

1. Preamble of the Constitution

Berubari Union case (1960):

Issue/dispute at the core:

- Conflict arose regarding the power of the Parliament to **transfer the territory of Berubari to Pakistan**, as per the **Nehru-Noon Agreement of 1958**.

Constitutional and legislative provisions involved:

- Whether the implementation of the Agreement in relation to the Berubari Union and the exchange of Enclaves **require any legislative action either by way of the law of Parliament under Article 3** of the Constitution or a **suitable amendment of the Constitution under the provisions of Article 368** or both?

Judgment delivered:

- The Supreme Court in Berubari Union case concluded that:
- The **preamble is not a part of the Constitution**.
- The **Parliament has the power to amend the Constitution**, including **Article 1**. · **Article 1 (3) (c) does not confer power or authority** on India to acquire territories. · A **cession of a part** of the territory of India would lead to the **diminution of the territory** of the Union of India. Such an amendment **can be made only under Article 368**.
- A **legislative action necessary for the implementation of the Agreement relating to the Berubari Union**. · A law of Parliament under **Article 3** of the Constitution **would be incompetent and a law relating to Article 368 of the Constitution is competent and necessary**, for exchange of the enclaves too, the same procedure is to be followed.
- SC recognised that the **Preamble could be used as a guiding principle if a term in any article of the Constitution is ambiguous or has more than one meaning**.

Impact of the Judgment:

- The Parliament of India enacted the Constitution (**Ninth Amendment**) Act, 1960, to give **effect to the Nehru Noor agreement of 1958**. The Berubari Union was divided and enclaves were exchanged on the basis of enclaves for enclaves without any consideration of territorial loss or gain.

Kesavananda Bharti Case 1973

Issue/dispute at the core:

- Kesavananda Bharati challenged the **Kerala land reforms legislation in 1970**, which imposed restrictions on the management of religious property.
- It was challenged under **Article 26**, regarding the right to manage religiously owned property without government interference.

Constitutional and legislative provisions involved:

- **Article 368 & Article 32:** Whether the Indian Parliament has the power to amend the fundamental rights? · Upto which extent parliament can amend constitution?

Judgment delivered:

- Preamble is a **part of Constitution**
- Preamble is **not a source of power nor a source of limitations.**
- Preamble has a **significant role** to play in the **interpretation of statues and interpretation of provisions of the Constitution.**
- **Parliament** in the exercise of constituent power **can amend any provision of the Constitution.** There are **no express limitations to the power of amendment.** The power to amend is wide and unlimited. The power to amend means the power to add, alter or repeal any provision of the Constitution.
- Neither the Constitution nor an amendment of the Constitution can be or is law within the meaning of **Article 13.**
- **Supreme Court deduced the 'Doctrine of Basic Structure'** - It implies that though Parliament has the **power to amend any provision of the Constitution**, it cannot in any manner interfere with the features so fundamental to the Constitution without which the Constitution would be spiritless.

Impact of the Judgment:

- Kesavananda Bharati case **overruled Golaknath case** judgment with regard to the power to amend the Constitution.
- All the amendments to the Constitution were subjected to the **test of 'Basic Structure' doctrine.** · The government to undo the implications of Kesavananda Bharati case. The government enacted the **42nd Amendment Act, 1976**, giving **'unlimited power to the Parliament to amend the Constitution.'** It also provided that **'validity of no constitutional amendment shall be called in question in any court on any ground'**.
- The Supreme Court held that the **Constitution should be read and interpreted in the light of grand and novel vision expressed in the preamble.** In fact, the Preamble was relied on in **imposing the implied limitations on amendment under the Article 368.** Further, in **S R Bommai Case** the Supreme Court reiterated that **Preamble indicates basic structure** of the Constitution.

LIC of India case (1995)

- In the 1995 case of Union Government Vs LIC of India also, the **Supreme Court has once again held that Preamble is the integral part of the Constitution** but is not directly enforceable in a court of justice in India.

2. Basic Features of the Constitution

a) Kesavananda Bharati Case (1973)	In this case, the SC held that the amending power of the Parliament is subject to the basic features of the Constitution.
b) Shankari Prasad case (1951)	<p>The Supreme Court said that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights.</p> <ul style="list-style-type: none"> ▪ Word 'law' under Article 13 includes only ordinary laws and not the constitutional amendment acts. ▪ The Parliament can abridge any of the Fundamental Rights by enacting a constitutional amendment act and such a law will not be void under Article 13.
c) I.R. Coelho case (2007):	<p>Supreme Court said that there could not be any blanket immunity from judicial review of laws included in the Ninth Schedule.</p> <p>The court held that judicial review is a basic feature of the constitution and it cannot be taken away by putting a law under the Ninth Schedule.</p> <ul style="list-style-type: none"> ▪ The judgment put an end to the politico-legal controversy by holding the Parliament's amending power subject to Judicial Review in line with Kesavananda Bharti's case judgement that the violation of Doctrine of Basic Structure will never be tolerated.
d) Indra Sawhney and Union of India (1992)	Rule of Law was added to the list of basic features of the constitution.
e) Waman Rao Case (1981)	<ul style="list-style-type: none"> ▪ The SC reiterated the Basic Structure doctrine. ▪ It drew a line of demarcation (April 24th, 1973 date of the Kesavananda Bharati judgment) and held that it should not be applied retrospectively to
	reopen the validity of any amendment to the Constitution which took place prior to the date.

3. Fundamental Rights

Amendability of Fundamental Rights

<p>a) Shankari Prasad Singh Deo v. Union of India (1951)</p>	<ul style="list-style-type: none"> ▪ The SC asserted that the Parliament's power to amend under Article 368 also includes the power to amend the Fundamental Rights guaranteed in Part III of the Constitution. ▪ It said that a constitutional amendment act enacted to abridge or take away the fundamental rights is not void of article 13(2).
<p>b) Sajjan Singh case (1965)</p>	<ul style="list-style-type: none"> ▪ In this case SC held that the Parliament can amend any part of the Constitution including the Fundamental Rights.
<p>c) Golaknath case (1967)</p>	<ul style="list-style-type: none"> ▪ In this case, SC reversed its earlier stance that the Fundamental Rights can be amended. ▪ It held that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13 and that to amend the Fundamental rights a new Constituent Assembly would be required. ▪ Article 368 gives the procedure to amend but does not confer on Parliament the power to amend the Constitution. It conferred upon Fundamental Rights a transcendental position.

Freedom of speech

Anuradha Bhasin case (2020): Right to Internet Access

Issue/dispute at the core:

- SC in response to petitions filed, arguing the **Internet shutdown and curbing of other civil liberties in the Jammu and Kashmir (J&K).**

Constitutional and legislative provisions involved:

- Section 144 of the Code of Criminal Procedure (1973), Indian Telegraph Act (1885), Information Technology Act, Article 21, Article 19 (1) & Article 19(1)(g).

Judgment delivered:

- This judgment **builds on a Kerala High Court judgment** that declared the **right to the Internet a fundamental right.** SC declared the Right to Internet access as a fundamental right forming a part of the **right to privacy and the right to education under Article 21** of the Constitution.
- The Supreme Court clarified that Right to access the Internet and released guidelines on imposition of **section 144 of CrPC.**
- The Supreme Court made the **Internet as an integral part of the freedom of expression guaranteed under Article 19 (1) of the Constitution.**

- SC held that the **Internet as a medium is a major means of information diffusion and that freedom to receive information is essential to expression.**
- It has also pointed out that in a **globalized world, restricting the Internet was to restrict the freedom to trade and commerce, protected by Article 19(1)(g).**
- While such **freedom is not absolute, the restrictions imposed on it should be in consonance with the mandate under Article 19(2) and Article 19(6) of the Constitution, inclusive of the test of proportionality.**

Impact of the Judgment:

- The **government is bound to publish all orders** it passes regarding such restrictions so that they can be challenged in a court of law.
- It held that such **restrictions cannot extend beyond a necessary duration nor could it be indefinite.** · The judgment **specifies a time-frame for a review of such order** (seven days)

Union of India v. Assn. for Democratic Reforms (2002):

- One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce.
- **Freedom of speech and expression includes right to impart and receive information** which includes freedom to hold opinions.

<p>Ram Manohar Lohia Case 1960</p>	<p>SC said that reasonable restrictions establish a relationship of proportionality between what the state wants to achieve and the extent to which it restricts speech.</p>
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Note: Other cases related to freedom of speech

- · Romesh Thappar vs State of Madras (1950)
- · Brij Bhushan and Another vs State of Delhi (1950)
- · Virendra vs State of Punjab (1957)
- · Hamdard Dawakhana vs Union of India and Others (1959)
- · Bennett Coleman & Co. and Others vs Union of India and Others (1972)
- · Indian Express Newspapers vs Union of India and Others (1984)
- · R. Rajagopal vs State of Tamil Nadu (1994)
- · People's Union for Civil Liberties vs Union of India (2004)
- · Shreya Singhal vs Union of India (2015)

Freedom of press

Romesh Thapar v. State of Madras, (1950):

Issue/dispute at the core:

- Romesh Thappar challenged order issued by the State of Madras under the **Maintenance of Public Order Act, 1949**, which contravenes the fundamental right of speech and expression conferred on him by **Article 19(1)(a)** of the Constitution.

Constitutional and legislative provisions involved:

- Restriction on **Freedom of press** and violation of **Article 19(1) (a)** of the Constitution or did it fall within the restrictions provided in **Article 19(2)**.
- The Court also had to determine whether the impugned provision was void under **Article 13(1)** of the Constitution by virtue of it being **in violation of the fundamental right of free speech and expression**.

Judgment delivered:

- The Supreme Court said that **freedom of speech and expression includes freedom of propagation of ideas** and that freedom is ensured by the freedom of circulation.
- **Freedom of speech and press laid at the foundation of all democratic organizations**, for without free political discussion there is no public education, so essential for the proper functioning of the process of popular government, is possible.
- It held that the **liberty of the press is an essential part of the right to freedom of speech and expression** under **Article 19(1)(a)**.
- The judgment was quoted again and again by the Supreme Court, including in the **Shreya Singhal case**, in which it **set aside the Section 66A of the Information Technology Act**.

Impact of the Judgment:

- 'Romesh Thappar' case **necessitated constitutional amendments**. The **first amendment** to the Indian Constitution undid the effect of this judgment. In this regard, the first amendment to the Constitution **amended Article 19**.

Right to Life and Personal Liberty (Art. 21)

M. C. Mehta v. State of Tamil Nadu (1986): Environment Law

Issue/dispute at the core:

- **Industrial accidents and their liabilities.** This judgment came on incident of Oleum gas (fuming sulfuric acid) leaked from a fertilizer plant of Shriram Food and Fertilisers Ltd. complex at Delhi, causing damages to several people.

Constitutional and legislative provisions involved:

- Whether **hazardous industries** are allowed to operate in densely populated areas? **Hazardous industries** regulating mechanisms? How is the **liability and amount of compensation determined**? What is the scope of **Article 32 (Constitutional Remedies)** & **Article 21(no person shall be deprived of his life or personal liberty)** of the Constitution?

Judgment delivered:

- Supreme Court directed that **children should not be employed in hazardous jobs** in factories for manufacture of match boxes and fireworks.
- SC found **strict liability principle inadequate** to protect citizens' rights and **replaced it with the absolute liability principle.**

Impact of the Judgment:

- It also changed the scope of **Environment Law in India** for the **first time, an industry was held responsible for an accident and forced to pay compensation.**
- It sought to **address and rectify the miscarriage of justice** and **reinstate faith in the judiciary.** · The Supreme Court performed an **extra-judicial role.** The verdict was decided on **taking into account the need for industrialization and the fact that accidents are an unavoidable consequence of it.**
- **Justice K.S. Puttaswamy vs. Union of India (2017) – Right to Privacy**

Issue/dispute at the core:

- Whether privacy is fundamental right or not?
- Protection of citizen's data collected by states.
- Use of Aadhar for welfare schemes
- Surveillance state - use of Aadhar data

Constitutional and legislative provisions involved:

- Article 21, Information Technology Act, 2000, Nature of regulatory power of state.

Judgment delivered:

- SC ruled that **Fundamental Right to Privacy** is **intrinsic to life and liberty** and thus, comes under **Article 21** of the Indian constitution.

- The court overruled its earlier judgments in **M. P. Sharma and Kharak Singh** (Supreme Court observed that the Indian Constitution does not specifically protect the right to privacy).
- SC declared that **bodily autonomy** is an **integral part of the right to privacy**. It has within its **ambit sexual orientation of an individual**.
- In **Gobind vs State of Madhya Pradesh, R. Rajagopal vs State of Tamil Nadu** and in **People's Union for Civil Liberties vs Union of India** cases, the Supreme Court held that the **right to privacy is a constitutionally protected fundamental right**.

Aadhaar Verdict 2018:

- Aadhaar Act passed the test laid down in the Privacy judgment to determine the reasonableness of the invasion of privacy.
- SC said that **Aadhaar must not be made compulsory for school admission and the administration cannot make it mandatory**.
- It **cannot be made mandatory for openings of a bank account** and for getting **mobile connections**. · SC upheld the use of Aadhaar for government services by using the **Doctrine of Proportionality**. · The SC has **made linking of Aadhaar and PAN mandatory**. The apex court also made Aadhaar **mandatory for filing of Income Tax Return (ITR)**
- It **struck down the provision in Aadhaar law allowing sharing of data on the ground of national security**. · It said that **authentication logs should be deleted after six months**.
- The **UIDAI** has mandated the use of Registered Devices (RD) for all authentication requests.
- The court **struck down Section 33(2) of the Aadhaar Act** which allows disclosure of information of a user in the interest of national security.
- **SC struck down Regulation 26(c)**, Aadhaar Regulations which allowed UIDAI to store metadata relating to Aadhaar based authentications or authentication history for private firms

Impact of the Judgment:

- **Privacy of the individual is essential aspect of dignity**. Privacy enables individual to retain the autonomy of the body and mind. The autonomy of individual is the ability to make decisions on vital matters of concern to life.
- One can **move to Supreme Court** or high court against tyranny of state.
- Provides for **protection against the state's interference** in the private matters including marriage, family & sex.
- It made the state **accountable** & seek justice in case of any infringement in the private zone & in case of **unnecessary surveillance** without her consent.

Euthanasia/Right to die with dignity/mercy killing:

The Supreme Court **Common Cause v. Union of India (2018)** gave **legal sanction to passive euthanasia** in a landmark verdict and **permitting 'living will' by patients on withdrawing medical support** if they slip into irreversible coma.

Issue/dispute at the core:

- Right to die vs. Right to live with dignity

Constitutional and legislative provisions involved:

- Article 21

Judgment delivered:

- **Right to Die** - The Supreme Court has upheld that the fundamental right to life and dignity includes right to refuse treatment and die with dignity.
- It held that **right to a dignified life extends up to the point of having a dignified death.**
 - **Fundamental right to 'meaningful existence' includes a person's choice to die without suffering.**
 - In **P. Rathinam vs. Union of India**- supreme court observed "Life is not mere living but living in health and health is not the absence of illness but the glowing vitality"

Aruna Shanbaug case (2011): The Supreme Court of India **laid down guidelines for euthanasia and made a distinction between 'active' and 'passive' euthanasia.** It said that causing death of a **person who is in a permanent vegetative state**, with no chance of recovery; **by withdrawing artificial life support is not a "positive act of killing"** and could be **permitted on a case-by-case basis.**

- In **2014, the Supreme Court** issued notice to all the states seeking their views on **whether a terminally ill person can execute a "living will"** that his/her life support system be withdrawn if he/she reaches vegetative state with no hope of revival.
- **2016, the Health ministry** uploads **-The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill** and wants people to give their views so that it can take decision to enact or not to enact law on passive euthanasia.
- **Gian Kaur Case 1996 SC** has held that the right to life **under Article 21 does not include the right to die.**

Bacchan Singh vs State of Punjab (1980): Capital punishment

Issue/dispute at the core:

- Whether the death penalty for crimes is constitutionally valid?

Constitutional and legislative provisions involved:

- **Article 19, Article 21**, the basic structure of the Constitution and **Article 6(1) of the International Covenant on Civil and Political Rights adopted by the UN General Assembly**.
- **Powers of the Supreme Court** to lay down norms restricting the area of the imposition of the death penalty to a narrow category of murders.

Judgment delivered:

- **SC** evolved the **doctrine of 'rarest of rare case'** for awarding the **death penalty**. The Supreme Court **laid down broad guidelines** for awarding the **death penalty**.
 - a. The extreme penalty can be inflicted **only in gravest cases of extreme culpability**.
 - b. In making the choice of sentence, **due regard must be paid to the circumstances of the offender also**.
 - c. Supreme Court was of the view that **minimal use of capital punishment to penalize the criminals**.
 - d. In **Chhannu Lal Verma vs the State of Chattisgarh (2018)** - Also upheld capital punishment.

Impact of the Judgment:

- Though the Supreme Court was of the view that minimal use of capital punishment to penalize the criminals, this view is **contradicted by the legislation by increasing the number of crimes for which capital punishment is awarded**. However various judges, observed that the time had come to review the need for the death penalty as a punishment, especially its purpose and practice.

Other cases related to death penalty

<p>a) Machhi Singh And Others vs State of Punjab (1983)</p>	<ul style="list-style-type: none"> ▪ SC had held that in the rarest of rare cases, when the collective conscience of the community is so shocked that it will expect the holders of the judicial power center to inflict death penalty, then death penalty may be sanctioned.
<p>b) Shatrughan Chauhan vs UOI (2014)</p>	<ul style="list-style-type: none"> ▪ The undue delay by President in rejecting mercy to a death row convict amounts to torture, such inordinate and unexplained delay by the President is sufficient in itself to entitle the convict to a commutation. ▪ The court had refused to fix a certain number of years above which undue delay would amount to torture. ▪ The crime in question is irrelevant while deciding the effects of keeping a death row prisoner waiting for a decision on his/her mercy petition. ▪ The suffering that comes with anticipating death on an everyday basis for the judges amounted to torture, which was violative of the Right to life under Article 21 of the Constitution.

Note: Other cases related to Capital Punishment:

- Jagmohan Singh vs State of Uttar Pradesh (1973)
- Rajendra Prasad vs State of Uttar Pradesh (1979)
- T.V. Vatheeswaran vs State of Tamil Nadu (1983)
- Shashi Nayar vs Union of India (1991)
- Alope Nath Dutta vs State of West Bengal (2007)
- Swamy Shraddhananda vs State of Karnataka (2008)
- Santosh Kumar Satishb hushan Bariyar vs State of Maharashtra (2009)

Other interpretations of Right to life

<p>a) Gopalan case (1950)</p>	<ul style="list-style-type: none"> ▪ Supreme Court has taken a narrow interpretation of the Article 21. ▪ It said that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. ▪ The State can deprive the Right to life & personal liberty of a person based on a law. It is because of the expression 'procedure established by law' in Article 21, which is different from the expression due process of law contained in the American Constitution.
	<ul style="list-style-type: none"> ▪ The Court held that the personal liberty means only liberty relating to the person or body of the individual. But, in Maneka case (1978) Supreme Court overruled its judgement.

b) Ban on Diwali firecrackers in Delhi (2017)	Air Pollution/Environment <ul style="list-style-type: none"> ▪ The court banned the sale of fireworks days ahead of Diwali on environmental grounds in view of severe pollution. ▪ It ruled out a blanket ban on firecrackers in Delhi-National Capital Region and permitted the sale of 'green crackers'
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Maneka Gandhi v. Union of India, (1978):

Issue/dispute at the core:

- She challenged in Supreme Court under **Article 32** (right to remedy) on the grounds that **right to travel abroad** came under broad sweep of **personal liberty granted** under **Article 21** and order also violated **Article 14 (equality)**.

Constitutional and legislative provisions involved:

- Whether the right to go abroad is part of personal liberty?
- Whether the right under **Article 19(1)(a)** has any geographical limitation?
- Whether the Section 10(3)(c) of the Passport Act, 1967, is violative of **Article 14, Article 19(1)(a) and Article 21**?
- **Article 22** – Safeguards against preventive detention.

Judgment delivered:

- **Freedom of speech and expression has no geographical limitations** and it carries the right of a citizen to gather information and to exchange thought with others not only in India but abroad also. · The Supreme Court's judgement in the Maneka Gandhi case meant that **'procedure established by law' under Article 21** would have the same effect as the expression **'due process of law'**. · In **Satwant Singh Sawhney case**, the Court held that the **'right of travel and to go outside the country is included in the right to personal liberty.'**
- The Court held that there is a **unique relationship between the provisions of Article 14, Article 19 and Article 21**. Therefore, a law depriving a person of 'personal liberty' has not only to stand the test of Article 21, but it must also stand the test of **Article 19 and Article 14** of the Constitution.
- Courts held that **personal liberty under Article 21 is of the widest amplitude** and it covers a variety of rights which go to constitute the personal liberty of man.

Impact of the Judgment:

- Maneka Gandhi case gave the term **'personal liberty'** the **widest possible interpretation**.
- The Supreme Court **expanded the scope of Article 21**, which now includes, among other rights, **Right to Clean Air, Right to Food, Right to Clean Environment and more**.

- The judgment **made India a true welfare state**, as enshrined in the preamble to the Constitution. · It marked the **beginning of an era of judicial activism**.

Right to property

I. C. Golaknath and Others v State of Punjab and Another (1967)

Issue/dispute at the core:

- Golaknath filled a **writ petition under Article 32** of the Constitution and **challenged the validity of the Punjab Security of Land Tenures Act**, which violated his **fundamental right to hold and acquire the property**.

Constitutional article and legislative provisions involved:

- Whether Amendment is a “law” under the **meaning of article 13(2)**, and whether fundamental rights can be amended or not.

Judgment delivered:

- Parliament **cannot amend** Fundamental Rights.
- The judgment provided for the “**Prospective Overruling of the law**”
- Supreme Court held that the **Fundamental Rights provided under Part III of the Constitution cannot be subjected to the process of amendment provided in Article 368**.
- Amendment Act was **also a ‘law’** within the purview of Article 13(2).
- Fundamental Rights are the **‘primordial rights necessary for the development of human personality’**.

Impact of the Judgment:

- Parliament tried to supersede the Golaknath case ruling by amending Article 368 itself. The Parliament passed 24th Amendment Act, 1971.
- According to it **an amendment of the Constitution passed under Article 368 will not be considered as ‘law’ under the meaning of Article 13**.
- It further stated that the **validity of an amendment to the Constitution shall not be challenged on the ground that it takes away or affects the Fundamental Rights**.
- **Recent case on Right to property**
- Recently Supreme Court has stated that **forcible dispossession of a person’s property a human right violation**

Issue/dispute at the core:

- Government (Himachal Pradesh) forcibly took over land belonging to a person and state has failed to pay the compensation.

Constitutional and legislative provisions involved:

- **Article 300A** (No person shall be deprived of his property save by the authority of law), **Right to get compensation** on acquisition of property by state.

Judgment delivered:

- SC stated that **right to property is both a human right and a constitutional right** - the latter **under Article 300A** of the Constitution.
- Court said- some **amount of property right is an indispensable safeguard against tyranny and economic oppression of the government.**
- The **44th constitutional amendment act (1978)** inserts article 300-A. Before this, right to property was the **fundamental right, enshrined under article 19(1)(f) & Art. 31 of the Constitution.** · **Article 300-A: only prohibits deprivation of the right to property by mere executive order unless** that order is made or authorized by some law enacted by the legislature

Impact of the Judgment:

- The **state cannot trespass into the private property** of a citizen and then **claim ownership** of the land in the name of **‘adverse possession’.**
- Grabbing private land and claiming it as its own **makes the state an encroacher.**

Right against exploitation Article-32

<p>a) Kanu Sanyal v/s District Magistrate (1974) case</p>	<p>SC laid down that the physical presence is NOT a part of the writ.</p> <p>Issue/dispute at the core: Whether Article 32 (right to approach the court to defend the fundamental rights) can be suspended under National Emergency under Article 352?</p>
<p>b) ADM, Jabalpur vs Shivkant Shukla (1976)</p>	<p>Power of the High Court to issue a writ of habeas corpus.</p> <ul style="list-style-type: none"> • Judgment: SC said that no person has any locus standi to move any writ petition under Article 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an, order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by malafide factual or legal or is based on extraneous consideration. The Supreme Court also upheld the constitutional validity of Section 16 A (9) of the Maintenance of Internal Security Act. • The Supreme Court in Remdeo Chauhan vs Bani Kant Das (2010) case officially admitted its mistake in the ADM, Jabalpur judgment. It read Article 21 in a restrictive manner and denied thousands of Emergency détentés the right of habeas corpus.

<p>c)Public interest Litigation (PIL)</p>	<ul style="list-style-type: none"> • Mumbai Kamagar Sabha vs. Abdul Thai (1976): The seeds of the concept of public interest litigation were initially sown in India by Justice Krishna Iyer. • The 1st reported case of PIL was Hussainara Khatoon vs. State of Bihar (1979)- it was focused on the inhuman conditions of prisons and under trial prisoners. • Right to speedy justice emerged as basic fundamental right which had been denied to these prisoners. • S.P. Gupta vs. Union of India: SC held that any member of the public/ social action group acting bonafide can invoke the Writ Jurisdiction of the High Courts (Article 226) and the SC (Article 32) seeking redressal against violation of legal or constitutional rights of persons who due to social or economic or any other disability cannot approach the Court. • The Supreme Court in Indian Banks Association, Bombay & Ors. vs. M/s Devkala Consultancy Service and Ors held that In an appropriate case, where the petitioner might have moved a court in her private interest and for redressal of the personal grievance, the court in furtherance of Public Interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case.
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Asiad Workers Case 1982:

- Supreme Court said that when a person provides labour of service to another for **remuneration which is less than the minimum wage**, the labour or service provided by him clearly falls within the scope and ambit of the words "**forced labour**" under **Article 23** (of the Constitution of India)."

Right to Education

Mohini Jain vs State of Karnataka (1989):

Issue/dispute at the core:

- Whether Right to Education is fundamental right or not?

Constitutional and legislative provisions involved:

- Against **Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984**, fixing the tuition fee, other fees and deposits to be charged from the students by the private Medical Colleges in the state. Whether the charging of capitation was arbitrary, unfair, unjust and as such violated **Article 14** of the Constitution?

Judgment delivered:

- Supreme Court held that the **'Right to Education' is concomitant to the fundamental rights** enshrined under Part III of the Constitution.
- **The Right to Education flows directly from right to life.**
- Charging capitation fee by the private educational institutions as a consideration for admission is wholly illegal and cannot be permitted.

Impact of the Judgment:

- The Parliament in 2002 passed the Constitution **(Eighty-sixth Amendment) Act of 2002**. It added **Article 21A** to the Constitution and expressly recognized **'Right to Education' as a fundamental right** in the Constitution.
- SC made **Constitutional obligation on state** to provide educational institutions at all levels for the benefit of the citizens.
- The judgment brought **equality in access to education**.
- SC said that **Capitation fee is nothing but a price for selling education**. The educational institutions from becoming **'teaching shops'**.

<p>a) Unnikrishnan JP vs State of Andhra Pradesh & Others 1993</p>	<p>In this case, SC held that Education is a Fundamental right flowing from Article 21.</p>
<p>b) Pramati Education and Cultural Trust v. Union of India (2014)</p>	<p>The SC ruled that RTE is inapplicable for aided or unaided minority schools. It had exempted the minority schools from implementing the No Detention policy</p>

Preventive Detention

<p>A.K. Gopalan vs The State Of Madras (1950)</p>	<p>SC satisfied that there was no violation of Fundamental Rights enshrined in Articles 13, 19, 21 and 22 under the provisions of the Preventive Detention Act, if the detention was as per the procedure established by law. It is narrow interpretation of Article 21. It means procedure established by law is the law established by the state.</p>
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Reservation

Indira Sawhney and Others vs Union of India (1992):

Issue/dispute at the core:

- Is Reservation for OBCs constitutionally valid?

Constitutional article and legislative provisions involved □

- Article 16(2), Article 340 (1) commission for OBCs (2nd OBC commission/ Mandal commission), Article 16(4)

Judgment delivered:

- It upheld the constitutional validity of the Office Memorandum that provided **27% reservation to the Backward classes**. It held that the **reservations should not exceed 50%**, and the **reservation in promotion is constitutionally impermissible**.
- Supreme Court said that reservations under **Article 16(4)** could **only be provided at the time of entry** into government service but **not in matters of promotion**.
- **It held that the reservations should not exceed 50 per cent, and the reservation in promotion is constitutionally impermissible.**
- Backward class of citizen in **Article 16(4)** can be identified on the basis of the caste and **not only on an economic basis**.

Impact of the Judgment:

- The judgment laid down a reasonable solution to the problem of reservation. The court made an attempt to **balance between the interests of society and educationally BCs** and a person belonging to the general category in matters of government employment.
- Various governments have made an attempt to change the effect of the decision of this case with the **intention of political gain**.
- The Constitution **77th Amendment in 1995** inserted a new **Article 16(4)(A)** that **empowers the State to make a provision for reservation in the matter of promotion to any class or classes of posts in the service of the State in favor of the SC and ST**.
- The **Constitution 81st Amendment in 2000** inserted **Article 16(4) (B)**. By this amendment, it was fixed that **reservation can exceed above 50 per cent reservation for SC, ST and BCs if backlog vacancies could not be filled up** in the previous years due to non-availability of eligible candidates.
- By the Constitution **85th Amendment in 2001**, the word '**in the matter of promotion to any classes**' was substituted by the words in the **matter of promotion with consequential seniority, to any classes**. It provided for '**consequential seniority**' in the case of promotion by the virtue of the rule of reservation for the government servants belonging to the SCs and STs.

B. K. Pavitra v Union of India (2019)- Reservation in promotion

- Supreme Court **upheld a reservation in promotion policy** on the ground that the **State had furnished sufficient data** to demonstrate both that SC/STs are inadequately represented and that the policy would not adversely affect efficiency.
- Court **introduced a new inclusive definition of administrative efficiency** under **Article 335** of the Constitution. The new **definition balances merit with ensuring adequate representation**. Also, the Court upheld the **Karnataka Reservation Act 2018** despite

the fact that the State had failed to apply the creamy layer test introduced in **Jarnail Singh**.

- The Court reasoned that **the test can only be applied at the stage of reservation in promotion and not at the stage of consequential seniority**.

Mukesh Kumar v The State of Uttarakhand (2020):

- The Supreme Court said that the **states are not bound to provide reservation in appointments and promotions and there is no fundamental right to reservation in promotions**.
- **Article 16 (4) and 16 (4A)** are enabling provisions, vesting discretion on the state government to consider providing reservation, if the circumstances so warrant.
- The state government **cannot be directed** to give reservation for appointment in public posts.

Other important judgment pertaining to Reservation

<p>a) Mandal case (1992)</p>	<ul style="list-style-type: none"> ▪ The scope & extent of Article 16(4) (provides for reservation of jobs in favour of backward classes) has been examined thoroughly by the Supreme Court. ▪ Court has rejected the additional reservation of 10% for poorer sections of upper castes, it upheld the constitutional validity of 27% reservation for the OBCs with certain conditions, viz, <ul style="list-style-type: none"> a) The advanced sections among the OBCs (creamy layer) should be excluded from the list of beneficiaries of reservation. b) No reservation in promotions, reservation should be confined to Initial appointments only. Any existing reservation in promotions can continue for five years only (upto 1997). c) The total reserved quota should not exceed 50% except in some extraordinary situations. This rule should be applied every year. d) The carry forward rule in case of unfilled (backlog) vacancies is valid. But it should not violate 50% rule. e) A permanent statutory body should be established to examine complaints of over inclusion and under-inclusion in the list of OBCs.
<p>b) E.V. Chinniah case 2004</p>	<p>SC allowed States to make a class within a class of members of the Scheduled Castes. It would amount to reform the Presidential list.</p>

<p>c) M. Nagaraj v Union of India Case (2006):</p>	<p>SC validated the state's decision to extend reservation in promotion to SCs and STs, but it gave direction that the state should provide proof on the following three parameters to it</p> <ol style="list-style-type: none"> 1. Empirical Data on Backwardness of the class benefitting from reservation. 2. Empirical Data on Inadequate Representation in service for which reservation in promotion is to be granted. 3. Impact on efficiency- how reservations in promotions would affect administrative efficiency.
<p>d) Rajeev Kumar Gupta & Ors v Union of India & Ors (2016)</p>	<p>Reservations for PwDs</p> <p>Supreme Court held the Government of India instructions disallowing reservation in promotion for persons with disabilities as illegal and said that wherever posts are identified to be suitable for disabled persons and 3% reservation must be given in direct recruitment as well as in promotion.</p>
<p>e) Jarnail Singh v Lachmi Narain Gupta case (2018):</p>	<ul style="list-style-type: none"> ▪ The court held that reservation in promotions does not require the state to collect quantifiable data on the backwardness of the Scheduled Castes and the Scheduled Tribes. ▪ Court said- creamy layer exclusion extends to SC/STs. Hence State cannot grant reservations in the promotion to SC/ST individuals who belong to the creamy layer of their community.
<p>f) Punjab v. Davinder Singh (2020)</p>	<ul style="list-style-type: none"> • SC held that States can sub-classify Scheduled Castes and Scheduled Tribes in the Central List to provide preferential treatment to the weakest out of the weak. • Sub-classifications within the Central List does not amount to tinkering with it. No caste is excluded from the list. • The States only give preference to weakest of the lot in a pragmatic manner based on statistical data. • It fully endorses to extend the creamy layer concept to the Scheduled Castes and Scheduled Tribes. • ▪ Citizens cannot be treated to be socially and educationally backward till perpetuity, those who came up must be excluded like the creamy layer.

Right to Assemble/Protest

Amit Sahani v Commissioner of Police & Others. (2020)

Issue/dispute at the core:

- Advocate Amit Sahani seeking to **remove the protests against CAA-NRC at Shaheen Bagh**, alleging that the protests were blocking the roads, affecting the right of free movement of the public.

Constitutional and legislative provisions involved:

- **Article 19**, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights, i.e., the **right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b)**.
- Right to protest vs Right to commute

Judgment delivered:

- Supreme Court has found the **indefinite “occupation” of a public road** by the Shaheen Bagh protestors **unacceptable** and the **administration ought to take action** to keep the areas clear of encroachments or obstructions.
- The judgment upheld the right to peaceful protest against the law but made it clear that public ways and public spaces cannot be occupied, and that too indefinitely.
- **Mazdoor Kisan Shakti Sangathan case**, each **fundamental right**, be it of an individual or of a class, **does not exist in isolation and has to be balanced with every other contrasting right**. It was made to reach a solution where **the rights of protestors were to be balanced with that of commuters**.
- The Court held that **democracy and dissent go hand in hand**, but then the demonstrations expressing dissent have to be in designated places alone.

Impact of the Judgment:

- Government may impose various restrictions on **Right to protest** by individuals.

<p>a) Ram Lila Maidan Incident v. Union of India and Ors. (2012)</p>	<p>Supreme Court declared that citizens have the fundamental right of peaceful assembly and protest that cannot be removed by the arbitrary executive or legislative action.</p>
<p>b) Mazdoor Kisan Shakti Sangathan vs UOI Case (2018)</p>	<p>▪ Supreme Court upheld that right to protest as it is crucial in a democracy, which rests on participation of an informed citizenry in governance.</p>

Freedom of Religion

Sabarimala temple case/ Indian Young Lawyers Association vs. the State of Kerala (2018):

Supreme Court Allows Women Entry into Sabarimala Temple, **which it termed as a violation of women's right to practice religion.**

Issue/dispute at the core:

- Essential religious practice, Right to Freedom of Religion vs. constitutionally-guaranteed rights. · **Constitutional and legislative provisions involved** □ Article 14,15, 21 &25, Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 (restricts the entry of women into the Sabarimala Temple)

Judgment delivered:

- SC stated that '**devotion cannot be subjected to gender discrimination**'.
- It **overturned the 1951 judgment of Bombay High Court** in the **State of Bombay versus Narasu Appa Mali** which held that **personal law is not 'law' or 'law in force' under Article 13** and held that **immunizing customs takes away the primacy of the constitution.**
- It takes away the woman's right against discrimination guaranteed under **Article 15(1)** of the Constitution and curtails the religious freedom assured by **Article 25(1).**
- Preventing women's entry in the temple with the **irrational and obsolete notion of "purity" offends the equality clauses in the Constitution**
- SC held that prohibition founded on the notion that menstruating women are "**polluted and impure**" is a **form of untouchability (Article 17)** and the **notions stigmatized women.**
- **No customs can claim supremacy over the Constitution** and its vision of ensuring the sanctity of dignity, liberty, and equality and customs and personal law have a significant impact on the civil status of individuals.

<p>a) Shafin Jahan v Asokan K.M. on 8 March, 2018 (case of Hadiya)</p>	<ul style="list-style-type: none"> · SC held that Right to choose religion and marry is an intrinsic part of meaningful existence. Neither the State nor patriarchal supremacy can interfere in person's decision. · It is a change from SC's earlier interpretation of the word "propagate," to mean "to transmit or spread one's religion by an exposition of its tenets," but to not include the right to convert another person to one's own religion. · It reinvigorates freedom of religion and freedom of conscience which has been recognized under the international law under the Universal Declaration on Human Rights recognizing fact that the entire humanity enjoys certain alienable rights. India is also a signatory of the same. · The Indian Constitution guarantees the right to freedom of religion but it does not explicitly mention right to conversion.
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b) TripleTalaq Shayara Bano Case (2017)	<p>Issue: Gender Equality vs Freedom of Religion</p> <ul style="list-style-type: none"> ▪ The Supreme Court declared that divorce through instant triple talaq among Muslims would be "void", "illegal" and "unconstitutional". ▪ The court declared that instant Triple Talaq is unconstitutional, Constitution Bench did not accept the argument that instant talaq is essential to Islam and deserves constitutional protection under Article 25. <ul style="list-style-type: none"> ▪ This practice is arbitrary and depends on the whims of the husband. The court ruled that the practice was against Article 14 of the Constitution, which guarantees the right to equality. It suggested the government to bring a legislation banning triple talaq. <p>Muslim Women (Protection of Rights on Marriage) Bill, 2019:</p>
	<ul style="list-style-type: none"> ▪ It criminalizes the practice of instant Triple Talaq. SC said that Muslim husband declaring instant Triple Talaq can be imprisoned for up to 3 years is alleged to be disproportionate for a civil offence.
c) Danial Latifi case (2001)	<ul style="list-style-type: none"> ▪ It challenged the constitutionality of the provisions of the Muslim Women's Act (1986), for providing maintenance only during the iddat period. ▪ The SC ruled that the husband would pay a reasonable and fair amount needed to maintain his ex-wife for the rest of her life.
d) Shamim Ara case (2002)	<ul style="list-style-type: none"> ▪ SC said that Nikah Halala is also rendered redundant. ▪ The court had said a mere plea of talaq in response to the proceedings filed by the woman for maintenance cannot be treated as pronouncement of talaq. To be valid talaq has to be pronounced as per the Koranic injunction. ▪ SC held that talaq must be pronounced in an Islamic way and it should be proven beyond doubt the events leading to talaq. ▪ It held that the wife was liable to receive maintenance from her husband
e) Ahmedabad Women Action Group (AWAG) case (1997)	<ul style="list-style-type: none"> ▪ The court held that adjudication of personal law was beyond the jurisdiction of the court.
f) Shah Bano Case (1985)	<ul style="list-style-type: none"> ▪ The SC directed the husband to pay alimony to Shah Bano. ▪ The Government at the time enacted the Muslim Women (Protection of Rights on Divorce) Act (1986), to nullify the court directive. It limited the maintenance payments to the iddat period (the 3-month waiting period for divorce).

g) Shirur Mutt' case (1954)	<p>Doctrine of Essentiality</p> <ul style="list-style-type: none"> ▪ SC said that the term Religion will cover all rituals and practices integral to a religion, and took upon itself the responsibility of determining the essential and non-essential practices of a religion.
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Minority institutions

a) Azeez Basha case, 1967	SC ruled that universities come under the definition of "educational institution" in Article 30(1).
	Thus, in this way, it also made obligatory on government to recognize such MEIs through statute.
b) Dr. T.M.A Pai Foundation V. State of Karnataka (2002)	<p>SC laid down the contours of governmental regulations on private institutions and still occupies the education field in so far as the constitutionality of statutes and regulations is concerned.</p> <ul style="list-style-type: none"> ▪ The right under Article 30(1) is not absolute/above the law <p>Article 30(1) was to ensure equal treatment between the majority & minority institutions and rules and regulations would apply equally to majority & minority institutions.</p> <p>Maximum freedom must be given to management of minority institutions that directly aim to preserve their special religious and linguistic characteristics but for those minority institutions imparting purely secular education & (Physics, Chemistry etc,) excellence is of paramount importance.</p>
c) Malankara Syrian Catholic College case (2007)	<ul style="list-style-type: none"> ▪ The SC has summarized the general principles relating to establishment and administration of minority educational institutions in the following way: <ul style="list-style-type: none"> ▪ The rights of minorities to establish and administer educational institutions of their choice comprises the following rights: <ol style="list-style-type: none"> 1. To choose its governing body in whom the founders of institution have faith & confidence to conduct and manage affairs of the institution; 2. To appoint teaching staff (teachers/ lecturers and he masters/principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees. 3. To admit eligible students of their choice and to set reasonable fee structure; 4. To use its properties and assets for the benefit of the institution.
d) Kerala Education Bill case 1958	SC said that minority should to be a group of people who are numerically a minority in a State as a whole as distinguished from any particular area or region.

Double jeopardy- Article 20

State of Mizoram vs. Dr. C. Sangnghina case (2019):

- SC has held that the **bar of double jeopardy will not apply if the person was discharged due to lack of evidence.**

Issue/dispute at the core:

- It was in **review of order passed by the Guwahati High Court in August 2015**, upholding a Special Court decision to decline to entertain a second charge sheet filed in corruption case against the accused on the ground of double jeopardy.

Constitutional and legislative provisions involved:

- **Article 20 (2)** of the Constitution of India and **Section 300 of the Criminal Procedure Code** say that **no person shall be prosecuted and punished for the same offense more than once.**

Judgment delivered:

- Where the accused has not been tried at all and convicted or acquitted, the principles of “double jeopardy” cannot be invoked at all. SC said, **the fundamental right to privacy cannot be construed as absolute and must bow down to compelling public interest.**

In another judgment SC has said that directing a **person to part with his voice sample to police was not a violation of his fundamental right to privacy and self-incrimination.**

Impact of the Judgment:

- SC **invalidate earlier judgment** in which, **there is no bar for the competent authority to issue a proper order of sanction for prosecution.**

5. Fundamental rights vs Directive Principle

Champakam Dorairajan (1951):

- **Judgment delivered:** Supreme Court ruled that **in case of any conflict between the Fundamental Rights and the Directive Principles, the former would prevail.** The SC further held that the **directive principles of State policy laid down in Part IV the Constitution cannot in any way override or abridge the fundamental rights guaranteed by Part III.** On the other hand, they have to conform and run as subsidiary to the fundamental rights laid down in Part III.
- **Importance of case:** It was a **first major verdict of the Supreme Court on the issue of Reservation.** o It led to the **First amendment of Indian Constitution.**

- The SC held that **Article 37 expressly says that the directive principles are not enforceable by court.** o **Fundamental Rights were given superiority over the Directive principles.**
- This continued in other cases such as **Qureshi v/s State of Bihar, Sajjan Singh V/s State of Rajasthan** cases court confirmed this stand.

<p>a) Golak Nath vs. The State of Punjab (1967)</p>	<p>▪ SC said that Fundamental Rights cannot be abridged/ diluted to implement the directive principles. It forced the government to amend the constitution</p>
<p>b) Minerva Mills v/s Union of India (1980) case</p>	<p>Supreme Court struck down 42nd Amendment Act 1976 (further widened the scope of the Fundamental Rights), declaring it to be violative of the basic structure.</p> <p>▪ The supreme court viewed that there is no conflict between the Fundamental Rights and the DPSP and they were complimentary of each other. ▪ The Court held that the Constitution exists on the balance of part III (Fundamental Rights) and Part IV (DPSP).</p> <p>Giving absolute priority to one over other will disturb the harmony of the Constitution.</p>

Note: Other related cases

- **The Kerala Education Bill vs Unknown (1958)**
- **Kesavananda Bharati vs State of Kerala (1973)**
- **Waman Rao and Others vs Union of India and others (1980) etc.**

6. Federalism

<p>a) Power tussle between Delhi Government and Lt. Governor - Govt of NCT of Delhi vs UoI - 2018</p>	<p>Powers of Lt Governor</p> <p>In this landmark Constitution Bench of the Supreme Court ruled that decisions of the elected government of Delhi do not require the concurrence of the Lt Governor who only needs to be informed.</p> <p>Calling for “Constitutional pragmatism” and underlining the clear separation of powers, the bench made it clear that the status of the Lieutenant Governor of Delhi is not that of a Governor of a State, rather he/her remains an Administrator, in a limited sense, working with the designation of Lieutenant Governor.</p>
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<p>b) S.R. Bommai v/s Union of India case (1994)</p>	<p>SC said that federalism is a basic feature of the Constitution and States are supreme in their sphere. So, State flag is not unauthorized. But, the manner in which the State flag is hoisted should not dishonor the national flag.</p> <p>In the State of West Bengal vs Union of India (1962), Supreme Court held that the Indian Constitution is not federal.</p>
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Note: you can use other cases for Center State relation like-

- State of Rajasthan vs Union of India (1977)
- Pradeep Jain vs Union of India (1984)
- R. Bommai vs Union of India (1994)
- Rameshwar Prasad and Others vs Union of India and Another (2006)

7. Sexual abuse of children and women

Alimony as a right of women

- Supreme Court has laid **comprehensive guidelines for applications filed by women** seeking maintenance from their estranged husbands.
- Maintenance cases have to be **settled in 60 days.**
- Supreme Court has held that **deserted wives and children are entitled to maintenance** from the husbands from the date they apply for it in a court of law.
- **Violation of judicial orders would lead to punishments** such as civil detention and even attachment of the property of the latter.

Gaurav Jain v Union of India: (1997):

- The Supreme Court held that the **children of the prostitutes** have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be **part of the mainstream of social life without any pre-stigma.**

<p>a) Vishaka and State of Rajasthan (1997)</p>	<p>Sexual harassment at the workplace</p> <ul style="list-style-type: none"> ▪ SC gave a set of guidelines for employers as well as other responsible persons/ institutions to immediately ensure the prevention of sexual harassment. ▪ It is called as Vishaka Guidelines, which were to be considered law until appropriate legislation was enacted. <p>The Supreme Court held that incidents like Sexual Harassment result in a violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'.</p> <p>It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution.</p>
	<p>The consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1) (g) - (to practice any profession or to carry out any occupation, trade or business)</p> <p>Therefore, such violations attract the remedy under Article 32 for the enforcement of these fundamental rights of women.</p> <p>On the basis of judgment, Parliament passed the sexual harassment at workplace (Prevention, Prohibition and Redressal) Act, 2013, which seeks to safeguard women from harassment at their place of work.</p> <p>Note : Medha Kotwal Lele and Others vs Union of India and Others (2012) is also related with sexual harassment at work place</p>
<p>b) Pedophilia case (2011)</p>	<p>The Supreme court said that the sexual abuse of children is one of the most heinous crimes.</p>
<p>c) Nirbhaya Case (2014)</p>	<p>SC introduced the Criminal Law (Amendment) Act, 2013 and defined "Rape" under the Protection of Children from Sexual Offences Act, 2012, the Indian Evidence Act, 1872, Indian Penal Code, 1860 and Code of Criminal Procedures, 1973</p>
<p>d) Permanent commission in army</p>	<p>The Secretary, Ministry of Defence Vs Babita Puniya (2020)</p> <p>The Supreme Court granted permanent commission to women officers in the Army irrespective of their number of years of service.</p>

8. Role of Governor

S. R Bommai case of 1994:

- The court gave primacy to a **floor test** as a check of majority.
- It also said that **the power under Article 356 is extraordinary and must be used wisely and not for political gain.**
- SC held **secularism as a basic feature of the Constitution of India.**

Rameshwar Prasad case (2006)

- Governor **cannot shut out post poll alliances altogether** as one of the ways in which a popular government may be formed.
- It **said unsubstantiated claims of horse-trading or corruption in efforts at government formation cannot be cited as reasons to dissolve the Assembly.**

Nabam Rebia judgment (2016):

- SC ruled that **Governor's discretion Article 163 is limited and his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith & tempered by caution.**

a) Hargovind Pant v. Raghukul Tilak (1979)	Supreme Court affirmed that the office of the Governor was not subordinate/subservient to the Government of India
b) Rameshwar Prasad v Union of India, 2005	SC struck the imposition of governor's rule after an inconclusive election and non-conveying of assembly even once. Since as per Bommai case no floor test was done the court struck down the president rule.
c) B.P. Singhal vs Union of India case (2010)	Removal of Governor In, SC observed that power to remove Governor cannot be exercised in an arbitrary, capricious or unreasonable manner. This power should only be exercised in rare and exceptional circumstances for valid and compelling reasons.
d) Harish Chandra Rawat v Union of India case (2016)	Supreme Court has ordered the floor test for the dismissed chief minister after the governor had assumed looks of the majority due to defections and the president dismissed the state government.

9. Powers of LG

Government of NCT Delhi v Union of India case (2018)

- SC **overturned the August 2016 judgment** of the Delhi high court, (ruled that since Delhi was a Union territory all powers lay with the central government, not the elected Delhi government). · **Supreme Court laid down a few key principles:**
- **Delhi government has power in all areas** (except land, police and public order). LG is **bound by the aid and advice of the government** in areas other than those exempted.
- The **only exception was a proviso to Article 239-AA**, which allowed the LG to refer to the President any issue on which there was a difference of opinion with the council of ministers. In that case, the LG would be bound by the President's decision.
- Delhi Lieutenant Governor **cannot act independently**.
- It must take the aid and advice of the Council of Minister; the role of the L-G is different than that of a Governor.

10. Article 356 (Presidents Rule)

<p>a) S R Bomai vs Union of India (1991)</p>	<ul style="list-style-type: none"> ▪ It should be used very sparingly, not for political gains. <p>Government's strength should be tested on the floor of the house and not as per whims of the Governor.</p> <p>Court cannot question the advice tendered by Council of ministers but it can scrutinize the ground for that advice of imposition of President's rule and may take corrective steps if malafide intention is found.</p> <p>Use of Art 356 is justified only when there is breakdown of constitutional machinery & not administrative.</p>
<p>b) Buta Singh vs The State of Punjab (1991)</p>	<p>The governor's report could not be taken at face value and must be verified by the council of ministers before being used as the basis for imposing President's rule.</p> <p>The Supreme Court ruled that if a political party with the support of other parties or MLAs staked claim to form a government and satisfied the Governor about its majority, he cannot override claim because of his subjective assessment that majority was formed through tainted means.</p>

c) Harish Chandra Rawat v Union of India case (2016)	Supreme Court has ordered the floor test for the dismissed chief minister after the governor had assumed looks of the majority due to defections and the president dismissed the state government.
d) Nabam rebia, Bamang Felix V Deputy speaker and others case (2016)	Supreme Court has reinstated the dismissed government. The president rule has been imposed in the state when the governor's order of preponing the assembly session was protested by the state government.spe

*Note: other cases related to presidents rule	<ul style="list-style-type: none"> - State of Rajasthan vs Union of India (1977) - Minerva Mills Ltd. vs Union of India (1980) - Rameshwar Prasad and Others vs Union of India and Another (2006) etc.
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11. Sedition law

Shreya singhal vs Union of India (2015)

- **Issue/dispute at the core:** Is **Section 66A** of the Information Technology Act, 2000, unconstitutional?
- **Constitutional article and legislative provisions involved:** fundamental right of free speech and expression guaranteed by **Article 19(1)(a)**, **Section 66A of the IT Act 2000** authorized the imposition of restrictions on the 'freedom of speech and expression'.
- **Judgment delivered:** The Supreme Court observed that **when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme.**
 - o SC declared Section 66A of IT Act as **unconstitutional and struck it down.**
- The court said that **this misused by police in various states to arrest innocent persons** for posting critical comments about social and political issues and leaders on social networking sites, hit at the root of liberty and freedom of expression, are two cardinal pillars of democracy.
- **Importance of judgment:** By striking down Section 66A, the Court upheld **Freedom of speech and expression as the bedrock of any democratic setup. It is a fundamental right of the citizen.**
 - o It also **put a restriction on the arbitrary power of the government to curb Freedom of speech and expression.**
- There are still enough provisions exist under **the Indian Penal Code and the Information Technology Act** to prosecute many forms of online abuse and harassment.

*Note- This is very important judgment related to freedom of speech

<p>a) Kedar Nath Singh vs State of Bihar (1962)</p>	<p>SC upheld Section 124A and said it struck a correct balance between fundamental rights and need for public order.</p> <p>The Court said that the penalization of sedition is a constitutionally valid restriction on the right to freedom of expression only when the words are intended to disturb public peace by violence.</p> <ul style="list-style-type: none"> ▪ The Court emphasized that Government established by law under section 124A must be distinguished from criticism of a specific party or persons. ▪ The purpose of sedition was to prevent the Government established by law from being subverted because the continued existence of the Government established by law is an essential condition of the stability of the State.
<p>b) Dr. Vinayak Binayak Sen v. State of Chhattisgarh (2011), (Kanahiya Kumar case)</p>	<p>SC redefined a seditious act only if it had essential ingredients as:</p> <ul style="list-style-type: none"> ▪ Disruption of public order ▪ Attempt to violently overthrow a lawful government, ▪ Threatening the security of State or public

12. Appointment of judges

<p>a) Shamsher Singh vs. State of Punjab case (1974)</p>	<ul style="list-style-type: none"> ▪ SC held that the approval of CJI is must in appointing the Judges of High court and Supreme Court.
<p>b) Record Association v/s Union of India (1993) Case</p>	<p>Supreme Court held that as far appointment of judges of Supreme Court and High Courts is concerned, the President shall act in accordance with the opinion of the Chief Justice of India (who will in turn give advice after consulting his colleagues)</p>
<p>c) First Judges case (1982) / S P Gupta Case</p>	<p>SC held that consultation does not mean concurrence and it only implies exchange of views.</p>

<p>d) Second Judges case (1993) / Supreme Court Advocates-on Record Association vs Union of India.</p>	<p>The court reversed its earlier ruling and changed the meaning of the word consultation to “concurrence”.</p>
<p>e) Third Judges case (1998)</p>	<p>SC opined that the consultation process to be adopted by the Chief Justice of India requires consultation of plurality judges. The opinion of the CJI only does not constitute the consultation process. He should consult a collegium of 4 senior most judges of the Supreme Court and if two judges give different opinion, he shouldn't send the advice to the government. The court said that the recommendation made by the chief justice of India without consultation process & complying with the norms and requirements is not binding on the government.</p>
<p>f) Justice Karnan vs SC case (2017)</p>	<p>SC in underlined the need to revisit the process of selection and appointment of judges to the constitutional court.</p>

Other cases related to judiciary

<p>a) National Court of Appeal</p>	<p>V. Vasantha Kumar case, 2016</p> <ul style="list-style-type: none"> · SC gave direction while hearing a PIL for establishment of a National Court of appeal at Chennai, Mumbai and Kolkata and quashing of the government order which had rejected his proposal for the same.
<p>b) Curative Petition</p>	<p>Rupa Ashok Hurra vs. Ashok Hurra & another case (2002)</p> <ul style="list-style-type: none"> · The concept of the curative petition was first evolved by the Supreme Court of India in this case, the question whether an aggrieved person is entitled to any relief against the final order of the Supreme Court, even after the dismissal of a review petition. · This was to avoid miscarriage of justice and to prevent abuse of process, supported by Article 137 of the Indian Constitution. · Under Article 145, the Supreme Court has the power to review any order pronounced by it. And Such petition needs to be filed within 30 days from the date of judgement/order. · If Bench hold at any stage that the petition is without any merit, it may impose a penalty on the petitioner.

<p>c) Gram Nyayalayas</p>	<p>National Federation of Societies for Fast Justice & Anr. Vs. Union of India (2020)</p> <ul style="list-style-type: none"> · The SC has directed all the states to come out with notifications for establishing 'Gram Nyayalayas' within a month and has asked the High Courts to expedite process of consultation with state governments on this issue.
<p>d) Judicial Review/ Tribunals</p>	<p>L. Chandra Kumar vs Union of India (1997)</p> <ul style="list-style-type: none"> · SC said that, Tribunals (Articles 323A and 323B) cannot be a substitute for the power of judicial review that Constitution bestows upon the High Courts. · The Tribunals will act as supplementary institutions to assist the High Court while performing their function. · Tribunals will remain under the supervision of the High Courts and cannot be considered as institutions parallel to the High Courts. · SC laid down that appeals against orders of CAT shall lie before the division bench of concerned high court.
<p>e) Transparency in Judicial Proceedings</p>	<p>Swapnil Tripathi vs SC (2018)</p> <ul style="list-style-type: none"> · Sunlight is the best disinfectant said the Supreme Court bench and ordered live-streaming and video recording of the court proceedings, it will bring transparency and effectuate the public right to know.
<p>f) Fast Track Courts</p>	<p>Brij Mohan Lal case (2002)</p> <ul style="list-style-type: none"> · The Court held that the continuation of FTCs is within the domain of the States with their own funds. It has left FTCs on the mercy of State as some states have continued support for FTCs while others did not.

<p>g) Contempt of court</p>	<p>1. S Mulgaonkar v Unknown (1978) case- SC that led to a landmark ruling on the subject of contempt of court.</p> <p>2. Justices P Kailasam and Krishna Iyer formed the majority going against then CJI M H Beg. Justice Iyer's counsel of caution in exercising the contempt jurisdiction came to be called the Mulgaonkar principles.</p> <p>3. In the Duda P.N vs Shivshankar case the court observed that judges should not use contempt to uphold their dignity and must welcome criticism as long as they do not hamper the functioning of the court.</p> <p>4. In the Auto Shankar case, the court invoked Sullivan doctrine that a public person must be open to criticism made with bonafide intentions even if it is untrue.</p> <p>5. In indirect taxpayers association case court agreed to bring truth as a defence against contempt proceedings provided if its in the public interest and the defence is bonafide.</p>
	<p>6. An amendment to the contempt Act,1971 in 2006 provided for truth as a valid defence in contempt proceedings, especially because the act was considered a threat to the fundamental rights of personal liberty and freedom of expression.</p>

13. Article 370

- In 2018 Supreme Court (SC) declare that **Article 370 was a temporary provision that lapsed with the dissolution of the J&K Constituent Assembly.** It gives special status to Jammu and Kashmir is not a temporary provision, it had acquired permanent status through years of existence, making its abrogation impossible.
- **Puranlal Lakhanpal vs. The President of India (1961):** SC observed that the **President may modify an existing provision in the Constitution under Article 370.**

14. Right to information

Supreme Court of India vs Subhash Chandra Agarwal case (2019):

Issue/dispute at the core:

- Secrecy vs. Right to information, Transparency and protecting its independence. Whether office of the CJI is a public authority under the Right to Information (RTI) Act.

Constitutional article and legislative provisions involved:

- Right to Information Act (2005), Section 2(f) meaning of public authority, Right to privacy.

Judgment delivered:

- SC ruled that the office of the Chief Justice of India (CJI) would come under the ambit of the Right to Information Act, 2005 (RTI Act), as CJI is public authority under the RTI Act.
- There should be a **balance between RTI and privacy** and that **information seeking should be calibrated**. **Independence and accountability go hand in hand** and that independence of the judiciary cannot be ensured only by denying information.

Principal consideration should be public interest and judges are not above the law.

- It upheld the **Delhi High Court judgment of 2010** that **the CJI does not hold information on the personal assets of judges in a fiduciary capacity**
- SC held that the **right to know under RTI was not absolute and ought to be balanced with the right to privacy of individual judges.**

Impact of the Judgment:

- The outcome is that the office of the **CJI will now entertain RTI applications.**

<p>a) Raj Narain Vs Indira Gandhi case (1975)</p>	<p>SC laid down the foundation of Right to Information in India stating that the people of the country have the right to know about every public act. Thus, The Supreme Court should begin practicing what it preaches.</p>
<p>b) Sabu Mathew George vs Union of India (2017)</p>	<p>SC ordered the respondents, Google, Microsoft and Yahoo to auto-block advertisements relating to sex selective determination. They also ordered the creation of a nodal agency that would provide search engines with the details of websites to block.</p>
<p>c) D.A.V. College Trust and Management Society Vs. Director of Public Instructions case (2019)</p>	<p>NGOs are under RTI</p> <ul style="list-style-type: none"> ▪ Supreme Court ruling has brought non-government organizations (NGOs) receiving funds from the governments under the ambit of RTI Act. ▪ NGOs are regulated under the provisions of Foreign Contribution Regulation Act (FCRA) and Foreign Exchange Management Act (FEMA Act). <p>It means that NGOs will have to maintain records as provided under the RTI Act, and every citizen will have the right to get information from them.</p>

15. Prevention of Corruption Act/ prior sanction for investigation
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a) State of Rajasthan v/s Raj Kumar case (1998)	SC upheld no need for sanction before filing a charge sheet under Section 173 CrPC
b) Anil Kumar v/s M.K.	SC upheld that Section 19 applies at the threshold itself and investigation under Section 156(3) CrPC requires a prior sanction.
Aiyappa case (2013)	
c) 2016 L. Narayana Swamy v/s State case	▪ SC upheld the decision of 2013
d) Subramanian Swami v/s Union of India case (2014)	Section 6A of Delhi Special Police Establishment Act requiring prior sanction, was made unconstitutional
e) NC Shivkumar v/s the State (2016)	Karnataka High Court in has said that- 2016 SC judgement ignored the settled principles of earlier judgments rendered by larger benches.
f) MK Aiyappa case (2013) and Narayana Swamy case (2016)	CrPC 1973 and the Prevention of Corruption Act 1988 provide that to prosecute a public servant, permission or sanction has to be secured from the government for which the official works. SC held that even an investigation cannot be ordered under Section 156(3) CrPC without prior sanction. Prior sanction for investigation impedes an unbiased and efficient investigation.
g) Vineet Narain vs. Union of India 1997	The Court struck down the requirement of sanction to investigate. It held that supervision by the government could not extend to control over CBI's investigations. For prosecution, the Court affixed a time frame of 3 months to grant sanction. SC also suggested reforms for making CBI independent. The Director of the CBI should be appointed on the recommendations of a committee headed by the Central Vigilance Commissioner, Home Secretary and Secretary in

	Department of Personnel as members.
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16. Office of Profit

a) Jaya Bacchan v. Union of India case (2006)	SC defined - Office which is capable of yielding a profit or pecuniary gain. It is not the actual receipt of profit but the potential for profit that is the deciding factor in an office of profit case.
b) Pradyut Bordoloi vs Swapan Roy (2001)	Supreme Court outlined the following questions for the test for office of Profit: <ul style="list-style-type: none"> o Whether the government makes the appointment o Whether the government has the right to dismiss the holder; o Whether the government pays the remuneration; o What are the functions of the holder and does he perform them for the government; o Does the government exercise any control over the performance of those functions?
c) U.C. Raman vs P.T.A. Rahim case (2014)	SC upheld that - Constitution allows a legislature to pass a law to grant exemption to any office of profit holder.

17. Anti-Defection Law

Kihoto Hollohan case (1992):

- SC had upheld the validity of the anti-defection law and made the Speaker's order subject to judicial review on limited grounds.
- It made clear that the court's jurisdiction would not come into play unless the Speaker passes an order, no intervention prior to adjudication.

- 10th schedule provisions **do not subvert the democratic rights** (freedom of speech and expression) in Parliament and state legislatures. It does not violate conscience. It do not violate **any right or freedom under Articles 105 and 194 of the Constitution.**
- Judges observed that suspicion of bias on the Speaker's role could not be ruled out as his or her election and tenure depend on the majority will of the House.

a) G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly case	Members who have publicly expressed opposition to their party or support for another party were deemed to have resigned.
b) Ravi S Naik v. Union of India case	In the absence of a formal resignation by the member, the giving up of membership can be inferred by his conduct.
c) Karnataka Case	MLA's would not be bound by the whip of their respective parties in the trust vote.
d) Manipur assembly case (Keisham Meghachandra Singh vs. the Hon'ble Speaker Manipur Legislative Assembly & Ors. (2020))	Supreme Court recommended the Parliament to amend the Constitution regarding the role of Speaker as a quasi-judicial authority while dealing with disqualification petitions. Court suggested that an independent tribunal can be appointed which will substitute the Speaker to deal with matters of disqualifications under Tenth Schedule.

18. Uniform civil code (Art. 44)

Mohd. Ahmad Khan vs Shah Bano Begum and others (1985)

- **Issue/dispute at the core:** Whether **Section 125 of the Code of Criminal Procedure applies to Muslims also?** Should not India need a Uniform Civil Code?
- **Constitutional article and legislative provisions involved:** **Section 125** of Crpc (puts a legal obligation on a man to provide maintenance for his wife during the marriage and after divorce too), **Article 44** (Uniform civil code)
- **Judgment delivered:** Based on its interpretation of the **Holy Quran**, the court held that **there is an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife.** Court observed that **a common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.**

Impact of the Judgment:

- SC step ahead of the general practice of deciding cases on the basis of interpretation of personal law. o The case took note of different personal laws and the need to recognize

and address the issue of gender equality and perseverance in matters of religious principles.

- **The judgment, in general, was a step towards creating an equal society of men and women.**
 - o Central government (headed by Rajiv Gandhi) **passed the Muslim Women (Protection on Divorce Act), 1986, to overturn Shah Bano case judgment-** The maintenance can only be made liable for the iddat period.
- If a woman is not able to provide for herself, the magistrate had the power to direct the Wakf Board for providing the means of sustenance to the aggrieved woman as well as her dependent children.

<p>a) Daniel Latifi Case (2001)</p>	<p>Issue- Muslim Women’s Act (MWA) was challenged on the grounds that it violated the Right to Equality under Articles 14& 15, and Right to Life under Article 21.</p> <p>The Supreme Court upheld the law as constitutional and harmonized it with section 125 of CrPC.</p> <ul style="list-style-type: none"> ▪ SC held that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her future. ▪ Thus, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.
<p>b) Sarla Mudgal Case (1995)</p>	<p>Issue- whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnize a second marriage?</p> <p>SC held that the Hindu marriage solemnized under Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act 1955.</p> <p>Conversion to Islam and marrying again, would not by itself dissolve the Hindu marriage under the act, hence 2nd marriage solemnized after converting to Islam would be an offence under section 494 of the IPC.</p>
<p>c) John Vallamattom Case (2003)</p>	<p>A priest from Kerala challenged the Constitutional validity of Section 118 (imposes restrictions on Christians donation of property for religious or charitable purposes by will) of the Indian Succession Act, The bench struck down the section as unconstitutional.</p>

Hindu women’s inheritance rights

The Hindu Succession (Amendment) Act, 2005

- **Act gave** Hindu women the right to be coparceners or joint legal heirs in the same way a male heir does. **Since the coparcenary (one who shares equally in the inheritance of an**

undivided property) **is by birth, it is not necessary that the father coparcener should be living as on 9.9.2005, the ruling said.**

Prakas vs Phulwati case (2015):

- SC held that the benefit of the 2005 amendment could be granted only to living daughters of living coparceners as on September 9, 2005 (the date when the amendment came into force).
- In **February (2018) contrary to the 2015 judgment**, the court held that the share of a father who died in 2001 will also pass to his daughters as coparceners at the time of partition of the property as per the 2005 law. · Then in April 2018, another two-judge bench **reiterated the position taken in 2015**. · These conflicting views by Benches of equal strength led to a reference to a three-judge Bench in 2020.

Batch of appeals against the 2015 verdict (2020):

- **SC** aimed at ensuring Right of Equality of a daughter in a Hindu Undivided Family, the **Supreme Court has held that** women will have coparcenary right, or equal right on family property by birth, irrespective of whether her/his father was alive/not on September 9, 2005 (**the day when Parliament recognised this right by amending the Hindu Succession Act of 1956**)
- **SC ruled that** a Hindu woman's right to be a joint heir to the ancestral property is by birth and does not depend on whether her father was alive/ not when the law was enacted (2005).
- **Importance** - It gave **the daughter equal coparcenary rights in consonance with the spirit of equality (Article 14)**.

19. Pardoning Power

K M Nanavati vs state of Maharashtra (1959):

- **Issue/dispute at the core:** - whether the pardoning power of the Governor and the (Special Leave Petition) SLP can be moved together?
- **Constitutional article and legislative provisions involved:** Article 131- special leave petition, Article 161- pardoning power of governor
- **Judgment delivered:** Supreme Court held that the SLP and pardoning power cannot operate together. If SLP is filed, then the power of the Governor in such condition will cease to exist.

Note: other cases related to pardoning power

- Maru Ram Vs Union of India and Another (1980)
- Kehar Singh and Another vs Union of India and Another (1988)
- Dhananjay Chatterjee Alias Dhana vs State of West Bengal (1994)
- Swaran Singh vs State of Uttar Pradesh and Others (1998)
- Epuru Sudhakar and Another vs Government of A.P. and Others (2006)

20. Adultery

Joseph Shine vs Union of India (2018):

It struck down the Section 497 of the Indian Penal Code which criminalized adultery.
Issue/dispute at the core:

- Is adultery a criminal offence? **Section 497 is not gender-neutral and a reflection of the social dominance of men.**
- **Constitutional article and legislative provisions involved: Section 497 of IPC** (It is a punishable offence for a man to have sexual intercourse with a married woman without the consent of her husband), **Section 13 (1) of Hindu Marriage Act, 1956** (adultery was a ground for divorce), Article 14, 15 & 21.

Judgment delivered:

- The court referred to **Puttaswamy judgment** in decriminalizing adultery.
- Section 497 is based on the **Doctrine of Coverture**, which holds that a woman loses her identity and legal right with marriage, is violative of her fundamental rights.
- It is a **denial of substantive equality**, in that it **reinforces the notion that women are unequal participants in a marriage**, incapable of freely consenting to a sexual act. Thus, it **violates Article 14** of the Constitution. · It is a denial of the constitutional guarantees of **dignity, liberty, privacy and sexual autonomy** which are intrinsic to **Article 21** of the Constitution.
- Constitutional guarantee in **Article 15(3)** cannot be employed in a manner that **entrenches paternalistic notions of protection** (only serves to place women in a cage). **Discrimination which is grounded in paternalistic and patriarchal notions cannot claim the protection of Article 15(3).**
- Society imposes impossible virtues on a woman, raises her to a pedestal. Confines her to spaces. Objectifies her and says she should be pure. society has no qualms to commit rape, honour killings, sex-determination and infanticide
- **Marriage does not mean ceding autonomy** of one to other. Ability to make sexual choices is essential to human liberty. Even within private zones, an individual should be allowed his choice.

Impact of the Judgment:

- It **expanded the horizons of individual liberty and gender parity.**

21. Section 377- Criminalize homosexuality

Navtej Singh Johar vs. Union of India (2018)

Issue/dispute at the core:

- Is homosexuality being crime? Right to sexuality, Right to sexual autonomy and Right to choice of a sexual partner is under Article 21 or not?

Constitutional and legislative provisions involved:

- Section 377 of IPC (Criminalize homosexuality), Article 21(Right to privacy), Article 14 & 1548

Judgment delivered:

- SC **decriminalized** homosexuality.
- It **dismissed** the position taken by SC in *Suresh Kumar Koushal case (2013)* that the **LGBTQ community constitutes a minuscule minority** and so there was no need to decriminalize homosexual sex. · **Right to Privacy and protection of sexual orientation** lie at the core of the fundamental rights guaranteed by **Article 14** (Equality before Law), **Article 15** (Prohibition of discrimination on the basis of race, caste, religion, sex, place of birth), **Article 21** (Protection of life and liberty) and **Article 19** (Freedom of expression) of the Constitution.
- In the **Naz Foundation judgment (2009)**, the High Court of Delhi held that '**Section 377 IPC, insofar it criminalizes consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15** of the Constitution.
- Sexual autonomy is an important pillar and **in-segregable facet of individual liberty, Denial of self expression is like death.**

Impact of the Judgment:

- The judgment is a **step in the direction that expands the frontiers of personal freedom.** · It upheld the **right of the LGBT community** to have intimate relations with **people of their choice, their inherent right to privacy and dignity and the freedom to live without fear.**

This judgment will help sexual minorities 'confront the closet' and realize their rights.

<p>Transgender as 'Third Gender'</p>	<p>National Legal Services Authority vs Union of India (2014) Supreme Court declared transgender people to be a 'third gender', affirmed that the fundamental rights guaranteed under the Constitution of India will be equally applicable to transgender people. It gave them the right to self-identification of their gender as male, female or third-gender.</p>
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	<p>Court held that because transgender people were treated as socially and economically backward classes, they will be granted</p> <ul style="list-style-type: none"> · Reservations in admissions to educational institutions and jobs. · It is a major step towards gender equality in India.
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22. Ordinance

D C Wadhwa and others vs state of Bihar and others (1986)

- **Issue/dispute at the core:** Validity of ordinance
- **Constitutional article and legislative provisions involved:** Article 123 (President to promulgate ordinances if a law is immediately necessary and at any time) Article- 213 (ordinance issued by Governor) · **Judgment delivered:** Supreme Court held that the Governor cannot assume legislative function by crossing the limits laid out in the Constitution. Any excess would amount to violation of provision.
 - o Repeated repromulgation of ordinances is clearly contrary to the constitutional scheme and it must be held to be improper and invalid.
- Power to promulgate an ordinance should be used to meet an extraordinary situation and it cannot be allowed to serve political interests.
- The court also observed that it cannot examine the question of satisfaction of the Governor in issuing an ordinance.

Impact of the Judgment - The judgment put a check on the process of repromulgation of ordinances. The court upheld the balance between executive and legislature.

a) AK Roy vs. Union of India, 1982	SC held that the President's Ordinance making power is not beyond the scope of judicial review.
b) Venkata Reddy v. State of Andhra Pradesh (1985)	Supreme court over ruled its previous judgment held that the Satisfaction of the President cannot be called in question.
c) Rustom Cavasjee Cooper vs Union of India (1970)	The ordinance making power of the President/Governor can be questioned if his satisfaction can be questioned on the grounds of malafide.
d) Krishna Kumar Singh vs State of Bihar- 2017	SC ruled that ordinances are subject to judicial review , and do not automatically create enduring effect

23. Electoral Reform

Abhiram Singh v. C. D. Commachen case (2017): Religion and caste in elections

24. SC declared that **seeking vote to the Religion and Caste is illegal and Corrupt Act.**

Issue/dispute at the core:

- SC reviewed its **Hindutva judgment (1995)** - mere reference to Hindutva or Hinduism wasn't a corrupt practice, as **Hinduism was not a religion but a way of life in India.**
- **Constitutional article and legislative provisions involved**
- Section 123 (3) of RPA 1951 (seeking votes in the name of religion, caste, race, community, and language is a corrupt practice)

Judgment delivered:

- The Supreme **Court reaffirmed the secular character of the Indian state**, ruling that election candidates cannot seek votes on the grounds of the religion, caste, creed, community or language of voters. · **An election could be annulled if candidates seek votes in the name of their religion or that of their voters.** The apex court's view has **enlarged the scope of the Representation of People Act 1951.** · **Election is a secular exercise** like the functions of the elected representatives **must be secular in both outlook and practice.**
- SC **interpreted Section 123(3) of RPA**- this provision was brought into **clearly proscribe appeals based on sectarian, linguistic or caste considerations.**

Impact of the Judgment:

- Judgment strives to **make socio-economic development as the main agenda of elections** as against garnering votes in the name of religion, caste, community, etc. which will eventually help in **raising social parameters** such as education, health, women empowerment, equality for vulnerable sections, etc.
- It seeks to **promote peace and harmony between people** who were earlier being divided into communal lines by vested interests.
- It is one more **step in cleansing the Indian politics** which has marred by caste and religious overtones. · It gives **teeth to the Election Commission by empowering it to disqualify candidature as recommended by the 2nd ARC**, and could lead to fair elections.

Name of case	Judgment
a) Union of India v Harbans Sigh Jalal and Others Case 1997	Model Code of conduct comes into force the moment an election is announced and remains in force till the results are declared.
b) Union of India v. Association for Democratic Reforms (2002)	<p>Voter's Right to Know</p> <ul style="list-style-type: none"> ▪ The Court held that electors had a fundamental right to know the antecedents of candidates contesting elections to hold public office. ▪ The court read in 'right to be informed' as a right flowing from freedom of speech and expression. <p>The Election Commission was directed to secure affidavits by candidates recording all particulars relating to past or pending criminal charges or cases against them.</p> <ul style="list-style-type: none"> ▪ This included information as to whether the candidate was convicted/acquitted/discharged of any criminal offence in the past.
c) Kuldip Nayar v. Union of India case (2006)	<p>It challenged amendments made in the Representation of People Act, 1951 and Open Ballet System.</p> <p>The Court said that free and fair elections would not stand defeated by open ballot to give effect to concept of proportional representation.</p>
d) People's Union for Civil Liberties v. Union of India case, 2013	<p>NOTA- Right of citizens to cast negative vote</p> <p>Rule 49(O) of the conduct of Election Rules 1961 ensures that the presiding officer records a voter has not voted in case if he doesn't want to vote after he has been inked on the finger and entered his name on Form (17-A). This is against the right to secrecy enshrined in the elections.</p> <p>SC held that Right to vote also includes a right not to vote and remain neutral.</p> <p>Right to secrecy is the integral part of free & fair elections. People who didn't vote shouldn't be victimized.</p>
e) Lily Thomas case (2013)	Supreme court directed all subordinate courts to give their verdict on cases involving legislators within a year , or give reasons for not doing so to the chief justice of the high court.
f) Jan Chaukidari vs Union of India (2013)	<ul style="list-style-type: none"> ▪ SC held that all those in lawful police or judicial custody, other than those held in preventive detention, will forfeit their right to stand for election.

g) Subramanian Swamy v Election Commission of India (ECI) 2013	SC has held that VVPAT (Vote Verifiable Paper Audit Trial) is indispensable for free and fair elections.
h) S Subramaniam Balaji case 2013	SC said that freebies promised by political parties in their election manifestos shake the roots of free and fair polls. SC directed the Election Commission to frame guidelines for regulating contents of manifestos.
i) Supreme Court 2013, judgment	The Returning officer can reject nomination papers of a candidate for non disclosure and suppression of information, including that of assets and their criminal background.
j) Public Interest Foundation v Union of India (2018)	<p>Decriminalization of politics</p> <p>SC directed political parties to publish the criminal details of their candidates in their respective websites and print as well as electronic media for public awareness.</p> <p>The published information (include the nature of their offences, charges framed against him, the court concerned, case number, etc) on the criminal antecedents of a candidate</p> <p>A political party should explain to the public through their published material how the “qualifications or achievements or merit” of a candidate, charged with a crime, impressed it enough to cast aside the smear of his criminal background.</p> <p>The party would have to give reasons to the voter that it was not the candidate’s mere winnability at the polls which guided its decision to give him ticket to contest elections.</p>
k) Lok Prahari V Union of India Case (2018)	<p>SC has asked the Central Government to amend the rules as well as the disclosure form filed by candidates along with their nomination papers and to include the sources of their income, and those of their spouses and dependents.</p> <p>Non-disclosure of assets & their sources would amount to a corrupt practice (under Section 123 of the Representation of the People Act, 1951).</p>
l) Association for Democratic Reforms v. Union of India (2019)	<p>Electoral bonds</p> <p>SC directed all the political parties who have received donations through Electoral Bonds to submit, detailed particulars of the donors as against each Bond (the amount of each such bond and the full particulars of credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit) to the Election</p>

	commission of India in sealed cover.
m) Rambabu Singh Thakur v Sunil Arora 2020	<p>The Supreme Court has ordered political parties to publish the entire criminal history (include the nature of their offences, charges framed against him, the court concerned, case number, etc.) of their candidates for Assembly and Lok Sabha elections along with the reasons that goaded them to field suspected criminals over decent people.</p> <p>Political parties have to submit compliance reports with the Election Commission of India.</p> <p>The information should be published in local as well as national newspaper as well as the parties' social media handles</p> <ul style="list-style-type: none"> ▪ It is applicable to parties both at Central and State levels. ▪ The political party should explain to the public through their published material how the qualifications /achievements/ merit of a candidate, charged with a crime, impressed it enough to cast aside the smear of his criminal background.
	<p>The judgment was based on 2018 Constitution Bench judgment (Public Interest Foundation v. Union of India)- court was cognizant of the increasing criminalization of politics in India and the lack of information about such criminalization among the citizenry.</p> <p>Significance of judgment - The judicial pronouncement makes difficult for criminal candidates to contest and enhance awareness & democratic participation; it will create the right conditions for the decriminalization of politics.</p>
n) Right to vote and contest in election	<p><u>Important cases:</u></p> <ul style="list-style-type: none"> · Javed and Others vs State of Haryana and Others (2003) · People's Union of Civil Liberties vs Union of India and Another (2003) · Rajbala and Others vs State of Haryana and Others (2015)

25. Prison Reforms

- The Supreme Court in **2018 appointed the Justice Roy Committee** to examine the problems prisons (overcrowding, lack of legal advice to convicts, issues of remission, parole etc.

Its recommendations:

- Phone call and family visit facility, Modern cooking facilities, canteens to buy essential items and trial through video-conferencing.
- The Prison Department has a **perennial average of 30%-40% vacancies**; due to this both the prisoner and his guard equally suffer human rights violation.
- **Speedy trial** is one of the best ways to remedy the unwarranted phenomenon of overcrowding.
 - Most prisons are **teeming with undertrial prisoners**, whose numbers are highly disproportionate to those of convicts.
- There should be at **least 1 lawyer for every 30 prisoners**.

Ramamurthy v. State of Karnataka (1996)	SC identified issues concerning prisons, such as overcrowding , trials being delayed , the torture and ill-treatment of prisoners, neglect of health and hygiene, insubstantial food and inadequate clothing. Directed government to bring uniformity nationally of prison laws and prepare a draft model prison manual .
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26. Police Reforms

Prakash Singh Vs Union of India (2007)	<ul style="list-style-type: none"> • SC instructed central and state governments to comply with a set of seven directives laying down practical mechanisms to kick-start reform. • The Supreme Court suggested four requisite points of reform: <ul style="list-style-type: none"> a) State Security Commission at State level; b) Transparent procedure for the appointment of the Police Chief and the desirability of giving him/her a minimum fixed tenure. c) Separation of investigation work from law and order. d) A new Police Act which should reflect the democratic aspirations of the people.
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27. Corruption, Bureaucracy & Politics nexus

T. S. R. Subramanian v Union of India case:

- It is a landmark case which was **aimed at professionalizing the bureaucracy, promote efficiency and good governance**.
- Supreme Court observed **that Civil servants have to be accountable to both political executive and people of this country**.

- The **Retired persons shall not guide the transfers and postings**, disciplinary action, suspension, reinstatement, etc. of civil servants, **unless supported by law** enacted by the Parliament or the State Legislature.
- It suggested **an alternative composition for the CSB**, consisting of high-ranking in-service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level.
- **Parliament under Article 309 of the Constitution can enact a Civil Service Act**, setting up a CSB.
- It directed the Centre, State Governments and the Union Territories **to issue appropriate directions to secure providing of minimum tenure of service to various civil servants within a period of three months**. · It directed the Centre, State Governments and the Union Territories **to issue directions like Rule 3(3) of the All India Services (Conduct) Rules, 1968, in their respective States and Union Territories**

Importance of judgment -

- It aims to make **the bureaucracy free from unnecessary political interference, provide them with the security of tenure, increase the bureaucratic efficiency and thus to achieve good governance**.
- It **fixes the accountability** for any action taken by requiring that the orders need to be in writing.
- By bringing RTI Act, the **judgment upheld the accountability of civil servants to the public**. · **Impact: Amendments in Rule 7 of the IAS, IPS and IFS (Cadre) Rules have been carried out**. But, in most of the states, the civil servants are transferred frequently and the CSB has remained only in paper.

<p>a) Ramashankar Raghuvanshi case (1983).</p>	<p>SC observed that employment based on the basis of past political loyalties violates Article 14 and 16 of the constitution.</p>
<p>b) Upendra Narayan Singh case (2009)</p>	<p>SC observed that the Public Service Commissions which have been given the status of constitutional authorities and which are supposed to be totally independent and impartial while discharging their function in terms of Article 320 have become victims of spoils system.</p> <p>In essence, public service commission's act as watchdogs for the civil servants. Over a period of time, recruitment to these commissions have become dependent on political loyalties.</p>

28. Speaker

a) Jagjit Singh versus the State of Haryana (2006)	SC raised questions about the confidence in the matter of impartiality of speaker.
b) Kihoto Hollohan vs Zachillhu and Others, case 1992	Supreme Court ruled that the decision of the Speaker on the questions of disqualification of the members is subject to judicial review.
c) Mohd. Saeed Siddiqui v. State of Uttar Pradesh and Yogendra Kumar Jaiswal v. the State of Bihar (2015)	Supreme Court has held that the Speaker's decision is not subject to judicial review. Supreme Court decided that the decision of the Speaker "that the Bill in question was a Money Bill is final and the said decision cannot be disputed nor can the procedure of the State Legislature be questioned by virtue of Article 212 (Courts should not inquire into proceedings of the Legislature).
d) Keisham Meghachandra case (2020)	Supreme Court set a timeline of three months for speakers to decide on defections and also directed the government to amend anti-defection law to strip the speaker of his power under this law.

29. Right to fly the National flag and issues associated with National Anthem

	Union of India v/s Navin Jindal (2004) case
a) Right to fly the National flag	Right to fly the national Flag with due respect and dignity is a fundamental right of every citizen under Article 19(1). It is subject to reasonable restrictions under Article 19(2) · Flag Code however not a law, for the purpose of Article 19(2) it would not restrictively regulate the free exercise of right to fly the National Flag.

b) National Anthem	<p>Bijoe Emmanuel v State of Kerala (1986)</p> <p>SC held that standing up respectfully when the national anthem was sung but not singing oneself does not violate Section 3 of the Prevention of Insult to National Honor Act, 1971.</p> <p>SC reversed its previous ruling that made it mandatory for movie theatres to play National Anthem before screening the movies while audiences stood up. Further clarity on the issue will emerge after 6 months following a report from a committee.</p> <p>After the ruling now theatres can choose whether to play National Anthem or not. If it is played the audience will have to stand up.</p> <ul style="list-style-type: none"> · Exemption granted to differently abled people will remain in force.
c) National Anthem Order	<p>Shyam Narayan Chouksey case (2018)</p> <p>The Court directed all cinema halls to play national anthem at the start of movies.</p>

30. Environment vs Tribal Rights

a) Rights of tribal/ environment protection/mining	<p>Samatha and State of Andhra Pradesh (1997)</p> <p>SC nullified all mining leases granted by the Andhra Pradesh State government in the Scheduled areas and asked it to stop all mining operations.</p> <p>It held that forest land, tribal land, and government land in scheduled areas could not be leased to private companies or non-tribal for industrial operations. Such activity is only permissible to a government undertaking and tribal people.</p>
b) Environment v Tribal Rights	<p>Supreme Court's Order on Rights Forest Rights Act (2018)</p> <p>The Court has ordered the state governments to evict over 10 lakh forest dwelling families whose claims have been rejected under the Forest Rights Act.</p> <p>SC held that if the claim is found to be not tenable by the competent authority, the result would be that the claimant is not entitled for the grant of any patta or any other right under the Act, but such a claimant</p>
	<p>is also either required to be evicted from that parcel of land or some other action is to be taken in accordance with law.</p>

	<p>Wildlife First vs Ministry of Forest (2019)</p> <p>Supreme Court ordered States to evict all individuals who had their claims rejected under the Act by 24 July 2019. Further, it also directed the Forest Survey of India to conduct a satellite survey and place on record encroachment positions before and after evictions.</p> <p>Finally, it directed the Chief Secretaries of various States to submit affidavits explaining why they had up until now failed to evict individuals, who had had their claims rejected.</p> <p>Note: other cases like- Vellore Citizens Welfare Forum vs Union of India (1995), .T.N. Godavarman Thiru mulpad vs Union of India and Others (1996), Indian Council for Enviro-legal Action vs Union of India and Others (1996) etc. are also related to protection of environment.</p>
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31. Other Important Judgments

a) Information and communication	<p>Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal case 1995</p> <p>Supreme Court suggested for creation of an independent broadcasting media authority along the lines of TRAI.</p>
b) Manual Scavenging	<p>Safai Karamchari Andolan vs. Union of India Case 2014</p> <p>Supreme Court ordered the abolishment of manual scavenging and asked for the implementation of rehabilitation of such workers.</p>
c) Operation of AFSPA vs Human rights	<p>Extra Judicial Execution Victim vs Union of India And Ors (2018)</p> <p>SC said that every death caused by the armed forces in a disturbed area, whether the victim is a dreaded criminal or a militant or a terrorist or an insurgent, should be thoroughly enquired.</p> <p>It tears down the cloak of secrecy about unaccounted deaths involving security forces in disturbed areas and serves as a judicial precedent to uphold civilian & human rights in sensitive areas under military control.</p> <p>Dealing a blow to the immunity enjoyed by security personnel under the Armed Forces (Special Powers) Act of 1958 (AFSPA) against criminal</p>

	<p>action for acts committed in disturbed areas, the apex court held that there is no concept of absolute immunity from trial by a criminal court if an Army man has committed an offence.</p>
<p>d) Deportation vs Refugee Rights</p>	<p>Verdict on Rohingya Crisis - Md. Salimullah vs UoI (2018)</p> <p>The Supreme Court rejected the plea to stop the deportation of seven Rohingya immigrants to Myanmar from Assam, saying that the seven were found as illegal immigrants and that Myanmar is also ready to accept them as their nationals.</p>
<p>e) Local Governance</p>	<p>Rajbala vs State of Haryana case (2015)</p> <p>SC upheld the validity of law barring the illiterate from Contesting panchayat polls in the state.</p> <p>Right to Contest is neither fundamental right, nor statutory right. It is Constitutional Right. It can be regulated and curtailed through laws passed by the appropriate legislature.</p>
<p>f) Zahira sheikh vs. State of Gujarat (2004)</p>	<p>Witness protection</p> <p>SC observed that witness protection is necessary for free and fair Trial and it also defined Fair trials.</p>
<p>g) Subhash Mahajan vs State of Maharashtra (2018)</p>	<p>SC diluted the Scheduled Castes and Tribes (Prevention of Atrocities POA) Act, 1989.</p> <p>SC said that there is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out/where on judicial scrutiny the complaint is found to be prima facie mala fide.</p> <p>In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority (Prior Sanction) and of a nonpublic servant after approval by the S.S.P. which may be granted in cases considered necessary & Such reasons must be scrutinized by the Magistrate for permitting further detention.</p> <p>To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are</p>

	<p>not frivolous or motivated.</p> <p>Any violation of above direction will be actionable by way of disciplinary action as well as contempt.</p>
h) Parliamentary privileges	<ol style="list-style-type: none"> 1. Keshav Singh's case, the Supreme Court clarified that Article 21 (Right to Life and Personal Liberty) would be applicable even when Legislatures exercised their powers in respect of their privilege. However, the position regarding Freedom of Speech being subservient to legislative privilege was confirmed. 2. In Raja Ram Pal v Hon'ble Speaker, Lok Sabha, and Ors. (2007), the Supreme Court held that Fundamental Rights under Articles 20 and 21 could prevail over privileges under Articles 105 and 194. However, no mention was made of rights under Article 19 (1) (a) relating to Freedom of Speech. 3. In Alagapuram R Mohanraj v Tamil Nadu Legislative Assembly, examined the issue The Supreme Court rejected the violations of the Right to Speech, Right to Expression, Right to Life in the case of breach of privileges, it upheld contention regarding violation of the Right to Equality was upheld. 4. In 'Searchlight' case (I) (M.S.M. Sharma vs. S.K. Sinha), Supreme Court held that the power of judicial review, applicable to ordinary law, could not be invoked to challenge an order made under Article 194, a Constitutional provision.
i) Right to livelihood/ food	<ul style="list-style-type: none"> - Olga Tellis and Others vs Bombay Municipal Corporation (1985) - Chameli Singh and others vs State of Uttar Pradesh and Another (1995) - People's Union For Civil Liberty vs Union of India (2001)
j) Disqualification of Legislators	<ul style="list-style-type: none"> - Kihoto Hollohan vs Zachillhu and Others (1992) - Ravi S. Naik vs Union of India (1994) - G. Viswanathan vs Speaker Tamil Nadu Legislative Assembly (1996) - Jaya Bachchan vs Union of India and Others (2006) - Rajendra Singh Rana vs Swami Prasad Maurya and Others (2007) - Speaker Haryana Vidhan Sabha vs Kuldeep Bishnoi and Others (2012)