Some important Judgements of Honourable Justice Dr, D.Y. Chandrachud on the Supreme Court – Advocates Aditya Ajgaonkar and Shipraa Tanna

On the Eve of Honourable Justice Dr. D. Y. Chandrachud being sworn into office as the Chief Justice of India, it is fitting that a glance is also taken backward, into a rich Judicial Career that has seen Honourable Justice contribute to answering some of the most important Constitutional Questions that have been posed to the Supreme Court. These are not then ten most important, nor do they seek to diminish the others that did not make it to this list. Given that his Career started in the Bombay High Court, was later being elevated to the Allahabad High Court as a Chief Justice and then onwards to the Supreme Court, there is much to discuss and write upon the sheer breadth of subjects which have been authoritatively dealt with by his lordship. We, however, have restricted ourselves to choosing ten, a daunting task indeed amongst the hundreds of Judgements that the Honourable Justice has been a part of in an effort to provide a glimmer of how his legacy has already shaped up even before he gets sworn in as the Chief Justice of India.

Art. 21 of Constitution: Right to Privacy – Aadhar card – Aadhar Scheme - Demographic and Biometric Information – Collection of data – Surveillance – Constitutionality of Aadhar Act – Constitutional Rights.

Citation: K.S. Puttaswamy (Aadhaar-5J.) v. UOI (2019) 1 SCC 1

Background:

The issue pertains to Aadhaar scheme which was conceptualized in the year 2006 and launched in the year 2009 with the creation of UIDAI which has secured the enrolment of almost 1.1 billion people in the country. Inspite of its continuous usage and popularity, the scheme of Adhar has faced heavy criticism by a certain section of the society. This

section of society states that Aadhaar is a serious invasion into the Right to Privacy of persons and it has the tendency to lead to a surveillance state where each individual can be kept under surveillance by creating his/her life profile and movement as well on his/her use of Aadhaar. Therefore, the petitioners have preferred the present petition against the enactment known as Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, also known as the 'Aadhaar Act' and challenged the Aadhar Act as constitutionally impermissible.

Held:

1. The requirement under the Aadhaar Act to provide individual demographic and biometric information is not violative of Right to Privacy.

2. The provisions of Aadhaar Act which require demographic and biometric information from a resident for Aadhaar Number successfully fulfills the criteria as laid down in three-fold test enumerated in the Puttaswamy case and therefore, requirement of demographic and biometric information cannot be said to be unconstitutional.

3. Collection of data, its storage and use does not violate Right to Privacy.

4. Aadhaar Act does not create an architecture for pervasive surveillance.

5. Aadhaar Act and its Regulations provide protection and safety of data received from individuals.

6. Section 7 of the Aadhaar Act is constitutional and the provision is not liable to be struck down on account of denial in some cases of right to claim on account of failure of authentication.

7. The State while enlivening right to food, right to shelter etc. envisaged under Article 21 of the Constitution cannot encroach upon the right of privacy of beneficiaries nor former can be given precedence over the latter.

8. Provisions of Section 29 of Aadhar Act is constitutional and is not liable to be struck down

9. Section 33 of Aadhar Act is not unconstitutional as it provides for the use of Aadhaar database for police investigation nor does it violate protection granted under Article 20 (3) of the Constitution.

10. Section 47 of the Aadhaar Act is not unconstitutional on the ground that it does not allow an individual to initiate any criminal process in the event that there is a violation of Aadhaar Act.

11. Section 57 of the Aadhaar Act, to the extent which permits use of Aadhaar by the State or anybody corporate or person, in pursuant to any contract to this effect is unconstitutional and void. Thus, the last phrase in main provision of Section 57, i.e. "or any contract to this effect" is struck down.

12. Section 59 of the Aadhaar Act has validated all actions taken by the Central Government under the notifications dated 28.01.2009 and 12.09.2009 and all actions shall be deemed to have been taken under the Aadhaar Act.

13. Parental consent for providing biometric information under Regulation 3 & demographic information under Regulation 4 has to be read for enrolment of children between 5 to 18 years to uphold the constitutionality of Regulations 3 & 4 of Aadhaar (Enrolment and Update) Regulations,2016.

14. Rule 9 as amended by PMLA (Second Amendment) Rules, 2017 is not unconstitutional and does not violate Articles 14, 19 (1) (g), 21 & 300 A of the Constitution and Sections 3, 7 & 51 of the Aadhaar Act. Further, Rule 9 as amended is not ultravires to PMLA Act,2002.

15. Circular dated 23.03.2017 is unconstitutional and hence set aside.

16. Aadhaar Act has been rightly passed as a Money Bill. The decision of Speaker certifying the Aadhaar Bill, 2016 as Money Bill is not immune from Judicial Review.

17. Section 139 AA of the Aadhaar Act does not breach fundamental Right of Privacy as per Privacy Judgment in Puttaswamy case of **K.S. Puttaswamy (Privacy-9J.) v. UOI (2017) 10 SCC 1.**

18. The Aadhaar Act does not violate the interim orders passed in Writ Petition (C) No. 494 of 2012 and other Writ Petitions.

Honourable Justice Chandrachud (Dissenting):

1. Aadhar program in its entirety is unconstitutional.

2. The passing of Aadhar Act as a money bill amounts to fraud of the constitution.

3. Introduction of Aadhaar Act as a money bill in the Rajya Sabha also bypassed the constitutional authority of the Rajya Sabha. The passage of the Act in Rajya Sabha is an abuse of the constitutional process.

4. Aadhar violates informational privacy and data protection.

Art. 21 of Constitution: Right to Privacy – Judicial Recognition of Right to Privacy – Constitutionally Protected Right – Constitutional Existence of Right to Privacy.

Citation: K.S. Puttaswamy (Privacy-9J.) v. UOI (2017) 10 SCC 1

Background

The issue pertains to determination of whether Right to Privacy is a constitutionally protected value. While considering the constitutional challenge to the Aadhaar card scheme of the Union Government, a 3 Bench Judge of the Supreme Court vide order dated 11th August 2015 observed that the compilation of demographic biometric data by government was questioned on the ground that it violates the Right to Privacy. The existence of a Fundamental Right of Privacy is in doubt in view of two decisions, first being the **M P Sharma v. Satish Chandra, District Magistrate, Delhi 1954 SCR 1077** rendered by a Bench of 8 Judges and the second being **Kharak Singh v. State of Uttar Pradesh (1964) 1 SCR 332** rendered by a Bench of 6 Judges and hence, this by way of this petition, the constitutional existence of Right to Privacy in India is contemplated to be decided.

Held:

1. The point of view that privacy is not a right guaranteed by the Indian Constitution in the Judgment of **M P Sharma 1954 SCR 1077** is overruled as it fails to adjudicate on whether right to privacy would arise from any other provisions of the rights guaranteed by Article 21 and Article 19 and holds that in the absence of a provision similar to the Fourth Amendment to the US Constitution, the Right to Privacy cannot be read into the provisions of Article 20 (3) of the Indian Constitution.

2. The Judgment in **Kharak Singh (1964) 1 SCR 332** has laid down that the dignity of the individual must also amount to 'personal liberty' and held that the content of the expression 'life' under Article 21 means not merely the right to a person's "animal existence" and that the expression 'personal liberty' is a guarantee against invasion into the sanctity of a person's home or an intrusion into personal security.

3. The Second part of the Judgement in **Kharak Singh (1964) 1 SCR 332** which holds that the right to privacy is not a guaranteed right under our Constitution while placing reliance upon the decision of the majority in **Gopalan AIR 1950 SC 27** is not reflective of the correct position in view of the decisions in **Cooper (1970) 2 SCC 298** and in **Maneka (1978) 1 SCC 248** and is overruled**.**

4. Life and personal liberty are inseparable for a dignified human existence and are inalienable. Indian Constitution is formed on the principle of Dignity of an individual, equality between human beings and the quest for liberty.

5. Life and personal liberty are not creations of the Constitution but rights recognized by the Constitution which are an inseparable part of human existence.

6. Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution.

7. Judicial recognition of the existence of a constitutional right of privacy is not in the nature of amending the Constitution nor is the Court embarking on a constitutional function of that nature which is entrusted to Parliament.

8. Privacy includes at its core the preservation of personal intimacies including the sanctity of family life, marriage, procreation, the home and sexual orientation while also including a right to be left alone.

9. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life including personal choices governing a way of life are intrinsic to privacy.

10. Privacy attaches to the person since it is an essential facet of the dignity of the human being;

11. It is imperative for the Constitution to evolve with the felt necessities of time to meet the challenges thrown up in a democratic order governed by the rule of law. Technological change has given rise to concerns which were not present seven decades ago and the rapid growth of technology may render obsolescent many notions of the present. Hence, the interpretation of the Constitution must be resilient and flexible to allow future generations to adapt its content bearing in mind its basic or essential features

12. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right.

13. In the context of Article 21, an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable.

14. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21.

15. An invasion of life or personal liberty must meet the three-fold requirement of: (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.

16. Privacy has both positive and negative content. The negative restrains the state from committing an intrusion upon the life and personal liberty of a citizen while the positive imposes an obligation on the state to take all necessary measures to protect the privacy of the individual.

17. Decisions rendered by the Supreme Court subsequent to Kharak Singh upholding the right to privacy would be read subject to the above principles.

18. Informational privacy is a facet of the right to privacy. The dangers to privacy in an age of information can originate not only from the state but from non-state actors as well.

19. It is important that the Union Government examines and put into place a robust regime for data protection. The creation of such a regime requires a careful and sensitive balance between individual interests and legitimate concerns of the state which include protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits. These policy matters are to be considered by the Union government while designing a carefully structured regime for the protection of the data. Since the Union government has informed the Court that it has constituted a Committee chaired by Hon'ble Shri Justice B N Srikrishna, former Judge of the Supreme Court, for that purpose, the matter shall be dealt with appropriately by the Union government having due regard to what has been set out in the judgment.

S. 377: Indian Penal Code, 1860 (IPC) : Right to Sexuality – LGBT Community – Consensual Sexual Conduct Between Adults of Same Sex - Constitutionality of S. 377 - Right to choose one's own life partner – Discrimination - Constitutional Rights.

Citation : Navtej Singh Johar & Ors. v. UOI (2018) 10 SCC 1

Background:

"Sexual orientation", "Right to sexual autonomy", "Right to Sexuality" and "Right to choose a sexual partner" are rights included in Right to Life as enshrined and guaranteed under Art. 21 of the Constitution of India. However, S. 377 of the Indian Penal Code, 1860 is a restriction on Right to Life and ancillary rights as mentioned above. A Two Bench Judge rendered a decision in **Suresh Kumar Koushal and another v. Naz Foundation and others (2014) 1 SCC 1** overturning a decision rendered by the Division Bench of the Delhi High Court in **Naz Foundation v. Government of NCT of Delhi and others (2009) 111 DRJ 1** declaring S. 377 of the Indian Penal Code, 1860 as unconstitutional. The key controversy revolves around right to choose one's own life partner, one's own sexual partner and a right to love as per one's own choice in light of a "sexual orientation" different from societal norms. Though there is a distinction between constitutional morality and social morality, it is essential to maintain a fine balance where one is entitled to live his/her own life as per his/her own pattern of life as long as it is lawful. However, denial of expression of choice by a statutory penal provision i.e. Section 377 of the Indian Penal Code, in **Suresh Kumar Koushal and another v. Naz Foundation (Supra**) and others overturning the judgment of the Delhi High Court in **Naz Foundation v. Government of NCT of Delhi and others (Supra)** is the central issue involved in the present controversy.

Held:

1. Section 377 of the Indian Penal Code which criminalizes consensual sexual conduct between adults of the same sex is unconstitutional.

2. Members of the LGBT community are entitled to all constitutional rights including the liberties protected by the Constitution as all other citizens of this country.

3. Interpersonal choices such as the choice of whom to partner and right to sexual autonomy including the right not to be subjected to discriminatory behavior are intrinsic to the constitutional protection of sexual orientation.

4. Members of the LGBT community are entitled to the benefit of an equal citizenship without discrimination and to equal protection of law as enshrined in Article 14 of the Constitution of India.

5. The decision in Suresh Kumar Koushal and another v. Naz Foundation and others **(2014) 1 SCC 1** stands overruled.

Art. 21 of Constitution: Right to Life - Right to die with dignity – Fundamental Right - Passive Euthanasia – Living Will – Legal Status of Euthanasia.

Citation: Common Cause (A Regd. Society) v. UOI 1994 SCC (5)

Background:

The key highlight in the present matter is the concept of life and death that is of outmost importance as life and death are inseparable. Though human life is full of suffering, death need not be one. While every person enjoys autonomy on the ability to decide everything for themselves throughout their life, the liberty to decide how one should be treated when the end of life is near is part of an essential attribute of personhood and hence, a requires an autonomy too. The most pressing issue herein is whether a person should be willfully allowed to end his life than endure suffering while his end is inevitable. This issue has been debated across the globe by doctors, lawyers, patients and patient's relatives. Even though medical science has progressed threefolds and modern science has the ability to prolong life, its ability to impact on the quality of life is essential to be considered while keeping human dignity intact. Right to life as enshrined in Article 21 of the Constitution of India also envisages the Right to die with dignity. The legal status of euthanasia has been embroiled in debate. Taking into account the question of unconstitutionality of Section 309 of the Indian Penal Code in the case of **P. Rathinam v. UOI (1994) 3 SCC 394** and the question of unconstitutionality of Section 306 of the Indian Penal Code in the case of **Gian Kaur v. State of Punjab (1996) 2 SCC 648** alongwith a reference to the case of **Aruna Ramachandra Shanbaug v. UOI (2011) 15 SCC 480**, the question pertaining to passive euthanasia is to be considered in the present case.

Held:

1. The court is engaged in the task of expounding the Constitution and finding substance and balance in the relationship between life, morality and the experience of dying.

2. The court is compelled to recognise passive euthanasia and advance directives as both bear a close association to the human urge to live with dignity.

3. Age brings isolation and physical and mental debility bring a loss of self-worth. Pain and suffering are accompanied by a sense of being helpless. More significant than the affliction of ageing and disease is the fear of our human persona being lost in the anonymity of an intensive care ward. It is hence necessary for the court to recognize that the dignity of citizens continues to be safeguarded by the Constitution even when life is seemingly lost and questions about one's own mortality is confronted in the twilight of existence

4. The sanctity of human life is the arterial vein which animates the values, spirit and cellular structure of the Constitution. The Constitution recognizes the value of life as its indestructible component. The survival of the sanctity principle is founded upon the guarantees of dignity, autonomy and liberty.

5. The right to a dignified existence, the liberty to make decisions and choices and the autonomy of the individual are central to the quest to live a meaningful life.

6. Each individual is entitled to a dignified existence which necessitates constitutional recognition of the principle that an individual possessed of a free and competent mental state is entitled to decide whether or not to accept medical treatment. The right of such an individual to refuse medical treatment is unconditional. Neither the law nor the Constitution can compel an individual who is competent and able to take decisions, to disclose the reasons for refusing medical treatment nor is such a refusal subject to the supervisory control of an outside entity under any circumstances whatsoever.

7. Constitutional recognition of the dignity of existence as an inseparable element of right to life which necessarily means that dignity attaches throughout the life of the individual which must subsist even in the culminating phase of human existence.

8. Dignity in the process of dying is as much a part of the right to life under Article 21. To deprive an individual of dignity towards the end of life is to deprive the individual of a meaningful existence.

9. The constitutionally recognized right to life is subject to the procedure established by law and the said procedure for regulation or deprivation ought to be fair, just and reasonable. Criminal law imposes restraints and penal exactions which regulate the deprivation of life, or as the case may be, personal liberty. The intentional taking away of the life of another is made culpable by the Penal Code. Active euthanasia falls within the express prohibitions of the law and is unlawful.

10. An individual who is in a sound and competent state of mind is entitled by means of an advance directive in writing, to specify the nature of medical intervention which may not be adopted in the future, should he or she cease to possess the mental ability to decide. Such an advance directive is entitled to deference by the treating doctor. The treating doctor who, in a good faith exercise of professional medical judgment abides by an advance directive is protected against the burden of criminal liability.

11. The decision by a treating doctor to withhold or withdraw medical intervention in the case of a patient in the terminal stage of illness or in a persistently vegetative state or the like where artificial intervention will merely prolong the suffering and agony of the patient is protected by the law. Where the doctor has acted in such a case in the best interest of the patient and in bona fide discharge of the duty of care, the law will protect the reasonable exercise of a professional decision.

12. In **Gian Kaur (1996) 2 SCC 648**, the Constitution Bench while affirming the constitutional validity of Section 306 of the Penal Code (abetment of suicide) held that the right to life does not include the right to die. The two Judge Bench decision in Aruna

Shanbaug proceeds on an incorrect perception of Gian Kaur. Moreover, Aruna Shanbaug **(2011) 15 SCC 480** has proceeded on the basis of the act – omission distinction which suffers from incongruities of a jurisprudential nature and The underlying basis of the decision in Aruna Shanbaug is flawed. Hence, it had become necessary for the Supreme Court to independently arrive at a conclusion based on the constitutional position.

13. While upholding the legality of passive euthanasia (voluntary and non-voluntary) and in recognizing the importance of advance directives, the present judgment draws sustenance from the constitutional values of liberty, dignity, autonomy and privacy. In order to lend assurance to a decision taken by the treating doctor in good faith, this judgment has mandated the setting up of committees to exercise a supervisory role and function. Besides lending assurance to the decision of the treating doctors, the setting up of such committees and the processing of a proposed decision through the committee will protect the ultimate decision that is taken from an imputation of a lack of bona fides; and

14. Directions in regard to the regime of advance directives have been issued in exercise of the power conferred by Article 142 of the Constitution and shall continue to hold the field until a suitable legislation is enacted by Parliament to govern the area.

S. 497: Indian Penal Code, 1860 (IPC) : Adultery – Criminal Offence – Gender Discrimination - Sexual Autonomy – Constitutionality of S. 497 – Constitutional Rights.

Citation: Joseph Shine v. UOI (2019) 3 SCC 3

Background:

The Patriarchal society in India has granted a man, the status of a superior being than a woman on account of being a male by birth and this status asserted that a husband is the owner of his wife's sexuality. The old age concept of marriage prescribed a subordinate status to woman due to patriarchal nature of society. However, the concept of marriage has undergone massive change in the last few decades. The meaning of marriage so as the roles of husband and wife have undergone massive. Every person is entitled to live with dignity, have a right to privacy and enjoy sexual autonomy as enshrined under Article 21 of the Constitution of India which is also applicable to the woman in our society. However, Sec. 497 of IPC for adultery is based on stereotypes and is gender discriminatory which considers husband to be the owner of his wife's sexuality. Keeping in mind the changing face of the society, legal provisions not in sync with the modern society cannot sustain. Therefore, the present Writ Petition has been filed under Article 32 of the Constitution of India for unanimously striking down Section 497 of IPC considering the judgement passed by a three-bench judge in **Yusuf Abdul Aziz 1954 SCR 930**, **Sowmithri Vishnu 1985 Supp SCC 137, V. Revathi (1988) 2 SCC 72 and W. Kalyani (2012) 1 SCC 358** as there is a necessity to have a revisit and a relook at the constitutionality of the provision.

Held:

1. Section 497 of the IPC denies equality to woman as it perpetuates a subordinate status to woman in marriage and in the society and hence, is violative of Article 14 of the Constitution.

2. Section 497 of the IPC lacks the determining principle to criminalize consensual sexual activity and is arbitrary in nature.

3. Section 497 of the IPC is based on gender stereotypes about the role of a woman and is hence discriminatory as embodied under Article 15 of the Constitution.

4. Section 497 of the IPC denies constitutional guarantee of dignity, liberty, privacy and sexual autonomy as embodied under Article 21 of the Constitution.

5. Section 497 of the IPC is Unconstitutional.

6. The Decision in the case of **Sowmithri Vishnu 1985 Supp SCC 137** and **V. Revathi (1988) 2 SCC 72** are overruled.

Art. 226 & 227 of Constitution: Anchor and MD – Arnab Goswami – Failure to pay outstanding amount - Suicide Note of deceased – Illegal detention - Appeal to Apex Court - Interim Bail rejected by Bombay High Court.

Citation: Arnab Manoranjan Goswami v.. The State of Maharashtra & Ors. (2021) 2 SCC 427

Background:

The present appeal has been preferred by the appellant against the Hon'ble Bombay High Court Order for denial of Interim prayer for the grant of bail. The Appellant is an Anchor of English News Channel, Republic TV as well as the Editor-in-Chief of the said English television news channel. He is also the Anchor of Hindi News Channel, R Bharat as well as the Managing Director of ARG Outlier Media Asianet News Private Limited which owns and operates the Hindi television news channel, R Bharat.

The Company, ARG Outlier Media Private Limited as mentioned above was awarded a contract for civil and interior work to another company, Concorde Design Private Limited which was owned substantially by Anvay Naik (now deceased).

The Appellant was arrested on 4th November 2020 in connection with FIR No. 59 of 2018 registered at Alibaug Police Station under Section 306 and 34 of the IPC.

The FIR has accused that the appellant had failed to make outstanding payments of Rs. 83 lacs for the Bombay Dyeing Studio project alongwith other payments who are accused in connected in appeals. Due to failure of the said payment, the deceased was under mental pressure and committed suicide leaving behind a suicide note which contained

the name of the appellant in the present case. The spouse of the deceased has filed the FIR against the appellant who according to her, is responsible for her husband's death.

The appellant invoked the jurisdiction of the High Court of Judicature at Bombay under Article 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 with the relief of granting a writ of Habeas Corpus claiming that he had been illegally arrested and wrongfully detained by the Station House Officer at Alibaug Police Station in Raigad District of Maharashtra in relation to the FIR inspite of an earlier closure report which was accepted by the Magistrate alongwith quashing of FIR and quashing of arrest memo.

While hearing the Interim application, the High Court was of the view that the prayers for interim relief proceeded on the premise that the appellant had been illegally detained and since he was in judicial custody, it would not entertain the request for bail or for stay of the investigation in the exercise of its extra-ordinary jurisdiction. The High Court held that since the appellant was in judicial custody, it was open to him to avail of the remedy of bail under Section 439 of the CrPC. The High Court declined prima facie to consider the submission of the appellant that the allegations in the FIR, read as they stand, do not disclose the commission of an offence under Section 306 of the IPC. Therefore, the appellant is aggrieved by the denial of his interim prayer for the grant of bail and has filed the present appeal before the Hon'ble Apex Court.

Held:

1. The Hon'ble Apex Court issued operative directions on 11th November 2020 and stated that the High Court was in error in rejecting the applications for the grant of interim bail. Therefore, the court was pleased to order and direct that appellant, Arnab Manoranjan Goswami and other accused in connected appeals be released on interim bail, subject to each of them executing a personal bond in the amount of Rs 50,000 to be executed before

the Jail Superintendent while directing them to cooperate in the investigation and not make any attempt to interfere with the ongoing investigation or with the witnesses.

2. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure.

3. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC "or prevent abuse of the process of any court or otherwise to secure the ends of justice". Decisions of the Supreme Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty.

4. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment.

5. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.

Art. 14, 15 & 21 of Constitution: Woman in Armed Forces - Equality of Opportunity for Women – Permanent Commission – Constitutional Rights.

Citation : Secr., Ministry of Defence v. Babita Puniya MANU/SC/0194/2020

Background:

The present Public Interest Litigation has been filed for grant of Permanent Commission to women SSC officers in the Army. The issue revolves around a quest for equality of opportunity for women seeking Permanent Commissions in the Indian Army. Several litigation proceedings have been filed and heard since the year 2003 where women engaged on Short Service Commissions in the Army seek parity with their male counterparts in obtaining Permanent Commission. Section 12 of the Army Act 19503 deals with Ineligibility of females for enrolment or employment. Pursuant to the enactment of this section, the Union Government issued a notification dated 30th January 1992 making women eligible for appointment as officers in the specific branches/cadres of the Army. The said notification has been extended subsequently and amended for the purpose of employment of women belonging to the SSC category. The said amendments have been challenged by way of this PIL in light of fundamental right of women to seek access to public appointment and to equality of opportunity in matters of engagement relating to the Army.

Held:

The following directions have been issued to the Union Government:

1. Allowing the grant of Permanent Commission (PCs) to SSC women officers in all the ten streams where women have been granted SSC in the Indian Army by the policy of Union Government is accepted subject to the following:

(a) All serving women officers on SSC shall be considered for the grant of PCs irrespective of any of them having crossed fourteen years or, as the case may be, twenty years of service;

(b) The option shall be granted to all women presently in service as SSC officers;

(c) Women officers on SSC with more than fourteen years of service who do not opt for being considered for the grant of the PCs will be entitled to continue in service until they attain twenty years of pensionable service;

(d) As a one-time measure, the benefit of continuing in service until the attainment of pensionable service shall also apply to all the existing SSC officers with more than fourteen years of service who are not appointed on PC;

(e) The expression "in various staff appointments only" in para 5 and "on staff appointments only" in para 6 shall not be enforced;

(f) SSC women officers with over twenty years of service who are not granted PC shall retire on pension in terms of the policy decision; and

(g) At the stage of opting for the grant of PC, all the choices for specialization shall be available to women officers on the same terms as for the male SSC officers. Women SSC officers shall be entitled to exercise their options for being considered for the grant of PCs on the same terms as their male counterparts.

2. SSC women officers who are granted Permanent Commission in pursuance of the above directions will be entitled to all consequential benefits including promotion and financial benefits. However, these benefits would be made available to those officers in service or those who had moved the Delhi High Court by filing the Writ Petitions and those who had retired during the course of the pendency of the proceedings.

Art. 25 (1) of Constitution: Right to Religion – Right to profess and practice religion – Ram Bhumi – Babri Masjid – Hindus and Muslims - Land Dispute – Ayodhya.

Citation: M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors CA 10866-10867/2010 on 9th November 2019.

Background:

India is a land of rich heritage and history which stems from political, spiritual and cultural beliefs. The history of India is in jeopardy due to the present dispute between two religious communities who both claim to have ownership over a piece of land admeasuring 1500 square yards in the town of Ayodhya.

The Hindu community claims that it is the birthplace of Lord Rama who is an incarnation of Lord Vishnu while the Muslim community claims that it is a site of the historic Babri Masjid built by the first Moghul emperor, Babur. The disputed property holds significant religious importance to both Hindus and Muslims.

The disputed property is situated at Ramkot at Ayodhya and devotees of Lord Rama believe that Lord Rama was born at the disputed site and therefore, the disputed site is called as Ram Janmabhoomi or Ram Janmasthan as the birthplace of Lord Rama. The Hindus claim that there existed an ancient temple at the disputed site dedicated to the birth of Lord Rama which was demolished by Moghul emperor Babur while the Muslims claim that a mosque was built at the behest of Babur on vacant land. Therefore, the significant question in this case is to understand the proprietary claim of the Hindus and Muslims on the disputed property and to trace the origins of this disputed property by way of multiple appeals before the Supreme Court.

Held:

The Hon'ble court has issued the following directions:

1. Suit 3 instituted by Nirmohi Akhara is held to be barred by limitation and dismissed accordingly. Suit 4 instituted by Sunni Central Waqf Board and other plaintiffs is held to be within limitation. The judgment of the High Court holding Suit 4 to be barred by limitation is reversed. Suit 5 is held to be within limitation and to be maintainable at the behest of the first plaintiff who is represented by the third plaintiff.

2. There shall be a decree in terms of prayer clauses (A) and (B) of the suit, subject to the following directions:

(i) The Central Government within a period of three months from the date of this judgment, shall formulate a scheme pursuant to the powers vested in it under Sections 6 and 7 of the Acquisition of Certain Area at Ayodhya Act 1993. The scheme shall envisage the setting up of a trust with a Board of Trustees or any other appropriate body under Section 6.

(ii) The scheme to be framed by the Central Government shall make necessary provisions in regard to the functioning of the trust or body including on matters relating to the management of the trust, the powers of the trustees including the construction of a temple and all necessary, incidental and supplemental matters.

(iii) Possession of the inner and outer courtyards shall be handed over to the Board of Trustees of the Trust or to the body so constituted.

(iv) The Central Government will be at liberty to make suitable provisions in respect of the rest of the acquired land by handing it over to the Trust or body for management and development in terms of the scheme framed in accordance with the above directions; and

(v) Possession of the disputed property shall continue to vest in the statutory receiver under the Central Government, untill in exercise of its jurisdiction under Section 6 of the Ayodhya Act of 1993, a notification is issued vesting the property in the trust or other body.

(vi) Simultaneously, with the handing over of the disputed property to the Trust or body under clause 2 above, a suitable plot of land admeasuring 5 acres shall be handed over to the Sunni Central Waqf Board, the plaintiff in Suit 4.

(vii) The land shall be allotted either by: (a) The Central Government out of the land acquired under the Ayodhya Act 1993; or (b) The State Government at a suitable prominent place in Ayodhya; The Central Government and the State Government shall act in consultation with each other to effectuate the above allotment in the period stipulated.

(viii) The Sunni Central Waqf Board would be at liberty, on the allotment of the land to take all necessary steps for the construction of a mosque on the land so allotted together with other associated facilities.

(ix) Suit 4 shall stand decreed to this extent in terms of the above directions; and the directions for the allotment of land to the Sunni Central Waqf Board in Suit 4 are issued in pursuance of the powers vested in the Supreme Court under Article 142 of the Constitution.

(x) In exercise of the powers vested in the Supreme Court under Article 142 of the Constitution, the Central Government is directed to frame a scheme and appropriate representation may be given in the Trust or body, to the Nirmohi Akhara in such manner as the Central Government deems fit.

(xi) The right of the Plaintiff in Suit 1 to worship at the disputed property is affirmed subject to any restrictions imposed by the relevant authorities with respect to the maintenance of peace and order and the performance of orderly worship.

Art. 25 of Constitution: Right to Religion – Right to profess and practice religion – Right to religious belief and practices – Sabarimala Temple of Lord Ayyappa – Ban on entry of women during menstruation – Constructional Rights.

Citation: Kantaru Rajeevaru v. Indian Young Lawyers Association Thr. Its General Secretary and Ors. 2019 SSC OnlineSC 1461

Background:

Religion is an expression of one's faith and a result of religions, languages, cultures and traditions. Essential practices of religion such as worshipping a deity and providing offerings to deity is an integral part of one's faith. However, what is perceived as faith and essential practice of religion for a particular deity by a section of the religious group may not be perceived in the same manner by another section of the same religious group for the same deity in a temple at another location. All sections of the society have the right to profess their own religion and practice and propagate their religious beliefs under Article 25 of the Constitution of India. However, any practice of a religion cannot be opposed to public order, morality and health. The main dispute herein is that individual right to worship in a temple cannot outweigh the rights of the section of the religious group to which one may belong, to manage its own affairs of religion.

Sabarimala Temple devoted to Lord Ayyappa is situated in the district of Pathanamthitta in Kerala. It is believed that Lord Ayyappa's powers derive from his asceticism and from his being celibate. Celibacy is a practice adopted by pilgrims before and during the pilgrimage. Those who believe in Lord Ayyappa and offer prayers are expected to follow a strict 'Vratham' or a vow over a period of 41 days which lays down a set of practices.

The practise of prohibiting the entry of women and barring their participation in the 41 days penance 'vratham' has been observed by the Ayyapan community since time immemorial as claimed by the Thantri of the temple.

Along with observing a penance, the followers are supposed to wear black clothes and cut all family ties while observing the 'vratham'. It is claimed that a deviation from the celibacy and austerity observed by the followers would be caused by the presence of women. Women have not been allowed to be a part of this pilgrimage due to their physiological features, considering them weak and unfit for the arduous journey. Women are also considered to be impure while menstruating according to Hindu traditions and therefore the temple authorities have placed restrictions on the entry of women between the ages 10 and 50 to preserve the temple's sanctity.

Therefore, the present writ petition has been filed with a plea seeking to permit entry of female devotees between the age group of 10 to 50 at the Lord Ayyappa Temple at Sabarimala.

Held:

1. Exclusion of women between the ages of 10-50 years by the Sabarimala Temple is contrary to constitutional morality and that it subverted the ideals of autonomy, liberty, and dignity. Morality conceptualized under Articles 25 and 26 of the Constitution cannot have the effect of eroding the fundamental rights guaranteed under these Articles.

2. The *Ayyappans* i.e. worshippers of Lord Ayyappa did not satisfy the requirements to be considered a separate religious denomination and hence, the exclusion of woman is not an essential religious practice.

3. Physiological characteristics of women like menstruation have no significance or bearing on the entitlements guaranteed under the Constitution.

4. The menstrual status of a woman cannot be a valid constitutional basis to deny her the dignity and the stigma has no place or recognition in a Constitutional order.

5. Such exclusion was a form of untouchability prohibited under Article 17 of the Constitution and a perusal of the Constituent Assembly Debates would show that the makers of the Constitution had deliberately chosen to not give the term *untouchability* a specific meaning.

6. Article 17 of the Constitution is a powerful guarantee against exclusion and cannot be read to exclude women against whom social exclusion of the worst kind has been practiced and legitimized on notions of purity and pollution.

Art. 19 of Constitution & Section 123 (3) of Representation of the People Act, 1951: Right to Freedom – Appeal by candidate for votes – Grounds of votes – race, community, caste, religion and language – expression "his" – Corrupt practices – Elections.

Citation: Abhiram Singh v. C.D. Commachen (Dead) by Legal Representatives and others (2017) 2 SCC 629

Background:

The Representation of the People Act, 1951, aims to provide for the conduct of elections by enlisting the "corrupt practices" and other offences which may lead to disqualification of a candidate under Section 100 of the Representation of the People Act, 1951 when proved.

The Petitioner was a BJP candidate contesting from Santacruz constituency in Mumbai in 1990 and he was accused of having indulged in corrupt practices by appealing to the voters on the ground of religion. The matter came up before the Supreme Court which then had to ascertain the scope of Section 123 of the Representation of the People Act, 1951. While hearing the appeal, a Bench of three learned Judges, on April 16, 1992, expressed the view that the content, scope and what constitutes a corrupt practice under sub-sections (3) or (3A) of Section 123 of the Representation of the People Act, 1951 needs to be laid down clearly to avoid miscarriage of justice in interpreting 'corrupt practice'. The Bench was of the opinion that the appeal requires to be heard and decided by a larger Bench of five Judges of the Court.

While the five-Judge Bench was hearing the Case, it was informed that an identical issue was raised in the election petition filed by one Narayan Singh against BJP leader Sunderlal Patwa and another Constitution Bench of five Judges of the Apex Court has referred to a larger Bench of seven Judges. Thereafter, an Order was made that "since one

of the questions involved in the present appeal is already referred to a larger Bench of seven Judges, we think it appropriate to refer this appeal to a limited extent regarding interpretation of sub-section (3) of Section 123 of the Representation of the People Act, 1951 Act to a larger Bench of seven Judges." Therefore, the matters are clubbed together and will be heard by the larger bench for a decision to be rendered accordingly.

Held:

1. The provision of Section 123 (3) of Representation of the People Act, 1951 is required to be read in conjunction with and corresponding to the amended section of 123 (3A) of Representation of the People Act, 1951 alongwith Section 153A of the Indian Penal Code. When read together, Section 123 (3) of Representation of the People Act, 1951 must be given a broad interpretation to maintain the purity of electoral process. A broad interpretation will also include within its ambit the appeals made to an elector by a candidate or his agent or any such other person with prior consent to vote or refrain from voting or influencing elections on the grounds of race, community, caste, religion or language.

2. Such appeal by any candidate in the name of race, caste, community, religion or language is impermissible under the Representation of the People Act, 1951 and constitutes a corrupt practice which would annul the election no matter what the circumstances. Race, caste, community, religion or language cannot be allowed to play any role in an electoral process and any appeal by a candidate on such grounds would amount to corrupt practice. No significance is attached to "his" religion under Representation of the People Act, 1951 when a candidate makes an appeal for votes on "his" religion. A textual reading of Representation of the People Act, 1951 further makes it clear that the Parliament intended that appeal for votes on the ground of religion is not permissible.

Dissenting Judgement (by Honourable Justice Chandrachud & 2 Ors):

1. Interpretation and significance should be attached to "his religion" where the expression "his" is used in the context of an appeal to vote for a candidate on the ground of race, caste, community, religion or language. The expression "his" refers to rival candidate. This view is plain and natural meaning of the statutory provision.

2. Section 123 (3A) of Representation of the People Act, 1951 has a different ambit which refers to promotion of hatred between different sections of the society on proscribed grounds by a candidate or any one on his behalf with his consent. Section 123 (3A) of the Representation of the People Act, 1951 does not refer to race, caste, community, religion or language of rival candidate unlike Section 123 (3) of Representation of the People Act, 1951 which uses the expression "his". Section 123 (3A) of Representation of the People Act, 1951 refers to promotion of hatred and enmity between different classes of citizens of India on the grounds of race, caste, community, religion or language.

3. Section 123 (3) of Representation of the People Act, 1951 is drafted by the legislature for the purpose of corrupt practice and its scope cannot be widened. There is no reason or justification to deviate from its plain and natural meaning.

4. Relying on several important settled principles enunciated in **Keshav Mills Co. Ltd. v D. CIT (1965) 2 SCR 908** and the **Supreme Court Advocates on Record Association Vs. Union of India (2016) 5 SCC 1**, it was held that no case has been made out to take a variant view from settled principles that the expression "his" in Section 123 (3) of Representation of the People Act, 1951 must mean the race, caste, community, religion or language of the candidate in whose favor an appeal to caste a vote is made out

or that of another candidate against whom there is an appeal to refrain from voting on the ground of race, caste, community, religion or language of that candidate.

The Honourable Justice Chandrachud has delivered many landmark Judgements during his time on the Supreme Court. We are sure that his tenure as the Chief Justice of India shall usher in a new era for the Supreme Court. We wish all the best and good luck and we are sure Honourable Justice Dr. D.Y .Chandarchud will deliver many land mark judgements as Chief Justice of India .
