

100

**LANDMARK
JUDGMENT IN
CONSTITUTIONAL
LAW**

*Judgments that have evolved the
Constitution as we know it*



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100 Landmark Judgment in Constitutional Law

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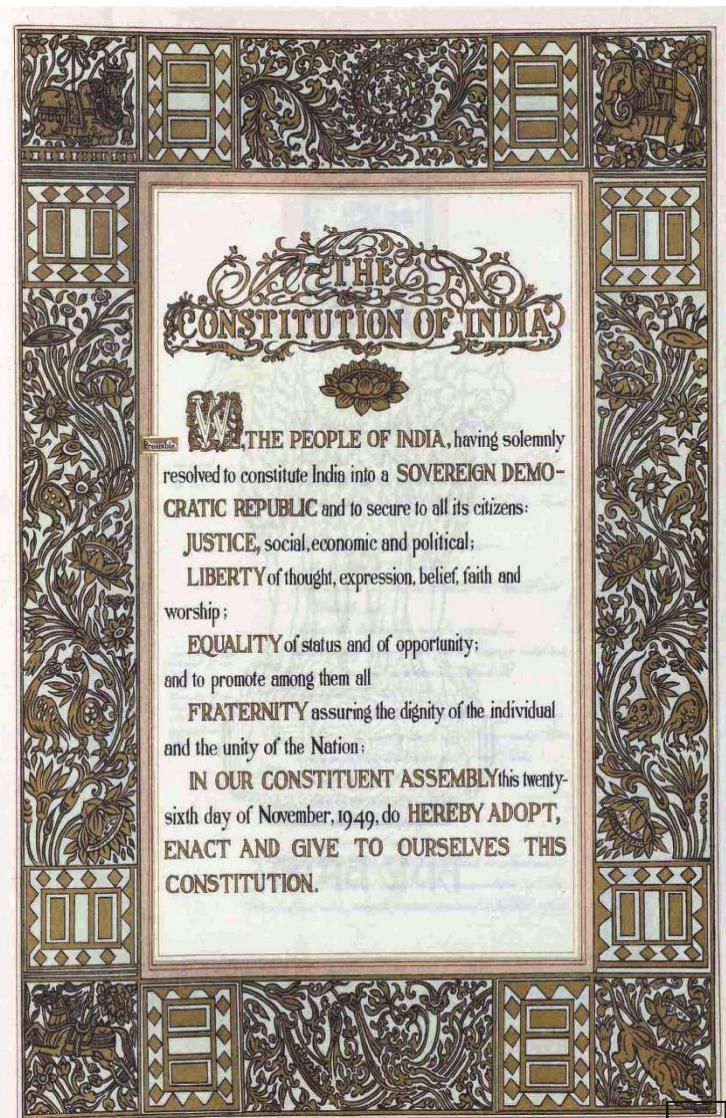
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Preamble of the Constitution



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Preamble

Topic: Preamble As Part Of The Constitution

Name of the Case: Berubari Union Case, AIR 1960 SC 845

Bench: Justice B. Sinha, Justice A.S. Shah, Justice K. Dasgupta, Justice K.S. Rao, Justice M. Hidayatullah, Justice P. Gajendragadkar, Justice S Das

Fact of the case: In the Berubari Union Case, the President consulted with the Supreme Court of India regarding the Nehru-Noon Agreement that was signed between the Prime Minister of India and the Prime Minister of Pakistan. The case concerned the disputed territory of Berubari, which was located on the border between India and Pakistan. The dispute was that the West Bengal State Government did not want to give any territory of Berubari to Pakistan.

Ratio: The Supreme Court said that the preamble shows the general purposes behind several provisions in the Constitution, and is thus a key to the minds of the maker of the Constitution. Further, where the term used in any Article are ambiguous or capable of more than one meaning, some assistance at interpretation may be taken from objectives enshrined in the preamble. Despite this recognition of the significance of the preamble, the Supreme Court specifically opined that the preamble is not a part of the Constitution.

Second Case Developed: Kesavananda Bharati V. State of Kerala, AIR 1973 SC 1461

Bench (Majority) Chief Justice Sikri, Justice Hedge, Justice Mukherjea, Justice Shelat, Justice Grover, Justice Jagmohan Reddy, Justice Khanna

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(Dissent) Justice Ray, Justice Palekar, Justice Mathew, Justice Beg, Justice Dwivedi, Justice Chandrachud

Fact of the case: The Parliament reacted to the Supreme Court judgement in Golak Nath Case (1967) by enacting the 24th Amendment act 1971. This Act amended Article 13 and Article 368. It stated that the Parliament has power to address or take away any part of the Fundamental Right as per Article 368 and such an act will not be a law under the meaning of Article 13.

Ratio: The Supreme Court rejected the earlier opinion and held that preamble is a part of Constitution. It observed that the preamble is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble.

The ratio was strengthened in **LIC of India case (1995)** wherein the Supreme Court again held that preamble is an integral part of the Constitution.

Topic (derived from Berubari and Kesavanand Bharti Case) : Whether preamble can be amended under Article 368 of the Constitution?

Ratio: The Supreme Court held that since preamble is a part of Constitution, the court stated that the opinion tendered by it in the Beru Bari Union (1960) in this regard was wrong, and held that preamble can be amended, subject to the condition that no amendment is done to the ‘basic structure of the Constitution’. In other words, the court held that the basic element or the fundamental feature of the Constitution as content in the preamble cannot be altered by an amendment under Article 368.

Part I

The Union and its Territory (Article 1 – 4)

Topic: Reorganisation Of States (Article 3)

Name of the case: Babu Lal Parate v. State of Bombay, AIR 1960 SC 51

Bench: Chief Justice Sudhi Ranjan Das, Justice SK Das, Justice AK Sarkar, Justice KN Wanchoo, Justice M Hidayatullah

Ratio: The exercise of power by Parliament under Article 3 is subject to following condition:

1. A bill for any such purpose cannot be introduced in a house of Parliament except on the recommendation of the President.
2. If the bill affects the area, name or boundaries of a state, then before recommending its consideration to the Parliament, the president has to refer the same to the state legislature concerned for expressing its view on it within such time as he may fix.

The term stated in Article 3 includes a Union Territory, but in the case of Union Territory, no reference need to be made to the concerned legislature to ascertain its view and Parliament cannot take any action in the like manner.

The purpose of the provision is to give an opportunity to the state legislature concerned to express its view on the proposal contained in the bill. Parliament is in no way bound by these views.

All that is contemplated is that Parliament should have before it the view of the State Legislature affected by the proposal contained in the bill, but the Parliament is free to deal with the matter in any manner it thinks fit and accept or reject what state

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legislature says. Parliament is not bound to accept or act upon the views of the state legislature.

If the state legislature fails to express his views within the stipulated time, Parliament is free to proceed with the matter as it likes. If once a bill has been referred to the state legislature it can later be amended by Parliament and no fresh reference to the state legislature is required to ascertain its view on the proposed amendments.

Topic: Does The Power Of Parliament To Diminish The Area Of State (Under Article 3) Include Also The Power To Cede Indian Territory To A Foreign Country?

Reference to Beru Bari case (1960)

Judgment: It was held that the power of Parliament to diminish the area of a state under Article 3 does not cover cessation of Indian Territory to a foreign country. Hence, Indian territory can be ceded to a foreign state only by amending the Constitution under Article 368.

Ratio altered: Maganbhai v. UOI, AIR 1969 SC 783

Ratio: The Supreme Court held that Article 3, broadly stated, deals with the internal adjustment of the territories of constituent states of India and Union. The act of the Parliament to diminish any area of any state if it concerns to taking out a part of the area of state and adding it to another state; the area diminished from one state must continue to be the part of India and it does not contemplate cessation of national Territory in favour of foreign country. Thus, the territory can be ceded to a foreign country only by enacting a formal amendment of the

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Constitution under Article 368 to alter the first schedule to the Constitution.

It was further held that a constitutional amendment is necessary in a case where the de jure and de facto Indian Territory is ceded to a foreign country. But settlement of a boundary dispute between India and other country stands on a different footing. The settlement of a boundary dispute cannot be held to a cessation of territory. This subject matter exclusively falls under the domain of executive.

Part II

Citizenship (Article 5 – 11)

Topic: Citizenship By Domicile. (Article 5)

Name of the Case: Pradeep Jain v. UOI, 1984 AIR SC 1420

Issue: Whether admission to a medical college or any other institution of higher learning situated in a state could be confined to those who had their domicile within the State or who were resident within the state for a specified number of years or can any reservation in admission can be made for them so as to give them precedence over those who does not possess domicile within the state?

Bench: Justice PN Bhagwati, Justice Amarendra Nath Sen and Justice Rangnath Mishra

Ratio: The Supreme Court discarded the idea of State domicile. The court has asserted that there is only one domicile, namely domicile in India. Article 5 recognizes only one domicile, that is, domicile in the territory of India. The legal system which prevails throughout the territory of India is one single individual system.

It would be absurd to suggest that the legal system varies from state to state or that the legal system of the state is different from the legal system of Union of India, merely because with respect to the subjects within their legislative competence, the state have power to make laws. The concept of domicile has no relevance to the applicability of municipal law, whether made by Union of India or by the States. It would not, therefore, be right to say that a citizen of India is domiciled in one state or another, forming part of Union of India.

When a person who is permanently resident in one state goes to another state with intention to reside there permanently

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indefinitely, his domicile does not undergo any changes: he does not acquire a new domicile of choice. His domicile remain the same, namely Indian domicile. The court held that to think in the term of state domicile will be highly detrimental to the concept of unity and integrity of India.

Part III

Fundamental Rights (Article 12 – 35)

Topic: Development of The Concept Of State Under Article 12

Name of the case: Rajasthan State Electricity Board versus Mohanlal, AIR 1967 SC 1857

Bench: CJI K. Subba Rao, Justice J.C. Shah, Justice J.M. Shelat, Justice Vashistha Bhargava, Justice G.K. Mitter

Issue:

Whether The Electricity Board be considered under the definition of “State” under Article 12 of the Indian Constitution?

Ratio: The term “other authorities” is broad enough to embrace any authority established by legislation and operating inside India’s territory or under the supervision of the Indian government. There was no need to limit this interpretation in the context of Article 12 of the Constitution when the words “other authorities” are used. Hence, the Board was clearly an authority under the definition of ‘State’ in Article 12 of the Indian Constitution.

Name of the Case: Ajay Hasia v. Khalid Mujib, AIR 1981 SC 487

Bench: CJI Y.V. Chandrachud, Justice P.N. Bhagwati, Justice V.R. Krishna Iyer, Justice Syed Murtuza Fazal Ali, Justice A.D. Kaushal

Ratio: The Supreme Court laid down following test to judge whether a body is an instrumentality of the government or not:

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- a) If the government owns the entire share capital of the body, it strongly suggests that the body is an instrument of the government.
 - b) When the government provides financial aid that covers nearly all of the body's expenses, it may imply that the body possesses a governmental character.
 - c) It's a relevant factor if the body has a monopoly status granted or protected by the state.
 - d) The presence of profound and widespread state control may indicate that the body is a state instrument.
 - e) If the body's functions are of public importance and closely connected to governmental functions, it is a relevant factor to consider the body as an instrumentality of the government.
-

Mere regulatory control whether under schedule or otherwise would not serve to make a body a part of the state.

Concept developed with *Rupa Ashok Hurra vs. Ashok Hurra, W.P. (c) 509 of 1997*

Bench: Chief Justice of India S.P. Bharucha, Justice S.S.M. Quadri, Justice U.C. Banerjee, Justice S.N. Variava, Justice S.V. Patil

Facts:

The facts of the case involve a matrimonial discord between a husband and a wife who have already been separated from each other for years. Later, the woman withdrew her consent which was given through divorce with mutual consent, which resulted in the case going to the Supreme Court.

Issue:

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Whether an aggrieved person, after the dismissal of a review petition, possesses entitlement to relief against a final judgment either under Article 32 of the Constitution or through alternative means?

Ratio: The Supreme Court in its decision agreed that it could check its own decisions under a curative petition if there were obvious mistakes. They said that the power to review decisions was really important, and it was following Article 137 of the Indian Constitution.

Topic: Personal Law (Article 13)

Name of the case: P.E. Mathew v. Union of India, AIR 1999 Ker 345

Issue: weather personal law falls under the scope of Article 13 of the Constitution?

Bench Justice A Lakshmanan and Justice KN Kurup (Kerala High Court)

Fact of the Case: Section 17 of the Indian Divorce Act, a central pre-constitutional law, was challenged as arbitrary, discriminatory and violative of Article 14.

Ratio: It was held that the present laws are outside the scope of Article 13 (1) as they are not defined in Article 13 (3) (b).

The judgement of Kerala High Court was based on the judgement of Supreme Court in Ahmedabad Women Action Group v. Union of India.

Topic: Doctrine Of Eclipse

Name of the Case: Bhikaji v. State of Madhya Pradesh, AIR 1955 SC 781

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Bench: Justice S.R. Das, Justice N.H. Bhagwati, Justice T.L. Aiyar, Justice Imam Venkatarama, Justice Jaffer Sayeed, Justice N. Chandrasekhara Aiyar

Ratio: The Doctrine of Eclipse is a legal principle in India that deals with the relationship between fundamental rights and existing laws that may be inconsistent with them. The Doctrine of Eclipse is addressed in Article 13(1) of the Indian Constitution.

According to the doctrine of the eclipse, if a law conflicts with the fundamental rights guaranteed by the Indian Constitution, it does not automatically become null and void. Instead, it is considered in a state of eclipse or overshadowed by fundamental rights.

If a statute is inconsistent with the provisions of Part III, it shall be deemed void. However, this does not render the entire law null and void under this doctrine; only the portion inconsistent with Part III of the Indian Constitution becomes void. The law is not abolished entirely but remains dormant, subject to the discretion of the Parliament.

Topic: Doctrine Of Severability

Name of the case: RMDC v. UOI, AIR 1957 SC 628

Bench: CJI Sudhi Ranjan Das, Justice T.L. Aiyar, Justice Venkatarama, Justice P. Bhuvneshwar, Justice S. K. Das, Justice P.B. Gajendragadkar

Ratio: The Supreme Court has explained the doctrine as follows;

“When a legislature whose authority subject to limitations aforesaid enacts a law which is wholly in excess of its powers,

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it is in itself void and must be completely ignored. But where the legislation falls in part within the area allotted to it and in part outside it, it is undoubtedly void as to the latter; but does it on account become necessarily void in its entirety? The answer to this question must depend on whether what is valid could be separated from what is invalid, and that is a question which has to be decided by court on a consideration of the provision of the act."

Further, based on the said judgement, the Supreme Court in **Motor General Traders Case 1984**, laid down following provisions as regard to the doctrine of severability:

- a. The intention of the legislature is the determining factor in determining whether the valid parts of the statute are separable from the invalid parts. The test is whether the legislature would have enacted the valid parts had it known the rest of the parts are invalid.
- b. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, invalidity of a part must result in the invalidity of the act in its entirety.
- c. On the other hand, if there are some distinct and separate part after removing what is invalid, what survives can stand independently and is workable, the portion of which remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest had become unenforceable.
- d. Even when the valid provisions are distinct and separate from the invalid provisions, but if they form part of a single statue which is intended to operate as a whole, then invalidity of a part will result in the failure of the whole.

- e. Likewise, though the valid and invalid parts of the statute are independent and may not form part of the scheme, but what is left after omitting the invalid person is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.
 - f. If after the invalid part is expunged from the statute, what remains cannot be enforced without making alteration and modifications therein, then the whole of it must be struck down as void.
 - g. The severability of the valid and invalid provisions of a statute does not depend on whether the provisions are in the same section or different sections; it is not the form, but the substance of the matter that is material, and that has to be ascertained on the examination of act as a whole.
-

Topic: Doctrine Of Waiver

Name of the case: **Basheshwar Nath v. IT Commissioner,**
AIR 1959 SC 149

Bench: Justice Sudhi Ranjan Das, Justice N.H. Bhagwati, Justice S.K. Das, Justice J.L. Kapur and Justice K. Subbarao

Fact of the Case: The petitioner's case was referred to income tax investigation commissioner under Section 5 (1) of the act, after the commission had decided upon the amount of disputed income, the petitioner on 19 May 1954, agreed as a settlement to pay in monthly installments over three lakhs by the way of tax and penalty.

In 1955, the Supreme Court declared Section 5 (1) ultra vires Article 14. The petitioner thereupon challenged the settlement between him and the commissioner.

Ratio:

Justice Sudhi Ranjan Das emphasized that under Article 14 of the Indian Constitution, no individual or state has the authority to waive any breach of the State's obligations.

The SC deemed Section 5 of the act discriminatory and unenforceable. Justice N.H. Bhagwati noted the distinction between statutory, constitutional, and fundamental rights.

While constitutional rights may be waived by citizens as they are granted by the Constitution, fundamental rights are inherently different and immune from legislative interference, thus cannot be waived by citizens.

Topic: Evolution Of Concept Of Equality (Article 14)

Name of the case: E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555

Bench: Justice Bhagwati, Justice Chandrachud, Justice Krishna Iyer

Facts of the Case: The petitioner filed a petition under Article 32 of the Constitution challenging the validity of his transfer from the post of Chief Secretary, first to the post of deputy Chairman State Planning Commission and then to the post of Officer on Special Duty. The petition was filed on the ground that the said order was made in *mala fide* exercise of power, not on account of exigencies of administration or public service, but because the second respondent was annoyed with the petitioner on the account of various incidents referred to in the petition and wanted him out of the way.

Ratio: Equality is a dynamic concept, it cannot be cribbed, cabined and confined within traditional doctrinaire limits. From

positive point of view, equality is antithetic to arbitrariness. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14.

Topic: Equality Before Law And Equal Protection Of Law (Article 14)

Name of the Case: Siri Srinivasa Theatre v. Government of Tamil Nadu, AIR 1992 SC

Bench: Justice B.P. Jeevan Reddy and Justice M.N. Venkatachelliah

Ratio: The Supreme Court has explained that the expression equality before law and equal protection of law do not mean the same thing even if there may be much in common between them.

Equality before law is a dynamic concept having many facets. One facet is that there shall be no privileged person or class and that none shall be above the law. Another facet is the obligation upon the state to bring about, through the machinery of law, more equal society. For, "*equality before law can be predicted meaningfully only in equal society.*"

Topic: Administrative Discretion And Article 14

Name of the case: BB Rajwanshi v. State of Uttar Pradesh, AIR 1988 SC 1089

Bench: Justice ES Venkataramiah

Fact of the Case: Section 6 (4) of the UP Industrial Dispute Act 1947, authorized the State Government to remit an order of

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a labour tribunal for reconsideration of adjudicating authority and that authority was to submit the award to the government. The Supreme Court noted that the section did not require government to hear the parties before remitting the award to the concerned adjudicating authority; The government was not required to give reason for remitting the award and was not required to inform 30 days prior to the date on which it was to reconsider the award.

Ratio: The Supreme Court declared the said provision under UP Industrial Disputes Act, 1947 as unconstitutional under Article 14 of the Constitution. It was observed that the provision cannot be in the absence of necessary statutory guidelines and that the proceedings before the labour court or the industrial tribunal is in the nature of *quasi-judicial* proceeding where parties have adequate opportunity to state their respective cases, to lead evidence and make all their submission.

Topic: Right Of Hearing And Article 14

Name of the case: State of Maharashtra v. Kamal, AIR 1985 SC 119

Bench: Chief Justice Y.V. Chandrachud, Justice Syed Murtuza Fazalali, Justice V.D. Tulzapurkar, Justice O. Chinnappa Reddy, justice A. Varadarajan

Fact of the case: The Maharashtra Legislature elected an act to provide for summary eviction of persons unauthorized and occupying vacant lands in urban areas. The act gave power to an authorized authority to order vacation of any land by its occupier.

Ratio: The Supreme Court declared the Act invalid under Article 14 on the ground that it laid down new guidelines to control the exercise of discretion by the concerned authority. The Act prescribed no procedure for concerned authority to follow before declaring any land as ‘vacant land’ for the purpose of the act. The Supreme Court emphasized that the act conferred ‘uncontrolled and arbitrary power’ on the authority and, therefore, in the matter covered by the act, a hearing procedure was of essence of the matter.

Topic: Comparative Scope Of Article 15(4) And Article 16(4)

Name of the case: EV Chinnaiyan v. State of AP, (2005) 1 SCC 394

Bench: Justice N. Santosh Hedge, Justice S.N. Variava, Justice B.P. Singh, Justice H.K. Sema, Justice S.B. Sinha

Fact of the case: The validity of Andhra Pradesh Schedule Caste (Rationalisation of Reservation) Act, 2000 was challenged before the High Court of Andhra Pradesh which was dismissed by majority of five judge bench.

The State of Andhra Pradesh appointed a commission headed by Justice Ramachandra Raju to identify the group among the Schedule Caste found in the list prepared under Article 341 of the Constitution of India by the President, who had failed to secure the benefit of education provided for Schedule Caste in the state in admission to professional colleges and appointments to services in the state.

Ratio: The scope of Article 15 (4) is wider than Article 16 (4). Article 15 (4) covers within eight several kinds of positive action program in addition to reservation. However, reservation

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of posts and appointments must be within reasonable limits, which is the maximum of 50%. The same limit applies to Article 15 (3). Reservation to a backward class is not a constitutional mandate, but a prerogative of the state.

The provisions for Article 330 (1) (b) and (c) shows that the Constitution has treated Scheduled Tribes in the autonomous district of Assam as a separate category distinct from all other scheduled tribes. This clearly indicates that when the Constitution makers wanted to make a sub-classification of scheduled Tribes, they have themselves made it in the text of the Constitution itself and have not empowered any legislature or government to make such a sub-classification.

It was also observed that Article 341 indicates that there can be only one list of Schedule Caste in regard to a state and that list should include all specified castes, races or tribes or part or groups notified in that presidential list. In the entire Constitution whenever reference has been made to “Schedule Castes” it refers only to the list prepared by President under Article 341 and there is no reference to any sub-classification or division in the state list except, maybe, for the limited purpose of Article 330. Therefore, it is clear that the Constitution intended all the castes including the subcastes, races and tribes mentioned in the list to be a member of one group for the purpose of Constitution and in this group cannot be subdivided for any purpose. The Constitution intended that all the castes included in the schedule under Article 341 would be deemed to be one class of persons.

Topic: Socially And Educationally Backward Classes Under Article 15 (4)

Name of the case: Balaji v. State of Mysore, AIR 1963 SC 649

Bench: Chief Justice Bhuvneshwar Sinha, Justice PB Gajendragadkar, Justice K.N. Wanchoo, Justice K.C. Gupta, Justice J.C. Shah

Fact of the Case: After the enactment of First Constitutional Amendment 1951, Balaji was the first case which came up before Supreme Court.

And order of the Mysore Government issued under Article 15 (4) reserve seats for admission to the state medical and engineering colleges for backward class and more backward classes. This was in addition to the reservation of seats for the Schedule Castes (15%) and for the Scheduled Tribe (3%). Backward and more backward classes were designated on the basis of ‘caste’ and ‘communities’.

Ratio: The Supreme Court invalidated the order based on following grounds:

1. The first facet in the Mysore order was that it was based solely on caste without regard to other relevant factors and this was not permissible under Article 15 (4). Though caste in relation to Hindu could be a relevant factor to consider in determining the social backwardness of a class of citizens, it must not be made the sole and dominant test in that behalf. Christians, Jains and Muslims do not believe in the caste system and, therefore, the test of the caste could not be applied to them. In as much as identification of all backward classes under the impugned order had been made solely on the basis of caste, the order was bad.
2. Secondly, the test adopted by the state to measure educational backwardness was the basis of the average of student population in the last three highest school classes of all higher schools in the state in relation to thousands citizen of that community. This average for the whole state was 6.9 per thousand. The court stated that for women the

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test applied was rational and permissible to judge educational backwardness, it was not validly applied. Only community falling below the state average could properly be regarded as backward, but not a community which came near the average.

3. Thirdly, the court declared that Article 15 (4) does not envisage classification between backward and more backward classes as was made by the Mysore order. Article 15 (4) authorizes a special provision being made for backward classes and not for such classes as were less advanced in the most Advanced classes in the state. By dropping the techniques of classifying communities into backward and more backward classes, 90% of the total population had been treated as backward. The order, in effect, sought to divide the state population into the most advanced and rest, but put the later into two categories - backward and more backward- and the classification of two categories is not envisaged by Article 15 (4).

“The interests of weaker Sections of society which are a first charge on the state and the Centre have to be adjusted with interest of community as a whole. The adjustment of these computing claims is undoubtedly difficult matter, but if under the guise of making a special provision, state reserves practically all the seats available in the college, that clearly would be subverting the object of Article 15 (4).” The state had “*to approach its task objectively and in a rational manner*”.

The court further drew **distinction between caste and class**. An attempt at finding a new basis for asserting social and educational backwardness in a place of caste is reflected in the Balaji decision.

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Further, the court also ruled that reservation under Article 15 (4) should be reasonable. It should not be such as to defeat or nullify the main rule of equality instrument in Article 15 (1). While it would not be possible to predicate, it was observed that the permissible percentage of reservation ought to be less than 50%, “how much less than 50% would depend upon the relevant prevailing circumstances in each case”. Also, a provision under Article 15 (4) need not be in the form of law, it could as well be made by an executive order.

Topic: Equal Pay For Equal Work Under Article 16

Name of the Case: State of Madhya Pradesh v. Pramod Bhartia, AIR 1986 SC 1571

Bench: Justice K Singh, Justice N Kasliwal and Justice BJ Reddy

Fact of the Case: The lecturers were working in higher secondary school in Madhya Pradesh claimed parity in pay with lecturers working in technical schools. The qualification prescribed for, and the service condition of, both group of lecturers is the same but the function and responsibility of both the categories of lecturer were qualitatively speaking similar.

Ratio: The Supreme Court has explained the doctrine of equal pay for equal work is implicit in the doctrine of equality enshrined in Article 14, and flows from it. The rule is as much a part of Article 14 as it is of Article 16 (1). The doctrine is also stated in Article 30 (1), a directive principle, which advises the state to direct its policy towards securing equal pay for equal work for both men and women.

The doctrine of equal pay for equal work would apply on the premises of similar work but it does not mean that there should

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be complete identity of all respects. If the two classes of person do some work under some employer, with some responsibility, under similar working conditions, the doctrine of equal pay for equal work would apply and it would not be open to the state to discriminate one class with other in paying salary.

However, the court still refused to concede to the lecturer in higher secondary schools the same pay as the lecturer in technical school. Since the plea of equal pay for equal work has to be explained with reference to Article 14, the onus is upon the petitioner who established their right to equal pay, or the plea of discrimination, as the case maybe. In the instant case, the petitioner failed to discharge this onus.

Topic: The Indra Sawhney Case Popularly Known As The Mandal Commission Case [Article 16 (4)]

Name of the Case: **Indra Sawhney v. Union of India, AIR 1993 SC 477**

Bench: Justice M Kania, Justice M Venkatachaliah, Justice S Pandian, Justice T Ahmadi, Justice K Singh, Justice P Sawant, Justice R Sahai, Justice BJ Reddy

Fact up the Case: The Mandal commission was appointed by the Government of India in terms of Article 340 of the Constitution in 1979 to investigate the condition of Socially and Educationally Backward Classes. One of the major recommendations by the commission was that, beside the Schedule Caste and Schedule Tribe, for Other Backward Classes which constitute nearly 52% component of the population, 27% jobs must be reserved so that the total reservation for all, Schedule Castes, scheduled Tribes and other backward classes amounts to 50%.

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No action was taken on the basis of Mandal report for long after it was submitted, except that it was discussed in the House of Parliament twice, once in 1982 and again in 1983. On August 1990, the VP Singh government at the Centre issued an official memorandum accepting the Mandal commission recommendation and announcing 27% reservation for Socially and Educationally Backward Classes in vacancies in civil force and services under government of India.

The constitutional validity of the said memorandum was questioned through several writ petition.

Ratio: The Supreme Court after referring to various of its previous decisions under Article 15 and 16 of the Constitution of India and also taking notes from the decision of Supreme Court on racial discrimination, made following observations:

1. The nature contemplated by Article 16 (4) can be provided not only by Parliament or legislature but also by executive to administrative instruction in respect of central and state services and by the local bodies and other authority as contemplated by Article 12, in respect of their services.
2. The provision made by executive order under Article 16 (4) becomes effective and enforceable by itself without being elected into law by the legislature.
3. The court has reiterated the view, expressed by it in ***Thomas case***, that Article 16 (1) permits classification for attainment of equality of opportunity as sought by Article 16 (1) itself. Article 16 (1) is a facet of Article 14. Article 14 permits reasonable classification so does Article 16 (1). A classification may involve reservation of seats or vacancies, as the case maybe. In other words, under Article 16 (1), appointments and/or post can be reserved in favour of a class. Further, Article 16 (4) is not an exception to Article 16 (1), but only instance of classification implicit

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and permitted by Article 16 (1). Even without Article 16 (4), the state could have classified backward class of citizens in a separate category for special treatment in the nature of reservation of post and appointments in government services. Article 16 (4) merely puts the matter beyond any shadow of doubt in specific terms.

4. Article 16 (4) permits reservation in favour of any “backward classes of citizens”. Backward classes having been classified by the Constitution itself as a class deserving special treatment and the Constitution having itself specified the nature of special treatment, it should be presumed that no further classification or special treatment is permissible in favour of apart from or outside Article 16 (4).
5. Even under Article 16 (1), reservation cannot be made on the basis of economic criterion alone.
6. What is the meaning of expression backward class of citizens used in Article 16 (4)? What does the expression signify and how should such class be identified? The assent of Article 16 (4) is on social backwardness. From a review of the previous case law in the area, the court has concluded that the judicial opinion emphasise the integral connection between caste, occupation, poverty and social backwardness. Social, educational and economic backwardness closely intertwined in the Indian context. As regards identification or backward classes, caste may be used as a criterion because caste often is a social class in India. But caste cannot be the sole criterion for reservation. Reservation is not being made under Article 16 (4) in favour of a caste but a backward class. Once a caste satisfy the criterion of backwardness, it becomes a backward class for purpose of Article 16 (4). Besides caste there may be

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other communities, groups, classes and denomination which may qualify as backward class of citizens.

7. Backwardness under Article 16 (4) need not be social as well as educational as in the case under Article 15 (4).
8. The court has left the task of actually identifying backward classes to the commission to be appointed by government, this body would evolve a proper and relevant criteria and test the several groups, caste, classes and section of people against that criteria.
9. A very important recommendation made by the court is that the “creamy layer”, the socially advanced member of a backward class, should be excluded from the benefit of reservation. Such exclusion would benefit the truly backward people and thus, more appropriately serve the purpose of Article 16 (4). But the real difficulty is how and where to draw the line? For, while drawing the line, it should be ensured that it does not result in taking away with one hand what is given by other.
10. Not only pseudo-class be a backward class for merit in reservation, it should also be in adequately presented in the services under the state. This matter lies within subjective satisfaction of state under Article 16(4).
11. The total reservation cannot exceed 50% in any one year.
12. Further, if a member belonging to, say, Scheduled Caste get selected in open competition on the basis of his own merit, he will not be counted against the quota reserved for schedule caste, he will be treated as open competition candidates.
13. The court has divided the total reservation of 50% into vertical and horizontal reservation. The reservation in favour of Scheduled Caste, Scheduled Tribes and Other

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Backward Classes under Article 16 (4) may be called vertical reservation where is the service in favor of physically handicapped under Article 16 (1) can be referred to as horizontal reservation. Horizontal reservation cut across the vertical reservation and is called interlocking reservation.

14. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherit in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of condition peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and special case made out.
15. A year is to be taken as a unit for the purpose of applying the 50% rule.
16. A significant point made by the court is not to apply the rule of reservation to promotion.
17. For the reserved category in-service, minimum standard can be prescribed.
18. For certain services and certain posts, it may not be advisable to apply the rule of reservation.
19. It is open to the government to notify which class among the several designated OBC are more backward, are appropriate of reserved job vacancies or posts among backward and more backward.
20. The court has rejected the reservation or 10% post in favour of other economically backward section of people who are not covered by any existing scheme of reservation.

21. The court has directed that there ought to be established a permanent body- Commission or tribunal, both at the Centre and in the state, which can look into complaints of wrong inclusion or wrong non-inclusion of groups, classes and sections in the list of OBCs.
 22. There should be a periodic revision of list of OBCs such as to exclude those who have ceased to be backward or to include new classes.
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**Topic: Reasonable Restriction On Fundamental Right
Guaranteed By Article 19 (1) (A) To (G)**

Name of the Case: Papnasam Labour Union v. Madura Coats Limited, AIR 1995 SC 2200

Bench: Justice GN Ray and Justice BL Hansaria

Ratio: The Supreme Court has stated that the following principles and guidelines should be kept in view while considering the constitutionality of a statutory provision imposing restriction on our Fundamental Right guaranteed by Article 19 (1) (a) to (g) when challenged on the ground of unreasonableness of the restriction imposed by it:

1. The restriction must not be arbitrary or of an excessive nature so as to go beyond the requirement of felt need of the society and object sought to be achieved.
2. There must be a direct and proximity access of a reasonable connection between restriction imposed and object sought to be achieved.
3. No abstract or fixed principle can be laid down which may have universal application in all cases. Such consideration

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on the question of qualify of reasonableness, therefore, is expected to vary from cases to cases.

4. To protect constitutional provision, the court should be alive to the felt needs of society and complex issues facing the people which the legislature intends to solve through effective legislation.
5. In appreciating such problems and felt need of society judicial approach must necessarily be dynamic, pragmatic and elastic.
6. It is imperative that for consideration of reasonableness of restriction imposed by a statute, the court should examine whether the social control as envisaged in Article 19 is being effectuated by restriction imposed on the Fundamental Right.
7. The rights granted to a citizen by Article 19 do not confer any absolute or unconditional right. Each right is subject to reasonable restriction which the legislature may impose in public interest. It is therefore necessary to examine whether such restriction is meant to protect social welfare satisfying the need of prevailing social values.
8. The reasonableness has got to be tested both from the procedural and substantive aspect. It should not be bound by procedural perniciousness or jurisprudence of remedies.
9. How restriction imposed on Fundamental Right s guaranteed by Article 19 must not be arbitrary, unbridled, and uncanalised and excessive and also not unreasonably discriminatory.
10. In judging reasonableness of restriction imposed under Article 19 (6), the court has to bear in mind directive principle of state policy.

11. Ordinarily, any restrictions or imposed which has the effect of promoting effectuating a directive principle can be presumed to be reasonable restriction in public interest.
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**Topic: Right To Receive Information Under Article 19
(1) (A)**

Name of the Case: People's Union of civil liberties v. UOI,
AIR 2003 SC 2363

Bench: Justice K.G. Balakrishnan and Justice P. Venkatarama Reddi

Fact of the Case: The Parliament inserted Section 33 B under the Representation of People (3rd amendment) Act, 2002, which imposes blanket ban on dissemination of information other than that spelt out in a net meant irrespective of the need of hour and the future exigencies and expedites.

Ratio: The Supreme Court dealt freedom of speech and expression provided under Article 19 (1) (a) in a broad expect. The right of citizens to obtain information on matter relating to public acts flow from Fundamental Right enshrined in Article 19 (1) (a). Securing information on the basis of details concerning the candidates contesting for election to Parliament or the state legislature promotes freedom of speech and expression and therefore right to information forms an integral part of Article 19 (1) (a). This right to information is, however, qualitatively different from the right to get information about public affair or the right to receive information through the press and electronic media, though, to a certain extent there may be overlapping.

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Therefore, Section 33 be inserted by the Representation of People (3rd Amendment) Act, 2002, does not pass the test of constitutionality:

firstly for the reason that it imposes blanket ban on dissemination of information other than that is spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and

secondly for the reason that the ban operate despite the fact that the disclosure of information now provided for is deficient and inadequate.

Topic: Limitation On Freedom Of Press

Name of the Case: Bennett Coleman & Company v. UOI, AIR 1973 SC 106

Bench: Chief Justice S.M. Sikri, Justice A.N. Ray, Justice P. Jagmohan Reddy, Justice K.K. Mathew, Justice M.H. Beg

Background: India faces a shortage of indigenous newspaper. Therefore, newsprint has to be imported from foreign countries. Because of the shortage of foreign exchange, quality of newsprint import it was not adequate to meet all requirements. Some restriction, therefore, became necessary on consumption of newspaper. Accordingly, a system of newsprint quota for newspaper was evolved. The actual consumption of newsprint by a newspaper during the year 1970-71 or 1971-72, which ever was less, was taken as the base. For dailies with a circulation up to 10000 copies, 10% increase in the basis entitlement was to be granted, but the newspaper with larger circulation, the increase was to be only 3%. The newspaper with less than 10 pages daily could raise the number of pages

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by 20% subject to ceiling of 10. A few more restriction was imposed on the user of newsprint.

The dominant direction of the policy was to curtail the growth of newspapers which could not increase the number of pages, which areas or periodicity by reducing circulation to meet their requirements even within their admissible quota of newsprint. Therefore, the newsprint policy was challenged in the Supreme Court.

Ratio: The Supreme Court declared the policy unconstitutional. While the government could evolve a policy of allotting newsprint on a fair and equitable basis, keeping in view the interest of small, medium and big newspapers, the government could not, in the attempt of regulating distribution of newsprint, control the growth and circulation of newspapers. In fact, here the newsprint policy became the newspaper control policy. While newsprint quota could be fixed on original basis, post-quota restriction could not be imposed. The newspapers should be left free to determine their pages, circulation and new editions within their fixed quota. The policy of limiting all papers whether a small or large, in English or an Indian language, to 10 pages was held to be discriminatory as it treated unequal as equals. The restriction imposed cut at the very root of guaranteed freedom.

The court stated that the effect and consequence of the impugned policy upon the newspaper is directly controlling the growth and circulation of newspapers. The direct effect is the restriction upon circulation of newspapers. The direct effect is upon the growth of newspapers through pages. The direct effect is that the newspapers are deprived of their area of advertisement. The direct effect is that they are exposed to financial loss and their freedom of speech and expression is infringed.

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The court maintained that the freedom of press embodies the rights of people to speak and express. The freedom of speech and expression is not only in the value of circulation but also in the volume of news and views. The press has right to free publication and their circulation without any obvious restraint on publication. In the word of the Supreme Court, freedom of Press is both qualitative and quantitative. Freedom lies in both circulation and in the content.

Topic: The Extent Of Protection Of Advertisements Under Article 19 (1) (A)

Name of the Case: **Hamdard Dawakhana v. Union of India, AIR 1960 SC 554**

Bench: Chief Justice Bhuvaneswar P Sinha, Justice Syed Zafar Imam, Justice KN Wanchoo, Justice KC Dasgupta

Background: Parliament elected an act with a view to control advertisements of drug in certain cases. The act was challenged on the ground that restriction on advertisements was a direct abridgement of the freedom of speech and expression. The court ruled that the predominant object of act was not merely look up advertisement offering against decency and morality, but also to prevent self-medication which might be used to advocate and spread the evil.

Ratio: The Supreme Court stated that an advertisement, no doubt, is a form of speech, but nature it is to be determined by the object which it seeks to promote. It may amount to an expression of ideas and propagation of human thought and, thus, would fall within the scope of Article 19 (1) (a). But a commercial advertisement having an element of trade and commerce and promoting business as an element of trade and commerce, and it no longer falls within the concept of freedom

of speech for its object is not to propagate any ideas— social, political or economic or to further literature or human thought.

And, advertisement promoting drugs and commodities, the sale of which is not in public interest, could not be regarded as propagating any idea and, as such, could not claim the protection of Article 19 (1) (a).

Topic: Freedom To Assemble And Reasonable Limitation Under Article 19 (1) (B) And 19 (3)

Name of the Case: **Himmat Lal v. Police Commissioner, AIR 1973 SC 87**

Bench: Chief Justice SM Sikri, Justice AN Ray, Justice P Jagmohan Reddy, Justice KK Mathew, Justice M Hameedullah Beg

Fact of the Case: The applicant's application for permission to hold a public meeting on public street was rejected. The applicant filed a writ petition under Article 226 before the High Court Bombay. The High Court felt that the organisation, of which the applicant was an office bearer, had to organise a meeting on the number of occasions and every time the question of applying for permission would arise. However, unsatisfied with the order of High Court, applicant approached Supreme Court.

Ratio: It was held that to confer uncontrolled discretion on administrative officer to regulate freedom of assembly is invalid. Rule of banning holding of public meeting on public street without police permission has been held bad.

In India, citizens had right to hold meeting on public street before the Constitution, subject to control of authority regarding the time and place of the meeting and consideration

of a public order. The rule in question gave no guidance as to the circumstances in which permission to hold meeting could be refused and, therefore, gave arbitrary power.

Topic: Freedom To Form Association And Reasonable Restriction Under Article 19 (1) (C) And 19 (4)

Name of the case: State of Madras v. VG Row, AIR 1952 SC 196

Bench: Chief Justice M Patanjali Sastri, Justice MC Mahajan, Justice BK Mukherjea, Justice Sudhi Ranjan Das, Justice Chandrashekhar

Background: The State Government power to declare an association unlawful on the ground that such association constituted a danger to public peace, or inferred with maintenance of public order, or the administration of the law. The government notification had to specify the grounds for making the order and fix a reasonable period to make a representation against the order. The State Government was, however, not authorised to disclose any facts which it regarded as being against public interest. The government had to place the notification and representation against it before an advisory board. If the board, after considering the material, found that there was no sufficient cause of declaring the Association unlawful, the government was bound to cancel the order.

Ratio: The Supreme Court declared the provision to be unconstitutional, for the test to declare an association unlawful was ‘subjective’ and the factual existence of the ground was not justiciable. The court emphasised that curtailing the right to form Association was fraught with serious potential reaction in religion, political and economic fields. Therefore, the vesting of power in the government to impose restriction on this right

without having the grounds, therefore calls for a judicial enquiry. The existence of one-sided review by an advisory board was no substitute for judicial inquiry.

Topic: Police Surveillance, Freedom Of Movement And Residence Under Article 19 (1) (D) And 19 (5)

Name of the Case: Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295

Bench: Chief Justice Bhubaneswar P Sinha, Justice NR Ayyangar, Justice Syed Jafar Imam, Justice K Subbarao, Justice JC Shah, Justice JR Madholkar

Background: There have been instances of police surveillance of activities of person suspected of criminal habits or tendencies. This includes secret picketing of the house, domiciliary visit at night, and showing the movements of the suspects. The purpose of police evidence is prevention of commission of crime by such person.

The petitioner was charged in a dacoit's case but was released as there was no evidence against him. The police opened a history sheet against him. He was put under surveillance under regulation 236 of UP Police Regulations.

Ratio: The Supreme Court observed that no aspect of police surveillance falls within the scope of Article 19 (1) (d). The purpose of the street picketing was necessary to identify the visitor to suspect so that police might have some idea of activities and this did not affect his right of movement in any material form. Against the validity of showing of the suspects moment, it was argued that if a person suspected that his movements was being watched by police, it would induce him in a psychological inhibition against movement and this would

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infringe Article 19 (1) (d) which should be interpreted as postulating freedom not only from physical, but even psychological, restraints on a person's moment. Rejecting this argument which advocated two broad view of the scope of safeguards granted by Article 19 (1) (d), The court ruled that Article 19 (1) (d) guarantees freedom from physical, direct and tangible restraints; it has no reference to 'mere personal sensitiveness', or 'the imponderable effect on the mind of person which might guide his action in the matter of his moment or locomotion'.

It was further held that domiciliary visit were also held to fall outside the scope of Article 19 (1) (d) as a knock at the door, or rousing a man from his sleep, does not impede or prejudice his locomotion in any manner.

The minority view was that all acts of surveillance result in a close observation of suspect's movement which infringes Article 19 (1) (d). If a man is shadowed, his movement is constricted.

The flaw in the majority view of Kharak Singh that if there was no physical restraint on a person's movement, then reasonableness of police surveillance could not be scrutinized under Article 19 (1) (d).

The flaw in the judgement of Kharak Singh was removed by Supreme Court in *Govind v. State of Madhya Pradesh, AIR 1975 SC 1378*. The court has now held that police surveillance will have to be restricted to such person only against whom the reasonable materials exist to induce the opinion that they show a determination to lead a life of crime. Similarly domiciliary visit and secret picketing by the police would be restricted to the clearest case of danger to community security and should not be restored as a routine follow-up at the end of conviction or release from prison or at the whim of a police officer. The

court gave a warning that these old regulation ‘ill-accord with the essence of personal freedom’, verge ‘perilously near unconstitutionality’ and, therefore, need to be revised.

Topic: The Concept Of Reasonable Restriction Under Article 19 (6)

Name of the case: Krishna Kakkanth v. Govt. of India, AIR 1997 SC 128

Bench: Justice S.N. Ray and Justice BL Hansaria

Fact of the case: The constitutional validity of circular issued by government of Kerala directing that distribution of pamphlets under comprehensive Coconut development program and similar schemes of the agriculture department and in order to streamline implementation of the scheme specify specific roles and responsibility of different agency involved.

It was provided in the circular that pump sets and accessories of farmers toys alone should be supplied and after sales service facility should be provided by suppliers and dealers. It was also indicated that the cost of pump sets and accessories would be supplied at a lesser price than fixed by government.

It was also stated in the circular that RAIDCO was the only cooperative in the State under cooperative department, having a network of branches for distribution of all sorts of pump sets etc.

Ratio: The Supreme Court explained the concept of reasonableness that the reasonableness or restriction is to be determined in an objective manner and from standpoint of the interest of general public and not from distant point of interest of a person upon whom the restrictions are imposed or upon abstract consideration. A restriction cannot be said to be

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unreasonable merely because it is in a given case, it operates harshly. In determining the infringement of the right guaranteed under Article 19 (1) (g), the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time all needs to be determined accordingly.

Thus, restriction to be reasonable must not be arbitrary or excessive in nature so as to go beyond the interest of general public. This formulation involves a balancing of private vis-a-vis public interest. In this process, the courts have learnt towards the consumer interest. Thus, while far-reaching restrictions are imposed on trade and commerce, only rarely will a restriction be held unreasonable.

Topic: Street Hawkers: Freedom To Trade And Commerce And Reasonable Restriction Under Article 19(1)(G) And 19 (6)

Name of the Case: **Sodan Singh v. New Delhi Municipality, AIR 1989 SC 1988 (First Case)**

Bench: Chief Justice ES Venkataramiah, Justice S Natarajan, Justice LM Sharma, Justice ND Ojha, Justice Kuldip Singh

Facts of the Case: The petitioner claimed the right to engage in trading business on the pavements of the road of the city of Delhi. The special leave petitions are against the judgment of Delhi High Court dismissing their claim.

Ratio: The Supreme Court considered the question how far the hawkers have a right to ply their trade on the pavement meant for pedestrians? In the instant case, the court has come to the conclusion that the right to carry on trade or business

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mentioned in Article 19 (1) (g) on the street pavements, if properly regulated, cannot be denied on the ground that the state payments are meant exclusively for pedestrian and cannot be put to any other use. The proper regulation is, however, a necessary condition, for otherwise the very object of laying road would be defeated.

The state holds all public roads and street in the country as a trustee on the behalf of public and a member of the public are entitled as beneficiaries to use them for trading as a matter of right subject to the right of other including pedestrian. The right of hawkers is subject to reasonable restriction under Article 19 (6).

Therefore, the petitioners do have a Fundamental Right to carry on a trade or business of their choice but not to do so at a particular place. The court conceded to the hawkers the right to do business while going from place to place subject to proper regulation in the interest of general convenience of the public.

Second Case in the Row: Sodan Singh v. NDMC, (II) AIR 1992 SC 1153

Ratio: The court has said that every citizen has a right to the use of public street vested in the state as a beneficiary but this right is subject to reasonable restriction as the state may choose to impose. Trading albeit a Fundamental Right under Article 19 (1) (g) of the Constitution but it is subject to reasonable restriction imposed by the virtue of Article 19 (6). This does not include a citizen occupying or squatting on any specific place of his choice on the pavement, regardless of the rights of other, including the pedestrian, to use the pavements. The court has emphasised in this connection: “proper regulation is, however, a necessary condition, for otherwise the very object of laying road would be defeated.”

Topic: Ex-Post-Facto Law Under Article 20

Name of the Case: Rattan Lal v. State of Punjab, AIR 1965 SC 1194

Bench: Justice K. Subba Rao, Justice KC Dasgupta, Justice Raghubar Dayal

Fact of the case: A boy of 16 years of age was found guilty of an offence and was ordered a rigorous imprisonment of six months and also imposed a fine on 31 May 1962. His appeal was dismissed by session judge on 22 September 1962 and by the High Court on 27 September 1962. The Probation of Offenders Act came into force on 1 September 1962. No plea was taken before High Court that the boy should be given the benefit of the Act. Later, he filed an appeal in Supreme Court by special leave and it was argued that he should be given the benefit of the Act. The government argued, on the other hand, that the Act is not retrospective and offence was committed much before the Act came into force.

Ratio: The Supreme Court while setting aside the order of government observed that an ex-post facto law which only mollifies the rigour of a criminal law does not fall within the said prohibition under Article 20 (1). If a particular law makes a provision to that effect, the retrospective in operation, it will be valid.

The court, therefore, ruled that the rule of beneficial construction required that even an ex-post facto law ought to be applied to reduce the punishment of the young offender.

Topic: Autrefois Acquit Under Article 20 (2)

Meaning: When a person has been convicted for an offence by a competent court, the conviction serves as a bar to any further

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proceeding against him for the same offence. The idea is that no one ought to be punished twice for one and the same offence. If a person is indicated again for the same offence in a court, he can plead, as a complete defence, his former acquittal or conviction, or, as it is technically expressed, he can make plea of *Autrefois Acquit*.

Name of the case: State of Bombay v. SL Apte, AIR 1961 SC 578

Bench: Justice N Rajagopala Ayyangar, Justice SK Das, Justice AK Sarkar, Justice JR Madholkar

Facts of the Case: A person was convicted under Section 409, IPC, for criminal breach of trust. Later, he was prosecuted under same fact but for different offence under Section 105 of the Insurance Act.

Ratio: The Supreme Court while explaining the legal provision of Article 20 (2) observed that to operate as a bad the second prosecution and the consequent punishment thereunder, must be for the same offence. The crucial requirements for attracting the Article are that the offence is the same, i.e, they should be identical.

If, however, the two offences are distinct, then notwithstanding that the allegation of the fact in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyze and compare not the allegation into complaint but the ingredient of two offences and see whether their identity is made out.

Topic: Prosecution Under Article 20 (2)

Name of the case: Maqbool Hussain v. State of Bombay, AIR 1953 SC 325

Bench: Chief Justice M Patanjali Sastri, Justice BK Mukherjea, Justice Sudhi Ranjan Das, Justice Ghulam Hassan, Justice NH Bhagwati

Fact of the Case: A person arrived at an Indian airport from abroad. He was found in possession of gold which was against the law at the time. Action was taken against him by the customs authorities and the gold was confiscated. Later, he was prosecuted before the criminal court under Foreign Exchange Regulation Act. The question was whether the plea of *Autrefois acquit* could be raised under Article 20(2).

Ratio: The Supreme Court held that the proceeding before the custom authority do not constitute prosecution of the appellant, and the penalty imposed on him did not constitute a punishment by the judicial tribunal. In the circumstances, the trial of the prisoner before the criminal court was not barred. The court observed that it is clear that in order that the protection of Article 20 (2) be evoked by a citizen there must have been a prosecution and punishment in respect of the same offence before a court of law or a tribunal not before the tribunal which entertains audit department or administrative enquiry.

The wording of Article 20 is “convicted”, “commission of the act charged as an offence”, “ accused of any offence“, and indicates that the proceeding there contemplated is in the order of nature of criminal proceedings before court of law or a judicial tribunal and the prosecution in this context would mean an initiation for starting of proceedings of a criminal nature before a court of law or a judicial tribunal in the cordons with the procedure prescribed in the statute which creates the offence and regulates the procedure.

Topic: Privilege Against Self-Incrimination Under Article 20 (3)

Name of the Case: State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808

Bench: Chief Justice Bhubaneswar P Sinha, Justice AK Sarkar, Justice K Subbarao, Justice KN Wanchoo, Justice KC Dasgupta, Justice Raghubar Dayal, Justice N Rajagopala Ayyangar, Justice JR Mudholkar

Issue: Whether Article 20 (3) violated when the accused is directed to give his specimen handwriting, or signature, or the impression of his palm and finger?

Fact of the Case: Specimen handwritings of the accused had been taken during investigation while the accused was in police custody. This has been excluded from the consideration by court below on the ground that the obtaining of such signature offended Article 20 (3).

Ratio: The court ruled that Article 20 (3) is not violated in any of the above situations. The court stated that “self-incrimination must mean conveying information based on the personal knowledge of the person giving information and covers only personal testimony which must depend upon his violation.”

The court stated that to be a witness may be equivalent to furnishing evidence in the sense of making oral or written statement, but not in the larger sense of expression as to include giving thumbs impression or impression of palm or foot or finger or specimen writing or exposing a part of body by an accused person for the purposes of identification.

The court emphasised that it is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agent of law and the lower courts with legitimate powers of bringing offenders to justice. The court stated

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regarding production of documents in the possession of the accused, that if it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon by the court to produce that document.

Several types of evidence are excluded from the purview of Article 20 (3). This is done with a view to draw a balance between the exigencies of investigation of crimes and need to safeguard the individual from being subjected to 3rd degree methods.

Topic: Development Of The Concept Of Due Procedure Of Law: From Gopalan To Maneka Gandhi

Name of the Case: AK Gopalan v. State of Madras, AIR 1950 SC 27

Bench: Chief Justice Hiralal Kania, Justice Syed Faisal Ali, Justice M Patanjali Sastri, Justice Mehr Chand Mahajan, Justice SR Das, Justice BK Mukherjea

Issue: There were several issues raised in this case including whether the Prevention and Detention Act 1950 violated Articles 14, 19, and 21 of the Indian constitution. Secondly is there any connection between Article 19 and 21 of the constitution?

Background: Just after the Constitution of India came into force, the question of interpretation Article 21 came into picture. The petitioner was detained under the Preventive Detention Act

He applied under Article 32 of the Constitution for the writ of habeas corpus and for his release from detention, on the ground that the said act contravened the provision of Article 14, 19 and

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22 of the Constitution of India and consequently *ultra vires* Article 21.

Ratio: The Supreme Court analyzed the arguments of the parties and held that there is no connection between Article 21 and 19 of the constitution. The court further held that the principles of natural justice were not violated in this case. The court finally dismissed the writ petition filed by Mr Gopalan.

The A K Gopalan and the State of Madras is a landmark case in Indian legal history. It is one of the important cases in which the apex court of India interpreted the provisions of the Indian constitution. The case set the precedent for how the Indian courts would interpret and apply the provisions of the Indian constitution in future cases.

It is also significant because it was among the first cases in which the principles of natural justice were applied in India. The case is also important because it established the principle that the Indian constitution is a living document and that it can be interpreted in light of changing times and circumstances. The judicial approach means that a preventive detention law would be valid, and be within the terms of Article 21, so long as it conformed with Article 22, and it would not be required to meet the challenge of Article 19.

However, the Supreme Court rejected the said contention based on following reasons:

1. The word ‘due’ was absent in Article 21.
2. The draft constitution had contained the words ‘due process of law’ but these words were later dropped and the present phraseology adopted instead.

Thus, the Supreme Court ruled that the expression “Procedure established by law” meant the procedure as laid down in the law and enacted by the Legislature and nothing

more. A person could thus be deprived of his “life” or “personal liberty” in accordance with the procedure laid down in the relevant law.

Another case on the said issue: Maneka Gandhi v. UOI, AIR 1978 SC 597

Fact of the case: The petitioner Maneka Gandhi’s passport was issued on 1st June 1976 as per the Passport Act of 1967. On 2nd July 1977, the Regional Passport Office (New Delhi) ordered her to surrender her passport. The petitioner was also not given any reason for this arbitrary and unilateral decision of the External Affairs Ministry, citing public interest.

The petitioner approached the Supreme Court by invoking its writ jurisdiction and contending that the State’s act of impounding her passport was a direct assault on her Right of Personal Liberty as guaranteed by Article 21. It is pertinent to mention that the Supreme Court in Satwant Singh Sawhney v. Ramarathnam held that right to travel abroad is well within the ambit of Article 21, although the extent to which the Passport Act diluted this particular right was unclear.

Issues Before the Court:

1. Are the provisions under Articles 21, 14 and 19 connected with each other or are they mutually exclusive?
2. Should the procedure established by law be tested for reasonability which in this case was the procedure laid down by the Passport Act of 1967?
3. If the right to travel outside the country is a part of Article 21 or not?
4. Is a legislative law that snatches away the right to life reasonable?

Ratio: The Supreme Court laid down following propositions seeking to make Article 21 much more meaningful:

1. The court retaliated the proposition that Article 14, 19 and 21 are not mutually exclusive. A nexus has been established between these three Articles. The theme of mutual relationship of Article 21 and 19 has already been discussed in several cases. This means that a law prescribing or procedure for depriving a person of personal liberty has to meet the requirement of Article 19. Also, the procedure established by law in Article 21 must answer requirement of Article 14 as well.
2. The expression personal liberty in Article 21 was given an expansive interpretation. The court emphasised that the expression personal liberty is of the widest amplitude covering a variety of rights which go to constitute the personal liberty of man. Some of these attributes have been raised to the status of distinct Fundamental Rights and give additional protection under Article 19.
3. The most significant and creative aspect of Maneka Gandhi, is the re-interpretation by the court of the expression procedure established by law and used in Article 21. The court gave following orientation to this expression:
 - a. Article 21 would no longer mean that law would prescribe some semblance of procedure, however arbitrary or fanciful, to the private person of his personal liberty. It now means that procedure must satisfy certain requisite in the sense of being fair and reasonable. The procedure cannot be arbitrary, unfair or unreasonable. The concept of reasonableness must be projected in the procedure contemplated by Article 21. The Court has now assumed the power to adjust the fairness and justice of procedure established by law to deprive a person of

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his personal liberty. The Court had reached this conclusion by holding that Article 21, 19 and 14 are mutually inclusive and interlinked.

b. The procedure contemplated by Article 21 must answer the test of reasonableness in order to conform with Article 14 for, in the word of Justice Bhagwati: “The principle of reasonableness which legally as well as philosophically is in a sensual element of equality or non-arbitrariness permits Article 21 like a brooding omnipresence.” Thus, the procedure in Article 21, must be right and just and fair and not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

c. According to Justice Iyer the procedure in Article 21 means fairness, not formal, procedure; ‘law’ is reasonable law and not any enacted piece. This makes the word procedure established by law by and large synonymous with the procedural due process in the USA. This makes the right of hearing a component part of natural justice.

d. As the right to travel abroad falls under Article 21, natural justice mode must be applied while exercising the power of impounding of passport under the passport act. Although the passport act does not expressly provide for the requirement of hearing before a passport is impounded, yet the same has to be implied therein.

Topic: Constitutionality Of Death Penalty

Name of the case: Bachan Singh v. State of Punjab, AIR 1980 SC 898

Bench: Justice Y Chandrachud, Justice A Gupta, Justice N Untwalia, Justice P Bhagwati, Justice R Sarkaria

Theme question before court: reasonableness of death penalty and analysis of view expressed in Jag Mohan and Rajendra case

Ratio: The Supreme Court held that the provision of death penalty, as alternative punishment for murder in Section 302, IPC, is not unreasonable and is in public interest. This Article clearly brings out the implication that the founding father recognised right of the state to deprive a person of his life or personal liberty in accordance with the fair, just and reasonable procedure established by valid law. The procedure provided in the Criminal Procedure Code for imposing capital punishment for murder cannot be said to be unfair, unreasonable and unjust. The court, however, emphasised that the death penalty is an exception rather than the rule and it ought to be imposed only in the ‘gravest of the cases’ of extreme culpability or in the rarest of the rare cases when the alternative option is unquestionably foreclosed.

Development in the concept

Name of the case: Machhi Singh v. State of Punjab, AIR 1989 SC 947

Bench: Justice MP Thakkar, Justice Syed Murtuza Fazalali Ali, Justice A Varadarajan

Ratio: The Supreme Court has emphasised that death penalty need not be inflicted except in ‘gravest of the cases’ of extreme culpability and that life imprisonment is the rule and death sentence is an exception. The court has emphasised that death sentence is to be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to circumstances of crime, and provided that the option to impose sentence of life imprisonment cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

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Further, the Supreme Court has formulated broad guidelines for determining the ‘rarest of the rare’ cases in which murderers should be awarded the death penalty instead of life imprisonment. The judges must ask them these two questions for deciding whether a murder case falls in the category of rarest of the rare cases:

1. Whether there is something uncommon about the crime which renders a life imprisonment sentence inadequate and calls for a death sentence?
 2. Whether the nature of the crime are such that there is no alternative but to impose the death sentence even after recording maximum weightage to the mitigating submissions which speaks in favour of the offender?
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Topic: Quality Of Life Under Article 21

Name of the Case: Francis Coralie v. Administrator, Union Territory of Delhi, AIR 1981 SC 746

Bench: Justice PN Bhagwati and Justice Syed Murtuza Fazalali

Issue: Whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more?

Fact of the case: The detenu was denied his right of detenu under Conservation of Forest Exchange and Prevention of the Smuggling Activities Act, 1974, to have interview with lawyers and the members of his family.

Ratio: The Supreme Court held that the ‘right to life’ includes ‘right to live with human dignity’ and all that goes along with it, viz, the bare necessities of life such as education, nutrition, clothing and shelter over the head and facilities for reading,

writing and expressing oneself in diverse form, freely moving about and missing and mingling with fellow human beings.

Of course, the magnitude and content of components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. Therefore, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to leave and it would, on this view, be provided by Article 21 unless it is in accordance with the procedure established by law, but new law which authorizes and no procedure which leads to such torture or cruelty, inhumane or degrading treatment can even stand the test of reasonableness and non-arbitrariness. It would plainly be unconstitutional and void as being violative of Article 21 and Article 14.

Topic: Right Against Sexual Harassment Under Article 21

Name of the case: Visakha and Anr v. State of Rajasthan

Bench: Chief Justice J.S. Verma, Justice Sujata Manohar, Justice BN Kirpal

Facts of the Case: During 1990, Bhanvari Devi who was employed to the Rajasthan State Government was raped by landlords of Gujar community in attempt to prevent child marriage. The rape survivor did not get justice from Rajasthan High Court and the rapist were allowed to go free. This case was brought to the attention of Supreme Court in the absence of domestic law to deal with sexual harassment of working women at all workplace.

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Ratio: The Supreme Court has declared sexual harassment of working woman at her work amounting to violation of right of gender equality and right to life and liberty which is a clear violation of Article 14, 15 and 21 of the Constitution.

Sexual harassment also violates victims Fundamental Right under Article 19 (1) (g) “*to practise any profession or to carry out any occupation trade or business*”.

Further, the court has accepted the proposition that international conventions and norms are to be read into Fundamental Rights where there is no inconsistency between them and there is a void in the domestic law. According to the court, “it is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is void in the domestic law.”

This landmark judgement led to the foundation of the sexual harassment of women at workplace prevention, Prohibition and redressal act 2013 by the government of India.

Topic: Right To Die, Passive Euthanasia Under Article 21

Name of the case: Common Cause (A Registered Society) v. UOI, W.P. (C) No. 215 of 2005

Bench: Chief Justice Dipak Misra, Justice A.K. Sikri, Justice A.M. Khanwilkar, Justice D.Y. Chandrachud and Justice Ashok Bhushan

Background: *The First Case: P. Rathinam v. Union of India, AIR 1994 SC 1844*, wherein the court held that right to life embodied in Article 21 also embodied in it ‘right not to live’ a forced life, to his detriment, disadvantage or disliking. The

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view constituted an authority for the proposition that an individual has right to do as he pleases with his life and to end it if he pleases.

The view expressed in P. Rathinam could not last for long and overruled by a constitutional bench of Supreme Court in **Gian Kaur v. State of Punjab, AIR 1996 SC 946.**

Issue in Gian Kaur: If attempt to commit suicide is not recorded as penal then what happens to someone who abets suicide which is punishable under Section 306, IPC?

Factual matrix in Gian Kaur: Gian Kaur and her husband were convicted under Section 306, IPC, for abetting the commission of suicide by Kulwant, their daughter in law.

Ratio in Gian Kaur: The Constitutional Bench of Supreme Court ruled that Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can ‘extinction of life’ be read to include ‘protection of life’.

Accordingly, the court has ruled that Article 309, IPC, is not unconstitutional. Therefore Section 306, IPC, has also been held constitutional.

However, the Supreme Court has distinguished between euthanasia and attempt to commit suicide. Euthanasia is termination of life of a person who is terminally ill, or in a persistent vegetative state. In such a case, death is due to termination of life is certain and imminent. The process of natural death has commenced, it is only reducing the process of suffering due to natural death. This is not a case of extinguishing life but only accelerating conclusion of the process of natural death which has already begun. This may fall within the concept of right to live with human dignity up to the end of natural life. This may include the right of a dying person

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to die with dignity when his life is ebbing out. But this cannot be equated with the right to die unnatural death curtailing the natural span of life.

Ratio in present case: The five-judge bench of Supreme Court recognised and gave sanction to passive euthanasia and living will/advance directive. The implication of this is that from now ‘right to die with dignity’ is a Fundamental Right.

The Supreme Court has clarified that the judgement in *Gian Kaur case* cannot be understood to have stated that passive euthanasia will be introduced through legislation. It further held that the word ‘life’ in Article 21 has been construed as life with dignity and it takes within the ambit the ‘right to die with dignity’ big part of the ‘right to live in dignity’. The sequitur of this exposition is that a dying man who is terminally ill or in a persistent vegetative state can make a choice of premature extension of his life as being facet of Article 21 of the Constitution. If that choice is guaranteed under part of Article 21, there is no necessity of any legislation for effective waiting that Fundamental Right and more so his personal human rights. Indeed, that tried cannot be an absolute right but subject to regulatory measure to be prescribed by a suitable legislation which, however, must be reasonable restriction and in the interest of general public. Thus, the court has clarified that Article 21 covers within its ambit only passive euthanasia and not active euthanasia.

In the present case, the Supreme Court has clarified that the ‘right to live with dignity’ also includes the smoothening of the process of dying in case of terminally ill patient or a person in permanent vegetative state with no hope of recovery and that is why it also recognises advance directive akin to a living will through which person of sound mind and in a position to communicate can indicate the decision relating to the circumstances in which withholding or withdrawal of medical

treatment can be restored to. Elaborate procedure and safeguards for executing such advanced directive has been provided in the judgement with essential in gradient being that the treating physician of a terminally ill or patient undergoing prolonged medical treatment shall refer the matter to a medical board consisting of head of the treating department and at least three experts from the field of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with experience in critical care and with overall standing in the medical profession. The decision of the medical board shall be communicated to the jurisdictional collector who shall constitute a medical board comprising the Chief District Medical Officer of the concerned district as the chairman and three expert doctor in the same field mentioned above.

The chairman of the medical board sale after taking consent of the executor of advance directive or the guardian name therein, shall communicate his decision to the jurisdictional judicial magistrate first class, who shall than authorise the implementation of the decision of the medical board. The court has also laid down the procedure of altering the advance directive and for the cases where there are no directives. Thus, the Supreme Court has finally ruled that the interest of the patient cell override the interest of the state in protecting the life of a citizen and that the right to live with dignity attaches throughout the life of the individual.

Topic: Right To Education Under Article 21

Name of the case: Unnikrishnan, JP v. State of Andhra Pradesh, AIR 1993 SC 2178

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Bench: Chief Justice L.M. Sharma, Justice S.R. Pandian, Justice B.P. Jeevan Reddy, Justice S. Mohan, Justice S.P. Bharucha

Ratio: The Supreme Court implied the ‘right to education’ from the ‘right to life and personal liberty’ guaranteed by Article 21. As the Fundamental Rights and directive principles are complimentary to each other, the content and parameters of this right or deduced in the light of Article 41, 45 and 46. Therefore, the ‘right to education’ in the context of this Directive Principle means: (a) every child has a right to free education up to the age of 14 years; (b) thereafter, his right to education is circumscribed by the limits of the economic capacity of the states and its development.

The court has emphasised that child has Fundamental Right to free education upto the age of 14 years. This obligation can be discharged by the state either through governmental school, or private schools run by non-governmental bodies, aided and recognised by the state. The court further ruled that a citizen has a right to call upon the state to provide educational facilities within the limits of its economic capacity and development.

The court has however cautioned that because it has relied upon some of the directive principles to locate the parameters of the ‘right to education’ implicit in Article 21, it does not follow automatically that each and every obligation referred to it in the Directive Principle gets automatically included with a preview of Article 21. It held that the ‘right to education’ to be implicit in the ‘right to life’ because it has inherent fundamental importance. As a matter of fact, “the court has referred to Article 41, 45, and 46 merely to determine the parameters of the said rights.”

Importance of the judgement delivered in Unnikrishnan:

Subsequent to the decision in Unnikrishnan, the Constitution 86th Amendment Act, 2002 was introduced Article 20A which makes the ‘right to education’ a Fundamental Right.

Topic: Right To Consult A Lawyer Under Article 22

Name of the case: State of Madhya Pradesh v. Shobhaaram, AIR 1966 SC 1910

Bench: Chief Justice AK Sarkar, Justice M Hidayatullah, Justice JR Mudholkar, Justice RS Bachhawat, Justice JM Shelat

Fact of the case: The Madhya Bharat Panchayat Act, 1949, Section 63 was challenged.

The respondents were arrested by the police for the offence of trespass and were released on bail. They were tried and sentenced to pay a fine by Nayay Panchayat,“ established under the Madhya Bharat Panchayat Act, 1949, with power to impose only a sentence of fine. The conviction was set aside by High Court on the ground that Section 63 of the Act, which provides that no legal practitioner shall appear on behalf of any party in the proceedings before the Nayay Panchayat, violated Article 21 of the Constitution and therefore void. The case was brought to Supreme Court.

Ratio: The Supreme Court held that a person arrested on accusation of a crime becomes entitled to be defended by counsel at the trial and his right is not lost even if he’s released on bail, or is tried by a court which has no power to impose a sentence of imprisonment. Thus, a provision banning a lawyer from appearing before Nayay Panchayat could be void to the extent it denies a person arrested the ‘right to be defended by a lawyer’ for the crime for which he has been arrested.

Topic: The Communication Of Grounds Of Arrest To The Detenu Under Article 21

Name of the Case: Khudi Ram Das v. State of West Bengal, AIR 1975 SC 550

Bench: Justice PN Bhagwati, Justice Jagmohan Reddy, Justice PK Goswami, Justice Ranjit Singh Sarkaria

Fact of the Case: The District Magistrate had before him detenu's history-sheet at the time of making the details order, but none of the facts contained therein was communicated to him. The detenu argued that the Magistrate was influenced in making the order by the material in the history-sheet which was not communicated to him and thus, his right under Article 22(5) was infringed. The magistrate asserted in an affidavit that beyond the grounds communicated, he did not take any material from the history - sheet into account in passing order. The State asserted that the court should accept the affidavit of the magistrate and should not probe into the nature of material before the District Magistrate or whether or not he was influenced by it in making the detention order.

Ratio: The Supreme Court rejected the argument of the State and declared that as the custodian of citizen Fundamental Right, it was his duty to satisfy itself whether there were other materials which could have influenced the District Magistrate in arriving at his objective satisfaction but which he did not communicate to the detenu. Whether the other materials on the record had or had not any effect on his mind could not be decided on the basis of magistrate's *ipse dixit* (a dogmatic and unproven statement).

Article 22(5) insists that all basic facts and particulars which influence the detaining authority in arriving at his satisfaction must be communicated to the detenu. It is, therefore, the duty

of Court to examine what were the basic facts and materials which actually weighed with the District Magistrate in reaching his satisfaction and, to this end, the Court can enquire him to produce before it the entire record of the case which was before him.

Topic: Standard Consideration Laid Down By Supreme Court For Using Power Of Preventive Detention Under Article 22

Name of the case: AK Roy v. UOI, AIR 1982 SC 710

Bench: Chief Justice Y.V. Chandrachud, Justice P.N. Bhagwati, Justice A.C. Gupta, Justice V.D. Tulzapurkar, Justice D.A. Desai

Facts of the Case: The procedure laid down in Section 10 and 11 of the National Security Act 1980, was challenged as being not in consonance with natural justice on at least three grounds;

1. The detenu has not been given the ‘right to cross-examine’ the detaining authority and the person on whose statement the order of detention is founded;
2. The Act does not give the detenu ‘right to present’ before advisory board, oral and documentary evidence, in rebuttal of the allegations made against him;
3. The Act does not furnish to the detenu the ‘right to be presented by a lawyer’ before the advisory board.

Ratio: The Supreme Court upheld the Act on all these grounds. The Court did recognize the importance of these three rights. They constitute the core of just causes because without them, it is difficult for any person to disprove the allegation made

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against him and to establish the truth. But two important consideration must be borne in mind in this regard:

1. There is no prescribed standard of reasonableness and, therefore, what kind of procedural rights ‘should be made available’ to a person depends upon the nature of the proceeding in relation to which the rights are claimed,
2. The question as to what kind of rights are visible to the detenu in the proceeding before the advisory board has to be decided in the light of constitutional provisions, and statutory provisions to the extent they do not offend the Constitution.

The court ruled that a detenu should not claim the ‘right of cross examination’ of witness in the proceeding before the advisory board. The rules of natural justice are not rigid norms of unchanging content. The ambit of those rules must vary according to the context and they have to be tailored to suit the nature of proceedings in relation to which the particular right is claimed as a component of natural justice.

Cross-examination may be necessary in the proceeding in which witness examined or documents are adduced in evidence in order to prove a point. Cross examination is a powerful weapon to expose the untruthfulness of such evidence. But the question of consideration of the advisory board is not whether the detainee is guilty of any charge but whether there is a recent cause for the detention.

The detention is based not on the fact proved either by applying the test of preponderance of probabilities or of reasonable doubt, but on the subjective satisfaction of detaining authority. The proceeding of the advisory board has, therefore, to be structured differently from the proceeding of judicial or quasi-judicial tribunals. In case of preventive detention, witness is either unwilling to come forward, or the source of information of the detaining authority cannot be disclosed without detriment

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to the public interest. Therefore, in the very nature of things, it is not possible to give to the detenu the right of cross-examination of witness.

Further, the court said that there is no objection in granting to the detenu right to lead evidence in rebuttal before the advisory board. There is no provision in the Constitution or the National Security Act denying to the detenu the right to present his own evidence but to rebut the allegation made against him. As the board is to complete its proceeding within a limited period, it can regulate its own procedure within the limits of Constitution and the statute and limit the time within which the detenu must complete the evidence.

Topic: Wages Lower Than That Of Minimum Wages Act Even During The Pandemic Attracts Article 23

Name of the Case: Sanjit Roy v. State of Rajasthan, AIR 1983 SC 328

Bench: Justice P.N. Bhagwati and Justice R.S. Pathak

Fact of the Case: Because of famine conditions in the countryside, the Public Work Department of the State of Rajasthan started a road project as a famine relief measure and a large number of workers were employed on this project.

The State was paying to this worker less than the minimum wages fixed for unskilled workers in the State. The State claimed that this was authorised by the Rajasthan Famine Relief Work Employees Exception from Labour Laws Act, 1964. The State argued that because of the exception act, the minimum wages act was not applicable to employees engaged on a famine relief work.

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The State argued that what it was doing was to provide relief to the person affected by drought and famine, and that its potential to help people would be very much reduced, and it would not be able to render help to maximum number of sufferers, if it were to give minimum wages to the workers.

Ratio: The Supreme Court invalidated the payment by State of wages lower than the minimum wages to the person employed on the mild relief work under Article 23. Rejecting the arguments, the Supreme Court ruled that even those persons who are employed on the relief work should be paid the legal minimum wages and not less than that as that would be invalid under Article 23.

In other words of Justice Bhagwati, “*where a person provides labour or services to another for remuneration which is less than the minimum wages, the level of service provided by him clearly falls within the meaning of word forced labour and address the condemnation of Article 23.*”

Whenever any labour or service is taken by the State from any person, even if the person is affected by drought and/or scarcity condition or not, the state must pay, at least, minimum wages to him/her to save violation of Article 23.

Rejecting the argument of the State that it was providing relief to person affected by drought and famine, the Supreme Court held that though the plea of State might seem possible but it was unsustainable.

The State is not giving dole or bounty to the affected persons, the work done by them is not worthless or useless to the society as to do so would be sheer waste of human labour and resources which could be usefully devoted to fruitful and productive channels leading to community welfare and creation of national wealth or asset. Therefore, if persons are employed

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in doing useful work, there can be no justification for the state not to pay the minimum wages.

Justice Bhagwati observed on this point as follows;

“The State cannot be permitted to take advantage of helpless condition of the affected persons and extract labour or services from them on payment of less than the minimum wages. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions.

The State cannot under the use of helping these affected persons extract work of utility and value from them without paying them minimum wages. Whenever any labour or services is taken by the state from any person, whether he be affected by brought, scarcity conditions or not, the state must pay, at least, minimum wages to such persons insofar as any exception provided by statute excludes the applicability of the Minimum Wages Act, 1948 to workman employed on famine relief work and permits payment of less than minimum wages to such workmen, must be held to be invalid as offending the provisions of Article 23.”

The expression forced labour in Article 23 is of the widest amplitude and on its true interpretation, it covers very possible form of forced labour, begar or otherwise, and it makes no difference whether the person is forced to give his labour or services to another is remunerated or not.

Justice Bhagwati emphasise that Article 23 “is intended to eradicate the pernicious practice of forced labour and to wipe it out altogether from the national scene.” Therefore, the exception act which warranted payment of less than minimum wages on the five main relief work was held to be unconstitutional. The court therefore directed the state to pay to those workers the minimum uses and also to pay them the

difference between the minimum wages and the actual wage paid for the past services.

Topic: Secularism Under Article 25 And 26

Name of the Case: S.R. Bommai v. UOI, AIR 1994 SC 1918

Bench: Justice Kuldip Singh, Justice P.B. Sawant, Justice K. Ramasamy, Justice S.C. Agarwal, Justice Yogeshwar Dayal, Justice S.R. Pandian, Justice A.M. Ahmadi

Ratio: The nine-judge bench of Supreme Court referred to the concept of secularism in the Indian context. The concept of secularism is not merely a passive attitude of religious tolerance. It is also a positive concept of equal treatment of all religions.

In the world of **Justice Sawant**:

“religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are essential part of secularism enshrined in our Constitution.”

In the world of **Justice BP Jeevan Reddy**:

“.....while the citizen of this country are free to profess, practice and propagate such religion, faith or believe as they choose, so far as the state is concerned, that is, from the point of view of the state, the religion, the faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally.” The concept of secularism was not expressly incorporated in the Constitution at the stage of its making. However, its operation was visible in the Fundamental Rights and directive principles. The concept of secularism, is not

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expressly stated in the Constitution, was, nevertheless deeply embedded in the constitutional philosophy.”

In 1976, though the 42nd amendment of the Constitution, the concept of secularism was made explicit by amending the preamble. By this amendment, the word secularism would introduce the preamble of the Constitution and thus, what was hitherto implicit was explicit.

To underline the great significance of secularism, the Supreme Court declared it as the basic feature of the Constitution. Any step inconsistent with the constitutional policy is, in the plain words, unconstitutional. And, further, the Supreme Court has gone to the extent of ruling that any State Government which has even separate policies or/and secular course of action if acts contrary to the constitutional mandate and renders its self-amenable to the action under Article 356.

Topic: What Is Religion?

Name of the case: Commr. HRE, Madras v. Sri Lakshmindra, AIR 1954 SC 282

Bench: Chief Justice Mehr Chand Mahajan, Justice B.K. Mukherjea, Justice S.R. Das, Justice Vivian Bose, Justice Ghulam Hassan, Justice N.H. Bhagwati, Justice T.L. Venkatarama Iyer

Fact of the case: Section 21, 30 (2), 31, 55, 56 and 63 to 69 of the Madras Hindu Religious and Charitable Endowments Act 1951 was challenged.

Ratio: The Supreme Court has explained the meaning of religion in the constitutional context as follows:

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“religion is certainly a matter of faith with individual or communities and it is not necessarily theistic. There are well-known religions in India like Buddhism and Jainism which do not believe in God or in any intelligent first cause.”

The guarantee under Article 25, subject to the exception mentioned, confers a Fundamental Right on every person not merely—

- I. To entertain such religious beliefs as are allowed to him by judgement or conscience, but also
- II. To exhibit his beliefs and ideas in search over outward acts and practises as are sanctioned and enjoined by his religion, and further,
- III. To propagate and disseminate his religious beliefs, ideas and views for the benefit and edification of others.

It was further stated that the guarantee under the Constitution of India, not only protects the freedom of religious opinion, but it protects also acts done in pursuance of religion. Religious practises are reflective of matters concerning religion and if religion is to be venerated, then the practises annexed thereto are equally respectable and have to be compiled with.

Topic: Religious Freedom Subject To The Right Of Others Under Article 25

Name of the Case: Rev Stainislaus v. State of Madhya Pradesh, AIR 1977 SC 908

Bench: Chief Justice A.N. Ray, Justice M. Hameedullah Beg, Justice R.S. Sarkaria, Justice P.N. Singhal, Justice Jaswant Singh

Fact of the case: The constitutional validity of Madhya Pradesh Dharma Swatantra Adhiniyam, 1968, was challenged in the High Court of Madhya Pradesh and the constitutional validity of the Orissa Freedom of Religious Act, 1967 was challenged in the High Court of Orissa. The two Acts prohibit forcible conversion and make offences punishable. The Madhya Pradesh court upheld the validity of the Act. The Orissa High Court held that Article 25(2) of the Constitution guarantees propagation of religion and conversion is a part of Christian religion, that the State Legislature has no power to enact the impugned legislation which in its pith and substance is a law related to religion and that Entry 97 of List 1 would apply.

Ratio: The Supreme Court while referring to the word propagate in Article 25(1), says that what Article 25(1) grants is not the right to convert another person to one's own religion but to transmit or spread one's religion by an exposition of its tenets. Article 25 guarantees 'freedom of conscience' to every citizen and not to the followers of any one particular religion. That means that there is no Fundamental Right to convert another person to one's own religion because if a person purposely undertakes to convert another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the freedom of conscience guaranteed to all the citizens in the country alike.

Topic: Acquisition Of Religious Place By The State

Name of the case: Dr. M Ismail Faruqui v. UOI, AIR 1995 SC 605

Bench: Justice M.V. Verma, Justice G. Ray, Justice S. Bharucha

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Facts of the case: The constitutional validity of Acquisition of Certain Area at Ayodhya and the Maintainability of the Special Reference Number 1 of 1993 made by the President of India under Article 143 (1) of the Constitution of India are challenged.

Ratio: The Supreme Court while considering the question of acquisition of religious place by the state held that a temple, church or a mosque etc are essentially immovable properties and subject to protection under Article 25 and 26. Every immovable property is liable to be acquired. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be integral part of such religious practises unless the place has a particular significance for that religion so as to form an essential or integral part thereof.

Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverently. Nevertheless, decoration of any religious place is to be made only in unusual and extraordinary situation for a larger national purpose keeping in view that such acquisition should not result in extension of the right to practise that religion, if the significance of that place be such. Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so as long as it can be practiced effectively, unless the right to worship at a particular place is itself an integral part of that right.

Topic: Restriction On Religious Instruction In Educational Institution Under Article 28 (1)

Name of the case: Aruna Roy v. UOI, AIR 2002 SC 3176

Bench: Justice M.B. Shah, Justice D.M. Dharmadhikari and Justice H.K. Sema

Fact of the case: Public Interest Litigation filed under Article 32 of the Constitution of India. It has been contended that National Curriculum Framework of School Education (NCERT) published by National Council of Educational Research and Training (NCERT) is against the constitutional mandate, anti-secular, and without consultation with Central Advisory Board of Education (CBSE) and therefore requires to be set aside.

Ratio: The Supreme Court has ruled that Article 28 does not ban a study of religion. The whole emphasis of Article 28 is against imparting religious instruction. There is no provision on study of religious philosophy and culture, particularly for having value-based social life in a society which is degenerating for power, cost for property.

The Supreme Court stated that the concept of secularism is not endangered if the basic tenets of religions all over the world are studied and learnt. Value-based education will help the nation to fight against fanaticism, ill-will, violence, dishonesty and corruption. These values can be inculcated if the basic tenets of all religions are learnt.

In the words of **Justice Dharmadhikari**: “*Study of religion, therefore, in school education cannot be held to be an attempt against the secular philosophy of the Constitution.*”

Topic: Protection of The Interest Of Minorities Under Article 29

Name of the Case: State of Bombay v. Bombay education Society, AIR 1954 SC 561

Bench: Chief Justice Mehr Chand Mahajan, Justice S.R. Das, Justice Ghulam Hassan, Justice Natwarlal H. Bhagwati, Justice B. Junannandhdadas

Fact of the case: An order issued by the Bombay government banning admission of those whose language was not English to school using English as a medium of instruction. The order was challenged before Supreme Court of India. The government argued that the order did not debar citizens from admission into English medium school only on the ground of religion, race, caste, language, but on the ground that such denial would promote the advancement of national language.

Ratio: The Supreme Court while rejecting the argument of government of Bombay pointed out that the argument overlooked the distinction between the object underlying the impugned order and the mode and manner adopted therein to achieve the object. The object underlying the order was laudable but even than its validity has to be judged by the method of its operation and its effect on the Fundamental Right guaranteed by Article 29 (2). The immediate ground for denying admission in English school to pupils whose mother tongue was not English was only language and so the order could not be upheld. Thus, discrimination in matter of admission on the basis of language was invalidated by Supreme Court under Article 29 (2).

Topic: Rules For Determining Religious Or Linguistic Minority Under Article 29 And 30

Name of the Case: TMA PAI Foundation v. State of Karnataka, AIR 2003 SC 355

Bench: Justice S.S.M. Quadri, Justice Ruma Pal, Justice S.N. Variava, Justice K.G. Balakrishnan, Justice P.V. Reddi, Justice Ashok Bhan, Justice Arijit Pasayat

Issue: Whether in order to determine the existence of a religious or linguistic minority in relation to Article 30, the State or the country as a whole is to be taken as a unit?

Judgment: Of the 11 judges constituting the bench, Chief Justice of India Kirpal deliver judgement for six of the judges. There were three concurring and two dissenting judgements on the issue. The majority view was that the language being the basis for the establishment of different states, for the purpose of Article 30, holding victim and nobody will have to be determined in relation to the state in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put on a par in Article 30. Therefore, the test for determining who are linguistic or religious minorities within the meaning of Article 30 would be one and the same either in relation to a state legislation or central legislation.

The minority view was that the question of minority status must be judged in relation to the offending pieces of legislation or executive order. If the source of the infringing action is the state, then the protection must be given against the state and this status of the individual or group claiming the protection must be determined with reference to the territorial limits of the State. When the entire nation is sought to be affected by Union

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legislation, the question of minority status must be determined with reference to the country as a whole. Thus, Parliament itself describe Hindi as the compulsory medium of instruction in all educational institution throughout the length and breadth of the country, if the minority status is to be determined only with respect to the territorial limits of a state, non-Hindi speaking person who are in majority in their own state but in a minority in relation to the rest of the country, would not be able to impinge the legislation on the ground that it interferes with the right to preserve distinct language and script. Such examples can be multiplied. The Supreme Court in **TMA Pai** was unanimously of the view that the right to establish and administer an institution in Article 30 of the Constitution, comprises the rights:

- a. To admit students,
- b. To set up reasonable fee structure,
- c. To constitute a governing body,
- d. To appoint staff (teaching and non-teaching),
- e. To take action if there is dereliction of duty on the part of any of the employees.

However, the court in TMA Pai did not decide about the authority competent to decide the minority status under Article 30.

Further Constitutional development:

The **National Commission For Minority Educational Institution Act, 2004**, was enacted which enables the commission set up under the act to decide all the questions relating to the status of any institution as a Minority Educational Institution and declare its status as such.

Topic: The Land Reform, Abolition Of Zamindari And Right To Property Under Article 31 A (Old Concept)

Name of the case: Godavari Sugar Mills v. SB Kamble, AIR 1975 SC 1193

Bench: Justice Hans Raj Khanna, Justice P.N. Bhagwati and Justice P.K. Goswami

Fact of the case: Law was passed to impose ceiling on land. The surplus land acquired from landlords was to be distributed among landless person and poor peasants. However, the surplus land acquired from industrial undertakings being used by them to produce raw materials for manufacture of goods was to be allotted to the State Farming Corporation for production of raw materials. The scheme, it was argued, was not for agrarian reform insofar as the land was vested in the state corporation. It was stressed that allotment of land to the landless for the poor agriculturist was an essential attribute of agricultural reform but not allotment of land to a State Corporation.

Judgment: The Supreme Court while rejecting the contention held that the main purpose of the act was to prevent concentration of agricultural land in the hands of a few. It sought to remove economic imbalance by taking surplus land from the holders in excess of the ceiling.

The bulk of the land has acquired was being distributed to the landless persons. Retaining a few blocks of land for cultivation of raw materials for industrial undertaking was meant to avoid fragmentation of this land and also to ensure that manufacturers were not starved of raw materials. This provision could not be detached from the rest of the act, the general scheme of which was to bring about agrarian reform. It was true that acquisition simpliciter of land by the state to augment its resources and

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without specifying the purpose of which it was to be used for acquisition would not get the protection of Article 31A. But vesting of some land in the State would not militate against the object of agrarian reform if it is a part of the general scheme of the agrarian reform and there was no oblique deviation from the avowed purpose. It was necessary to look at the general scheme of the act acquiring land, object of acquisition, reasons for retaining land with the state and not distributing it among the poor peasants.

The court said that the concept of agrarian reform was not static. With the change of times under the impact of fresh ideas and in the context of fresh situation, the concept of agrarian reform is bound to acquire the new dimensions. A major which has the effect of improving the ruler economy and promoting ruler welfare would be a part of agrarian reform.

The 44th Constitutional Amendment

The 44th Constitutional Amendment, 1978 transformed the ‘right to property’ from the category of Fundamental Right by repealing Article 31, and converted it into an ordinary constitutional right by electing Article 300A instead. Article 300A merely says, “no person shall deprive off property saved by authority of law.”

Right to Constitutional Remedies

Topic: The True Nature Of Proceeding Under Article 32

Name of the case: Bandhua Mukti Morcha v. UOI, AIR 1984 SC 802

Bench: Justice P.N. Bhagwati, Justice R.S. Pathak and Justice Amarendra Nath Singh

Fact of the case: The petitioner, and organisation dedicated to the cause of release of bonded labourers in the country, addressed a letter to **Justice P.N. Bhagwati** alleging:

1. That there were large number of labourers from different parts of the country who are working in some of the stone quarries situated in the district Faizabad, state of Haryana under "inhumane and intolerable condition ."
2. That a large number of them were bonded labourers;
3. That the provision of the Constitution and various social welfare laws passed for the benefit of the said workmen were not being implemented in regard to these labourers.

The petitioner also mentioned in the letter the names of the stone quarries and particulars of labourers who are working as bonded labourers and create that a writ be sued for proper implementation of the various provisions of the social welfare litigation.

Judgment: The Supreme Court has clarified that procedurally, under Article 32, it is not bound to follow the ordinary advisory procedure and make of such procedure as may be effective for the enforcement of Fundamental Rights. When writ petition was moved on behalf of some workmen that they were being held in bondage, the Court appointed two persons as commissioner to make report on petitioners condition.

It was argued that the report had no evidentiary value since what was stated therein was based only on ex-party evidence, which had not been tested by cross examination. The Court held that argument not well founded and rejected it, as it was based on a total misconception of the true nature of proceeding under Article 32.

Article 32 does not say by what proceeding the Supreme Court may be moved for enforcement of the Fundamental Right s.

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The only limitation is that the proceeding must be appropriate for the enforcement of Fundamental Right. The Constitution make a deliberately did not lay down any particular form a proceeding for enforcement of Fundamental Right not be they stipulate that such proceedings should conform to any rigid pattern or a straight jacket formula. The reason being that they realise that the people were poor and illiterate and insistence on any rigid formula would be self-defeating.

Article 32 (2) confers power on the Court in its widest terms. It is not confined to issuing the high prerogative writs, but it is much wider and includes within its matrix power to issue any direction, order, writs which may be appropriate for enforcement of Fundamental Right in question.

The Constitution is silent as to the procedure to be followed by the court in exercising its power under Article 32 (2) because the Constitution makers were anxious not to allow any procedural technicalities to stand in the way of enforcement of Fundamental Rights. The apex Court is bound by no procedure to do complete justice under Article 141 of the Constitution of India.

Whatever procedure is necessary to fulfil the purpose is permissible to the court. It is not at all obligate tree for Court to follow adversarial procedure. No such restriction ought to be imposed on the court. In such a system of poor person is always at disadvantage against rich person. When a poor person come to the court for enforcement of their Fundamental Right, it is necessary to depart from the adversarial procedure and evolve a new procedure so as to enable such person to bring the necessary material before the court so as to a secure enforcement of their right.

In the words of Justice Bhagwati:

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“ we have therefore to abandon the laissez faire approach in the judicial process particularly where it involves a question of enforcement of Fundamental Rights and forge new tools, devise new methods and adopt new stages for purpose of making Fundamental Rights meaningful for the large masses of people. If we want the Fundamental Rights to become a living reality and the Supreme Court to become a real sentinel on the qui vive (on the alert or lookout), we must free ourselves from the cycles of outdated and outmoded assumptions and bring to bear on the subject fresh outlook and original unconventional thinking.”

Accordingly, the court has accepted even a letter addressed to the court as an appropriate proceeding and has taken cognizance in the matter raised therein.

Achievement of the judgement

The said judgement led the foundation of **Public Interest Litigation** which alone is responsible for bringing justice to the ignored and poorer Section of society.

Part IV

Directive Principles of State Policy (DPSP)

[Article 36 – 51]

Topic: Inter-Relationship Between Fundamental Rights And Directive Principles

Name of the Case: State of Madras v. Champakam Dorairajan, AIR 1951 SC 226

Bench: Chief Justice Harilal J Kania, Justice Fazal Ali, Justice M Patanjali Sastri, Justice Mehr Chand Mahajan, Justice B.K. Mukherjea, Justice SR Das, Justice Vivian Bose

Judgment: The Supreme Court while rejecting the argument of Government of India observed that while Fundamental Rights were enforceable, DPSPs were not, and so the law made to implement the DPSPs could not take away Fundamental Rights. The DPSPs should confirm, and run as subsidiary, to the Fundamental Rights. The Court observed that the DPSPs, which by Article 37 are expressly made unenforceable by a Court cannot override the provision found in Part III, Fundamental Rights, which, notwithstanding, other provisions are expressly made enforceable by appropriate writs, orders or directions under Article 32. The chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any legislative or executive act or order, except to the extent provided in the appropriate Article in Part III of the Constitution. The DPSPs have to conform to and run as subsidiary to the chapters on Fundamental Rights.

Maturity in the concept of DPSP and Fundamental Rights

Topic: The Balance Between Fundamental Rights And DPSPs Is An Essentials Feature Of The Basic Structure Of The Constitution

Name of the case: Minerva Mills v. UOI, AIR 1980 SC 1789

Bench: Chief Justice Y.V. Chandrachud, Justice P.N. Bhagwati, Justice A.C. Gupta, Justice N.L. Untwalia, Justice P.S. Kailasam

Judgment: The Supreme Court held that Fundamental Rights are not an end in themselves but are the means to an end. The end is specified in the directive principles. It was further observed in the same case that Fundamental Rights and directive principles together constitute the core of commitment to social revolution and it together, are the conscience of the Constitution. The Indian Constitution is founded on the bedrock of the balance between the two. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Rights and directive principles is a sensual feature of the basic structure of the Constitution.

The goals set out in directive principles are to be achieved without aggregating the Fundamental Rights. It is in the sense that Fundamental Rights and directive principles together constitute the core of our Constitution and combine to form its conscience. Anything that destroys the balance between the two part will *ipso facto* (by that very fact or act) will destroy the essential element of the basic feature of Constitution.

The concept of DPSPs also developed in *Olga Tellis v. Bombay municipal Corporation, AIR 1986 SC 194*, wherein the Court held that the directive principles are fundamental in the governance of the country, they must, therefore, be regarded as

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equally fundamental to the understanding and interpretation of the meaning and content of Fundamental Rights.

Topic: No Distinction Can Be Made Between Frs And Dpsps

Name of the Case: Ashok Kumar Thakur v. UOI, (2008) 6 SCC 771

Bench: Justice Dr. Arijit Pasayat and Justice C.K. Thakker

Judgment: The Supreme Court held that no distinction can be made between the two set of rights. The Fundamental Rights represent the civil and political rights and directive principles embody social and economic rights. Merely because the directive principles are non-justifiable by the judicial process does not mean that they are of subordinate importance.

The directive principle and Fundamental Rights are now regarded as one. They are regarded as supplementary and complimentary to each other.

Topic: Right To Health, Medical Aid While In Service Or Post Retirement Is A Fundamental Right

Name of the case: Consumer education and research Centre v. UOI, AIR 1995 SC 923

Bench: Chief Justice A.M. Ahmadi, Justice K. Ramasamy, Justice M.M. Punchhi

Fact of the case: The petitioner seeks to fill in the airing gaps and remedial measures for the protection of health of the workers engaged in mines and asbestos industries with

adequate mechanisms for diagnosis and control of the silent killer disease ‘asbestosis’.

It appears from the record that in Karnataka, Andhra Pradesh and Rajasthan, there exist about 30 mines and the workmen employed there in about 106. There are about 74 asbestos industries in nine states, namely, Haryana, Delhi, Andhra Pradesh, Karnataka, Rajasthan, Maharashtra, Kerala, Gujarat and Madhya Pradesh which employs about 11,000 workmen.

Judgment: Reading Articles 21, 38, 42, 43, 46 and 40A together, the Supreme Court has concluded that ‘right to health’, medical aid to protect the health and vigour of a worker while in service or post retirement is a Fundamental Right to make the life of the workmen meaningful and purposeful with dignity of person.

Social justice is the arch of the Constitution, which ensures life to be meaningful and livable with human dignity. Social justice, equality and dignity of the person are cornerstone of social democracy. Social justice is a dynamic device to mitigate the suffering of the poor, weak, dalits, tribals and deprived section of the society and to elevate them to the level of equality to live a life with dignity of the person. The aim of social justice is to attain substantial degree of social, economic and political equality.

**Topic: Equal Pay For Equal Work Under Article 39
(D)**

Name of the case: Grih Kalyan Kendra v. UOI, AIR 1991 SC 1173

Bench: Justice K.N. Singh and Justice N.D. Ojha

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Fact of the case: The workers Union of the Kendra has filed the writ petition for a declaration that Kendra wherein the workers are employed is a ‘state’ within the meaning of Article 12 of the Constitution and such it is prayed by them that writ of mandamus be issued directing the respondents to pay regular pay scale on par with another employee.

Judgment: The Supreme Court has held that Equal Pay For Equal Work is not expressly declared by the Constitution as a Fundamental Right but in the view of Directive Principle Of State Policy as contained in Article 39 (d) the Constitution, Equal Pay For Equal Work has assumed the status of Fundamental Right in service jurisprudence having regard to the constitutional mandate of equality in Article 14 and 16 of the Constitution.

The principle of Equal Pay for Equal Work properly be applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing different scales of pay do identical work under same employer.

Topic: Free-Legal Aid Under Article 39A

Name of the case: Cardamom marketing Corporation v. State of Kerala, (2017) 5 SCC 255

Bench: Chief Justice H.L. Dattu and Justice A.K. Basheer

Fact of the case: The Government of Kerala, in exercise of power under Article Section 76 (1) of Kerala Court Fees and Suit Valuation Act, 1959, authorised the tribunal and the appellate authority is to levy additional court fee in respect of each appeal or revision and the amount so collected was to be credited to the Kerala Aligarh benefit fund.

Judgment: The Supreme Court held that the purpose for which the fund was to be utilized, was for providing efficient legal services for the people of the State, which amounts to *quid pro quo* (a favour or advantage granted in return for something); with advocates playing an important role in the administration of justice and discharging duty of the highest utility. Therefore, the Court was of the opinion that the additional court fee imposed had a direct nexus to the object it sought to be achieved in relation to the service available to the appellant or others, who approach the courts or tribunals for redressal of their grievance. Thus, the validity of the notification was upheld.

Topic: Pension Under Article 41 And 43

Name of the case: DS Nakara v. UOI, AIR 1983 SC 130

Bench: Chief Justice Y.V. Chandrachud, Justice V.D. Tulzapurkar, Justice D.A. Desai, Justice O. Chinnappa Reddy, Justice Baharul Islam

Facts of the case: The petitioner contends that all pensioners entitled to receive pension under the relevant rules from a class irrespective of the dates of their retirement and there cannot be a mini classification within this class, that the differential treatment accorded to those who had retired prior to the specified date is violative of Article 14.

Judgment: The constitutional bench of Supreme Court held that pension is not only compensation for loyal service rendered in the past, but also by the broader significance it is a social welfare measure rendering socio-economic justice by providing security in the fall of life in physical and mental prowess is ebbing corresponding to the ageing process and, therefore, when it required to fall back upon savings.

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Why scheme of pension making liberate provisions for those retiring after a specified date was held to be discriminatory vis-a-vis those residing earlier then the date? The Supreme Court invoked Article 14, 38(1), 39(d) and (e), 41 and 43(3), and even the word socialist in the preamble to the Constitution to reach this result. Since the advent of the Constitution, the state action is being directed towards attaining the goal of directive principles assure to set up a welfare state in India.

According to the court, the principal aim of a socialist state is to eliminate inequality in income, status and standard of life. The basic framework of socialism is to provide a decent standard of life to the working people and, is basically, to provide security from cradle to grave. This, among others on the economic side, envisages economic equality and equitable distribution of income. In the old age, socialism aim at providing an economic security to those who have rendered onto society what they were capable of doing when they were fully equipped with their mental and physical prowess.

Article 41 enjoys the state to ensure a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and enjoyable leisure, relieving the boredom and the humility of dependence in the old age. The court applied the liberal formula to all pensioners irrespective of the date of retirement, as distinction among business with reference specified date was held to be discriminatory.

Describing the nature of pension given to a government servant on retirement, the court emphasised on three features thereof:

- (1) Pension is neither a bounty nor a matter of grace depending upon the sweet will of employer and it creates a vested right;
- (2) Pension is not an *ex gratia* (by virtue of grace) payment but it is a payment for the past service rendered; and

(3) it is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly work for the employer on an assurance that in their old age they would not be left in lurch.

Topic: Ban On The Slaughter Of The Progeny Of A Cow Under Article 48

Name of the case: State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamaat, AIR 2006 SC 212

Bench: Justice AK Mathur

Fact of the case: The Bombay Animal Prevention (Gujarat Amendment) Act, 1994 was challenged. By this amendment the age of the bull and bullock which was existed at the time that is the bull below the age of 16 years and bullock below the age of 16 years cannot be slaughtered was deleted. By this amendment the age restriction was totally taken away and that means that no bull and bullock respective of the age shall be slaughtered.

Judgment: The Supreme Court upheld a total ban on the slaughter of the progeny of a cow. The word “calves and other drought cattle” were construed as a matter of description of species and not with regard to age or person and only so as to distinguish such cattle from other cattle.

Topic: Doctrine Of Absolute Liability

Name of the case: MC Mehta v. UOI, AIR 1987 SC 1086

Bench: Chief Justice P.N. Bhagwati, Justice Ranganath Misra, Justice GL Oza, Justice M.M. Dutt, Justice K.N. Singh

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Fact of the case: At 4th and 6th December, 1985 leakage of Oleum Gas from one of the unit of Shriram foods and Fertilisers Industries in Delhi, belonging to Delhi Cloth Mill Ltd. In this leakage one advocate practising in Hazari Court had died and several other affected.

A writ petition under Article 32 of the Constitution was brought by the way of Public Interest Litigation.

Judgment: The Supreme Court took a hard and bold decision holding that it was not bound to follow the 19th century rule of English law, and it could evolve a rule which is suitable to prevail in the Indians of social and economic at the present day. It evolved the rule of ‘absolute ability’ as a part of Indian law in preference to the rule of strict liability laid down in *Ryland vs Fletcher*. In the words of Chief Justice Bhagwati;

“this, rule (Ryland v. Fletcher) evolved in the 19 century at a time when all these developments of science and technology has not taken place cannot afford any guidance in evolving in a standard of liability that is consistent with the constitutional norms and the need of present-day economy and social structure. We do not feel inhibited by The Sun which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the need of the fast-changing society and keep abreast with the economic developments, taking place in this country. As a new situation arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot allow our judicial taking to be constrained by reference of the law as it prevails in in England or for that matter that in other foreign legal order. We in India cannot hold our hands back and venture to evolve a new principle of liability which English courts have not done.”

So, the Supreme Court evolved a new rule creating absolute liability for harm caused by dangerous substance. The

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following statement of **Chief Justice Bhagwati** which lays down the new principle may be noted:

"we are of the view that an enterprise which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of person working in the factory and residing in the surrounding areas owes an absolute and non-degradable duty to the community to ensure that no harm results to anyone on the account of hazardous or inherently dangerous activity which it has undertaken.

The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on the account of such activities the enterprise must be absolutely liable to compensate for such harm and it should be no answer to enterprise to say that it has taken all reasonable care and that the harm occurred without any negligence on its part."

The court also led down the measure of compensation payable within the capacity of enterprise, so that the same can have the different effect. The court held that "*we would also like to point out that the measure of compensation in the kind of cases referred to must be correlated to the magnitude and capacity of the enterprise because such compensation must have a different effect. The large and more prosperous enterprise, greater must be the amount of compensation payable by it for the harm caused on account of accident in carrying on hazardous or inherently dangerous activity by the enterprise.*"

Topic: International Law Under Article 51

Name of the case: State of West Bengal v. Kesoram Industries Ltd, AIR 2005 SC 1646

Bench: Chief Justice V.N. Khare, Justice R.C. Lahoti, Justice B.N. Agarwal, Justice S.B. Sinha, Justice A.R. Lakshmanan

Judgment: The Supreme Court observed that as Article 253 contains a non-obstinate clause, it operates notwithstanding anything contained in Article 245 and Article 246. Article 246 confers power in Parliament to enact laws with respect to matters eliminated in list one of the 7th schedule to the Constitution. Entries 10 to 21 of List 1 of the 7th schedule pertain to international law. In making any law under any of these entries, Parliament is required to keep Article 51 in mind.

Further Related Concept

Name of the Case: People's Union for civil liberties v. UOI, AIR 1997 SC 568

Bench: Justice K. Singh and Justice S.S. Ahmad

Judgment: The Supreme Court referred to Article 17 of the International Convent on Civil and Political Rights, 1966 and Article 12 of the Universal Declaration of Human Rights, 1948, so as to derive from Article 21 Right to Privacy in India. The court observed in this connection as under:

"International law today is not confined to regulating the relation between the states. Scope continues to extend. Today matters of social concerns, such as, health education and economic apart from the human rights fall within the ambit of international regulations. International law is more than ever aimed at individuals. It is almost accepted proposition of law that the rule of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law."

Part IV – A

Fundamental Duties

Topic: Nature Of Fundamental Duties Under Article 51A

Name of the case: AIIMS Students Union v. AIIMS, AIR 2001 SC 3262

Bench: Chief Justice RC Lahoti and Justice Shivraj V Patil

Judgment: The Supreme Court observed that though Article 51 (1) (A) does not expressly cast any Fundamental Duty on the state, the duty of every citizen of India is to collective duty of the state its *de facto* (in fact, whether by right or not) enforceability in the sense that Article 51A is a yardstick against which the action of the state may be assessed. Thus, in deciding the issue of reasonable percentage of reservation in educational institutions it was held that one of the factors to be taken into consideration would be whether the character and quantum of reservation would stall or accelerate achieving the ultimate goal of excellence enabling the nation to rise to higher level as prescribed under Article 51A-j.

Part V

The Union

Chapter I

The Executive

Article 52 To 78

Topic: Appointment Of Prime Minister Under Article 74(1)

Name of the Case: Madan Murari v. Chaudhury Charan Singh, AIR 1980 Cal 95

Bench: Justice S Mukherjee

Fact of the case: The petitioner in this application is a citizen of India. In this application filed under Article 226 of the Constitution on 3 September 1979 he has asked for a *rule nisi* (unless) to show cause under what authority the respondent 1 and his colleagues resolved to advise the President to dissolve the Lok Sabha on 20 August 1979 and also *rule nisi* upon the respondent to show cause why writ or order or direction in the nature of *Quo Warranto* should not be instituted calling upon Chaudhary Charan Singh to show cause why he should not be removed from the office of Prime Minister. The petitioner also press for an *ad interim* (for an intervening or temporary period of time) order of injunction restraining the respondent 1 from functioning as Prime Minister of India till the disposal of the petition.

Judgment: The Court observed that despite the 42nd Amendment, the present act has its own discretion in choosing the Prime Minister. In making this assessment as to who as the Prime Minister will enjoy the confidence of Lok Sabha it is not fettered in his choice except by his own assessment. It was an

unprecedented situation that such a government should give advice to the President which would be binding who could not sit in judgement on the political assessment of the present. Whether it was politically justified or not in appointing the Prime Minister is not a matter of Court to determine.

Thus, in the facts and circumstances of the case, the President was legally and constitutionally justified in calling upon Charan Singh to form the ministry. Once the ministry was formed it was competent constitutionally to function and aid and advise the President in terms of Article 74 (1) until the Cabinet resigned on 20 August 1979.

It was further observed that it was constitutionally within the discretion of President to accept the Cabinet advice to dissolve the Lok Sabha. The President was not bound to accept the advice, he was free to accept or not to accept that advice. The President did not act unconditionally in accepting that advice. After the Prime Minister and the Council of Minister tender his resignation, their continuance in office until alternative arrangements would be made as directed by the President was mandatory and imperative obligation for them as they held their office during President pleasure.

The court however expressed the view that the government should not function only as caretaker government and carry out day to day administration and defer all policy questions which could await disposal by Council of Ministers responsible to Lok Sabha. This was so because the government had never proved its responsibility to Parliament, it resigned before facing a vote of confidence.

Topic: Non- Justiciability Of Cabinet Advice Under Article 74(2)

Name of the Case: S.R. Bommai v. UOI, AIR 1994 SC 1918

Bench: Justice Kuldip Singh, Justice P.B. Sawant, Justice S.C. Agrawal, Justice K Ramasamy, Justice Yogeshwar Dayal, Justice B.P. Jeevan Reddy, Justice S.R. Pandian, Justice A.M. Ahmadi

Judgment: The Supreme Court while interpreting the implications of Article 74(2) held that no court is concerned with what advice was rendered by the ministers to the President. The court is only concerned with the validity of the order and not with what happened in the inner councils of the president and the minister. An order cannot be challenged on the ground that it is not in accordance with the advice tendered by the minister or that it was based on no advice. If, in a given case, the President acts without, or contrary to, the advice tendered to him, it may be a case warranting his impeachment, but so far as the court is concerned, it is the act of President.

Article 74(2) protects and features the secrecy of the deliberations between the President and his Council of ministers. Its scope is limited. Article 74(2) cannot override the basic provisions of Constitution relating to judicial review. When any action taken by the President in excise office function is challenged, it is for Council of Ministers to justify the same, since the President acts under Article 74(1).

Article 74(2) does not mean that the government need not justify the act of the President taken in excise office his functions. When act or order of President is questioned in the court, it is for the Council of ministers to justify the same by disclosing the material which formed the basis of Act/order.

Topic: The British System Of Parliamentary Democracy In Indian Constitution

Name of the case: Ram Jawaya v. State of Punjab, AIR 1955 SC 549

Bench: Chief Justice Mukherjea, Justice V. Bose, Justice Jagannadhadas, Justice V. Ayyar, Justice Imam

Fact of the case: The petition is filed under Article 32 of the Constitution wherein the petitioner purports to carry on business of preparing, printing, publishing and selling test book for different classes in the school of Punjab, particularly for the primary and middle classes, under the name and style Uttar Chand Kapoor & Sons. The Government of Punjab issued a notification wherein the business of printing, publication and sale of text book were to be nationalised under so called policy of nationalisation of textbooks. It was argued that no restriction could be imposed upon the petitioner right to carry on trade which is guaranteed under Article 19(1)(g).

Judgment: Chief Justice of India Mukherjea speaking on behalf of Supreme Court stated that our Constitution has adopted the British system of Parliamentary executive, the President is only a formal or constitutional head of the executive and that the real executive powers are vested in the ministers or the Cabinet. It was further observed that our Constitution is modelled on the British Parliamentary system where the executive is deemed to have the Parliament responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the size of this responsibility is retaining the confidence of the legislative branch of the state. In the Indian constitution, therefore, we have the same system of Parliamentary executive as in England and Council of ministers consisting, as it does, all the member of legislature, like the British cabinet, ‘a hyphen

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which joins, a buckle with fastens', The legislative part of the State to the executive part. The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive function.

The petitioner right to carry on trade and business under Article 19(1)(g) were curtailed based on the ground that government has power to issue such notification and such undertaking does not fall under the meaning of Article 31(2).

Topic: Collective Responsibility Under Article 75(3)

Name of the Case: SP Anand, Indore v. HD Deve Gowda, AIR 1997 SC 272

Bench: Chief Justice AM Ahmadi and Justice Sujata V Manohar

Fact of the case: According to petitioner, Siri H.D. Deve Gonda, the then Prime Minister of India, not being a member of either house of Parliament was, under the constitutional not eligible to be appointed as the Prime Minister of India. The petition was filed under Article 32 of the Constitution of India.

Issue: Can a person who is not a member of either house of Parliament be sworn in as the Prime Minister of India?

Judgment: The Supreme Court observed that the principle of collective responsibility is both salutary and necessary. It was held that even though Prime Minister is not a member of either house of Parliament, once he is appointed, he becomes answerable to the house and the principle of collective responsibility the governs the democratic process. On other condition, can a council of minister work as a team and carry on the government of the country. It is the Prime Minister who forces collective responsibility among the ministers through his

ultimate power to dismiss a minister. The Supreme Court has ruled that the principle of collective responsibility is in full operation so long as the Lok Sabha is not dissolved.

Union Parliament

Article 79 - 122

Topic: Disqualify Members Of Parliament Of Office Of Profit Under The Government

Name of the case: Madhukar v. Jaswant, AIR 1976 SC 2283

Bench: Justice V.R. Krishna Iyer and Justice N.L. Untawalia

Fact of the case: The appellant, who was a private medical practitioner and whose name was included in the panel of doctors maintained by the corporation and the respondent, were contestants in an election for the Presidentship of a medical Council.

Judgment: The Supreme Court has replaced the approach to disqualify members of Parliament upon holding office of profit. The court says, “after all, all law is a means to an end. What is the legislative and here in disqualifying holders of office of profit under government? Obviously, to avoid a conflict between duty and interest, to cut out the massive job of sale position to advance private benefit and to avoid the likelihood of influence in government to promote personal advantage. So, this is the mischief to be suppressed. At the sametime we have to bear in mind that our Constitution mandates the state to undertake multiform public welfare and social economic activities involving technical persons, welfare workers, and lay people on a massive scale so that participatory government may

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prove a progressive reality. In such an expending situation, can we keep out from elective post at various levels many doctors, lawyers, engineers and scientists, not to speak of any army of the other non-official who are wanted in various fields, not as full-time government servants but as part-time participant in People's project sponsored by government?

For instance, if a National Legal Service Authority funded largely by state comes into being, a large segment of the legal profession may be employed in ennobling occupation of legal aid to the poor. Doctors, lawyers, engineers, scientists and other experts may have to be invited into local bodies, legislature and like political administrative organ based on election if these vital limbs of reference government are to be the monopoly of populist politician or lay members but is sprinkled with technician in an age which belong to technology. So, an interpretation of 'office of profit' or cast the net so wide that our citizen with specialities and know-how are inhibited from entering elected organs of public administration and offering voluntary services in para official, statutory or like projects run or directed by government or cooperation controlled by the state may be detrimental to the democracy itself. Even athletes may hesitate to come into Sports Councils if some fee for services is paid and that prove their funeral if elected to Panchayat! A balanced view, even if it invokes 'judicial irreverence' to vintage precedents, is the wiser desideratum.

Further development

The Supreme Court in *Jaya Bachchan v. Union of India, AIR 2006 SC 2119*, held that payment of honorarium in addition to daily allowance in the nature of compensatory allowance, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence construed profit.

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For the purpose of disqualification, the office in question must be under the government. If the office is not under the government, no disqualification will arise. To determine whether a person holds an office under government, several tests which are ordinary applied are:

1. Whether the government makes the appointment;
 2. Whether the government has right to remove or dismiss the holder of the office;
 3. Whether the government pays the renumeration;
 4. Whether the functions performed by the holder are carried by him for the government and
 5. Whether the government has control over the duties and function of the holder
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Topic: Constitutionality of Anti-Defection Law

Name of the case: **Kihota Hollohon v. Zachilhu, AIR 1993 SC 412**

Bench: Justice L.M. Sharma, Justice M.V. Verma, Justice K.G. Reddy, Justice S. Agarwal

Fact of the case: The petitioner challenges 10th Schedule of the Constitution introduced by Constitution (52nd Amendment) Act, 1985 also known as anti-defection law.

Judgment: The Supreme Court while upholding the constitutional validity anti-defection law observed that the speaker's order under the law disqualifying a member of legislature on the ground of defection is subject to judicial review.

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The majority has upheld the validity of para two of the 52nd Amendment. This provides for disqualification on defection of members from one political party to another. These provisions do not violate any rights or freedoms guaranteed to the legislature under Article 105 and 194 of the Constitution.

While rejecting the contention that the entire 10th Schedule, even after exclusion of Para 7, would be volitive of the basic structure of Constitution insofar as the provision in this schedule affect the democratic rights of elected members of the legislature and, therefore, of the principle of Parliamentary democracy, the majority judge has ruled that the Speaker acts as a tribunal adjudicating upon rights and obligations and his decision in a defection case would thus be open to judicial review under Article 136, 226 and 227, and that the penalty clause in para six of the schedule does not exclude adjudication of the course under these Articles of the Constitution. However, judicial review would not cover any stage prior to making of the decision by speaker. The only exception for any interlocutory interference being case of interlocutory disqualification or suspensions which may have grave, immediate and irreversible repercussion and consequences.

Topic: Limiting Power Of Speaker Under Anti - Defection Law

Name of the case: Jagjit Singh v. State of Haryana, AIR 2007 SC 590

Bench: Chief Justice C.K. Thakker & Justice P.K. Balasubramanyan

Issue: Whether the power to disqualify a member on the ground of defection should continue to vest in the Speaker, or

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should it be vested in some independent body outside the House?

Fact of the case: Petitioner challenges the decision of the Speaker to disqualify a member for defection without complying with the principles of natural justice in as much as the member was not granted sufficient time to file a reply to meet the case against him was repealed.

Judgment: The Supreme Court observed that proceedings in respect to disqualification of a member are comparable neither to a trial in a court of law nor departmental proceedings for disciplinary action.

The high ethical standard which was set up by the majority Judges in ***Kihota Hollohon*** is seldom reached by the Speakers in India. The confidence placed by the majority Judges in the “high tradition” of the “high office of the speaker” have, in practice, been found to be misplaced.

Topic: Ordinance Making Power Of President Under Article 123

Name of the Case: Krishna Kumar Singh v. State of Bihar, (2017) 3 SCC 1

Bench: Justice T.S. Thakur, Justice Madan B. Lokur, Justice S.A. Bobde, Justice A.K. Goel, Justice D.Y. Chandrachud, Justice L. Nageswara Rao, Justice Uday Umesh Lalit

Fact of the Case: The Government of Bihar promulgated as many as eight ordinances in exercise of his legislative power under Article 213 (1) of the Constitution. None of this ordinance was laid before the legislative assembly or the legislative Council.

Judgment: The Supreme Court held that if the President or Governor, act on the aid and advice of executive, promulgates an ordinance in misuse or abuse of this power, the legislature cannot only pass a resolution disapproving the ordinance but can also pass a vote of no-confidence in the executive. There is no requirement of approval of an ordinance by legislature for it to operate validly.

Topic: Parliamentary Privileges Under Article 105

Name of the case: PV Narsimha Rao v. State, AIR 1998 SC 2120

Bench: Justice S.C. Agarwal and Justice A.S. Anand

Fact of the case: The Narsimha Rao government at the Centre did not enjoy majority in Lok Sabha in 1993. Vote of no-confidence was moved against the government by the opposition parties. To avert defeat on the floor of house, certain member of the ruling party gave large sum of money to a few members of the Jharkhand Mukti Morcha (JMM) to vote against the motion on the floor of the house. Consequently, no-confidence motion was defeated in the house with 251 four and 265 against. This led to two important questions as under:

Issue:

- a. Whether by the virtue of Article 105(1) and 105(2), a member of Parliament can claim immunity from prosecution before a criminal court on a charge of bribery in relation to the proceedings in Parliament?
- b. Whether a member of Parliament is a public servant under the prevention of corruption act, 1988?

Judgment: The five-judge bench of Supreme Court divided opinion into two.

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On the first point, the majority view is that ordinary law does not apply to acceptance of bribery by a member of Parliament in relation to proceeding in Parliament. The court gave a very broad interpretation of Article 105(2). On behalf of the majority, **Justice Bharucha**, has stated as under:

“broadly interpreted, as we think it should be, Article 105(2) protects a member of Parliament against proceeding in court that relate to, or concern, or have a connection or nexus with anything said, or a vote given, by him in Parliament.”

The majority has ruled that while the bribe givers can claim no immunity under Article 105, the bribe takers stand on a different footing. The alleged bribe takers are set to have received monies as a motive or reward for defeating the no-confidence motion and, thus, the nexus between the bribe and a no-confidence motion is explicit. The majority judges have insisted that to enable members to participate fearlessly in Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceeding that bear and access to their speech or vote.

The reason for such a broad view is that otherwise a member who makes a speech or cast her vote that is not to the liking of powers that may be troubled by a prosecution alleging that he has been paid a bribe for the purpose. But a member who is alleged to have accepted bribe but has not voted cannot enjoy immunity under Article 105(2). Also, the members of the house who have given the bribe do not enjoy any immunity from prosecution. On this view, the majority held that four JMM members who had taken the money and put it against the motion were not guilty of corruption. But one member, Ajit Singh, who has taken the money but did not vote was held liable to be prosecuted.

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But the majority judges expressed the view, narrowly interpreting Article 105(2), that the immunity under Article which can be claimed is the liability that has arisen as a consequence of the speech that has been made for the vote that has been given in the Parliament.

The minority judges have argued that the criminal liability incurred by a member of Parliament who has accepted the bribe for speaking or giving his vote in Parliament in particular manner arises independently of the making of the speech or giving of vote by member and such liability cannot be regarded as the liability in respect of anything said or any vote given in the Parliament.

On the second question mentioned above, all the judges are agreed that a member of Parliament or a State Legislature is a public servant under Section 2 (c) of the Prevention of Corruption Act, 1988, because he holds an office and he is required and authorised to carry out a public duty, viz, effectively and fearlessly representing his constituency.

Under Section 19 of the Prevention of Corruption Act, 1988 a public servant cannot be prosecuted for certain offences without the sanction of competent authority, i.e, The authority competent to remove him from office. In the case of a member of Parliament or state legislature, there exists no such competent authority capable of removing him. Therefore, the majority view is that a member can be prosecuted for such offences, but after obtaining the permission of chairman or speaker as the case maybe of the concerned house.

Topic: Parliamentary Privileges And Fundamental Right

Name of the Case: Keshav Singh v. Speaker, legislative assembly, AIR 1965 SC 349

Bench : Justice J. Takru & Justice G. Mathur

Issue:

1. Whether any other Fundamental Rights would apply to legislative privileges as it was not pertinent to the issue in hand?
2. Whether a particular privilege claimed by a house exists or not on the basis whether the house of commons had enjoyed the same on January 26, 1950?
3. Whether the power of house to commit for its contempt can be accepted in India in the view of the fact that, unlike England, India had a written constitution containing Fundamental Right, and the doctrine of judicial review of legislative action forms a part of country's constitutional jurisprudence?

Fact of the Case: Keshav Singh printed and published a pamphlet against a member of State Legislative Assembly. The house adjudged him guilty of committing its contempt and sentenced him to be reprimanded. On 16 March 1964, when the speaker administered a reprimand to him, he behaved in the house in an objectionable manner. Accordingly, the House directed that he be imprisoned for seven days for committing contempt of House by his conduct in the house at the time of being reprimanded by the Speaker. On 19 March 1964, advocate Solomon presented a petition under Article 226 to the Allahabad High Court for a writ of *habeas corpus* (to bring a party before a Court or a Judge) on behalf of Keshav Singh alleging that his detention was illegal as the house had no

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authority to do so; he had not been given an opportunity to defend himself and that his detention was *mala fide* (carried out in bad faith) and against natural justice. The court passed an interim bail order releasing cases in pending a full hearing of the petition on merits. Instead of filing a return to Keshav Singh petition, the house resolved *pre-emptorily* (to take action in order to prevent happening) that Keshav Singh, advocate Solomon and two judges of High Court who had passed the interim bail order, had committed contempt of the house and that they be brought before it in custody.

The judge moved petition under Article 226 in the High Court asserting that the dissolution of the house was wholly unconstitutional and violated the provision of Article 211 [Article 121 in case of Parliament]; that in ordering release of Keshav Singh on the habeas corpus petition, The judges were exercising their jurisdiction and authority vested in them as judges of the High Court under Article 226. A full bench consisting of all the 28 judges of High Court ordered stay of the implementation of the resolution of the House till the disposal of the said petition.

Thereafter, the house then passed a clarificatory resolution saying that its earlier resolution had given rise to misgiving that the concerned person would be deprived of an opportunity of explanation; that it was not so and the question of contempt would be decided only after giving an opportunity to explain to the judges. The warrant of arrest against two judges were withdrawn, but they were placed under an obligation to appear before house and explain why the house should not proceed against them for its contempt. The High Court again granted a stay order against the implementation of this resolution. Thus, there emerged a complete legislative judicial deadlock.

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At this stage, the President of India referred the matter to the Supreme Court for its advisory opinion under Article 143 of the Constitution of India.

The Supreme Court held that the two judges had not committed contempt of the legislature by issuing the bail order. The judges had jurisdiction and competence to entertain cases since petition and to pass the order as they did. The assembly was not competent to direct the custody and production before itself of the advocates and the judges. It was further held that the three wings of democratic state, viz, legislature, executive and the judiciary. The court emphasised that these three organs must function not in antimony, nor in a spirit of hostility, but rationally harmoniously.

Judgment: The Supreme Court while considering the question of mutual relationship between Fundamental Rights and legislative privilege held that Article 21 would apply to Parliamentary privileges and a person would be free to come to the court for a rate of *habeas corpus* on the ground that he had been deprived of his personal liberty not in accordance with the law but for capricious or malafide reasons.

The Supreme Court in concerned to the first issue mentioned herewith held that the position appears to be that it is wrong to suppose that no Fundamental Right applies to the area of legislative privileges. Some Fundamental Rights, like Article 19(1)(a), do not apply. Perhaps, Article 19(1)(a) to Article 19(1)(g) would not apply. On the other hand, some Fundamental Rights, example, Article 21 do apply, while the position with regard to others, example, Article 22(1) and Article 22(2), is not clear.

The Supreme Court in regard to issue number 2 mentioned herewith, the court retaliated to the judgement pronounced in ***MSM Sharma v. Sinha (I), AIR 1959 SC 395***, wherein, on the

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one hand, the court decided the general question whether a breach of privilege occurs when a newspaper prints a report including the portion ordered to be expunged by the Speaker. The court answered the question in the affirmative. But, on the other hand, when the question arose whether the expunged person had been printed by the newspaper or not, the court refused to express any opinion on this controversy saying that it must be left to the house itself to determine whether there has, in fact, been any breach of its privilege. Of course, when once it is held that a particular privilege exists, then it is for the house to judge the occasion and a manner of its exercise and the court would not sit in judgement over the way of the house has exercised its privilege. Each house of parliament in India has the power to commit a person for its contempt, but the position remains vague on the question whether such contempt is immune from judicial security or not.

The Supreme Court pointed out that Article 211 [Article 121 in case of Parliament] debars the State Legislature from discussing the conduct of a High Court judge. Therefore, on a party of reasoning, one House, a part of the Legislature, cannot take any action against a High Court for anything done in the discharge of his duties. The existence of a fearless and independent judiciary being the basic foundation of the constitutional structure in India, no legislature has power to take action under Article 194 (3) or 105 (3) against a Judge for its contempt alleged to have been committed by a judge in the discharge of his duties. The court also held that right of the citizens to move the judicature and the right of the advocate to assist that process must remain and controlled by Article 105 (3) and Article 194 (3). It is necessary to do so for enforcing the Fundamental Rights and for sustaining the rule of law in the country. Therefore, a house could not pass a resolution for committing a High Court judge for contempt. The court

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rejected the contention of assembly that it had absolute power to commit a person for its contempt and a general warrant issued by it would be conclusive and free from judicial scrutiny. The court declared that House of Commons enjoyed the privilege to commit a person for contempt by non-justiciable general warrant, as a superior Court of record in the land and not the legislature. Therefore, Parliament and the state legislature in India, which have never been courts, cannot claim such a privilege.

Part V

The Union Judiciary

Article 124 to 147

Topic: Appointment Of Supreme Court Judges And Judicial Autonomy (Three Judge Case)

First of 3-Judge Case: S.P Gupta v. UOI, AIR 1982 SC 149

Bench: Justice P.N. Bhagwati, Justice A.C. Gupta, Justice Syed Murtuza Fazal Ali, Justice V.D. Tulzapukar, Justice D.H. Desai, Justice R.S. Pathak, and Justice E.S. Venkataramiah

Fact of the Case: The relevant part of the case concerns disclosure of certain document between the Ministry of Justice, the Chief Justice of Delhi High Court, and the Chief Justice of India, as well as the relevant note made in connection with non-election of judge over the time and appeal of High Court judge. The appellant, together with one of the judges in the question, sought disclosure of these documents.

Judgment: The seven-judge bench of Supreme Court set aside the precedent for the collegium system of Supreme Court and High Court of India.

Power of appointment of judges

Justice E.S. Venkata Ramaiyah, in his verdict, wrote that under the scheme of Article 217 the power to appoint a Judge of the High Court is vested in the President. However, if there are conflicting opinions, the President has to weigh them after giving due consideration to each of them and take a decision on the question. He mentioned that while he is bound to consult authority is mentioned therein and to take into consideration their opinions, he is not bound by their opinion. Ordinarily, one does not expect the President to make an appointment by

ignoring all the adverse opinions expressed by the functionaries mentioned in Article 217.

Chief Justice of India not being entitled to primacy in case of difference of opinion.

Justice PN Bhagwati mentioned in this regard that the opinion of each of these three constitutional functionaries is entitled to equal weight and is not possible to say that the opinion of Chief Justice of India must have primacy over the opinions of other constitutional functionaries. If primacy were to be given to the opinion of Chief Justice of India, it would, in substance, amount to concurrence, because giving primacy would mean that his opinion must prevail over that of the Chief Justice of the High Court and the Governor of the State, which means that Central Government must accept his opinion.

Consultation

Justice Desai mentioned in this regard that the consultation has to be meaningful, purposeful, result oriented and of substance.... All the parties involved in the process of consultation must put all the material at its command relevant to the subject under discussion before all other authority is to be consulted. Nothing can be kept back. Nothing can be withheld. Nothing can be left for the eyes of any particular constitutional functionaries. It was, however, clarified that the President will have the right to differ from other constitutional functionaries, i.e, Chief Justice of India, Chief Justice of concerned High Court and Governor of the State, for cogent reason and take a contrary view.

Collegium System for Appointment of Judges

This was the first case to introduce the concept of collegium system. Justice PN Bhagwati writes as under:

“we would rather suggest that there must be a collegium to make a recommendation to the President in regard to appointment of a Supreme Court or High Court Judge. The recommending authority should be more broad-based and there should be consultation with wider interests. If the collegium is composed of persons who are expected to have knowledge of the persons who may be fit for appointment on the bench and of quality is required for appointment and this last requirement is absolutely essential—it would go a long way towards securing the right kind of judges, who would be truly independent in the sense we have indicated above and who would invest the judicial process with significance and meaning for the deprived and exploited section of humanity.”

Second Judge Case: Supreme Court advocates on record Association v. UOI, AIR 1994 SC 268

Bench: Justice S.R. Pandian, Justice A.M. Ahmadi, Justice J. Verma, Justice J.S. Punchhi, Justice M.M. Yogeshwar Dayal Ray, Justice Dr. A.S. Anand and Justice S.P. Bharucha

Fact of the Case: A Public Interest Litigation was filed in Supreme Court by lawyers association rising several crucial issues concerning the judges of Supreme Court and High Courts. The petition was considered by a bench of nine judges.

Judgment: The court considered the question of the primacy of the opinion of Chief Justice of India in regard to the appointment of the Supreme Court Judges. The Court emphasised that the question has to be considered in the context of achieving the constitutional purpose of selecting the best suitable for composition of the Supreme Court so essential to ensure the independence of judiciary, and, thereby, to preserve democracy.

Referring to the consultative process envisaged in Article 124(2) for appointment of Supreme Court judges, the Court

emphasised that this procedure indicates the government does not enjoy primacy for ‘absolute discretion’ in the matter of appointment of Supreme Court judges.

The court has pointed out that the provision for consultation with the Chief Justice was introduced because of the realisation that the Chief Justice is best equipped to know and assess the worth of the candidate and his suitability for appointment as a Supreme Court judge, and it was also necessary to eliminate political influence.

The Court has also emphasise that the phraseology used in Article 124(2) indicates that it was not considered desirable to wish absolute discretion or power of veto in the Chief Justice as an individual in the matter of appointments so that there should remain some power with executive to be exercised as a check, whenever necessary. Accordingly, the Court observed as under;

“The indication is that in the choice of a candidate suitable for appointment, the opinion of Chief Justice of India should have the greatest weight, the selection should be made as a result of a participatory consultative process in which the executive should have a power to act as a mere check on the exercise of power of Chief Justice of India, to achieve the constitutional purpose. Thus, the executive element in the appointment process reduced to the minimum and any political influence is eliminated. It was for this reason that the word ‘consultation’ instead of ‘concurrence’ was used, but that was done merrily to indicate that absolute discretion was not given to anyone, not even to Chief Justice of India as an individual.”

Thus, in the matter of appointment of a Supreme Court judge, the primary aim is to reach an exit decision taking into account the view of all the consultancies giving the greatest weight to the opinion of Chief Justice. When decision is reached by consensus, no question of primacy arises. Only when

conflicting opinion emerged at the end of the process, the question of giving primacy to the opinion of Chief Justice arises, unless for a very good reason known to the executive and is disclosed to the chief Justice of India, the appointment is not considered to be suitable.

The 3rd Judge Case: Re Special Reference, AIR 1999 SC 1

Background: Clarify certain points arising out of above judgement, the Supreme Court has delivered an advisory opinion on reference made by President under Article 143. In this opinion, the court has laid down the following proposition in regard to the appointment of Supreme Court judges:

Observation:

1. In making his recommendation for appointment to the Supreme Court, the chief Justice of India ought to consult four senior most puisne Judges of the Supreme Court. Thus, the collegium to make recommendations for appointment should consist of the Chief Justice and four senior most puisne Judges.
2. The opinion of all the members of collegium in respect of each decision should be in writing.
3. The views of senior most Supreme Court judge who has from the High Court from where the person recommended comes must be obtained in writing from consideration of collegium.
4. If the majority of the collegium is against the appointment of a particular person, that person shall be appointed. The course he is gone on to say that “if even two of the judges forming the collegium expresses strong view, for good reason, that are adverse to the appointment of a particular person, the chief Justice of India would not press for such appointment.”

5. The following exception have not been engrafted on the rule of seniority among the High Court judges for appointment to the Supreme Court:

a. High Court judge of outstanding merit can be appointed as a Supreme Court judge regardless of his standing in the seniority list. All that needs to be recorded when recommending him for appointment is that he has outstanding merit.

b. A High Court judge may be appointed as a Supreme Court judge for good reason from amongst several judges of equal merit, as for example, the particular region of the country in which his parents High Court is situated is not represented on Supreme Court bench.

Thus, the responsibility to make recommendation for appointment as Supreme Court judges has been taken away from Central executive and has not been placed on collegium consisting of the chief Justice of India and four senior most puisne judges. The sphere of consultation has thus been broadened. Before this opinion was delivered, this collegium consisted of chief Justice and two senior most judges. The court has not specifically stated that an opinion formed by the chief Justice of India in any manner other than that indicated has no primacy in the matter of appointments to the supreme Court and the government is not obliged to act thereon.

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the collegium system of appointing judges to the Supreme Court and high courts with a new body called national judicial appointment commission NJAC. However, in 2015, the Supreme Court has declared on the 99th Constitutional amendment act as well as the NJAC act as unconstitutional and void. Consequently, the earlier collegium system became

operative again. The verdict was delivered by the Supreme Court in fourth Judges case, 2015 [The Supreme Court advocates on record Association v. UOI, W.P. (C) No. 13 of 2015].

Topic: Ingredients That Constitute Contempt Of Court

Name of the case: **Hira Lal Dixit v. State of Uttar Pradesh, AIR 1954 SC 743**

Bench: Justice M.C. Mahajan, Justice Mukherjea, Justice S. Das, Justice V. Bose, Justice G. Hassan

Fact of the Case: The appellant urges that the passage complained of could not possibly be capable of any derogatory meaning or application and could not be regarded as constituting a contempt of court. However, the respondent argued that the passage in question was perfectly innocuous and only expressed laudatory sentiment toward the court and that such flattery could not possibly have the slightest derogatory words against the judges.

Judgment: Following factors have been laid down by Supreme Court that constitute contempt of court. They are as under;

1. Institution derogatory to the dignity of which are calculated to undermine the confidence of people in the integrity of judges.
2. An attempt by one party to prejudice the Court against the other party to the action.
3. To stir up public feelings on the question pending for decision before the court and to try to impress the judges in favour of himself.

4. An attempt to affect the mind of judges and to deflect them from performing their duty by flattery or veiled threat.
 5. An act for publication which is scandalises the court attributing dishonesty to a judge in the discharge of his functions.
 6. Willful disobedience or non-compliance of the court's order.
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Topic: Nature Of Original Jurisdiction Of Supreme Court Under Article 131

Name of the Case: State of Rajasthan v. UOI, AIR 1977 SC 1361

Bench: Chief Justice M. Hameedullah Beg, Justice Y.V. Chandrachud, Justice P.N. Bhagwati, Justice P.K. Goswami, Justice A.C. Gupta, Justice N.L. Untwalia and Justice Syed Murtaza Fazalali

Fact of the Case: There were general elections in the country for Lok Sabha in 1977 in which the Congress party was badly defeated. At this time, there were Congress ministries in several state. The Home Ministries, Government of India, through a communication advise the Chief Minister of the state to advise their governors to dissolve the state assemblies under Article 174 (2) (b) of the Constitution, and seek a fresh mandate from the people.

The State Government filed suits in the Supreme Court against the Central Government under Article 131 seeking injunctions against dissolution of state legislative assemblies under Article 356 and holding fresh elections in the states because the ruling party had been defeated in the elections for the Lok Sabha in these states.

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The Central Government raised several preliminary objections to the maintainability of the suit, viz;

1. Article 131 covers disputes only between the Government of India and a ‘State’. There is a distinction between a State and a “State Government”;
2. Article 131 covers special kinds of disputes in which States, as such, may be interested and not merely Government of a State which may come and go;
3. There was no denial of any constitutional right to any State.
4. There was no legal point involved in the case which was based purely on political factors.
5. The disputes related to the question whether the State Assemblies should be dissolved which did not involve any question on which the existence or extent of a legal right depended.

Judgment: The Supreme Court rejecting all these contentions held that the matter fell within Article 131. The Court refused to give a restrictive meaning to Article 131. It ruled that Article 131 includes a dispute between central and State Government involving a legal right. In the words of **Justice Chandrachud**, *“the true construction of Article 131(a), true in substance and true pragmatically, is that a dispute must arise between the UOI and a state.”*

The dispute between the UOI and a State cannot be a dispute which arises out of the difference between the Government in Office at Centre and the Government in Office in a State. It is not necessary for attracting Article 131 that the plaintiff must assert a legal right in itself. Article 131 contains no such restriction. It is sufficient for attracting Article 131 that the plaintiff questions the legal or constitutional right asserted by the defendant, be it the Government of India or any other State.

Such a challenge brings the suit within the term of Article 131 for, the questions for decision of the Court is not whether this or that particular legislative assembly is in title to continue in office but whether the government of India which asserts the Constitution drive to dissolve the assembly on the grounds alleged, possesses any such right.

The State has the *locus* and interest to contest and seek an adjudication of the claim set up by the Union Government. In a Federation, the state is vitally interested in defining the powers of the Central Government, on the one hand, and their own, on the other.

Case Second: State of Karnataka v. UOI, AIR 1978 SC 68

Bench Chief Justice M Hameedullah Beg, Justice Y.V. Chandrachud, Justice Bhagwati, Justice N.L. Untwalia, Justice P.N. Singhal, Justice Jaswant Singh and Justice P.S. Kailasam

Fact of the Case: The Government of India appointed a commission of enquiry under Commission of Enquiry Act, to inquire into certain allegations of corruption and misuse of power by the Chief Minister and a few other ministers. The State Government brought a suit against the Centre under Article 131 for issue of a declaration that the notification appointing the commission was illegal and *ultra vires*.

The main contention of the state was that the Commission of Enquiry Act does not authorise the Central Government to constitute a commission of enquiry in regard to matters falling exclusively within the state legislative and executive power. The crucial question arises was, whether the Central Government could appoint a commission to inquire into the contract of Chief Minister and other ministers of a state in the discharge of their governmental function.

Judgment: The Supreme Court ruled that the suit under Article 131 by the State was competent and maintainable. The majority Judges were not prepared to take too restrictive the view of Article 131. They were not prepared to distinguish between the ‘State’ and its ‘Government’. The majority view was that there exists an integral relationship between the state and its government and what affects the government or the ministers in their capacity as Ministers raises a matter in which the state would be concerned. In the words of **Justice Chandrachud**:

“The object of Article 131 is to provide a high-powered machinery for ensuring that the Central Government and the State Government act within their respective spheres of their authority and do not trespass upon each other constitutional functions or powers.”

It was also clarified that under Article 131, it is not necessary that the plaintiff should have some legal right of its own to enforce, before it can file a suit. What is necessary is that the dispute must be one involving any question “on which the existence or extent of legal right” depends. The plaintive can bring the suit so long as it has interest in raising the dispute because it is affected by it, even if no legal right of it is infringed provided, of course, The dispute is relatable to the existence or extent of legal right.

Therefore, a challenge by the State Government or the authority of the Central Government to appoint a commission of inquiry or to inquire into the allegation against the state ministers as regards the discharge of their concerns in the state clearly involved to question on which the existence of extent of the legal right of the Central Government to appoint such commission depended and that was enough to sustain the proceedings brought by the State under Article 131.

Topic: Nature Of Special Leave Petition Under Article 136

Name of the Case: Narpat Singh v. Jaipur Development Authority, AIR 2002 SC 2036

Bench Justice R.C. Lahoti and Justice B.N. Agrawal

Judgment: The Supreme Court has described the nature of its power under Article 136 are as under:

“The exercise of judicial conferred by Article 136 of the Constitution on this court is discretionary. It does not confer a right to appeal on a party to litigation, it only confers a discretionary power of widest amplitude on this Court to be exercised for satisfying the demands of justice. On one hand, it is an exceptional power to be exercised sparingly, with caution and care and to remedy extraordinary situations or situations occasioning gross failure of justice; On the other hand, it is an overriding power whereunder the court may generously step in to impart justice and remedy in justice.”

Topic: Law Declared By Supreme Court To Be Binding On All Court

Name of the Case: Commissioner of Income-tax v. Sun Engineering Works (P) Ltd., AIR 1993 SC 43

Bench: Justice Y. Dayal and Justice A. Anand

Judgment: The Supreme Court in regard to Article 141 of the Constitution held that what is binding is the ratio of the decision and not any findings on facts, or the opinion of the Court on any question which was not required to be decided in a particular case, it is the principle found out upon a reading of

the judgement as a whole in the light of questions before the court, and not particular words or sentences.

Topic: Power Of Supreme Court To Do Complete Justice Under Article 142

Name of the Case: Mohd Anis v. UOI, 1994 Supp (1) SCC 145

Bench: Justice A.M. Ahmadi and Justice N. Venkatachala

Fact of the Case: Under Section 25 of the Delhi Special Police Establishment Act, 1946, Central Bureau of Investigation (CBI) cannot investigate a cognizable offence committed within a state without the consent of the concerned State Government.

Judgment: The Supreme Court has ruled that it can under Article 142(1) direct CBI to investigate such an offence within a state without consent of the concerned State Government. The Court has asserted that under exercise of its power under Article 142(1) is not conditioned by any statutory power, because statutory provisions cannot override constitutional provisions. Article 142(1) being a constitutional power cannot be limited or conditioned by any statutory provision. The Court has explained the scope of Article 142 in following words:

“The constitutional plenitude of the power of Apex Court is to ensure due and proper administration of justice and is intended to be coextensive in each case and to meeting any exigency. Very wide power has been conferred on this court for due and proper administration of justice and whenever Court sees that the demand of justice warrants exercise of such power, it will reach out to ensure that justice is done by restoring to this extraordinary power conferred to meet precisely such situation.”

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The power under Article 142(1) cannot be diluted merely because the act in question stipulates that the State Government permission will be necessary if the CBI is to investigate any offences committed within the territorial jurisdiction of a State Government. That maybe actually obligation governing the relation between the Central Government and State Government but it cannot control Supreme Court power under Article 142(1). The statute does not forfeit investigation by CBI but only requires certain formalities to be completed which has no relevance when the apex court makes an order in excise office power under Article 142(1).

PART VI THE STATE

The Executive Article 153 To 167 & 213

Topic: Tenure Of Governor Under Article 156 (1)

Name of the Case: Om Narain Agarwal v. Nagar Palika, Shahjahanpur, AIR 1993 SC 1440

Bench: Justice N.M. Kasliwal and Justice Yogeshwar Dayal

Judgment: The Supreme Court observed that while there exist provisions in the Constitution for impeachment of President, no such provisions exist concerning the Governor. The reason being that as he holds his office during the pleasure of the President, the Central Government can always recall him if the instances so require. A governor is a political appointee, and appointed is by the government on political considerations, it can also be terminated on political considerations.

Topic: Whether Office Of Governor Is An Employment Under The Government Of India

Name of the case: Hargovind Pant v. Raghukul Tilak, AIR 1979 SC 1109

Bench Chief Justice Y.V. Chandrachud, Justice P.N. Bhagwati, Justice N.L. Untwalia, Justice Syed Murtuza Faizalai, Justice R.S. Pathak

Fact of the Case: The first respondent, who was a member of Rajasthan State Public Service Commission during the years 1958 to 1959, was later appointed as Governor of the State of

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Rajasthan. The petitioner contended that by the virtue of Article 319 (d) of the Constitution the respondent was ineligible to be appointed as Governor of State because he was a member of the State Public Service Commission.

Issue: Whether, by reason of Article 319(d) the respondent was ineligible for employment either under the Government of India or under the Government of State and whether the office of governor was an employment under the Government of India?

Judgment: The Supreme Court has ruled that the office of governor is not an employment under the Government of India, and so it does not fall within the provision of Article 319(d). Therefore, a member of the State Public Service Commission can be appointed as Governor. The court adduced the following reason for this view: unemployment can be said to be under the Central Government if the holder or the incumbent is under the control of Central Government vis-a-vis such employment. The office of Governor does not fall under this description. The office of Governor is not an employment under the Government of India; The Governor occupies a high constitutional office with important constitutional function and duties; he is not an employee of the Government of India; he is not subordinate or subservient or under the control of Government of India, nor is he amenable to its directions, nor is he accountable to it for the manner in which he carries his functions and duties. Governor is an independent constitutional office which is not subject to control of Government of India.

Topic: Whether A Person Who Is Disqualified To Be A Member Of State Legislature Could Be Appointed As A Minister Or The Chief Minister Under Article 164(4)?

Name of the Case: B.R. Kapur v. State of Tamil Nadu, (2001) 7 SCC 231

Bench Justice G.B. Pattanaik, Justice S.P. Bharucha, Justice Brijesh Kumar, Justice Y.K. Sabharwal and Justice Ruma Pal

Fact of the Case: The nomination paper of Jayalalithaa for election to the state legislative assembly was rejected. She had been convicted for certain offences under the Prevention of Corruption Act and the Indian penal Code and sentenced to 3 years rigorous imprisonment. She had appealed to the High Court against her conviction; The High Court suspended her sentence but not her conviction pending decision on her appeal. Accordingly, she was disqualified to contest an election to the house. As a result of the election, her party AIADMK all by a big majority and elected her as a leader the governor of Tamil Nadu appointed her as the chief minister under Article 164(4) as she was not a member of the state legislature at this time. Her appointment as the chief minister was challenged in Supreme Court.

Judgment: The Supreme Court held that it would be “unreasonable and anomalous to conclude that a minister who is a member of legislature is required to meet the constitutional standards of qualification and disqualification but that a minister who is not a member of legislature need not. Logically, the standard expected of a minister who is not a member should be the same as, if not greater than, those required of a member.”

However, if the Governor appoints a disqualified person to a constitutional office, the discretion of the Governor may not be challengeable because of Article 361, but that does not confer any immunity on the appointee himself. The qualification of the appointee to hold office can be challenged in proceeding for *quo warranto* (a writ or legal action requiring a person to show by what warrant an office or franchise is held, claimed, or exercised). If the appointment is contrary to any constitutional provision, it can be quashed by the court.

Topic: Conduct Of Government Business Under Article 154 And 166

Name of the Case: State of Madhya Pradesh v. Yashwant Trimbak, AIR 1996 SC 765

Bench: Justice J.B. Patnaik and Justice S.C. Agrawal

Fact of the Case: According to the pension rules, the departmental proceeding against a retired employee could not be instituted without the “Section of the Governor”. The learned counsel appearing for the appellant raised two contentions assailing the legality of the order of the Tribunal:

- 1) The order initiating the departmental enquiry proceeding which was served on the respondent having been passed in the name and by order of the Governor in terms of Article 166(2) of the Constitution of India, the validity of the order cannot be called in question on the ground that it is not an order executed by the Governor and Tribunal, therefore, committed gross error of law in quashing the departmental proceedings on a finding that there has been no sanction of the Governor.
- 2) The power to accord sanction under Rule 9(2)(b)(i) of the Pension Rules being an executive power of the State

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Government and the Governor having allocated the Business of the State Government to be transacted by the different Ministers under the Rule of Business made under sub-Article (3) of Article 166 of the Constitution and admittedly the Council of Ministers having accorded sanction, there is no infirmity with the same and further the sanction of the Governor himself is not necessary.

Judgment: The Supreme Court held that the order could not be questioned in any court on the ground that it was not made or executed by the Governor. The bar to judicial inquiry with regard to the validity of such order engrafted in Article 166(2) would be attracted. *“The signature of the concerned secretary or under-secretary who is authorised under the authentication rule to sign the document signifies the consent of the Governor as well as the acceptance of the advice rendered by the concerned minister.”*

The court mentioned that the order of sanction for prosecution of a retired government servant is executive act of the government. Under Article 166(3), the Governor may frame rules of business and allocate all his functions to different ministers except those which the Governor is required by the Constitution to exercise his own discretion. The expression “business of the government of the state” in Article 166 (3), comprises of functions which the Governor is to exercise with the aid and advice of the Council of ministers including the functions which the governor has to exercise in his own subjective satisfaction as well as statutory function of the State Government. Therefore, accepting the matter to be discharged by the Governor in his discretion, “the personal satisfaction of the Governor is not required and any funds may be allocated to ministers”. Therefore, the decision taken by council of ministers to sanction prosecution of the retired government servant is valid and does not suffer from any legal infirmity.

Topic: Power Of Governor Under Article 167

Name of the Case: J.P. Bansal v. State of Rajasthan, AIR 2003 SC 1405

Bench: Justice Shivraj V. Patil and Justice Arijit Pasayat

Fact of the Case: The appellant was appointed as judicial member of the tribunal issued by Finance Department of the Government of Rajasthan. He prays for issuing a writ of mandamus to the State of Rajasthan to pay compensation on cessation of functioning as Chairman of the abolished Rajasthan Taxation and Tribunal having been turned down by the learned single judge and the division bench of Rajasthan High Court the appeal was referred to Supreme Court.

Judgment: The Supreme Court observed that the Constitution requires that action must be taken by the authority concerned in the name of the Governor. It is not till this formality is observed that the action can be regarded as that of the State. Constitutionally speaking the Council of Minister or advisor and as the head of state, the Governor is to act with the aid and advice of Council of Ministers. Therefore, till the advice is given by the Governor, the council of minister does not get legalized into the action of the state.

**State Legislature
Article 168 To 212**

**Topic: Meeting Of State Legislature And Power Of
Summoning Under Article 188**

Name of the Case: Rameshwar Prasad (VI) v. Union of India, AIR 2006 SC 980

Bench: Chief Justice Y.K. Sabharwal, Justice K.G. Balakrishnan, Justice B.N. Agrawal, Justice Ashok Bhan, Justice Arijit Pasayat

Fact of the case: Petitioner challenges the constitutional validity of notification which orders dissolution of the legislative assembly of the State of Bihar. It is a unique case. Earlier cases that come up before Supreme Court those where the dissolution of assemblies was ordered on the ground that the parties in the power had lost the confidence of the house. The present case is of its own kind where before even the first meeting of legislative assemblies, its dissolution has been ordered on the ground that attempts to crumble majority by illegal means and lay claim to form the government in the state and if these attempts continue, it would amount to tampering with Constitutional provisions.

Judgment: The Supreme Court held that the constitution of any Assembly can only be under Section 73 of the Representation of People Act, 1951 and the requirement of Article 188 of the Constitution suggests that the Assembly comes into existence even before its first sitting commences.

Normally, the government is formed by the party commanding the required majority in the State. However, the issue has become more complex with a number of political parties in the fray. If a political party with the support of other political

parties or other MLAs stake claim to form a Government and satisfies the Governor about its majority to form a stable Government, the Governor cannot refuse formation of the Government and override the majority claim because of his subjective assessment that the majority was cobble together by illegal and unethical means.

The Governor summons house to meet at such times and places as he thinks fit. It is now a well-settled convention that the Governor summons the house not of his own accord but only with advised to do so by Council of ministers.

It is the Council of Minister which provides business for a session of the legislature, and, therefore, it follows that for the Governor to act otherwise in accordance with such advice in the matter of summoning House of legislature would be without purpose.

Six months should not intervene between the last sitting in one session of the house and date for his first meeting in the next session under Article 174 (1).

Topic: The Governors Power Of Prorogation Under Article 174

Name of the case: State of Punjab v. Sat Pal Dang, AIR 1969 SC 903

Bench: Chief Justice M. Hidayatullah, Justice J.C. Shah, Justice V Ramasamy, Justice G.K. Mitter, Justice A.N. Grover

Fact of the Case: On the eve of the adoption of the State budget and passing of the Appropriation Bill, the Speaker adjourned the House for two months on the plea that there was disorder in the House. It was however suspected that the Speaker had done this to thwart a move to pass a vote of no

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confidence against him. The adjournment led to a crisis because in the absence of the appropriation being made by the legislature, the State Government could not withdraw any money from the Consolidated Fund of State, and there was thus a danger of the government machinery coming to a standstill. To set matter right, the Governor had to intervene. He prorogued the house and summon it to meet a week later.

The action of the Governor in proroguing and summoning the house was challenged in the Supreme Court.

Judgment: The Supreme Court pointed out that “Article 174(2) (a) which enables the governor to prorogue the Legislature does not indicate any restriction on this power”. The power is “untrammeled” by the Constitution, and that the Governor had exercised his power to get rid of the speakers and adjournment order and to put back the constitutional machinery of the State into life. Governor’s action was perfectly understandable as an emergency had arisen. There was no abuse of power by him and no *mala fide* (abuse of power) on his part.

Implicit, however, in this remark of the Court is the suggestion that the Governor does not enjoy an absolute discretion to prorogue the house and there may be circumstances when prorogation may be questioned on the ground that of want of good faith and abuse by him of his constitutional powers.

Topic: Internal Autonomy To The State Legislature Under Article 212

Name of the Case: Mangalore Ganesh Beedi Works v. State of Mysore, AIR 1963 SC 589

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Bench: Justice J.L. Kapur, Justice S.K. Das, Justice A.K. Sarkar, Justice M. Hidayatullah, Justice Raghubar Dayal

Fact of the Case: The Constitution validity of Indian Coinage (Amendment Act), 1955 was challenged.

Judgment: The Supreme Court held that the validity of a taxing measure cannot be challenged on the ground that it offends Article 197 to 199. And, the procedure laid down in Article 202 of the Constitution as Article 212 prohibits the validity of any proceeding in the state legislature called in question on the ground of any alleged irregularity of procedure.

No officer or member of the State Legislature in whom the powers are vested by or under the Constitution for regulating procedure, or the conduct of the business, or for maintaining order in the legislature, is to be subject to the jurisdiction of any court in respect of the exercise by him of the power under Article 212.

State Judiciary Article 214 To 231

Topic: Qualifications For A High Court Judge Under Article 217

Name of the Case: Kumar Padma Prasad v. UOI, AIR 1992 SC 1213

Bench: Justice Kuldip Singh, Justice P.B. Sawant and Justice N.M. Kasliwal

Fact of the Case: Siri K.N. Srivastava, Secretary to Law and Justice, Mizoram Government, was appointed as High Court Judge. The appointment was challenged by petitioner through the writ petition in Gauhati High Court. The Gauhati High

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Court granted a stay on the warrant of appointment. Shri Srivastava then moved the Supreme Court against the High Court order from High Court to the Supreme Court.

Judgment: Referring to Article 217, the Supreme Court pointed out that the question was whether Shri Srivastava had held a judicial office for 10 years. The term judicial office has not been defined in the Constitution, according to the Court, holder of the judicial office under Article 217 means a person who exercises only judicial function and renders decisions in a judicial capacity. He must belong to a judicial service which in a class is free from executive control and is disciplined to hold the dignity, integrity and independence of judiciary.

The Supreme Court ruled that Shri Srivastava was not qualified to be appointed as High Court judge as he had held no judicial office in the judicial service. The court ruled that the office of Legal Remembrancer-cum-Secretary (Law and Judicial) of the State Government headed by him was a non-judicial office under the control of executive. All other offices held by him was neither judicial nor part of any judicial service. He also did not complete 10 years as a member of the state judicial service.

Thus, the Supreme Court made it clear that ordinarily the domain in such matters play wholly with the constitutional authorities like the present, where the incumbent did not fulfil the qualification prescribed for the office, it became the court's duty to see that no ineligible or unqualified person was appointed to a high constitutional office of High Court judges.

Topic: Transfer Of High Court Judges Under Article 222

Name of the Case: Re Presidential Reference, AIR 1999 SC 1(final case on the issue) [check three judge case on Appointment of Judges]

Bench: Justice S. Bharucha, Justice M Mukherjee, Justice S. Majmudar, Justice S.V. Manohar, Justice G. Nanavati, Justice S.S. Ahmad, Justice K. Venkataswami, Justice B. Kirpal and Justice G. Pattanaik

Judgment: The Supreme Court has further elucidated its ruling in Supreme Court advocates on the transfer of a High Court judge. The court has stated that before recommending the transfer of a judge from one High Court to another as a judge, Chief Justice of India must consult a plurality of judges. He must take into account the views Chief Justice of the High Court from which the judges are to be transferred, any judge of Supreme Court whose opinion may have significance in the case, the Chief Justice of High Court the transfer is to be affected.

All these views are to be expressed in writing and should be considered by a collegium consisting of the Chief Justice and four senior most puisne judges of the Supreme Court. The collegium should consider the response of the judges to be transferred. This view and those of the four senior most judges should be conveyed to the Government of India along with the proposal for transfer. Unless the decision to transfer has been taken in manner aforesaid, it is not decisive and does not bind the Government of India.

Because of all the safeguards mentioned above, judicial review in case of transfer of High Court judges, according to the court, would be limited to a case where transfer of judges has been

made or recommended without obtaining the view and reaching the decision in the manner aforesaid.

Topic: The Court Of Record And Power To Punish For Its Contempt Under Article 215

Name of the Case: State of Bihar v. Subhash Singh, AIR 1997 SC 1390

Bench: Justice K. Ramasawamy and Justice G.T. Nanavati

Fact of the Case: While disposing of a writ petition, the High Court directed the concerned officer to consider the case and dispose it off within two months. When this did not happen, the High Court imposed the cost on the officer personally for non-compliance of its order. The appeal was filed before Supreme Court.

Judgment: The Supreme Court has emphasised that the head of department or designated officer is ultimately accountable to the court for the result of the action or decision taken. Executive is entrusted to comply with the orders passed by the Court in exercise of judicial review. The Court exercises its power of judicial review to ensure that the executive discharges its power “truly, objectively, expeditiously for the purpose of which substantive, act/result are intended.” Executive actions of the state or its official must be carried out subject to the Constitution and within the limits set by the law. *“Judicial review of administrative action is, therefore, an essential part of the rule of law.”*

When the court directs an officer to discharge his duties expeditiously and if it is not done, the officer concerned is required to explain to the court as to the circumstances in which he could not comply with the direction issued by the court. If

there was any unavoidable delay, he should have sought further time for compliance. In the instant case, the concerned officer took no such step. The Supreme Court also impressed on the High Court to be circumspect in imposing cost personally against official and keep at the back of his mind that fact in each case.

Topic: Nature Of Writ Petition Under Article 226

Name of the Case: L. Chandra Kumar v, UOI, (1997) 3 SCC 261

Bench: Chief Justice A.M. Ahmadi, Justice M.M. Punchhi, Justice K. Ramasamy, Justice S.P. Bharucha, Justice S. Saghir

Issue:

1. Whether the tribunal, constituted under Article 323A and under Article 323B of the Constitution, possess the competence to test the constitutional validity of the provision?

Fact of the Case: Several Special Leave Petition, civil appeals, writ petitions were clubbed together to form the concern petition before Supreme Court of India on the said issue.

Judgment: The seven-judge bench of Supreme Court held that the power of judicial review under Article 226 of the Constitution is the basic feature of the Constitution. Having held so, the Court at the same held that a litigant cannot straight away invoke the High Court's constitutional jurisdiction at the first instance but must approach the Administrative Tribunal first.

Topic: Nature Of The Power Of High Court Under Article 227

Name of the Case: State v. Navjot Sandhu, (2003) 6 SCC 641

Bench: Justice S.N. Variava and Justice Brijesh Kumar

Judgment: Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and Tribunals throughout the territory in relation to which it exercises its jurisdiction. This jurisdiction cannot be limited or fettered by any act of the state legislature. The supervisory jurisdiction extends to keeping the subordinate tribunal within the limit of their authority. The powers under Article 227 are wide and can be used, to meet the end of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purports to exercise any discretionary power. It is settled law that this power of judicial superintendence must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bars exercise of revisional power, it would require very exceptional circumstances to warrant interference in Article 227 since the power of superintendence was not meant to circumvent statutory law.

Topic: Appointment Of District Judges Under Article 233

Name of the Case: State of Kerala v. A Lakshmikutty, AIR 1987 SC 331

Bench: Justice A.P. Sen and Justice B.C. Ray

Issue: Whether the High Court could issue a writ of mandamus to the governor of state directing him to act as per the recommendation of High Court to fill up the vacancies in the post of district judge reserved for directorship meant from the practicing member of the bar under Article 233 (1) of the Constitution of India?

Fact of the case: Judicial review of the acts of governor not to appoint candidates of district judges post as recommended by the High Court and not to communicate on this matter with the concerned High Court.

Judgment: The Supreme Court has greatly discussed the respective roles of government and the High Court in the matter of appointment of district judges. This matter is governed by Article 233(1) of the Constitution according to which the appointment of district judges is to be made by the State Governor in consultation with the High Court under Article 233(1). A person not being in service of the state or of the Centre can be appointed only when recommended by High Court under Article 233(2). Some of the salient point which emerges from the court's opinion are as under;

1. The power of State Government to appoint district judges is not absolute and unfettered but is hedged in with restrictions. The power is conditioned by the requirement of consultation with the High Court.
2. The power of appointment is an executive function of the government.
3. The eligibility for appointment as a district judge by director depends entirely on the High Court's recommendation. The State Government cannot appoint

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anyone from outside the panel of names forwarded by the High Court.

4. Conversation between the High Court and the State Government, as envisaged by Article 233(1), must be “real, full and effective”. This means that there must be an interchange of views between the High Court and the State Government. On this point, the court has emphasised as under; “if the State Government were simply to give lip service to the principle of consultation and depart from the advice of the High Court in making judicial appointments without referring back to the High Court, the difficulties which prevent the government from accepting its advice, the consultation would not be effective and any appointment of a person as a district judge under Article 233(1) would be invalid.”
5. Normally, as a matter of rule, the recommendation of the High Court for appointment of district judge should be accepted by State Government. If, in any particular case, the State Government for “good and valid reasons” find it difficult to accept the recommendations of the High Court, the government should communicate its view to the High Court.”

In the instant case, the High Court forwarded to the State Government, a panel of names for appointment as district judges. For some reason, the State Government did not want to accept the final list but it did not communicate its view to the High Court in the matter. The Supreme Court ruled that before rejecting the panel forwarded by the High Court, the government should have conveyed its view to the High Court to elicit its opinion. The government should have taken the High Court into confidence. Accordingly, a *mandamus* was issued to the State Government requiring it to communicate its view to the High Court to elicit its opinion.

Topic: Betterment Of The Condition Of Services Of The Members Of Subordinate Judiciary

Name of the Case: All India Judges Association v. UOI, AIR 1992 SC 165

Bench: Chief Justice Ranganath Misra, Justice A.M. Ahmadi, Justice P.B. Sawant

Fact of the Case: Petition was filed by All India Judges Association under Article 32 seeking direction for setting up an All India Judicial Services and for bringing about uniform condition of services for members of the subordinate judiciary throughout the country. The Court referred to work the law commission had shared in its 14 Report in the year 1958 from the portion of setting up of All India Judicial Services and observed:

“there is considerable force in the view expressed by the Law Commission. An All India Judicial Services essentially for manning the higher services in the subordinate judge receive is very much necessary. The reason advanced by the Law Commission for recommending the setting up of All India Judicial Services appeal to us.”

The court has thus directed the Central Government and other authority concerned to take appropriate steps to set up and All India Judicial Services, and bring about uniformity in designation of judicial services. This requires action be taken under Article 312.

In addition, the Supreme Court also directed various improvements being effectuated in the condition of service of the subordinate judiciary, example, raising the retirement age of 60 years, examination of the pay structure of judicial services,

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provisions for admissions for purchase of law books and journals for a residential library for every judicial officers, provision for residential accommodation, etc.

Justifying the higher retirement age for judicial officer than the executive officer, the court has said that the work of a judge involves more of a mental activity than physical. In case of a judge court experience is an indispensable factor and subject to the basic physical fitness with growing age experiences.

The court emphasised that “dispensation of justice is evitable feature of any civilised society”. The court also pointed out that income from “fee is more than the expenditure on the administration of justice. The court, therefore, suggested that “what is collected as Court-fee at least be spent on administration of justice instead of being utilised as a source of general revenue of the State”. The court has also suggested that provision must be made for in-service training of judicial officers.

Second Case: All India Judges Association v. UOI, AIR 1993 SC 2493

Bench: Justice M.V. Ahmadi and Justice P. Sawant

Background: The review petition was filed by several State Government and Central Government against the decision in All India Judges Association v UOI, 1992. They raised several objection to the direction given by Supreme Court in the abovementioned case. The main objection on their behalf were as under:

1. It falls within the exclusive purview of each State to regulate service conditions for subordinate judiciary. When the Supreme Court gives direction for this purpose, it encroaches upon the state power;

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2. Implementation of the direction given by Supreme Court would impose a heavy financial burden on the state.

Judgment: The Supreme Court, after considering the objections, it rejected the same and reiterated its earlier direction in All India Judges Association Case 1992. The court asserted that it made recommendations to improve the system of justice and thereby to improve the content and quality of justice administered by the courts.

Commenting on various objections raised by the various government to the direction issued by the court to improve the working condition of subordinate judiciary, the court stated that this was because of lack of realisation that judicial service is different from executive service. In this connection the court stated:

“The judicial service is not service in the sense of employment. The judges are not employees. As a member of judiciary, the excise the sovereign judicial power of the state.”

The Supreme Court had prescribed the qualification of minimum of three years legal practice for recruitment in the lowest rung of judicial officers.

The court also recommended that the service condition of judicial officer should be laid and reviewed by time to time by an independent commission exclusively constituted for the purpose.

The third case: All India Judges Association v. UOI, (2002) 4 SCC 247

Bench: Justice V. Kirpal, Justice G. Patnaik and Justice V. Khare

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Judgment: The Supreme Court considered such questions pertaining to district and subordinate judges as pay scale, sufficiency of judicial strength, qualifications and equipment of judges. The court had suitable direction as regards these matters.

The court has also answered the objection that by making the directions, the court was encroaching upon the powers of the State conferred by Article 309. The court has observed in this connection:

“but the mere fact that Article 309 gives power to the executive and the legislature to prescribe the service condition of judiciary does not mean that judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role of judiciary in that we have, for critically it would not be impossible for the executive or the legislature to turn and twist the tail of the judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain independence of judiciary.”

Because of these reasons, the Supreme Court has reiterated what it said in its 1992 judgement for effectuating various improvements in the service conditions of the district and subordinate judges. The court has however modified somewhat this direction to raise the age of judgement to 60 years. The benefit of this extension in retiring age would not a cure automatically to all judicial officer irrespective of their past record of service and evidence of their continued utility to the judicial system in future. The benefit would be available only to those whom the High Court “have a potential for continued useful service.”

Part VIII

The Union Territories

Article 239 to 241

**Topic: Jurisdiction And Competence Of The
Government Of NCT Of Delhi And The Government
Of India Under Article 239 AA And 239 AA (4)**

Name of the Case: Government of NCT of Delhi v. Union of India, (2018) 8 SCC 501

Bench: Chief Justice Dipak Misra, Justice A.K. Sikri, Justice A.M. Khanwilkar, Justice D.Y. Chandrachud, and Justice Ashok Bhushan

Fact of the Case: The Parliament of India enacted Delhi Administration Act 1966, which formed Delhi Metro Political Council with a provision of 56 directly elected members and five members nominated by newly created position of Lieutenant Governor. The council had only advisory power regard to the legislative proposals, budget proposals and other matter referred to it by Lieutenant Governor. The Lieutenant Governor succeeded the Chief Commissioner as administrator of Delhi.

After huge demand for legislative assembly, the government of India came up with constitution 69th Amendment Act, 1991 which formed Government of National Capital Territory Act, 1991 where in Delhi Legislative Assembly was introduced with Chief Minister and Council of Minister replacing the then Chief Executive Councilor and Executive councilors.

Conflict between Government of Delhi and Government of India was seen when the Delhi Lieutenant Governor General Najeeb Jung denied sending files related with the affairs of police, public order and land. The decision of Najeeb Jung was

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backed by Home Ministry. Through the said notification it was notified that Delhi Anti-Corruption Branch could not investigate Central Government Employee's because they have no jurisdiction to do so.

Similarly, in 2015 when the Government of Delhi formed enquiry commission for investigating into CNG Fitness Scheme, the same was opposed by Lieutenant Governor Najeeb Jung, who referred the matter to Home Ministry. The Home Ministry ruled that the Government of National Capital Territory of Delhi was not the competent authority to set up an enquiry commission, thus holding that the Delhi Government order was legally invalid and *void ab initio*.

A petition based on such issues was filed before Delhi High Court. The Delhi High Court ruled that Lt Governor had complete control of all the matters regarding National Capital Territory of Delhi. Not satisfied with the High Court decision, the Government of Delhi appealed before Supreme Court.

Judgment: The Supreme Court while setting aside the judgement of Delhi High Court ruled that the Delhi Lieutenant Governor had no independent decision-making power under Article 239AA and had to follow the aid and advice of the Chief Minister led Council of Minister of the Government of Delhi on the matter Delhi Legislative Assembly could legislate. The judgement was held under following sub-heads:

Status of Delhi under Constitution

- * Administration of Union Territory under Article 239 (1) is different from Article 239AA which provides for an elected legislature.
- * Parliament can legislate for Delhi on any matter in the state list and the concurrent list but the executive power in relation to Delhi except the police, land and public order

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vests only in the State Government headed by Chief Minister.

- * It also held that the executive power of the Union does not extend to any of the matters which come within the jurisdiction of Delhi Assembly.

LG to act on ‘aid and advice’ of Council of Ministers

- * For establishing a democratic and representative form of government for NCT of Delhi, Government of Delhi enjoys the confidence of people of Delhi should have the functional autonomy to legislate for the NCT of Delhi.
- * The law in regard to aid and advice of the Council of Ministers by affirming that LG is bound to act on aid and advice except in respect of land, public order and the police.

LG cannot refer every matter to the President

- * Article 239AA (4) says that in the case of difference of opinion between the LG and his ministers on any matter, the LG shall refer it to the President for final decision and act according to it.
- * However, the court inferred that the words ‘any’ matter employed in the proviso to Article 239AA (4) cannot be inferred to mean ‘every matter’.
- * The power of Lt Governor under the said proviso represents the exception and not the general rule which has to be exercised in exceptional circumstances by LJ.

Limited References to be Made to the President

- * LG does not refer to the President normal administrative matters that disturb the concept of constitutional governance, principles of collaborative federalism and the standard of constitutional morality.

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- * The court also held that the President is the highest constitutional authority and his decision should be sought only on constitutionally important issues.

Part IX

The Panchayats

Article 243 - 243O

Topic: Panchayat Is A Permanent Constitutional Body

Name of the Case: Lakshmappa Kallappa v. State of Karnataka, AIR 2000 Kant 61

Bench: Justice P.W. Shetty

Fact of the case: The constitutional validity of Section 159 (2) and Section 179 (3) of the Karnataka Panchayati Raj Act, 1993 was challenged. The said Section do not permit the non-elected members of Zila Panchayat to participate and vote in the meeting convened for the purpose of considering the no-confidence motion moved against the Adhayaksha and Upadhyaksha of Panchayat.

Judgment: Article 243 to Article 243 O provides for the constitution of panchayats, the terms of the member of panchayats, reservation to be made in the Panchayat. Any law made by the state legislature which runs counter to the said constitutional provisions, requires to be declared as unconstitutional.

**Topic: Extending The Provisions Of State Legislation
On Panchayats To Union Territories**

Name of the case: UT Chandigarh v. Avtar Singh, (2002) 10 SCC 432

Bench: Justice Mahesh Grover

Judgment: The notable feature of this constitutional provisions is that these are in the nature of basic provisions which need to be supplemented by law made by the respective State Legislature. The reason is that local government including the self-governing institution for the ruler areas, is exclusively state subject under Article Entry 5, List II. Parliament does not have legislative power to enact any law relating to village Panchayat. However, it is open to the center, if statutorily authorised, to extend the provisions of the state legislation on Panchayats to Union territories.

Part IX-A **The Municipalities**

Topic: Conversion Of A Municipal Council To A Corporation

Name of the Case: Municipal Board, Hapur v. Jassi Singh, AIR 1997 SC 2689

Bench: Justice K. Ramasamy and Justice Faizan Uddin

Issue: Whether the municipality has power to levy the fee/taxes?

Judgment: Article 243-W authorises the State Legislature to confer such powers and authority as may be necessary to enable the municipalities to function as institutions of self-government. The municipalities maybe authorised to prepare plans for economic development and social justice. Under Article 243 - X, the State Legislature may by law authorise a municipalities “to levy, collect and appropriate such taxes, duties, tolls and fees” as may be specified in law. This provision makes it clear that even under the new scheme, municipalities have not been assigned any independent powers

of taxation. The concerned state legislature has to pass a law to confer taxing powers on the municipalities.

Under Article 240-Y, the State Government is to appoint a financial commission to review the financial position of municipalities and make suitable recommendations to strengthen municipal finance. The commission may recommend distribution of taxing power between the state and the municipalities, giving of grant-in-aid by the state to the municipalities, and other measures needed to improve the financial position of municipalities.

Topic: Challenging Election Of Members To A Gram Panchayat And A Municipal Committee

Name of the Case: Lal Chand v. State of Haryana, AIR 1999 P&H 1 (FB)

Bench: Justice S. Ahmed and Justice R. Sethi

Fact of the Case: The petitioner contends that in addition to the benefit which was made available to him at the time of retirement, he is also entitled to the benefit of employment being provided to one of his sons in government services in terms of the policy in question.

Judgment: A full bench of Punjab and Haryana High Court entertain writ petition challenging election of members to a Gram Panchayat and a Municipal Committee. The High Court's judicial review is a fundamental and basic structure of the Constitution which cannot be taken away even by a constitutional amendment. Therefore, Article 243 and Article 243 would have to be read subject to Articles 226 - O and 227 - ZG of the Constitution. This means that the High Court would have a power to entertain her petition with regard to challenge

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to election to any Panchayat and Municipality in spite of the ban imposed by two constitutional provisions in question. The High Court may, however, keeping in view the facts and circumstances of the case, regulate the petitioner to the remedy available before the election tribunal.

Part XI

Relation Between the Union and State

Article 245 - 263

Chapter I

Legislative Relations

Article 245 - 255

Topic: Principles Of Interpretation Of List

Name of the case: State of Kerala v. People's Union of Civil Liberties, Kerala State Unit, (2009) 8 SCC 46

Bench: Justice S.B. Sinha and Justice Mukundakam Sharma

Fact of the Case: The State Government of Kerala enacted Kerala Schedule Tribe (Restriction on Transfer of Lands and Distribution of Alienated Lands) Act, 1975 with the object of providing restriction on transfer of lands by member of scheduled Tribes in the State of Kerala and for restoration of possession of land alienated by such members and for matters connected therewith.

However, restoration of their lands never happened, therefore the scheduled Tribe of Kerala filed an application before the Court. Even after order of the High Court the restoration of land did not took place in the actual manner. The government of Kerala tried to amend the Act but consent of the President was denied.

Judgment: The Supreme Court has expressed that the right question test which has been applied in many cases as a test to find out whether an administrative agency has validly exercised its power, namely, whether it has posed to itself the right question should be applicable to find out whether the courts have exercised their jurisdiction properly or not when the

validity of the statute is under attack went on to observe what would be the right question in such cases viz whether the statute has been enacted to achieve the constitutional course set out not only in Part III of the Constitution but also in Part IV and Part IV-A. If the question is answered in the affirmative in the fact instances of the case, then the statute is safe.

Topic: Principle Of Harmonious Interpretation Under Article 246

Name of the Case: Godfrey Phillips India Limited v. State of Uttar Pradesh, AIR 2005 SC 1103

Bench: Chief Justice Ruma pal, Justice Arun Kumarg, Justice P. Mathur and Justice C.K. Thakkar

Fact of the case: The appellants are manufacturer of tobacco and tobacco products. They have challenged the imposition and levy of all luxury tax on tobacco and tobacco products by treating them as luxuries within the meaning of word in Entry 62 of List II.

Principle of harmonious interpretation

The three lists are very detailed and Constitution makers have made an attempt to make the increase in one list exclusive for those in the other list. But, as no drafting can be perfect, at times, some conflict or overlapping between an entry in one list and an entry in the other list comes to surface. This gives rise to the question of determining inter- relationship between such entries.

Some of the entries in the different list may overlap and appears to be in direct conflict with each other. In such a situation, the principle of supremacy of the Union List over the State List, as enunciated above, is not to be applied automatically or

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mechanically as soon as some conflict of legislative judicial becomes apparent. The non-obstinate clause is the ultimate rule which is to be invoked only as a last resort, in case of inevitable or irreconcilable conflict between the entries in different lists.

Judgment: The Supreme Court held that before applying the abovementioned rule the court should make an attempt to reasonably and practically construed the interest so as to reconcile the conflict and avoid overlapping. This is the rule of harmonious interpretation of various entries. An effort is to be made by the court to reconcile all concerned and relevant interest. To harmonise and reconcile conflicting entries in the list, it may be necessary to read and interpret the relevant entries together, and, where necessary, restrict the ambit of the broader entry in favour of narrower entry so that it is not eaten up by the former. It may be necessary to construe a broad entry in a somewhat restricted sense that it theoretically capable of. If one entry is general, and the other limited or specific, then the former maybe restricted to give sense and efficacy to the letter which may be treated as particularised and something in the nature of an exception to the general entry. It has been held that the scope of List II Entry 54 was widened by insertion of Article 366 (29-A) powers of the States to levy such tax as subjected to a corresponding restriction as a consequence of constitutional limit imposed on sale tax under Article 286 (3) and Section 3 and schedule 2 proviso.

Topic: Rule Of Pith And Substance

Name of the Case: Premchand Jain v. RK Chhabra, AIR 1984 SC 981

Bench: Justice Ranganath Misra, Justice Syed Murtuza Fazalali and Justice A Varadarajan

Fact of the Case: The appellant was prosecuted under Section 22 and 23 of University Commission Act, 1956. Section 22 of UCA, 1956 empowers right to confer degree and Section 23 imposes prohibition of the word ‘University’ used by any ineligible person/Organisation. The appellant has lost the case in High Court and appeal before Supreme Court.

Judgment: The Supreme Court has enunciated the principle of pith and substance as follows;

“as long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though germane for the purpose for which competent legislation is made, it covers and expect beyond it. In a series of decisions this court has opined that if an enactment substantially falls within the power expressly conferred by Constitution upon the legislation enacting it, it cannot be held invalid merely because it accidentally encroaches on matters assigned to another legislature.”

Thus, it was held that definition of ‘university’ given in Section 2 or the provision in Section 23 of the Act, 1956, are not *ultra vires* the Parliament on the ground that such provisions are beyond its legislative competence.

Topic: Doctrine Of Colourable Legislation

Name of the case: KC Gajapati Narayana Deo v. State of Orissa, AIR 1953 SC 375

Bench: Justice Jagannadhadas and Justice Narasimham

Fact of the Case: Several applications were filed under Article 226 of the Constitution of India for issuing a direction by the

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court under mandamus for restraining State of Orissa against issuing any notification or taking any other step under Orissa Estate Abolition Act, 1952. The said act abolishes Zamindari in the state of Orissa.

Judgment: The Supreme Court has explained doctrine of colourable legislation as follows:

"If The constitution of a state distributes the legislative power amounts different bodies, which have to act within their respective spheres mode off by specific legislative entries.... question do arise as to whether the legislature in particular case has or has not, in respect to the subject matter of the statute or in the method of ejecting it, transgressed the limits of its constitutional power. Such transgression maybe be patent, manifest or direct, but it may also be disguised, covert or indirect, and it is this letter class of case that the expression colourable legislation has been applied.... The idea conveyed by the expression is that although apparently legislature in passing a statute purported to act within the limits of its powers, yet, in substance and in reality it's transgressed these powers, the translation being veiled by what appears, on Proper examination, to be mere pretence or disguise."

Topic: Repugnancy Between A Central And State Law Under Article 254(1)

Name of the Case: Kanaka Gurha Nirmana Sahakara Sangha v. Narayananamma, AIR 2002 SC 3659

Bench: Justice M. Shah and Justice D. Dharmadhikari

Background: Supreme Court was approached to interpret Article 254(1) of the Constitution. When an imposed statute appears to touch two different entries in two lists, then the rule

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of pith and substance helps in characterising the law as belonging to this or that entry. But, under Article 254(1), questions of a different nature arises. The question before court was not whether a statute fall under this entry or that, but whether state law comes into conflict with a central law or not.

Judgment: The Supreme Court has observed that for application of Article 254(1), firstly, there must be repugnancy between the State and the law made by Parliament. Secondly, if there is repugnancy, the state legislation would be void only to the extent of repugnancy. If there is no repugnancy between the two laws, there is no question of application of Article 254(1) and both the Acts would operate. Repugnancy between two statutes maybe ascertained by considering whether parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of State Legislature. Where the paramount legislation does not work out to be exhaustive or unqualified there is no inconsistency and it cannot be said that any qualification or restriction introduced by another law is repugnant to the provision in the main or paramount law. Before coming to the conclusion that there is a repeal by implication, the court must be satisfied that the two enactments are so inconsistent that it becomes impossible for them to stand together.

Topic: Exception To The General Rule Of Repugnancy Under Article 254(2)

Name of the Case: Zaverbhai v. State of Bombay, AIR 1954 SC 752

Bench: Chief Justice M.C. Mahajan, Justice B.K. Mukherjea, Justice B.K Jagannadhadas, Justice V. Bose Justice T.L. Venkata Rama Aiyyar

Background: The Central Legislature enacted the Essential Supplies Act, 1946, conferring power on the Central Government to issue orders to regulate production, supply and distribution of essential commodities. Under Article 7(1), or contravention of any of the order was to be punishable with imprisonment up to 3 years or fine or with both. Considering these punishments inadequate, the Bombay legislature enacted Bombay Act, 1947, and enhanced the punishments provided under the central law. Both laws were preferable to the concurrent list. As there was repugnancy between the Central and the Bombay laws, the Bombay law received the assent of the Centre and became operative in Bombay. In 1950, Parliament modified its Act of 1946 and enhanced the punishments.

Judgment: The Supreme Court held that the Bombay Act of 1947 and Central Act of 1950 dealt with the same subject of enhanced punishment, and that under the proviso of Article 254(2), the State law became void because it was repugnant to the later Central law.

The Supreme Court stated that under the proviso to Article 254, Parliament to repeal a state law. But where Parliament does not expressly do so, even then, the state law will become void under that provision if it conflicts with the later law “with respect to the same matter” that may be enacted by Parliament.

Chapter II
Administrative Relations
Article 256 - 263

**Topic: Distribution Of Executive Power Between
Centre And State Under Article 256**

Name of the Case: **Bishamber Dayal Chandra Mohan v. State of Uttar Pradesh, AIR 1982 SC 33**

Bench: Justice A.P. Sen and Justice Baharul Islam

Fact of the Case: The petitioner in support of the writ petition contends under the following heads;

1. There was nothing to prevent the State Government for making a law placing reasonable restriction on the freedom to carry on any occupation, trade or business guaranteed under Article 19 (1) (g) read with Article 19 (6) of the Constitution, or the freedom of trade, commerce and intercourse, throughout the territory of India, guaranteed under Article 301 of the Constitution but the restriction must be by “law” or by an “order having the force of law” and not by the recourse to the executive authority of the state under Article 162 of the Constitution;
2. The seizure of the consignment of the wheat, while they were in transit in the course of interstate trade and commerce from Delhi and State of Punjab and Haryana to various destinations in the state of Maharashtra and Madhya Pradesh, was without the “authority of law” and in violation of Article 300A of the Constitution.

Judgment: The Supreme Court has held that the State Legislature is competent to enact a law on the subject covered by Entry 33, List III, regulating trade and commerce, and the production, and supply and distribution of “foodstuffs” under

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Essential Commodities Act, 1955. The Act, 1955, was elected by Parliament in exercise of concurrent jurisdiction under Entry 73 List 2, of the 7th Schedule to the Constitution as amended by Constitution (3rd Amendment) Act, 1954. The exercise of such concurrent jurisdiction would not deprive the State Legislature of its jurisdiction thereunder. The executive power of state which is coextensive with legislative power is subject to the limitation contained in Article 162 which directs that in any matter with respect to which the legislature of a State and Parliament power to make laws, the executive power of the state shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union of authorities thereof.

In the concurrent field, therefore, ordinarily the authority to execute law rests with the State even when the law is passed by the Centre. In exceptional cases, however, Parliament may describe that the execution of a central law shall be with the Centre alone, or with both the Centre and the States. In this field, even after Centre claims executive power under its law, the residuary executive power under the entry may still rest with the states.

Topic: Centre And State Administrative Coordination Under Article 258

Name of the Case: Jayantilal Amrat Lal v. FN Rana, AIR 1964 SC 648

Bench: Justice P.B. Gajendragadkar, Justice K. Subba Rao, Justice K.N. Wanchoo, Justice J.C. Shah, Justice Raghubar Dayal

Fact of the Case: Under the Land Acquisition Act, 1894, the Central Government is competent to acquire land for the

purpose of Union. The Centre Government by a notification under Article 258 entrusted this power to the commissioner in the State of Bombay who were to exercise the power subject to the control of the State Government. Thereafter, the state of Gujarat was carved out of Bombay state, and a commissioner in Gujarat, acting under the original entrustment of power, took proceedings to acquire certain lands for the Union purpose. Section 87 of the State Reorganisation Act kept alive all laws prevailing in the State before reorganisation. When the commissioner power to acquire land was challenged, he filed a petition in Supreme Court.

Judgment: The Supreme Court developed the view that the Presidential notification under Article 258 (1) had the force of law and so was kept alive by Section 87 of Land Acquisition Act. The commissioner in Gujarat could, thus, exercise the function of Central Government under the Land Acquisition Act without a fresh notification having been issued.

A distinction has been drawn between the functions entrusted and exercisable by President as under:

1. Functions vested in the Union and exercisable by the President on behalf of Union;
2. Functions interested to the President by express provision of the Constitution.

Only the former functions, but not the latter, can be interested to the state under Article 258(1).

In the latter category all such functions as the power to promulgate ordinance (Article 123), to suspend the provisions of Article 268 - 279 during an emergency (Article 354), to declare and emergency under Article 352, to declare failure of constitutional machinery of state under Article 356, to declare financial emergency under Article 360, to make rules for

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recruitment to and condition of service a person appointed to post and services in central services (Article 309), to appoint judges (Article 124 & 217), to appoint a Commission of Backward Class (Article 340), to appoint a special officer for the Scheduled Caste (Article 338) and President's pleasure regarding Union Servant (Article 310).

Secondly, what can be delegated under Article 258(1) is a function to which the executive power of Union extends. A question, therefore, arises whether under Article 258 (1) only an executive function can be interested to the State or even that is characterised as quasi-judicial or delegated legislation as well. The balance of judicial opinion so far is that only executive, and no other functions, can be delegated under Article 258(1). The majority in the *Rana case* left the question open as the function involved in the case was only administrative. It could thus mean that the power of delegated legislation and quasi-judicial nature, can be delegated by Centre to the state only if there is a statutory provision warranting the same and not under Article 258(1).

Part XII
Finance, Property, Contract and Suits
Article 264 - 300A

Chapter I
Finance
Article 264 - 290a

Central and State Taxes
List Entries 82 - 92B

Central Taxes
Entry List 82 - 92-B & 96, 97

- * Taxes on income other than agricultural income - 82
- * Duties of customs including export duties - 83
- * Duties of excise on tobacco and other goods manufactured or produced in India except— (a) alcoholic liquor's for human consumption; (b) opium, Indian hemp and other narcotics drugs and narcotics, but including medicinal and toilet preparation containing alcohol or any substance included in sub - paragraph (b) of this Entry - 84
- * Corporation Tax - 85
- * Taxes on capital values of assets exclusive of agricultural land, of individuals and companies; taxes on the capital of companies - 86
- * Estate duty in respect of property other than agricultural land - 87
- * Duties in respect of succession of property other than agricultural land - 88
- * Terminal taxes on goods or passenger carried by railway, sea or air; taxes on railway fares and freights - 89

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- * Taxes other than stamp duties on transactions in stock exchanges and futures markets- 90
- * Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of share, debentures, proxies and receipts- 91
- * Taxes on the sales or purchase of newspapers and on advertisements published therein- 92
- * Taxes on the sales or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-state trade or commerce - 92-A
- * Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person) where such consignment takes place in the course of inter-state trade or commerce - 92-B
- * Fees in respect of any of the matters in the Union List, but not including fees taken in any Court, except the Supreme Court - 96
- * Any other tax not enumerated in List II and III - 97

State taxes Entries List 45 - 63 & 66

- * Land revenue including its assessment and collection - 45
- * Taxes on agricultural income- 46
- * Duties in respect of succession to agriculture land - 47
- * Estate duty in respect of agriculture land - 48
- * Taxes on lands and buildings - 49
- * Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral department - 50

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- * Duties of exercise on the following goods manufactured or produced in the state and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India: (a) alcoholic liquor for human consumption, (b) Opium, Indian hemp, and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in such paragraph (b) of this entry - 51
- * Taxes on the entry of goods into a local area for consumption, use or sale therein – 52 (***Repealed by 101st Amendment Act, 2016***)
- * Taxes on consumption or sale of electricity - 53
- * Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92-A of list I - 54
- * Taxes on advertisements other than those published in newspaper- 55 (***Repealed by 101st Amendment Act, 2016***)
- * Taxes on goods and passengers carried by road or on inland waterways - 56
- * Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35, List III – 57 (concurrent list)
- * Taxes on animals and boats - 58
- * Tolls - 59
- * Taxes on professions, trades, callings and employment- 60
- * Capitation tax - 61
- * Taxes on luxuries including taxes on entertainments, amusements, betting and gambling- 62

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- * Rates of stamp duty in respect of documents other than those specified in the provisions of List 1 with regard to rates of stamp duty - 63
- * Fees in respect of any of the matters in the list, but not including fees taken in any court - 66

Concurrent List

Entry List 35, 44, & 47

- * Principles on which taxes on mechanically propelled vehicles are to be levied - 35
- * Stamp duties other than duties or fee collected by means of judicial stamps, but not including rates of stamp duty - 44
- * Fees in respect of any of the matters in the list, but not including fees taken in any court - 47

Residuary Taxes

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- * Any other matter not eliminated in List I and List III including any tax not mentioned in either of those List

NOTE: There are more than hundred landmark judgement in the financial relations and taxing structure. Landmark judgements under financial relation between Centre and state are not important unless you are preparing for CA, CS, or Income Tax Officer or any other examinations in similar category.

The 101 Constitutional Amendment Act, 2016

GST

The Parliament of India enacted goods and services tax GST which replaced number of indirect taxes levied by Union and the State Government to weed out just kidding effect of taxes and provide a common national platform for goods and services.

Following central indirect taxes were submerged

- * Central excise duty
- * Additional excise duties
- * Exercise duties leave it under medical and toilet preparations exercise duties act, 1955
- * Additional custom duty also known as countervailing duty
- * Special additional duty of custom
- * Central surcharge and cesses so far as they relate to supply of goods and services

Following state indirect taxes were submerged

- * State value added taxes/Sale Tax
- * Entertainment tax
- * Central sales tax (levied by Centre and collected by local bodies)
- * Octroi and Entry Tax
- * Purchase tax
- * Luxury tax
- * Taxes on lottery, betting and gambling

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- * State surcharge and cesses in so far as they relate to the supply of goods and services.

After 101 Constitutional amendment, the current taxing position between Centre and state are as follows:

- * Taxes levied by the Centre but collected and appropriated by the State - 268
- * Taxes levied and collected by the Centre but assigned to the states - 269
- * Levy and collection of goods and services in course of interstate trade or commerce - 269-A
- * Taxes leave it and collected by the Centre but distributed between the Centre and the states. - 270
- * Surcharge on certain taxes and duties for the purpose of the Centre. 271
- * Taxes leave it and collected by and retained by the State.

Chapter III Property, Contracts, Rights, Liabilities, Obligations And Suits Article 294 - 300

Topic: Trade Or Business And Their Relationship With Centre And State Between Article 73 (A) And 298 And Also Article 258 (B) And 298

Name of the Case: H. Araj v. State of Maharashtra, AIR 1984 SC 781

Bench: Justice O. Chinnappa Reddy, Justice E.S. Venkataramaiah, Justice R.B. Mishra

Fact of the Case: The petitioners who were agents for the sale of tickets for lotteries conducted by various State Governments other than the State of Maharashtra contended writ petition, that the aforesaid ban that was sought to be imposed had no legal authority. Under the Constitution, lotteries organised by Government of India or the Government of the State was a subject which was within the exclusive legislative competence of Parliament and that it was not open to the government of any state purporting to act in exercise of its executive power to impose such ban. On the behalf of the State Government, the respondent, it was contended that the Union government's executive power was coextensive with the power to make laws, that the President in exercise of his power under Article 258 (1) had entrusted to the State Government that executive power of Union through a Presidential order in respect of lotteries run by the State, and therefore it was competent for the State Government to impose the ban.

Judgment: The Supreme Court held that the Government of Maharashtra cannot purport to ban the sale of lottery ticket of other states by the virtue of the entrustment of power under Article 258 (1) of the Constitution.

It was observed that Article 73 extends the execute the power of Union to the matters with respect to which Parliament has power to make laws. But the executive power of Union, by the way the opening words of Article 73 is "*subject to the provisions of Constitution*". Therefore, it follows that executive power of Union with respect to lotteries organised by the Government of State has necessarily to be exercised subject to the provision of Constitution including Article 298, which expressly extends the executive power of the state to the carrying on of any trade or business subject only to legislation by Parliament if the trade or business subject only to which the state legislature may make laws.

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Reading and considering Article 73 and 298 together, it is clear that the executive power of a State in the matter of carrying on any trade or business with respect to which the state legislature may not make laws is subject to legislation by Parliament but is not subject to executive power of the Union. The Government of State is not required to obtain the permission of the Union Government in order to organise its lotteries, in the absence of Parliamentary legislation. Even assuming that such permission is necessary, a condition imposed by such permission that lottery tickets of one state may not be sold in another state cannot be enforced by the other state. The other state has no power to make any laws in regard to lotteries organised by the first state. The other state has no power to make law in regard to lotteries organised by first state. Its executive power, by the virtue of Article 298, extends to lotteries organised by itself but not to lotteries organised by other state.

If a state Acts in breach of the conditions imposed by President while investing the power under Article 258 it is open to the President to revoke the permission or to take such further or other action as may be constitutionally permissible but it cannot possibly enable the government of other state to do anything about it except to complain perhaps to the Union government.

Chapter IV

Right To Property

Article 300A

Topic: Acquisition Of Property By The State Involves Payment Of Some Money

Name of the Case: Jilubhai Nanbhai Khachar v. State of Gujarat, AIR 1995 SC 142

Bench: Justice K. Ramasamy and Justice N. Venkatachala

Fact of the Case: The appellant content that, under Entry 54, of List 1 of the 7th schedule to the Constitution, since Regulation of Mining and Mineral Development Act, 1957 occupies the field of mines and minerals covered under Section 69 A of the Amendment Act, it is void and it is *ultra vires* of the Constitution.

Judgment: The Supreme Court has stated that the word ‘law’ used in Article 300-A, must be an Act of parliament or of state legislature, a rule or statutory order having the force of law. The deprivation of property shall be only by authority of law, be it an Act of Parliament or state legislature, but not by an executive fiat. The provision of property is by acquisition or requisition or taken possession of for a public purpose. The Court has also ruled that the law may fix an amount for which may be determined in accordance with such principles as maybe laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the ground that the amounts of fixed or amounts determined is not adequate. The amount fixed must not be illusionary. The principal led to determine the amount must be relevant to the determination of amount. The court has further observed that it would, thus, be clear that acquisition of the property by law laid in furtherance of the Directive Principle of State Policy was to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of just compensation or indemnification to the owner of the property expropriated. It is very negation of the effectuating the public purpose. Payment of market value in lieu of acquired property is not sine qua non for acquisition. Acquisition and payment of amount are part of this scheme and they cannot be dissected. However, fixation of the amount or specification of

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the principles and the manner in which amount is to be determined must be relevant to the fixation of amount. The amount determined need not bear reasonable relationship. In other words, it is not illusory. The adequate advocacy of the resultant amount cannot be questioned in a court of law. However, the validity of irrelevant principles is amenable to social security.

Part XIII

Trade, Commerce And Intercourse Within The Territory Of India

Article 301 - 307

**Topic: Motivation And Aspirations Of The Framers
Of The Constitution In Drafting Article 301 – 305**

**Name of the Case: Atiabari Tea Co. Ltd. v. State of Assam,
AIR 1961 SC 232**

Bench: Justice B.S. Shah, Justice K. Dasgupta, Justice K. Wanchoo and Justice B. Gajendragadkar

Fact of the Case: The State of Assam in acted Assam Taxation (on Goods Carried by Road or Inland Waterways) Act, 1954. The purpose of the Act is to levy taxes on certain goods carried by road or inland waterway in the State of Assam. The appellant challenged the validity of the Act mainly on the ground that (1) the Act, rules and the notification under the act were *ultra vires* the Constitution, because the Act was repugnant to the provisions of Article 301 of the Constitution as the tax on carriage of tea through the State of Assam had the effect of interfering with the freedom of trade, commerce and intercourse; (2) that tea being a controlled industry under the provision of the Tea Act, 1953, the Union Government alone had the power to regulate the manufacture, production, distribution or transport of tea and jurisdiction of Assam Legislature was thus completely ousted; (3) that the tax under the act was nothing but a duty of excise, in substance, do not form, and was thus an encroachment to the central legislative field within the meaning of Entry 84 of the Union List. The impugned Act was also challenged on the ground that it was discriminatory and void under Article 14 of the Constitution.

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The competence of the Assam legislature to legislate on subject was also questioned.

Judgment: The Supreme Court has explained in detail the motivations and aspirations of the framers of the Constitution in drafting Article 301 - 305 in following words:

In drafting the relevant Articles 301 - 305 the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal polity which had been adopted by the Constitution for the governance of the country. Political freedom had been won, and political unity had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity. It was realised that in the course of time different political parties believing in different economic theories or ideologies may come in power in the several constituent units of the Union and that mean conceivably give rise to local and regional pulls and pressures in economic matters. Local or regional fears or apprehensions raised by local or regional problems may persuade the state legislature to adopt remedial measures intended solely for the protection of regional interest without due regard to their effect on economic of the nation as a whole. The object of Article 301 to 305 was to avoid such possibility. Free movement and exchange of goods throughout the territory of India is essential for the economics of the nation and for sustaining and improving living standard of the country.

Commenting on Article 301, the Supreme Court has observed that Article 301 "*is not a declaration of mere platitude, or the expression of pious hope of a declaratory character; it is not also a mere statement of Directive Principle of State Policy; it embodies and enshrines a principle of paramount importance that they economic unity of the country will provide the means sustaining force for the stability and progress of the political and cultural unity of the country.*"

Topic: Inter-Relation Between Article 19(1) (G) And 301

Name of the Case: Dist. Collector, Hyderabad v. Ibrahim,
AIR 1970 SC 1275

Bench: Chief Justice M. Hidayatullah, Justice J.C. Shah, Justice K.S. Hegde, Justice A.N. Grover, Justice A.N. Ray, Justice I.D. Dua

Fact of the Case: The respondents are dealer in sugar and other commodities and carry on business in city of Hyderabad and Secunderabad. The State Government allocated quota for sugar received from Central Government for distribution in different areas and nominated licenses or dealers to take delivery of the allotted quotas from the factories.

In December 1964, the State Government ordered that the sugar quota allocated to “the twin city’s of Hyderabad and Secunderabad” be given in its entirety to the Greater Hyderabad Consumer Central Co-operative Store, Hyderabad. On the account the respondent who held the license under the Andhra Pradesh sugar licensing order for distribution of sugar and were also recognised dealer under the Sugar Control Order, 1963, whereby an executive fiat prevented from carrying on their business in sugar.

Judgment: The Supreme Court has observed that while Article 19 (1) (g) deals with the rights of individual, Article 301 provides safeguards for caring the trade as a whole is distinguished from an individual’s right to do the same. This view, however, is hardly tenable. Article 301 is based on Section 92 of the Australian constitution which has been held to comprise right of individual as well, and the same should be the position in India. In the actual practice, this view has never been enforced and individuals have challenged legislation on

the ground of its effect on their right to carry on trade and commerce. The Supreme Court has denounced the theory that Article 301 guarantees freedom “in the abstract and not of the individuals”.

Topic: Exceptions To Freedom Of Trade And Commerce

Name of the Case: **State of Madras v. Nataraja Mudaliar, AIR 1969 SC 147**

Bench: Justice J.C. Shah, Justice R.S. Bachhawat, Justice G.K. Mitter, Justice C.A. Vidyasingam, Justice K.S. Hegde

Judgment: The Supreme Court observed that Article 301 does not merely protect inter-state trade or operate against inter-state barriers, all trade is protected whether it is inter-state or intra-state by the prohibition imposed by Article 301. Accordingly, under Article 302, Parliament can impose a restriction on both inter-state as well as intra-state commerce. Inter-state and intra-state trade activities often have intimate inter - relationship.

It was further observed that limitation introduced in Article 303(1) cannot circumscribe the scope of Article 301.

Thus, the rigours of the limitation imposed on Parliament by Article 303(1) are relaxed somewhat by Article 303(2). Under Article 303 (2), Parliament may prefer one state over another, or discriminate between the states, if it is declared by law made by Parliament that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of India. In other words, when Parliament is faced with the task of meeting an emergency created by the scarcity of goods in any particular part of India, Parliament may enact a law-making discrimination, or giving preference, in favour of the

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part, thus, affected. Such a declaration by Parliament would be conclusive and not justiciable.

The word ‘preference to one state over another’ and ‘discrimination between one state and another’ in Article 303 occur as well in Section 51 (II) and 99 of the Australian Constitution.

It was further held that an Act enacted for the “purpose of imposing tax which is to be collected and retained by the state” does not amount to a law giving any preference to one state over another, or making any discrimination between one state and another, merely because of varying rates of tax prevailing in different states.

Part XIV
Services Under the Union and the State
Article 308 - 323

Chapter I
Services
Article 308 - 314

Topic: Doctrine Of Pleasure Under Article 309

Name of the case: UOI v. SP Sharma, (2014) 6 SCC 351

Bench: Justice B.S. Chauhan, Justice J. Chelameswar and Justice M.Y. Eqbal

Fact of the Case: The present appeals arise out of the order passed way back in 1980 terminating the services of the respondents herein which was brought invoking the ‘Doctrine of Pleasure’ as enshrined under Article 310 of the Constitution of India coupled with the power to be exercised and under Section 18 of the Army Act. Initially, the order of dismissal was passed on 1980, which were assailed in writ petitions that were dismissed by High Court.

Judgment: The Supreme Court observed that in a Constitutional set up, when an office is held during the ‘pleasure of the President’, it means that the officer can be removed by the authority on whose pleasure he holds the office, without assigning any reason. The authority is not obliged to assign any reason or disclose any cause for the removal.

Article 309 of the Constitution empowers the appropriate legislature or executive to make any law, rules or regulations with regard to the condition of service without impinging upon the overriding power recognised under Article 310. Article 309 is expressly made subject to the provisions of Article 318.

Thus, The Army act, 1950 cannot in any way override the constitutional provisions contained in Article 309.

Topic: Removal Of Government Officer From Government Services

Name of the Case: State of Madhya Pradesh v. Shardul Singh, (1970) 1 SCC 108

Bench: Justice J. Shah and Justice K. Hegde

Fact of the Case: A departmental enquiry was initiated against a sub-Inspector of police by the Superintendent of Police. After holding an enquiry, he sent his report to the Inspector General of Police who ultimately dismissed the sub-inspectors from service. The order of dismissal was on the ground of its being inconsistent with Article 311(1). It was argued that the enquiry led by the Superintendent of Police infringed the mandate of Article 311 (1) as the sub-Inspector was appointed by the Inspector General of Police.

Judgment: The Supreme Court ruled that Article 311(1) “does not in terms require that the authority empowered under that provision to dismiss or remove an official should itself intimate or conduct the inquiry proceedings the dismissal or removal of the officer, or even that inquiry should be done at his instance”. The only right guaranteed to a civil servant under Article 311 (1) is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed.

Topic: Removal Of A Sub-Judge

Name of the case: **Baldev Raj v. Punjab and Haryana High Court, AIR 1976 SC 2490**

Bench: Justice P.K. Goswami, Justice Y.V. Chandrachud and Justice P.N. Singhal

Fact of the case: The High Court after enquiry recommended removal of a sub-judge. The Government referred the matter to State Public Service Commission for advice and, on its advice, the sub-judge was reinstated.

Judgment: The Supreme Court quashed the said order and observed that the sole and exclusive disciplinary control over subordinate judiciary is vested in the High Court and its recommendation is binding on the government. The government does not have to consult any other body except the High Court in this area, not even the Public Service Commission.

Chapter II

Public Services Commission

Article 315 - 323

Topic: Removal Of A Member Under Article 316

Name of the Case: **Ref No 1 of 2006, decided on 8 July 2009, (2009) 8 SCC 41: Chhattisgarh Public Service commission**

Background: In a reference made by the President under Article 317 of the Constitution, the question relating to misbehavior by the Chairman of the Chhattisgarh Service Commission came up for consideration before the Supreme Court. On facts, the court found that the evidence did not

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warrant any conclusion of misbehavior. But in the course of the judgement, the court expressed certain views regarding the object behind the provisions of Article 315 and 317 of the Constitution.

Judgment: In relation to Article 315, the Court held that the object of the Article is to ensure that the commission should be independent and impartial body as indicated by their salary etc. being charged on the consolidated fund of the state and the removal by following the procedure laid down in the Constitution, i.e, their offices were constitutionally protected. The court also noted that misbehavior is not defined in Article 317 but what constitute misbehavior in these words:

“The chairman of the Public Service Commission expected to show absolute integrity and impartiality in exercising the powers and duties a chairman. His actions shall be transparent and he shall discharge his functions with utmost sincerity and integrity. If there is any failure on his part, or he commits any act which is not befitting the honour and prestige as a chairman of the Public Service Commission, it would amount to miss behaviour as contemplated under the Constitution. If it is proved that he has shown any favour to the candidate during the selection process, that would certainly be an act of misbehaviour.”

Topic: Action Taken By Government Against His Servant In Consultation With The Commission: Mandatory Or Not [Article 320 (3) (C)]

Name of the Case: State of Uttar Pradesh v. Manbodhan Lal Srivastava, AIR 1957 SC 912

Bench: Chief Justice S.R. Das, Justice Bhubaneswar Sinha, Justice T.L. Venkatarama Aiyyar, Justice J.L. Kapur, Justice A.K. Sarkar

Background: The Government of Uttar Pradesh reduced an officer in rank. The officer alleged that there was irregularity in the consultation of the state commission by the government.

Issue: Whether irregularity in, do not complete absence of, consideration with the State Public Service Commission would enable the officer concerned to challenge the order passed by the government?

Judgment: The Supreme Court held that Article 320(3)(c) does not confer any right on a public servant so that the absence of, or any irregularity in, consultation would not offer him a cause of action in a court of law. The main reason for this view are:

1. The opinion of the commission has not been made binding on the government. In the absence of such a binding character, it is difficult to see how non-compliance with this provision could have the effect of nullifying the final order passed by government. If the opinion of the commission were binding on the government, it could have been argued with some force that non-compliance with the rule for consultation would have been fatal to the validity of the order proposed to be passed against a public servant.
2. The constitution does not provide for contingency as to what is to happen in the event of non-compliance with this provision. It does not either expressly or impliedly provide that non-compliance will invalidate the final order of the government.
3. The proviso to Article 320 itself indicates that in certain cases or classes of cases, the commission need not be

consulted. The President may make regulation to take away the protection of Article 320 (3) (c) in certain cases or classes of cases.

The concept was evolved with time. It was in **Dinkar Case** that the consultation was made mandatory.

Topic: Consultation With Commission For Taking Disciplinary Action Against Civil Servant Is Mandatory For The Government

Name of the Case: **Dinakar Anna Patil v. State of Maharashtra, (1999) 1 SCC 354**

Bench: Justice G.T. Nanavati and Justice S.P. Kurdkar

Background: A rule made by Government of Maharashtra said that the government “may, in consultation with the Maharashtra Public Service Commission” make appointments in relaxation of percentage fixed for promotees and directly appointed person.

Issue: Whether under the said rule of ‘consultation’ with the commission was “directory” or “mandatory”?

Judgment: The Court made no reference to the precedent of **Manbodhan case** and rejected the argument that “may” used in the rule is “directory”, the court observe that to give such a meaning would render the very object of consultation with Maharashtra Public Service Commission whenever necessary. It would give unbridled power to the government to dispense with the ‘consultation’ with Maharashtra Public Service Commission which may result into arbitrary exercise of power by the authority”.

Part XIV A

Tribunals (Article 323-B)

Topic: Jurisdiction Of High Court Can Be Taken Away By Tribunal

Name of the Case: S.P. Sampath Kumar v. Union of India,
AIR 1987 SC 386

Bench: Chief Justice P.N. Bhagwati, Justice Ranganath Misra,
Justice Khalid, Justice G.L. Oza, Justice M.M. Dutt

Fact of the Case: Section 28 of the Administrative Tribunal Act, 1985 originally in acted within the ambit of Article 323 A, provided for exclusion of jurisdiction of the Supreme Court under Article 32. The act was amended by the Administrative Tribunal (Amendment) Ordinance, 1986, now save the jurisdiction of Supreme Court both under Article 32 in respect of original proceedings and also under Article 136 for entertaining appeals. However, the Act 1985, excludes the jurisdiction of High Court.

The petitioners in this writ petitions and transfer petitions challenged the *vires* of the 1985, Act. It was contended that the exclusion of jurisdiction of the High Court under Article 226 and 227 in the service matter specified in Section 28 of the Act was unconstitutional and void, and that the composition of the tribunal and the mode of appointment of Chairman, Vice-Chairman and Members was outside the scope of the power conferred on Parliament under Article 323 A.

Judgment: The Administrative Tribunal act, 1985 is a legislation in term of Article 323A. By setting up a tribunal under the Act, for the resolution of service disputes, the jurisdiction of the High Court in regard to such matters is intended to be taken away and is intended to be vested in the

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tribunal.

**Part XV
Election
Article 324 - 329**

Topic: Right To Elect Is Not A Fundamental Right

Name of the Case: Jyoti Basu v. Debi Ghosal, AIR 1982 SC 983

Bench: Justice O. Chinnappa Reddy and Justice R.S. Pathak

Fact of the Case: The appellant contends that the concept of proper party was not relevant in election law and that only these person could be impleaded as party who are expressly directed to be so impleaded by the Representation of People Act, 1951.

The first appellant in the appeal is the Chief Minister and other two appellant State Minister. They had been impleaded by the first respondent as parties to an election petition filed by him in the High Court questioning the election of second responded to the House of People. It was averred in the election petition that the Chief Minister and State Ministers who are impleaded as parties to the election petition had colluded and conspired with the returned candidates to commit various alleged corrupt practices.

Judgment: Right to elect, fundamental though it is to democracy, each, anomalously enough, neither a Fundamental Right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute and election. Outside of the statute, there is no right to elect, creations they are, and therefore, subject to statutory limitation.

Topic: Composition Of Election Commission

Name of the Case: S.S. Dhanoa v. UOI, AIR 1991 SC 1745

Bench: Justice P.B. Sawant and Justice M.H. Kania

Background: Until 1989, the Election Commission consisted of only the Chief Election Commissioner. In 1989, the Central Government changed track and sought to appoint Election Commissioners. The underlying purpose of this move seems to be to grab the powers of the Chief Election Commissioner who was single handily exercising the power of the Election Commission. In 1989, by notification issued under Article 324 (2), was fixed at two. By another notification, the President appointed the petitioner and one other person as Election Commissioners as such. The rules made by the President under Article 324 (5) fixed the tenure of these commissioners at five years, or until reaching the age of 65 years, whichever was earlier.

Hitherto, the election commission had consisted of only one member, viz, The Chief Election Commissioner. With the addition of two more members, the smooth working of commission was adversely affected. Accordingly, on 1 January 1990, the President issued two notifications under Article 324(2) rescinding the 1989 notifications creating the two post of Election Commissioners and appointing two persons to these posts. In this way, from 1990, the election commission again reverted to a one-man body. The question arose ***whether the notification was constitutionally valid?***

Judgment: The Supreme Court observed that when an institution like the election commission is entrusted with the vital functions, and is armed with exclusive and uncontrolled powers to execute them, it is both necessary and desirable that the power not exercised by one individual. However, as wise as he maybe, “it will-conforms to the tenant of democratic rule.”

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When most powers are exercised by an institution which is accountable to none, it is politic to entrust it's a fair or more hands then one. It helps to assure judiciousness and want of arbitrariness.

After release of the provisions of Article 324, and review of the debates held in constitute assembly on the matter at issue, the court laid down the proposition that under Article 324 (1), The status of election commissioner is not *pari passu* (side by side) with that of the Chief Election Commissioner.

The Chief Election Commissioner has been given protection in that his conditions of service cannot be varied to his disadvantage after his appointment, and he cannot be removed from his office except in like manner and only grounds as a judge of Supreme Court. These protections are not available to the election commissioners. Their conditions of service can be varied even to their disadvantage after their appointment and they can be removed on the recommendation of chief election Commissioner. These provisions indicate that the Chief Election Commissioner is not *primus inter pares*, i.e, first among the equals, but is intended to be placed in a drastically higher position than the Election Commissioners.

In this context, the court held both the 1990 notifications as valid. Article 324 (2) leaves it to the President to fix and appoint such member of Election Commissioner as he may from time to time determined. The power to create the post is unfettered. So, also is the power to reduce or abolish them. If the President decide to abolish both the post of Election Commissioner either because there was no work for them, or that the election commission could not function, there could be nothing wrong with it.

**Topic: Directions To Candidate To File An Affidavit
Detailing Information About Themselves Under
Article 324**

Name of the case: UOI v. Association for Democratic Reforms, AIR 2002 SC 2112

Bench: Justice M.B. Shah, Justice Basheshwar Prasad Singh and Justice H.K. Sema

Judgment: The Supreme Court directed the election commission to issue certain direction to candidates to file an affidavit detailing information about themselves under certain specific heads. This was done to stop criminalisation of politics. People have a right to know about the candidate for whom they are being urged to vote. The right to know flows from Article 19 (1) (a). When law is silent Article 324 is a reservoir of power to act for the avowed purpose of having free and fair elections. The court has further observed in the following wording:

“The Constitution has taken care of leaving scope for exercise of residuary power by the commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the elected laws or rules by issuing necessary direction, the commission can fill the vacuum till there is legislation on the subject.”

Topic: Interpreting Article 329

Name of the case: Election Commission of India v. Ashok Kumar, AIR 2000 SC 2979

Bench: Chief Justice R.C. Lahoti and Justice K.G. Balakrishnan

Fact of the Case: The 12th Lok Sabha having been dissolved by the President of India in 1999, the Election Commission of India announced the program for the general election to constitute the 13th Lok Sabha.

Writ petitions were filed by the respondents to challenge the validity of notification issued by Election Commission after 13th Lok Sabha election. The challenge was made on the ground of booth capturing taken place in the Lok Sabha election.

Judgment: The Supreme Court while interpreting Article 329 of the Constitution held that anything done towards completing or in furtherance of the election proceeding cannot be described as questioning the election. Without interrupting, obstruction or delaying the progress of election proceedings, judicial intervention is available if the assistance of the court has been sought merely to correct or smoothen the promise of the election proceeding, to remove the obstacles therein, to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and the stage is set for invoking the jurisdiction of the court.

Part XVI
Special Provisions Relating to Certain Classes
Article 330 - 342

**Topic: Claims Of Schedule Caste And Schedule Tribe
To The Services And Posts Under Article 335**

Name of the Case: Ashutosh Gupta v. State of Rajasthan, (2002) 4 SCC 34

Bench: Justice Ruma pal and Justice Dr. A.R. Lakshmanan

Judgment: The Supreme Court has observed that Article 335 stipulates the claims of the member of Schedule Caste and Schedule Tribes shall be taken into consideration, consistent with the maintenance of efficiency of administration, in making the appointments to services and posts in connection with the Union or the state. It is thus, obvious that even in the matter of reservation in the favour of Schedule Caste and Schedule Tribes the founding father of the Constitution did make a provision relating to maintenance of if efficiency of administration. In this view of the matter if any issue the provision provides for recruitment of a candidate without bearing in mind the maintenance of efficiency of administration and such a provision cannot be sustained, and such provisions are against the constitutional mandate.

Topic: Power Of President Under Article 341

Name of the Case: Bhaiyalal v. Harikrishna Singh, AIR 1965 SC 1557

Bench: Chief Justice P.B. Gajendragadkar, Justice K.N. Wanchoo, Justice M. Hidayatullah, Justice J.C. Shah, Justice S.M. Sikri

Fact of the Case: The appellant election was challenged *inter alia*, on the ground that he belonged to the *Dohar* caste which was not recognised as a Schedule Caste for the district in question and saw his declaration that he belonged to the *Chamar* caste which was a Schedule Caste was in properly and illegally accepted by the returning officer. The election tribunal declared the election invalid. The finding was confirmed by High Court and the appellant has filed the appeal before Supreme Court.

Judgment: The Supreme Court has observed as regard to the power of President under Article 341 as under

"it is obvious that in specifying caste, race or tribe, the President has been expressly authorised to limit the notification to parts of all groups within the caste, races or tribes and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe, but the part of or groups within them would be a specified. Similarly, the President can specify caste, race or tribe or part thereof in relation not only to entire state, but in relation to parts of the state where he is satisfied that the examination of social and educational backwardness of the race, caste or tribe justifies such specifications. In fact, it is well-known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the caste, race or tribe as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts for groups of caste, race or tribes, but to make the said specification by reference to different areas in the State. Educational and social

backwardness regard to this caste, race or tribe may not be uniform or of the same intensity in the whole of the state, if may vary in degree or in kind in different areas and may justify the division of the state into convenient and suitable areas for the purpose of issuing the public notification in question.”

**Topic: A Person Belonging To OBC In One State
Cannot Automatically Claim OBC In Another State**

Name of the Case: Municipal Corporation of Delhi v. Veena, AIR 2001 SC 2749

Bench: Justice Doraiswamy Raju and Justice S.R. Babu

Fact of the Case: The appellant claim to belong to OBCs on the basis of certificate issued in the state other than the government of National Capital Territory of Delhi. The application filed by the respondent candidate stood rejected. The respondent filed writ petition before the High Court and the High Court by a common order dated 1998 held that the advertisement issued by Municipal Corporation of Delhi did not indicate the form in which the OBC certificate have to be filled in respect of post arising in the National Capital Territory of Delhi and, therefore, there was no obligation on the respondent to produce the certificate from the prescribed authorities in Delhi, that the obligation to produce the certificate from the authority in Delhi could not be fulfilled by candidate coming from outside Delhi and, therefore, what is possible could not be expected to be fulfilled by respondent and on that basis, the High Court directed to treat the application filed by respondent to be in order and proceed to make selection. The order was challenged before the Supreme Court.

Judgment: The Supreme Court has mentioned that a person belonging to OBC in one state cannot automatic automatically

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claim the same status in another state. Each state has its own list of OBCs. The court observed that caste or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social handicaps suffered by that caste or group in that state. However, it may not be so in another state to which a person belongs thereto goes by migration.

Part XVII

Official Language

The Language Of Supreme Court, High Court, Etc

Article 348 - 349

Title: Language of the Supreme Court

Name of the case: **Madhu Limye v. Ved Murti, AIR 1971 SC 2608**

Bench: Chief Justice M. Hidayatullah, Justice J.M. Shelat, Justice Vashishtha Bhargava, Justice G.K. Miter, Justice C.A. Vidyalingam, Justice A.N. Ray, Justice I.D. Dua

Fact of the Case: Raj Narain, an intervener, insisted on arguing in Hindi before the 7-judge bench Supreme Court in 1970. The court heard the order meant of Raj Narain but deferred the next day.

Judgment: The Supreme Court observed that Article 348 provides that the language of the Supreme Court's English. As Raj Narain was not amenable to these suggestions, the court was construed to cancel his intervention.

Further, Article 348 (1) (b) provides that authority text of all orders, rules, regulations and by-laws is issued under Constitution or laws and all the Acts, bills, ordinances promulgated by the President or Governor shall be in English language for the purpose of proceedings before the Supreme Court and High Court.

Part XVIII

Emergency Provisions

Article 352 – 360

Topic: Judicial Review On The Discretion Of The President To Declare Or Not To Declare Emergency

Name of the Case: Minerva Mills v. UOI, AIR 1980 SC 1789

Bench: Chief Justice Y.V. Chandrachud, Justice P.N. Bhagwati, Justice A.C. Gupta, Justice N.L. Untwalia, Justice P.S. Kailasam

Fact of the Case: Section 4 and 55 of the Constitution (42nd Amendment) Act, 1976 was challenged on the ratio of the majority judgement in ***Kesavan Bharati case***, namely, though by Article 368 of the Constitution, Parliament is given the power to amend the Constitution, the power cannot be exercised so as to damage the basic structure of Constitution or so as to destroy its basic structure.

Judgment: Justice Bhagwati mentioned that whether the president in proclaiming the emergency under Article 352 has applied his mind, or whether he acted outside his power, or acted *mala fide* in proclaiming the emergency, could not be excluded from the scope of judicial review.

The Supreme Court observed that 38th Amendment which seeks to protect the satisfaction of President from being called into question in a court could be declared unconstitutional as being violative of the basic structure of the Constitution. Further, after the Supreme Court decision in ***S.R. Bommai***, in which the Supreme Court did go into validity of a proclamation issued by the President under Article 356, it can now be safely

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asserted that a proclamation of emergency under Article 352 is reviewable by the court on the ground mentioned by Justice PN Bhagwati as under:

The Court to control the exercise of power to proclaim an emergency in two ways:

1. The President must act on the advice of the Central Cabinet and not in his own subjective satisfaction and also not on the advice of Prime Minister alone. Thus, the power to declare an emergency lies with the Cabinet.
 2. The democratic control over the executive power in respect of proclaiming an emergency has been strengthened in so far as Parliamentary approval is necessary for the proclamation immediately after it is made and, then, after every six months.
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Topic: Enquiry Into Complaints Against The Chief Minister

Name of the Case: M Karunanidhi v. UOI, AIR 1979 SC 898

Bench: Chief Justice Y.V. Chandrachud, Justice P.N. Bhagwati, Justice P.N. Untwalia, Justice Syed Murtuza Fazalali, Justice R.S. Pathak

Background: In 1973, a centrally appointed commission, consisting of a judge of the Supreme Court, was appointed to inquire into some complaints against the member of the Karunanidhi ministry in Tamil Nadu which was dismissed by the President under Article 356. The Chief Minister had earlier asserted on the floor of the state legislature that, under the Constitution, the Centre had no right to interfere in the power conferred on the State List. The state cabinet was responsible

only to the state assembly which was supreme in so far as the affairs of the state were concerned.

Judgment: The Supreme Court while upholding the constitutionality of the enquiry commission observed that on several occasions, the State Government have appointed enquiry commission to probe into allegations of corruption and misuse of power against their ex-minister and ex-chief ministers. The legality and constitutionality of appointing such commissions has been judicially upheld in several cases. But nothing concrete appears to have been achieved by such an exercise as no conviction has even resulted as a result of reports of this commission.

It was observed that the scheme of Constitution is a scientific and equitable distribution of legislative power between the Parliament and the state legislature. First, regarding the matters contained in List I, i.e., The Union list to the seventh schedule, Parliament alone has power to legislate and state legislature have no authority to make any law in respect of the entries content in List I. Secondly, so far as the concurrent list is concerned, both the Parliament and the state legislature are in title to legislate in regard to any of the entries appearing therein, but that is subject to the condition laid down by Article 254 (1). Thirdly, so far as the matter in List II, i.e., the state lists are concerned, the state legislature are competent to legislate on them and only under certain conditions Parliament can do so.

Topic: Justiciability Of The Proclamation Under Article 356

Name of the Case: SR Bommai v. UOI, AIR 1994 SC 1918

Bench: Justice Kuldip Singh, Justice P.B. Sawant, Justice K. Ramasamy, Justice S.C. Agarwal, Justice Yogeshwar Dayal,

Justice B.P. Jeevan Reddy, Justice S.R. Pandian, Justice A.M. Ahmadi

Background: In 1989, the Janta Dal Ministry headed by Shri SR Bommai was in office in Karnataka. A number of members defected from the party and there arose a question mark on the majority support in the house of the Bommai's ministry. The Chief Minister proposed to the Governor that the assembly session be called to test the strength of the ministry on the floor of the house. But the Governor ignored this suggestion. He also did not explore the possibility of an alternative government but reported to the President that as Bommai had lost the majority support in the house, and as no other party was in a position to form the government, action be taken under Article 356 (1). Accordingly, the President issued the proclamation under in April, 1989.

Bommai challenged the validity of the proclamation before the Karnataka High Court through a writ petition on various grounds. The High Court ruled that the proclamation issued under Article 356(1) is not wholly outside the scope of judicial scrutiny; The satisfaction of the President under Article 356 (1) which is a condition precedent for the issue of the proclamation ought to be real and genuine satisfaction based on relevant facts and circumstances. The scope of judicial scrutiny is therefore confined to an examination within the disclosed regions where any regional access to the action proposed for proclamation issued. The court may examine as to whether the proclamation was based on satisfaction which was *mala fide* for any reason, or based on wholly extraneous and irrelevant grounds. In such a situation, the stated satisfaction of the President would not be a satisfaction in a constitutional sense under Article 356. In the end, however, the High Court dismissed the petition holding that effect stated in the Governors report could not be held to be irrelevant. Governors *bona fides* were not questioned and his

satisfaction was based on reasonable assessment of all facts. The court also ruled that recourse to floor test was neither compulsory nor obligatory and was not a breeding visit to the sending of the report to the President. S.R. Bommai appealed the decision of High Court before Supreme Court.

Besides, there were three more proclamations before the Supreme Court for the review— those made in Madhya Pradesh, Himachal Pradesh and Rajasthan in 1992 in the wake of the demolition of the disputed Babri structure in Ayodhya.

Judgment: Supreme Court in its judgement by majority declared that Karnataka, Meghalaya and Nagaland proclamations as unconstitutional but the proclamations in Madhya Pradesh, Rajasthan and Himachal Pradesh as valid.

A bench of nine-judge was constituted in *Bommai* to consider the various issues arising in several cases, and several opinion were rendered. On the basis of consensus among the judges, the following propositions can be enunciated in relation to Article 356 (1) and the scope of judicial review thereunder;

1. The President exercises his power under Article 356 (1) on the advice of the Council of Ministers which, in effect, the power really belongs maybe formally vested in the President.
2. The question whether the incumbent state Chief Minister has lost his majority support in the assembly has to be decided not in the Governor's chamber but on the floor of the house. There should be test of strength between the government and other on the floor of the house before recommending imposition of President's rule in the state.
3. The governor should explore the possibility of installing an alternative ministry, when the erstwhile ministry loses support in the house.

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4. The validity of the proclamation issued under Article 356, justiciable on such grounds as: whether it was issued on the basis of any material at all, or whether the material was relevant, or whether the proclamation was issued in the *malafide* exercise of the power, or was based only on extraneous and/or irrelevant grounds.
5. There should be material before the President indicating that the Government of the state cannot be carried on in accordance with the Constitution. The material in question before the President should be as would induce a reasonable man to come to the conclusion in question.
6. When a *prima facie* (based on the first impression) is made out against the validity of the proclamation, it is for the Central Government to prove that the relevant material did in fact exist. Search material maybe the report of the Governor or any other material.
7. The dissolution of the legislative assembly in the state is not an automatic consequence of the issuance of the proclamation. The dissolution of assembly is also not a must in every case. It should be done only when it is found to be necessary for achieving the purpose of the proclamation.
8. The provisions in Article 356 (3) are intended to be a check on the power of President under Article 356(1). If the proclamation is not approved within two months by two houses of Parliament, it automatically lapses. This means that the President ought not to take any irreversible action till the proclamation is approved by the house of Parliament. Therefore, the state assembly ought not to be dissolved.
9. Once the proclamation is approved by Parliament, and then at the end of six months, or it is revoked earlier, neither the

dismissed the State Government, nor the dissolved legislature will revive.

10. If the court invalidates the proclamation, even if approved by the Parliament, the action of the President becomes invalid. The State Government, if dismissed, is revived and the state assembly, if dissolved, will be restored.
11. Article 74(2) bars an enquiry into the question whether any or what advice was tendered by the Council of Ministers to the President. Article 74(2) “does not bar the court from calling upon the Union Council of Ministers to disclose to the court the material upon which the President had formed the requisite satisfaction. The material on the basis of which advice was tendered does not become part of the advice. Even if the material is looked into by or shown to the President, it does not partake the character of advice”.

The Supreme Court, in this case, seeks to promote basic and wholesome constitutional values, society, Parliamentary system, federalism, control over the executive and secularism.

Part XIX

Miscellaneous

Article 361 - 367

Topic: “Sale For Purchase Of Goods”

Name of the Case: Gannon Dunkerly & Co. v. State of Rajasthan, (1993) 1 SCC 364

Bench: Chief Justice M.H. Kania, Justice J.S. Verma, Justice S.C. Agarwal, Justice Y. Dayal and Justice A.S. Anand

Judgment: Article 366 (29) (A) explains the ambit of the expression “sale or purchase of goods”.

The object of the new definition introduced in Article 366 (29) (A) of the Constitution is, therefore, to enlarge the scope of tax on sale or purchase of goods whenever it occurs in the Constitution so that it may include within its scope the transfer, delivery or supply of goods that may take place under any of the transactions referred to in sub-clause (a) to (f) thereof whenever such transfer, delivery or supply becomes subject to levy of sale tax. So construed the expression tax on the sale for purchase of goods in Entry 54 of the State List, therefore, includes a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract also. The tax leviable by the virtue of Article 366 (29)(A) of the Constitution thus becomes subject to same discipline which any levy under entry 54 of the state list is made subject to the Constitution.

PART XX

Amendment of the Constitution

Article 368

Topic: The Court's Interpretation On Amendability Of The Constitution

Name of the Case: Sankari Prasad Singh v. UOI, AIR 1951 SC 458

Bench: Chief Justice Harilal Kania, Justice B.K. Mukherjea, Justice Sudhi Ranjan Das, Justice N. Chandrasekhara Aiyar

Fact of the Case: This is the first case on amendability of the Consultation, the validity of the Consultation (First Amendment) Act, 1951, curtailing the right to property guaranteed by Article 31 was challenged. The argument against the validity of the First Amendment was that Article 13 prohibits enactment of a law infringing or abrogating the Fundamental Rights, that the word ‘law’ in Article 13 would include any law, even a law amending the Constitution and, therefore, the validity of such a law could be judged and scrutinised with reference to the Fundamental Rights which it could not infringe.

Judgment: The Supreme Court while adopting the literal interpretation of the Constitution upheld the validity of first amendment. The court rejected the contention and limited the scope of Article 13 by ruling that the word ‘law’ in Article 13 would not include ‘constitutional amending law’ passed under Article 368. The court stated on this point *‘We are of the opinion that the context of Article 13 law must be taken to mean rules and regulations made in the exercise of ordinary legislative power and not amendment to the constitution made*

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in the exercise of constituent power with the result that Article 13 (2) does not affect amendments made under Article 368.”

The court held that the terms of Article 368 are perfectly general and empower Parliament to amend the Constitution without any exception. The Fundamental Rights are not excluded or immunised from the process of constitutional amendment under Article 368. These rights could not be invaded by the legislative organs by means of laws and rules made in exercise of legislative power but they could certainly be curtailed, abridged or even nullified by alteration of the Constitution itself in exercise of the constituent power.

The Court, thus, disagreed with the view that the Fundamental Rights are inviolable and beyond the reach of the process of the constitutional amendment. The Court, thus, ruled that Article 13 refers to a ‘legislative’ law, i.e., an ordinary law made by a legislature, but not to a constituent’ law, i.e., a ‘procedure’ laid down in Article 368 amend any Fundamental Right.

Case Second: Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845

Background: The validity of the Constitutional (17th Amendment) Act, 1964 was called in question. This Amendment again adversely affected the right to property. By this amendment, number of statutes affecting property rights were placed in the 9th Schedule and were, thus, immunised from Court review.

Issue:

1. Whether the amendment of the Constitution insofar as it purported to take away or abridged the Fundamental Rights was within the prohibition of Article 13(2)?

2. Whether Article 31A and 31 B (as amended by the 17th Amendment) sought to make changes to Articles 132, 136 and 226, or in any of the Lists in the 7th Schedule of the Constitution, so that the conditions prescribed in the proviso to the Article 368 had to be satisfied?

Judgment: The Supreme Court ruled that the ‘pith and substance’ of the Amendment was only to amend the Fundamental Right so as to help the State Legislature in effectuating the policy of the agrarian reform. If it affected Article 226 in an insignificant manner, that was only incidental; it was an indirect effect of the 17th Amendment and it did not amount to an amendment of Article 226. The impugned Act did not change Article 226 in any manner.

The conclusion of the Supreme Court in **Sankari Prasad case** as regards the relation between Article 13 and 368 was reiterated by the majority. It felt no hesitation in holding that the power of amending the Constitution conferred on Parliament under Article 368 could be exercised over each and every provision of the Constitution. The majority refused to accept the argument that Fundamental Rights were “eternal, and beyond the reach of Article 368.”

The Third Case: LC Golak Nath v. State of Punjab, AIR 1967 SC 1643

Bench: Chief Justice K. Subba Rao, Justice K.N. Wanchoo, Justice M. Hidayatullah, Justice J.C. Shah, Justice S.M. Sikri, Justice R.S. Bachawat, Justice V. Ramaswami, Justice J.M. Shelat, Justice V. Bhargava, Justice K.K. Mitter, Justice C.A. Vaidyalingam

Issue:

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- * Whether any of the Fundamental Right could be abridged or taken away by the Parliament in exercise of its power under Article 368?

Judgment: The supreme Court while overruling earlier cases of *Shankar Prasad* and *Sajjan Singh* held that the Fundamental Right were non - amendable through the constitutional amending procedure set out in Article 368, while the minority upheld the line of reasoning adopted by the court into earlier Articles.

The majority took the position that Fundamental Rights occupy a “transcendental” position in the Constitution, so that no authority functioning under the Constitution, including Parliament exercising the amending power under Article 368, would be competent to amend the Fundamental Rights.

Chief Justice Subba Rao on behalf of himself and four other judges, equated Fundamental Rights with natural rights and characterised them as “primordial rights necessary for the development of human personality”. It was established that when Parliament would not affect Fundamental Right by enacting a bill in its ordinary legislative process even unanimously, how could it then abrogate a Fundamental Right with only 2/3 majority? While Articles of less significance require consent of majority of states, can Fundamental Rights be amended without such consent?

While overruling the judgement passed in *Shankari Prasad* and *Sajjan Singh case*, the Supreme Court held that the term law in a comprehensive sense would take in even constitutional law. The court formulated its position as follows, “an amendment of the Constitution is law within the inclusive definition of law under Article 13 (2) of the Constitution and, as the entire scheme of Constitution was to list postulates the

inviolability of Part III thereof, Article 368 shall not be so construed as to destroy the structure of our Constitution.”

The Fourth Case: Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461

Bench: Chief Justice S.M. Sikri, Justice J.M. Shelat, Justice K.S. Hegde & Justice A.N. Grover, Justice A.N. Ray, & Justice P.J. Reddy & Justice Palekar, Justice Hans Raj Khanna, Justice K.K. Mathew, Justice M.H. Beg, Justice S.N. Dwivedi, Justice B.K. Mukherjea, Justice Y.V. Chandrachud

Issue:

- * The constitutional validity of XXIV and XXV Amendment was challenged?

Judgment: The court made following observation under several points noted below:

- a. The court held that the power to amend Constitution is to be found in Article 368 itself. It was emphasised that the “provisions relating to the amendment of the Constitution are some of the most important feature of any modern constitution”.
- b. Further, the court recognised that there is a distinction between an ordinary law and a constitutional law.
- c. Kesavananda did not concede an unlimited amending power to Parliament under Article 368. The amending power was now subjected to one very significant qualification, viz, That the amending power cannot be exercised in such a manner as to destroy or emasculate the basic or fundamental features of the Constitution. A

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constitutional amendment which opens the basic structure of constitution is ultra vires.

- d. Some of the features regarded by the court as fundamental and, thus, non-amendable are:

I. Supremacy of the Constitution,

II. Republican and democratic form of government,

iii. Secular character of the Constitution,

IV. Separation of power between legislative, executive and the judiciary,

V. Federal character of the Constitution

e. Therefore, it means that while Parliament can amend any constitutional provision by virtue of Article 368, such a power is not absolute and unlimited and the court can still go into the question whether or not an amendment violates or fundamental or basic feature of the Constitution. If an amendment does so, it will be constitutionally invalid.

f. What is the fundamental feature of the Constitution is a moot point. The list given above is not final or exhaustive of such features. It is for the courts to decide as and when a question arises whether a particular amendment of the Constitution affects any basic or fundamental features of the Constitution or not. The question of basic feature has to be considered in a case in the context of concrete problem.

f. It was further held that, Can Parliament under Article 368 rewrite the entire Constitution and bring a new constitution? The answer to the question is that Parliament can only do that which does not modify the basic feature of the Constitution and not beyond that.

Development in the Concept after Keshavananda Bharti Case

Name of the case: Minerva Mills v. UOI, 1980 SC 1789

Bench: Justice Chief Justice Y.V. Chandrachud, Justice P.N. Bhagwati, Justice A.C. Gupta, Justice N.L. Untwalia, Justice P.S. Kailasam

Background: A writ petition was filed in Supreme Court challenging the taking over of the management of the mills under the Sick Textile Undertaking (Nationalisation) Act, 1974, and in order made under Section 18-A of the Industrial (Development and Regulation) Act, 1951. The petition challenged the constitutional validity of clause (4) & (5) of Article 368, introduced by Section 55 of the 42nd Amendment. If these clauses were held valid then the petitioners could not challenge the validity of the 39th Amendment which had placed the Nationalisation Act, 1974, in schedule IX Schedule.

Judgment: The Supreme Court held that Article 368 (4) & (5) to be beyond the amending power of the Parliament and void since it's sought to remove all limitations on the power of Parliament to amend the Constitution and confer power on Parliament to amend the Constitution so as to damage or destroy its basic essential feature or its basic structure. The true object of this clause was to remove the limitations imposed on parliaments power to amend the Constitution through *Kesavanand Bharti case*.

The court observed that depriving the Courts of the power of judicial review will mean making Fundamental Rights “a mere adornment” as they will be rights without remedies. A controlled Constitution will become uncontrolled.

It was held that the goals set out in Part IV of the Constitution, Directive Principles of State Policy, must be achieved without

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the abrogation of means provided for by party which is Fundamental Rights. In this sense, Fundamental Rights and Directive Principles of State Policy both together constitute the core of the Constitution and combine to form its conscience. Anything that destroys the balance between the two parts will *ipso facto* destroy an essential element of the basic feature of the Constitution.

Name of the case: **Waman Rao v. UOI, AIR 1981 SC 271**

Bench: Chief Justice Y.V. Chandrachud, Justice A. Sen, Justice P.N. Bhagwati, Justice Tulzapurkar, Justice V.K. Iyer

Background: The Constitution validity of Maharashtra Agricultural (Land Ceiling) on Holding Act, 1967 was challenged. The Act imposed ceiling on agricultural holding in the state. As the Act had been placed in the 9th Schedule, the constitutional validity of Article 31A and 31B and an unamended Article 31C was also challenged on the ground of damaging the 'basic structure' of the Constitution.

Judgment: The majority bench of Supreme Court held that all Acts and Regulations included in the 9th schedule until the landmark case of **Kesavananda Bharati** will receive the full protection of Article 31B. Since, the 9th schedule is a part of the Constitution, no addition or alteration can be made therein without complying with the restrictive provisions governing the amendments of the Constitution. Therefore, the Acts and regulations included in the 9th schedule after **Kesavananda Bharati** will not receive the protection of Article 31B for the plain reason that in the face of **Kesavananda judgement**, there is no justification for making additions to the 9th schedule with a view to conferring a blanket protection on the law included therein "The various constitutional amendment, by which additions were made to the 9th schedule on or after 24th April

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1973, will be held valid only if they do not damage or destroy the basic feature of the Constitution.“

These laws would not receive the protection of Article 31B *ipso facto*. Each law has to be examined individually for determining whether the constitutional amendment by which it has been put in the 9th schedule damages or destroys the basic feature of the Constitution in any manner. If, however any such Act is protected by Article 31A or 31C (as stood prior to the 42nd Amendment) then the act will be valid.

Article 31C as it stood prior to the 42nd amendment made in 1976 is valid to the extent it constitutionally has been upheld in **Kesavanand Bharati case**. Laws passed for giving effect to the directive principles in Article 39 (b) & (c) “will fortify that structure”. The Court expressed the hope that Parliament would utilise to the maximum its potential to pass laws genuinely and truly related to the principles contained in Article 39 (b) & (c).

Part XXI

Temporary, Transitional and Special Provisions

Article 369 - 378A

President Order of 2019: Deleting Article 370 from the Constitution of India.

On 5 August 2019 the Government of India issued the Constitution (Application to Jammu and Kashmir) Order 2019 under Article 370, suspending the Constitution (Application to Jammu and Kashmir) Order 1954. Thus, the special provision which was granted to State of Jammu and Kashmir was abrogated and Jammu and Kashmir Reorganisation Act, 2019 was passed to convert Jammu and Kashmir status of State into two separate Union territories. Hereafter, all the acts, rules and regulation, and the entire Constitution of India will be applicable on Jammu and Kashmir. The special status guaranteed to Jammu and Kashmir under Article 35A was also abrogated.

The constitutional validity of the said order, 2019 was challenged before the Supreme Court of India.

Name of the case: Dr. Shah Faisal vs. UOI, W.P. (C) No. 1099 of 2019

Bench Justice N.V. Ramana, Justice S.K. Kaul, Justice R. Subhash Reddy, Justice B.R. Gavai, Justice Surya Kant

Fact of the case: The case pertains to the constitutional challenge before the Supreme Court as regard to two

constitutional orders issued by President of India in exercise of his power under Article 370 of the Constitution of India. These Constitution orders made the Constitution of India applicable to the state of Jammu and Kashmir in its entirety, like other states in India.

Issue:

1. When can a matter be referred to a larger bench?
2. Whether there is a requirement to refer the present matter to a larger bench in the view of the earliest contradictory view of this Court in Prem Nath Kaul case and Sampat Prakash case?
3. Whether Sampat Prakash case is per incuriam for not taking into consideration the decision of court in Prem Nath Kaul case?

Prem Nath Kaul v. State of Jammu and Kashmir, AIR 1959

SC 749: The Supreme Court held that the constitutional relationship between the State of Jammu and Kashmir and the Union of India should be finally decided by the constituent assembly of the State and, therefore, he has to be treated as a temporary provision.

Sampat Prakash v. State of Jammu and Kashmir, AIR 1970

SC 1118: The Supreme Court reversed the judgement of Prem Nath and held that Article 370 as a permanent provision giving perennial power to the President to regulate the relationship between the state and the Union of India.

Judgment: The constitutional bench of Supreme Court held that the Constitutional bench in the ***Prem Nath Kaul Case*** did not discuss the continuation of cessation of the operation of Article 370 of the Constitution after the dissolution of constituent assembly of state. This was not an issue in the question before this Court, unlike in the ***Sampat Prakash case***.

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where the contention was specifically made before and refuted by, the court. This court sees no reason to read into the **Prem Nath Kaul Case** and interpretation which result in it being in conflict with the subsequent judgement of this court, particularly when an ordinary reading of the judgement does not result in such an interpretation.

It was held that the contacts of **Prem Nath Kaul case** was different, as it was dealing with the validity of legislation passed by the Yuvraj of Jammu and Kashmir before the sitting of the constituent assembly of Jammu and Kashmir.

Thus, it was held that there is no conflict between the judgements in Prem Nath Kaul case and the Sampath Prakash case. The plea of counsel to refer the present matter to a larger bench on this ground is therefore rejected.

Following Articles are Repealed Article 379 - 391

Constitutional Amendments¹

Amendment	Objective and Provision Amended
1 st Amendment Act, 1951	<ul style="list-style-type: none"> 1. Empowered the state to make special provisions for the advancement of Socially and Economically backward classes. 2. Provided for the saving of laws providing for acquisition of Estates, etc. 3. Added ninth schedule to protect the land reform and other laws included in it from the judicial review. 4. Added three more grounds of restrictions on freedom of speech and expression, viz, public order, friendly relations with foreign states and incitement to an offence. Also, made the restriction "reasonable" and thus, justiciable in nature. 5. Provided that State trading and nationalisation of any trade or business by the state is not to be invalid on the ground of violation of the right to trade or business.
2 nd Amendment Act, 1952	Re-adjusted the scale of representation in the Lok Sabha by providing that one member would represent even more than 7,50,000 persons.
3 rd Amendment Act, 1954	Empowered the Parliament to control the production, supply and distribution of foodstuffs, cattle fodder, raw cotton, cotton seeds and raw jute in the public interest.

¹ Source: M. Lakshmikant, Indian Polity- Constitutional Amendment

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Amendment	Objective and Provision Amended
4 th Amendment Act, 1955	<ol style="list-style-type: none"> 1. Made the scale of compensation given in <i>lieu</i> of compulsory acquisition of private property beyond the scrutiny of courts. 2. Authorised the state to nationalise any trade. 3. Included some more acts in the ninth schedule. 4. Extended the scope of Article 31 A (saving laws)
5 th Amendment Act, 1955	Empowered the President to fix the time limit for the State Legislature to express their views on the proposed Central legislation affecting the areas, boundaries and names of the states.
6 th Amendment Act, 1956	Included a new subject in the Union List, i.e, taxes on the sale and purchase of goods in the course of the interstate trade and commerce and restricted the state's power in this regard.
7 th Amendment Act, 1956	<ol style="list-style-type: none"> 1. Abolished the existing classification of states into four categories, i.e, Part A, Part B, Part C states, and recognised them into 14 States and 6 Union territories. 2. Extended the jurisdiction of High Court to Union territories. 3. Provided for the establishment of a common High Court for two or more states. Provided for the appointment of additional and acting judges of the High Court.
8 th Amendment Act, 1960	Extended the reservation of seats for the Scheduled Castes and Scheduled Tribes, and especially presentation for the Anglo Indians in the Lok Sabha and the state Legislative Assemblies for a period of 10 years (Upto 1970)

100 landmark Judgement in Constitutional Law

Amendment	Objective and Provision Amended
9 th Amendment Act, 1960	Facilitated the cession of Indian territory of Barubari Union to Pakistan as provided in the Indo-Pakistan Agreement, 1958
10 th Amendment Act, 1961	Incorporated Dadra and Nagar Haveli in the Indian Union.
11 th Amendment Act, 1961	Changed the procedure of election of the Vice-President by providing an electoral college instead of a joint meeting of the two houses of Parliament. Provided that the election of the President or Vice-President cannot be challenged on the ground of any vacancy in the appropriate electoral college.
12 th Amendment Act, 1962	Incorporated Goa, Daman and Diu in the Indian Union.
13 th Amendment Act, 1962	Gave the status of State to Nagaland and made special provisions for it.
14 th Amendment Act, 1962	<ol style="list-style-type: none"> 1. Incorporated Puducherry in the Indian Union. 2. Provided for the creation of legislatures and Council of Ministers for the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and

Amendment	Objective and Provision Amended
	Puducherry.
15 th Amendment Act, 1963	<ol style="list-style-type: none"> 1. Enable the High Court to issue writs to any person or authority even outside its territorial jurisdiction if the cause of action arises within its territorial limit 2. Increased the retirement age of High Court judges from 60 to 62 years. 3. Provided for appointment of retired judges of the High Court as acting judges of the same court. 4. Provided for compensatory allowance to judges who are transferred from one High Court to another. 5. Enabled the retired judges of High Court to act as <i>ad hoc</i> judges of the Supreme Court. 3. Provided for the procedure of determining the age of the Supreme Court and High Court judges.
16 th Amendment Act, 1963	<ol style="list-style-type: none"> 1. Empowered the state to impose further restriction on the rights to freedom of speech and expression, to assemble peacefully and to form Association in the interest of sovereignty and integrity of India. 6. Included sovereignty and integrity in the form of oath or affirmations to be subscribed by contestants to the legislatures, member of the legislatures, ministers, judges and CAG of India.

100 landmark Judgement in Constitutional Law

Amendment	Objective and Provision Amended
17 th Amendment Act, 1964	<ol style="list-style-type: none"> Prohibited declaration of land under personal cultivation unless the market value of the land is paid as compensation. Included 44 more acts in the ninth schedule.
18 th Amendment Act, 1966	Made it clear that the power of Parliament to form a new State also include a power to form a new State or Union Territory by uniting a part of a state or Union Territory to another state or Union Territory.
19 th Amendment Act, 1966	Abolished the system of election tribunal and wasted the power to hear election petitions in the High Courts.
20 th Amendment Act, 1966	Validated certain appointments of District Judges in the Uttar Pradesh which were declared void by the Supreme Court.
21 st Amendment act, 1967	Included ‘Sindhi’ as the 15th language in the eighth schedule.
22 nd Amendment Act, 1969	Facilitated the creation of a new autonomous state of Meghalaya within the State of Assam.

Amendment	Objective and Provision Amended
23 rd Amendment Act, 1969	Extended the reservation of seats for the Scheduled Castes and Scheduled Tribes, and especially presentation for the Anglo Indians in the Lok Sabha and the State Legislative Assemblies for further period of 10 years. (Upto 1980s)
24 th Amendment Act, 1971	Affirmed the power of Parliament to amend any part of the Constitution including Fundamental Rights. Made it compulsory for the President to give his assent to a Constitutional Amendment Bill.
25 th Amendment Act, 1971	Curtailed the Fundamental Right to property. Provided that any law made to give effect to the directive principles contained in Article 39 (b) and (c) cannot be challenged on the ground of violation of the rights guaranteed by Article 14, 19 and 31.
26 th Amendment Act, 1971	Abolished the privy purses and privileges of the former's rulers of princely states.
27 th Amendment Act, 1971	<ol style="list-style-type: none"> Empowered the administrators of certain Union territories to promulgate ordinances. Made certain special provisions for new Union territories of Arunachal Pradesh and Mizoram. Authorised the Parliament to create the legislative assembly and council of ministers for the new state of Manipur.

100 landmark Judgement in Constitutional Law

Amendment	Objective and Provision Amended
28 th Amendment Act, 1972	Abolished the special privileges of ICS officers and empowered the Parliament to determine their service conditions.
29 th Amendment Act, 1972	Included two Kerala Acts on land reforms in the ninth schedule.
30 th Amendment Act, 1972	Did away with the provision which allowed appeal to the Supreme Court in civil cases involving an amount of 20,000 and provided that an appeal can be filed in the Supreme Court only if the case involves a substantial question of law.
31 st Amendment Act, 1972	Increased the number of Lok Sabha seat from 525 to 545.
32 nd Amendment Act, 1973	Made special provisions to satisfy the aspirations of the people of Telangana region in Andhra Pradesh.
33 rd Amendment Act, 1974	Provided that the resignation of the members of Parliament and the state legislatures maybe accepted by the speakers or chairman only if he is satisfied that the registration is voluntary or genuine.

Amendment	Objective and Provision Amended
34 th Amendment Act, 1974	Included 20 more land tenure and land reforms acts of various states in ninth schedule.
35 th Amendment Act, 1974	Terminated the protectorates status of Sikkim and conferred on it the status of associated state of the Indian Union. The 10th schedule was added laying down the terms and conditions of Association of Sikkim with the Indian Union.
36 th Amendment Act, 1975	Made Sikkim a full-fledged state of the Indian Union and omitted the 10th schedule.
37 th Amendment Act, 1975	Provided legislative assembly and Council of Ministers of the Indian Union of Arunachal Pradesh.
38 th Amendment Act, 1975	<ol style="list-style-type: none"> 1. Made the declaration of emergency by the President non-Justiciable. 2. Made the promulgation of ordinances by the President, governors and administrators of the Union territories non-justiciable. 3. Empowered the President to declare different proclamations of national emergency on different grounds simultaneously.
39 th Amendment Act, 1975	<ol style="list-style-type: none"> 1. Placed the disputes relating to the President, Vice President, Prime Minister and Speaker beyond the scope of the judiciary. They are to be decided by such authority as may be determined by the Parliament.

100 landmark Judgement in Constitutional Law

Amendment	Objective and Provision Amended
	<p>2. Included certain Central Acts in the ninth schedule.</p>
40 th Amendment Act, 1976	<p>1. Empowered the Parliament to specify from time to time the limits of the territorial waters, continental shelf, the Exclusive Economic Zone (EEZ) and Maritime Zone of India.</p> <p>2. Included 64 more central and state laws, mostly relating to land reforms, in the ninth schedule.</p>
41 st Amendment Act, 1976	Raised the retirement age of members of State Public Service Commission and Joint Public Service Commission from 60 to 62.
42 nd Amendment Act, 1976 (The most comprehensive amendment made so far to the Constitution. It is also known as “mini constitution”. It gave effect to the recommendations of the 14th Finance Commission)	<p>1. Added three words, i.e, ‘Socialist’, ‘Secular’ and ‘Integrity’ in the preamble.</p> <p>2. Added fundamental duties by the citizens (new part IV A)</p> <p>3. Made the President bound by the advice of the Cabinet.</p> <p>4. Provided for administrative tribunals and tribunals for the other matters (Part XIV A)</p> <p>5. Froze the seat in the Lok Sabha and State legislative assembly on the basis of 1971 census till 2001.</p> <p>6. Made the Constitutional Amendments beyond judicial scrutiny.</p> <p>7. Curtailed the power of judicial review and writ jurisdiction of the Supreme Court and High Court.</p> <p>8. Raised the tenure of Lok Sabha and state legislative assembly.</p>

Amendment	Objective and Provision Amended
tion of Swaran Singh committee.	<p>legislative assemblies from 5 to 6 years.</p> <p>9. Provided that the laws made for the implementation of Directive Principles cannot be declared invalid by the courts on the ground of violation of some Fundamental Rights.</p> <p>10. Empowered the Parliament to make laws to deal with antinational activities and such laws are take precedence over Fundamental Right s.</p> <p>11. Added three new Directive Principles viz.,, equal justice and free legal aid, participation of workers in the management of industries and protection of environment, Forest and wildlife.</p> <p>12. Facilitated the proclamation of national emergency in a part of territory of India.</p> <p>13. Extended the one time duration of the President's rule in the state from six months to 1 year.</p> <p>14. Empowered the Centre to deploy its forces in any state to deal with a grave situation of law and order.</p> <p>15. Shifted five subjects from the State List to the Concurrent List, viz, education, forests, protection of wild animals and birds, weights and measures and administration of justice, Constitution and organisation of all court as it the Supreme Court and the High Courts.</p> <p>16. Did away with the requirement of quorum in the Parliament and the state legislatures.</p> <p>17. Empowered the Parliament to decide from time to time the rights and privileges of its members and committees.</p> <p>18. Provided for the creation of the All India</p>

Amendment	Objective and Provision Amended
	<p>Judicial Services.</p> <p>19. Shortened the procedure for disciplinary action by taking away the right of civil servant to make representations at the second stage after the inquiry.</p>
<p>43rd Amendment Act, 1977 (Elected by the Janata government to nullify some of the distortion introduced by 42nd amendment act of 1976)</p>	<ol style="list-style-type: none"> 1. Restored the jurisdiction of the Supreme Court and the high courts in respect of judicial review and issue of writs. 2. Deprive the Parliament of its special powers to make laws to deal with antinational activities.
<p>44th Amendment Act, 1978 (Enacted by the Janata government mainly to nullify some of the other distortions introduced by the 42nd amendment act, 1976)</p>	<ol style="list-style-type: none"> 1. Restored the original term of Lok Sabha and State Legislative Assemblies. 2. Restored the provisions with regard to quorum in the Parliament and state legislature. 3. Permitted directions to the British house of commons in the provisions pertaining to the Parliamentary privileges. 4. Gave constitutional protection to publication in newspaper of true reports of the proceedings in the Parliament and the state legislature. 5. Empowered the President to send back once the advice of Cabinet for reconsideration. But the reconsidered advice is to be binding on the president. 6. Deleted the provision which made the

Amendment	Objective and Provision Amended
	<p>satisfaction of the President, Governor and administrators final in issuing ordinances.</p> <p>7. Restored some of the powers of Supreme Court and High Courts.</p> <p>8. Replaced the term “internal disturbance” by “armed rebellion” in respect of National Emergency.</p> <p>9. Made the President to declare a national emergency only on the written recommendation of the Cabinet.</p> <p>10. Made certain procedural safeguards with respect to national emergency and President’s rule.</p> <p>11. Deleted the right to property from the list of Fundamental Rights and made it only a legal right.</p> <p>12. Provided that the Fundamental Rights guaranteed by Article 20 and 21 cannot be suspended during a national emergency.</p> <p>13. Omitted the provisions which took away the power of courts to decide the election dispute of the President, Vice President, the Prime Minister and Speaker of the Lok Sabha.</p>
45 th Amendment Act, 1980	Extended the reservation of seats from the Scheduled Castes and Scheduled Tribes and the special the presentation for the Anglo Indian in the Lok Sabha and state legislative assemblies for further period of 10 years. (Upto 1990)
46 th Amendment Act, 1980	<ol style="list-style-type: none"> Enabled the states to plug loopholes in the laws and realise sales tax dues. Brought about some uniformity in tax rates on certain items.

100 landmark Judgement in Constitutional Law

Amendment	Objective and Provision Amended
47 th Amendment Act, 1984	Included 14 land reforms act of various states in the ninth schedule.
48 th Amendment Act, 1984	Facilitated the extension of President's rule in Punjab beyond one year without meeting the two special conditions for such extensions.
49 th Amendment Act, 1984	Give a constitutional sanctity to the autonomous District Council in Tripura.
50 th Amendment Act, 1984	Empowered the President to restrict the Fundamental Rights of persons employed in intelligence organisations and telecommunication systems to set up for the armed forces or intelligence organisations.
51 st Amendment Act, 1984	Provided for reservation of seats in Lok Sabha for Scheduled Tribe in Meghalaya, Arunachal Pradesh, Nagaland and Mizoram as well as in the legislative assemblies of Meghalaya and Nagaland.
52 nd Amendment, 1985 (Also known as anti- defection law)	Provided for the disqualification of members of Parliament and state legislators on the ground of defection and added a new 10th schedule for containing the details in this regard.

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Amendment	Objective and Provision Amended
53 rd Amendment Act, 1986	Made special provisions in respect of Mizoram and fixed the strength of its assembly at a minimum of 40 members.
54 th Amendment Act, 1986	Increased the salaries of Supreme Court and High Court judges and enable the Parliament to change term in future by an ordinary law.
55 th Amendment Act, 1986	Made special provisions in respect of Arunachal Pradesh and fixed the strength of its assembly at a minimum of 30 members.
56 th Amendment Act, 1987	Fixed the strength of the Goa legislative assembly at a minimum of 30 members.
57 th Amendment Act, 1987	Reserved seat for the Scheduled Tribes in the legislative assemblies of the state of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland.
58 th Amendment Act, 1987	Provided for an authoritative text of the Constitution in Hindi and give the same legal sanctity to the Hindi version of the Constitution.

Amendment	Objective and Provision Amended
59 th Amendment Act, 1988	<ol style="list-style-type: none"> 1. facilitated extension of President's rule in Punjab up to 3 years. 2. Provided for the declaration of national emergency in Punjab on the ground of internal disturbance.
60 th Amendment Act, 1988	Increased the ceiling of taxes on professional, trades, callings and increments from 250 ₹ per annum to 2500 ₹ per annum.
61 st Amendment Act, 1989	Reduced the voting age from 21 years to 18 years for the Lok Sabha and state legislative assemblies.
62 nd Amendment Act, 1989	Extended the reservation of seats for the Scheduled Castes and scheduled Tribes and special the presentation for the Anglo Indians in the Lok Sabha and the state legislative assemblies for the further period of 10 years.
63 rd Amendment Act, 1989	Repealed the changes introduced by the 59th amendment act of 1988 in relation to Punjab. In other words, Punjab was brought at par with the other states in respect of emergency provisions.
64 th Amendment Act, 1990	Facilitated the extension of the President's rule in Punjab up to a total period of three years and six months.

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Amendment	Objective and Provision Amended
65 th Amendment Act, 1990	Provided for the establishment of multimember national commission for Schedule Caste and Schedule Tribes in the place of a special officer for Schedule Caste and Schedule Tribes.
66 th Amendment Act, 1990	Included 55 more land reforms act of various states in the ninth schedule.
67 th Amendment Act, 1990	Facilitate the extension of the President's rule in Punjab up to a total period of 4 years.
68 th Amendment Act, 1991	Facilitated the extension of President's rule in Punjab up to a total period of five years
69 th Amendment Act, 1991	Accorded special status to the Union Territory of Delhi by designing it as the National Capital Territory of Delhi. The amendment also provided for the creation of 70 member assembly and a seven-member Council of Ministers for Delhi.
70 th Amendment Act, 1992	Provided for the inclusion of the members of the legislative assemblies of National Capital Territory of Delhi and the Union Territory of Puducherry in the electoral college for the election of the President.

100 landmark Judgement in Constitutional Law

Amendment	Objective and Provision Amended
71 st Amendment Act 1992	Included Konkani, Manipuri and Nepali language in the eighth schedule. With this, the total number of scheduled languages increased to 18.
72 nd Amendment Act, 1992	Provided for the reservation of seats for the Scheduled Tribes in the legislative assembly of Tripura.
73 rd Amendment Act, 1992	Granted constitutional status and protection to the Panchayati Raj institutions. For this purpose, the amendment has added a new part nine entitled as “the Panchayats” and a new 11 schedule containing 29 functional items of the panchayats.
74 th Amendment Act, 1992	Guaranteed constitutional status and protection to the urban local bodies, for this purpose, the amendment has added a new part 9A entitled as “the means parties” and a new 12 schedule containing 18 functional items of the municipalities.
75 th Amendment Act, 1994	Provided for the establishment of rent tribunal for the adjudication of disputes with respect to rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants.
76 th Amendment Act, 1994	Included the Tamil Nadu Reservation Act, 1994 in the ninth schedule to protect it from the judicial review. In 1982, the Supreme Court ruled that the total reservation should not exceed 50%.

Amendment	Objective and Provision Amended
77 th Amendment Act 1995	Provided for reservation in promotions in government jobs for Scheduled Castes and Scheduled Tribes. This amendment nullified the Supreme Court ruling with regards to reservation in promotion.
78 th Amendment Act, 1995	Included 27 more land reforms act of various states in the ninth schedule. With this, the total number of acts in the schedule increased to 282. But, the last entry is numbered 284.
79 th Amendment Act, 1999	Extended the reservation of seats for the scheduled caste and scheduled Tribes and special representation for the Anglo Indian in the Lok Sabha and the state legislative assemblies for a further period of 10 years. (Upto 2010)
80 th Amendment Act, 2000	Provided for an “alternative scheme of devolution” of revenue between the Centre and states. This was enacted on the basis of the recommendations of the 10th finance commission which had recommended that out of the total income obtained from the central taxes and duties, 29% should be distributed among the states.
81 st Amendment Act, 2000	Empowered the state to consider the unfilled reserved vacancies of year as a separate class for vacancies to be filled up in any succeeding year or years. Such class of vacancies are not to be combined with the vacancies of the year in which they are being filled up to determine the ceiling of 50% reservation on the total number of vacancies of that year. In brief, this amendment ended the 50% ceiling on reservation in backlog vacancies.

Amendment	Objective and Provision Amended
82 nd Amendment Act, 2000	Provided for making of any provision in favour of the schedule caste and schedule Tribes for relaxation in qualifying marks in any examination or lowering the standard of evolution, for reservation in matters of promotion to the public services of the Centre and state.
83 rd Amendment Act, 2000	Provided that new reservation in panchayats need to be made for Schedule Caste in Arunachal Pradesh. The total population of the State is tribal and there is no Schedule Castes.
84 th Amendment Act, 2001	Extended the ban on adjustment of seat in the Lok Sabha and the state legislative assemblies for another 25 years with the same objective of encouraging population limiting measures. In the other words, the number of seats in the Lok Sabha and assemblies are remain same till 2026. It also provided for the readjustment and rationalisation of territorial constituencies in the state on the basis of population figure of 1991 census.
85 th Amendment Act, 2001	Provided for “consequential seniority” in the case of promotion by the virtue of rule of reservation for the government servants belonging to the scheduled castes and scheduled Tribes with retrospective effect from June 1995.
86 th Amendment Act, 2002	<ol style="list-style-type: none"> 1. Made elementary education a Fundamental Right. The newly added Article 21A declares that “the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the statement determine”. 2. Changed the subject matter of Article 45 in

Amendment	Objective and Provision Amended
	<p>directive principles. It now reads “the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.</p> <p>3. Added a new fundamental duty under Article 50 1A which reads “it shall be the duty of every citizen of India who is a present or guardian or provide opportunities for education to the children or ward between the age of six and 14 years”.</p>
87 th Amendment Act, 2003	Provided for the readjustment and rationalisation of territorial constituencies in the states on the basis of the population figures of 2001 census and not 1981 census has provided earlier by the 84th amendment act of 2001.
88 th Amendment Act, 2003	Made a provision for service tax. Taxes on services are levied by the Centre. But, their proceeds are collected as well as appropriated by both the Centre and States in accordance with the principles formulated by the Parliament.
89 th Amendment Act, 2003	Bifurcated the erstwhile combined national Commission for Scheduled Castes and Scheduled Tribes into two separate bodies, namely, National Commission for Scheduled Castes and National Commission for Scheduled Tribes. Both the commissions consists of a Chairman, a Vice Chairperson and three other members. They are appointed by the President.
90 th Amendment Act, 2003	Provided for maintaining the erstwhile representation of the Scheduled Tribes and non-Scheduled Tribes in the Assam legislative Assembly from the Bodoland territorial areas districts.

Amendment	Objective and Provision Amended
<p>91st Amendment Act, 2003</p>	<p>Made the provision to limit the size of Council of Ministers, to debar defectors from holding public offices, and to straighten the anti-defection law:</p> <ol style="list-style-type: none"> 1. The total number of ministers, including the Prime Minister, in the central Council of Minister shall not exceed 15% of the total strength of the Lok Sabha. 2. Member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. 3. The total number of ministers, including the Chief Minister, in the council of ministers in the State shall not exceed 15% of the total strength of legislative assembly of that state. But, the number of ministers, including the chief minister, in a state shall not be less than 12. 4. Member of either house of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. 5. A member of either house of Parliament or either house of a state legislature belonging to any political party who is this qualified on the ground of defection shall also be disqualified to hold any remunerative political post. The expression “remunerative political post“ means (1) any office under the Central Government or a State Government where the salary already numeration for such office is paid out of the public revenue of the concerned

Amendment	Objective and Provision Amended
	<p>government; or (2) any office under a body, whether Inc or not, which is wholly or partially owned by the Central Government or State Government and the salary or renumeration for such office is paid by such body, except where such salary or a renumeration paid is compensatory in nature.</p> <p>6. The provision of the 10th schedule pertaining to exemption from disqualification in case of split by one third members of Legislature party has been deleted. It means that the defector have no more protection on ground of splits.</p>
92 nd Amendment Act, 2003	Included four more languages in the VIII schedule. They are Bodo, Dogri, Mathilli and Santhali. With this, the total number of constitutional language increase to 22.
93 rd Amendment Act, 2005	Empowered the state to make special provisions for the Socially and Educationally Backward Classes or the Scheduled Caste or Schedule Tribes in educational institutions including private educational institution, except the minority educational institutions.
94 th Amendment Act, 2006	Freed Bihar from the obligation of having a tribal welfare minister and extended the same provision to Jharkhand and Chhattisgarh. This provision will not be applicable to the two newly formed states and Madhya Pradesh and Orissa, where it has already been in force.

100 landmark Judgement in Constitutional Law

Amendment	Objective and Provision Amended
95 th Amendment Act, 2009	Extended the reservation of seats for the Scheduled Castes and Scheduled Tribes and special day presentation for the Anglo Indians in the Lok Sabha and the state legislative assembly is for a further period of 10 years. (Upto 2020)
96 th Amendment Act, 2011	Substituted “Odia” for “Oriya”. Consequently, the “Oriya” language in the eighth schedule shall be pronounced as “Odia“.
97 th Amendment Act, 2011	Gave a constitutional status and protection to cooperative societies. In this context, it made the following three changes in the Constitution 1. It made the right to form a cooperative society a Fundamental Right 2. It included a new Directive Principles of State Policy on promotion of cooperative societies. 3. It added a new Part IX-B in the Constitution which is entitled as “the cooperative societies“
98 th Amendment Act, 2012	Provided for a special provisions in the Hyderabad Karnataka region of the state of Karnataka. The special provisions aim to establish or use divisional mechanism for equitable allocation of funds to meet the development needs of the region, as well as to enhance human resource and promote employment from the region by providing for local cadre in services and reservation in educational and vocational trainings institution.

Amendment	Objective and Provision Amended
99 th Amendment Act, 2014	Replaced the collegium system of appointing judges to the Supreme Court and high courts with a new body called national judicial appointment commission. However, in 2015, the Supreme Court has declared this amendment as unconstitutional and void. Consequently, the earlier collegium system became operative again.
100 th Amendment Act, 2015	Gave effect to the acquiring of certain territories by India and transfer of certain territories to Bangladesh in pursuance of the land boundary agreement of 1974 and its protocol of 2011. For this purpose, this amendment act amended the provisions in relating to that address of four states (Assam, West Bengal, Meghalaya and Tripura) in the first schedule of the Constitution.
101 st Amendment Act, 2016	Paved the way for introduction of goods and services tax GST regime in the country. [The details on this amendment has already been covered]
102 nd Amendment Act, 2018	Conferred constitutional status on the National Commission for Backward Classes which was set up in 1993 by an act of parliament. Relieved the National Commission For Scheduled Castes from its function with regard to the backward classes. Empowered the President to specify the socially and educationally backward classes in relation to a state or Union Territory.

100 landmark Judgement in Constitutional Law

Amendment	Objective and Provision Amended
103 rd Amendment Act, 2019	<ol style="list-style-type: none"> 1. Empowered the state to make any special provision for the advancement of any economically weaker Sections of citizen. 2. Allowed the state to make a provision for the reservation of up to 10% of seats for such Sections in admission to educational institution including private educational institutions, whether edit or unaided by the state, except the Marathi Educational Institutions. This reservation of up to 10% would be in addition to the existing reservations. 3. Permitted the state to make a provision for the reservation of up to 10% of appointments or posts in favour of such Sections. This reservation of up to 10% would be in addition to the existing reservation.
104 th amendment act 2020	To extend the reservation of seats of SCs and STs in the Lok Sabha and state assemblies from 70 years to 80 years. Removed reserved seats for Anglo Indian community in the Lok Sabha and state assemblies.

About Author

Amaresh Patel is a ***Founder and Managing Director*** at Into Legal World and EduCuriosity. Into Legal World, a trademark of Parivritt Enterprises Pvt Ltd, has established it's reputation in Legal News Portal, Institute, Publication House and a law firm under name of Sui Juris Law Firm. The company has also received monetary award under Startup Uttar Pradesh program.

After the success of Into Legal World, he is also venturing into a new company named EduCuriosity for bridging up the gaps between academic learning and the skills required for being a professional.

He is also author of 4 law books, 3 of which has been Bestsellers, namely 100 Landmark Judgments of the Year Series. His newly launched book named 100 landmark judgement 2020-21 is a foreword by Prof. Balraj Chauhan, VC, DNLU.

His idea of writing this book, namely, “100 Landmark Judgment 2021” is to help law students, advocates, teachers, professionals, and judicial officers to find landmark judgment pronounced by Supreme Court which has changed the law or has capacity to change the law. He believes that law is an ever-changing subject and to understand it, one has to be updated, and there is nothing best to update oneself in law than going through important judgments of Supreme Court and High Courts.