



**ONLYIAS**  
BY PHYSICS WALLAH

# IMPORTANT JUDGEMENTS & JUDICIAL DOCTRINES

## MARKS BOOSTER SERIES



**For UPSC CSE Mains 2023**

## TABLE OF CONTENTS

### UNIT 1: Topic wise Important Judgements

1. PREAMBLE OF THE CONSTITUTION .....	3
2. BASIC FEATURES OF THE CONSTITUTION .....	3
3. FUNDAMENTAL RIGHTS .....	4
3.1 Amendability of Fundamental Rights:.....	4
3.2 Right to Equality (Article 14-18):.....	4
3.3 Right to Freedom (Article 19-22):.....	7
3.4 Freedom of Religion (Article 25-28):.....	13
3.5 Cultural and Educational Rights (Article 29-30):.....	14
4. FUNDAMENTAL RIGHTS VS DIRECTIVE PRINCIPLES.....	15
5. FEDERALISM .....	15
6. SEXUAL ABUSE OF CHILDREN AND WOMEN.....	16
7. ROLE OF GOVERNOR .....	17
8. POWERS OF LG .....	18
9. ARTICLE 356 (PRESIDENTS RULE) .....	19
10. SEDITION LAW .....	19
11. APPOINTMENT OF JUDGES .....	20
12. ARTICLE 370 .....	21
13. PREVENTION OF CORRUPTION ACT/ PRIOR SANCTION FOR INVESTIGATION .....	22
14. OFFICE OF PROFIT .....	23
15. ANTI-DEFECTION LAW .....	23
16. UNIFORM CIVIL CODE (ARTICLE 44) .....	24
16.1 Hindu Women's Inheritance Rights:.....	24
17. PARDONING POWER .....	25
18. ORDINANCE.....	26
19. ELECTORAL REFORMS.....	26
20. PRISON REFORMS .....	28
21. POLICE REFORMS .....	29
22. CORRUPTION, BUREAUCRACY & POLITICS NEXUS .....	29
23. SPEAKER.....	31
24. ISSUES ASSOCIATED WITH NATIONAL FLAG AND NATIONAL ANTHEM.....	31
25. ENVIRONMENT VS TRIBAL RIGHTS.....	31
26. OTHER IMPORTANT JUDGEMENTS.....	32

### UNIT 2: Important Judicial Doctrines

1. DOCTRINE OF BASIC STRUCTURE .....	34
2. DOCTRINE OF SEPARATION OF POWERS .....	34
3. DOCTRINE OF JUDICIAL REVIEW .....	35
4. DOCTRINE OF SOVEREIGN IMMUNITY .....	35
5. DOCTRINE OF DUE PROCESS OF LAW .....	36
6. DOCTRINE OF CONSTITUTIONAL MORALITY .....	36
7. DOCTRINE OF 'POLLUTER PAYS' PRINCIPLE .....	37
8. DOCTRINE OF PUBLIC TRUST .....	37

9. DOCTRINE OF PITH AND SUBSTANCE .....	38
10. DOCTRINE OF INCIDENTAL OR ANCILLARY POWERS .....	38
11. DOCTRINE OF SEVERABILITY .....	38
12. DOCTRINE OF ECLIPSE .....	39
13. DOCTRINE OF COLOURABLE LEGISLATION.....	39
14. DOCTRINE OF HARMONIOUS CONSTRUCTION .....	39
15. DOCTRINE OF REPUGNANCY.....	40
16. DOCTRINE OF TERRITORIAL NEXUS.....	40
17. DOCTRINE OF PLEASURE .....	40
18. DOCTRINE OF PARENS PATRIAE.....	41
19. DOCTRINE OF CASUS OMISSUS .....	41

### UNIT 3: Landmark Judgements in Detail

1. ROMESH THAPAR V. STATE OF MADRAS (1950) .....	42
2. BERUBARI UNION CASE (1960) .....	43
3. GOLAKNATH CASE (1967) .....	44
4. KESAVANANDA BHARATI CASE (1973).....	45
5. MANEKA GANDHI V. UNION OF INDIA (1978): RIGHT TO LIFE AND PERSONAL LIBERTY (ARTICLE 21).....	46
6. MOHD. AHMED KHAN V. SHAH BANO BEGUM AND OTHERS (1985): UNIFORM CIVIL CODE (ARTICLE 44) .....	47
7. D C WADHWA AND OTHERS V. STATE OF BIHAR AND OTHERS (1986) .....	48
8. M. C. MEHTA V. UNION OF INDIA (1986).....	49
9. MOHINI JAIN V. STATE OF KARNATAKA (1992): RIGHT TO EDUCATION.....	50
10. RESERVATION: INDIRA SAWHNEY AND OTHERS V. UNION OF INDIA (1992) .....	51
11. ARUNA SHANBAUG CASE: EUTHANASIA /RIGHT TO DIE WITH DIGNITY/MERCY KILLING (2011) .....	52
12. T. S. R. SUBRAMANIAN V. UNION OF INDIA CASE (2013): CORRUPTION, BUREAUCRACY AND POLITICS NEXUS.....	53
13. SHREYA SINGHAL V. UNION OF INDIA (2015) .....	54
14. RIGHT TO PRIVACY: JUSTICE K.S. PUTTASWAMY V. UNION OF INDIA (2017) .....	55
15. NAVTEJ SINGH JOHAR V. UNION OF INDIA (2018) .....	56
16. SABARIMALA TEMPLE CASE/INDIAN YOUNG LAWYERS ASSOCIATION V. THE STATE OF KERALA (2018).....	57
17. SUPREME COURT OF INDIA V. SUBHASH AGARWAL CASE (2019):RTI .....	58
18. RIGHT TO PROPERTY: VIDHYA DEVI V. THE STATE OF HIMACHAL PRADESH (2020) .....	59
19. ANURADHA BHASIN CASE (2020): RIGHT TO INTERNET ACCESS .....	60
20. KARNATAKA HIJAB ISSUE.....	61
21. S.G. VOMBATKERE V. UNION OF INDIA: KEEPING SEDITION LAW ON HOLD (2022) .....	63

**UNIT  
1**

## Topic Wise Important Judgements

### 1. PREAMBLE OF THE CONSTITUTION

Important Cases	Judgements
<b>Berubari Union Case (1960)</b>	<ul style="list-style-type: none"> <li>❖ The <b>Preamble</b> is <b>not a part</b> of the Constitution.</li> <li>❖ The <b>Parliament</b> has the <b>power to amend the Constitution</b>, including <b>Article 1</b>.</li> <li>❖ <b>Article 1 (3) (c)</b> does <b>not confer power or authority</b> on India to <b>acquire territories</b>.</li> <li>❖ SC recognised that the <b>Preamble could be used as a guiding principle</b> if a term in any Article of the Constitution is ambiguous or has more than one meaning.</li> </ul>
<b>Kesavananda Bharati Case (1973)</b>	<ul style="list-style-type: none"> <li>❖ The Preamble is a <b>part of the Constitution</b>.</li> <li>❖ Preamble is <b>neither a Source of Power to Legislature nor a Source of Prohibition upon the powers of Legislature</b>.</li> <li>❖ Preamble has a <b>significant role to play in the interpretation</b> of legislative acts and interpretation of provisions of the Constitution.</li> <li>❖ <b>The Supreme Court deduced the 'Doctrine of Basic Structure'</b> - It implies that though Parliament has the <b>power to amend any provision of the Constitution</b>, it cannot in any manner interfere with the basic features to the Constitution without which the Constitution would be spiritless.</li> </ul>
<b>LIC of India Case (1995)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court in this case once again held that <b>Preamble is the integral part of the Constitution</b> but is <b>not directly enforceable</b> in a court of justice in India.</li> </ul>

### 2. BASIC FEATURES OF THE CONSTITUTION

Important Cases	Judgements
<b>Kesavananda Bharati Case (1973)</b>	<ul style="list-style-type: none"> <li>❖ In this case, the SC held that the <b>amending power of the Parliament is subject</b> to the '<b>Basic Features</b>' of the Constitution.</li> </ul>
<b>Waman Rao Case (1981)</b>	<ul style="list-style-type: none"> <li>❖ The SC <b>reiterated the Basic Structure doctrine</b> in this case.</li> <li>❖ It drew a line of demarcation (April 24th, 1973 date of the Kesavananda Bharati judgement) 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.</li> </ul>

<b>I.R. Coelho Case (2007)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court said that there could <b>not be any blanket immunity from judicial review of laws included in the Ninth Schedule</b>.</li> <li>❖ The court held that <b>Judicial Review is a basic feature</b> of the constitution and it cannot be taken away by putting a law under the Ninth Schedule.</li> <li>❖ Therefore, the judgement put an <b>end to the politico-legal controversy</b> by holding the Parliament's amending power subject to Judicial Review.</li> </ul>
--------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

#### UPSC Mains PYQs

1. What was held in the Coelho Case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution?	<b>2016</b>
-------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------

### 3. FUNDAMENTAL RIGHTS

#### 3.1 Amendability of Fundamental Rights:

Important Cases	Judgements
<b>Shankari Prasad Singh Deo Case (1951)</b>	<ul style="list-style-type: none"> <li>❖ The SC asserted that the <b>Parliament's power to amend under Article 368 also includes the power to amend the Fundamental Rights</b> guaranteed in Part III of the Constitution.</li> <li>❖ It said that a constitutional amendment act enacted to abridge or take away the fundamental rights is not void of article 13(2).</li> </ul>
<b>Sajjan Singh case (1965)</b>	<ul style="list-style-type: none"> <li>❖ In this case, SC held that the <b>Parliament can amend any part</b> of the Constitution <b>including the Fundamental Rights</b>.</li> </ul>
<b>Golaknath Case (1967)</b>	<ul style="list-style-type: none"> <li>❖ The SC held that the <b>Parliament cannot amend Fundamental Rights</b>.</li> <li>❖ The judgement provided for the <b>"Prospective Overruling of the Law"</b>.</li> <li>❖ The 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.</li> <li>❖ The Amendment Act was also a 'law' within the purview of <b>Article 13(2)</b>.</li> <li>❖ Fundamental Rights are the <b>'primordial rights necessary for the development of human personality'</b>.</li> </ul>
<b>Kesavananda Bharati Case (1973)</b>	<ul style="list-style-type: none"> <li>❖ In this case, the SC held that the <b>Parliament can amend the Fundamental Rights, subject to the 'Basic Features'</b> of the Constitution.</li> </ul>

#### 3.2 Right to Equality (Article 14-18):

Important Cases	Judgements
<b>Indira Sawhney Case (Famously known as Mandal Case) (1992)</b>	<ul style="list-style-type: none"> <li>❖ The Court rejected the <b>additional reservation of 10% for poorer sections of upper castes</b> and it upheld the constitutional validity of the <b>Office Memorandum</b> that provided <b>27% reservation to the Backward Classes</b>, with certain conditions:               <ul style="list-style-type: none"> <li>➤ The <b>advanced sections among the OBCs (creamy layer)</b> should be excluded from the list of beneficiaries of reservation.</li> <li>➤ <b>No reservation in promotions</b>, reservation should be confined to initial appointments only.</li> </ul> </li> </ul>



	<ul style="list-style-type: none"> <li>➤ The total reserved quota should <b>not exceed 50%</b> except in some extraordinary situations. This rule should be applied every year.</li> <li>➤ The <b>carry forward rule</b> in case of unfilled (backlog) vacancies is valid. But it <b>should not violate the 50% rule</b>.</li> <li>➤ A <b>permanent statutory body</b> should be established to examine complaints of over inclusion and under-inclusion in the list of OBCs.</li> <li>❖ It held that the reservations should <b>not exceed 50%</b>, and the reservation in promotion is constitutionally impermissible.</li> <li>❖ The Supreme Court said that reservations under <b>Article 16(4) could only</b> be provided at the time of <b>entry into government service but not in matters of promotion</b>.</li> <li>❖ A Backward Class of citizens in <b>Article 16(4)</b> can be <b>identified on the basis of the caste and not only on an economic basis</b>.</li> </ul>
<b>M. Nagaraj V. Union of India Case (2006)</b>	<ul style="list-style-type: none"> <li>❖ SC validated the <b>state's decision to extend reservation in promotion to SCs and STs</b>, but it gave direction that the state should provide proof on the following three parameters:               <ul style="list-style-type: none"> <li>➤ <b>Socially and Educationally Backward:</b> The SC and ST community should be socially and educationally backward.</li> <li>➤ <b>Empirical Data:</b> The data <b>on Inadequate Representation</b> in service for which <b>reservation in promotion is to be granted</b>.</li> <li>➤ <b>Impact on Efficiency:</b> The reservations in promotions <b>should not affect administrative efficiency</b>.</li> </ul> </li> </ul>
<b>Rajeev Kumar Gupta &amp; Ors V. Union of India &amp; Ors (2016)</b>	<ul style="list-style-type: none"> <li>❖ <b>Reservations for Persons with Disabilities (PwDs):</b> Supreme Court held the Government of India instructions disallowing reservation in promotion for Persons with Disabilities (PwDs) as illegal and said that wherever posts are identified to be suitable for disabled persons - <b>3% reservation</b> must be given in direct recruitment as well as in promotion.</li> </ul>
<b>Jarnail Singh V. Lachhmi Narain Gupta Case (2018)</b>	<ul style="list-style-type: none"> <li>❖ The court held that <b>reservation in promotions does not require the state to collect quantifiable data on the backwardness of the Scheduled Castes and the Scheduled Tribes</b>.</li> <li>❖ Court held that <b>creamy layer exclusion extends to SC/STs</b>. Hence, the <b>State cannot grant reservations in the promotion to SC/ST individuals</b> who belong to the creamy layer of their community.</li> </ul>
<b>B. K. Pavitra V. Union of India (2019)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court <b>upheld the reservation in promotion policy on the ground that the State had furnished sufficient data</b> to demonstrate both that <b>SC/STs are inadequately represented</b> and that the policy would not adversely affect efficiency.</li> <li>❖ Court introduced a new inclusive definition of administrative efficiency under <b>Article 335</b> of the Constitution. The new definition <b>balances merit with ensuring adequate representation</b>.</li> <li>❖ Also, the Court upheld the <b>Karnataka Reservation Act 2018</b> despite the fact that the <b>State had failed to apply the creamy layer test introduced in Jarnail Singh</b>.</li> <li>❖ The Court <b>reasoned that the test can only be applied at the stage of reservation in promotion and not at the stage of consequential seniority</b>.</li> </ul>
<b>State of Punjab V. Davinder Singh (2020)</b>	<ul style="list-style-type: none"> <li>❖ SC held that <b>States can sub-classify Scheduled Castes and Scheduled Tribes in the Central List</b> to provide preferential treatment to the weakest out of the weak.</li> </ul>

	<ul style="list-style-type: none"> <li>➤ <b>Sub-Classifications</b> within the <b>Central List</b> do not amount to tinkering with it. No caste is excluded from the list.</li> <li>➤ The <b>States only give preference to the weakest</b> of the lot in a pragmatic manner based on statistical data.</li> <li>➤ It fully endorses the <b>creamy layer concept to the Scheduled Castes and Scheduled Tribes</b>.</li> <li>❖ <b>Citizens cannot be treated to be socially and educationally backward till perpetuity</b>, those who came up must be <b>excluded like the creamy layer</b>.</li> </ul>
<b>Mukesh Kumar V. The State of Uttarakhand (2020)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court said that the states are not bound to provide reservation in appointments and promotions and there is <b>no fundamental right to reservation in promotions</b>.</li> <li>❖ <b>Article 16 (4) and 16 (4A)</b> are enabling provisions, vesting discretion on the state government to consider providing reservation, if the circumstances warrant.</li> <li>❖ The state government <b>cannot be directed</b> to give reservation for appointment in public posts.</li> </ul>
<b>Janhit Abhiyan V. Union of India (2022)</b>	<ul style="list-style-type: none"> <li>❖ The 103rd constitutional amendment <b>does not violate</b> the <b>Basic Structure</b> of the Constitution.</li> <li>❖ The EWS quota is not in conflict with <b>Equality</b> or the fundamental principles of the Constitution.</li> <li>❖ Reservation is a tool used by the state for <b>Affirmative Action</b> to include backward classes.</li> <li>❖ Reservation is not limited to Socially and Economically Backward Classes (SEBCs), but also includes other disadvantaged groups.</li> <li>❖ The 50% ceiling limit for reservations set by the Mandal Commission is not rigid and the 50% <b>rule only applies to specific communities, not the general category</b>.</li> <li>❖ Scheduled Castes, Scheduled Tribes, and Backward Classes with special provisions are distinct from the general category.</li> </ul>
<b>Additional Judgements</b>	<p><b>SC/ST Quota in Promotions:</b></p> <ul style="list-style-type: none"> <li>❖ State is obligated to collect quantifiable data as per the court's judgement in <b>M Nagaraj (2006) and Jarnail Singh (2018)</b>.</li> <li>❖ Collection of data has to be for each category of posts for the entire service.</li> <li>❖ The Central government must determine a time period to revisit the reservation policy after ascertaining the percentage of posts occupied by SCs/STs.</li> <li>❖ Assessment on the inadequacy of representation of the reserved categories in promotional posts should be left to the states.</li> </ul> <p><b>Validity of OBC Quota in NEET Admissions:</b></p> <ul style="list-style-type: none"> <li>❖ The SC has held that reservation is not at odds with merit.</li> <li>❖ It observed that 'merit' could not be narrowed to the limit of success in open competitive exams.</li> <li>❖ Merit of a person is a sum total of <b>"lived experiences"</b> and his or her struggle to overcome cultural and social setbacks, observed the SC.</li> <li>❖ The court held that the power of the <b>State government</b> to craft reservations for the OBC amplified the principle of <b>"substantive equality"</b> manifested through <b>Article 15 (1)</b>.</li> </ul> <p><b>Right to Government Aid is Not A Fundamental Right:</b></p> <ul style="list-style-type: none"> <li>❖ The SC has clarified that if the government made a policy call to withdraw aid, an institution cannot question the decision as a <b>"matter of right"</b>.</li> </ul>

- ❖ Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilisation of the grant-in-aid by an educational institution can be imposed.
- ❖ All that **Article 30(2)** states is that on the ground that an institution is under the management of a minority, whether based on religion or language.
- ❖ The **grant of aid to that educational institution** cannot be discriminated against, if other educational institutions are entitled to receive aid.

**Criterion for Deciding Creamy Layer:**

- ❖ The Supreme Court said that the basis of exclusion of creamy layer cannot be merely **economic**.
- ❖ SC struck down the notifications as a **“flagrant violation”** of the 2016 Act and said Section 5 (2) of the Act required the State to consider social, economic and other factors together to identify and exclude Backward Class members as “creamy layer”.

**Right To Abortion To Unmarried Women:**

- ❖ The Supreme Court noted that the High Court took a narrow view in this case and failed to consider the Amendment of 2021 made to the **Medical Termination of Pregnancy Act (MTP Act)**.
- ❖ The Court said that the phrase ‘married woman’ was replaced by ‘any woman’ and the word ‘**husband**’ was replaced by ‘**partner under Section 3 of the MTP Act**’. But evidently, there is a gap in the law: while Section 3 travels beyond conventional relationships based on marriage, Rule 3B of the MTP Rules fails to consider a situation involving unmarried women but recognizes other categories of women such as divorcees, widows, minors, disabled and mentally ill women and survivors of sexual assault or rape.
- ❖ The Court held that “all women are entitled to safe and legal Abortion, and there is no rationale in excluding unmarried women from the ambit of Rule 3B of MTP Rules, which mentions the categories of women who can seek abortion of pregnancy in the term 20-24 weeks.”
- ❖ The Court also ruled that rape includes ‘**Marital Rape**’ for the purpose of MTP Rules.

### 3.3 Right to Freedom (Article 19–22):

Important Cases	Judgements
<b>Ram Manohar Lohia Case (1960)</b>	<ul style="list-style-type: none"> <li>❖ 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.</li> </ul>
<b>Romesh Thapar V. State of Madras (1950)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court said that freedom of speech and expression includes <b>freedom of propagation of ideas</b> and that freedom is ensured by the <b>freedom of circulation</b>.</li> <li>❖ Freedom of speech and press laid at the foundation of all democratic organisations. Without free political discussion there is no public education, so essential for the <b>proper functioning of the process of popular government</b>, is possible.</li> </ul>



	<ul style="list-style-type: none"> <li>❖ It held that the <b>liberty of the press</b> is an essential part of the right to freedom of speech and expression under <b>Article 19(1)(a)</b>.</li> <li>❖ The judgement was quoted again and again by the Supreme Court, including in the Shreya Singhal case, in which it set aside the <b>Section 66A of the Information Technology Act</b>.</li> </ul>
<b>Maneka Gandhi V. Union of India, (1978)</b>	<ul style="list-style-type: none"> <li>❖ <b>Freedom of speech and expression</b> has <b>no geographical limitations</b> and it carries the right of a citizen to gather information and to exchange thoughts with others not only in India but abroad also.</li> <li>❖ The Supreme Court's judgement in the Maneka Gandhi case <b>meant that 'Procedure Established by Law' under Article 21 would have the same effect as the expression 'Due Process of Law'</b>.</li> <li>❖ The Court held that there is a unique relationship between the provisions of <b>Article 14, Article 19 and Article 21</b>. Therefore, a law depriving a person of <b>'Personal Liberty'</b> has not only to stand the test of <b>Article 21</b>, but it must also stand the test of Article 19 and Article 14 of the Constitution.</li> </ul>
<b>Bachan Singh V. State of Punjab (1980)</b>	<ul style="list-style-type: none"> <li>❖ SC evolved the <b>doctrine of 'rarest of rare case'</b> for awarding the <b>death penalty</b>. The Supreme Court laid down broad guidelines for awarding the death penalty.</li> <li>❖ The extreme penalty can be inflicted only in <b>gravest cases of extreme culpability</b>.</li> <li>❖ In making the choice of sentence, due regard must be paid to the circumstances of the offender also.</li> <li>❖ The Supreme Court was of the view that minimal use of capital punishment to penalise the criminals.</li> <li>❖ In <b>Chhannu Lal Verma vs the State of Chattisgarh (2018)</b> - Also upheld capital punishment.</li> </ul>
<b>Asiad Workers Case (1982)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court said that when a person provides labour of service to another for <b>remuneration which is less than the minimum wage</b>, the labour or service provided by him clearly falls within the scope and ambit of the words <b>"forced labour" under Article 23</b> (of the Constitution of India)."</li> </ul>
<b>Machhi Singh and Others V. State of Punjab (1983)</b>	<ul style="list-style-type: none"> <li>❖ SC had held that in the <b>rarest of rare cases</b>, when the collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty, then death penalty may be sanctioned.</li> </ul>
<b>Association for Democratic Reforms Case (2002)</b>	<ul style="list-style-type: none"> <li>❖ Freedom of speech and expression includes the <b>right to impart and receive information</b> which includes freedom to hold opinions.</li> <li>❖ The court argued that a good democracy aspires for a "Knowing Citizenry", and any type of disinformation or lack of knowledge will result in an "Uninformed Citizenry", which will have an impact on democracy.</li> </ul>
<b>Shatrughan Chauhan V. UOI (2014)</b>	<ul style="list-style-type: none"> <li>❖ The Court held that <b>undue delay by President in rejecting mercy to a death row convict amounts to torture</b>, such inordinate and unexplained delay by the <b>President</b> is sufficient in itself to entitle the convict to a commutation.</li> <li>❖ Though the court refused to fix a certain number of years above which undue delay would amount to torture.</li> <li>❖ 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.</li> </ul>

	<ul style="list-style-type: none"> <li>❖ The suffering that comes with anticipating death on an everyday basis for the judges amounted to torture, which was <b>violative of the Right to life under Article 21 of the Constitution.</b></li> </ul>
<b>Amit Sahani V. Commissioner of Police &amp; Others Case (2020)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court has found the <b>indefinite “occupation” of a public road</b> by the <b>Shaheen Bagh</b> protestors is unacceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions.</li> <li>❖ The judgement upheld the <b>Right to Peaceful Protest</b> against the law but made it clear that public ways and public spaces cannot be occupied, and that too indefinitely.</li> </ul>
<b>Mazdoor Kisan Shakti Sangathan V. UOI Case (2018)</b>	<ul style="list-style-type: none"> <li>❖ This case dealt with demonstrations at Delhi’s Jantar Mantar.</li> <li>❖ The court in this case tried to balance the interests of local residents and the protesters to hold demonstrations and directed the police to devise proper mechanisms for limited use of the area for peaceful protests and demonstrations.</li> <li>❖ The Court held that <b>democracy and dissent go hand in hand</b>, but then the demonstrations expressing dissent have to be in designated places alone.</li> </ul>
<b>Anuradha Bhasin Case V. UOI (2020)</b>	<ul style="list-style-type: none"> <li>❖ SC declared the <b>Right to Internet access as a fundamental right</b> forming a part of the <b>right to privacy and the right to education under Article 21</b> of the Constitution.</li> <li>❖ The Supreme Court clarified that Right to access the Internet and released guidelines on imposition of section 144 of CrPC.</li> <li>❖ The Supreme Court made the <b>Internet an integral part of the freedom of expression guaranteed under Article 19 (1) of the Constitution.</b></li> <li>❖ SC held that the <b>Internet as a medium is a major means of information diffusion</b> and that freedom to receive information is essential to expression.</li> <li>❖ It has also pointed out that in a globalised world, <b>restricting the Internet was to restrict the freedom to trade and profession, protected by Article 19(1)(g).</b></li> <li>❖ While such freedom is not absolute, the restrictions imposed on it should be in consonance with the mandate under <b>Article 19(2) and Article 19(6)</b> of the Constitution, inclusive of the <b>test of proportionality.</b></li> </ul>
<b>M. C. Mehta V. State of Tamil Nadu (1996)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court directed that <b>children should not be employed in hazardous jobs</b> in factories for manufacture of match boxes and fireworks.</li> <li>❖ SC found strict liability principle inadequate to protect citizens’ rights and replaced it with the <b>“Absolute Liability Principle”.</b></li> </ul>
<b>Gaurav Jain V. Union of India (1997)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court held that the <b>children of prostitutes</b> have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be <b>part of the mainstream of social life without any pre-stigma.</b></li> </ul>
<b>Mohini Jain V. State of Karnataka (1992)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court held that the <b>‘Right to Education’</b> is concomitant to the <b>fundamental rights</b> enshrined under Part III of the Constitution.</li> <li>❖ The Right to Education flows directly from <b>Right to Life under Article 21.</b></li> <li>❖ Charging capitation fee by the private educational institutions as a consideration for admission is wholly illegal and cannot be permitted.</li> </ul>
<b>Unnikrishnan JP V. State of Andhra Pradesh &amp; Others (1993)</b>	<ul style="list-style-type: none"> <li>❖ In this case, SC held that <b>Right to Education</b> is a <b>Fundamental right</b> flowing from <b>Article 21.</b></li> </ul>
<b>A.K. Gopalan V. The State of Madras (1950)</b>	<ul style="list-style-type: none"> <li>❖ SC satisfied that there was <b>no violation</b> of Fundamental Rights enshrined in <b>Articles 13, 19, 21 and 22</b> under the provisions of the <b>Preventive Detention Act</b>, if the detention was as per the <b>Procedure Established by Law.</b></li> </ul>

	<ul style="list-style-type: none"> <li>❖ It is a narrow interpretation of <b>Article 21</b>. It means procedure established by law is the law established by the state.</li> </ul>
<b>Justice K.S. Puttaswamy V. Union of India (2017)</b>	<ul style="list-style-type: none"> <li>❖ SC ruled that <b>Fundamental Right to Privacy</b> is <b>intrinsic</b> to life and liberty and thus, comes under <b>Article 21</b> of the Indian constitution.</li> <li>❖ The court overruled its earlier judgments in <b>M. P. Sharma and Kharak Singh</b> (Supreme Court observed that the Indian Constitution does not specifically protect the right to privacy).</li> <li>❖ SC declared that <b>bodily autonomy is an integral part of the right to privacy</b>. It has within its ambit sexual orientation of an individual.</li> <li>❖ SC <b>upheld the use of Aadhaar</b> for government services by using the <b>Doctrine of Proportionality</b>.</li> <li>❖ The court <b>struck down Section 33(2) of the Aadhaar Act</b> which allows disclosure of information of a user in the interest of national security.</li> <li>❖ SC <b>struck down Regulation 26(c)</b>, Aadhaar Regulations which allowed UIDAI to store metadata relating to Aadhaar based authentications or authentication history for private firms.</li> </ul>
<b>AK Gopalan Case (1950)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court has taken a narrow interpretation of <b>Article 21</b>.</li> <li>❖ It said that the protection under <b>Article 21</b> is available only against arbitrary executive action and not from arbitrary legislative action.</li> <li>❖ The State can deprive the <b>Right to Life &amp; Personal Liberty</b> of a person based on a law. It is because of the expression '<b>Procedure Established by law</b>' in <b>Article 21</b>, which is different from the expression '<b>Due Process of Law</b>' contained in the American Constitution.</li> <li>❖ The Court held that personal liberty means only liberty relating to the person or body of the individual. But, in the <b>Maneka Case (1978)</b> Supreme Court overruled its judgement.</li> </ul>
<b>National Legal Services Authority V. Union of India (2014)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court declared transgender people to be a '<b>third gender</b>', affirmed that the fundamental rights guaranteed under the Constitution of India will be equally applicable to transgender people.</li> <li>❖ It gave them the <b>Right to Self-Identification</b> of their gender as male, female or third-gender.</li> <li>❖ Court held that because transgender people were treated as <b>Socially and Economically Backward Classes (SEBCs)</b>, they will be granted Reservations in admissions to educational institutions and jobs.</li> </ul>
<b>Ram Lila Maidan Incident V. Union of India and Ors. (2012)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court declared that citizens have the <b>Fundamental Right of Peaceful Assembly</b> and <b>Protest</b> that cannot be removed by arbitrary executive or legislative action.</li> </ul>
<b>Sabu Mathew George V. Union of India (2017)</b>	<ul style="list-style-type: none"> <li>❖ SC ordered the respondents, Google, Microsoft and Yahoo to auto-block advertisements relating to <b>sex selective determination</b>.</li> <li>❖ They also ordered the creation of a nodal agency that would provide search engines with the details of websites to block.</li> </ul>
<b>Ban on Diwali firecrackers in Delhi (2017)</b>	<p style="text-align: center;"><b>Air Pollution/Environment</b></p> <ul style="list-style-type: none"> <li>❖ The Supreme Court ruled out a blanket ban on firecrackers in Delhi-National Capital Region and permitted the sale of '<b>Green Crackers</b>'.</li> <li>❖ This has ensured a <b>balance between the interests of the firecracker industry and the right to Public Health</b>.</li> </ul>

<b>Navtej Singh Johar V. Union of India (2018)</b>	<p style="text-align: center;"><b>SC Decriminalised Homosexuality</b></p> <ul style="list-style-type: none"> <li>❖ It dismissed the position taken by SC in <b>Suresh Kumar Koushal Case (2013)</b> that the LGBTQ community constitutes a minuscule minority and so there was no need to decriminalise homosexual sex.</li> <li>❖ <b>Right to Privacy and Protection of Sexual Orientation</b> lie at the core of the fundamental rights guaranteed by <b>Article 14</b> (Equality before Law), <b>Article 15</b> (Prohibition of discrimination on the basis of race, caste, religion, sex, place of birth), <b>Article 21</b> (Protection of life and liberty) and Article 19 (Freedom of expression) of the Constitution.</li> </ul>
<b>Joseph Shine V. Union of India (2018)</b>	<ul style="list-style-type: none"> <li>❖ The court in this case struck down the Section 497 of the IPC as unconstitutional, being violative of Articles 14, 15 and 21.</li> <li>❖ Section 497 of IPC is based on the <b>Doctrine of Coverture</b>, which holds that a woman loses her identity and legal <b>Right with Marriage, is violative of her fundamental rights.</b></li> <li>❖ <b>It is a denial of Substantive Equality and Dignified Life</b> 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 <b>Article 14 and Article 21</b> of the Constitution.</li> <li>❖ Also, discrimination which is grounded in paternalistic and patriarchal notions cannot claim the protection of <b>Article 15(3).</b></li> </ul>
<b>Mazdoor Kisan Shakti Sangathan V. UOI Case (2018)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court upheld that <b>Right to Protest</b> as it is crucial in a democracy, which rests on participation of an <b>informed citizenry</b> in governance.</li> </ul>
<b>Sabarimala Temple Case/ Indian Young Lawyers Association V. State of Kerala (2018)</b>	<ul style="list-style-type: none"> <li>❖ SC stated that '<b>devotion cannot be subjected to gender discrimination</b>'.</li> <li>❖ It overturned the <b>1951 judgement of Bombay High Court</b> in the <b>State of Bombay versus Narasu Appa Mali</b> which held that personal law is not 'law' or 'law in force' under <b>Article 13</b> and held that immunising customs takes away the primacy of the constitution.</li> <li>❖ It takes away the woman's right against discrimination guaranteed under <b>Article 15(1)</b> of the Constitution and curtails the religious freedom assured by Article 25(1).</li> <li>❖ Preventing women's entry in the temple with the irrational and obsolete notion of "purity" offends the equality clauses in the Constitution</li> <li>❖ 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 stigmatised women.</li> <li>❖ <b>No customs can claim supremacy over the Constitutional Morality</b> 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.</li> </ul>
<b>Supreme Court Common Cause V. Union of India (2018)</b>	<ul style="list-style-type: none"> <li>❖ The SC determined that <b>Right to Die with Dignity</b> is a fundamental right under <b>Article 21</b> of the constitution.</li> <li>❖ The Court approved the application of advanced medical directives and through this process it can be ensured that the individual had a dignified death as his or her individual autonomy is protected.</li> </ul>
<b>State of Mizoram V. Dr. C. Sangnghina Case (2018)</b>	<ul style="list-style-type: none"> <li>❖ The SC held that if the accused person was discharged due to lack of evidence then the bar of "<b>Double Jeopardy</b>" will not apply.</li> <li>❖ Thus, where the accused person has not been tried at all and convicted or acquitted, the principles of "Double Jeopardy" cannot be invoked at all.</li> </ul>

<b>Supreme Court of India V. Subhash Agarwal Case (2019)</b>	<ul style="list-style-type: none"> <li>❖ SC ruled that the office of the <b>Chief Justice of India (CJI)</b> would come under the ambit of the Right to Information Act, 2005 (RTI Act), as <b>CJI is public authority</b> under the RTI Act.</li> <li>❖ There should be a <b>balance between RTI and Privacy</b> and that information seeking should be calibrated.</li> <li>❖ <b>Independence and Accountability go hand in hand</b> and that independence of the judiciary cannot be ensured only by denying information.</li> <li>❖ Principal consideration should be public interest and judges are not above the law.</li> <li>❖ It upheld the Delhi High Court judgement of 2010 that the CJI does not hold information on the personal assets of judges in a fiduciary capacity</li> <li>❖ SC held that the <b>Right to Know under RTI was not Absolute and ought to be balanced with the Right to Privacy of individual judges.</b></li> </ul>
<b>D.A.V. College Trust and Management Society V. Director of Public Instructions case (2019)</b>	<p style="text-align: center;"><b>NGOs are under RTI</b></p> <ul style="list-style-type: none"> <li>❖ The Supreme Court ruling has brought Non-Government Organisations (NGOs) receiving funds from the governments under the ambit of RTI Act.</li> <li>❖ It means that NGOs will have to maintain records as provided under the RTI Act, and every citizen will have the <b>Right to Get Information</b> from them.</li> </ul>
<b>Arunachala Gounder V. Ponnusamy (2022)</b>	<ul style="list-style-type: none"> <li>❖ The Court determined that the legislative intent of enacting Section 14(1) of the <b>Hindu Succession Act</b> was to remedy the limitation of Hindu women who could not claim an absolute interest in inherited properties, but only had a life interest.</li> <li>❖ The Supreme Court has observed that a <b>daughter is capable of inheriting the self-acquired property</b> or share received in partition of a coparcenary property of her Hindu Father dying intestate.</li> <li>❖ The Court further noted that Ancient Texts, Commentaries, and Judicial Pronouncements have recognized the Rights of Female Heirs, including Wives and Daughters, to inherit self-acquired property or share received in partition of coparcenary property of a Hindu male dying intestate.</li> </ul>
<b>Jacob Puliye V. Union of India (2022)</b>	<ul style="list-style-type: none"> <li>❖ The Court found that the <b>vaccination policy of the Union of India</b> is not unreasonable and arbitrary.</li> <li>❖ However, the Court held that <b>bodily integrity</b> is protected under <b>Article 21</b> of the Constitution of India, and no individual can be forced to be vaccinated.</li> <li>❖ The Court observed that <b>personal autonomy includes the right to refuse medical treatment</b>, but the Government can impose reasonable and proportionate limitations on individual rights in the interest of public health.</li> </ul>

UPSC Mains PYQs		
1. "The most significant achievement of modern law in India is the constitutionalization of environmental problems by the Supreme Court." Discuss this statement with the help of relevant case laws.		<b>2022</b>
2. "Right of movement and residence throughout the territory of India are freely available to the Indian citizens, but these rights are not absolute." Comment.		<b>2022</b>



### 3.4 Freedom of Religion (Article 25–28):

Important Cases	Judgements
<b>Shafin Jahan V. Asokan K.M. 2018 (Case of Hadiya)</b>	<ul style="list-style-type: none"> <li>❖ SC held that the <b>Right to choose Religion</b> and marry is an <b>intrinsic part of meaningful existence</b>. Neither the State nor patriarchal supremacy can interfere in a person's decision.</li> <li>❖ 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.</li> <li>❖ It reinvigorates <b>Freedom of Religion and Freedom of Conscience</b> which has been recognized under the international law under the <b>Universal Declaration on Human Rights</b> recognizing the fact that the entire humanity enjoys certain alienable rights. India is also a signatory of the same.</li> <li>❖ The Indian Constitution guarantees the right to freedom of religion but it does not explicitly mention the right to conversion.</li> </ul>
<b>Triple Talaq Shayara Bano Case (2017)</b>	<p style="text-align: center;"><b>Gender Equality vs Freedom of Religion</b></p> <ul style="list-style-type: none"> <li>❖ The Supreme Court declared that <b>divorce through instant triple talaq among Muslims would be "void", "illegal" and "unconstitutional"</b>.</li> <li>❖ The court declared that <b>Instant Triple Talaq is unconstitutional</b>; the Constitution Bench did not accept the argument that instant talaq is essential to Islam and deserves constitutional protection under <b>Article 25</b>.</li> <li>❖ The court ruled that the practice was against <b>Article 14</b> of the Constitution, which guarantees the right to equality. It suggested the government to bring a legislation banning triple talaq.</li> <li>❖ The SC said that Muslim husband declaring <b>Instant Triple Talaq can be imprisoned for up to 3 years</b> is alleged to be disproportionate for a civil offence, thus <b>criminalising Triple Talaq</b>.</li> </ul>
<b>Danial Latifi Case (2001)</b>	<ul style="list-style-type: none"> <li>❖ It challenged the Constitutionality of the provisions of the <b>Muslim Women's (Protection of Rights on Divorce) Act (1986)</b>, for providing maintenance only during the iddat period.</li> <li>❖ 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.</li> </ul>
<b>Shamim Ara Case (2002)</b>	<ul style="list-style-type: none"> <li>❖ SC said that <b>Nikah Halala</b> is rendered redundant.</li> <li>❖ 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 <b>Quranic injunction</b>.</li> <li>❖ SC held that talaq must be pronounced in an Islamic way and it should be proven beyond doubt the events leading to talaq.</li> <li>❖ It held that the wife was liable to receive maintenance from her husband.</li> </ul>
<b>Shah Bano Case (1985)</b>	<ul style="list-style-type: none"> <li>❖ The SC directed the <b>husband to pay alimony to Shah Bano</b>.</li> <li>❖ The Government at the time enacted the <b>Muslim Women (Protection of Rights on Divorce) Act (1986)</b>, to nullify the court directive. It limited the maintenance payments to the iddat period (the 3-month waiting period for divorce).</li> </ul>
<b>Shirur Mutt Case (1954)</b>	<p style="text-align: center;"><b>Doctrine of Essentiality</b></p>

	<ul style="list-style-type: none"> <li>❖ SC said that the term Religion will cover <b>all rituals and practices integral to a religion</b>, and took upon itself the responsibility of determining the essential and non-essential practices of a religion.</li> </ul>
<b>Abhiram Singh V. C. D. Commachen Case (2017)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court reaffirmed the <b>Secular character of the Indian state</b>, ruling that election candidates cannot seek votes on the grounds of the religion, caste, creed, community or language of voters.</li> <li>❖ 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 <b>Representation of People Act 1951</b>.</li> <li>❖ Election is a secular exercise like the functions of the elected representatives must be secular in both outlook and practice.</li> <li>❖ SC interpreted <b>Section 123(3) of RPA</b>- this provision defines appeals based on sectarian, linguistic or caste considerations as corrupt practices.</li> </ul>
<b>Aishat Shifa V. State of Karnataka (2022)</b>	<ul style="list-style-type: none"> <li>❖ A Divisional Bench of the Supreme Court, delivered a <b>split verdict</b> on 13th October 2022.</li> <li>❖ While Justice Gupta confirmed the Karnataka HC Judgment and upheld the ban, and held that <b>Secularity means Uniformity</b>. According to him, Hijab would affect the creation of a homogenous group of students and create a segmented society.</li> <li>❖ On the other hand, Justice Dhulia held the opposite and decided in favour of those challenging the ban and held that <b>Secularity means tolerance to diversity</b>, asking to take off hijab at school gate is violative of Privacy and Dignity.</li> <li>❖ The case has now been placed before the CJI to decide whether to refer the case to a <b>3-judge bench or a 9-judge bench</b>.</li> </ul>

### 3.5 Cultural and Educational Rights (Article 29–30):

Important Cases	Judgements
<b>Dr. T.M.A Pai Foundation V. State of Karnataka (2002)</b>	<ul style="list-style-type: none"> <li>❖ SC laid down the contours of governmental regulations on <b>private institutions</b> and still occupies the <b>education field</b> in so far as the <b>Constitutionality</b> of statutes and regulations is concerned.</li> <li>❖ The right under <b>Article 30(1) is not absolute/above the law</b>.</li> <li>❖ <b>Article 30(1)</b> was to ensure equal treatment between the majority &amp; minority institutions and rules and regulations would apply equally to majority &amp; minority institutions.</li> <li>❖ <b>Maximum freedom must be given to management of minority institutions</b> that directly aim to preserve their special religious and linguistic characteristics but for those minority institutions imparting purely secular education &amp; (Physics, Chemistry etc.) excellence is of paramount importance.</li> </ul>
<b>Malankara Syrian Catholic College Case (2007)</b>	<ul style="list-style-type: none"> <li>❖ The SC has summarised the general principles relating to <b>establishment and administration of minority educational institutions</b> in the following way:</li> <li>❖ The <b>Rights of Minorities</b> to establish and administer educational institutions of their choice comprises the following rights:               <ul style="list-style-type: none"> <li>➤ <b>To choose its governing body</b> in whom the founders of institution have faith &amp; confidence to conduct and manage affairs of the institution;</li> </ul> </li> </ul>

- To **appoint teaching staff** (teachers/ lecturers and the masters/principals) and also **non-teaching staff**; and to take action if there is dereliction of duty on the part of any of its employees.
- To **admit eligible students** of their choice and to set a reasonable fee structure.
- To **use its properties and assets** for the benefit of the institution.

#### 4. FUNDAMENTAL RIGHTS VS DIRECTIVE PRINCIPLES

Important Cases	Judgements
<b>Champakam Dorairajan Case (1951)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court ruled that in case of any conflict between the Fundamental Rights and the Directive Principles, the former would prevail.</li> <li>❖ The SC further held that the <b>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.</b></li> <li>❖ On the other hand, they have to conform and run as a subsidiary to the fundamental rights laid down in Part III.</li> </ul>
<b>Golak Nath V. The State of Punjab (1967)</b>	<ul style="list-style-type: none"> <li>❖ SC said that <b>Fundamental Rights cannot be abridged/diluted</b> to implement the directive principles. It forced the government to amend the constitution</li> </ul>
<b>Minerva Mills V. Union of India Case (1980)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court <b>struck down 42nd Amendment Act 1976</b> (further widened the scope of the Fundamental Rights), declaring it to be <b>violative of the Basic Structure.</b></li> <li>❖ The supreme court viewed that there is no conflict between the Fundamental Rights and the DPSP and they were complimentary of each other.</li> <li>❖ The Court held that the <b>Constitution exists on the balance of part III (Fundamental Rights) and Part IV (DPSP).</b></li> <li>❖ Giving absolute priority to one over other will disturb the harmony of the Constitution.</li> </ul>

#### UPSC Mains PYQs

1. The rights of persons with disabilities Act, 2016 remains only a legal document without intense sensitisation of Government functionaries and citizens regarding disability	<b>2022</b>
2. The Right of Children to Free and Compulsory Education Act, 2009 remains inadequate in promoting an incentive-based system for children's education without generating awareness about the importance of schooling. Analyse.	<b>2022</b>

#### 5. FEDERALISM

Important Cases	Judgements
<b>Govt of NCT of Delhi V. UoI (2018)</b>	<p style="text-align: center;"><b>Powers of Lt Governor</b></p> <ul style="list-style-type: none"> <li>❖ In this landmark judgement, the <b>Constitutional Bench</b> 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.</li> </ul>

	❖ Calling for “ <b>Constitutional Pragmatism</b> ” and underlining the clear <b>Separation of Powers</b> , 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.
<b>S.R. Bommai V. Union of India Case (1994)</b>	❖ SC said that <b>Federalism is a basic feature of the Constitution</b> and States are supreme in their sphere. So, the State flag is not unauthorised. But, the manner in which the State flag is hoisted should not dishonour the national flag.

#### UPSC Mains PYQs

1. “While the national political parties in India favour centralisation, the regional parties are in favour of state autonomy.” Comment.	<b>2022</b>
2. The concept of cooperative federalism has been increasingly emphasised in recent years. Highlight the drawbacks in the existing structure and the extent to which cooperative federalism would answer the shortcomings.	<b>2015</b>
3. Though the federal principle is dominant in our Constitution and that principle is one of its basic features, it is equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism. Discuss.	<b>2014</b>
4. Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss.	<b>2013</b>

## 6. SEXUAL ABUSE OF CHILDREN AND WOMEN

Important Cases	Judgements
<b>Vishaka and Others V. State of Rajasthan (1997)</b>	<ul style="list-style-type: none"> <li>❖ SC gave a <b>set of guidelines for employers as well as other responsible persons/ institutions to immediately ensure the prevention of sexual harassment.</b></li> <li>❖ It is called as <b>Vishaka Guidelines</b>, which were to be considered law until appropriate legislation was enacted.</li> <li>❖ The Supreme Court held that incidents like <b>Sexual Harassment result in a violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'</b> and are a <b>clear violation of the rights under Articles 14, 15 and 21</b> of the Constitution.</li> <li>❖ Incidents of Sexual Harassment of women at workplace result in the violation of the victim's fundamental right under <b>Article 19(1) (g)</b> i.e. to practice any profession or to carry out any occupation, trade or business.</li> <li>❖ Therefore, such violations attract the remedy under Article 32 for the enforcement of these fundamental rights of women.</li> <li>❖ On the basis of the judgment in this case, <b>Parliament passed the sexual harassment at workplace (Prevention, Prohibition and Redressal) Act, 2013</b>, which seeks to safeguard women from harassment at their place of work.</li> </ul>
<b>Pedophilia Case (2011)</b>	❖ Noting that the sexual abuse of children is one of the most heinous crimes, the Supreme court issued elaborate guidelines on this issue.

	<ul style="list-style-type: none"> <li>❖ The <b>Juvenile Justice Act</b> was later enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to disposition of delinquent juveniles.</li> </ul>
<b>Nirbhaya Case (2014)</b>	<ul style="list-style-type: none"> <li>❖ <b>Justice J. S. Verma Committee</b> was constituted to suggest amendments to deal with sexual offences more sternly and effectively in future.</li> <li>❖ Based on the recommendations of the above committee, <b>Criminal Law (Amendment) Act, 2013</b> was enacted.</li> <li>❖ Definition of the offence of rape in Section 375 IPC was extended and rape was redefined in various other acts such as Protection of Children from Sexual Offences Act of 2012, the Indian Evidence Act of 1872 and the Code of Criminal Procedures of 1973.</li> <li>❖ A more pragmatic approach while dealing with the issue of consent in the offence of rape was to be adopted.</li> <li>❖ Harsher penalty commensurating with the gravity of offence was introduced.</li> </ul>
<b>Ministry of Defence V. Babita Puniya (2020)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court judgement led to the granting of <b>Permanent Commission</b> to women officers in the Armed Forces irrespective of their number of years of service.</li> </ul>
<b>State of Jharkhand V. Shailendra Kumar Rai (2022)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court reiterated the case of <b>Lillu v. State of Haryana, 2013</b> and held that the <b>two-finger test violates the Right to Privacy, Integrity and Dignity of a Woman</b>.</li> <li>❖ However, the test was still conducted, and hence, the Court in the present case held that if anyone performs a <b>Two-Finger Test</b> on a sexual assault victim, it will be <b>construed as an offence of misconduct and will be penalised accordingly</b>.</li> </ul>

## 7. ROLE OF GOVERNOR

Important Cases	Judgements
<b>S. R Bommai Case (1994)</b>	<ul style="list-style-type: none"> <li>❖ The court gave primacy to a <b>Floor Test</b> as a check of majority. meaning, <b>Government's strength should be tested on the Floor of the House</b> and not as per whims of the Governor.</li> <li>❖ It also said that the power under <b>Article 356</b> is extraordinary and must be used wisely and not for political gain.</li> <li>❖ SC held <b>Secularism as a Basic Feature</b> of the Constitution of India.</li> </ul>
<b>Rameshwar Prasad Case (2006)</b>	<ul style="list-style-type: none"> <li>❖ Governors cannot shut out <b>post poll alliances</b> altogether as one of the ways in which a popular government may be formed.</li> <li>❖ It said unsubstantiated claims of <b>horse-trading</b> or corruption in efforts at government formation cannot be cited as reasons to dissolve the Assembly.</li> </ul>
<b>Nabam Rebia Case (2016)</b>	<ul style="list-style-type: none"> <li>❖ SC ruled that <b>Governor's discretion</b> under <b>Article 163</b> 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 &amp; tempered by caution.</li> </ul>



	❖ The Governor must strictly abide by the aid and advice of the Cabinet regarding summoning the Assembly for a floor test.
<b>Hargovind Pant V. Raghukul Tilak Case (1979)</b>	❖ Supreme Court affirmed that the <b>office of the Governor was not subordinate/subservient</b> to the Government of India
<b>Rameshwar Prasad V. Union of India Case (2005)</b>	❖ SC struck the imposition of Governor's rule after an inconclusive election and non-conveying of assembly even once. As per Bommai Case, there was no floor test done, so the court struck down the President Rule.
<b>B.P. Singhal V. Union of India Case (2010)</b>	❖ SC observed that power to remove the 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.
<b>Harish Chandra Rawat V. Union of India Case (2016)</b>	❖ The <b>governor's report could not be taken at face value and must be verified</b> by the Council of Ministers before being used as the basis for imposing <b>President's Rule</b> . ❖ The Supreme Court ruled that if a <b>Political Party with the support of other parties or MLAs</b> staked claim to form a government and satisfied the Governor about its majority, <b>he cannot override the claim because of his subjective assessment that majority was formed through tainted means.</b>

#### UPSC Mains PYQs

1. Discuss the essential conditions for the exercise of the legislative powers by the Governor. Discuss the legality of re-promulgation of ordinances by the Governor without placing them before the Legislature.	<b>2022</b>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------

## 8. POWERS OF LG

Important Cases	Judgements
<b>Government of NCT Delhi V. Union Of India Case (2018)</b>	❖ SC overturned the August 2016 judgement 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: <ul style="list-style-type: none"> <li>➤ Delhi government has power in all areas (<b>except land, police and public order</b>). The Lt. Governor (LG) is bound by the aid and advice of the government in areas other than those exempted.</li> <li>➤ The only exception was a provision to <b>Article 239-AA</b>, which allowed the LG to refer to the <b>President</b> any issue on which there was a difference of opinion with the council of ministers. In that case, the <b>LG</b> would be bound by the President's decision.</li> <li>➤ Delhi Lieutenant Governor cannot act independently. It must take the aid and advice of the Council of Ministers; the role of the L-G is different from that of a Governor.</li> </ul>

## UPSC Mains PYQs

1. Whether the Supreme Court Judgement (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine.	<b>2018</b>
2. Discuss the essentials of the 69th Constitutional Amendment Act and anomalies, if any, that have led to recent reported conflicts between the elected representatives and the institution of the Lieutenant Governor in the administration of Delhi. Do you think that this will give rise to a new trend in the functioning of Indian federal politics?	<b>2016</b>

## 9. ARTICLE 356 (PRESIDENTS RULE)

Important Cases	Judgements
<b>S R Bommai V. Union of India (1994)</b>	<ul style="list-style-type: none"> <li>❖ The SC ruled that the President's rule should be <b>used very sparingly, not for political gains.</b></li> <li>❖ The Court cannot question the advice tendered by Council of Ministers but it <b>can scrutinise the ground for that advice of imposition of the President's Rule</b> and may take corrective steps if malafide intention is found.</li> <li>❖ Use of <b>Article 356</b> is justified only when there is breakdown of constitutional machinery &amp; not administrative.</li> </ul>
<b>Buta Singh V. The State of Punjab (1991)</b>	<ul style="list-style-type: none"> <li>❖ The Appellant's <b>right to private defence was upheld and his conviction by lower courts was set aside.</b> (The appellant Buta Singh, who was convicted by lower courts for causing the death of Balbir Singh.)</li> </ul>

## 10. SEDITION LAW

Important Cases	Judgements
<b>Shreya Singhal V. Union of India (2015)</b>	<ul style="list-style-type: none"> <li>❖ 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.</li> <li>❖ <b>SC declared Section 66A of Information Technology Act (IT Act) as unconstitutional</b> and struck it down.</li> <li>❖ The court said that this misuse 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 that make the <b>two cardinal pillars of democracy.</b></li> </ul>
<b>S.G. Vombatkere V. Union of India (2022)</b>	<ul style="list-style-type: none"> <li>❖ State and Central Governments should refrain from registering any FIR under <b>Section 124A of the IPC.</b></li> <li>❖ The Investigating agency should not continue any investigation or take any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration.</li> <li>❖ If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief.</li> <li>❖ All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance.</li> </ul>

<b>Kedar Nath Singh V. State of Bihar (1962)</b>	<ul style="list-style-type: none"> <li>❖ SC upheld <b>Section 124A</b> and said it struck a correct balance between <b>Fundamental Rights</b> and need for public order.</li> <li>❖ 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.</li> <li>❖ The Court emphasised that a Government established by law under <b>Section 124A</b> must be distinguished from criticism of a specific party or persons.</li> <li>❖ 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.</li> </ul>
<b>Dr. Vinayak Binayak Sen V. State of Chhattisgarh (2011), (Kanhaiya Kumar Case)</b>	<ul style="list-style-type: none"> <li>❖ SC <b>redefined a Seditious Act</b> only if it had essential ingredients as:               <ul style="list-style-type: none"> <li>➤ Disruption of public order</li> <li>➤ Attempt to violently overthrow a lawful government,</li> <li>➤ Threatening the security of State or public</li> </ul> </li> </ul>

## 11. APPOINTMENT OF JUDGES

Important Cases	Judgements
<b>Shamsher Singh V. State of Punjab Case (1974)</b>	<ul style="list-style-type: none"> <li>❖ SC held that the approval of CJI is must in appointing the Judges of <b>High Court</b> and <b>Supreme Court</b>.</li> </ul>
<b>Supreme Court Advocates on Record Association V. Union of India Case (1993)</b>	<ul style="list-style-type: none"> <li>❖ Supreme Court held that as far appointment of judges of Supreme Court and High Courts is concerned, the <b>President shall act in accordance with the opinion of the Chief Justice of India</b> (who will in turn give advice after consulting his colleagues)</li> </ul>
<b>First Judges Case (1981) / S P Gupta Case</b>	<ul style="list-style-type: none"> <li>❖ SC held that <b>consultation (with reference to appointment of Judges) does not mean concurrence</b> and it only implies exchange of views.</li> </ul>
<b>Second Judges Case (1993) / Supreme Court Advocates-on Record Association V. Union of India Case</b>	<ul style="list-style-type: none"> <li>❖ The court reversed its earlier ruling and <b>changed the meaning of the word consultation to “concurrence”</b>.</li> <li>❖ It ruled that the <b>advice tendered by the CJI is binding on the President</b> in the matters of appointment of the judges of the SC.</li> </ul>
<b>Third Judges Case (1998)</b>	<ul style="list-style-type: none"> <li>❖ SC opined that the <b>consultation process to be adopted by the Chief Justice of India requires consultation of plurality judges</b>.</li> <li>❖ The opinion of the CJI only does not constitute the consultation process. He should <b>consult a Collegium of 4 senior most judges of the Supreme Court and if two judges give different opinions, he shouldn't send the advice to the government</b>.</li> <li>❖ The court said that the recommendation made by the <b>chief Justice of India</b> without consultation process &amp; complying with the norms and requirements is not binding on the government.</li> </ul>
<b>Justice Karnan V. SC Case (2017)</b>	<ul style="list-style-type: none"> <li>❖ SC underlined the need to revisit the process of selection and appointment of judges to the constitutional court.</li> </ul>
<b>National Court of Appeal V. Vasantha Kumar Case (2016)</b>	<ul style="list-style-type: none"> <li>❖ SC gave direction while hearing a PIL for establishment of a <b>National Court of Appeal</b> at Chennai, Mumbai and Kolkata and quashing of the government order which had rejected his proposal for the same.</li> </ul>

<b>Rupa Ashok Hurra V. Ashok Hurra &amp; another</b> <b>ase (2002)</b>	<ul style="list-style-type: none"> <li>❖ The concept of the Curative Petition was <b>first evolved by the Supreme Court of India in this Case</b>, 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.</li> <li>❖ This was <b>to avoid miscarriage of justice and to prevent abuse of process, supported by Article 137</b> of the Indian Constitution.</li> <li>❖ Under <b>Article 145</b>, the Supreme Court has the power to review any order pronounced by it. Such petition needs to be filed within 30 days from the date of judgement/order.</li> <li>❖ If the Bench holds at any stage that the petition is without any merit, it may impose a penalty on the petitioner.</li> </ul>
<b>National Federation of Societies for Fast Justice &amp; Anr. V. Union of India (2020)</b>	<ul style="list-style-type: none"> <li>❖ The SC has directed all the states to come out with notifications for establishing '<b>Gram Nyayalayas</b>' within a month and has asked the High Courts to expedite the process of consultation with State Governments on this issue.</li> </ul>
<b>L. Chandra Kumar V. Union of India (1997)</b>	<ul style="list-style-type: none"> <li>❖ SC said that Tribunals (<b>Articles 323A and 323B</b>) cannot be a substitute for the power of Judicial Review that the Constitution bestows upon the High Courts.</li> <li>❖ The Tribunals will act as supplementary institutions to assist the High Court while performing their function.</li> <li>❖ <b>Tribunals will remain under the supervision of the High Courts</b> and cannot be considered as institutions parallel to the High Courts.</li> <li>❖ SC laid down that appeals against orders of CAT shall lie before the division bench of the concerned high court.</li> </ul>
<b>Swapnil Tripathi V. SC (2018)</b>	<ul style="list-style-type: none"> <li>❖ "<b>Sunlight is the best disinfectant</b>" 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.</li> <li>❖ <b>Note: "Sunlight is the best disinfectant" phrase could be used in transparency, E-Governance, RTI and in other aspects to stress the need for transparency.</b></li> </ul>
<b>Brij Mohan Lal Case (2002)</b>	<ul style="list-style-type: none"> <li>❖ The Court held that the continuation of <b>Fast Track Courts( FTC)</b> is within the domain of the States with their own funds.</li> <li>❖ It has left <b>FTCs</b> on the mercy of the State as some states have continued support for FTCs while others did not.</li> </ul>

#### UPSC Mains PYQs

- |                                                                                                                                                                                    |             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1. Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India. | <b>2017</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|

## 12. ARTICLE 370

Important Cases	Judgements
<b>Puranlal Lakhanpal V. The President of India (1961)</b>	<ul style="list-style-type: none"> <li>❖ SC observed that the <b>President</b> may modify an existing provision in the Constitution under Article 370.</li> </ul>

### UPSC Mains PYQs

- |                                                                                                                                                                                                                                                     |             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1. To what extent is Article 370 of the Indian Constitution, bearing marginal note “Temporary provision with respect to the State of Jammu and Kashmir”, temporary? Discuss the future prospects of this provision in the context of Indian polity. | <b>2016</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|

## 13. PREVENTION OF CORRUPTION ACT/ PRIOR SANCTION FOR INVESTIGATION

Important Cases	Judgments
<b>Vineet Narain V. Union of India (1997)/ Jain Hawala Case</b>	<ul style="list-style-type: none"> <li>❖ 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.</li> <li>❖ SC also suggested reforms for making <b>CBI independent</b>. The <b>Director</b> of the <b>CBI</b> should be appointed on the recommendations of a <b>committee</b> headed by the <b>Central Vigilance Commissioner, Home Secretary and Secretary in the Department of Personnel</b> as members.</li> </ul>
<b>Anil Kumar V. M.K. Aiyappa Case (2013)</b>	<ul style="list-style-type: none"> <li>❖ SC upheld that Section 19 of the Prevention of Corruption Act applies at the threshold itself and investigation under <b>Section 156(3) CrPC requires a prior sanction</b>.</li> </ul>
<b>Subramanian Swamy V. Union of India Case (2014)</b>	<ul style="list-style-type: none"> <li>❖ The <b>constitutionality of the criminal offense of defamation under Section 499 and Section 500 of the Indian Penal Code, 1860 was upheld</b> by the Supreme Court. The Court relied on the judgments given by other countries on this issue and said that the Right to Reputation falls under the Right to Life given under Article 21 of the Constitution of India.</li> </ul>
<b>NC Shivkumar Case (2016)</b>	<ul style="list-style-type: none"> <li>❖ The Court held that if there was no previous sanction, <b>the magistrate cannot order an investigation against a public servant</b> while invoking power under Section 156 (3) CrPC.</li> </ul>
<b>MK Aiyappa Case (2013) and Narayana Swamy Case (2016)</b>	<ul style="list-style-type: none"> <li>❖ <b>CrPC 1973</b> and the <b>Prevention of Corruption Act 1988</b> provide that to prosecute a public servant, permission or sanction has to be secured from the government for which the official works.</li> <li>❖ SC held that even an investigation cannot be ordered under <b>Section 156(3) CrPC</b> without prior sanction.</li> <li>❖ Prior sanction for investigation impedes an unbiased and efficient investigation.</li> </ul>

### UPSC Mains PYQs

- |                                                                                                                                                                                                                                                                                                                                 |             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1. The jurisdiction of the Central Bureau of Investigation (CBI) regarding lodging an FIR and conducting probes within a particular state is being questioned by various States. However, the power of States to withhold consent to the CBI is not absolute. Explain with special reference to the federal character of India. | <b>2021</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|



## 14. OFFICE OF PROFIT

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

## 15. ANTI-DEFECTION LAW

Important Cases	Judgements
<b>G. Viswanathan V. Speaker, Tamil Nadu Legislative Assembly Case (1996)</b>	<ul style="list-style-type: none"> <li>❖ Once a member is expelled, he is treated as an <b>'unattached' member</b> in the house.</li> <li>❖ However, he continues to be a member of the old party as per the <b>Tenth Schedule</b>.</li> <li>❖ So, if he joins a new party after being expelled, he can be said to have <b>voluntarily given up membership</b> of his old party.</li> </ul>
<b>Kihoto Hollohan Case (1992)</b>	<ul style="list-style-type: none"> <li>❖ SC had upheld the validity of the <b>anti-defection law</b> and made the <b>Speaker's order</b> subject to <b>judicial review</b> on limited grounds.</li> <li>❖ It made clear that the court's jurisdiction would not come into play unless the Speaker passes an order, no intervention prior to adjudication.</li> <li>❖ 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 does not violate any right or freedom under <b>Articles 105 and 194</b> of the Constitution.</li> <li>❖ Judges observed that suspicion of bias on the <b>Speaker's role</b> could not be ruled out as his or her election and tenure depend on the majority will of the House.</li> </ul>
<b>Ravi S Naik V. Union of India Case (1994)</b>	<ul style="list-style-type: none"> <li>❖ In the absence of a formal resignation by the member, the giving up of membership can be inferred by his conduct.</li> </ul>

<b>Writ Petitions in Karnataka Defection Case (2019)</b>	<ul style="list-style-type: none"> <li>❖ The SC ruled that MLA's would not be bound by the <b>Whip</b> of their respective parties in the trust vote.</li> </ul>
<b>Manipur Assembly Case (Keisham Meghachandra Singh V. the Hon'ble Speaker Manipur Legislative Assembly &amp; Ors. (2020))</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court recommended the <b>Parliament to amend the Constitution regarding the role of Speaker</b> as a quasi-judicial authority while dealing with disqualification petitions.</li> <li>❖ Court suggested that an <b>independent tribunal</b> can be appointed which will <b>substitute the Speaker to deal with matters of disqualifications</b> under the Tenth Schedule.</li> </ul>

## 16. UNIFORM CIVIL CODE (ARTICLE 44)

Important Cases	Judgements
<b>Mohd. Ahmad Khan V. Shah Bano Begum and Others (1985)</b>	<ul style="list-style-type: none"> <li>❖ Based on its interpretation of the Holy Quran, the court held that <b>there is an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife.</b></li> <li>❖ Court observed that a <b>common Civil Code</b> will help the cause of <b>national integration</b> by removing disparate loyalties to laws which have conflicting ideologies.</li> </ul>
<b>Sarla Mudgal Case (1995)</b>	<ul style="list-style-type: none"> <li>❖ SC held that the <b>Hindu marriage</b> solemnised under <b>Hindu law</b> can only be dissolved on any of the grounds specified under the <b>Hindu Marriage Act 1955.</b></li> <li>❖ Conversion to Islam and marrying again, would not by itself dissolve the Hindu marriage under the act, hence 2nd marriage solemnised after converting to Islam would be an offence under <b>Section 494 of the IPC.</b></li> </ul>
<b>Daniel Latifi Case (2001)</b>	<ul style="list-style-type: none"> <li>❖ SC held that the amount received by a wife during <b>Iddat Period</b> should be large enough to maintain her during Iddat as well as provide for her future.</li> <li>❖ Thus, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.</li> </ul>
<b>John Vallamattom Case (2003)</b>	<ul style="list-style-type: none"> <li>❖ A priest from Kerala challenged the Constitutional validity of <b>Section 118</b> (imposes restrictions on Christians donation of property for religious or charitable purposes by will) <b>of the Indian Succession Act.. The bench struck down the section as unconstitutional.</b></li> </ul>

### 16.1 Hindu Women's Inheritance Rights:

Important Cases	Judgements
<b>Prakash V. Phulavati Case (2015)</b>	<ul style="list-style-type: none"> <li>❖ <b>Verdict of the SC in 2015:</b> <ul style="list-style-type: none"> <li>➤ The Appellant contention that the present case was a case of notional partition and was governed by the Principal Act was accepted by the SC. As per the notional partition, shares in the Ancestral Properties were already allotted to the heirs under the <b>Hindu Succession Act, 1956 ("Principal Act").</b></li> </ul> </li> </ul>

- The Supreme Court held that even though the Amendment Act is a social legislation, it cannot be applied retrospectively, unless intended by the legislature and expressly provided under such legislation.
- 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). Thus, meaning both the daughter and the father must be alive at the date of amendment.
- ❖ **Verdicts after 2015:**
  - **February 2018:** Contrary to the 2015 judgement, the SC held that it is not mandatory whether the coparcener should be living or not at the date of Amendment Act, the important finding is that the Amendment will apply to all the transactions from the date of Amendment irrespective of it being pending.
  - **April 2018:** Another two-judge bench reiterated the position taken in 2015.
- ❖ **Verdicts of 2020:**
  - These conflicting views by Benches of equal strength led to a reference to a **three-judge Bench in 2020 (led by Justice Arun Mishra)**.
  - 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).

**NOTE:** A **Coparcener** is the one who shares equally in the inheritance of an undivided property.

## 17. PARDONING POWER

Important Cases	Judgements
<b>K M Nanavati V. State of Maharashtra (1959)</b>	❖ The Supreme Court held that the <b>Special Leave Petition (SLP)</b> and Pardoning Power cannot operate together. If SLP is filed, then the power of the <b>Governor</b> in such a condition will cease to exist.

UPSC Mains PYQs		
1.	Instances of the President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time limit specified for the President to accept/reject such petitions? Analyse.	<b>2014</b>

## 18. ORDINANCE

Important Cases	Judgements
<b>D C Wadhwa and others V. state of Bihar and others (1986)</b>	<ul style="list-style-type: none"> <li>❖ The 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.</li> <li>❖ Repeated promulgation of ordinances is clearly contrary to the constitutional scheme and it must be held to be improper and invalid.</li> <li>❖ Power to promulgate an ordinance should be used to meet an extraordinary situation and it cannot be allowed to serve political interests.</li> <li>❖ The court also observed that it cannot examine the question of satisfaction of the Governor in issuing an ordinance.</li> </ul>
<b>AK Roy V. Union of India (1982)</b>	<ul style="list-style-type: none"> <li>❖ SC held that the President's Ordinance making power is not beyond the scope of judicial review.</li> </ul>
<b>Venkata Reddy V. State of Andhra Pradesh (1985)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme court overruled its previous judgement and held that the <b>satisfaction of the Governor/President cannot be called in question.</b></li> </ul>
<b>RC Cooper V. Union of India (1970)</b>	<ul style="list-style-type: none"> <li>❖ The ordinance making power of the <b>President/Governor</b> can be questioned if his satisfaction can be questioned on the grounds of <b>malafide.</b></li> </ul>
<b>Krishna Kumar Singh V. State of Bihar (2017)</b>	<ul style="list-style-type: none"> <li>❖ SC ruled that ordinances are subject to <b>Judicial Review</b>, and do not automatically create enduring effect.</li> </ul>

## 19. ELECTORAL REFORMS

Important Cases	Judgements
<b>Union of India V. Harbans Singh Jalal and Others Case (1997)</b>	<ul style="list-style-type: none"> <li>❖ Election Commission are entitled to take necessary steps for the conduct of a free and fair election.</li> <li>❖ <b>Model Code of Conduct (MCC)</b> comes into force the moment an election is announced and remains in force till the results are declared.</li> </ul>
<b>Union of India V. Association for Democratic Reforms (2002)</b>	<ul style="list-style-type: none"> <li>❖ The Court held that electors had a <b>fundamental right to know</b> the antecedents of candidates contesting elections to hold <b>public office.</b></li> <li>❖ The court read in '<b>Right to be Informed</b>' as a right flowing from freedom of speech and expression.</li> <li>❖ The <b>Election Commission</b> was directed to secure affidavits by candidates recording all particulars relating to past or pending criminal charges or cases against them.</li> <li>❖ This included information as to whether the candidate was convicted/acquitted/discharged of any criminal offence in the past.</li> </ul>
<b>Kuldip Nayar V. Union of India Case (2006)</b>	<ul style="list-style-type: none"> <li>❖ It challenged amendments made in the <b>Representation of People Act, 1951</b> and <b>Open Ballot System.</b></li> <li>❖ The Court said that free and fair elections would not stand defeated by an open ballot to give effect to the concept of proportional representation.</li> </ul>
<b>Lily Thomas Case (2013)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court held that Section 8(4) of Representation of People Act 1951 is ultra vires to the constitutional provisions.</li> </ul>

	<ul style="list-style-type: none"> <li>❖ The Court also accepted that the <b>grounds for disqualification of a candidate and a member are the same</b>. Thus, Parliament has exceeded its powers by bringing in Section 8(4).</li> </ul>
<b>People's Union for Civil Liberties V. Union of India Case (2013)</b>	<ul style="list-style-type: none"> <li>❖ Rule 49(o) of the conduct of <b>Election Rules 1961</b> ensures that the <b>Presiding Officer</b> records a voter has not voted in case 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 <b>Right to Secrecy</b> enshrined in the elections.</li> <li>❖ SC held that <b>Right to Vote</b> also includes a right not to vote and remain neutral.</li> <li>❖ <b>Right to Secrecy</b> is the integral part of <b>Free &amp; Fair elections</b>. People who didn't vote shouldn't be victimised.</li> </ul>
<b>Jan Chaukidar V. Union of India (2013)</b>	<ul style="list-style-type: none"> <li>❖ SC held that all those in <b>lawful police or judicial custody</b>, other than those held in preventive detention, will forfeit their right to stand for election.</li> </ul>
<b>Subramanian Swamy V. Election Commission of India (ECI) (2013)</b>	<ul style="list-style-type: none"> <li>❖ SC has held that <b>Voter Verifiable Paper Audit Trail (VVPAT)</b> is indispensable for free and fair elections.</li> </ul>
<b>S Subramaniam Balaji Case (2013)</b>	<ul style="list-style-type: none"> <li>❖ SC said that <b>Freebies</b> promised by political parties in their election manifestos shake the roots of free and fair polls.</li> <li>❖ SC directed the <b>Election Commission</b> to frame guidelines for regulating contents of manifestos.</li> </ul>
<b>Lok Prahari V. Union of India Case (2018)</b>	<ul style="list-style-type: none"> <li>❖ SC has asked the <b>Central Government</b> 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.</li> <li>❖ Non-disclosure of assets &amp; their sources would amount to a corrupt practice (under <b>Section 123 of the Representation of the People Act, 1951</b>).</li> </ul>
<b>Public Interest Foundation V. Union of India (2018)</b>	<ul style="list-style-type: none"> <li>❖ SC <b>directed political parties to publish the criminal details</b> of their candidates in their respective websites and print as well as electronic media for public awareness.</li> <li>❖ 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.</li> <li>❖ A political party should explain to the public through their published material how the <b>"qualifications or achievements or merit"</b> of a candidate, charged with a crime, impressed it enough to cast aside the smear of his criminal background.</li> <li>❖ The <b>party would have to give reasons</b> 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.</li> </ul>
<b>Rambabu Singh Thakur V. Sunil Arora (2020)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court has <b>ordered political parties to publish the entire criminal history</b> (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.</li> <li>❖ <b>Political parties have to submit compliance reports</b> with the <b>Election Commission of India</b>.</li> <li>❖ The <b>information should be published in local as well as national newspapers</b> as well as the parties' social media handles.</li> <li>❖ It is <b>applicable to parties both at Central and State levels</b>.</li> </ul>



	<ul style="list-style-type: none"> <li>❖ The <b>political party should explain to the public</b> 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.</li> <li>❖ <b>The judgement was based on the 2018 Constitution Bench judgement (Public Interest Foundation v. Union of India)- court was cognizant of the increasing criminalization of politics</b> in India and the lack of information about such criminalization among the citizenry.</li> </ul>
<b>Association for Democratic Reforms V. Union of India (2021)</b>	<ul style="list-style-type: none"> <li>❖ SC directed all the <b>Political Parties</b> who have received donations through <b>Electoral Bonds</b> 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 <b>Election commission of India</b> in sealed cover.</li> </ul>

### UPSC Mains PYQs

1. Discuss the procedures to decide the disputes arising out of the election of a Member of the Parliament or a State Legislature under the Representation of People Act 1951. What are the grounds on which the election of any returned candidate may be declared void? What remedy is available to the aggrieved party against the decision? Refer to the case laws	<b>2022</b>
2. Discuss the role of the Election Commission of India in light of the evolution of the Model Code of Conduct.	<b>2022</b>
3. To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful?	<b>2017</b>
4. ‘Simultaneous elections to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government’s accountability to the people’ Discuss.	<b>2017</b>
5. In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India?	<b>2018</b>
6. On what grounds a people’s representative can be disqualified under the Representation of People Act, 1951? Also mention the remedies available to such a person against his disqualification.	<b>2019</b>
7. “There is a need for simplification of procedure for disqualification of persons found guilty of corrupt practices under the Representation of peoples Act”. Comment.	<b>2020</b>

## 20. PRISON REFORMS

Important Cases	Judgements
<b>Ramamurthy V. State of Karnataka (1996)</b>	<ul style="list-style-type: none"> <li>❖ SC identified issues concerning prisons, such as <b>overcrowding, trials being delayed, the torture and ill-treatment of prisoners, neglect of health and hygiene, insubstantial food and inadequate clothing.</b></li> <li>❖ Directed government to bring uniformity nationally of prison laws and prepare a draft model prison manual.</li> </ul>
<b>Satendra Kumar V. CBI (2022)</b>	<ul style="list-style-type: none"> <li>❖ The <b>Supreme Court</b> laid down guidelines regarding the grant of bail, urging the government to enact a separate law to streamline the process.</li> </ul>

- ❖ The courts must satisfy themselves on the compliance of **Sections 41 and 41A** of the Code. Any non-compliance would entitle the accused for grant of bail.
- ❖ While considering the application under **Sections 88, 170, 204 and 209** of the Code, a bail application need not be compulsorily filed.
- ❖ The **State and Central Governments** must comply with the directions issued by SC with respect to the constitution of special courts.
- ❖ The **High Courts** are directed to look for the **undertrial prisoners** who are unable to comply with the bail conditions and take appropriate action in light of **Section 440** of the **Code to facilitate their release**.
- ❖ Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks, with the exception of any intervening application.

## 21. POLICE REFORMS

Important Cases	Judgements
<b>Prakash Singh V. Union of India (2006)</b>	<ul style="list-style-type: none"> <li>❖ SC instructed central and state governments to comply with a set of seven directives laying down practical mechanisms to kick-start reform.</li> <li>❖ <b>The Supreme Court suggested four requisite points of reform:</b> <ul style="list-style-type: none"> <li>➤ State Security Commission at State level.</li> <li>➤ Transparent procedure for the appointment of the Police Chief and the desirability of giving him/her a minimum fixed tenure.</li> <li>➤ Separation of investigation work from law and order.</li> <li>➤ A new Police Act which should reflect the democratic aspirations of the people.</li> </ul> </li> </ul>

## 22. CORRUPTION, BUREAUCRACY & POLITICS NEXUS

Important Cases	Judgements
<b>Ramashankar Raghuvanshi Case (1983)</b>	<ul style="list-style-type: none"> <li>❖ SC observed that <b>employment based on the basis of past political loyalties violates Article 14 and 16</b> of the constitution.</li> </ul>
<b>Upendra Narayan Singh Case (2009)</b>	<ul style="list-style-type: none"> <li>❖ SC observed that the <b>Public Service Commissions</b> 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 <b>Article 320</b> have become victims of the spoiled system.</li> <li>❖ In essence, Public Service Commissions Act as watchdogs for the civil servants. Over a period of time, recruitment to these commissions have become dependent on political loyalties.</li> </ul>
<b>T. S. R. Subramanian V. Union of India Case (2013)</b>	<ul style="list-style-type: none"> <li>❖ It is a landmark case which was <b>aimed at professionalising the bureaucracy, promoting efficiency and good governance</b>. Court ruled that civil servants were not bound to follow oral directives.</li> <li>❖ The Supreme Court observed that <b>Civil servants have to be accountable to both political executive and people of this country</b>.</li> </ul>

	<ul style="list-style-type: none"> <li>❖ 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.</li> <li>❖ 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.</li> <li>❖ Parliament under <b>Article 309</b> of the Constitution can enact a <b>Civil Service Act</b>, setting up a CSB.</li> <li>❖ It directed the <b>Centre, State Governments and the Union Territories</b> to issue appropriate directions to secure the provision of minimum tenure of service to various civil servants within a period of three months.</li> <li>❖ It directed the <b>Centre, State Governments and the Union Territories</b> to issue directions like <b>Rule 3 (3) of the All India Services (Conduct) Rules, 1968</b>, in their respective States and Union Territories</li> </ul>
<b>Vijay Madanlal Choudhary V. Union of India (2022)</b>	<ul style="list-style-type: none"> <li>❖ Apex Court upheld the validity of vast powers conferred to ED under the <b>Prevention of Money Laundering Act (2022)</b>.</li> <li>❖ In this case, the Constitutional validity of <b>several provisions like attachment of property, taking possession of attached property, search and seizure, search of persons, powers of arrest, reverse burden of proof, offences triable by the Special Court, offences being Cognizable and Non-bailable and twin conditions for grant of bail by court and statements made to ED officials;</b> of <b>Prevention of Money Laundering Act (PMLA)</b> was challenged before the apex Court.</li> <li>❖ The Court upheld all the <b>challenged</b> provisions of the <b>PMLA</b>. The Court also held that the <b>ED</b> did not possess <b>police powers</b> and, as a result, did not have to follow police procedure when conducting an inquiry. Further, the <b>Court</b> noted that the reversed burden of proof to receive bail was justified in order to counter the <b>'heinous'</b> crime of money laundering.</li> </ul>

#### UPSC Mains PYQs

1. "Recent amendments to the Right to Information Act will have a profound impact on the autonomy and independence of the Information Commission". Discuss	<b>2020</b>
2. Citizens' Charter is an ideal instrument of organisational transparency and accountability, but. It has its own limitations. Identify the limitations and suggest measures for greater effectiveness or the Citizens Charter.	<b>2018</b>
3. "If an amendment bill to the Whistleblowers Act, 2011 tabled in the Parliament is passed, there may be no one left to protect." Critically evaluate.	<b>2015</b>
4. "Institutional quality is a crucial driver of economic performance". In this context suggest reforms in the Civil Service for strengthening democracy.	<b>2020</b>
5. Initially Civil Services in India were designed to achieve the goals of neutrality and effectiveness, which seems to be lacking in the present context. Do you agree with the view that drastic reforms are required in Civil Services? Comment	<b>2017</b>
6. "Traditional bureaucratic structure and culture have hampered the process of socio-economic development in India." Comment.	<b>2016</b>
7. Has the Cadre based Civil Services Organisation been the cause of slow change in India? Critically examine.	<b>2014</b>

## 23. SPEAKER

Important Cases	Judgements
<b>Jagjit Singh V. the State of Haryana (2006)</b>	❖ SC raised questions about the confidence in the <b>impartiality of the Speaker</b> .
<b>Mohd. Saeed Siddiqui V. State of Uttar Pradesh and Yogendra Kumar Jaiswal V. the State of Bihar (2015)</b>	❖ The <b>Supreme Court</b> has held that the <b>Speaker's decision is not subject to Judicial Review</b> . ❖ The 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 <b>Article 212</b> (Courts should not inquire into proceedings of the Legislature).

## 24. ISSUES ASSOCIATED WITH NATIONAL FLAG AND NATIONAL ANTHEM

Important Cases	Judgements
<b>Union of India V. Naveen Jindal Case (2004)</b>	❖ Right to hoisting the <b>National Flag</b> with due respect and dignity is a <b>Fundamental Right</b> of every citizen under <b>Article 19(1)</b> . It is subject to reasonable restrictions under Article 19(2) ❖ Flag Code however is not a law, for the purpose of <b>Article 19(2)</b> it would not restrictively regulate the free exercise of the <b>Right to Fly the National Flag</b> .
<b>Bijoe Emmanuel V. State of Kerala (1986)</b>	❖ SC held that standing up respectfully when the <b>National Anthem</b> is sung but not singing oneself does not violate <b>Section 3 of the Prevention of Insult to National Honor Act, 1971</b> . ❖ SC reversed its previous ruling that made it mandatory for movie theatres to play the <b>National Anthem</b> before screening the movies while audiences stood up. Further clarity on the issue will emerge after <b>6 months</b> following a report from a committee. ❖ After the ruling now, theatres can choose whether to play the National Anthem or not. If it is played the audience will have to stand up. ❖ Exemptions granted to differently abled people will remain in force.
<b>Shyam Narayan Chouksey Case (2018)</b>	❖ The Court directed all cinema halls to play the National Anthem at the start of movies.

## 25. ENVIRONMENT VS TRIBAL RIGHTS

Important Cases	Judgements
<b>Supreme Court's Order on Forest Rights Act (2018)</b>	❖ The Court has ordered the state governments to evict over <b>10 lakh</b> forest dwelling families whose claims have been rejected under the <b>Forest Rights Act</b> . ❖ 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 is also either required to be evicted from that parcel of land or some other action is to be taken in accordance with law.

<b>Samatha V. State of Andhra Pradesh (1997)</b>	<ul style="list-style-type: none"> <li>❖ SC nullified all mining leases granted by the <b>Andhra Pradesh State Government</b> in the <b>Scheduled Areas</b> and asked it to stop all mining operations.</li> <li>❖ The Supreme Court held that the right to livelihood is an important facet of the right to life.</li> </ul>
--------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## 26. OTHER IMPORTANT JUDGEMENTS

Important Cases	Judgements
<b>Information and Communication Secretary, Ministry of Information and Broadcasting V. Cricket Association of Bengal Case (1995)</b>	<ul style="list-style-type: none"> <li>❖ The use of <b>Radio waves and frequencies</b> should be monitored and <b>regulated by government agencies for the public good.</b></li> <li>❖ The Supreme Court has found that the right to communicate and receive information is part of the right to freedom of expression as guaranteed by Article 19(1) (a) of the Constitution.</li> <li>❖ The Supreme Court observed that <b>“Private broadcasters may be more likely to infringe upon citizens’</b> freedom of speech than state-run media.</li> <li>❖ It also noted that Broadcasting media should be controlled by the public, not by the government.</li> </ul>
<b>Kanu Sanyal V. District Magistrate (1974)</b>	<ul style="list-style-type: none"> <li>❖ SC laid down that the physical presence is NOT a part of the writ.</li> </ul>
<b>S. P. Gupta V. Union of India (1981)</b>	<ul style="list-style-type: none"> <li>❖ Justice P. N. Bhagwati articulated the concept of <b>Public Interest Litigation.</b></li> </ul>
<b>Safai Karamchahi Andolan V. Union of India Case 2014</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court ordered the abolishment of manual scavenging and asked for the implementation of rehabilitation of such workers. It directed all states to abolish Manual Scavenging.</li> <li>❖ The SC observed that the practice of Manual Scavenging has not ended and ordered the abolishment of the same and it asked for implementation of rehabilitation of such workers.</li> </ul>
<b>Extra Judicial Execution Victim V. Union of India And Ors (2017)</b>	<ul style="list-style-type: none"> <li>❖ 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.</li> <li>❖ Dealing a blow to the immunity enjoyed by security personnel under the <b>Armed Forces (Special Powers) Act of 1958 (AFSPA)</b> against criminal 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.</li> </ul>
<b>Verdict on Rohingya Crisis - Md. Salimullah V. UoI (2021)</b>	<ul style="list-style-type: none"> <li>❖ The Supreme Court rejected the plea to stop the deportation of seven <b>Rohingya immigrants to Myanmar</b> from Assam, saying that the seven were found as illegal immigrants and that Myanmar is also ready to accept them as their nationals.</li> </ul>
<b>Rajbala V. State of Haryana Case (2015)</b>	<ul style="list-style-type: none"> <li>❖ SC upheld the validity of law barring the illiterate from contesting panchayat polls in the state.</li> <li>❖ <b>Right to Contest is Neither Fundamental Right, nor Statutory right.</b> It is a <b>Constitutional Right.</b> It can be regulated and curtailed through laws passed by the appropriate legislature.</li> </ul>



<b>Zahira Sheikh V. State of Gujarat (2006)</b>	<ul style="list-style-type: none"> <li>❖ SC observed that witness protection is necessary for <b>free and fair Trial</b> and it also defined <b>Fair trials</b>.</li> </ul>
<b>Subhash Mahajan V. State of Maharashtra (2018)</b>	<ul style="list-style-type: none"> <li>❖ SC diluted the <b>Scheduled Castes and Tribes (Prevention of Atrocities POA) Act, 1989</b>.</li> <li>❖ SC said that there is no absolute bar against grant of <b>Anticipatory Bail</b> in cases under the <b>Atrocities Act</b>, if no prima facie case is made out/where on judicial scrutiny the complaint is found to be prima facie mala fide.</li> <li>❖ In view of acknowledged abuse of law of arrest in cases under the <b>Atrocities Act</b>, arrest of a <b>Public Servant</b> 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 &amp; such reasons must be scrutinised by the Magistrate for permitting further detention.</li> <li>❖ 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 not frivolous or motivated.</li> </ul>
<b>ADM Jabalpur Case (1976)</b>	<ul style="list-style-type: none"> <li>❖ SC said that no person has any locus standi to move any writ petition under <b>Article 226</b> 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.</li> <li>❖ The Supreme Court also upheld the constitutional validity of <b>Section 16 A (9) of the Maintenance of Internal Security Act</b>.</li> <li>❖ The Supreme Court in <b>Ramdeo Chauhan vs Bani Kant Das (2010)</b> case officially admitted its mistake in the ADM, Jabalpur Judgment. It read <b>Article 21</b> in a restrictive manner and denied thousands of Emergency détentés the right of habeas corpus.</li> </ul>



## UNIT 2

# Important Judicial Doctrines

- ❖ A legal doctrine is a **framework, set of rules, procedural steps, or test, often established through precedent in the common law**, through which judgments can be determined in a given legal case.
- ❖ A doctrine comes about when a judge makes a ruling where a process is outlined and applied and allows for it to be equally applied to like cases.
- ❖ When enough judges make use of the process, it may become established as the **de facto method of deciding situations**.

## 1. DOCTRINE OF BASIC STRUCTURE

<b>Introduction</b>	<ul style="list-style-type: none"> <li>❖ It is <b>not clearly defined by the Supreme Court of India</b>.</li> <li>❖ Basic structure as per the court: Parliamentary Democracy, Fundamental Rights, Secularism, Federalism, Judicial Review etc.</li> </ul>
<b>Origin</b>	❖ Found in the <b>German Constitution</b> which, after the Nazi regime, was amended to protect some basic laws.
<b>Significance / Application</b>	❖ To ensure that the power of amendment is not misused by Parliament
<b>Associated Judgements</b>	<ul style="list-style-type: none"> <li>❖ Kesavananda Bharati Case (1973)</li> <li>❖ Indira Nehru Gandhi v Raj Narain Case (1975)</li> <li>❖ Minerva Mills Case (1980)</li> <li>❖ Waman Rao Case (1981)</li> </ul>

## 2. DOCTRINE OF SEPARATION OF POWERS

<b>Introduction</b>	❖ It is <b>not explicitly mentioned in the Constitution</b> , considered as part of that <b>Basic Structure</b> .
<b>Origin</b>	❖ It is a political doctrine originating in the writings of Charles de Secondat, Baron de Montesquieu in the work " <b>The Spirit of the Laws</b> ".
<b>Significance / Application</b>	❖ It applies the division of powers between various organs of the State: <b>Executive, Legislature and Judiciary</b> .
<b>Associated Judgements</b>	<ul style="list-style-type: none"> <li>❖ <b>Ram Jawaya V. State of Punjab Case (1955)</b></li> <li>❖ <b>Indira Nehru Gandhi V. Raj Narain Case (1975)</b></li> </ul>
<b>Constitutional Provisions</b>	❖ Article 50

UPSC Mains PYQs	Year
1. Do you think that the Constitution of India does not accept the principle of strict separation of powers rather it is based on the principle of 'checks and balance'? Explain.	2019

### 3. DOCTRINE OF JUDICIAL REVIEW

<b>Introduction</b>	❖ It refers to the <b>power of the judiciary</b> to decide on the <b>Constitutional validity</b> of the acts of the other organs of the Government (the Executive and the Legislative).
<b>Origin</b>	❖ The concept of <b>Judicial Review</b> first originated in America, established through the case of <b>Marbury v. Madison</b> .
<b>Significance / Application</b>	❖ To regulate any such acts which may contravene the Constitution.
<b>Associated Judgements</b>	❖ <b>Indira Gandhi V. Raj Narain Case (1975)</b> : it was considered as the <b>Basic Structure</b> of the Constitution.
<b>Constitutional Provisions</b>	❖ Article 13; Article 32 and 226; Article 131-136; Article 137; Article 245; Article 246 (3); Article 251 and Article 254.

### 4. DOCTRINE OF SOVEREIGN IMMUNITY

<b>Introduction</b>	❖ It is a <b>legal doctrine</b> whereby a <b>Sovereign or State cannot commit a legal wrong</b> and is immune from <b>Civil Suit</b> or <b>Criminal Prosecution</b> , strictly speaking in modern texts in its own Courts.
<b>Origin</b>	❖ It was derived from a <b>British Common Law Doctrine</b> which is based on the idea that the <b>King can't do any wrong</b> .
<b>Significance / Application</b>	❖ It provides a ruling to the government body with an option of choosing immunity from Civil lawsuits and Criminal prosecutions.
<b>Associated Judgements</b>	❖ <b>Mirza Ali Akbar Kasani V. United Arab Republic and Others</b> : SC held that <b>Section 86(1) of Criminal Procedure Code</b> modifies the international doctrine of Sovereign Immunity to a certain extent, and when a suit is instituted against a foreign State with the consent of the government, it is not open for a foreign State to rely upon the doctrine of Sovereign Immunity under international law. ❖ <b>State of Rajasthan V. Vidyawati</b> : In this case, the Court rejected the plea of immunity of the State and held that the State was liable for the act of the driver like any other employer.
<b>Constitutional/Legal Provisions/International Conventions</b>	❖ Article 51; Section 86 of the Civil Procedure Code, 1908; Diplomatic Relations (Vienna Convention) Act, 1972

## 5. DOCTRINE OF DUE PROCESS OF LAW

<b>Introduction</b>	❖ It is a doctrine that not only checks if there is a law to deprive the Life and Personal Liberty of a person but also ensures that the law is made Fair and Just.
<b>Origin</b>	❖ The <b>Doctrine</b> has its origins from the <b>English common law</b> . It is first seen in the <b>Magna Carta-the law of the Land for England</b> .
<b>Significance /Application</b>	❖ It prohibits the State from taking actions that shall deprive an individual from their Rights to Safety, Liberty or Life. E.g. Fundamental Rights, Liberty, etc.
<b>Associated Judgements</b>	❖ <b>Maneka Gandhi V. Union of India Case (1978)</b> : SC held that 'Procedure Established by Law' within the meaning of Article 21 must be 'Right and Just and Fair' and 'not Arbitrary, Fanciful or Oppressive' otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.
<b>Constitutional Provisions</b>	❖ Article 21

## 6. DOCTRINE OF CONSTITUTIONAL MORALITY

<b>Introduction</b>	❖ It means adherence to the <b>core principles of Constitutional Democracy</b> and moreover it is a guarantee that the SC is committed to protect all minorities, despite opposition from majoritarian governments.
<b>Origin</b>	❖ The doctrine of Constitutional Morality traces its origin back to the work of English Historian George Grote.
<b>Significance /Application</b>	❖ <b>According to Dr. B R Ambedkar</b> , it would mean effective coordination between conflicting interests of different people and the administrative cooperation to resolve them amicably without any confrontation amongst the various groups working for the realisation of their ends at any cost.
<b>Associated Judgements</b>	❖ <b>Sabarimala Case (2018)</b> : SC upheld the Religious Freedom, Gender Equality and the Right of Women to Worship guaranteed in the Indian Constitution ❖ <b>Kesavananda Bharati Case (1973)</b> : SC restricted the power of the Parliament to violate the Basic Structure of the Constitution. ❖ <b>Naz Foundation Case</b> : SC opined that only Constitutional Morality and not Public Morality should prevail.
<b>Constitutional Provisions</b>	❖ Article 12 to 35; Article 36 to 51; Article 51A; Preamble

### UPSC Mains PYQs

1. 'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of 'Constitutional Morality' with the help of relevant judicial decisions

**2021**

## 7. DOCTRINE OF 'POLLUTER PAYS' PRINCIPLE

<b>Introduction</b>	❖ In environmental law, the Polluter Pays Principle is enacted to make the party <b>responsible for producing pollution responsible for paying for the damage</b> done to the natural environment.
<b>Origin</b>	❖ This idea was proposed by Thomas Lindhqvist to the Swedish government in 1990.
<b>Significance /Application</b>	❖ In simple terms it is believed that those who cause pollution should pay the price.
<b>Associated Judgements</b>	❖ Recently, SC has sought an explanation from the governments of Haryana, Punjab and Uttar Pradesh on why they should not be punished under tort law and be made to pay a hefty penalty for stubble fires seen during the winter month.
<b>Constitutional/Legal Provisions/International Conventions</b>	❖ Environment Protection Act, 1986; Rio Declaration (1992)

## 8. DOCTRINE OF PUBLIC TRUST

<b>Introduction</b>	❖ It is the principle that certain resources are preserved for public use, and that the government is required to maintain them for the public's reasonable use.
<b>Origin</b>	❖ It traces its origin to the <b>Ancient Roman Empire</b> which was founded on the idea that certain common properties such as rivers, seashore, forests, and the air were held by the government in trusteeship for the free and unrestricted use of the general public.
<b>Significance /Application</b>	❖ It primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership.
<b>Associated Judgements</b>	❖ <b>M.C Mehta V. Kamal Nath Case:</b> The Court observed that earth's Natural Resources are the gift of nature; it should be protected and it also stated that the values and law must adhere to the environment. ❖ <b>Shailesh R. Shah V. State of Gujarat Case:</b> The court stated that the state holds all the resources like the lake, pond, natural gases, wetland and as the State is held as the Trustee and it is the duty of the State to maintain and protect them for public use.
<b>Constitutional/Legal Provisions/International Conventions</b>	❖ Article 21



## 9. DOCTRINE OF PITH AND SUBSTANCE

<b>Introduction</b>	❖ Pith means ‘ <b>True Nature</b> ’ and Substance means ‘ <b>The Most Important or Essential Part of Something</b> ’. It is a <b>legal doctrine</b> used to determine under which head of power a given piece of legislation falls.
<b>Origin</b>	❖ First acknowledged in the <b>Canadian Constitution</b> and in India, it came to be adopted under GoI Act 1935
<b>Significance /Application</b>	❖ It usually applied where the question arises of determining whether a particular law relates to a particular Subject (mentioned in Seventh Schedule),
<b>Associated Judgements</b>	❖ <b>Prafulla V. Bank of Commerce (1946)</b> : SC held that dealing with money lending (a <b>State subject</b> ), is not invalid, merely because it incidentally affects promissory notes. ❖ <b>State of Bombay V. F.N Balsara (1951)</b> : The first important judgment which upheld the Pith and Substance Doctrine.
<b>Constitutional Provisions</b>	❖ Article 246; Article 254

## 10. DOCTRINE OF INCIDENTAL OR ANCILLARY POWERS

<b>Introduction</b>	❖ Supplements the doctrine of Pith and Substance.
<b>Origin</b>	❖ The Doctrine can be traced back to “ <b>R. V. Waterfield (1963) Case</b> ”, a decision of the English Court of Appeal.
<b>Significance/Application</b>	❖ It is invoked when there is a need to <b>Aid the Principal legislation in question</b> .
<b>Associated Judgements</b>	❖ <b>State of Rajasthan V. G Chawla (1958)</b> : SC held that the power to legislate on a topic of legislation carries with it the power to legislate on an Ancillary matter which can be said to be reasonably included in the power given.
<b>Constitutional Provisions</b>	❖ Article 4; Article 169

## 11. DOCTRINE OF SEVERABILITY

<b>Introduction</b>	❖ It is a doctrine that protects the <b>Fundamental Rights enshrined in the Indian Constitution</b> .
<b>Origin</b>	❖ It finds roots in England in the Case of Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Company Ltd.
<b>Significance /Application</b>	❖ It protects our Fundamental Rights, as it is mentioned in <b>Article 13(1)</b> of the Constitution.
<b>Associated Judgements</b>	❖ <b>A.K. Gopalan V. State of Madras (1950)</b> : the SC held that in case of inconsistency with the Constitution, only the disputed provision of the Act will be void and not the whole of it, and every attempt should be made to save as much as possible of the act. ❖ <b>State of Bombay V. F.N. Balsara (1951)</b> : Eight Sections of the <b>Bombay Prohibition Act</b> were declared invalid, the SC held that the portion which was invalid to the extent of Fundamental Rights was separable from the rest of the act.
<b>Constitutional Provisions</b>	❖ Article 13

## 12. DOCTRINE OF ECLIPSE

<b>Introduction</b>	❖ It is based on the principle that a law that violates <b>Fundamental Rights(FR)</b> is not null or void ab initio but becomes only unenforceable.
<b>Origin</b>	❖ The origin of this doctrine can be found in <b>Keshavan Madhava Menon V. State of Bombay (1951)</b> .
<b>Significance /Application</b>	❖ The FR overshadows the law/act and makes it unenforceable but not void ab initio (Having no legal effect from inception). Hence, an ' <b>Eclipse</b> ' is said to be cast on it. The law just becomes invalid but continues to exist.
<b>Associated Judgements</b>	❖ <b>Bhikaji Narain Dhakras V. State of Madhya Pradesh (1955)</b> : SC held that the impugned law (Central Provinces and Berar Motor Vehicles (Amendment) Act, 1947) became, for the time being, eclipsed by the Fundamental Right.
<b>Constitutional Provisions</b>	❖ Article 13(1)

## 13. DOCTRINE OF COLOURABLE LEGISLATION

<b>Introduction</b>	❖ The Doctrine of colourable legislation is also called " <b>Fraud on the Constitution</b> ".
<b>Origin</b>	❖ It traces its origin to a Latin Maxim which, in this context, implies: " <b>Whatever Legislature cannot do directly, it cannot do indirectly</b> ".
<b>Significance /Application</b>	❖ The doctrine comes into play when a Legislature does not possess the power to make law upon a particular subject but nonetheless indirectly makes one.
<b>Associated Judgements</b>	❖ <b>R.S Joshi V. Ajit Mills (1977)</b> : the SC held that in the statute of force, the colourable exercise of or extortion on administrative force or misrepresentation on the constitution, are articulations which only imply that the assembly is clumsy to authorise a specific law, albeit the mark of competency is struck on it, and afterwards it is colourable enactment."
<b>Constitutional Provisions</b>	❖ Article 246

## 14. DOCTRINE OF HARMONIOUS CONSTRUCTION

<b>Introduction</b>	❖ The term <b>Harmonious Construction</b> refers to such construction by which harmony or oneness amongst various provisions of an enactment is arrived at.
<b>Origin</b>	❖ The Doctrine of Harmonious construction originated through interpretations given by courts in a number of cases.
<b>Significance /Application</b>	❖ This doctrine was brought about to bring harmony between the different lists mentioned in the <b>Schedule 7</b> of the Constitution of India.
<b>Associated Judgements</b>	❖ <b>East India hotels ltd. V. Union of India (2000)</b> : SC held that an Act is to be read as a whole, the different provisions have to be harmonised and the effect to be given to all of them.
<b>Constitutional Provisions</b>	❖ Schedule 7 of the Constitution

UPSC Mains PYQs	Year
1. From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of Federal Supremacy' and 'Harmonious Construction' have emerged. Explain.	<b>2019</b>

## 15. DOCTRINE OF REPUGNANCY

<b>Introduction</b>	❖ The term “Repugnancy” means contradiction of ideas. Here, in the wider sense, it can be defined as inconsistency between State and Union law.
<b>Origin</b>	❖ This doctrine is adopted from the <b>Constitution of America</b>
<b>Significance /Application</b>	❖ Conflicts between the laws of the Centre Government and State Government and to avoid such conflicts between the State laws and Centre laws, the Constitution of India enacted Article 254.
<b>Associated Judgements</b>	❖ <b>M. Karunanidhi V. Union of India (1979):</b> SC held that where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and absolutely irreconcilable, the Central Act will take precedence and the State Act will become void due to the repugnancy.
<b>Constitutional Provisions</b>	❖ Article 254

## 16. DOCTRINE OF TERRITORIAL NEXUS

<b>Introduction</b>	❖ It says that laws made by a State Legislature are not applicable outside the State, except when there is a sufficient nexus between the State and the object.
<b>Origin</b>	❖ This doctrine derives its Authority from Article 245 of the Indian Constitution.
<b>Signifies/Application</b>	❖ To determine whether a particular Legislation is within the Territorial nexus or not, this doctrine is applied.
<b>Associated Judgements</b>	❖ <b>A.H. Wadia V. Income Tax Commissioner (1948):</b> It was held that a question of extraterritoriality of enactment can never be raised against a Supreme Legislative Authority on the grounds of questioning its validity. ❖ <b>State of Bombay V. RMDC (1957):</b> The SC held that there existed a sufficient Territorial Nexus to enable the Bombay Legislature to tax the respondent as all the activities which the competitor is ordinarily expected to undertake took place mostly within Bombay.
<b>Constitutional Provisions</b>	❖ Article 245; Article 245(1); Article 245(2)

## 17. DOCTRINE OF PLEASURE

<b>Introduction</b>	❖ The doctrine of Pleasure is one of the concepts which has been introduced in India from British rule. Under this doctrine, the Civil Servants were regarded as servants of the Crown and these Civil Servants served at their Pleasure.
<b>Origin</b>	❖ The doctrine of Pleasure has its <b>Origins in English law</b> . In England, the moral rule is that a Civil Servant of the Crown holds office during the Pleasure of the Crown.
<b>Signifies/Application</b>	❖ It provides that people who are members of the Defence Services or the Civil Servants of the Union or of All-India Services hold office during the Pleasure of the President and members of the State Services hold office during the Pleasure of the Governor.

<b>Associated Judgements</b>	<ul style="list-style-type: none"> <li>❖ <b>State of Bihar V. Abdul Majid (1954):</b> SC held that the English Common Law has not been adopted in its entirety and with all its rigorous implications.</li> <li>❖ <b>Union of India V. Tulsiram Patel (1965):</b> SC held that the “Pleasure Doctrine” was neither a relic of the Feudal Age nor was it based on any special Prerogative of the British Crown but was based upon Public Policy.</li> </ul>
<b>Constitutional Provisions</b>	❖ Article 155; Article 310; Article 311

## 18. DOCTRINE OF PARENS PATRIAE

<b>Introduction</b>	❖ ‘Parens Patriae’ is a Latin term meaning ‘ <b>Parent of his or her Country</b> ’ and to act as the parent of any child, individual, or animal who is in need of protection.
<b>Origin</b>	❖ Parens Patriae relates to a notion initially invoked by the King's Bench in the sixteenth century in cases of non-compos mentis adults( not sane or rational).
<b>Significance /Application</b>	❖ Some children, incapacitated individuals, and disabled individuals lack parents who are able and willing to render adequate care, thus requiring state intervention.
<b>Associated Judgements</b>	<ul style="list-style-type: none"> <li>❖ <b>Animal Welfare Board of India V. A Nagaraja &amp; Ors (2014):</b> SC held that the Court has a duty under the doctrine of Parens Patriae to take care of Animal’s Rights.</li> <li>❖ <b>Bhopal Gas Leak Disaster Case:</b> SC held that the <b>Parens Patriae</b> theory makes it imperative for the State to protect Rights of the Citizens when they are not in a position to do so.</li> <li>❖ <b>Recently, Uttarakhand High Court</b> has invoked the doctrine of Parens Patriae to issue “mandatory directions for the welfare of Cows and other stray Cattle” in the State.</li> </ul>
<b>Constitutional Provisions</b>	❖ Article 12; Article 38 (1); Article 39; Article 39A

## 19. DOCTRINE OF CASUS OMISSUS

<b>Introduction</b>	❖ Omissus is a Greek word that means “ <b>Cases of Omission</b> ”. Omission in a statute cannot be supplied by construction. A matter which should have been provided in a statute cannot be supplied by the courts.
<b>Significance/Application</b>	<ul style="list-style-type: none"> <li>❖ The Executive must act and the Judiciary in the course of administration of justice must apply the law as laid down by the said legislative will.</li> <li>❖ A <b>Casus Omissus</b> cannot be provided by the Courts by Judicial Interpretation unless there is a reasonable need for it and the justification for it can be found in the four corners of the law itself.</li> </ul>
<b>Associated Judgements</b>	❖ <b>Commissioner of Wealth Tax V. Hashmatunnisa Begum Case:</b> The bench meant that something more is being got out in the elucidation of the subject matter than can be got by the strict interpretation of the words used.



# 3

## Landmark Judgements in Detail

### 1. ROMESH THAPAR V. STATE OF MADRAS (1950)

#### Synopsis:

*Romesh Thapar V. State of Madras was a landmark Case, decided by the Supreme Court of India on May 26, 1950. This Case dealt with the issue of **Freedom of Speech and Expression** under **Article 19(1)(a)** of the Indian Constitution.*

*The Supreme Court, in its judgement, observed that the **Freedom of Speech and Expression** includes the **Right to Circulate one's Views to Others**, and that the restriction imposed by the State was not a reasonable restriction in the interest of **Public Order**.*

#### Background:

- ❖ Preliminary objection was that Law is imposing restrictions for securing **Public Order and maintenance of Public Safety on Fundamental Right** of Freedom of Speech and Expression ensured under **Art. 19, clauses (1)(a) of the Constitution of India**.

#### Matter in Question:

- ❖ Romesh Thapar challenged the 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.

#### Judgement 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 organisations. Without free political discussion there is no public education, so it is essential for the proper functioning of the process of Popular Government.
- ❖ 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 judgement was quoted again and again by the Supreme Court, including in the **Shreya Singhal Case**, in which it set aside the **Section 66A** (Criminalises the sending of Offensive messages through Computer or Other Communication devices) of the **Information Technology Act, 2000**.

#### Significance of the Judgement:

- ❖ '**Romesh Thapar**' Case necessitated Constitutional amendments. The First Amendment to the Indian Constitution undid the effect of this judgement. In this regard, the first amendment to the Constitution amended **Article 19**.
- ❖ The judgement in this case was significant as it established the principle that the Freedom of Speech and Expression is a Fundamental Right guaranteed by the Indian Constitution, subject to reasonable restrictions. This case also set an important precedent for future cases involving Freedom of Speech and Expression in India.



## 2. BERUBARI UNION CASE (1960)

### Synopsis:

*The **Berubari Union Case** is an important judgement which has implications upon the **power of the Parliament** to cede territory to a foreign country. The judgement clarified that the Parliament does not have the power to cede territory under **Article 3 of the Constitution**, though it can be done through an Amendment under **Article 368**.*

*The significance of the **Berubari Union Case** lies in the fact that it established important principles regarding the **Territorial Integrity of India** and the limits of the **Amending power of the Parliament**.*

### Background:

- ❖ After the partition, Certain areas of India became enclaves in East Pakistan. Similarly, certain East Pakistan enclaves were found in India.
- ❖ In this, Berubari Union No. 12 was treated as part of the Province of West Bengal. Around 1952, Pakistan alleged that the Berubari Union should really have formed part of East Bengal.
- ❖ In 1958 the Prime Ministers of India and Pakistan entered into an agreement (**Nehru-Noon Agreement of 1958**) which provided for the division of Berubari Union No. 12 between India and Pakistan and exchange of Indian enclaves in Pakistan and Pakistan enclaves in India.
- ❖ Doubts arose regarding the implementation of the 1958 agreement. Therefore, in exercise of the powers conferred upon him by **clause (1) of Article 143** of the Constitution, **the President of India referred the matter to the Supreme Court**.

### Matter in Question:

- ❖ The issue was to decide upon 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?

### Judgement Delivered:

- ❖ 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.

### Significance of the Judgement:

- ❖ The Parliament of India enacted the **Constitution (Ninth Amendment) Act, 1960**, to give effect to the **Nehru-Noon 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.

### 3. GOLAKNATH CASE (1967)

#### Synopsis:

*The Golaknath case, 1967 dealt with the question of whether the Indian Parliament has the power to amend the Fundamental Rights enshrined in the Constitution of India.*

*The court held that the Parliament cannot amend Fundamental Rights. This ruling was overturned in Kesavananda Bharati V. Union of India 1973 Case which held that Parliament has the power to amend any part of the Constitution, including the Fundamental Rights, as long as it does not damage or destroy the Basic Structure of the Constitution.*

#### Background:

- ❖ The validity of the **Punjab Security of Land Tenures Act, 1953 (Act 10 of 1953)** and of the **Mysore Land Reforms Act (Act 10 of 1962)** as amended by **Act 14 of 1965** was challenged by the petitioners under **Art. 32** of the Constitution.
- ❖ Since these Acts were included in the **9th Schedule of the Constitution by the Constitution (Seventeenth) Amendment Act, 1964**, the validity of the said Amendment Act was also challenged.
- ❖ In this connection it was urged that **Shankari Prasad's Case** in which the validity of the constitution (First) Amendment Act, 1951 had been upheld and **Sajjan Singh Case** in which the validity of the Constitution (Seventeenth) Amendment Act, 1964, had been upheld by this Court, had been **wrongly** decided.
- ❖ It was contended that **Parliament had no power to amend Fundamental Rights in Part III of the Constitution.**

#### Matter in Question:

- ❖ Golaknath filed 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 and Legislative Provisions Involved:

- ❖ Whether the Amendment is a "**law**" under the meaning of **Article 13(2)**, and whether Fundamental Rights can be amended or not.

#### Judgement Delivered:

- ❖ **Parliament cannot amend Fundamental Rights.**
- ❖ The 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**.
- ❖ The 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'.

#### Significance of the Judgement:

- ❖ **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.

## 4. KESAVANANDA BHARATI CASE (1973)

### Synopsis:

*Kesavananda Bharati judgement is a landmark in the history of Indian constitutional law. It ensured that the Constitution could not be amended arbitrarily by the Parliament and that the **Basic Structure** of the Constitution would remain intact.*

*It firmly established the Principle of **Judicial Review** of constitutional amendments in India. This case strengthened the position of the judiciary as the **Guardian of the Constitution** and the **protector of the rights of the citizens**. It also **limited the Power of the Parliament to amend the Constitution** and made it clear that the **Fundamental Rights of the citizens are Sacrosanct** and cannot be taken away by any amendment.*

### Background:

- ❖ The Supreme Court, in **Shankari Prasad Case (1951)** and **Sajjan Singh Case (1965)** ruled in favour of almost absolute power to Parliament for amending the Constitution. As per the judgements in these cases, “**Law**” in Article 13 meant **Rules or Regulations** made in using ordinary Legislative power and not Constitutional amendment power (under Article 368).
- ❖ This gave Parliament power to amend any part of the Constitution. This meant that **Fundamental rights were amendable**.
- ❖ In **I. C. Golaknath Case (1967)**, 11 judges bench, SC overruled its earlier reasoning and held that Parliament had no power to amend under article 368 to amend because word ‘**Power**’ was not there in the heading of Article 368. **This made Fundamental rights transcendental.**
- ❖ **The 24th Constitutional Amendment Act 1971** introduced the word ‘**Power**’ in the heading of Article 368 and other respective Articles.

### Matter in Question:

- ❖ Kesavananda Bharati challenged the **Kerala Land Reforms Legislation in 1970**, which imposed restrictions on the management of Religious Property under **Article 26**.

### Constitutional and Legislative Provisions Involved:

- ❖ **Article 368 and Article 32:** Whether the Indian Parliament has the power to amend the Fundamental Rights?
- ❖ Upto what extent can Parliament amend the Constitution?

### Judgement Delivered:

- ❖ The **Preamble** is a **part of the Constitution**.
- ❖ The Preamble is **neither a source of power to legislature nor a source of Prohibition upon the powers of legislature**.
- ❖ Preamble has a **significant role to play in the interpretation** of Legislative Acts 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 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**.
- ❖ **The 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 Basic Features to the Constitution without which the Constitution would be spiritless.

### Significance of the Judgement:

- ❖ 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 Article 368**. Further, in **S R Bommai Case (1994)**, the Supreme Court reiterated that the **Preamble indicates the Basic Structure** of the Constitution.

## 5. MANEKA GANDHI V. UNION OF INDIA (1978): RIGHT TO LIFE AND PERSONAL LIBERTY (ARTICLE 21)

### Synopsis:

*Maneka Gandhi V. Union of India is a landmark case which dealt with the issue of the **Right to Personal Liberty** and the **Procedure Established by Law** under **Article 21** of the Indian Constitution.*

*The Supreme Court held that the **Right to Personal Liberty** under **Article 21** of the Indian Constitution is not confined to the protection against physical restraint but also includes within its ambit, the **Right to Travel Abroad**. The court further held that the procedure established by law under Article 21 must be fair, reasonable, and just. It observed that the **Principles of Natural Justice** must be followed before any order is passed, which affects the Rights of a person.*

### Background:

- ❖ The Case arose when **Maneka Gandhi's passport was impounded by the Government of India**, without giving her an opportunity to be heard. Maneka Gandhi argued that the impounding of her passport violated her Fundamental Right to Personal Liberty under Article 21 of the Indian Constitution, as the impounding order was passed **without following the Principles of Natural Justice**.
- ❖ On seeking reasons for such impounding of passports, the Government of India declined to provide any quoting ‘**Interests of the General Public.**’
- ❖ **She filed a Writ Petition under Article 32 of the Constitution of India**, challenging the order on the grounds that it violated Articles 14, 19, and 21 of the Constitution.

### Matter in Question:

- ❖ Maneka Gandhi challenged in the Supreme Court under **Article 32** (Right to Constitutional 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.

### Judgement Delivered:

- ❖ Freedom of Speech and Expression has **no geographical limitations** and it carries the Right of a citizen to gather Information and to exchange thoughts 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'.
- ❖ 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.

#### Significance of the Judgement:

- ❖ The Maneka Gandhi Case gave the term 'Personal Liberty' the widest possible interpretation.
- ❖ The Supreme Court expanded the scope of Article 21, which now includes, Right to Clean Air, Right to Food, Right to Clean Environment and more.
- ❖ The judgement made India a true Welfare State, as enshrined in the Preamble to the Constitution.
- ❖ It marked the beginning of an era of Judicial Activism.

## 6. MOHD. AHMED KHAN V. SHAH BANO BEGUM AND OTHERS (1985): UNIFORM CIVIL CODE (ARTICLE 44)

#### Synopsis:

*The Shah Bano Case was a landmark case that addressed the issue of maintenance for Muslim women after divorce. The Supreme Court of India held that Muslim women are entitled to maintenance under Section 125 of the Code of Criminal Procedure (CrPC), which is a secular law and applies to all citizens regardless of religion. The court observed that a common civil code would promote national integration and help address gender inequality in matters of religious principles.*

*However, the Central government later passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 to overturn the judgement, limiting maintenance to the iddat period. Despite this, the case was significant in recognizing the need for gender equality and promoting a more equal society.*

#### Background:

- ❖ It was a landmark case regarding the issue of maintenance for Muslim women after divorce.
- ❖ **Shah Bano Begum** was a Muslim woman who was divorced by her husband, Mohd. Ahmad Khan, in 1978. She filed a petition in the court seeking maintenance from her husband under **Section 125 of the Code of Criminal Procedure (CrPC)**, which provides for maintenance to be paid to a divorced wife.
- ❖ The case went up to the Supreme Court of India, which held that Muslim women are entitled to maintenance under **Section 125 of the CrPC**, which is a secular law and applies to all citizens regardless of religion.

#### Matter in Question:

- ❖ Whether **Section 125** of the **Code of Criminal Procedure** applies to Muslims also?
- ❖ Does India need a **Uniform Civil Code**?

#### Constitutional 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).

#### Judgement 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.
- ❖ The court held that the provisions of the **Muslim Personal Law**, which did not provide for maintenance to be paid beyond the period of iddat (three months after divorce), were **unconstitutional** as they violated the fundamental rights of Muslim women.
- ❖ Court observed that a common Civil Code will help the cause of **national integration** by removing **disparate loyalties** to laws which have **conflicting ideologies**.



### Significance of the Judgement:

- ❖ SC steps ahead of the general practice of deciding cases on the basis of **interpretation of personal law**.
- ❖ 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 judgement, in general, was a step towards creating an **Equal Society of Men and Women**.
- ❖ Central government (headed by Rajiv Gandhi) passed the **Muslim Women (Protection of Rights on Divorce), 1986**, to overturn **Shah Bano Case** judgement- The maintenance can only be made liable for the Iddat period.
- ❖ If a woman is not able to provide for herself, the **Magistrate** has the power to direct the **Waqf Board** to provide the means of sustenance to the aggrieved woman as well as her dependent children.

## 7. D C WADHWA AND OTHERS V. STATE OF BIHAR AND OTHERS (1986)

### Synopsis:

*The case initiated by D.C. Wadhwa was a landmark case dealing with the powers of the Governor, specially with the ordinance making powers. The Supreme Court held that the Governor cannot assume legislative functions beyond the limits laid out in the Constitution and that repeated promulgation of ordinances is improper and invalid. The court emphasised that the power to promulgate ordinances should be used only in extraordinary situations and not for political interests. The judgement was significant as it established a check on the process of ordinance promulgation and upheld the balance between the executive and legislature in India's constitutional scheme.*

### Background:

- ❖ The petitioner, Dr D.C. Wadhwa, a professor of economics in Pune had filed a Public Interest Litigation (PIL) challenging the **general power of the Governor** to **re-promulgate** various ordinances.
- ❖ It did an **extensive research** and published about the **misuse of the ordinance making power** of the governor of Bihar.
- ❖ He found that the government of Bihar had promulgated 256 ordinances between 1967 and 1981 and these 256 ordinances were kept alive for periods ranging between one and fourteen years by mechanically re-promulgating the ordinances without changing any content of the ordinance or trying to turn it into an Act.

### Matter in Question:

- ❖ Determining the **Validity** of an **Ordinance**.

### Constitutional 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)

### Judgement Delivered:

- ❖ The 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.
- ❖ **Repeated promulgation** 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.

### Significance of the Judgement:

- ❖ The judgement put a **check** on the process of promulgation of ordinances.
- ❖ The court **upheld the balance between Executive and Legislature**.

## 8. M. C. MEHTA V. UNION OF INDIA (1986)

### Synopsis:

In *M.C. Mehta V. Union of India (1986)*, commonly known as the *Oleum Gas Leak Case* or *Shriram Food and Fertilizer case*, the Supreme Court held that the **Right to a pollution-free environment was a fundamental right under the Constitution of India**. The court also laid down several guidelines to prevent the occurrence of **industrial accidents** and to ensure that industries were held accountable for any damage caused by their activities.

### Background:

- ❖ An incident of a **major oleum gas leak** happened on 4th December 1985 from one of the units of Shriram, a subsidiary of Delhi Cloth Mills Ltd.
- ❖ The leakage physically affected many including the common public and the workmen.
- ❖ After two days, another minor leakage of oleum gas took place from the joints of a pipe.
- ❖ Due to the subsequent two incidents of oleum gas leakage, the Delhi administration immediately responded by issuing an order under **Section 133(1)** of the **Code of Criminal Procedure, 1973** which directed Shriram to take certain steps like stopping the use of **harmful chemicals** and **gases** in the unit within two days, shift the said chemicals to a safer place different from the site of disaster, and report to the District Administration on non-compliance.

### Matter in Question:

- ❖ The authority of the Supreme Court under **Article 32** to decide, whether Shriram Food and Fertilizer, could restart its caustic chlorine plant?
- ❖ What are the necessary conditions that need to be satisfied to run an industrial unit in a heavily populated area?
- ❖ In case of an accident, what is the **liability of any hazardous industry**? Whether the concept of **strict liability** (*Rylands v. Fletcher (1868)* case) applicable in such a situation?
- ❖ What should be the amount of **compensation** in case of an accident occurring due to a hazardous industry?

### Constitutional and Legislative Provisions Involved:

- ❖ The scope of **Article 32** (Constitutional Remedies) and **Article 21** (no person shall be deprived of his life or personal liberty) of the Constitution
- ❖ Concept of **Absolute Liability**.

### Judgement Delivered:

- ❖ The Court suggested to the Government of India to set up a “**High Powered Authority**” after consulting with the **Central Board** to supervise the functioning of hazardous industries.
- ❖ A **national policy** regarding the **location of such industries** in places where there are little or no health hazards to the common public should be formulated.
- ❖ It also directed the government to set up **environmental courts** regionally to deal with cases regarding various environmental issues.
- ❖ As opposed to the rule of **strict liability** (wherein the defendant is liable for harm and damage, even if the incident was completely unintentional), evolved in the case of *Rylands v. Fletcher (1868)*, the Court came up with the rule of **absolute liability**. According to which, if any individual or any industry is engaged in an inherently dangerous or hazardous activity and any harm is caused to anyone while carrying out such activity, the said individual carrying out such activity should be absolutely liable.

### Significance of the Judgement:

- ❖ It **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.

## 9. MOHINI JAIN V. STATE OF KARNATAKA (1992): RIGHT TO EDUCATION

### Synopsis:

*The Supreme Court, in Mohini Jain V. State of Karnataka, held that the 'Right to Education' is concomitant to the fundamental rights enshrined under Part III of the Constitution.*

*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.*

### Background:

- ❖ State Government issued a notification dated June 5, 1989 under section 5(1) of the **Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984** fixing the tuition fee to be charged from the students by the private Medical Colleges in the State. The tuition fee per year for the students belonging to the category of "Indian students from outside Karnataka" was up to Rs.60,000 per annum.
- ❖ The petitioner, who came under the category of "**Indian students from outside Karnataka**", was informed by the Private Medical College, that she could be admitted to the MBBS Course provided she would deposit Rs.60,000 as the tuition fee for the first year and furnish a bank guarantee in respect of the fees for the remaining years of the MBBS Course.
- ❖ When the father of the petitioner could not pay the exorbitant annual tuition fee of Rs.60,000, the petitioner was denied admission. The petitioner, under **Article 32** of the Constitution of India, **challenged this charging of exorbitant tuition fees from the students other than those admitted to the "Government seats"**.

### Matter in Question:

- ❖ Whether Right to Education is a 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?

### Judgement Delivered:

- ❖ The Supreme Court held that the '**Right to Education**' is naturally associated with the fundamental rights enshrined under **Part III** under **Article 21** 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.

### Significance of the Judgement:

- ❖ The Parliament passed the **86th Constitution 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 a **Constitutional obligation** on the State to provide educational institutions at all levels for the benefit of the citizens.
- ❖ The judgement brought **Equality in Access** to education.
- ❖ SC said that **Capitation fee** is nothing but a price for selling education making educational institutions as mere '**teaching shops**'.

## 10. RESERVATION: INDIRA SAWHNEY AND OTHERS V. UNION OF INDIA (1992)

### Synopsis:

*The Court, in **Indira Sawhney and Others V. The Union of India Case** or the **Mandal Commission Case** not only upheld the constitutional validity of reservations for OBCs but also set certain limits and conditions on their implementation. Along with this, the Court also set the legal framework for their implementation. It also highlighted the importance of balancing the **Right to Equality with the need for Affirmative Action to promote social justice**.*

### Background:

- ❖ The **Indira Sawhney and Others V. The Union of India Case**, commonly known as the **Mandal Commission case**, was a landmark case on the issue of reservations in government jobs and educational institutions for **Other Backward Classes (OBCs)**.
- ❖ The case arose out of a challenge to the **implementation of the recommendations of the Mandal Commission**, which had recommended that **27% of government jobs and seats in educational institutions be reserved for OBCs**.

### Matter in Question:

- ❖ Is reservation for OBCs **constitutionally valid**?

### Constitutional and Legislative Provisions Involved:

- ❖ **Article 16(2), Article 16(4), Article 340 (1)** Commission for OBCs (2<sup>nd</sup> OBC Commission/ Mandal commission).

### Judgement Delivered:

- ❖ The scope and extent of **Article 16(4)** (provides for reservation of jobs in favour of backward classes) was examined thoroughly by the Supreme Court.
- ❖ It upheld the constitutional validity of the **Office Memorandum** that provided **27% reservation to the Backward classes**. However, the advanced sections among the **OBCs (creamy layer)** should be excluded from the list of beneficiaries of reservation.
- ❖ It held that the reservations should **not exceed 50%**, and the **reservation in promotion is constitutionally impermissible**, it should be confined to **initial appointments only**.
- ❖ The 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.
- ❖ Backward class of citizens in **Article 16(4)** can be identified on the basis of the **caste and not only on an economic basis**. Court has rejected the additional reservation of 10% for poorer sections of upper castes.
- ❖ The **Carry Forward Rule** in case of unfilled (backlog) vacancies is valid. But it should not violate the 50% rule.
- ❖ A permanent statutory body should be established to examine complaints of over inclusion and under-inclusion in the list of OBCs.

### Significance of the Judgement:

- ❖ The **Constitution 77th Amendment in 1995** inserted a new **Article 16(4A)** 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 favour of the SC and ST.
- ❖ The **Constitution 81st Amendment in 2000** inserted **Article 16(4B)**. 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 **85th Constitution 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.

## 11. ARUNA SHANBAUG CASE: EUTHANASIA /RIGHT TO DIE WITH DIGNITY/MERCY KILLING (2011)

### Synopsis:

*In the Aruna Shanbaug Case, the Supreme Court in its landmark judgement allowed for **passive euthanasia** in India by withdrawing treatment or food that would have caused the patient in a permanently **vegetative state** to live. Hence, Indian Parliament should enact a law regarding euthanasia which enables a doctor to end the painful life of a patient suffering from an incurable disease with the **consent** of the patient. The law needs to be stringent to avoid any chance of misuse by the doctors.*

### Background:

- ❖ 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.

### Matter in Question:

- ❖ Differentiate between **Right to die V. Right to live with dignity**.

### Constitutional and Legislative Provisions Involved:

- ❖ **Article 21:** Right to life and Personal Liberty.

### Judgement 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 the 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**.

### Other Related Developments

- ❖ In **P. Rathinam V. Union of India, 1994**, Supreme court observed “**Life is not mere living but living in health and health is not the absence of illness but the glowing vitality**”.
- ❖ In the **Gian Kaur Case, 1996** SC has held that the **right to life** under **Article 21** does **not include the Right to Die**.
- ❖ 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.
- ❖ In 2016, the Health ministry uploaded the **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 make a decision to enact or not to enact a **law on passive euthanasia**.

### Significance of the Judgement:

- ❖ The Supreme Court has held the **Right to life with dignity** as a fundamental right and right to life under **Article 21** of the Constitution of India is akin to the **Right to Die with dignity**.
- ❖ In this case, the court created a **balance** between two aspects of the **Right to Life** under **Article 21**:
  - One creates a **duty** on the state to **preserve human life** and the other is ensuring **individual autonomy** related to decisions regarding their own life and body.



## 12. T. S. R. SUBRAMANIAN V. UNION OF INDIA CASE (2013): CORRUPTION, BUREAUCRACY AND POLITICS NEXUS

### Synopsis:

*The case, filed by retired top civil servants, sought the court's **directives to ensure the independence of civil services and their freedom from political interference.***

*The Supreme Court ruled that civil servants were **not bound to follow oral directives and suggested alternative compositions for Civil Services Boards (CSB) at the Centre and State levels.** The court directed the implementation of **minimum tenure** of service for civil servants, and highlighted the **accountability of civil servants to both the political executive and the public.***

### Background:

- ❖ Politicians in the state government were seen to have been transferring civil servants repeatedly.
- ❖ In this regard retired top civil servants filed the petition.
- ❖ They sought **mandatory court directives** that ensured the **independence** of the various civil services and their freedom from political interference, by requiring the Indian federal and state governments to implement the recommendations made by **several commissions** such as **Hota Commission** wherein the commission recommended that:
  - **Oral instructions** given by politicians to civil servants must be recorded in **writing**,
  - Senior civil service appointments should be made for a **fixed term**,
  - **Civil Services Boards** should be established to advise on postings.

### Matter in Question:

- ❖ Professionalising of Bureaucracy.

### Constitutional and Legislative Provisions Involved:

- ❖ **Article 309, The Indian Administrative Service (Cadre) Rules, 1954.**

### Judgement Delivered:

- ❖ It is a landmark case which was **aimed at professionalising the bureaucracy, promoting efficiency and good governance.** Court ruled that civil servants were **not bound** to follow **oral directives.**
- ❖ The 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.
- ❖ The court also suggested an alternative composition for the **Civil Services Board (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.
- ❖ Also, Parliament under **Article 309** of the Constitution can enact a **Civil Service Act**, for the setting up of CSB.
- ❖ The court directed the Centre, State Governments and the Union Territories to issue appropriate directions to secure the provision of **minimum tenure of service** to various civil servants within a period of **three months.**

### Significance of the Judgement:

- ❖ 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 judgement **upheld the accountability** of civil servants to the public.
- ❖ 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 on paper.

## 13. SHREYA SINGHAL V. UNION OF INDIA (2015)

### Synopsis:

*The Supreme Court of India declared **Section 66A of the Information Technology Act, 2000** as **unconstitutional** and struck it down in this case. The Court emphasised that **Freedom of Speech and Expression** is a **cardinal value and fundamental right** in a democracy, and misuse of **Section 66A** to arrest individuals for critical comments on social media violated this right. By striking down **Section 66A**, the Court **upheld Freedom of Speech and Expression** as a fundamental right and put a **check on arbitrary government power** to curb it. Still, sufficient provisions exist under the **Indian Penal Code and IT Act** to prosecute online abuse and harassment.*

### Background:

- ❖ Police arrested two women for posting allegedly offensive and objectionable comments on Facebook about the propriety of shutting down the city of Mumbai after the death of a political leader.
- ❖ The police made the arrests under **Section 66A of the Information Technology Act of 2000 (ITA)** which punishes any person who sends through a computer resource or communication device any information that is grossly offensive, or with the knowledge of its falsity, the information is transmitted for the purpose of causing annoyance, inconvenience, danger, insult, injury, hatred, or ill will.

### Matter in Question:

- ❖ Is **Section 66A of the Information Technology Act, 2000**, unconstitutional?

### Constitutional and Legislative Provisions Involved:

- ❖ Fundamental **Right of Free speech and expression** guaranteed by **Article 19(1)(a)**, **Section 66A of the IT Act 2000** authorised the imposition of restrictions on the '**Freedom of Speech and Expression**'.

### Judgement 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**.
- ❖ SC declared **Section 66A of IT Act** as **Unconstitutional** and struck it down.
- ❖ The court said that this misuse 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**.

### Significance of the Judgement:

- ❖ 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 citizens.
- ❖ It also puts **restrictions** on the **arbitrary powers** of the **government to curb Freedom of Speech and Expression**.
- ❖ There are still enough provisions existing under **the Indian Penal Code** and the **Information Technology Act** to prosecute many forms of online abuse and harassment.

## 14. RIGHT TO PRIVACY: JUSTICE K.S. PUTTASWAMY V. UNION OF INDIA (2017)

### Synopsis:

*The SC held that “the Right to Privacy is protected as an intrinsic part of the Right to Life and Personal Liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution”.*

*It overruled previous judgements of the Supreme Court in M.P. Sharma and Kharak Singh, insofar as the latter held that the Right to Privacy was not recognized under the Indian Constitution.*

### Background:

- ❖ The case was brought by retired High Court Judge Puttaswamy, challenging the Government’s proposed scheme for a uniform biometrics-based identity card which would be **mandatory** for access to government services and benefits.

### Matter in Question:

- ❖ Whether **privacy** is a fundamental right or not?
- ❖ Issue related to the **protection of citizen’s data** collected by states.
- ❖ Whether **Aadhar** is to be used for **welfare schemes**?
- ❖ Whether the use of Aadhaar data creates a **Surveillance state**?

### Constitutional and Legislative Provisions Involved:

- ❖ **Article 21, Information Technology Act, 2000**, nature of **regulatory powers** of state.

### Judgement Delivered:

- ❖ SC ruled that **Fundamental Right to Privacy** is intrinsic to life and liberty and thus, comes under **Article 21** of the **Indian Constitution**.
- ❖ SC declared that **bodily autonomy** is an integral part of the **Right to Privacy**. It has within its ambit sexual orientation of an individual.
- ❖ SC upheld the use of Aadhaar for **government services** by using the **Doctrine of Proportionality**.
- ❖ It cannot be made **mandatory** for openings of a bank account and for getting mobile connections.
- ❖ 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 Aadhar Act** which allows disclosure of information of a user in the interest of **national security**.
- ❖ SC struck down **Regulation 26(c)**, which allowed **UIDAI** to store metadata relating to Aadhar based authentications or authentication history for private firms.
- ❖ Aadhar Act passed the test laid down in the **Privacy judgement** 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.

#### Other Related Cases:

- ❖ **M. P. Sharma (1954) and Kharak Singh (1964) case:** Supreme Court had observed that the Indian Constitution does **not** specifically protect the right to privacy.
- ❖ In **Gobind V. State of Madhya Pradesh, R. Rajagopal V. State of Tamil Nadu** and in **People's Union for Civil Liberties V. Union of India** cases, the Supreme Court held that the right to privacy is a constitutionally protected fundamental right.

#### Significance of the Judgement:

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

### 15. NAVTEJ SINGH JOHAR V. UNION OF INDIA (2018)

#### Synopsis:

*In Suresh Kaushal and Anr V. NAZ Foundation and Ors., the Court held that Section 377 of the Indian Penal Code violates Articles 14, 15, and 21 of the Constitution and amounts to discrimination on grounds of sexual orientation. Owing to the vague judgement passed by the SC, which did not decriminalise Section 377 per se, the judgement was challenged in the Navtej Singh case through a petition made by five individuals from the LGBTQ community for scrapping section 377.*

#### Background:

- ❖ **Section 377 of IPC** categorised consensual sex between homosexuals as “unnatural offence” and criminalises it.
- ❖ It discriminates against a minority solely on the ground of their sexual orientation which is analogous to prohibited ground of sex. The section was challenged in **Suresh Kaushal and Anr V. NAZ Foundation and Ors.**

#### Matter in Question:

- ❖ Is **homosexuality** a crime?
- ❖ Whether 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 (Criminalise homosexuality), Article 21 (Right to Privacy), Article 14 and 15**

#### Judgement Delivered:

- ❖ **SC Decriminalised 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 decriminalise homosexual sex.

- ❖ **Right to Privacy and protection of Sexual Orientation** lies 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.
- ❖ Sexual autonomy is an important pillar and in-segregable facet of individual liberty, denial of self expression is like death.

#### Other Related Cases:

- ❖ **Naz Foundation V. Government of NCT of Delhi (2009):** In the **Naz Foundation judgement (2009)**: Delhi High Court 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.
- ❖ **Suresh Kaushal and Anr Vs. NAZ Foundation and Ors (2013):** SC held that **Section 377** of the IPC violates **Articles 14, 15 and 21** of the Constitution. However, the decision of decriminalizing homosexuality should be made by Parliament and not the courts. The Court highlighted that only a miniscule (fewer than 200 cases in the past 150 years) number of cases have been registered on the issue and therefore does not provide a sound basis of declaring section 377 IPC ultra-vires the provision of Art 14, 15 and 21 of the Constitution.

#### Significance of the Judgement:

- ❖ The judgement 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 judgement will help sexual minorities '**Confront the Closet**' and **realise their rights**.

## 16. SABARIMALA TEMPLE CASE/INDIAN YOUNG LAWYERS ASSOCIATION V. THE STATE OF KERALA (2018)

#### Synopsis:

*The case was referred to the Constitution Bench of the Supreme Court to determine the constitutionality of **Rule 3(b) of the Kerala Hindu Places of Worship (Authorization of Entry) Act, 1956**. This Rule prevented the women of menstruating age (10-50 years) from entering the Sabarimala Temple devoted to Lord Ayyappan. In a majority decision, the Court struck down the Rule 3(b) citing that it prevents women of the said age group from exercising their **Right to Freedom of Religion under Article 25(1)**. The Court also held that this practice **did not qualify as an Essential Religious Practice**.*

#### Background:

- ❖ This case was referred by a **three Judge Bench** to a **Constitution Bench** of the **Supreme Court**.
- ❖ The Court was called upon to determine the **constitutionality** of **Rule 3(b) of the Kerala Hindu Places of Worship (Authorisation of Entry) Act, 1965 (KHPW Act)**, which prohibited women of menstruating age, i.e. between 10-50 years, from entering the Sabarimala Temple devoted to Lord Ayyappan.



### Matter in Question:

- ❖ Difference between **Essential Religious Practice**, **Right to Freedom of Religion** and **constitutionally-guaranteed rights**.

### Constitutional and Legislative Provisions Involved:

- ❖ **Article 14, 15, 21 and 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).

### Judgement Delivered:

- ❖ SC stated that '**Devotion cannot be subjected to gender discrimination**'.
- ❖ It overturned the 1951 judgement of Bombay High Court in the **State of Bombay V. Narasu Appa Mali** which held that personal law is not 'law' or 'law in force' under **Article 13** and held that immunising 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 stigmatised women.
- ❖ No customs can claim supremacy over the Constitution and its vision of ensuring **dignity, liberty, and equality**. **Customs and personal law** have a significant impact on the civil status of individuals.

### Significance of the Judgement:

- ❖ The Sabarimala judgement aids the **Doctrine of Social Inclusion** by reading profoundly into the meaning of '**Life and Liberty**' under **Article 21**.

## 17. SUPREME COURT OF INDIA V. SUBHASH AGARWAL CASE (2019): RTI

### Synopsis:

*This case discussed several questions relating to the disclosure of information under the **Right to Information Act, 2005 (RTI Act)**. The Court held that the office of the **Chief Justice of India (CJI)** would constitute a **public authority** under the **RTI Act**. The Court held that while personal information would be entitled to protection from an **unwarranted invasion of privacy**, conditional access could be granted where a larger public interest was involved.*

### Background:

- ❖ The Constitution Bench of the Supreme Court of India held that the Supreme Court is a "**Public Authority**" and hence will fall within the ambit of the **Right to Information Act, 2005 (RTI Act)**.
- ❖ The respondent, Subhash Chandra Agarwal, an Indian businessman and right to information activist, filed separate applications requesting access to information from the **Central Public Information Officer (CPIO)** relating to assets of sitting judges, as well as correspondence relating to the appointment of judges and alleged influence on the decisions on appointment. The information, however, was denied.

### Matter in Question:

- ❖ The question of **Secrecy V. Right to information, Transparency and Protecting its independence**.
- ❖ Whether the office of the **CJI is a Public Authority** under the **Right to Information (RTI) Act**?

### Constitutional and Legislative Provisions Involved:

- ❖ **Right to Information Act (2005), Section 2(f)**: Meaning of public authority, **Right to Privacy**.

### Judgement 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 judgement 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.

### Significance of the Judgement:

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

## 18. RIGHT TO PROPERTY: VIDHYA DEVI V. THE STATE OF HIMACHAL PRADESH (2020)

### Synopsis:

*Supreme Court in the **Vidhya Devi V. The State of Himachal Pradesh and Ors** held that the **Right to own Private Property** is a **human right** and **cannot be denied**. The party depriving one's right to property must have the authority of law. In this case, the plaintiff was given compensation for the wrong acquisition of property by the state.*

### Background:

- ❖ Himachal Pradesh Government forcibly took over land belonging to a person and the state has failed to pay the compensation.
- ❖ The Supreme Court stated that forcible dispossession of a person's property is a **Human Right violation**.

### Matter in Question:

- ❖ Whether right against deprivation of property, unless in accordance with law procedure established by law, continues to be a constitutional right under Article 300-A.

### 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.

### Judgement 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 held that 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)** and **Article 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 authorised by some law enacted by the legislature.

### Significance of the Judgement:

- ❖ 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**.

## 19. ANURADHA BHASIN CASE (2020): RIGHT TO INTERNET ACCESS

### Synopsis:

*Following the abrogation of **Article 370** of the Indian Constitution, Anuradha Bhasin's petition argued that the lockdown of internet services was a violation of fundamental rights, including the right to freedom of expression and the right to access information. 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 globalised world, restricting the Internet was to restrict the freedom to trade and commerce, protected by **Article 19(1)(g)**.*

### Background:

- ❖ Due to the, **Constitutional Order 272 (applying all provisions of the Constitution of India to the State of Jammu and Kashmir, and modifying Article 367 (Interpretation)) of 05.08.2019**, the District Magistrates, apprehending breach of peace and tranquillity, imposed restrictions on movement and public gatherings by virtue of powers vested under **Section 144, Criminal Procedure Code (Cr PC)**.
- ❖ This severely restricted the movement of journalists too.

### Matter in Question:

- ❖ Whether the Government can claim exemption from producing all the orders passed under **Section 144, Cr.P.C.** and other orders under the Suspension Rules?
- ❖ Whether the freedom of speech and expression and freedom to practise any profession, or to carry on any occupation, trade or business over the Internet is a part of the fundamental rights under **Part III** of the Constitution?
- ❖ Whether the Government's action of prohibiting internet access is valid?
- ❖ Whether the imposition of restrictions under Section 144, CrPC were valid?
- ❖ Whether the freedom of press of the Petitioner was violated due to the restrictions?

### 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) and Article 19(1)(g).**

### Judgement Delivered:

- ❖ This judgement builds on a Kerala High Court judgement that declared the **Right to 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 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 globalised 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.

#### Significance of the Judgement:

- ❖ 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 judgement specifies a **time-frame for a review of such order (seven days)**.

## 20. KARNATAKA HIJAB ISSUE

#### Synopsis:

*The Karnataka High Court created a distinction between ‘Freedom of Conscience’ and ‘Religious Expression’, claiming that while conscience is an **internal belief**, religious expression is an **outward expression** of this belief. The Court also held that wearing the hijab is **not an Essential Religious Practice** rather it is a cultural practice. It did not merit protection under **Article 25** of the Constitution and the ban on hijab does not violate the **Right to Freedom of Speech and Expression under Article 19(1)(a)** of the Constitution.*

#### Background:

- ❖ A dispute came forth regarding the wearing of the Hijab at a government-run Pre-University College for Girls at Udupi that prohibited wearing of hijab as being in violation of its uniform policy.
- ❖ The Petitioners argued that wearing Hijab is necessary religious practice and State’s actions banning hijab amounts to **religion based discrimination**.
- ❖ The Government contended that wearing Hijab is not a necessary religious practice and also any such practice must be in accordance with **Constitutional Morality** and **Individual Dignity**.

#### Matter in Question:

- ❖ Is wearing Hijab an Essential Practice in Islam?
- ❖ The Karnataka High Court has upheld the ban on the wearing of Hijab (head scarf) by students in schools and colleges in the State.

#### Constitutional and Legislative Provisions Involved:

- ❖ **Articles 14; Article 15; Articles 19(1) (a); Article 21; Article 25, Karnataka Education Act, 1983** and its **1995 Rules**.

#### Judgement Delivered:

- ❖ The HC held that wearing Hijab is not an **Essential Religious Practice** in Islam.
- ❖ It is not protected by the **Right to Freedom of Religion** guaranteed by **Article 25** of the Constitution.
- ❖ The government has the power to restrict the wearing of hijabs in colleges where uniforms are prescribed.
- ❖ The Bench also upheld the legality of the order prescribing guidelines for uniforms in schools and pre-university colleges under the provisions of the **Karnataka Education Act, 1983**.
- ❖ The school uniform will cease to be a uniform if hijab is also allowed.
- ❖ The Court also spoke about the possibility of some “**unseen hands**” behind the hijab row to engineer **social unrest** and **disharmony**.

- ❖ The prescription of school uniform does not violate the petitioner's **fundamental rights guaranteed under article 19 (1) (a)** of the constitution that is freedom of expression and Article 21 that is privacy.

#### Other Related Cases:

- ❖ **Shirur Mutt Case in 1954:** The doctrine of “essentiality” was invented by the Supreme Court. The court held 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.
- ❖ **Amna Bint Basheer v Central Board of Secondary Education (2016):** the Kerala High Court held that the practice of wearing a hijab constitutes an essential religious practice but did not quash the dress code prescribed by CBSE.
- ❖ **Fathima Tasneem v State of Kerala (2018):** Kerala HC held that collective rights of an institution would be given primacy over the individual rights of the petitioner. The case involved two girls who wanted to wear the headscarf. The school refused to allow the headscarf. However, the court dismissed the appeal as students were no longer in the rolls of the respondent-School.

#### Significance of the Judgement:

- ❖ Some viewed the order as a **blow to the right to education** for Muslim women. Others see it as **Empowerment of women**.
- ❖ According to **feminist activists**, it is not about an item of clothing, it's about the right of a woman to choose how she wants to dress.
- ❖ Some perceived it as a **blow against the universal right to education** without discrimination, guaranteed by the law and the Constitution of India.
- ❖ The case highlights the **intersection of religious practices, constitutional rights, and state regulations** in India, and the ongoing debate on the **balance between individual freedoms and societal norms**.

#### Recent Development on the Issue

##### **Aishat Shifa V. State of Karnataka - Split Decision in Hijab Ban Case (2022):**

- ❖ A Divisional Bench of the **Supreme Court**, delivered a **Split Verdict** on 13th October 2022.
- ❖ While Justice Gupta confirmed the Karnataka HC Judgement and upheld the ban, and held that **Secularity means Uniformity**. According to him, Hijab would affect the creation of a homogenous group of students and create a segmented society.
- ❖ On the other hand, Justice Dhulia held the opposite and decided in favour of those challenging the ban and held that **Secularity means Tolerance to Diversity**, asking to take off hijab at school gate is violative of Privacy and Dignity.
- ❖ The case has now been placed before the CJI to decide whether to refer the case to a **3-judge bench or a 9-judge bench**



## 21. S.G. VOMBATKERE V. UNION OF INDIA: KEEPING SEDITION LAW ON HOLD (2022)

### Synopsis:

*The Supreme Court received a challenge to the constitutional validity of **Section 124A of the Indian Penal Code (IPC)**, which defines the **offence of sedition**. The court issued an order stating that the **state and central governments should refrain from registering any FIR** or continuing any investigation under **Section 124A of the IPC**. All pending trials, appeals, and proceedings related to charges under this section should be kept in abeyance.*

### Background:

- ❖ **Section 124A of Indian Penal Code** defines the offence and punishment of Sedition. The said provision was challenged in that it curtails the **Freedom of Speech and Expression**, and also, the country from which the law was borrowed, i.e., the United Kingdom, has itself repealed it.
- ❖ The court sent notice of the same to the Government to which the Government replied that it has decided to re-examine and re-consider the provision of **Section 124A of the Indian Penal Code**.

### Matter in Question:

- ❖ To determine the Constitutional Validity of **Section 124A of IPC**.

### Constitutional and Legislative Provisions Involved:

- ❖ **Section 124A of IPC, Article 19(1)(a)**

### Judgement Delivered:

- ❖ The Apex Court gave passed the following Order in the interest of justice:
  - State and Central Governments should **refrain** from registering any FIR under section 124A of the IPC.
  - The Investigating agency should not continue any investigation or take any coercive measures by invoking **Section 124A of IPC** while the aforesaid provision of law is under consideration.
  - If any fresh case is registered under **Section 124A of IPC**, the affected parties are at liberty to approach the concerned Courts for appropriate relief.
  - All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance.

### Significance of the Judgement:

- ❖ The order ensures that the **Civil liberties** are to be balanced with the **security of the state**.
- ❖ Since the inception of the sedition law, it is the first time that this law is suspended.
- ❖ Recent abuse of sedition law stresses the need for a relook on this law and with this order, people's faith in the judiciary is restored.



PW Web/App: <https://smart.link/7wwosivoicgd4>



**ONLYIAS**  
BY PHYSICS WALLAH

# Congratulations

## to Our TOPPERS

**AIR 2**



**Jagrati Awasthi**

UPSC CSE 2020

**AIR 3**



**Uma Harathi**

UPSC CSE 2022

**AIR 4**



**Smriti Mishra**

UPSC CSE 2022

**AIR 5**



**Utkarsh Dwivedi**

UPSC CSE 2021



**900+ Selections in last 3 years from various  
PW OnlyIAS Initiatives**