



## Important Judgements of Independent India

- The Constitution of India, enacted in 1950, has been the cornerstone of India's democracy. After its enactment it has undergone several amendments.
- The Supreme Court is the ultimate interpreter of the Constitution and, by its creative and innovative interpretation, has been the protector of our constitutional rights and fundamental freedom.
- These judgements are to be appreciated not only as precedents, but also as having laid down the law on issues of paramount importance—law that is binding on all courts and authorities in the country.

### Kesavananda Bharati v. State of Kerala (1973)

**Main theme:** Propagating the '**basic structure**' doctrine as a safeguard against the usurpation of the Constitution.

- It was unique for the reason that it brought a shift in the balance of democratic power. Earlier judgements had taken a stand that Parliament could amend even the fundamental rights through a proper legislative process.
  - But the present case held that Parliament can not amend or alter the fundamental structure a '**Basic Structure**' of the constitution.
- Besides, Kesavananda Case was significant in that the Supreme Court ascribed to itself the function of preserving the integrity of the Indian Constitution.
- The '**basic structure**' doctrine formulated by the court represented the pinnacle of judicial creativity and set a benchmark for other constitutional courts around the world.
- The doctrine ruled that even a constitutional amendment could be invalidated if it impaired the essential features—the basic structure—of the Constitution.

### Evolution of the Basic structure doctrine

- Since the adoption of Indian Constitution, debates have started regarding the power of the Parliament to amend key provisions of the Constitution.
- In the early years of Independence, the Supreme Court conceded absolute power to Parliament in amending the Constitution, as was seen in the verdicts in **Shankari Prasad case (1951)** and **Sajjan Singh case (1965)**.
  - This means Parliament had the power to amend any part of the constitution including Fundamental rights.
- However, in the **Golaknath case (1967)**, the Supreme Court held that Parliament could not amend Fundamental Rights, and this power would be only with a Constituent Assembly.
  - The Court held that an amendment under Article 368 is "law" within the meaning of Article 13 of the Constitution and therefore, if an amendment "takes away or abridges" a Fundamental Right conferred by Part III, it is void.
- To get over the judgments of the Supreme Court in the Golaknath case (1967), RC Cooper case (1970), and Madhavrao Scindia case (1970), the then government headed by Prime Minister Indira Gandhi had enacted major amendments to the Constitution (the 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> and 29<sup>th</sup>).

- All the four amendments brought by the government were challenged in the Kesavananda Bharati case.

## Maneka Gandhi v. Union of India (1978)

**Main theme:** Expanding the **meaning of the 'right to life'** under the Constitution of India

- The right to life and personal liberty under Article 21 reads: 'No person shall be deprived of his life or personal liberty except according to **procedure established by law**'.
- In other words, courts were not allowed to question any law—no matter how arbitrary or oppressive—as violating the right to life or personal liberty if the law had been suitably passed and enacted.
- However, by vesting in itself the **power of substantive review under Article 21**, the court transformed itself from being merely a supervisor, to being a watchdog of the Constitution.
- The Supreme Court's judgement in the Maneka Gandhi case effectively meant that '**procedure established by law**' under Article 21 would have the same effect as the expression '**due process of law**'.
- In a subsequent decision, the Supreme Court stated that Article 21 would read as: '**No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law.**'

## Mohammed Ahmed Khan v. Shah Bano Begum (1985)

**Main theme:** Questioning the sanctity of **personal religious laws** and bringing the debate on a **Uniform Civil Code** to the forefront of the national discourse.

- In April 1985, the Supreme Court delivered a judgement on the maintenance a divorced Muslim woman would be entitled to receive from her former husband in the case of Mohammed **Ahmed Khan v. Shah Bano Begum (Shah Bano)**.
- It is seen as one of the milestones in Muslim women's fight for rights in India and the battle against the set Muslim personal law. It laid the ground for thousands of women to make legitimate claims which they were not allowed before.
- While the Supreme Court upheld the right to alimony in the case, the judgment set off a political battle as well as a controversy about the extent to which courts can interfere in Muslim personal law.

## Indra Sawhney v. Union of India (1992)

**Main theme:** Delivering the decision relating to the **constitutionality of reservations** under the Constitution of India.

- In the **Indra Sawhney judgment (1992)**, the Court upheld the government's move and proclaimed that the advanced sections among the OBCs (i.e, the creamy layer) must be excluded from the list of beneficiaries of reservation. It also held that the concept of creamy layer must be excluded for SCs & STs.
- The Indra Sawhney verdict also held there would be reservation only in initial appointments and not promotions.
  - But the government through this amendment introduced **Article 16(4A)** to the Constitution, empowering the state to make provisions for reservation in matters of promotion to SC/ST employees if the state feels they are not adequately represented.
- The Supreme Court in the judgement also **cappped the reservation quota at 50%**.

## Vishaka v. State of Rajasthan (1997)

## **Main theme:** Innovating jurisprudence to **prevent sexual harassment at the workplace.**

- In the context of sexual harassment of women at workplace, judicial activism reached its pinnacle in **Vishaka v. State of Rajasthan (Vishaka)**.
- The judgement was unprecedented for several reasons:
  - the Supreme Court acknowledged and relied to a great extent on international treaties that had not been transformed into municipal law;
  - the Supreme Court provided the first authoritative definition of 'sexual harassment' in India; and confronted with a statutory vacuum, it went creative and proposed the route of 'judicial legislation'.
- Since there was no legislation in India related to sexual harassment at the workplace, the court stated that it was free to rely on the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW—signed by India in 1980)** in interpreting **Articles 14, 15, 19 and 215 of the Constitution**.
  - To justify its decision the court referred to several sources including the **Beijing Statement** of Principles of the Independence of the Judiciary, a decision of the High Court of Australia and its own earlier decisions.

## **The Supreme Court set out the following significant guidelines:**

- The employer and/or other responsible people in a workplace are duty-bound to prevent or deter sexual harassment and set up processes to resolve, settle, or prosecute in such cases.
- For the first time in India, 'sexual harassment' was defined authoritatively.
  - The definition includes 'such unwelcome sexually determined behaviour (whether directly or by implication) such as: physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography, and any other unwelcome physical, verbal or non-verbal conduct of sexual nature'.
- All employers or persons in charge of workplaces must strive to prevent sexual harassment and, if any act amounts to a specific offence under the Indian Penal Code, 1860 or any other law, they must take appropriate action to punish the guilty.
- Even if the act is not considered a legal offence or a breach of service rules, the employer should create appropriate mechanisms so that the complaint is addressed and redressed in a time-bound manner.
- This complaint mechanism must, if necessary, provide a complaints committee, a special counsellor or other support service, such as assuring confidentiality. The complaints committee should be headed by a woman, and at least half its members must be women.
- The employer must sensitize female employees to their rights and prominently notify the court's guidelines.
- Even if a third party is responsible for sexual harassment, the employer must take all steps necessary to support the victim.
- The central and state governments should adopt suitable measures to ensure that private sector employers implement the guidelines.

## **Aruna Ramachandra Shanbaug v. Union of India (2011)**

### **Main Theme:** Accepting **passive euthanasia** as being constitutional

- **Passive euthanasia** is a condition where there is withdrawal of medical treatment with the deliberate intention to hasten the death of a terminally-ill patient.
- The **Aruna Shanbaug case** triggered debate of Euthanasia in India.
- A writ petition under Article 32 before the Supreme Court of India was filed, asking for the legalisation of euthanasia so that Aruna's continued suffering could be terminated by withdrawing medical support.

- Supreme court in 2011 **recognised passive euthanasia** in this case by which it had permitted withdrawal of life-sustaining treatment from patients not in a position to make an informed decision.
- Subsequent to this, in a landmark judgment (2018), the Supreme Court recognised passive euthanasia and **“living will”**.
  - A **‘living will’** is a concept where a patient can give consent that allows withdrawal of life support systems if the individual is reduced to a permanent vegetative state with no real chance of survival.

## Lily Thomas v. Union of India (2013)

**Main Theme:** Struck down as unconstitutional **Section 8(4) of the Representation of the People Act (RPA)-1951** that allowed convicted lawmakers a three-month period for filing appeals to the higher court and to get a stay on the conviction and sentence.

- **Section 8 of the RPA** deals with disqualification on conviction for certain offences: A person convicted of any offence and sentenced to imprisonment for varying terms under Sections 8 (1) (2) and (3) shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of six years since his release.
  - But **Section 8 (4) of the RP Act** gives protection to MPs and MLAs as they can continue in office even after conviction if an appeal is filed within three months.
- The Supreme Court held that chargesheeted Members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months’ time for appeal, as was the case before.
- The Bench found it unconstitutional that convicted persons could be **disqualified from contesting elections** but could continue to be Members of Parliament and State Legislatures once elected.

## Justice K.S. Puttaswamy vs. Union of India (2017)

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

- Nine judges of this Court assembled to determine whether privacy is a constitutionally protected value. The issue reaches out to the foundation of a constitutional culture based on the protection of human rights and enables this Court to revisit the basic principles on which our Constitution has been founded and their consequences for a way of life it seeks to protect.
- This case presents challenges for constitutional interpretation. If privacy is to be construed as a protected constitutional value, it would redefine in significant ways our concepts of liberty and the entitlements that flow out of its protection.
- The Puttaswamy judgement of 2017 reaffirmed the **‘Right to Privacy’ as a fundamental right in Indian Jurisprudence**. Since then, it has been used as an important precedent in many cases, to emphasize upon the right to privacy as a fundamental right and to clarify the scope of the same.
- The Supreme Court upheld the validity of the **Aadhar Scheme** on the ground that it did not violate the right to privacy of the citizens as minimal biometric data was collected in the enrolment process and the authentication process is not exposed to the internet.
  - The majority upheld the constitutionality of the Aadhaar Act, 2016 barring a few provisions on disclosure of personal information, cognizance of offences and use of the Aadhaar ecosystem by private corporations.
  - They relied on the fulfilment of the proportionality test as laid down in the Puttaswamy (2017) judgment.

## Proportionality Test under Puttaswamy (2017) judgment

It held that **privacy is a natural right** that inheres in all natural persons, and that the right may be restricted only by state action that passes each of the three tests:

- First, such state action must have a legislative mandate;
- Second, it must be pursuing a legitimate state purpose; and
- Third, it must be proportionate i.e., such state action — both in its nature and extent, must be necessary in a democratic society and the action ought to be the least intrusive of the available alternatives to accomplish the ends

## Navtej Singh Johar vs. Union Of India (2018)

**Main Theme:** Decriminalised homosexuality by **striking off parts of Section 377 of the Indian Penal Code (IPC)**

- In **Navtej Singh Johar v. Union of India case**, the Supreme Court of India unanimously held that **Section 377** of the Indian Penal Code 1860 (IPC), which criminalized 'carnal intercourse against the order of nature', was **unconstitutional** in so far as it criminalized consensual sexual conduct between adults of the same sex.
- The petition, challenged Section 377 on the ground that it was vague and it violated the constitutional rights to privacy, freedom of expression, equality, human dignity and protection from discrimination guaranteed under Articles 14, 15, 19 and 21 of the Constitution.
- The Court relied upon the judgement in the case of **K.S. Puttaswamy v. Union of India**, which held that denying the LGBT community its right to privacy on the ground that they form a minority of the population would be violative of their fundamental rights, and that sexual orientation forms an inherent part of self-identity and denying the same would be violative of the right to life.

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- [Constitutional Rights, Judicial Review and Parliamentary Democracy](#)
- [Privacy Judgement and the Aftermath](#)
- [Section 377 Judgement](#)
- [Perpetuating the Power-Imbalance - Addressing Sexual Harassment at Higher Institutions in India](#)
- [Reservation in India](#)
- [Reservation: Not a Right](#)

### Legal Insights

[Mohd. Ahmad Khan v. Shah Bano Begum, 1985 SCR \(3\) 844](#)

[Navtej Singh Johar and Others v. Union of India, 2018 \(10\) SCALE 386](#)

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