

Role of Judiciary in the Advancement of Society by Their Latest Verdict in 21st Century

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Abstract: The Indian society is consistently in a state of flux. Reform is pivotal to keep up with the rapidity of changing circumstances and mindsets. Rules and laws become obsolete and often irrelevant in the face of an ever-evolving society. Undoubtedly, the year of 2017 and 2018 has been a landmark year in the history of Supreme Court of India. The year saw being pronounced some important judgments by the Supreme Court such as judgements on triple talaq, right to privacy which kept it in the headlines of newspapers throughout the year. This paper summarises some most important judgements of the Hon'ble Supreme Court.

Introduction

The Supreme Court of India is the torchbearer of justice - Objective, impartial and incorruptible (or at least one hopes). In the last few decades, the SC hasn't just laid down the law, they've almost acted as the last line of defence against apathetic lower courts, crooked cops and draconian rulings. The rule of law governs the country of India. The judiciary is an important part of our government and plays a critical role in the way our democracy works. Here are some landmark SC judgements of the recent past.

1. Right to Privacy now a Fundamental Right under Article 21 of Indian Constitution

In the case of **Justice K.S. Puttaswamy v. Union of India, 2012**, a Constitutional bench of Nine-Judge of the Supreme Court declared that the Right to Privacy is a Fundamental Right. In an unanimous decision, the bench held that right to privacy is an intrinsic part of right to life and personal liberty envisaged under Article 21 of the Constitution of India. This case overruled the observations which were held in the case of MP Sharma and Kharak Singh that held that the right to privacy is not protected by the Constitution of India.

2. Triple Talaq is Unconstitutional and against the Shariat

In a landmark judgement, Supreme Court of India declared in the case **Shayara Bano v. Union of India and others** that the practice of Triple Talaq is unconstitutional by a 3:2 majority. While Justices Nariman and Lalit held that instant Triple Talaq is unconstitutional and violative of Article 14 (Right to Equality), Justice Joseph struck down the practice on the ground that it goes against Shariat and the basic tenets of the Quran. Thus, in totality, the judges opined that "Triple Talaq is not a basic and integral part of Islam" as Quranic procedure works on the rationale that the termination of marriage must not happen in a state of sudden provocation, rage or whims. In fact, it demands time and patience by delaying the divorce in the hope of a union between the individuals. Further, it is against principles of equality, international human rights law. The court also observed that the practice of instantaneous Triple Talaq is unconstitutional, derogatory and discriminatory for women.

3. Seeking vote in the name of Religion is not permissible

A seven-judge constitution bench of the Supreme Court held in the case of **Abhiram Singh v. C.D. Commachen** that asking for votes in elections in the name of religion, caste or community will amount to corrupt practice and election of a candidate who indulged in such practice can be set aside. The bench

headed by Chief Justice T.S. Thakur passed the ruling by a 4:3 majority and observed that such practices are against the secular ethos of Indian Constitution. The bench also examined the Section 123(3) of the Representation of Peoples Act and observed that “Election is a secular exercise and therefore a process should be followed....the relationship between man and god is an individual choice and state should keep this in mind”. Thus, seeking votes in the name of religion, caste by emotionally influencing the common man is an unconstitutional practice and it should be stopped.

4. Aadhaar Link with Income Tax Returns is valid

The Hon’ble Supreme Court, in the case of **Binoy Viswam v. Union of India & Ors.** upheld the constitutional validity of Section 139AA of Income Tax Act which made it mandatory for people to link IT returns with their Aadhaar Number. Further, the Court said that the provision is also subject to the outcome of final verdict of the validity of Aadhaar case which is yet to come. Further, the Bench also clarified that those who don’t have Aadhaar Card can also file their IT returns. Thus, the court held that Section 139AA of Income Tax Act is a valid but it is not compulsorily required for filing IT returns.

5. Sex with Minor Wife is Rape

In the case of **Independent Thought v. Union of India**, a two-Judge Bench of Supreme Court of India, held that sexual intercourse with a minor wife is rape as in toto, having sex with minor is rape. The bench examined the issue that whether sexual intercourse between a man and his minor wife amounts to rape or not?

The two judge bench ruled that sexual intercourse with a girl below 18 years of age is rape regardless of whether she is wife or not. Further the bench Clarified that Section 198(6) of the CrPC will be applicable with regard to this issue and cognizance can be taken only in accordance with the provisions of Section 198(6) of the Code,1860. The court also observed that the exception of section 376(2) of Indian Penal Code,1860 creates an unnecessary distinction between a married girl child and an unmarried girl child and this artificial distinction is violative to the provisions of Article 15(3) and Article 21(3) of the Constitution and our commitments in international convention.

6. Re-Promulgation of Ordinances is against the spirit of Constitutionalism

In another landmark judgement named **Krishna Kumar Singh v. State of Bihar**, a seven judge Constitutional bench of the Supreme Court held that “re-promulgation of ordinances by executive is a fraud on the Constitution and a subversion of democratic legislative processes”. The court further said that Ordinances promulgated under Article 123 and Article 213 are subject to judicial review. The court has full power to check the validity of an ordinance. Further, the bench with regard to the question of placing the Ordinance before the Legislature, held that the requirement is mandatory under Indian Constitution.

7. Death Penalty confirmed for all the convicts of Mukesh and anrs. V. NCT Delhi (Nirbhaya Case)

In a long-awaited justice for Nirbhaya, the Supreme Court of India finally upheld the death penalty awarded by the Trial Court to all culprits of Nirbhaya case. In a heart-touching judgement, the Court said that “it sounds like a story from a different world where humanity is treated with irreverence”. Thus, The three-Judge Bench dismissed the Appeals filed by the convicts and confirmed the capital punishment.

8. Women are free to guide their love life

Withholding the dignity of a woman, a bench of three-Judge Bench of Supreme Court held that women have right to reject or love someone under Article 21 of Indian Constitution. This observation was made in the case of **Pawan Kumar v. State of Himachal Pradesh**, where a man was sentenced to 7 years by the

Himachal Pradesh High Court for teasing and compelling a girl to take extreme step of committing suicide. The court not only dismissed the appeal but also observed that “in a civilised society, male chauvinism has no room and this egoism must succumb to law. The obnoxious act of eve-teasing affected justice and the rights of a woman. It has to be kept in mind that she has a right to life and entitled to love according to her choice and this legal right should be recognized in the society. It has to be socially respected. No one can force a woman to love without her choice. She has the absolute right to reject”.

9. Relaxation of the six months cooling off period in Divorce cases

In *Amardeep Singh v. Harveen Kaur*, the Supreme Court held that the period of six months is not mandatory for divorce with mutual consent. Section 13B(2) of Hindu Marriage Act, 1955 stipulates to wait for a minimum period of six months in order to get a decree of divorce in the case of parties who are seeking divorce with mutual consent. The court while analyzing the section said that the provision is to save parties from a hurried decision and to give time to consider their divorce application. However, if parties are not willing to cohabit for six months and both of them are mutually asking for divorce then the period of six months can be waived and parties are not further obliged to wait for a period of six months. A Bench comprising Justices A.K. Goel and U.U. Lalit held that: “We are of the view that the period mentioned in Section 13B (2) is not mandatory but directory; it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation”.

10. Directions to prevent misuse of section 498A of the Indian Penal Code

In another landmark Judgement, in the case of **Rajesh Sharma & Ors. v. State of U.P.**, the apex court provided guidelines to prevent misuse of Section 498A of Indian Penal Code, 1860. The purpose behind inserting the section 498A in IPC was to save women from domestic violence. But in the recent years, the country saw gross violation of this section and therefore the apex court has to come up with some guidelines in order to stop misuse of the Section 498A of Indian Penal Code.

A two-Judge Bench comprising of Justices AK Goel and UU Lalit, observed that “Section 498A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman. But not to abuse it.”

11. WhatsApp Conversation cannot be considered as a Document under the Evidence Act, 1872

The Delhi High Court took a strict view in the case of *National Lawyers Campaign for Judicial Transparency and Reforms & Ors. v. Union of India & Ors*, wherein a petition was filed on the basis of information available on the WhatsApp, seeking to issue a direction to the State of Arunachal Pradesh and its Police Officials to register an FIR based on allegations contained in the alleged suicide note of Arunachal Pradesh’s late Chief Minister, Kalikho Pul. The Court dismissing the petition, held that any available information on WhatsApp does not qualify as document under the Evidence Act, 1872. Thus Whatsapp conversation will not be considered as document under the Evidence Act, 1872.

12. Guidelines for Prison Reforms

The judiciary held that prisoners, like all human beings, deserve to be treated with dignity. The court considered the statistics provided by National Crime Records Bureau and National Human Rights Commission of suicides that occur in prisons and its increasing number. The court realized that there is a need to improve the conditions of prisons across the country. Further the court observed, “What is practiced in our prisons is the theory of retribution and deterrence and the ground situation emphasizes this, while our

criminal justice system believes in reformation and rehabilitation and that is why handcuffing and solitary confinement.”

13. Guidelines to Reduce Road Accident

The Supreme Court issued guidelines in a writ petition **S.Rajasekaran V. Union of India and ors.** to reduce the number of deaths that occur as a result of road accidents. The Bench noted that the number of deaths due to road accidents is over 100,000 in a year, which means almost one death every three minutes. The court also stated the compensation awarded for deaths and other motor accident claims crosses over hundreds of crores of rupees. Thus, the apex court provided some guidelines to reduce the number of road accidents.

14. Deadline to make Public Services more accessible for visually disabled people

In a significant judgement, the Supreme Court issued some important directives and set deadlines while disposing of a petition filed by a visually disabled Gurgaon resident Rajive Raturi in a civil writ petition no. 243 of 2005 seeking proper and adequate access for visually disabled persons to public places. The Bench comprising Justice A.K. and Justice Ashok Bhushan directed that 50% of all Government buildings of the national capital and all State capitals be made fully accessible by December, 2018.

15. Every Author has a Fundamental Right to Speak out ideas freely and express their thoughts adequately

Once again preserving the Article 19(1)a, the Bench of Chief Justice Dipak Misra, alongwith Justices A M Khanwilkar and Dr.DY Chandrachud, dismissed a petition in the case of **K.L.N.V. Veeranjanyulu v. Union of India & Ors** which asked for a ban on the book ‘Samajika Smugglurlu Komatollu’ written by Professor Kancha Ilaiah. Upholding the Author’s fundamental right to free speech, the Court held, “Any request for banning a book of the present nature has to be strictly scrutinized because every author or writer has a fundamental right to speak out ideas freely and express thoughts adequately. Curtailment of an individual writer/author’s right to freedom of speech and expression should never be lightly viewed”.

16. Sabarimala temple opens doors to women

A Hindu pilgrimage center in Periyar Tiger Reserve in Kerala, the Ayyappan temple in Sabarimala clocks about 45–50 million devotees every year. Women between the ages 10 and 50, though, were kept out. On September 28, a five-bench judge comprising Justices R F Nariman, A M Khanwilkar, D Y Chandrachud, and Indu Malhotra, led by CJI Dipak Misra overruled the Kerala High Court’s 27-year-old decision that restricted the entry of women into the temple.

The judicial landscape of the country had witnessed a lot of landmark judgement which legal luminaries have expressed divergent view. Several law have been abolished while others have been upheld. So we can say that these judgement have a pivot role in the advancement of society in a positive manner.