Landmark Judgement 2023

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1	**Enforceability of non-stamped arbitration agreements.**	**IN RE INTERPLAY BETWEEN ARBITRATION AGREEMENTS UNDER THE ARBITRATION AND CONCILIATION ACT 1996 AND THE INDIAN STAMP ACT 1899. V.** **2023 INSC 1066** **(13 December 2023)** CURATIVE PET(C) No. 44/2023 in R.P.(C) No. 704/2021 in C.A. No. 1599/2020 **Justices:** Chief Justice (Dr.) Dhananjaya Y. Chandrachud, Justice Sanjay K. Kaul, Justice Sanjiv Khanna, Justice Bhushan R. Gavai, Justice Surya Kant, Justice Jamshed B. Pardiwala, Justice Manoj Misra **Question(s):** Whether an arbitration clause in an unstamped or inadequately stamped contract is enforceable? **Factual Background:** • In 2011, a Division Bench (two judges) of the Supreme Court in *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd* [2011 INSC 508] ("***SMS Tea Estates***") held that an arbitration agreement in an unstamped contract is invalid. In February 2020, a three-judge bench of the Supreme Court in *Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram v. Bhaskar Raju and Brothers* [2020 INSC 194] ("***Bhaskar Raju***") followed this ruling in *SMS Tea Estates* with approval. • In 2021, a three-judge bench of the Supreme Court in *N N Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.* [2021 INSC 12] ("***N N Global 1***") took a view contrary to *SMS Tea Estates* and held that non-stamping of the contract would not invalidate the arbitration agreement contained in it and the arbitration agreement can be acted upon. Given these conflicting decisions of the Court, a Constitution Bench (five judges) was set up to decide the issue. • In December 2022, a *curative petition* (final remedy to reconsider a decision by the Supreme Court) was filed in the Supreme Court for reconsideration of the *Bhaskar Raju* decision. Before the curation petition was finally decided, in April 2023, a Constitution bench of the Supreme Court by a 3:2 majority in *N N Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.* [2023 INSC 423] ("***N N Global 2***") held that *N N Global 1* was incorrect and upheld the view taken in *SMS Tea Estates.* The Court held that an unstamped contract is void (does not have any legal effect) and hence, an arbitration clause in an unstamped contract is not enforceable. • Later, while hearing the curative petition in *Bhaskar Raju* and considering the larger ramifications and consequences of the decision in *N N Global 2* , the Supreme Court referred the case to a Seven-Judge Bench. The present case (*In Re: Interplay between Arbitration Agreements under The Arbitration and Conciliation Act 1996 and The Indian Stamp Act 1899*) is this reference to the Seven-Judge Bench to decide the correctness of the Constitution Bench decision in *NN Global 2*. **Decision of the Supreme Court:** • The Supreme Court held that that arbitration agreement or arbitration clause contained in an unstamped or inadequately stamped contract is valid and can be acted upon. The Court also held that a contract which is not stamped or is inadequately stamped is not void but is only inadmissible in evidence. The Court declared that the decisions in *N N Global 2* and *SMS Tea Estates* were incorrect. The judgment of the Court was authored by Chief Justice Chandrachud. Justice Sanjiv Khanna wrote a separate concurring opinion. **Reasons for the Decision:** *The difference between inadmissibility and voidness* • The Supreme Court noted that a void agreement is unenforceable in a Court of law i.e. it cannot be given effect to, while an inadmissible document can merely not be introduced as evidence in a Court of law. The Court observed that while Section 35 of the Indian Stamp Act 1899 ("**Stamp Act**") makes an unstamped or inadequately stamped document inadmissible in evidence, non-stamping under the Stamp Act does not render the document void. The Court noted that the non-payment of stamp duty is a curable defect as the Stamp Act itself provides under Section 42(2) that once the required stamp-duty is paid, the instrument will become admissible in evidence. In contrast, the Court noted that there is no procedure by which a void agreement can be cured.

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		Minimising Judicial Interference • The Supreme Court noted that one of the main objectives of the Arbitration and Conciliation Act 1996 ("**Arbitration Act**") is to minimise the supervisory role of courts in the arbitral process. Section 5 of Arbitration Act states that for matters covered by the Arbitration Act, no court can interfere unless the law explicitly allows for it. Section 5 shows the legislative intent of limiting judicial intervention during the arbitral proces. Section 8 of the Arbitration Act mandates courts to refer the parties to arbitration if there is *prima facie* a valid arbitration agreement. When referring parties to arbitration, the court cannot conduct a mini-trial by allowing parties to produce evidence regarding validity of an arbitration agreement. Section 11 of the Arbitration Act deals with the appointment of arbitrators, Section 11 allows intervention by courts only when parties fail to appoint an arbitrator. Section 11(6A) inserted by Arbitration Amendment Act of 2015 states that while appointing an arbitrator, the Court shall confine itself to the examination of existence of an arbitration agreement. The Court found that the intention of the legislature in adding Section 11(6A) was to limit the scope of the referral court's jurisdiction to only one aspect – the existence of an arbitration agreement. *The doctrine of competence-competence* • The Supreme Court noted that the doctrine of kompetenz-kompetenz (also known as competence competence) states that arbitrators are empowered to decide on their own jurisdiction. The doctrine of competence-competence allows the arbitrators to decide on all issues arising out of the underlying contract, including the existence and validity of the arbitration agreement. Enshrining the competence-competence principle in Indian arbitration law, Section 16 of the Arbitration Act empowers the arbitral tribunal to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of arbitration agreement. • The Court noted that once the arbitrators decide a matter, Section 34 of the Arbitration Act allows applications for setting aside arbitral decisions. The Court noted that one of the grounds on which an arbitral award can be set aside is that the arbitration agreement is not valid under law. This indicates that the Arbitration Act does not contemplate the court determining the validity of an arbitration agreement before the arbitrators have had a chance to decide the issue first. Justice Khanna in his separate opinion held that an objection related to insufficient stamping or non-stamping of the underlying contract can be decided by the arbitrators. *Arbitration Act's silence on stamp duty* • The Supreme Court noted that the Arbitration Act is a self-contained code and hence, provisions of other laws cannot interfere with the working of the Arbitration Act, unless the Act specifically allows for it. The Court noted that Parliament was aware of the Stamp Act when it enacted the Arbitration Act, yet, the Arbitration does not specify stamping as a pre-condition to the existence of a valid arbitration agreement. *Intent and Purpose of Stamp Act* • The Court noted that the Stamp Act is a fiscal legislation to protect the interests of revenue for the government, it is not intended to arm litigants with a weapon of technicality by which they can delay the resolution of a case. • The Court held that the arbitrators will be bound by the Stamp Act and will have authority to enforce the provisions of the Stamp Act. The Court declared that this interpretation of the law ensures that the provisions of the Arbitration Act are given effect to while not detracting from the purpose of the Stamp Act. View Judgment
2	**Challenge to the abrogation of Article 370 of the Constitution.**	**IN RE ARTICLE 370 OF THE CONSTITUTION V.** **2023 INSC 1058** **(11 December 2023)** W.P.(C) No. 1099/2019 **Justices:** 1. Chief Justice (Dr.) Dhananjaya Y. Chandrachud, Justice Sanjay K. Kaul, Justice Sanjiv Khanna, Justice Bhushan R. Gavai, and Justice Surya Kant

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		2. Justice Nuthalapati V. Ramana, Justice Sanjay K. Kaul, Justice Ramayyagari S. Reddy, Justice Bhushan R. Gavai, and Justice Surya Kant 3. Justice Nuthalapati V. Ramana, Justice Sanjay K. Kaul, Justice Ramayyagari S. Reddy, Justice Bhushan R. Gavai, and Justice Surya Kant 4. Justice Nuthalapati V. Ramana, Justice Sanjay K. Kaul, Justice Ramayyagari S. Reddy, Justice Bhushan R. Gavai, and Justice Surya Kant **Question(s):** Is the Union of India's abrogation of Article 370 of the Constitution of India and the bifurcation of the State of Jammu and Kashmir into two Union Territories constitutional? **Factual Background:** 5. • Prior to 1947, the territory of Jammu and Kashmir ("**J&K**") was ruled by Maharaja Hari Singh. When India gained independence in 1947, J&K had to choose whether to join the Dominion of India or the Dominion of Pakistan. Faced with a military threat from Pakistan, Maharaja Hari Singh joined the Dominion of India by signing an Instrument of Accession in 1947. In June 1949, the Maharaja transferred his power to Yuvraj Karan Singh. In November 1949, Yuvraj Karan Singh made a proclamation that the upcoming Constitution of India would govern the constitutional relationship between J&K and India. • When the Constitution of India was adopted, J&K was included as a State in the Constitution. However, the entire Indian Constitution did not apply to J&K. In 1957, the Constituent Assembly of Jammu and Kashmir prepared and adopted the Constitution of Jammu and Kashmir ("**J&K Constitution**"). The relationship between the Indian Government and J&K was set out in Article 370. Article 370(1) allowed the Indian Parliament to make laws for J&K subject to the "consultation" or "concurrence" of the J&K State Government. • Article 370(3) allowed for the abolition of Article 370 and the entire Indian Constitution to apply to J&K if the President passed a "Constitutional Order" ("**C.O.**") on the recommendation of the J&K Constituent Assembly. However, the J&K Constituent Assembly was dissolved after it adopted the J&K Constitution, and no recommendation was made for the removal of Article 370. • In June 2018, the Chief Minister of J&K resigned and in November 2018, the Governor dissolved the Legislative Assembly of J&K. One month later, President's Rule was imposed in J&K under Article 356 of the Indian Constitution. Under President's Rule, the governance of the State was transferred to the President of India and the Indian Parliament. In August 2019, the President issued C.O. 272 which applied all the provisions of the Indian Constitution to J&K. C.O. 272 also stated that Article 370 could be removed on the recommendation of the "State Legislature" instead of the J&K Constituent Assembly. The President then issued C.O. 273 which abolished Article 370 on the recommendation of Parliament (acting as the State Legislature of J&K due to the imposition of President's Rule in the State). Finally, Parliament passed the Jammu and Kashmir Reorganisation Act, 2019 ("**J&K Reorganisation Act**") which bifurcated the State of J&K into two Union Territories, the Union Territory of J&K, and the Union Territory of Ladakh. • The Petitioners challenged the constitutionality of C.O. 272, C.O. 273, and the J&K Reorganisation Act. 6. • Following the execution of the 'Instrument of Accession' by the Maharaja of Kashmir with India in October 1947, Article 370 was added to the Indian Constitution and provided for special provisions concerning the State of Jammu and Kashmir (**"J&K"**). This article restricted the legislative authority of the Union Parliament over J&K. The entire Constitution of India was not applicable to the J&K, and J&K had its own Constitution. Further, according to Article 370(3), the special status of J&K could not be amended or repealed, unless theConstituent Assemblyof J&K recommended it. • On 20 December 2018, President's Rule (State emergency) was imposed in J&K. On 5 August 2019, two Constitution Orders ("**C.O.s**") were issued by the President in exercise of his power under Article 370. C.O. 272 made all the provisions of the Constitution of India applicable to J&K, and rendered the Constitution of J&K obsolete. It also allowed for the removal of Article 370 of the Indian Constitution based on the recommendation of the State Legislature of J&K instead of the J&K Constituent Assembly. Given that J&K was under

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		President's rule, the powers of the J&K State Legislature were exercised by the Union Parliament, which recommended the repeal of Article 370. Subsequently, C.O. 273 was issued, which repealed Article 370 upon the recommendation of Parliament, thereby eliminating the special status of J&K. • While the constitutional validity of C.O. 272 and C.O. 273 was under challenge before a Constitution Bench (five judges), a reference was sought to a larger bench in view of an apparent conflict between the two Constitution Bench (five judge) decisions of *Prem Nath Kaul* (1959 INSC 17) and *Sampat Prakash* (1968 INSC 265). ○ The Petitioners argued that the Supreme Court in *Prem Nath Kaul* had held that the Indian Government's Parliamentary and Presidential powers over J&K were subject to the final approval of the J&K Constituent Assembly. Therefore, in the Petitioners' arguments, once the Constituent Assembly was dissolved, the Indian Government's powers to pass C.O.s concerning J&K under Article 370 ceased to be exercisable because there was no Constituent Assembly to approve such C.O.s. Despite this, the subsequent decision in *Sampat Prakash* upheld the validity of a C.O. concerning J&K after the Constituent Assembly of J&K was dissolved. Therefore, it was contended that *Prem Nath Kaul* and *Sampat Prakash* were in conflict with each other as they took different views on whether the President's powers to issue C.O.s concerning J&K continued to operate after the Constituent Assembly of J&K was dissolved. **Decision of the Supreme Court:** 7. • The Supreme Court rejected the petitions and upheld the abolition of Article 370 and the reorganisation of the State of J&K into two Union Territories. The Judgment of the Court was authored by Chief Justice Chandrachud. Justice Sanjay K. Kaul and Justice Sanjiv Khanna wrote separate concurring opinions. • The Supreme Court found that Article 370 was a "temporary" provision enacted until the special circumstances facing J&K were resolved. The Court held the President could not use a Constitutional Order to indirectly amend the Constitution to make the removal of Article 370 conditional on the recommendation of the State Legislature instead of the J&K Constituent Assembly. But it also found that the "recommendation" of the J&K Constituent Assembly under Article 370(3) would never have been binding on the President of India, who always had the power to remove Article 370. After the dissolution of the J&K Constituent Assembly, the President could abolish Article 370 whenever the President thought appropriate. The Court also held that the passage of the J&K Reorganisation Act did not violate the procedure for the reorganisation of States in Article 3. The Government of India stated that the Union Territory of J&K would be made a State again, and thus the Court did not decide the legality of converting the State of J&K into two Union Territories. • The Court directed that elections to the Legislative Assembly for the Union Territory of J&K be held by 30 September 2024. 8. ○ The Constitution Bench (five judges) of the Supreme Court unanimously concluded that there is no conflict between the judgments in the *Prem Nath Kaul* and the *Sampat Prakash*. The Court therefore declined to refer the issue to a larger bench. The Court also held that the case of *Sampat Prakash* was not incorrect because it failed to consider the earlier decision in *Prem Nath Kaul*. This decision paved the way for the legality of abolition of Article 370 to be decided by a Constitution Bench (five judges) as opposed to a larger bench of seven judges. **Reasons for the Decision:** <u>*Kashmiri sovereignty*</u> • The Supreme Court held that after Maharaja Hari Singh signed the Instrument of Accession and Yuvraj Karan Singh made the proclamation stating that the Constitution of India will govern the constitutional relationship between J&K and India, J&K became an integral part of India with no separate sovereignty. The Court also noted that Section 3 of the J&K Constitution said that J&K was an integral part of India and Section 3 could never be changed by the State Government of J&K. Thus, while the J&K Constitution and Article 370 gave J&K extra "autonomy", it was still a State under the Indian Constitution. The separate opinion of Justice Kaul found that the State of Jammu and Kashmir retained sovereignty due to the J&K Constitution.

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		Temporary nature of Article 370 • The Supreme Court found that Article 370 was originally passed as a temporary measure till the "special circumstances" in the State ended and the J&K Constituent Assembly was formed. Article 370 was included in Part XXI of the Constitution called "Temporary and Transitional provision" with other temporary articles. Further, the "marginal note" next to Article 370 said "temporary provisions with respect to the State of Jammu and Kashmir. *Difference between Constituent Assembly and State Legislature* • The Supreme Court found that one paragraph of C.O. 272 was unconstitutional because it tried to indirectly amend Article 370. Paragraph 4 of C.O. 272 stated that instead of the J&K Constituent Assembly giving a recommendation to the President to abolish Article 370, the State Legislature could make the same recommendation. The Court held that a State Legislature and a Constituent Assembly are very different, one passes laws and the other creates a constitution. Thus, by trying to replace "Constituent Assembly" with "State Legislature", paragraph 4 of C.O. 272 was an indirect and unconstitutional attempt to amend the Constitution. *President's power to abolish Article 370* • However, the Supreme Court held that the President of India retained the power to unilaterally abolish Article 370 even after the J&K Constituent Assembly ceased to exist. Article 370(3) required the "recommendation" of the J&K Constituent Assembly to abolish Article 370 entirely. The Court found that while "concurrence" meant the J&K State Government had to agree with the Indian Government, "recommendation" only required the view of the J&K Constituent Assembly be forwarded to the President under Article 370(3). Thus, the "recommendation" of the J&K Constituent Assembly would never have been binding on the President. The J&K Constituent Assembly was dissolved after adopting the J&K Constitution, but the President retained the power to abolish Article 370 whenever the "special circumstances" in J&K ended and the President thought it was appropriate. The Court held that it can only review the President's decision to abolish Article 370 if it was made in bad faith, which it was not. • The Supreme Court held the President did not need to consult the J&K State Government to apply the entire Indian Constitution to J&K. It held that consultation was only necessary where some parts of the Indian Constitution were being applied to J&K, and careful amendments had to be made to the Constitution of J&K. But because the whole Indian Constitution was being applied to J&K in 2019, and the Constitution of J&K was being replaced entirely by the Indian Constitution, no consultation was necessary. After the whole Indian Constitution was applied to J&K, the Constitution of J&K is inoperative. *Consequences of President's Rule in Jammu & Kashmir* • The decision of nine-Judges in *S.R. Bommai v. Union of India* had already held that the President's decision to impose Article 356 in a State (President's Rule) was subject to judicial review. The Petitioners argued that Article 370 could not be repealed during the imposition of President's Rule in J&K. The Court rejected this argument and stated that government action under President's Rule cannot be rejected merely because it has an irreversible impact. However, the Court also held that the actions taken during the imposition of President's Rule were subject to judicial review on the grounds that they were made in bad faith or had no connection with the reasons for imposing President's Rule. However, actions pertaining to the everyday administration of a State during President's Rule cannot be challenged. *Reorganisation of State into two Union Territories* • Article 3 of the Constitution allows Parliament to change the boundaries of States by passing a law. However, any law made under Article 3 (such as the J&K Reorganisation Act) must be sent to the affected States to seek its views. The Supreme Court found that the passage of the J&K Reorganisation Act did not violate Article 3 because: (i) the views of a State on any reorganisation act are not binding; (ii) the requirement to seek the J&K's views was suspended due to the imposition of President's Rule in J&K; and (iii) Parliament, acting as the legislature of J&K during the imposition of President's Rule had agreed to the J&K Reorganisation Act. The Court held that during President's Rule, Parliament can not only pass laws on behalf of a State, but also perform other constitutional functions for the State such as approving re-organisation acts.

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		• The Supreme Court observed that Article 3 of the Constitution gave Parliament the right to create a Union Territory out of the land of a State. Thus, the Court upheld the creation of the Union Territory of Ladakh. On the question of whether Parliament can extinguish a State and create two Union Territories, the Court recorded the Government of India's statement that the Union Territory of J&K would be made a State again soon. Given this assurance, the Court held there was no need to decide whether a State could be converted into a Union Territory. The Court directed that elections should be held in the Union Territory of J&K by 30 September 2024. The separate opinion of Justice Khanna noted that converting a State into a Union Territory interferes with federalism and should only be done for compelling reasons. View Judgment
3	**When parties who have not signed an arbitration agreement can nonetheless be made party to an arbitration.**	**COX AND KINGS LTD. V. SAP INDIA PVT. LTD.** **2023 INSC 1051** **(6 December 2023)** ARBIT. PETITION No. 38/2020 **Justices:** Chief Justice (Dr.) Dhananjaya Y. Chandrachud, Justice Hrishikesh Roy, Justice Pamidighantam S. Narasimha, Justice Jamshed B. Pardiwala and Justice Manoj Misra **Question(s):** **(i)** Can parties who have not signed a contract be made parties to an arbitration concerning that contract? If yes, then under what circumstances can they be made parties? **(ii)** Whether the Group of Companies Doctrine ("**GoC Doctrine**") is valid and applicable in Indian arbitration law. **Factual Background:** • In December 2020, the Petitioner (Cox and Kings Limited) entered into a Software Licensing Agreement with SAP India Private Limited ("**SAP India**"). Under the Agreement, the Petitioner was made a licensee of software which was developed and owned by SAP India. • In 2015, while the Petitioner was in the process of developing its own e-commerce platform, SAP India recommended its software, Hybris Solution to the Petitioner. Three new agreements were entered into by the two companies, one of which was the 'General Terms and Conditions Agreement' containing an Arbitration Clause. • Encountering difficulties in implementing the software, the Petitioner sought assistance from SAP SE, the parent company of SAP India based in Germany. However, the project faced setbacks and was eventually terminated by the Petitioner in November 2016. The Petitioner demanded a refund of ?45 crore. In response, SAP India claimed wrongful termination and demanded ?17 crore. The Petitioner sent notices to initiate arbitration to both SAP India and SAP SE. However, SAP SE was not a signatory to any of the agreements. • SAP India did not appoint an arbitrator. Subsequently, the Petitioner approached the Supreme Court seeking the appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The Petitioner contended that SAP SE, by assuming full responsibility for the project, implicitly consented to be bound by the agreement. Moreover, SAP India was entirely owned by SAP SE. This legal concept of incorporating a non-signatory into an arbitration agreement is recognized as the Group of Companies Doctrine. Given the importance of the legal issue, the Three-Judge bench of the Supreme Court referred the case to a Constitution Bench (five judges). **Decision of the Supreme Court:** • The Supreme Court affirmed the validity of the Group of Companies Doctrine in Indian arbitration law, ruling that companies within a corporate group, even if not explicit signatories to an arbitration agreement, could be bound by the agreement. Regarding exactly when non-signatories may be bound, the Court ruled that such determinations should be left to the competence of arbitral tribunals on a case-to-case basis. The judgment of the Court was authored by Chief Justice D.Y. Chandrachud, with Justice P. S. Narasimha authoring a concurring opinion. **Reasons for the Decision:** *Non-signatories can be party to an arbitration agreement* • The Supreme Court explained that while the primary approach to identify parties in an arbitration is to look at the signatories to the arbitration agreement, this does not preclude

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		non-signatories from being considered as parties to the arbitration. Even parties that have not signed an arbitration agreement can demonstrate their intention and consent to enter into a legal relationship and be bound by the arbitration agreement through other actions. The test lies in assessing whether these non-signatories intended to establish legal relations with the parties of the arbitration agreement. • The Supreme Court held that while a written arbitration agreement is mandatory, the form of recording is irrelevant. Under section 7 of the Arbitration Act, an agreement is considered in writing when parties formally sign it, when there is documented evidence of their consent, or when an exchange of claims and defence acknowledges its existence. The Court clarified that the common goal in these circumstances is to ascertain the parties' mutual intention to be bound by the arbitration agreement. Being a signatory is not necessary. *Group of Companies Doctrine applicable in India* • The Supreme Court defined 'group of companies' as a set of privately and publicly owned firms in different businesses. Even though each firm is an independent legal entity, they all follow a common authority, and are linked by trust-based. • The GoC Doctrine allows a non-signatory company within a 'group of companies' to either benefit from or be bound by an arbitration agreement made by its affiliated companies. This applies when circumstances indicate that all parties, both signatories and non-signatories, intended to be bound by the agreement. The GoC Doctrine takes a practical approach, consolidating all closely connected parties in a single forum, which is especially useful in disputes involving multiple agreements and parties. Furthermore, the Court clarified that the existence of 'group of companies' is a question of fact, which courts have to assess. • The Supreme Court ruled that the following factors must be considered when applying this doctrine: (i) mutual intent of the parties (ii) the relationship of the non-signatory to the party which is a signatory to the agreement (iii) commonality of subject-matter (iv) composite nature of the transaction, and (v) performance of the contract. • The Supreme Court held that to involve a non-signatory, a party must present strong evidence demonstrating the conscious and deliberate participation of the non-signatory. Simply showing that the companies work together as a single economic unit isn't sufficient; they must actively collaborate on a common. Furthermore, the Court opined that the GoC Doctrine exists independently in the Indian arbitration law, based on the principle of the mutual intent of parties in an agreement. *Standard of determination by court at referral stage* • The Supreme Court explained that Section 8 of the Arbitration Act requires the court to conduct a preliminary check to assess if the arbitration agreement is valid, and Section 11 allows the Supreme Court and High Courts to appoint arbitrators if the parties don't follow the agreed procedure of appointment. • The court will decide on the agreement's validity and the parties involved in two situations: first, when a signatory wants to include a non-signatory to arbitration, and second, when the non-signatory itself wants to join. However, for complex deals, it's better for arbitral tribunals, not the court, to decide if a non-signatory is really part of the arbitration agreement. This aligns with Section 16 of the Arbitration Act, which allows the tribunal to decide its own authority. View Judgment
4	**Whether a Governor can withhold action on a Bill and power of the Speaker to reconvene the session of the legislative assembly.**	**THE STATE OF PUNJAB V. PRINCIPAL SECRETARY TO THE GOVERNOR OF PUNJAB** **2023 INSC 1017** **(10 November 2023)** W.P.(C) No. 1224/2023 **Justices:** Chief Justice Dr. Dhananjaya Y. Chandrachud, Justice Jamshed B. Pardiwala, Justice Manoj Mishra **Question(s):** **(i)** Whether the Governor can withhold action on bills which have been passed by the State Legislature. **(ii)** Whether it is permissible for the Speaker to reconvene a Legislative Assembly session which has been adjourned *sine die* but has not been prorogued.

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		Factual Background: • On 22 February 2023, the Council of Ministers of the Government of Punjab forwarded a recommendation to the Governor of Punjab seeking the summoning of the *Punjab Vidhan Sabha* for its Budget Session commencing on 3 March 2023. The Governor refused to do so, on the ground that he was seeking legal advice. This led to the first round of litigation between the State of Punjab and the Governor of Punjab. Following the decision of the Supreme Court on 28 February 2023, he summoned the assembly and the Budget session was convened on 3 March 2023. • The Budget session of the Punjab Legislative Assembly was adjourned *sine die* (dismissed for an unspecified period) by the Speaker on 23 March 2023. The Assembly was reconvened and four bills were passed on 19 and 20, June 2023. The Governor expressed his doubt on the legitimacy of these bills and stated that the calling of the session was illegal, against the accepted procedures and practice of the legislature, and against the provisions of the Constitution. • The inaction by the Governor of Punjab regarding the four bills led to the present second round of the litigation. The Governor had neither assented to these bills nor were they returned when the petition was admitted by the Supreme Court on 6 November 2023. **Decision of the Supreme Court:** The Three-Judge-Bench of the Supreme Court allowed the petition and held that the Governor cannot withhold action indefinitely on bills which have been passed by the State Legislature. The Court also ruled that the Speaker can reconvene a session of the Legislative Assembly which has not been prorogued. The judgment of the Court was authored by Chief Justice Chandrachud. **Reasons for the Decision:** *No power to withhold assent indefinitely* • The Supreme Court referred to Article 200, which states that the Governor must either assent to the bill or return it to the legislature "as soon as possible". The Court held that the expression "as soon as possible" has a significant constitutional content and describes the expedient manner in which the Governor must act once a bill is passed. Not taking action on bills for indefinite periods of time is inconsistent with the phrase "as soon as possible" and the mandate of Article 200. The Constitution contains this language bearing in mind the importance attached to the power of legislation which squarely lies in the domain of the state legislature. • The Supreme Court ruled that if the Governor decides to withhold assent under Article 200, the logical course of action is to return the bill to the state legislature for reconsideration. *Reconvening of assembly after adjournment sine die is permissible* • The Supreme Court also held that Rule 16 of the Rules of Procedure of the Punjab Legislative Assembly recognises a situation where the Speaker reconvenes a sitting of the Legislative Assembly which has been adjourned *sine die* but not prorogued. It referred to *Ramdas Athawale v. Union of India* (2010 INSC 177) in which it was held that an adjournment is an interruption in the course of one and the same session, whereas a prorogation terminates a session. • The Court observed that established legislative practice across various legislative assemblies in the country distinguished between an adjournment *sine die* and prorogation of the session of the House. Therefore, the Speaker was empowered to reconvene the Punjab Legislative Assembly as it had only been adjourned and not prorogued. View Judgment
5	**Bail application filed by Deputy Chief Minister of Delhi.**	**MANISH SISODIA V. CENTRAL BUREAU OF INVESTIGATION** **2023 INSC 956** **(30 October 2023)** Crl.A. No. 3352/2023 **Justices:** Justice Sanjiv Khanna and Justice Sarasa V. N. Bhatti **Question(s):** Whether Manish Sisodia ("**Appellant**") is entitled to bail.

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		Factual Background: • The Appellant was the former Deputy Chief Minister and Excise Minister of Delhi. He was arrested and taken into custody by the Central Bureau of Investigation ("**CBI**") and the Enforcement Directorate ("**ED**") on 26 February 2023 and 9 March 2023 respectively, in connection with an investigation pertaining to the Delhi Liquor Excise Policy 2021-22 ("**Excise Policy**"). • The CBI filed two chargesheets which charged the Appellant for offences under Sections 201 (disappearing evidence) and 420 (cheating) of the Indian Penal Code, 1860 ("**IPC**") and Sections 7, 7A, 8 and 12 (taking and offering a bribe) of the Prevention of Corruption Act, 1988 ("**PCA**"). The ED filed a criminal complaint accusing the Appellant of money laundering under the Prevention of Money Laundering Act, 2002 ("**PMLA**"). • The crux of the allegations was that the Appellant had abused his authority as a public servant by formulating a new Liquor Excise Policy for Delhi which favoured certain wholesale distributors in return for bribes and kickbacks to the Appellant and his associates. It was contended by the CBI and ED that these bribes amounted to around Rupees One Hundred Crores and the same was laundered and used by the Appellant in support of his political party. • The Appellant had been denied bail in both the cases (that of the CBI and of the ED) by the Trial Court and the High Court of Delhi. The Appellant appealed to the Supreme Court seeking bail. **Decision of the Supreme Court:** • The Supreme Court refused to grant bail to the Appellant in light of the serious allegations in the chargesheet filed by the ED regarding the offences under the PMLA that the Court found were tentatively supported by evidence. However, the Court unequivocally stated that the Court found all disputed factual and legal issues were left open and will be decided in trial before the Trial Court. The judgment of the Court was authored by Justice Khanna. • The Supreme Court gave the Appellant the freedom to file a fresh bail application in case there was a change in circumstances or if the trial proceeded slowly over the next three months. The Court also allowed the Appellant to file interim bail applications in case of any medical or personal or family emergency. **Reasons for the Decision:** *Legal Principles to be followed for Grant of Bail under the PMLA* • The Supreme Court referred to the case of *Vijay Madanlal Choudhary v. Union of India* [2022 INSC 757] ("***Vijay Madanlal***") where the standard of granting bail under the PMLA was clarified. According to *Vijay Madanlal,* in order to grant bail, a court need not give detailed reasons or examine the evidence in detail but must arrive at a tentative finding on reasonable grounds that the accused is not guilty of an offence under the PMLA. The Court followed the mandate laid down by *Vijay Madanlal* in deciding the present bail application. *Grounds for Refusal to Grant Bail to the Appellant* • The Supreme Court observed that the allegations in the ED's criminal complaint concerning illegal gains due to changes brought about by the Excise Policy was tentatively supported by the facts and evidence. Specifically, this pertained to the fact that certain wholesale distributors had allegedly made exorbitant profits at the expense of the government exchequer and the general public under the new Excise Policy. *Additional Observations* • The Supreme Court highlighted its concern regarding the long period of incarceration undergone by the Appellant. Emphasizing that the right to a speedy trial is a fundamental right under Article 21 of the Constitution, the Court clarified that an accused should not have to wait until he had undergone imprisonment for the specified period of the offence he is charged with before being granted bail under the PMLA. • The Supreme Court also relied on the assurance by the CBI that the trial would be concluded within six to eight months and said that if the case was not decided within this time, then the Appellant may be granted bail. The Court further noted that if the trial was proceeding slowly after three months, the Appellant could re-apply for bail. View Judgment

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6	Directions to secure the elimination of manual scavenging.	**DR. BALRAM SINGH V. UNION OF INDIA** **2023 INSC 950** **(20 October 2023)** W.P.(C) No. 324/2020 **Justices:** Justice Shripathi R. Bhat, Justice Aravind Kumar **Question(s):** A petition seeking implementation of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 ("**Manual Scavengers Employment Act, 1993**") and the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 ("**Manual Scavengers Rehabilitation Act, 2013**"). **Factual Background:** • A petition was filed under Article 32 of the Constitution of India, seeking directions to the Respondents (Union of India and all the States and Union Territories) to implement provisions of the Manual Scavengers Employment Act, 1993 and Manual Scavengers Rehabilitation Act, 2013. The Manual Scavengers Employment Act, 1993 was enacted to prohibit the employment of manual scavengers and the construction of dry latrines. The Manual Scavengers Rehabilitation Act, 2013 was enacted to provide for the rehabilitation of individuals previously engaged in manual scavenging. • The Petitioner claims that despite these legislations, manual scavenging continues due to the Respondents' failure to implement essential provisions of these statutes such as failure to conduct surveys for identification of manual scavengers in all districts. The Petitioner sought a blanket ban on manual scavenging while simultaneously ensuring adequate rehabilitation and employment opportunities for those involved in these practices. • The Respondent contended that the Manual Scavengers Rehabilitation Act, 2013 does not mandate a nationwide survey of manual scavengers by the Union Government. Instead, it requires localized surveys by local bodies. It was highlighted that the government incurred an expenditure of approximately ten crore for conducting a survey in 2013, followed by payment of compensation to identified manual scavengers of approximately 55 crores. **Decision of the Supreme Court:** • The Supreme Court directed the Union Government to ensure phased eradication of manual sewer cleaning, by developing policies and issuing directives to all relevant bodies, including corporations, railways, cantonments, and agencies under its jurisdiction. Additionally, it should provide essential guidelines to ensure that outsourced sewer cleaning tasks do not necessitate individuals entering sewers for any reason. • State Governments were directed to align their policies with Union guidelines, providing comprehensive rehabilitation measures for sewage workers and their families. The Court highlighted the need for a significant increase in compensation for sewer deaths and disabilities, alongside mechanisms for contractor accountability. The compensation amount for sewer deaths was raised to thirty lakhs. Additionally, the Court instructed the establishment of educational scholarships for victims' dependents and the coordination of legal authorities in policy implementation. The judgment of the Court was authored by Justice Bhat. **Reasons for the Decision:** *Emancipatory nature of Act* • The Supreme Court observed that the Manual Scavengers Rehabilitation Act, 2013 was enacted to advance Fundamental Rights guaranteed under Articles 15, 17, 23 and 24 of the Constitution of India, to shift away from oppressive societal structures towards dignified employment. Section 11(7) read with section 6(2) of the Manual Scavengers Rehabilitation Act, 2013 liberates individuals from practice of manual scavenging. The Act must therefore be interpreted to promote fraternity and assure the dignity of the individual. *Insufficiency of the Surveys/Inaccuracy of Data* • The Supreme Court highlighted that the data collected from surveys in 2013, 2018, and later years has inconsistencies and contradictions, undermining the credibility of the surveys. The failure to identify manual scavengers servicing insanitary latrines, as

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		evidenced by data from Cantonment Boards, highlights the shortcomings of the surveys in capturing the true extent of manual scavenging. Furthermore, the National Commission for Safai Karamcharis has consistently raised concerns about the accuracy of data on manual scavengers since 2015-16, indicating a lack of reliable figures and the need for authentic data collection. *Non-constitution of Committees and Institutions* • The Supreme Court held that institutional shortcomings, such as the non-constitution and non-functioning of key bodies mandated by the 2013 Act, including the State Commissions, hinder effective implementation of the Act. The Central Monitoring Committee, tasked with coordinating and monitoring implementation efforts, has failed to meet regularly. Vigilance Committees, crucial for overseeing rehabilitation efforts and monitoring compliance, are either non-existent or non-functional in many states. • The Court held that the failure to constitute Survey Committees at the state and district levels impedes the conducting of comprehensive surveys to identify manual scavengers and formulating effective rehabilitation plans. *Wider outlook for Rehabilitation* • The Supreme Court held that the first step towards rehabilitation is identifying manual scavengers through a real and undisputable survey. Economic measures alone are not sufficient for upliftment of the family; rehabilitation demands a combination of both long-term and short-term socio-economic measures like scholarships. View Judgment
7	**Whether members of the LGBTQIA+ community have a right to marriage.**	**SUPRIYO @ SUPRIYA CHAKRABORTY V. UNION OF INDIA** **2023 INSC 920** **(17 October 2023)** W.P.(C) No. 1011/2022 **Justices:** Chief Justice (Dr.) Dhananjaya Y. Chandrachud, Justice Sanjay K. Kaul, Justice Shripathi R. Bhat, Justice Hima Kohli, Justice Pamidighantam S. Narasimha **Question(s):** **(i)** Do members of the lesbian, gay, bisexual, transgender, queer, and intersex ("**LGBTQIA+**") community have a right to marriage? If yes, then can the Supreme Court of India make a declaration to this effect? **(ii)** Does the non-inclusion of LGBTQIA+ marriages under the Special Marriage Act, 1954, amount to unconstitutional discrimination under Article 14 of Constitution of India? **(iii)** Do members of the LGBTQIA+ community have a right to form civil unions, and does the State have a corresponding duty to legally recognise such civil unions? **Factual Background:** • Two same-sex couples filed writ petitions in the Supreme Court under Article 32 of Constitution of India seeking legal recognition of same-sex marriages. The Petitioners argued that Section 4(c) of the Special Marriage Act, 1954 ("**SMA**"), which defines marriage as a union between a man and a woman, was unconstitutional because it discriminates against same-sex couples, denying them essential benefits of marriage. This includes opportunities such as adoption and surrogacy and benefits under succession laws and insurance policies. The Petitioners contended that by not recognising same-sex marriage, the Government was infringing their fundamental right to equality, freedom of expression, and human dignity. • The Union of India (Respondents) argued that marriage is a social institution which flows from tradition, personal law, and religion and needs social acceptability, and only heterosexual marriages have such acceptability. The Union of India argued that the Constitution does not recognize a fundamental right to marry. Further, the SMA is not discriminatory, as Parliament never contemplated including non-heterosexual unions during its enactment. Further, the Union argued that interpreting the SMA to cover non-hetrosexual couples would lead to absurd and unworkable results and impact various other statutes related to adoption, succession, surrogacy, and maintenance which all contemplated as a union between a man and a woman. Only Parliament has the authority to bring about such a change.

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		Decision of the Supreme Court: • The Constitution Bench (five judges) wrote four opinions. All five Judges found that there is no fundamental right to marry under the Constitution. All five Judges further held that the Special Marriage Act, 1954 allows marriage only between a male and a female and cannot be interpreted to cover non-hetrosexual marriages as this would amount to an extensive re-writing of the law beyond the role of the Court. However, the Court did not strike down the SMA as unconstitutional. • A majority of three judges (Chief Justice Chandrachud, Justice Bhat, and Justice Kohli) expressly stated that transgender persons in heterosexual relationships as well as Intersex persons who identify as either male or female have the right to marry under existing law. • By a 3:2 majority, the Supreme Court held that non-heterosexual couples do not have the right to enter into a civil union unless the legislature changes the laws. This 3:2 majority further held that unmarried couples (including queer/non-heterosexual couples) do not have the right to jointly adopt a child under the Juvenile Justice (Care and Protection of Children) Act, 2015 ("**JJ Act**"). The opinions of Justice Bhat (joined by Justice Kohli) and Justice Narasimha formed the majority opinion of the Court on these issues. The minority found that non-hetrosexual couples have a right to enter into a civil union. The minority found that a failure to recognise civil unions would violate Article 15 of the Constitution. The minority further interpreted Section 57 of the JJ Act to allow unmarried couples to adopt and consequently struck down Regulation 5(3) of the Central Adoption Resource Authority ("**CARA**") Adoption Regulation, which limits adoption only to single individuals and married couples who are in a stable marital relationship. The opinions of Justice Chandrachud and Justice Kaul constituted the minority opinion of the Court. • The Supreme Court acknowledged that members of the LGBTQIA+ community faced a variety of legal disadvantages and directed the Union Government to constitute a committee chaired by the Union Cabinet Secretary to set out the rights and benefits queer couples in civil unions would be entitled to. **Reasons for the Decision:** *No fundamental right to marry* • The Supreme Court found that the Constitution does not expressly recognize a fundamental right to marry. It pointed out that the laws relating to the institution of marriage are enacted by the Parliament. However, the Court found that the institution of marriage cannot be elevated to the realm of a fundamental right based on the importance people accord to it or the content of marriage laws. As the right to marry is a personal preference which confers social status, it is not an enforceable right which courts can compel the government to provide. *SMA cannot be interpreted to cover same-sex marriages* • All five judges held that reading gender-specific terms in the SMA (e.g., "man" and "woman" or "bride" and "bridegroom") gender neutrally (to mean "spouse") to allow same sex marriages would involve rewriting the law, which was the role of Parliament and not the Court. The Court noted that various provisions of the SMA specifically referred to 'men' and 'women' and treated them differently (e.g., specifying different legal ages for marriage and different rights on issues of divorce, maintenance, and inheritance). Thus, applying the SMA to same-sex couples would lead to numerous complications when applying the gender-specific provisions of the law. • None of the judges struck down the SMA as unconstitutional. Chief Justice Chandrachud declined to strike down the SMA as this would make it impossible for interfaith couples to marry under Indian law and defeat the SMA's progressive intent. Justice Kaul found that the SMA's failure to provide for same-sex marriage was discriminatory but did not strike it down for the same reasons as the Chief Justice. Justice Bhat held that the SMA was not discriminatory solely because it failed to provide for non-heterosexual marriages, noting that homosexuality itself was criminalised when the SMA was enacted in 1954. *No legal recognition for civil unions of LGBTQIA+ couples* • All five judges held that queer persons have the right to relationships and choice of partners under Article 21. However, a majority of three judges (Justices Bhat, Kohli, and Narasimha) did not recognise a right for non-hetrosexual couples to form legally recognised civil unions. They noted that recognising civil unions would involve creating a

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		separate legal framework for such unions, including registration, eligibility, age restrictions, and other rights related to marriage, which is beyond the power of the Court. Justice Narasimha, concurring with Justice Bhat, added that mandating the state to recognize civil unions could violate the doctrine of separation of powers. However, Chief Justice Chandrachud and Justice Kaul (in the minority) ruled that queer couples have the right to enter into a civil union and the State has a corresponding duty to recognise such unions. This right falls under Articles 19 and 25, encompassing freedom of speech, expression, association, and conscience. The minority found the right to form a civil union is essential for the full enjoyment of intimate associations. Justice Chandrachud's opinion outlined some of the benefits that would accrue to civil unions, such as police protection from interference with their marriage, and as discussed below, the right to adopt. *No right for unmarried or non-hetrosexual couples to adopt* • A majority of three judges (Justices Bhat, Kohli, and Narasimha) held that Section 57(2) of JJ Act does not permit adoption by unmarried couples. Justice Bhat held that Section 57 seeks to protect the best interest of the child, and applying the law to unmarried couples would fail to protect an adopted child if the marriage subsequently breaks down. Thus, the majority held that unmarried couples (including non-hetrosexual couples) cannot adopt. Chief Justice Chandrachud (in the minority) observed that Section 57 uses the term "couple" (not 'married couple') and "spouse" and held that the JJ Act does not stop unmarried couples (including queer couples) from adopting a child. Chief Justice Chandrachud further held that Regulation 5(3) of the CARA Adoption Regulations, which restricts adoption to single individuals and married couples who are in stable marital relationship for two years, was inconsistent with the JJ Act as it restricted adoption to married couples despite the JJ Act not doing so. Regulation 5(3) of the CARA Adoption Regulations is ultra vires the JJ Act and is read down to exclude the word "marital". Hence, the reference to a 'couple' in Regulation 5 includes both married and unmarried couples as well as queer couples. *Transgender persons in hetrosexual relations can marry* • The Supreme Court held that a transgender person in a heterosexual relationship is entitled to marry. The Court reasoned that marriage laws in India permit marriages arising out of heterosexual relationships. The existing laws such as the SMA, 1954 or other personal laws describe a marital relationship between a 'man' and a 'woman', 'husband' and a 'wife', 'bride and a bridegroom'. If this was interpreted to exclude transgender persons, it would violate Article 15 of the Constitution and the Transgender Persons Act, 2019 which prohibits discrimination against transgender persons. Further, the Court stated that a person is a transgender person by virtue of their gender identity and not their sexual orientation. View Judgment
8	**Requirements of a legal arrest under Section 19 of the Prevention of Money Laundering Act, 2002.**	**PANKAJ BANSAL V. UNION OF INDIA** **2023 INSC 866** **(3 October 2023)** Crl.A. No. 3051-3052/2023 **Justices:** Justice Ajjikuttira S. Bopanna, Justice Sanjay Kumar **Question(s):** Whether the arrest of the Appellants was valid and in conformity with the requirements of Section 19 of the Prevention of Money Laundering Act, 2002 ("**PMLA**"). **Factual Background:** • On 12 May 2023, the Directorate of Enforcement ("**ED**") issued summons to the Appellant's company, the M3M Group, calling on them to provide information and documents pertaining to certain transactions. On 1 June 2023, the ED raided the property of M3M Group and seized their assets and bank accounts and arrested a Mr. Roop Bansal, who was a promoter in the M3M. • The Appellants (Pankaj Bansal and his father Mr. Basant Bansal), apprehending arrest by the ED, approached the Delhi High Court for anticipatory bail. On 9 June 2023, the Delhi High Court granted them anticipatory bail till the next hearing on 5 July 2023 since the ED

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		had not implicated them in its investigation. The High Court also found that the Appellants had not even been summoned by the ED in the case. • The ED then filed another Information Report on 13 June 2023 against Mr. Sudhir Parmar and Mr. Roop Bansal. Summons were also issued to the Appellants on the same day. Both Mr. Pankaj Bansal and Mr. Basant Bansal were present at the ED's office in New Delhi on 14 June 2023. However, the ED claimed that they had evaded a summons in connection with a second Information Report and so, both of them were arrested under Section 19(1) of the PMLA. The Additional Sessions Judge, Panchkula, remanded the Appellants to the ED's custody for five days of interrogation. • The arrest and remand were challenged by the Appellants before the High Court of Punjab and Haryana. The High Court dismissed the writ petitions and the Appellants appealed to the Supreme Court of India. **Decision of the Supreme Court:** • The Division Bench (Two Judges) of the Supreme Court only considered whether the arrest of the Appellants under Section 19 of the PMLA was lawful. The Court examined the manner in which the Appellants were arrested by the ED and held that the safeguards under Section 19 of the PMLA were violated. The Additional Session Judge's order remanding the Appellants into ED custody did not record a finding that the Sessions Judge had examined the grounds of arrest or that they were satisfied that the requirements of Section 19 of the PMLA had been satisfied. The Supreme Court ruled under Section 19(1) of the PMLA, the arrested person must be provided with a written copy of the grounds of their arrest. • The Supreme Court allowed the appeal and ordered that the Appellants be released from custody immediately and their arrest be set aside. The judgement of the Court was authored by Justice Sanjay Kumar. **Reasons for the Decision:** <u>*Safeguards under Section 19 of PMLA*</u> • Section 19 of the PMLA prescribes how the arrest of a person allegedly involved in money laundering can be effected. Relying on *Vijay Madanlal Choudhary v. Union of India* (2022 INSC 757), the Supreme Court observed that Section 19 had certain inbuilt safeguards that had to be adhered to by the high-ranking officials authorising arrest. These included recording reasons for the official's belief that the person was involved in the offence of money laundering and informing the accused of the grounds for their arrest. This requirement flows from Article 22(1) of the Constitution of India. • The Supreme Court also noted that Section 19 of the PMLA required the authorised officer to forward the copy of the arrest order along with all the material in his possession concerning the necessity to arrest the person to the Adjudicating Authority. The authorised officer is also required to produce the arrested person before the Special Court or Judicial Magistrate within 24 hours in compliance with Section 167 of the Criminal Procedure Code, 1973. Finally, following the case of *V. Senthil Balaji v. State* (2023 INSC 677), the Adjudicating Authority under the PMLA must satisfy themselves that there has been due compliance with the safeguards under Section 19 of the PMLA. Otherwise, the arrest and any remand for interrogation will be unlawful and violative of Article 22(1) of the Constitution. • In the present case, the Supreme Court found that the Additional Sessions Judge had failed to ascertain whether the ED had recorded the reasons to believe that the Appellants were guilty of an offence under the PMLA). Moreover, the Sessions Judge had failed to record his own satisfaction regarding whether the requirements under Section 19 of the PMLA had been complied with by the ED). <u>*Informing arrested person about grounds of arrest*</u> • Given that Section 19 of the PMLA did not specify exactly how the ED was to 'inform' the arrested person of the grounds of their arrest, the Supreme Court examined how individuals should be 'informed'. The Court held that the statutory language used in Section 19(1) of the PMLA and the constitutional mandate under Article 22(1) of the Constitution of India (which requires that an arrested person be informed of the ground of their arrest as soon as possible) require that the arrested person to be provided with a written copy of the grounds of their arrest. The Court observed that conveying this

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		information to an arrested person is necessary to enable them to seek legal counsel and present their case for bail before a court. However, the Court also held that sensitive information which may compromise the investigation could be redacted when providing the arrested person with the grounds for their arrest. • In the present case, the Supreme Court found that the grounds of arrest was not communicated in the proper manner to the Appellants and thus, their arrest was violative of Section 19(1) of the PMLA. *Analysis by Supreme Court on the conduct of investigation by the ED* • The Supreme Court found that the manner in which the ED conducted the investigation of the case was not transparent or fair and lacked good faith. The Court noted that the ED had filed a second Information Report on 13-14 June 2023, declined to disclose the pending Information Report to the Delhi High Court, and summoned and arrested the Appellants as soon as they received anticipatory bail from the Delhi High Court. • The ED had argued that the arrest of the Appellants was because they had failed to cooperate with the ED in their investigation and had failed to respond to the summons. The Supreme Court held that mere non-cooperation of a witness cannot render him liable to be arrested under Section 19 of PMLA. • Noting that the clandestine and bad faith conduct of the ED during the investigation demonstrated an arbitrary exercise of power, the Court ordered that the judicial custody of the Appellants was not warranted and that their arrest be set aside & they be released. View Judgment
9	**Whether the Supreme Court's invalidation of Section 6A of the Delhi Special Police Establishment Act, 1946 would have retrospective effect.**	**C.B.I. V. DR. R.R. KISHORE** **2023 INSC 817** **(11 September 2023)** Crl.A. No. 377/2007 **Justices:** Justice Sanjay K. Kaul, Justice Sanjiv Khanna, Justice Abhay S. Oka, Justice Vikram Nath, Justice Jitendra K. Maheshwari **Question(s):** Whether the Supreme Court's 2014 invalidation of Section 6-A of the Delhi Special Police Establishment Act, 1946 ("**DSPE Act**"), which stated that corruption investigations into senior government officials can only begin with the Union Government's approval, would have a retrospective effect, or would apply from the date the Supreme Court struck down the provision. **Factual Background:** • Dr. R.R. Kishore was the Chief District Medical Officer in the Government of Delhi. In 2004, he was arrested by the Central Bureau of Investigation ("**CBI**") while allegedly accepting a bribe for "setting things right" for a radiologist conducting an illegal sex-determination test. • Dr. Kishore challenged the arrest before the Delhi High Court claiming that the CBI did not obtain the mandatory approval under Section 6A(1) of the Delhi Special Police Establishment Act, 1946 ("**DSPE Act**") to arrest him. Section 6A of the DSPE Act requires that the Union Government grant prior approval before an investigation under the Prevention of Corruption Act, 1988 ("**PC Act**") against a State official at a Joint Secretary level designation or higher. A Chief District Medical Officer is a Joint Secretary level rank officer. • In October, 2006, the Delhi High Court held that Dr. Kishore's arrest was illegal as approval under S. 6A(1) of DSPE Act was not taken before arrest. In January, 2007, the CBI filed an appeal against the High Court's decision at the Supreme Court. • On 6 May 2014, a Constitution Bench of the Supreme Court in *Dr. Subramanian Swamy v Director, Central Bureau of Investigation* (2014 INSC 358) ("***Subramanian Swamy***") declared Section 6A(1) of the DSPE Act unconstitutional because it violated the Right to Equality under Article 14. The Court held that immunity cannot be restricted to a certain rank of officers only above the Joint Secretary level. ○ After the *Subramanian Swamy* judgment, the CBI contended that since the provision has been declared unconstitutional, it never had any legal effect and Dr. R.R. Kishore cannot claim that the CBI breached the provision during its investigation. Dr. R.R. Kishore

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		contended that even though the Supreme Court declared the law to be invalid, the Court did not say that the law never had any effect (i.e., the Court's invalidation was not retrospective). Because Dr. R.R. Kishore's investigation took place *prior* to the Court's invalidation of Section 6A, Dr. R.R. Kishore argued when his investigation took place, Section 6A had legal effect and the CBI's investigation violated Section 6A. According to Dr. R.R. Kishore, giving retrospective effect to the judgment would violate the constitutional protection in Article 20(1) that no person shall be punished under a law that was not in force at the time the offence was committed. **Decision of the Supreme Court:** • The Supreme Court held that the declaration in *Subramanian Swamy* will have retrospective effect, and Section 6A of DSPE Act will not have legal effect from its date of insertion, i.e. 11 September 2003. The Court ruled that once a law is declared unconstitutional then it would be *void ab initio* (i.e., treated as not having any legal effect from the day it was enacted). As a result, Section 6A will offer no protection to senior civil servants even if their investigation began prior to the Supreme Court's judgment in 2014. The judgment of the Court was authored by Justice Vikram Nath. **Reasons for the Decision:** *Applicability of Article 20 of the Constitution* • The Supreme Court referred to Article 20(1) of the Constitution which states that no person shall be convicted of any offence except for violating a law that is in force at the time of the commission of the offence. The Article also provides that a person cannot be subjected to a punishment greater than that which is given under the law in force at the time of the commission of the offence. The Court held that what is prohibited under Article 20 is conviction of a new offence or imposing an enhanced sentence under a law which was not in force when the act was committed. However, the changes to investigation and trial procedure itself after the commission of the offence are not prohibited. An investigation or trial under a procedure different from the one at the time of commission of the offence does not violate Article 20(1) of the Constitution. • The Supreme Court noted that the invalidation of Section 6A of the DSPE Act does not introduce any new offence or conviction. It is a procedural provision regarding investigations under the PC Act. The Court noted that modifications to procedural provisions cannot be considered to create a new offence. The Court noted that the issue involved in the present reference relates to a matter of procedure, and not the two aspects of conviction or enhanced sentence that are covered by sub-article (1) of Article 20 of the Constitution. *Retrospective application of judgment in the case of Subramanian Swamy* • The Supreme Court stated that according to Article 13(2) of the Constitution, a law which violates the fundamental rights set out in the Constitution is invalid. The Court then observed that in *Subramanian Swamy*, the Constitution Bench had found that Section 6A of the DSPE Act violates Article 14 which guarantees the right to equality. Hence, Section 6A would be invalid according to Article 13(2) of the Constitution. • The Supreme Court found that any law held to be unconstitutional for whatever reason, whether due to lack of legislative competence or in violation of fundamental rights, would be *void ab initio* (i.e., treated as not having any legal effect from the day it was enacted). The Court also noted that an unconstitutional law is not a valid law and cannot confer any rights or offer any protections, it is inoperative as though it had never been passed. Thus, the declaration made by the Constitution Bench in the case of *Subramanian Swamy* will have retrospective operation. View Judgment
10	**Guidelines to review preventive detention orders.**	**AMEENA BEGUM V. THE STATE OF TELANGANA** **2023 INSC 788** **(4 September 2023)** Crl.A. No. 2706/2023 **Justices:** Justice Surya Kant, Justice Dipankar Datta **Question(s):** Whether the preventive detention order passed against the Appellant's husband is valid.

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		Factual Background: • The Commissioner of Police in Hyderabad issued a detention order against the Appellant's husband ("**detenu**") under the provisions of Section 3(2) of the Telangana Prevention of Dangerous Activities Act, 1986 ("**the Telangana Act**"). The detenu was alleged to have habitually committed serious offences including outraging the modesty of women, cheating, extortion, obstructing the public servants from discharging their legitimate duties, robbery and criminal intimidation along with his associates in an organised manner. • The Appellant's wife challenged the detention order. However, after review, the Advisory Board under the Telangana Act deemed the detention justified. Consequently, the State Government confirmed the detention order, directing its continuation for a year from the date of detention (27 January 2023). Subsequently, the Appellant's wife filed a petition in the Telangana High Court, which was rejected. Thereafter, an appeal was filed in the Supreme Court. **Decision of the Supreme Court:** • The Supreme Court quashed the detention order and directed for the release of the detenu. The judgment of the Court was authored by Justice Datta. • The Supreme Court also laid down the following guidelines for courts to follow when reviewing preventive detention orders: 1. The authority must consider all relevant circumstances and not rely on extraneous material. 2. The power of preventive detention must be exercised for the intended purpose and not for unauthorised reasons. 3. The detaining authority must act independently and not under external influence. 4. The authority should not disable itself from considering individual cases. 5. The satisfaction must be based on material that demonstrably satisfies statutory mandates. 6. There should be a clear link between past conduct and the need for detention, without relying on stale material. 7. The grounds for detention must be relevant and be shared with the detenu, allowing for representation. 8. The detention process must adhere strictly to the timelines provided by the relevant law. **Reasons for the Decision:** *Detention order is unsustainable and indefensible* • The Supreme Court observed that the detention order was based on five distinct offences, including outraging modesty of women, cheating, obstructing public officials, and dacoity. The Court found that the offences in the detention order were isolated acts affecting private individuals and did not disrupt public life. Additionally, it noted that past criminal history alone cannot justify detention and cautioned against the inclusion of extraneous factors in detention orders. The Court also highlighted the importance of clear and comprehensible language in detention orders. The Court held that preventive detention laws, reserved for emergency or fast-moving situations, should not have been invoked in this case for the enforcement of ordinary 'law and order' issues. *Distinction between 'law and order' and 'public order'* • The Supreme Court noted that Section 3 of the Telangana Act required the subjective satisfaction of the detaining authority before a detention order can be issued. The Court focused on two main issues: whether the alleged acts prejudiced 'public order' and whether all relevant circumstances were considered. Referring to Section 2(a) of the Act, the Court explained 'public order' as situations causing harm, danger, alarm, or insecurity among the public or posing a grave danger to life or public health. Incidents categorised under 'law and order' pertain to breaches of specific laws affecting individual rights or small groups without causing widespread societal disruption. It distinguished between 'law and order' and 'public order', and held that not every breach of law leads to public disorder.

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		Purpose of preventive detention and limited judicial review • The Supreme Court observed that preventive detention involves loss of liberty without trial and is aimed at safeguarding the security and welfare of the state. It is a precautionary measure to prevent potential harm to society, based on suspicion or anticipation rather than proof. Limited judicial review is available for aggrieved detainees. View Judgment
11	**Right of child born out of void or voidable marriage to inherit coparcenary (joint family) property.**	**REVANASIDDAPPA V. MALLIKARJUN** **2023 INSC 783** **(1 September 2023)** C.A. No. 2844/2011 **Justices:** Chief Justice (Dr.) Dhananjaya Y. Chandrachud, Justice Jamshed B. Pardiwala, Justice Manoj Misra **Question(s):** Whether a child born out of a void marriage or a voidable marriage is entitled to coparcenary property (i.e., ancestral or joint-family property) of the parents or only the self-acquired property of the parents. **Factual Background:** • In 2003, a Division Bench (two judges) of the Supreme Court in *Jinia Keotin v. Kumar Sitaram Manjhi* (2002 INSC 576) (“***Jinia Keotin***”) held that a child born from a void marriage (a marriage that does not have any legal effect) or a voidable marriage (a marriage that may be annulled by one spouse) would have no right to claim inheritance in ancestral or *coparcenary property* (joint-family property). This judgment was later followed in *Neelamma v. Sarojamma* [(2006) 9 SCC 612] (“***Neelamma***”) and *Bharatha Matha v. R Vijaya Renganathan* (2010 INSC 328) (“***Bharatha Matha***”). • The present appeal at the Supreme Court (*Revanasiddappa v. Mallikarjun*) was filed against the judgment of the Karnataka High Court by illegitimate sons of one Shri Shivasharanappa. The sons claimed a share in ancestral properties. The wife of Shivasharanappa, along with her two sons, stated that Shivasharanappa had married a second woman while still married to her and therefore, the children born out of this second marriage are not entitled to any share in Shivasharanappa’s ancestral property. • At the Supreme Court, a Division Bench (two judges) in *Revanasiddappa v. Mallikarjun* (2011 INSC 251) doubted the correctness of the decisions in *Jinia Keotin*, *Neelamma*, and *Bharatha Matha* and referred the case to a larger bench of three-judges. **Decision of the Supreme Court:** • The Supreme Court held that children born out of void or voidable marriages are entitled to a share in their parents' ancestral properties. The Court clarified that such children are not coparceners in the ancestral property (a person who shares equally with others in the inheritance of an undivided property) and cannot claim an equal share in the ancestral property in their own right. However, children from void and voidable marriages are entitled to a right in their parents’ share of the ancestral property. The judgment of the Court was authored by Chief Justice Chandrachud. **Reasons for the Decision:** *Legitimacy of children born out of void or voidable marriages* • The Supreme Court found that Section 16 of the Hindu Marriage Act, 1955 (“**HMA**”) provides that children born out of void and voidable marriages though “illegitimate”, shall be treated as legitimate. The Court noted that the law has a socially beneficial purpose of removing the stigma of illegitimacy faced by children of such marriages, since the children themselves are innocent. *Right in Property of Parents* • The Supreme Court noted that an illegitimate who is deemed to be legitimate under Section 16(3) of the HMA will only have inheritance rights in the property of their parents and not have any rights in the property of a person other than their parents). • The Court noted children born out of valid marriage are coparceners in the Hindu joint-family property and they have a share in the ancestral property apart from and equal to

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		their parents. On the death of their parents, they are then equally entitled to a share of their parents property. On the other hand, children born out of void and voidable marriage are not coparceners in the Hindu-Joint family property, they are only entitled to a share in their parents' property. • The Court noted that to ascertain the property of parents, Section 6(3) of the Hindu Succession Act, 1956 provides that for a Hindu Mitakshara coparcener, their share in the property would be the part that would have been allotted to him if a partition had taken place immediately before his death. Thus, the Court concluded that the children born out of void and voidable marriage are entitled to: (i) a share in the ancestral property that would be allotted to their parents on partition, and (ii) a share in the self-acquired property of the parents. View Judgment
12	**Habeas corpus petition filed by Cabinet Minister of Tamil Nadu.**	**V. SENTHIL BALAJI V. THE STATE REPRESENTED BY DEPUTY DIRECTOR** **2023 INSC 677** **(7 August 2023)** Crl.A. No. 2284-2285/2023 **Justices:** Justice Ajjikuttira S. Bopanna, Justice M. M. Sundresh **Question(s):** **(i)** Is the habeas corpus petition filed for the release of the Appellant from arrest under Section 19 of the Prevention of Money Laundering Act, 2002 ("**PMLA**") maintainable? **(ii)** Can the time spent by the Appellant in hospital be excluded from the custody period? **Factual Background:** • On 14 June 2023, the Appellant, a Cabinet Minister of the State of Tamil Nadu, was arrested by the Enforcement Directorate ("**ED**") under Section 19 of the PMLA. Section 19 empowers authorised officers of the ED to arrest persons believed to have committed an offence of money laundering. On the same day, the Appellant was taken to hospital when he complained of chest pain. His wife filed a habeas corpus petition before the Madras High Court to secure his release. Meanwhile, the State filed an application seeking judicial custody of the Appellant for fifteen days before the Trial Court. • On 14 June 2023, the Trial Court found that there existed a *prima facie* case against the Appellant. It sent the Appellant to judicial custody for fifteen days, until 28 June 2023. On 15 June 2023, the High Court directed that the Appellant be moved to a private hospital of his choice to undergo a bypass surgery. After the surgery, on 16 June 2023, the Trial Court granted custody of the Appellant to the State for eight days, permitting interrogation on the condition that he be allowed to remain in the hospital where he was receiving treatment. • The State filed an application before the High Court seeking to exclude the period of hospitalisation while calculating the period of custody since no physical custody of the Appellant had been taken • A split verdict by a Division Bench (two judges) of the High Court led the matter to be referred to a third Judge of the High Court. While dismissing the Appellant's habeas corpus petition, the third Judge asked the Division Bench to decide the date from which the period of custody was to be calculated. Both the Appellant and the State petitioned the Supreme Court. The State sought to exclude the time spent by the Appellant in hospital from the total custody period. The Appellant argued that under Section 167(2) of the Code of Criminal Procedure, 1973 ("**CrPC**") a Magistrate can authorize the detention of the accused for a maximum period of fifteen days for investigation, and such detention can only be by police officers and not members of other investigative agencies such as the ED. Since fifteen days had passed, the Appellant was entitled to be released. **Decision of the Supreme Court:** • The Supreme Court dismissed the Appellant's habeas corpus petition. It interpreted custody to mean actual physical custody and excluded the time spent by the Appellant in hospital from the custody period. It granted the State custody of the Appellant until 12 August 2023. The Court observed that the larger issue of whether the fifteen day period of custody in favour of the police referred to in Section 167(2) CrPC can only be within the first fifteen days of remand or span the entire period of investigation as a whole, should

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		be placed before a larger Bench for its consideration. The decision of the Court was authored by Justice Sundresh. **Reasons for the Decision:** *Habeas corpus is a remedy for illegal detention* • The Supreme Court observed that a writ of habeas corpus could only be issued when detention was illegal. Thus, the writ would only lie in connection to a Section 19 PMLA arrest, if a person was not produced before a court within twenty-four hours of arrest as mandated in Section 19(3). The Court found that the arrest of the Appellant was procedurally compliant, and the Trial Court had passed a reasoned order of remand under Section 167(2) of the CrPC on the day of arrest itself, 14 June 2023. In this context, the only remedy available to the Appellant was to challenge the order of remand before a higher forum, rather than invoking the constitutional writ jurisdiction of the High Court by filing a habeas corpus petition. *PMLA is a special code* • The Appellant argued that the State had violated its duty under Section 41A of the CrPC. Section 41A provides for the issue of a notice to a person prior to arrest. The Supreme Court found that the PMLA was a one of a kind code, with its own mechanisms concerning searches, seizures and arrests, and its own safeguards. In light of Section 65 of the PMLA, which provides that its provisions will override those of the CrPC, officers of the ED were not required to follow Section 41A of the CrPC. *Custody means actual custody* • The Supreme Court found that custody did not mean legal custody but actual or physical custody. It observed that once an order was passed granting custody, any external interference in the securing of this custody including a court order, would not start the period of custody. As a result, the fifteen days of custody could not be reduced by the hospitalisation of the Appellant, which was effected through a court order. To reach this conclusion, the Court relied on the doctrine of *actus curiae neminem gravabit*, which states that no person (the ED in this case) can be prejudiced by an act of court. *Custody not limited to police custody* • The Supreme Court found that the expression "such custody" in Section 167(2) of the CrPC included not only police custody but also the custody of other investigating agencies such as the ED. It noted that Section 167(2) consciously omits the expression "police custody" and gives the Magistrate the discretion to determine the kind of custody whether judicial, police or that of an investigating agency or other entity to be granted. *Fifteen day custody period not restricted to fifteen days within order of remand* • The Appellant had cited *CBI v. Anupam J. Kulkarni* (1992 INSC 154) (***"Anupam J. Kulkarni"***) to argue that the maximum period of fifteen days of custody referred to in Section 167(2) of the CrPC meant the first fifteen days from the order of remand. The Supreme Court found that the maximum period of fifteen days applied across the entire period of investigation since nothing in Section 167(2) suggested it had to be the first fifteen days. But in its concluding paragraph, the Court directed that the issue considered in *Anupam J. Kulkarni,* of whether the maximum period should be only the first fifteen days, be decided by a larger Bench of the Supreme Court. View Judgment
13	**Challenge to the extension of tenures granted to the Directors of the Enforcement Directorate and the Central Bureau of Investigation.**	**DR. JAYA THAKUR V. UNION OF INDIA** **2023 INSC 616** **(11 July 2023)** W.P.(C) No. 456/2022 **Justices:** Justice Bhushan R. Gavai, Justice Vikram Nath, and Justice Sanjay Karol **Question(s):** **(i)** Do the amendments to the Delhi Special Police Establishment Act, 1946 and the Central Vigilance Commission Act, 2003 allowing three one-year extensions to the Directors of the Central Bureau of Investigation and the Enforcement Directorate threaten the independence of these investigative agencies, and could they allow for extension of Mr. Sanjay Kumar Mishra's tenure in violation of a specific Supreme Court order?

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		(ii) Are the Amendments contrary to the Supreme Court's decision in *Common Cause v. Union of India* (2021 INSC 459) ("***Common Cause***")? **Factual Background:** • On 13 November 2020, the tenure of Mr. Sanjay Kumar Mishra, the Director of the ED was extended beyond two years. However, in September 2021, the Supreme Court, in the *Common Cause* decision, held that such extensions should only be granted in rare and exceptional cases and for a brief period. The Court specifically ruled against any further extension of Mr. Mishra's tenure beyond the first extension. • On 14 December 2021, Parliament enacted the Delhi Special Police Establishment (Amendment) Act, 2021, and the Central Vigilance Commission (Amendment) Act, 2021, amending the Delhi Special Police Establishment Act, 1946 ("**DSPE Act**") and the Central Vigilance Commission Act, 2003 ("**Vigilance Act**"), respectively. These Amendments allowed the Union Government to extend the tenure of Central Bureau of Investigation ("**CBI**") and the Enforcement Directorate ("**ED**") directors with up to three one-year extensions. Prior to the amendment, the tenure of the directors could be up to two years. • These provisions allowing for the extension of tenure were initially introduced through Ordinances on 15 November 2021. Despite the Supreme Court's directive, Mr. Sanjay Kumar Mishra's tenure saw a second extension for a year on 17 November 2021, followed by a third extension on 17 November 2022. • These Amendments and tenure extension orders were challenged on the grounds that they violated principles of fair investigation and fair trial, and afforded the Union Government substantial control over the Director's tenure, compromising the independence of the CBI and ED and violating the Supreme Court's previous directions. The Union of India contended that these agencies continue to be independent as extensions are granted on the recommendation of a High Level Committee consisting of the Central Vigilance Commissioner and the Vigilance Commissioners, who are totally independent and impartial persons. The continuity of Mr. Mishra's leadership was argued to be crucial. **Decision of the Supreme Court:** ○ The Supreme Court affirmed the constitutionality of the Amendments to the DPSE and Vigilance Act. However, the Court ruled that the second and third extensions of Mr. Mishra's tenure on 17 November 2021 and 17 November 2022 were illegal and in violation of the Supreme Court's *Common Cause* decision. The Court directed the Union Government to appoint a new Director for the Enforcement Directorate by 31 July 2023, while Mr. Mishra continues in the role until then. The Three-Judge Bench judgment was authored by Justice B.R. Gavai. **Reasons for the Decision:** *The Amendments are constitutional* • The Supreme Court noted that a statute enacted by Parliament or a State Legislature could only be struck down on two grounds: firstly, that the Legislature does not have competence to make a law and secondly, the law violates fundamental rights or other constitutional provisions. • The Supreme Court examined the process of appointing the directors. The Director of the ED is recommended by a Committee led by the Central Vigilance Commissioner, with members including secretaries from the Ministries of Home Affairs, Personnel, and Revenue. The Central Vigilance Commissioner, who leads this Committee, is appointed by a three-member body comprising the Prime Minister, the Minister of Home Affairs and the Leader of the Opposition in Parliament. Similarly, the Director of the CBI is recommended by a Committee consisting of the Prime Minister, the Leader of the Opposition in Parliament, and the Chief Justice of India (or a Judge of the Supreme Court nominated by the CJI). • The Supreme Court held that in both instances, the safeguards in the statute insulated these officers from external pressures, allowing them to act independently. Under the new amendment, the Committees are empowered to recommend extensions for incumbent directors in the public interest, provided they give written reasons for the extension. The Court asserted that if the Committee can be trusted with the initial appointment, there is

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		no reason why the same Committee cannot be trusted with extensions. These extensions are not being granted arbitrarily at the 'sweet-will' of the Government. *Second and Third extension of Mr. Mishra's tenure is invalid* • The Supreme Court held that a direction issued by the Court cannot be subsequently nullified by an enactment, as doing so amounts to intrusion into judicial power and violates rule of law. In the decision of *Common Cause*, after upholding the first tenure extension granted to Mr. Mishra, the Court specifically issued a direction that no further extension shall be granted to Mr. Mishra. Both the Union of India and Mr. Mishra were parties to the proceedings and were bound by Court's direction. Hence the subsequent extensions given to Mr. Mishra were illegal. View Judgment
14	**Challenge to Tamil Nadu's amendments to the Prevention of Cruelty to Animals Act and its permitting of 'Jallikattu'.**	**THE ANIMAL WELFARE BOARD OF INDIA V. UNION OF INDIA** **2023 INSC 548** **(18 May 2023)** W.P.(C) No. 23/2016 **Justices:** Justice Kurian. M. Joseph, Justice Ajay Rastogi, Justice Aniruddha Bose, Justice Hrishikesh Roy, Justice Chudalayil T. Ravikumar, **Question(s):** **(i)** Whether Tamil Nadu's amendment to the Prevention of Cruelty to Animals Act permitting Jallikattu in the state of Tamil Nadu is contrary to the Supreme Court's ban on the sport. **(ii)** Whether Jallikattu is part of the cultural heritage of Tamil Nadu. **(iii)** Whether the Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017 violates the right to equality and life of animals. **Factual Background:** • In May 2014, the Supreme Court in *Animal Welfare Board of India v. A. Nagaraja* (2014 INSC 370) (*"**A. Nagaraja**"*) banned Jallikattu and bullock-cart racing. It held that the practices caused unnecessary pain and suffering to animals, as per the Prevention of Cruelty to Animals Act, 1960 ("**PCA Act**"). • In January 2017, the Tamil Nadu government passed the Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017 which permitted the sport of Jallikattu and introduced rules to govern its practice. The Maharashtra Legislature enacted similar amendments to the PCA Act to allow bullock-cart races and the State of Karnataka issued rules laying down rigid regulatory measures for conducting Kambala which is a bullock-cart race in the state. • A group of animal rights activists and organisations challenged the Amendments at the Supreme Court as being violative of the Supreme Court Judgment in *A. Nagaraja.* The petitions also contended that only the Union government has the power to frame rules under PCA Act and hence the rules framed by the Tamil Nadu Legislature are invalid and therefore inapplicable. **Decision of the Supreme Court:** ○ The Supreme Court held that Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017 permitting Jallikattu is not contrary to the Supreme Court's judgment in *A. Nagaraja*. The Court held that the issues with Jallikattu pointed out in *A. Nagaraja* has been overcome by the State Amendment Acts by minimising the pain and suffering to the animals during the conduct of the sport. The Court further held that Jallikattu is part of the cultural heritage of Tamil Nadu and that the fundamental rights to equality and life cannot be extended to animals. The judgment of the Court was authored by Justice Aniruddha Bose. **Reasons for the Decision:** *The Amendments minimised cruelty* • The Supreme Court found that the sport of Jallikattu, Kambala and Bullock Cart Racing permitted by the Amendment Acts of the three States minimised the pain and suffering that would be caused to the bulls. The Court noted that the Rules enacted by the States specify isolated arenas for the sports to be conducted including the setting up of both bull

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		run and bull collection areas, and galleries separating spectators from directly coming into contact with bulls. The Court noted that *A. Nagaraja* banned Jallikattu because of the cruel manner in which the animals were treated during the sport but after the amendments by the State most of the harmful practices have been substantially minimised. Thus, the Amendments are not contrary to the *A. Nagaraja* judgment. *Jallikattu is a cultural practice* • The Supreme Court noted that Jallikattu has been going on in the State of Tamil Nadu for at least the last few centuries but whether this has become an integral part of Tamil culture or not requires religious, cultural and social analysis, which is an exercise that cannot be undertaken by the judiciary. The Court also noted that the State has determined Jallikattu to be a part of cultural heritage of Tamil Nadu and the Court decided not to interfere with this view of the legislature. The Court clarified that the view reflected in *A. Nagaraja* that the performance of Jallikattu is not a part of the cultural heritage of Tamil Nadu does not hold good. *Fundamental Rights not to be extended to animals* • The Supreme Court stated that there is no precedent which states that animals have fundamental rights. The Court recalled that the *A. Nagaraja* judgment also does not lay down that animals have Fundamental Rights. According to the Court, a legislation can be challenged on the basis of reasonableness as per Article 14 of the Constitution of India. However, Article 14 and Article 21 cannot be invoked by an animal. *State government had the authority to pass the amendments* • The Supreme Court held that the primary focus of the Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017 relates to Entry 17 of List III (Prevention of cruelty to animals) of Seventh Schedule to the Constitution of India. Under the Constitutional scheme of the Seventh Schedule, both the Union and the States have a right to make laws concerning issues under List III. Before passing the amendment to the PCA Act, Tamil Nadu obtained Presidential assent under Article 254(2) of the Constitution of India which provides that if a State Government makes a law on a topic that both the States and the Union Government can make laws about (List III), and the state law clashes with a previous law made by the Union Government, the state law can still be enforced if the President approves it. View Judgment
15	**Whether the Government of Delhi or the Lt. Governor of Delhi has control over the civil services of Delhi.**	**GOVT. OF NCT OF DELHI V. UNION OF INDIA** **2023 INSC 517** **(11 May 2023)** C.A. No. 2357/2017 **Justices:** Chief Justice (Dr.) Dhananjaya Y. Chandrachud, Justice Mukeshkumar R. Shah, Justice Krishna Murari, Justice Hima Kohli, Justice Pamidighantam S. Narasimha **Question(s):** Whether the Government of the National Capital Territory of Delhi ("**GNCTD**") or the Union Government (acting through the Lt. Governor of Delhi) has control over civil "services" in Delhi according to Entry 41 of the State List of Schedule VII of the Constitution. **Factual Background:** o On 21 May 2015, the Union Government issued a Presidential notification ("**2015 Notification**") which said that the Lt. Governor of Delhi shall exercise control over the "services" (i.e., civil services) in Delhi. Schedule VII of the Constitution lists "services" under Entry 41 of the State List and thus, State Governments typically control the civil services in the State. However, the 2015 notification removed "services" from the control of the GNCTD and placed the civil services under the control of the Lt. Governor of Delhi. The GNCTD challenged the 2015 Notification before the Supreme Court. **Decision of the Supreme Court:** o The Supreme Court held that the GNCTD had legislative and executive power over the "services" under Entry 41 of List II of the Schedule VII of the Constitution. Thus, in cases regarding civil services and the power to supervise or exercise control over the transfer or suspension of civil servants, the Lt. Governor of NCT of Delhi would be bound by the aid

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		and advice of the Council of Ministers of the GNCTD. However, because Article 239AA confers the Union Government with exclusive legislative power over public order, police, and land in Delhi, the Court held that the Union Government shall exercise power over civil services relating to these specific areas of governance. The decision of the Court was authored by Chief Justice Chandrachud. **Reasons for the Decision:** *Legislative and executive powers of Delhi Government under the Constitution* • The Supreme Court referred to its 2018 Constitution Bench (five judges) decision in *Government of NCT of Delhi v. Union of India* to hold that the NCT of Delhi had a unique nature by virtue of Article 239AA of the Constitution, and this set it apart from other Union Territories. As executive power is co-extensive with legislative power, the executive power of the NCTD extended to all matters with respect to which the GNCTD had the power to legislate. Article 239AA states that the Legislative Assembly of Delhi shall have power to make laws for Delhi with respect to any of the matters enumerated in the State List or the Concurrent List "*in so far as any such matter is applicable to Union territories*" except matters with respect to certain excluded entries of public order, police and land in the State List. • The Union of India had contended that the phrase "*in so far as any such matter is applicable to Union Territories*" in Article 239AA(3)(a) meant that the GNCTD had power to legislate on any entry only if such an entry was clearly applicable to all Union Territories as a class. However, the Supreme Court dismissed this contention and held that the phrase in Article 239AA was an inclusive term and interpreted it to mean that the Legislative Assembly of Delhi has the power to legislate on any subject in the State or Concurrent Lists, except the expressly excluded subjects of public order, police and land under Article 239AA(3)(a). *Delhi's special status* • The Supreme Court reasoned that if the phrase "*in so far as any such matter is applicable to Union Territories*" was interpreted to exclude many more entries than what was expressly excluded by Article 239AA(3), then it would defeat the very purpose of granting a "special status" to Delhi over other Union Territories. This "special status" for Delhi (granted by the Sixty-Ninth Constitutional Amendment) introduced a legislative assembly in Delhi to provide for local governance and democratic popular representation. Reducing the legislative powers of the Delhi legislature would distort the balance between local interests of the people of Delhi and national interests of the Union for good governance of the national capital. *Role of civil servants* • The Supreme Court also discussed the principles underlying the role of civil servants in a modern parliamentary democracy like India. It referred to the triple chain of accountability which led to a responsible democratic government wherein civil servants were responsible to the elected ministers; ministers were accountable to the legislature; and the legislature was finally accountable to the electorate. Civil servants formed the foundation of a responsible government since they implemented and administered the government decisions and policy which, by extension, was the will of the electorate. So, in case civil servants and "civil services" were not under the control of elected representatives, it could lead to unaccountable and non-responsive civil servants that would disregard the will of the elected minister and indirectly the electorate. *Additional observations* • The Union of India had submitted that the GNCTD does not have legislative competence over Entry 41 of List II because Part XIV of the Constitution (which covers Services under the Union and the States) does not contemplate any services for Union Territories. However, the Supreme Court referred to the inclusive definition of "State" in Section 3(58) of the General Clauses Act, 1897, where the term "State" included even Union Territories. Thus, Part XIV was applicable to Union Territories like Delhi. • The Supreme Court also held that the exercise of rule-making power by the Union Government (through the President of India) under Article 309 of the Constitution (regarding recruitment and conditions of service of persons serving in the civil services of the Union or a State) would not oust the legislative power of the Government of NCTD to make laws over Entry 41 of the State List in Schedule VII. View Judgment

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16	**Various constitutional questions emanating from the split of the Shiv Sena in 2022 and the disqualification petitions pending against Members of the Maharashtra Legislative Assembly.**	**SUBHASH DESAI V. PRINCIPAL SECRETARY, GOVERNOR OF MAHARASHTRA** **2023 INSC 516** **(11 May 2023)** W.P.(C) No. 493/2022 **Justices:** Chief Justice of India (Dr.) Dhananjaya Y. Chandrachud, Justice Mukeshkumar R. Shah, Justice Krishna Murari, Justice Hima Kohli, Justice Pamidighantam S. Narasimha **Question(s):** **(i)** Whether a notice for removal of a Speaker or Deputy Speaker prevents them from deciding disqualification (for defection) proceedings under the Tenth Schedule of the Constitution. **(ii)** Can the High Courts or the Supreme Court decide a disqualification petition for defection under the Tenth Schedule if the Speaker has not yet taken a decision? **(iii)** What is the status of proceedings in the Legislature during the pendency of disqualification petitions against Members? **(iv)** What is the role of the Speaker in determining the whip and the leader of a legislature party? **(v)** How much discretion does the Governor have to invite a person to form the Government, and can courts review the Governor's decision? **Factual Background:** • In June 2022, Mr. Uddhav Thackeray (part of the "**Petitioners**") was the Chief Minister of Maharashtra and the Party President of the Shiv Sena Legislative Party ("**SSLP**"). Mr. Eknath Shinde (part of the "**Respondents**") was the Group Leader of the SSLP. Subsequently, the SSLP split into two factions – one led by Mr. Thackeray and another by Mr. Shinde – and each side claimed to be the 'real' SSLP. Mr. Shinde's faction violated a whip issued by Mr. Thackeray's Chief Whip calling for a meeting of all Shiv Sena members of the legislative assembly ("**MLAs**"). The faction led by Mr. Thackeray then issued a resolution removing Mr. Shinde as Group Leader of the SSLP and filed disqualification proceedings against Mr. Shinde and his MLAs on the ground of defection under the Tenth Schedule of the Constitution. • At this stage, the office of the Speaker in the Maharashtra Legislative Assembly was vacant. The Deputy Speaker took up the disqualification proceedings and issued notice to Mr. Shinde and his faction. Mr. Shinde's faction, in turn, issued a notice for removing the Deputy Speaker on the grounds that the Deputy Speaker no longer enjoyed the support of the majority in the State Legislature. In *Nabam Rebia & Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly* (2016 INSC 526) ("***Nabam Rebia***") a Constitution Bench (five judges) of the Supreme Court had held that such a notice prevented the Speaker from deciding disqualification proceedings. • In the meanwhile, the Governor of Maharashtra issued notice to Mr. Thackeray requesting him to prove his majority on the floor of the House. Before the floor test could be held, Mr. Thackeray resigned as Chief Minister. Subsequently, Mr. Shinde, with the support of MLAs from the Bharatiya Janata Party, was appointed the new Chief Minister and a new Speaker was elected. • The Petitioners filed a Writ Petition before the Supreme Court seeking to quash the appointment of Mr. Shinde as the Chief Minister while the Respondents filed another Writ Petition praying that the Deputy Speaker be prohibited from taking any action under the Tenth Schedule against Mr. Shinde's faction until the issue of the removal of the Deputy Speaker was decided. These Writ Petitions were combined and heard before the Supreme Court. ○ Mr. Shinde also filed a petition before the Election Commission of India ("**Election Commission**") under the Election Symbols (Reservation and Allotment) Order, 1968 ("**Election Symbols Order**"), for allotment of the symbol of the Shiv Sena (i.e. a 'bow and arrow') to the faction led by him. The ECI ruled in favour of Mr. Shinde and granted the symbol to Mr. Shinde's faction. **Decision of the Supreme Court:** • The Supreme Court held that the Speaker must recognise the whip and leader of the legislature party as appointed by the concerned political party. In the event of a split, the

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		Speaker can decide if MLAs of any faction ought to be disqualified and the Election Commission can decide who can use the party's symbol. Both these decisions can be taken concurrently and neither the Speaker nor the Election Commission needs to wait for the other's decision. • The Supreme Court held that except in extraordinary cases, neither the High Courts nor the Supreme Court can decide disqualification proceedings under the Tenth Schedule of the Constitution. The Court further held that an MLA had the right to participate in legislative proceedings while disqualification petitions are pending against them and the validity of decisions taken by the legislature cannot be questioned merely because disqualification petitions were pending against certain members. • The Supreme Court ruled that a Governor is only justified in calling a person to prove their majority on the floor of the legislature if the Governor has reasons to believe, based on objective material, that such a person has lost the confidence of the majority of the legislature. • On the issue of whether the Speaker can decide disqualification proceedings when a notice for the Speaker's removal is pending, the correctness of the decision in *Nabam Rebia* was referred to a larger Bench of seven judges. Until the issue is decided by seven judges, the Court held that the Speaker has the authority to examine whether a motion for their removal was genuine or merely intended to stop them adjudicating disqualification proceedings. If the Speaker found the removal motion to be genuine, then they could pause the disqualification proceedings till the decision on the Speaker's removal was concluded. Else, the Speaker could reject the motion. The judgment of the Court was unanimous and authored by Chief Justice Chandrachud. **Reasons for the Decision:** *Reference of Nabam Rebia to a larger bench* • The Supreme Court noted that the correctness of *Nabam Rebia* was in doubt because it conflicted with the judgment in *Kihoto Hollohan v. Zachillhu* (1991 INSC 287) ("***Kihoto Hollohan***"). In *Nabam Rabia* a Constitution Bench had held that a Speaker ought not to decide disqualification proceedings once proceedings for the Speaker's own removal had been initiated. In *Kihoto Hollohan*, another Constitution Bench had held that the independence and impartiality of the Speaker when adjudicating disqualification proceedings cannot be doubted. Given that both decisions took divergent views on the independence of the Speaker, the Court referred the correctness of *Nabam Rebia* to a larger bench. The Court found that the facts in *Nabam Rebia* were different from the present case and thus, the decision in *Nabam Rebia* would not apply to the present case. *Power of higher courts to decide disqualification petitions in the first instance* • The Petitioners argued that the Speaker cannot be entrusted to adjudicate the disqualification petitions fairly since he was appointed with the support of Mr. Shinde's MLAs against whom defection proceedings had initially been filed. The Supreme Court rejected the argument and held that under Paragraph 6 of the Tenth Schedule, the Speaker had the exclusive jurisdiction to decide the disqualification petitions. Barring any exceptional factual circumstances, the Court should not decide disqualification petitions. However, the Court could review the final decision of the Speaker. *Validity of proceedings in the legislature during pendency of disqualification petitions* • The Petitioners contended that the validity of decisions taken by the legislature while the disqualification petitions were being decided would depend on the final outcome of the disqualification petitions. The Supreme Court rejected this contention and clarified that if a member incurs disqualification, then their seat shall become vacant only prospectively from the date of their disqualification and an MLA has the right to participate in the proceedings of the legislature until they are disqualified. Otherwise, all the decisions of legislatures would become uncertain and unworkable as soon as disqualification petitions were initiated. Thus, proceedings in the legislature during the pendency of disqualification petitions were valid. *Appointment of Whip and Leader of a legislature party* • The Supreme Court highlighted that there was a difference between the political party and the legislature party under the Tenth Schedule and that the two terms are not one and the same. In the context of the Tenth Schedule, the legislature party consists only of those

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		members of a political party who had been set up for election by the political party and have been elected to a seat in the legislature. The Court found that the Speaker must recognise the whip and the leader of the legislature party that was appointed by the political party since the members of the legislature party are elected due to their affiliation to the political party and owe their allegiance to that political party. The Court, therefore, held that the resolution removing Mr. Shinde as the Group Leader of the SSLP issued by the Shiv Sena faction led by Mr. Thackeray was valid as it represented the will of the political party under the Shiv Sena party's constitution. *Deciding who is the 'real' Shiv Sena party and allotment of the party symbol* • The Petitioners argued that when defection proceedings and a dispute over which faction can use the party's symbol (before the Election Commission) have arisen simultaneously, then the disqualification proceedings ought to be decided before the Election Commission decides on the party's symbol since the latter dispute would determine who was the real political party for determining defection. The Court, however, stated that the Election Commission can concurrently decide which faction can use the party's symbol even while disqualification proceedings are ongoing, and both decisions need not be the same as they are based on different considerations. The Speaker decides disqualification petitions as and when they are initiated, while the decision of the Election Commission would only have prospective effect and will not affect the decision of the Speaker. *Impact of deletion of Paragraph 3 of Tenth Schedule* • Paragraph 3 of the Tenth Schedule stated that a member of the legislature would not be subject to disqualification if there was a 'split' in the original political party where one-third or more members separated to form a different political party from the original political party. However, Paragraph 3 was deleted by the Constitution (Ninety-First Amendment) Act, 2003. The Supreme Court categorically stated that the defence of 'split' was now no longer available to any member(s) who faced disqualification proceedings regardless of whether such member(s) claimed to belong to the original political party or not. In this case, both factions claimed to be the 'original' Shiv Sena political party. *Exercise of discretion by Governor ordering the Chief Minister to face floor test and inviting a person to prove his majority in the legislature* • The Supreme Court said that the Governor can only order a floor test requiring a Chief Minister to prove their majority based on some objective material which indicated that the Chief Minister had lost the confidence of the legislature. In this case, the Court found that there was no such objective material present and that the Governor of Maharashtra called for a floor test based on the request of some MLAs only. While this was not in accordance with law, the Court recognised that Mr. Thackeray had voluntarily resigned before facing the floor test and the Court could not reverse a voluntary resignation. View Judgment
17	**Applicability of laws and rights of non-tribals within Scheduled Areas.**	**ADIVASIS FOR SOCIAL AND HUMAN RIGHTS ACTION V. UNION OF INDIA** **2023 INSC 512** **(10 May 2023)** C.A. No. 2202/2012 **Justices:** Justice Abhay S. Oka and Justice Rajesh Bindal **Question(s):** **(i)** Whether Union and State laws can apply to a Scheduled Area unless a specific notification making the said laws applicable to the Scheduled Area is issued by the Governor of that State. **(ii)** Whether persons who are not members of a Scheduled Tribe have the right to settle down in Scheduled Areas. **(iii)** Should non-Scheduled Tribe candidates have the right to vote in or to contest the elections of the Legislative Assembly or the Lok Sabha from the Scheduled Area? **Factual Background:** • On 31 December 1977, the President of India declared the entire district of Sundargarh in the State of Orissa as a Scheduled Area under Clause 6(2) of the Fifth Schedule to the

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		Constitution of India. A Scheduled Area is an area consisting of a significant population of tribal communities. The Fifth Schedule of the Constitution empowers the President to declare certain areas within States as Scheduled Areas to safeguard the interest and welfare of the tribal communities in that area. The Governor has the power to alter the applicability of Central and State laws to Scheduled Areas by issuing a notification under Clause 5(1) of the Fifth Schedule. • The Petitioner was a society representing the interests and fundamental rights of Scheduled Tribes. They approached the High Court of Orissa by way of a writ petition contending that only members of Scheduled Tribes had the right to reside and vote in Scheduled Areas. The Petitioner also submitted that no law made by Parliament or the State Legislature would apply to such Scheduled Areas unless the Governor issued a notification under the Fifth Schedule. The High Court dismissed the writ petition. The Petitioners appealed to the Supreme Court. **Decision of the Supreme Court:** • The Supreme Court held that the Central and the State laws which are applicable to the State of Orissa will continue to apply to Scheduled Areas in the State of Orissa unless the Governor, under Clause 5(1) of the Fifth Schedule, declares that a particular law is not applicable to the Scheduled Area. The Supreme Court held that non-tribals have the right to settle down in a Scheduled Area based on Article 19(1)(e) of the Constitution of India which grants every citizen a right to settle in any part of the territory of India. Further, any person including non-tribals have a right to vote even in Scheduled Areas. There is no provision that all the constituencies for Lok Sabha and State Legislature elections in Scheduled Areas are reserved only for Scheduled Tribes candidates. The judgment of the Court was authored by Justice Oka. **Reasons for the Decision:** *Applicability of Union and State Laws to a Scheduled Area* • The major question of law in this case was whether Union and State laws would apply in a Scheduled Area without a specific notification issued by the Governor. Clause 5 of the Fifth Schedule of the Constitution was held to mean that the Governormay, by public notification, direct that any particular law of Parliament or the State Legislature shall not apply to a Scheduled Area or shall apply to such Scheduled Area with some modifications. • The Supreme Court referred to the Constitution Bench judgment of the Supreme Court in *Chebrolu Leela Prasad Rao v. State of Andhra Pradesh* (2020 INSC 344) and held that this judgment clearly clarified that all Central and State laws are automatically applicable to a Scheduled Area unless the Governor issued a notification under Clause 5 of the Fifth Schedule or introduced some modifications to that law in its application to the Scheduled Area. Therefore, the power of the Governor under Clause 5 of the Fifth Schedule is restricted to directing that a particular Union or State law will not apply in a Scheduled Area or that it shall apply with certain modifications. *Power of Governor and Fundamental Rights* • The Supreme Court held that the exercise of powerbythe GovernorunderClause5 of the Fifth Schedule cannot override or violate the Fundamental Rights under Part III of the Constitution of India. This power of the Governor is equivalent to the power of the Parliament and State Legislatures to make laws and the power should only be exercised subject to the Fundamental Rights and other provisions of the Constitution. *Right to Vote and Reservations in Scheduled Areas* • The Supreme Court stated that the right to vote was governed by Part III of the Representation of the People Act, 1950 ("**RPA 1950**"). The RPA 1950 did not restrict voting rights in Scheduled Areas to only tribal populations. Therefore, any Indian citizen who is eligible to vote, including a non-tribal, can vote in a Scheduled Area. • The Supreme Court noted that reservation for constituencies was to be made in terms of Article 330 and 332 of the Constitution of India and these provisions did not provide that all the constituencies in Scheduled Areas should be reserved for Scheduled Tribes. The Delimitation Act of 2002 applied to Scheduled Areas and even this did not provide for specific reservations for Scheduled Tribes in Scheduled Areas. View Judgment

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18	**Power of the Supreme Court to grant a divorce based on the consent of the parties under Article 142 of the Constitution.**	**SHILPA SAILESH V. VARUN SREENIVASAN** **2023 INSC 468** **(1 May 2023)** T.P.(C) No. 1118/2014 **Justices:** Justice Sanjay K. Kaul, Justice Sanjiv Khanna, Justice Abhay S. Oka, Justice Vikram Nath, Justice Jitendra K. Maheshwari **Question(s):** **(i)** Whether the Supreme Court can, under Article 142 of the Constitution, grant divorce based on the mutual consent of the parties, bypassing the waiting period under Section 13B of the Hindu Marriage Act, 1955, (**"HMA"**), and also quash other connected proceedings. If yes, what are the contours of this power? **(ii)** Can the Supreme Court grant divorce under Article 142 despite one spouse's objection, in cases of irretrievable breakdown of marriage? **Factual Background:** • A transfer petition was filed in the Supreme Court for the transfer of divorce proceedings from one state to another. During the course of proceedings, the parties agreed to divorce by mutual consent and arrived at a settlement. The parties sought the Supreme Court's intervention under Article 142 of the Indian Constitution to dissolve their marriage. Article 142(1) of the Constitution grants the Supreme Court the power to do 'complete justice' in 'any cause or matter' before it. • A Division Bench of the Supreme Court (two judges) found that there was an irretrievable breakdown in the marriage. Recognizing the backlog in family courts, the Supreme Court dissolved the marriage under Article 142, bypassing the lengthy process in the family court under the HMA. • The Supreme Court acknowledged a surge in similar cases before the Supreme Court seeking relief under Article 142. On 29 June 2016, the bench referred the matter to a Constitution Bench (five judges) to clarify the scope of the Court's power under Article 142 of the Constitution. **Decision of the Supreme Court:** • The Constitution Bench held that the Supreme Court can record the settlement between the parties and dissolve the marriage by passing a decree of divorce by mutual consent in exercise of power under Article 142 of the Constitution without being bound by the procedural requirement under the HMA. The Court also held that while exercising powers under Article 142 of the Constitution, the Court can quash and set aside other proceedings between the parties, including criminal proceedings. • Furthermore, the Supreme Court held that under Article 142(1) of the Constitution, the Supreme Court could grant divorce if a marriage has irretrievably broken down, even if one party opposes the prayer for divorce. Finally, the Court clarified that parties could not approach the Supreme Court directly to dissolve the marriage under Article 142. Rather, parties would have to approach the Family Court as the court of first instance.The judgment of the Court was authored by Justice Sanjiv Khanna. **Reasons for the Decision:** *The scope and ambit of power of Supreme Court under Article 142(1) of the Constitution of India* • The Supreme Court held that Article 142(1) of the Constitution gives wide power to the Supreme Court to do 'complete justice' in any 'cause or matter.' The Court held that this power, while broad, is restrained by fundamental considerations of general public policy (fundamental rights, secularism, federalism, and other basic features of the Constitution of India) and specific public policy (e.g some express prohibition in any statute). It was held that while the Court cannot create new laws or disregard explicit statutory provisions, it can intervene in areas where the law is unclear. As long as the Court's actions uphold these fundamental principles the Court may deviate from procedural and substantive laws to do 'complete justice' between parties. *Supreme Court can grant a decree of divorce under Article 142(1)* • Section 13-B of the HMA provides for divorce by mutual consent, subject to a mandatory cooling-off period of minimum six months and maximum eighteen months. The Supreme

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		Court clarified that the cooling off period of six months can be waived in exceptional situations where prolonged court proceedings have already caused significant distress to the parties. The purpose of the cooling-off period is not to prolong suffering or salvage irreparably broken marriages. If reconciliation efforts fail and the marriage is totally unworkable, then the Court can grant divorce without waiting for the cooling-off period. • The Supreme Court finally held that while exercising powers under Article 142(1) of the Constitution, it can grant divorce based on mutual consent without requiring parties to file joint motions before the trial court. Even if the main case is pending elsewhere, the Supreme Court's power extends to granting divorce by mutual consent, thereby easing the burden on multiple courts and the parties. Based on the settlement reached between the parties, the Court has the power to appropriately deal with other pending proceedings between them, whether civil or criminal. *Court can grant of divorce under Article 142(1) even if one spouse opposes such prayer* • The Supreme Court held that under Article 142, it can dissolve the marriage (on grounds of an irretrievable breakdown of marriage) even without the consent of both the parties. However, it observed that such a remedy could not be claimed as a right but was a discretionary power of the Court, requiring careful consideration of several factors. Factors like duration of marriage, long separation period, nature of allegations, attempts at reconciliation, the orders passed in the legal proceedings from time to time, must be assessed cumulatively. These facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, whether spouse and children are dependent. Custody of children, alimony, and other pending matters are also relevant. *A party cannot directly approach the Supreme Court by filing a writ petition to seek divorce on the ground of irretrievable breakdown of marriage* • The Supreme Court held that if a party is aggrieved by the order of a court, they cannot directly approach the Supreme Court or High Court and seek divorce on ground of irretrievable breakdown of marriage through writ petitions under Article 32 or Article 226 of the Constitution. Instead, they must appeal to the appropriate superior court or tribunal. The writ jurisdiction of the High Courts and Supreme Court is meant for enforcing fundamental rights under Part III of the Constitution, not for challenging judicial orders. Therefore, relief of divorce cannot be directly sought through Article 32 of the Constitution. View Judgment
19	**Constitutional challenge to the Union Ministry of Information and Broadcasting's restrictions on the operation of the Media One television channel.**	**MADHYAMAM BROADCASTING LIMITED V. UNION OF INDIA** **2023 INSC 324** **(5 April 2023)** C.A. No. 8129/2022 **Justices:** Chief Justice (Dr.) Dhananjaya Y. Chandrachud and Justice Hima Kohli **Question(s):** Is the order issued by the Ministry of Information and Broadcasting ("**MIB**") refusing to renew the uplinking and downlinking permission granted to Madhyamam Broadcasting Ltd. ("**MBL**") to operate the television channel Media One violative of MBL's right to freedom of expression under the Constitution? **Factual Background:** • On 19 April 2010, MBL applied for permission to uplink and downlink its news and current affairs television channel named 'Media One'. On 30 September 2011, MIB gave MBL permission to uplink Media One for a period of ten years under the 'Policy Guidelines for Uplinking of Television Channels from India'. • On 3 May 2021, MBL applied for a renewal of the permission granted to Media One. MIB issued a show cause notice to MBL as to why the permission granted to them should not be revoked since the Ministry of Home Affairs (**"MHA"**) had denied security clearance to MBL. • On 31 Jan 2022, MIB revoked MBL's permission for uplinking and downlinking Media One. The reason given was that due to denial of security clearance, the company ceased to fulfil

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		the eligibility requirement for renewal of permission for uplinking and downlinking of TV Channels. • MBL filed a writ petition under Article 226 of the Constitution in the High Court of Kerala challenging MIB's order revoking the uplinking and downlinking permission for Media One. The Union of India's submissions were made through a 'sealed cover' (i.e., they were not made available to MBL or the public). The Union told the High Court that security clearance was denied to MBL based on inputs given by the Intelligence Bureau ("**IB**"), which are sensitive and secret in nature. It was further stated that MHA cannot disclose reasons for the denial of security clearance for national security reasons. • On 8 February 2022, a Single Judge of the High Court of Kerala dismissed the writ petition. The Single Judge's decision was challenged before the Division Bench (two judges) of the High Court. On 2 March 2022, the Division Bench dismissed the appeal. MBL appealed against the decision of the Division Bench of the High Court of Kerala to the Supreme Court. Before the Supreme Court the Union Government contended that MBL had close ties to Jamaat-e-Islami Hind ("**JEI-H**") and hence was a security threat. • On 15 March 2022, the Supreme Court said that the issue as to whether the contents of the sensitive files (which were submitted in a sealed cover before the High Court) should be disclosed to the Petitioners will be decided by the Supreme Court's final judgement. **Decision of the Supreme Court:** • The Supreme Court held that MIB's order revoking MBL's permission for uplinking and downlinking Media One was unconstitutional. The judgement of the Court was authored by Chief Justice Chandrachud. • The Supreme Court held that MBL's right to a fair hearing has been infringed because: (i) MIB's order revoking Media One's license did not contain any reasons for denial of security clearance and (ii) the Union's reasons were not disclosed to MBL and were only disclosed to the Court. The Supreme Court further held that the non-renewal of permission to operate a media channel is a restriction on the freedom of the press which can only be reasonably restricted on the grounds stipulated in Article 19(2) of the Constitution. The Supreme Court held that Media One's alleged anti-establishment stance and the alleged link of the shareholders of the channel to JEI-H are not legitimate reasons to restrict the right of freedom of speech. The Court directed MIB to proceed with the issuing of renewal permissions in accordance with the Court's judgment within four weeks. **Reasons for the Decision:** • The Supreme Court noted that Paragraph 10 of the 'Policy Guidelines for Uplinking of Television Channels from India' sets out the conditions for renewal of existing permissions. Paragraph 10.2 of the Up linking Guidelines states that the channel should not have violated the Programme Code on more than five occasions. The Court found that Media One had not violated the Programme Code on five or more occasions. *Reasons for denial of security clearance must be provided* • The Supreme Court noted that the MHA only revealed its reasons for denying security clearance to the High Court, and MBL was not given even a summary of these reasons. This, according to the Court, undermined the freedom of the press under Article 19(1)(a) of the Constitution and denied a fair avenue to challenge the MIB's decision, which infringed MBL's right to a fair hearing. The Court stated that the summary of reasons for denying security clearance constitutes the bare minimum procedural safeguards, and the MHA's failure to disclose its reasons represents an unreasonable and arbitrary approach. • The Supreme Court disapproved of the practice of accepting evidence in sealed cover. It stated that the non-disclosure of reasons for denial of security clearance to MBL and the disclosure solely to the Court in a sealed cover compromised the core principles of natural justice. It was held that when relevant material is disclosed in a sealed cover, it perpetuates a culture of secrecy and opaqueness, and makes it hard for the aggrieved party (in this case MBL) to challenge the judgement. *Incorrect reasoning to deny security clearance* • The Supreme Court observed that security clearance was denied to MBL because of an alleged link between the shareholders of Media One and JEI-H, and its alleged anti-establishment stance. The Court found that the IB had solely relied on the content and 'tenor' of MBL's published articles, and content of Media One's broadcasted programs to

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		establish a link between MBL and JEI-H. The Court held that firstly, JEI-H is not a banned organisation, and therefore, the contention that links with JEI-H will affect national security cannot be accepted, and secondly, there is no material to prove that the shareholders of MBL are sympathizers of JEI-H. It was also held that the report of IB is purely an inference drawn from information that is already in the public domain and that there is nothing 'secretive' about this information to attract the ground of confidentiality. • On the matter of the confidentiality of IB Reports, the Court held that absolute immunity from disclosure for reports by investigative agencies is antithetical to a transparent and accountable system, as these reports significantly impact individuals' lives, liberties, and professions. • The Supreme Court also noted that national security claims cannot be made out of thin air. There must be concrete intelligence material backing such an allegation. The Court held that the material produced by the Union of India had no nexus with the national security threat raised. *Freedom of the press* • The Supreme Court criticized the denial of security clearance to Media One on the basis of the views which the channel is constitutionally entitled to hold, expressing concern over the chilling effect on free speech and press freedom. The Court clarified that criticism of governmental policy is not a permissible reason to restrict expression under Article 19(2) of the Constitution. View Judgment
20	**Significance of mitigating factors when awarding the death penalty.**	**SUNDAR @ SUNDARRAJAN V. STATE BY INSPECTOR OF POLICE** **2023 INSC 264** **(21 March 2023)** R.P.(Crl.) No. 159-160/2013 In Crl.A. No. 300-301/2011 **Justices:** Chief Justice (Dr.) Dhananjaya Y. Chandrachud, Justice Hima Kohli, Justice Pamidighantam S. Narasimha **Question(s):** **(i)** Should the Supreme Court review the Petitioner's conviction for kidnapping and murder (under Sections 364A and 302 of the Indian Penal Code, 1860)? **(ii)** Is the award of the death penalty to the Petitioner justified? **Factual Background:** • On 27 July 2009, the Petitioner kidnapped a seven-year-old child in Kammapuram, Tamil Nadu. He made two calls to the victim's mother, demanding a ransom of Rs 5 lakhs. On 30 July 2009, the police raided the house of the Petitioner and arrested him and a co-accused. The Petitioner confessed to strangling the child and disposing of his body in a tank. On the basis of the Petitioner's confession, the police recovered the victim's body from the tank. • The Trial Court at Cuddalore found the Petitioner guilty of kidnapping and murdering the child. He was convicted for kidnapping and murder under Sections 364A and 302 of the Indian Penal Code, 1860 and sentenced to death. The co-accused was acquitted of all offences. • The Petitioner appealed his conviction before the Madras High Court unsuccessfully. An appeal to the Supreme Court before a Division Bench (two judges) was also dismissed. Both the appellate courts upheld the conviction and the award of the death penalty by the Trial Court. • In light of the Supreme Court's ruling in *Mohd. Arif alias Ashfaq v. Registrar, Supreme Court of India,* (2014 INSC 590) petitions seeking a review of sentences of death penalty were required to be heard in open court. The Petitioner argued that his conviction warranted a review since it suffered from judicial errors. He argued that even if his guilt were established, the Courts had failed to consider mitigating circumstances in awarding him the death penalty, and his sentence ought to be commuted. The State of Tamil Nadu urged that the errors alleged did not warrant an exercise of the Supreme Court's narrow review jurisdiction. **Decision of the Supreme Court:**

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		• The Supreme Court upheld the conviction of the Petitioner for kidnapping and murder. However, it found that neither the Trial Court nor the appellate courts had considered mitigating circumstances in awarding the death penalty to the Petitioner, which was only appropriate in the rarest of rare cases. The Supreme Court commuted the sentence of the Petitioner to life imprisonment for not less than twenty years without remission. The judgment of the Court was authored by Chief Justice Chandrachud. **Reasons for the Decision:** *No errors apparent on the face of the record* • The Court found that the Petitioner had failed to raise a reasonable doubt about the prosecution's case, which was based on strong witness testimonies and documentary evidence. Satisfied with the concurrent findings of the Trial Court, the High Court, and its Division Bench, the Supreme Court upheld the conviction of the Petitioner for kidnapping and murder. *Consideration of mitigating and aggravating circumstances* • The Supreme Court found that the Trial Court had not granted the Petitioner a meaningful hearing on sentencing before awarding the death penalty. Neither the Trial Court nor the appellate courts had made a genuine effort to consider mitigating circumstances that suggested the possibility of reform or rehabilitation for the Petitioner. Instead, the penalty had been imposed and confirmed solely on the basis of the gruesome nature of the crime. The Division Bench of the Supreme Court had reasoned that the Petitioner's decision to target the only son of a family, who would have carried on the family lineage, was an aggravating circumstance. • Citing its previous judgments, the Supreme Court emphasised that it was the duty of a court to inquire into the mitigating circumstances of a criminal, and rule out the possibility of their reformation and rehabilitation before awarding the death penalty. This duty was to be discharged even if the accused was silent. Further, the Court noted that the murder of the child, regardless of its sex was an aggravating circumstance and that courts should not make patriarchal value judgments that encourage the notion that only a son furthers his family lineage. • The Supreme Court ruled that despite the grave crime committed by the Petitioner, the death penalty was to be awarded only in the "rarest of rare cases," (*Bachan Sigh v. State of Punjab* 1980 INSC 120) and was not appropriate in the present case. The Court considered mitigating factors, noting that the Petitioner was twenty-three years old when he committed the crime and had no previous criminal antecedents. It noted that he had been in prison since 2009, where his conduct had been satisfactory, except for an attempted escape in 2013. The Petitioner had earned a diploma in food catering while in jail and was suffering from systemic hypertension. In view of these circumstances, the Court commuted the Petitioner's sentence to life imprisonment of not less than twenty years without remission. It noted that although life sentences subject to remission usually work out to fourteen years, this shorter sentence was inadequate in view of the grave crime committed. View Judgment
21	**Plea to increase the amount of compensation for victims of the Bhopal Gas Tragedy.**	**UNION OF INDIA. V. M/S. UNION CARBIDE CORPORATION** **2023 INSC 222** **(14 March 2023)** CURATIVE PET(C) No. 345-347/2010 In R.P.(C) No. 229/1989 & 623-624/1989 In C.A. No. 3187-3188/1988 and SLP (C) No. 13080/1988 **Justices:** Justice Sanjay K. Kaul, Justice Sanjiv Khanna, Justice Abhay S. Oka, Justice Vikram Nath and Justice Jitendra K. Maheshwari **Question(s):** Whether the settlement order passed by the Supreme Court against Union Carbide Corporation for the Bhopal Gas Tragedy disaster can be reconsidered to increase the settlement amount. **Factual Background:** • On the night of 2-3 December 1984, the escape of deadly chemical fumes from Union Carbide India Limited's ("***Union Carbide India***") pesticide factory in Bhopal led to the

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		deaths of around 3,000 people and serious injuries to over 30,000 others. In order to provide relief and remuneration to the large number of victims, the Government of India enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 ("***Bhopal Claims Act***"). Under the Act, the Union Government assumed the exclusive right to represent every person who was entitled to claim compensation. The Bhopal Claims Act also allowed the Union Government to file cases for claims and to enter into a compromise with Union Carbide India on behalf of the victims. Union Carbide Corporation ("***Union Carbide USA***"), an American corporation owned a majority of the shares of Union Carbide India. So, the Union Government instituted a case against Union Carbide USA in India for compensation. • After proceedings before the District Court in Bhopal and the Madhya Pradesh High Court in which both courts awarded different amounts of interim compensation to be paid by Union Carbide USA, both the Union Government and Union Carbide USA filed petitions before the Supreme Court of India. Later, Union Carbide USA and the Union Government entered into a negotiated settlement in February 1989 whereby Union Carbide USA agreed to pay $470 million to the Union Government as a final settlement for all claims and liabilities arising out of the Bhopal Gas disaster. The amount was calculated to ensure urgent relief to the victims and was required to be deposited by 31 March 1989. Upon payment of the settlement amount, all civil and criminal cases related to the disaster were to be closed. The Supreme Court approved of the settlement in *Union Carbide Corporation v. Union of India* (1989 INSC 60) ("***UCC case***"). In its judgment, the Supreme Court also stated that in the unlikely situation of the settlement fund being insufficient to provide compensation to the victims, the Union of India should provide for the deficiency. • In the present case, the Union Government had filed a curative petition before the Supreme Court in 2010 seeking to reopen the case and reconsider the settlement amount. The Union Government requested the Court to increase the settlement amount against Union Carbide USA following new facts and data relating to the number of deaths and injuries. **Decision of the Supreme Court:** ○ The Supreme Court passed a unanimous judgment rejecting the curative petition filed by the Union of India. The Supreme Court held there was no legal principle that justified an increase in compensation. The Supreme Court also refused to increase the settlement amount using its discretionary powers under Article 142 of the Constitution of India. The decision of the Court was authored by Justice Kaul. **Reasons for the Decision:** *Maintainability of the Curative Petition* • The Supreme Court observed that a curative petition could be filed only on a very limited number of grounds in order to rectify a gross miscarriage of justice that was not previously recognised by the Court during its review judgment. • The Supreme Court noted that the curative petition would lead to a re-examination of its final judgment in the *UCC case*. The Court said that the scope of review in a curative petition was very limited. The Court held that increasing the settlement through a curative petition would exceed the purpose of such a petition. However, the Court agreed to examine the petition on its merits because of the importance of the matter. *Adequacy of the settlement amount* • The Union of India submitted that the curative petition was filed because the settlement amount agreed to was based on wrong facts and data that underestimated the number of victims and the extent of monetary loss caused to them by the disaster. The Union Government stated that it did not want to reopen the suit but to increase the underlying settlement amount of $470 million in light of the additional amounts claimed. • The Supreme Court noted that the Union Government had opposed earlier claims by private organisations which sought to enhance the amount of the settlement fund. The Court also observed that the disbursement of individual compensation amounts from the settlement fund had increased as the exchange rate fluctuations of the Indian rupee against the US dollar had led to an increase in the amount available to the Union Government. The Court also noted that the Welfare Commissioner under the Bhopal Claims Act had adjudicated the claims as per the law and that the Supreme Court itself had previously found that the compensation provided was more than what was reasonably

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		available to the victims under the law. Thus, according to the Court, all these observations reinforced the fact that the settlement amount was sufficient to compensate the victims. *Responsibility of the Union Government* • The Supreme Court also found that the Supreme Court had previously directed the Union of India, being a welfare state, to take out relevant insurance policies on behalf of future victims who were later born with or developed any disabilities due to the disaster in order to fulfil any future deficiency in the compensation. The Court criticised the Union of India and said it was grossly negligent since it had failed to take out any such insurance policies. Moreover, the Court noted that a sum of Rs. 50 crore was still lying undisbursed with the Reserve Bank of India to take care of victims and ordered that this amount be utilised in accordance with the Bhopal Claims Act in case of additional expenses. *Additional observations* • The Supreme Court observed that there had been no allegations of fraud committed by Union Carbide USA while negotiating the settlement amount and legally, a settlement could only be set aside in cases of fraud. The Court held that it would not be appropriate to use its inherent powers to do justice under Article 142 of the Constitution in this case. Finally, the Court noted that it was necessary to provide closure in this case since otherwise, every private claimant could also start to lead evidence for extra monetary damages and this would lead to inevitable judicial delay that would favour UCC instead of the beneficiaries. View Judgment
22	**Challenge to the procedure for appointing Members of the Election Commission of India (ECI).**	**ANOOP BARANWAL V. UNION OF INDIA MINISTRY OF LAW AND JUSTICE SECRETARY** **2023 INSC 190** **(2 March 2023)** W.P.(C) No. 104/2015 **Justices:** Justice Kurian M. Joseph, Justice Ajay Rastogi, Justice Aniruddha Bose, Justice Hrishikesh Roy, Justice Chudalayil T. Ravikumar **Question(s):** Whether the Supreme Court is required to pass any directions to ensure the independence of the Election Commission of India ("**ECI**") given that Parliament has not passed any law under Article 324 specifying the appointment process for Members of the ECI. **Factual Background:** • Article 324 of the Constitution states that the ECI shall supervise and control elections. Article 324(2) specifically provides that the President is responsible for appointing the Chief Election Commissioner and Election Commissioners, subject to any law enacted by Parliament. Parliament had not made any law for the appointment of ECI Members. In the absence of such legislation, the President has been making appointments based on the Prime Minister's recommendations. • Several Writ Petitions were filed in the Supreme Court asserting that the existing procedure for appointing members to the ECI is unconstitutional. The Petitioners contended that under the existing system, the executive government exclusively holds the authority for appointments, which is eroding the ECI's independence. The Petitioners requested the Supreme Court to issue directions for the establishment of an independent system for ECI appointments. The Union of India responded saying that judicial intervention in the appointment procedure of ECI members would violate the separation of powers and even under the current appointment process, the ECI has been able to demonstrate its independence as free, fair, and timely elections have been held. **Decision of the Supreme Court:** • The Supreme Court ruled in favour of the Petitioners and laid down guidelines to constitute a selection committee consisting of the Prime Minister of India, the Leader of the Opposition in the Lok Sabha, and the Chief Justice of India for appointing ECI members until a law is made by the Parliament. The Court concluded that the framers of the Constitution clearly contemplated a law by Parliament under Article 324 and did not intend the executive to exclusively make appointments to the Election Commission. Seven decades have passed and no law has been framed. There is a clear legislative vacuum and

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		continuing appointments to the ECI solely by the executive will have an adverse effect on the fundamental rights of the people and democracy. Hence, the Supreme Court held that it was appropriate for the Court to lay down norms for the appointment of ECI Members which will be effective until Parliament passes a law. The judgment of the Court was authored by Justice K.M. Joseph. Justice Ajay Rastogi wrote a concurring but separate opinion. **Reasons for the Decision:** *Framers of the Constitution sought to protect ECI's independence* • The Supreme Court referred to the Constituent Assembly Debates of 1949 to determine the intent of the Constitution's framers. Dr B. R. Ambedkar pointed out that the election machinery should not be under the control of the government of the day, and the elections should be conducted by an independent body called the Election Commission. The Court found that it is clear that the Members of the Constituent Assembly did not want the appointment to the Election Commission to be made solely by the executive. The Court Bench found that the phrase 'subject to the provisions of any law to be made by the Parliament' in Article 324(2) demonstrated the intention of the framers of the Constitution to ensure the independence of the ECI but leave the specific appointment process for Parliament to prescribe by law. • The Supreme Court observed that the framers of the Constitution clearly intended that Parliament would step-in and make a law, and that the appointment by the executive was a mere transient or stop-gap arrangement to be replaced by a law taking away the exclusive power of the executive to appoint ECI members. The absence of law even after seven decades creates a legislative vacuum which makes it necessary for the Court to step in and provide guidelines. *Additional reasons to protect ECI's independence* • The Supreme Court noted that Article 324 gives the ECI the entire responsibility to hold the national and state elections and carries with it the necessary powers to discharge this function. The Court held that since the ECI discharges such important functions integral to democratic process in the country, the ECI should be independent, fair, and follow the rule of law. The Court noted that an Election Commission which does not ensure free and fair polls, guarantees the breakdown of the rule of law. • The Supreme Court noted that the ECI needs to be free from executive control because (i) a party in power naturally has an incentive to remain in power and may seek to interfere with the ECI's independence to retain power; (ii) if the Election Commission exercises their powers unfairly or illegally then it has a chilling effect on the fortunes of political parties and inequality in the treatment of political parties would violate the principle of equality under Article 14; and (iii) Justice Ajay Rastogi's separate opinion emphasised the need for objective selection of ECI members to ensure transparency and accountability. *Composition of independent commission* • The Supreme Court took note of the fact that the appointment of the Director of the Central Bureau of Investigation is made on the recommendation of a committee consisting of the Prime Minister as the Chairperson, the Leader of the Opposition in the Lok Sabha, and the Chief Justice of India or a Judge of the Supreme Court nominated by him. Similarly, in the appointment of the Chairperson and Members of the Lokpal, under the Lokpal and Lokayuktas Act, 2013, the Chief Justice is one of the five members of a selection committee. The Court also took note of the Report of the Goswami Committee and the Two Hundred and Fifty-Fifth Law Commission Report to come up with the selection committee for the appointment of ECI members. Justice Ajay Rastogi in his separate opinion undertook a comparative analysis of the appointment of the head of election-conducting bodies across the world and noted that in most jurisdictions, such appointments are a consultative process, involving members of both the ruling party and the opposition party. The opposition's presence in decision-making processes of governance is essential for a healthy democracy, ensuring accountability and fostering deliberative processes. He also noted that some jurisdictions have constitutional functionaries such as Speakers of the house of the legislature, and judges of the highest court in the country in a multi-member committee. *Short terms undermine independence*

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		• The Supreme Court noted that according to Section 4 of the Conditions of Service of Election Commissioners and Transaction of Business Act, 1991, an Election Commissioner is entitled to a term of six years subject to the condition that the officer would have to vacate the office upon his reaching the age of sixty-five years. The Court noted that the Union Government has constantly been choosing members who are close to attaining the age of sixty-five since 2004. The Court observed that the condition of having a tenure less than six years should be an exception and not the norm. The Court found that short terms undermined the independence of the Election Commission and defeated the policy of independence. *Additional observations* • The Supreme Court noted that the grounds of removal of Chief Election Commissioner (CEC) are the same as that of a Supreme Court judge i.e. removal by a resolution by a two-thirds majority of Parliament on the ground of proven misbehaviour or incapacity. However, an Election Commissioner can be removed on the recommendation of the CEC. The Court held that there is no need to make the removal process for Election Commissioners the same as that of the CEC. Justice Ajay Rastogi in his separate opinion suggested that the grounds of removal of the Election Commissioners should be the same as that of the CEC to ensure the neutrality and independence of the office. • The Petitioners sought a direction from the Supreme Court that the ECI be provided with a permanent Secretariat and its expenses charged to the Consolidated Fund of India. The Court noted that it was a matter of policy that can be provided for by a law. View Judgment
23	**Challenge to DNA test on child to prove adultery.**	**APARNA AJINKYA FIRODIA V. AJINKYA ARUN FIRODIA** **2023 INSC 146** **(20 February 2023)** C.A. No. 1308/2023 **Justices:** Justice V. Ramasubramanian, Justice B. V. Nagarathna **Question(s):** Whether DNA test of a child can be directed in divorce proceedings to prove the ground of adultery. **Factual Background:** • The husband (Respondent) in an ongoing divorce proceeding filed an application to ascertain the paternity of the second child born to his wife during their marriage by a deoxyribonucleic acid test ("DNA test"). The Family Court allowed it and the decision was affirmed by the Bombay High Court. • The wife (Petitioner) approached the Supreme Court against the decision of the Bombay High Court. **Decision of the Supreme Court:** • The Supreme Court held that in this case it is not in the best interest of the child to allow the DNA test because the ultimate object for demanding DNA test is not for determining parentage of the child but for proving allegations of adultery (extramarital relations) during the marriage, which can be proved by adducing any other evidence. The Court also held that children have the right not to have their legitimacy questioned frivolously before a court of law. This is an essential attribute of their right to privacy. The judgment of the Court was authored by Justice B.V. Nagarathna and signed by Justice V. Ramasubramanian. Justice V. Ramasubramanian also wrote a separate concurring opinion. **Reasons for the Decision:** *DNA Tests of Children : Principles* • Justice Nagarathna summarised the principles of when a Court should direct a DNA test on a minor: • DNA tests of children shall not be conducted in a routine manner in case of matrimonial disputes unless there is no other way of proving infidelity. • Section 112 of Indian Evidence Act, 1872 provides that a child born during a valid marriage is considered to be the legitimate child of the husband. A DNA test of a child born during

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		continuance of a valid marriage can only be directed when the husband can prove he did not have access to the wife. • No DNA Test is justified when paternity of a child is not directly in issue, but is merely collateral to the proceeding. • While directing DNA tests to prove adultery, the Court should consider the consequences on the children born out of adultery, including inheritance-related consequences and social stigma. *Right to Privacy of Children* • The Supreme Court noted that a child's right to privacy is not equal to that of an adult. However, children have their own identity, and Article 8 of the United Nations Convention on Rights of Child provides children with an express right to preserve their identity. The Court noted that one's genetic information is personal and intimate and is protected by the right to privacy applicable to children). The Court held that the details of their parentage form an essential attribute of a child's identity and therefore they should not be challenged frivolously before the courts. *Best interests of a child* • The Supreme Court stated that the interest of the child should be given primary consideration in actions involving children. The Court noted that a revelation of illegitimacy of a child through a DNA test can not only cause confusion in the mind of the child but a quest to find out who is his/her real father. The Court observed that not knowing who one's father is creates a mental trauma in a child, and may lead to a bittering relationship between the child and parents. Further, this also creates lots of social stigma towards both the child and the mother. Hence, the Court held that a parent may, in the best interests of the child, choose not to subject a child to a DNA test. • Justice V. Ramasubramanian in his separate opinion observed that whether DNA tests should be allowed or not should be decided by looking from the child's perspective and not from the perspective of the parents. The child cannot be used as a means to prove adulterous (out of marriage) relations. The adulterous conduct of the wife can be proved by the respondent by advancing other evidence but the identity of the child should not be compromised. *Adverse inference cannot be drawn* • J. Ramasubramanian in his separate opinion took note of Illustration (h) under Section 114 of Indian Evidence Act, 1872. It says that if a man refuses to answer a question which he is not compelled to answer by law, the Court may presume that the answer, if given, would be unfavourable to him. J. Ramasubramanian held that if the wife raises an objection as to the DNA test of the child for her benefit, then the presumption under Section 114, illustration (h) can be raised against her. However, if the wife raises objections as to the DNA test of the child in the capacity of a mother for the benefit of her child then no presumption under the said provision can be drawn against her. View Judgment
24	**Power of the Bar Council of India to prescribe a qualifying exam to practice as an advocate.**	**BAR COUNCIL OF INDIA V. BONNIE FOI LAW COLLEGE.** **2023 INSC 116** **(10 February 2023)** C.A. No. 969/2023 **Justices:** Justice Sanjay K. Kaul, Justice Sanjiv Khanna, Justice Abhay S. Oka, Justice Vikram Nath, Justice Jitendra K. Maheshwari **Question(s):** Whether the Bar Council of India can prescribe either a pre-enrolment or a post-enrolment examination (like the All India Bar Examination) as a necessary condition for practising as an advocate. **Factual Background:** • Bonnie Foi Law College ("**College**") applied to the Bar Council of India ("**BCI**") to offer a law degree course. A dispute arose between the BCI and the College. In 2009, the Supreme Court appointed an inspection team which visited the College and gave a report pointing out shortcomings in the infrastructure and functioning of the college.

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		• During this matter, a larger question of diminishing standards of legal education provided at various law colleges in India came before the Supreme Court. The Court appointed a three-member Committee to examine issues relating to affiliation and recognition of law colleges and to identify areas of improvement. The report submitted by this committee led to the first All India Bar Examination ("**AIBE**") being conducted in 2010, by a specially constituted independent body consisting of experts of various disciplines. • During the hearing, a case of *V. Sudeer v. Bar Council of India* (1999 INSC 105) ("***V. Sudeer***") came up for reconsideration, the Supreme Court in *V. Sudeer* held that the BCI has no power under Advocates Act to prescribe rules for a pre-enrolment training or examination as a necessary condition for practice as an advocate. • In 2016, a three-judge bench of the Supreme Court opined that the questions in the present matter are of considerable importance affecting the legal profession in general and need to be authoritatively answered by a Constitution Bench. **Decision of the Supreme Court:** ○ The Supreme Court held that the BCI has the power to prescribe a post-enrolment examination like the All India Bar Examination as a necessary condition to practice as an advocate. The Court held that the BCI also has the power to prescribe a pre-enrolment examination or necessary pre-enrolment training as a condition for practicing as an advocate. The Court declared that the decision in *V. Sudeer* was incorrect. The judgment of the Court was authored by Justice Sanjay K. Kaul. **Reasons for the Decision:** *Scope of BCI's powers under Advocates Act, 1961* • The Supreme Court took note of Section 7 of the Advocates Act, 1961 ("**Advocates Act**") which provides for functions of the BCI. In particular, Section 7(1)(h) provides for the promotion of legal education and for the laying down of standards for such education in consultation with Universities in India and State Bar Councils. The Court also noted that Section 49 of the Advocates Act deals with the general powers of BCI to make rules and Section 49(1)(ah) & (ag) specifically deals with the conditions subject to which an Advocate shall have the right to practise. The Court held that considering Section 7 and Section 49 of Advocates Act, the BCI has powers to provide for a pre-enrolment training course or an examination for enrolment of advocates as the BCI is directly concerned with the standard of persons who want to obtain a licence to practice law as a profession. The Court declared that it is left to the BCI to decide at what stage the All-India Bar Examination will be held, that is, pre-enrolment or post-enrolment. *Need for Quality Control of Lawyers* • The Supreme Court noted that quality of lawyers is an important aspect of administration of justice and access to justice. The Court held that quality control of lawyers entering into the profession is the need of the hour and a provision of an All India Bar Examination for enrolment serves the purpose. *Suggestions to the BCI regarding conduct of AIBE* • The Supreme Court, while upholding the validity of AIBE, gave certain suggestions to the BCI regarding the conduct of the examination: I. The schedule of conducting AIBE twice in a year should be strictly followed as otherwise the students with law degrees would be unable to practice. II. Students in the final Semester of course of law could be allowed to take AIBE and the result of AIBE would be subject to passing all college examinations. III. Any law graduate who is yet to appear for AIBE or get enrolled under the Advocates Act, 1961 should be able to do all the tasks allied to the legal profession other than pleading before the courts. IV. Lawyers who are in non-legal jobs for a certain number of years should re-qualify AIBE to rejoin the legal profession. V. Different State Bar Councils are charging different fees for enrolment. The BCI must make sure that a uniform pattern is observed and the fee does not become oppressive at the threshold of young students joining the profession. View Judgment

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25	**Clarification regarding the applicability of the offence of adultery to the armed forces after the offence was declared unconstitutional.**	**JOSEPH SHINE V. UNION OF INDIA SECRETARY** **2023 INSC 87** **(31 January 2023)** MA 2204/2020 in W.P.(Crl.) No. 194/2017 **Justices:** Justice Kuttiyil M. Joseph, Justice Ajay Rastogi, Justice Aniruddha Bose, Justice Hrishikesh Roy, Justice Chudalayil T. Ravikumar **Question(s):** Whether the Supreme Court's judgment in *Joseph Shine v. Union of India* ("***2018 Joseph Shine case***"), where the Court struck down as unconstitutional the offence of adultery under Section 497 of the Indian Penal Code, 1860 ("**IPC**"), also applied to individuals in the armed forces. **Factual Background:** • The Union of India sought a clarification on whether the judgment of the Supreme Court in the *2018 Joseph Shine case* applied to the members of the armed forces who are governed by the Army Act, 1950, Air Force Act, 1950 and Navy Act, 1957. These three Acts had provisions punishing individuals in the armed forces for violations of discipline. Such violations included, among others, promiscuous or adulterous acts. Since the *2018 Joseph Shine case* declared adultery under Section 497 of IPC as unconstitutional, the Union of India filed a petition to clarify whether the judgment in that case would also apply to the armed forces who are governed under these special laws and whether the judgment would affect proceedings concerning allegedly adulterous acts punishable under the Army Act, Air Force Act and Navy Act. ○ In the *2018 Joseph Shine case*, a Constitution Bench of the Supreme Court ruled that Section 497 of the IPC was unconstitutional as it offended Articles 14, 15 and 21 of the Constitution of India and unreasonably discriminated between a man and a woman. Section 497 of the IPC defined adultery on the basis that if a person (a man) had consensual sexual intercourse with the wife of another man, without the consent of that man, then such person would be liable for having committed adultery. However, the wife could not be punished in such cases. The Court in the same case also struck down Section 198(2) of the Criminal Code of Procedure ("**CrPC**") as it treated only the husband of a woman who committed adultery as an aggrieved person who could file a complaint, and did not extend the same treatment to the wife of a man who had engaged in adultery. The Court held that this statutory provision reflected an antiquated approach where wives were considered the "property" of men. **Decision of the Supreme Court:** • The Supreme Court unanimously held that its decision in the *2018 Joseph Shine case* did not consider whether the invalidation of Section 497 of the IPC applied to the Army Act, Air Force Act or Navy Act that governed the armed forces. Thus, the striking down of adultery under the IPC did not affect proceedings against members of the armed forces under the Army Act, Air Force Act or Navy Act. Justice Joseph authored the judgment of the Court. **Reasons for the Decision:** • Article 33 of the Constitution states that Parliament has the power to enact a law to modify the applicability of Fundamental Rights to the armed forces. The Union of India submitted that the armed forces were a distinct class and thus, the judgment of the Supreme Court in the *2018 Joseph Shine case* would not apply to them since the Army Act, Air Force Act and Navy Act were separate codes which operated independently of the IPC. The Union of India submitted that where a member of the armed forces was charged with unbecoming conduct and it consisted of adultery, then the judgment in the *2018 Joseph Shine case* should not prevent authorities in the armed forces from taking action against such member. • The Supreme Court held that its judgment in the *2018 Joseph Shine case* was only concerned with the constitutional validity of Section 497 of the IPC and 198(2) of the CrPC. In that case the Court did not consider the validity of the provisions in the Army Act, Air Force Act or Navy Act punishing adultery. Therefore, the Court held that the judgment in the *2018 Joseph Shine case* had no effect on the operation of proceedings against members of the armed forces under the Army Act, Air Force Act or Navy Act. View Judgment

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26	Revisions to guidelines on euthanasia and execution of 'Advanced Medical Directives'.	**COMMON CAUSE (A REGD. SOCIETY) DIRECTOR SH. H.D. SHOURIE V. UNION OF INDIA (A) MINISTRY OF HEALTH AND FAMILY WELFARE SECRETARY** **2023 INSC 77** **(24 January 2023)** MA 1699/2019 in W.P.(C) No. 215/2005 **Justices:** Justice KuttiyilM. Joseph, Justice Ajay Rastogi, Justice Aniruddha Bose, Justice Hrishikesh Roy, Justice Chudalayil T. Ravikumar **Question(s):** Do the euthanasia guidelines issued by the Supreme Court for terminally ill patients in *Common Cause (A Regd. Society) v Union of India* need to be modified? **Factual Background:** • On 9 March 2018, a Constitution Bench (five judges) of the Supreme Court, in *Common Cause (A Regd. Society) v Union of India,* ("***Common Cause***") upheld the right to die with dignity, and gave legal recognition to an 'Advance Medical Directive' (**"AMD"**) or a 'living will'. An AMD allows individuals to outline their wishes regarding the withdrawal of life-sustaining treatment in the event they become terminally ill or are in a persistent vegetative state and are unable to communicate their desires, thereby allowing them to end their prolonged suffering.The Court laid down guidelines for creating an AMD, including who can execute an advance directive, what it should contain, how it should be recorded and preserved, and when and by whom can it be given effect. It was clarified by the Court that the guidelines shall remain in force till the Parliament brings a legislation in the field. ○ Subsequently, the Indian Society of Critical Care Medicine filed an application seeking certain modifications and clarifications of some of the guidelines in the *Common Cause* judgment. They argued that many obstacles were faced in the implementation of the Court's guidelines. **Decision of the Supreme Court:** • The Constitution Bench (five judges) modified the *Common Cause* judgment dated 9 March 2018, and simplified the procedure for executing AMDs, such as significantly reducing the role of Judicial Magistrate First Class. The objective was to streamline the process to address practical challenges encountered during the implementation of the directives. The judgment of the Court was authored by Justice Joseph. **Reasons for the Decision:** *Reduced role of Judicial Magistrate First Class **("JMFC")*** • The Supreme Court reduced the involvement of JMFCs, recognizing the difficulties an ordinary individual may face in accessing a judicial magistrate. Previously, the guideline mandated that the AMD had to be signed by two attesting witnesses and countersigned by a JMFC. However, the Court revised this requirement, eliminating the role of a JMFC. Now, the AMD can be signed in the presence of two attesting witnesses, and before a notary or a Gazetted Officer, who can confirm that the document was executed voluntarily. • Additionally, the earlier guidelines tasked the JMFC with informing the family members of the executor about the AMD's execution. This guideline has been modified, placing the responsibility on the executor to inform their family members and family physician, and provide them with a copy of the AMD. • Previously, when the treating physician was informed about the AMD, they were required to verify its genuineness from a JMFC. Now, the genuineness must be verified from existing digital health records or the custodian of the document. • The Supreme Court also deleted certain guidelines pertaining to the role of a JMFC, such as the JMFC's duty to preserve a copy of the advance directive in his office, to forward it to the Registry of the jurisdictional District Court for being preserved, and the JMFC's duty to hand over a copy of the AMD to the family physician. *Constitution of the Medical Board* • The earlier guidelines required the treating physician to determine if the AMD is genuine and if there is any hope of the patient being cured, before they suggest withdrawing treatment. The hospital must then form a Medical Board comprising the head of the

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		treatment department and at least three experts with over twenty years of experience in general medicine, cardiology, nephrology, neurology, oncology or psychiatry, with an added experience in critical care.If the Medical Board certifies that the instructions in the AMD should be carried out, the District Collector is charged with creating a second Medical Board which will include the Chief Medical Officer of the district. The same experience requirements will apply to the three new doctors selected for the second medical board. After visiting the patient, this medical board will decide if they agree with the decision of the hospital's medical board. • Recognizing the challenge of finding doctors with over twenty years of experience in many regions of the country, the Supreme Court eased the qualification requirement for board members. The guidelines were modified to stipulate that doctors now only need a minimum of five years of experience to serve on the renamed 'Primary' and 'Secondary' medical boards. The Secondary board will no longer include the Chief Medical Officer. Instead, the Chief Medical Officer will nominate a registered medical practitioner. The minimum number of board members for both boards has been reduced to three. Further, the Court placed a time limit of forty eight hours on each medical board to arrive at a decision. View Judgment
27	**Extent to which private (non-State) parties are required to respect the Article 19 and 21 rights of other persons.**	**KAUSHAL KISHOR V. THE STATE OF UTTAR PRADESH GOVT. OF U.P. HOME SECRETARY** **2023 INSC 4** **(3 January 2023)** W.P.(Crl.) No. 113/2016 **Justices:** Justice Syed A. Nazeer, Justice Bhushan R. Gavai, Justice Ajjikuttira S. Bopanna, Justice V. Ramasubramanian, Justice B. V. Nagarathna **Question(s):** **(i)** Are the grounds enumerated in Article 19(2) of the Constitution the only reasons for which free speech can be restricted under the Constitution? **(ii)** Can fundamental rights under Articles 19 or 21 of the Constitution be enforced against non-State actors (e.g., other citizens or private companies)? **(iii)** Is the State duty-bound to protect the Article 21 right of a citizen, when infringed by non-State actors? **(iv)** Can a statement made by a Minister about State affairs be attributed to the Government? **(v)** Can a statement by a Minister, inconsistent with the fundamental rights of a citizen, be held to violate a citizen's rights? **Factual Background:** • On 29 July 2016, a woman and her minor daughter were allegedly gangraped on National Highway 91. The victims petitioned the Supreme Court, seeking transfer of the trial to Delhi from Uttar Pradesh, in the hope of a fair investigation. The victims also sought action against Mr. Azam Khan, Minister for Urban Development in the Uttar Pradesh Cabinet, who had labelled the incident an "opposition conspiracy" hatched to defame the State Government. On 5 October 2017, a Three-Judge Bench referred the questions arising for consideration in this petition to a Constitution Bench (five judges). • On 10 November 2017, the Three-Judge Bench clubbed the petition with an appeal from Kerala that raised similar issues. The appeal challenged the inaction of the Government of Kerala in addressing derogatory statements about women made by its Minister for Electricity, Mr. M. M. Mani. • On 24 October 2019, the Constitution Bench framed the above-mentioned five questions for consideration. **Decision of the Supreme Court:** • The Supreme Court found that the grounds enumerated in Article 19(2) for restricting the right to free speech were exhaustive, and that free speech cannot be restricted for reasons not found in Article 19(2). The Court held that Articles 19 and 21 could be enforced against non-State actors (e.g., other citizens or private companies). It also found that the State has

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		an affirmative duty to protect a person's rights under Article 21, even against non-State actors. • The Court held that a statement made by a Minister about State affairs, could not be attributed to the Government. It also held that a mere statement by a Minister which undermined the fundamental rights of a person or citizen would not be actionable unless it led to an act or omission of public officers that caused harm or loss to the person or citizen. The judgment of the Court was authored by Justice Ramasubramanian. Justice Nagarathna wrote a separate opinion which dissented on certain issues. ○ The Constitution Bench of the Supreme Court directed that the petition from Uttar Pradesh and the appeal from Kerala be listed before regular benches of the Court to be decided in accordance with the principles laid down by the Constitution Bench. **Reasons for the Decision:** *Exhaustive nature of Article 19(2)* • The Supreme Court found that the eight grounds to impose "reasonable restrictions" on free speech were comprehensive and exhaustive. They anticipated all possible attacks on individuals, classes of people, society, the State, the Court and the country— the subjects whom the Article sought to protect. Free speech could not be restricted for any additional reasons, including by invoking other fundamental rights. Where two fundamental rights staked rival claims, they were to be balanced using established tools of judicial interpretation. *Enforceability of Fundamental Rights against non-State actors* • The Supreme Court found that some fundamental rights were enforceable against non-State actors. The Court acknowledged that although it had been wary of extending the enforcement of fundamental rights to private individuals, its approach had evolved over time. Rights once exclusively enforced against the State, were gradually enforced against private individuals with regard to the public duties or functions they performed. Hence, the Court held that Articles 19 and 21 could be enforced against parties other than the State and its instrumentalities. It observed that initially, only the State was thought capable of lawfully depriving a person's life and personal liberty. However, over time, violations of Article 21 by non-State actors had become possible. First, this was because Article 21 had been interpreted to include a host of associated rights to protect a person's dignity (such as the right to livelihood and environment), and second, traditional Government functions had been outsourced to private actors and public-private partnerships. Justice Nagarathna disagreed. In her partly dissenting opinion, she held that fundamental rights under Articles 19 and 21 could not be enforced against private actors, unless they had been recognised in statute or common law. Enforcing fundamental rights against non-State actors would ignore the difference between a fundamental right and a common law right. However, a writ of *habeas corpus* could be sought against a private person for an Article 21 violation, since illegal detention, whether effected by the State or a private party, had an identical effect on the life and liberty of the detainee. *Government not responsible for individual Minister's statements* • The Petitioners argued that Ministers making wayward statements should be subject to disciplinary action. However, the Supreme Court stated that a 'Code of Conduct for Ministers' could not be enforced in a court of law, and that the Prime Minister or Chief Minister did not have disciplinary control over the Council of Ministers. • The Supreme Court concluded that a statement made by a Minister about State affairs, or to protect the Government, could not be ascribed to the Government by invoking the principle of collective responsibility. It observed that the principle of collective responsibility envisioned in Articles 75(3) and 164(2) of the Constitution required the Council of Ministers to be responsible to the legislature, not the Chief Minister or Prime Minister. Even though each individual Minister is responsible for the decisions taken collectively by the Council of Ministers, the statements of individual Ministers made outside the legislature could not be attributed to the Council of Ministers. On the contrary, Justice Nagarathna (in her partly dissenting opinion) held that a statement by a Minister, made in an official capacity, could be attributed to the Government if it were representative of the views of the Government itself. *Requirements for a constitutional tort*

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		• The Supreme Court found that the Government could not be held responsible for a mere statement by a Minister which undermined a citizen's or person's constitutional rights. It could only be held responsible if, as a consequence of that statement, public officers did or failed to do something which caused harm or loss to the citizen or person. Justice Nagarathna identified the need for a proper framework to determine the acts and omissions of Government agents which would constitute a constitutional tort. She noted that the Government would not be held responsible if the statements of its agents caused harm or loss to a citizen or person, unless the views expressed in the statements aligned with its own. View Judgment
28	Constitutional challenge to 'Demonetisation.	**VIVEK NARAYAN SHARMA V. UNION OF INDIA** **2023 INSC 2** **(2 January 2023)** W.P.(C) No. 906/2016 **Justices:** Justice Syed A. Nazeer, Justice Bhushan R. Gavai, Justice Ajjikuttira S. Bopanna, Justice V. Ramasubramanian, Justice B. V. Nagarathna **Question(s):** Whether 'demonetisation' (i.e., that? 500 and? 1,000 notes will not be legal tender) was legal and constitutional. The Supreme Court framed 5 issues: 1. Whether (i) the Union Government's power under Section 26(2) of the Reserve Bank of India Act, 1934 ("**RBI Act**") to declare invalid "*any series*" of bank notes meant the Union Government could declare invalid *all series* of bank notes of a particular denomination (?500 and ?1,000); and (ii) if the Union Government could remove *all series* of a particular denomination, whether this amounted to excessive delegation of power to the Union Government. 2. Whether the Notification dated 8 November 2016 ("**Demonetisation Notification**") should be struck down because it was based on a legally flawed decision-making process. 3. Whether the 2016 Notification should be struck down as a disproportionate action. 4. Whether the time period provided for exchange of notes by the 2016 Notification was reasonable. 5. Whether the RBI has an independent power under Section 4(2) of the Specified Bank Notes (Cessation of Liabilities) Act, 2017 ("**Bank Notes Act 2017**") to accept the demonetised notes beyond the period specified in the Notifications issued under Section 4(1) of the Bank Notes Act. **Factual Background:** • On 8 November 2016, the Union Government issued the Demonetisation Notification under Section 26(2) of the RBI Act, 1934. Section 26(2) of the RBI Act states that on recommendation of the Central Board of the RBI, the Union Government may declare that "*any series*" of bank notes of any denomination shall cease to be legal tender. The Union Government had initially requested the Central Board of the RBI to consider recommending the demonetisation of certain high-value denominations of currency notes in order to reduce fake currency notes and black money in the Indian economy. The RBI's Central Board considered the proposal and recommended demonetisation and thereafter, the Demonetisation Notification was issued by the Union Government. • The Demonetisation Notification declared that all the existing series of ?500 and ?1000 notes shall cease to be legal tender from 9 November 2016. The policy of demonetisation fixed a time period (initially up to 30 December 2016 and later extended by subsequent Notifications to 30 June 2017) for individuals to exchange their bank notes in various banks, subject to certain conditions. • The Parliament of India subsequently enacted the Bank Notes Act, 2017. Section 3 of the Bank Notes Act provided that the specified bank notes that ceased to be legal tender under the Demonetisation Notification would no longer be legally guaranteed by the RBI. Section 4 of the 2017 Act provided for a grace period for certain classes of persons to return the specified bank notes to the RBI.

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		• The legal validity of the Demonetisation Notification and policy was challenged in multiple petitions before various High Courts and the Supreme Court of India. The Supreme Court transferred all such matters to itself and the case was referred to a Constitution Bench of the Court (five judges). **Decision of the Supreme Court:** • The Constitution Bench of the Supreme Court, by a majority of 4:1, held that the policy of demonetisation and the Demonetisation Notification were legally and constitutionally valid. Justice Gavai authored the majority judgment on behalf of himself and Justices Nazeer, Bopanna and Ramasubramanian. Justice Nagarathna authored a dissenting minority opinion. • The Supreme Court held that the Union Government had the power under Section 26(2) of the RBI Act to declare 'all' series of bank notes invalid and this included the power to invalidate all series of a denomination of notes. The majority further held that interpreting the provision in this manner does not excessively delegate power to the Government as the power can only be exercised on the recommendation of the RBI's Central Board. The majority held that the Demonetisation Notification: (i) was not based on a flawed decision making process; (ii) was proportional; and (iii) the time period for exchange of notes was reasonable. • The dissenting opinion by Justice Nagarathna held that only the Central Board of the RBI could recommend demonetisation of "any" (and not "all") series of bank notes under Section 26(2) of the RBI Act. The Union Government could elect to accept such recommendation and issue a notification under Section 26(2) to bring it into effect. In Justice Nagarathna's view, the Union Government could only demonetise "any" or "all" series of bank notes without the recommendation of the Central Board of the RBI by passing a law in Parliament. **Reasons for the Decision:** *Interpreting Section 26(2) of the RBI Act* • The Supreme Court held that the scope of the term "any series" used in Section 26(2) of the RBI Act had to be interpreted in light of the special nature and objectives of the RBI Act. The RBI was created with the purpose of issuing bank notes and currency on behalf of the Union Government and this power was conferred on the RBI by the Parliament of India under the RBI Act. Since Parliament itself conferred powers on the Union Government to act on recommendations of the Central Board of RBI under the RBI Act, the Court held that such powers cannot be interpreted in a restrictive manner. This meant that the term "any series" of a denomination in Section 26(2) can mean "all series" of a denomination. Thus, the Union Government, on the recommendation from the Central Board of the RBI could demonetise all series of ?500 and ?1,000 bank notes. In her dissent, Justice Nagarathna held that Section 26(2) of the RBI Act was limited only to proposals for demonetisation initiated by the Central Board of the RBI. On examining the document records submitted by the Union Government and the RBI, Justice Nagarathna found that the demonetisation proposal was initiated by the Union Government and not by the Central Board of the RBI. Since the procedure prescribed in Section 26(2) of the RBI Act was not followed, she held that the Demonetisation Notification was unlawful. Moreover, considering the serious economic ramifications of such an exercise, such demonetisation must have been carried out by legislation and not by an executive action like the Demonetisation Notification. *Issue of excessive delegation* • The Petitioners argued that if the term "any series" used in Section 26(2) of the RBI Act allowed the Union Government to demonetise all series of a denomination, this would give the Union Government unguided, arbitrary and excessive powers. The Supreme Court ruled that a mere possibility of abuse of delegated powers is not a ground to strike down a law. The Court stated that Section 26(2) of the RBI Act had an in-built safeguard since the decision to demonetise had to be taken on the recommendation of the Central Board of the RBI. Thus, the Court held that Section 26(2) did not suffer from the problem of excessive delegation.

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		In her dissenting opinion, Justice Nagarathna stated that under Section 26(2) of the RBI Act, only the Central Board of RBI could initiate a proposal for demonetisation but it cannot do so for "all" series or "all" denominations of bank notes as that would lead to granting excessive delegated powers to the RBI. *Proportionality and reasonableness* • The Petitioners argued that the drastic measure of demonetisation, which caused hardships to citizens, could have been avoided if the Government adopted alternative measures that caused less hardship, and so, the Demonetisation Notification was disproportionate to the aim it sought to achieve. The Supreme Court held that the policy of demonetisation fulfilled the test of proportionality as there was a direct and rationale nexus between the objectives sought to be achieved (curbing fake currency and financing of terrorism to ensure India's economic security) and the measures taken (the demonetisation of ?500 and ?1,000 notes). • The Petitioners had also argued that the time period provided to exchange the demonetised bank notes for new ones was unreasonable. The Supreme Court held that the fifty-two days (9 November 2016 to 30 December 2016) that had been provided for the exchange of notes was not unreasonable considering the case of *Jayantilal Ratanchand Shah v. Reserve Bank of India* [(1996) 9 SCC 650]. In that case, the Supreme Court had upheld the demonetisation of bank notes in 1978 where only three days were provided for exchanging the demonetised notes and noted that providing a longer period would undermine the object of demonetisation. On this basis, the Court held that the period of fifty-two days given in the 2016 Notification for exchange of demonetised notes was not unreasonable. *Independent powers of RBI under 2017 Act* • It was also submitted by the Petitioners that the RBI had independent powers under Section 4(2) of the Bank Notes Act to accept demonetised notes even after the period specified in the 2016 Notification, provided that the reasons for failure to deposit the notes were satisfactory. The Supreme Court, however, read Section 4(2) in the context of Sections 3 and 4(1) of the Bank Notes Act. Section 3 of the Act stated that the demonetised bank notes ceased to have the guarantee of the Union Government and were no longer liabilities of the RBI while Section 4(1) allowed for exchange of the demonetised bank notes by citizens of India as well as other classes of persons as per conditions specified by the Union Government. Thus, the Court held that the Bank Notes Act was an integrated scheme and any exchange of the demonetised bank notes must follow the conditions specified by the Union Government and that the RBI had no independent power to accept demonetised notes. View Judgment