JUDICIAL VERDICTS

Current Affairs of OAS Prelims 2020

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Contents

Supreme Court Accords Fundamental Right Status to Internet Access

On 10th January, the Supreme Court declared that access to the internet is protected under Article 19 of the Constitution.

Supreme Court Verdict

- In response to a plea against the suspension of internet services in Jammu and Kashmir since last August, a three-judge bench of the Court affirmed that the right to freedom of speech and expression, as guaranteed to all citizens under the first section of that article, covers the right to go online.
- In effect, even if left unsaid, this would make net access a fundamental right.
- It instructed the government for the restoration of internet access to hospitals, educational institutions and other establishments that provide essential services in the Union territory, but didn't call for an immediate lifting of the ban

Significance of the Judgement

- This would mark a major advance for a country that has attracted opprobrium from around the world for the sheer number of internet clampdowns imposed.
- It would also update a crucial aspect of democratic existence to the information age, place India in the league of progressive jurisdictions, and begin to harmonize our legal outlook with that of the United Nations Human Rights Council, which upheld net access as a human right in 2016.
- It's clear that nobody's voice should be muzzled, after all, and barring self-expression online amounts to exactly that.

Other Judgements on Cyber Freedom

- In 2019 the Kerala high court, had ruled that no one should arbitrarily be deprived of web connectivity.
- A Supreme Court ruling in 2017 that accorded privacy the status of a fundamental right under Article 21, which assures everyone the right to life and liberty.

Safeguards

- These rights do have "reasonable restrictions" under specified circumstances. The individual freedoms are granted only so long as they do not violate the rights of others. Freedom of speech, for example, must not clash with other imperatives like law and order.
- Hate speech that promotes enmity between different groups is explicitly banned under Section 153A of the Indian Penal Code.
- As for the internet, the Court's judgement gave administrations space to restrict its access on the condition that it's proportionate to the problem identified. While this formulation seems fuzzy and could provide enough scope for administrations to justify internet snap-offs in various cases, it is still significant that the rationale used for such

actions would be open to judicial scrutiny. In other words, it cannot be done at an administrator's whim.

Way Forward

- The government must formulate clear guidelines on internet shutdowns that are in consonance with the Court's ruling, and these should be put out for public discussion. Additionally, a limit could be put on how long such a spell can last.

Supreme Court Declares Private Property a Human Right

Granting relief to an 80-year-old woman from Himachal Pradesh, Supreme Court Bench in its 8th January judgement stated that a citizen's right to own private property is a human right and the state cannot take possession of it without following due procedure and authority of law.

Background of the Case

- The Himachal Pradesh government forcibly took over four acres of land from Vidya Devi, an illiterate woman, at Hamipur district to build a road in 1967 and failed to pay her a compensation for 52 years.
- Ms. Devi first learnt about her right for compensation in 2010 from her neighbours who had also lost their property to the road. Then she marched straight to the Himachal Pradesh High Court to fight against the state. The state objected to the petition stating that it had perfected the title by 42 years of 'adverse possession'. In 2013, the High Court asked her to file a civil suit in the lower court. Aggrieved with this, she moved the Supreme Court.

Supreme Court's Verdict

- The SC stated that the state cannot trespass into the private property of a citizen and then claim ownership of the land in the name of 'adverse possession'.
- A welfare state cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens.
- Grabbing private land and then claiming it as its own makes the state an encroacher.
- In a welfare state, right to property is a human right.
- The top court exercised its extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and directed the state to pay the compensation of Rs 1 Crore to the woman.
- The Supreme Court noted that in 1967, when the government forcibly took over Ms. Devi's land, 'right to private property was still a fundamental right' under Article 31 of the Constitution.
- Property ceased to be a fundamental right with the 44th Constitution Amendment in 1978. Nevertheless, Article 300A required the state to follow due procedure and

authority of law to deprive a person of his or her private property; the Supreme Court reminded the government.

Right to Property

- Originally, the right to property was one of the seven fundamental rights under Part III of the Constitution. It was dealt by Article 19(1)(f) and Article 31.
- Article 19(1)(f) guaranteed to every citizen the right to acquire, hold and dispose of property.
- Article 31, on the other hand, guaranteed to every person, whether citizen or non-citizen, right against deprivation of his property.
- The 44th Amendment Act of 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1)(f) and Article 31 from Part III.Instead, the Act inserted a new Article 300A in Part XII under the heading 'Right to Property'. It provides that no person shall be deprived of his property except by authority of law. Thus, the right to property still remains a legal right or a constitutional right, though no longer a fundamental right. It is not a part of the basic structure of the Constitution.

Supreme Court Upholds Constitutional Validity of SC & ST Amendment Act, 2018

On 10th February 2020, the Supreme Court upheld the constitutional validity of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018.

Supreme Court's Verdict

- The February 10, 2020 judgement upheld the constitutional validity of SC & ST Amendment Act 2018, thereby nullifying its own controversial March 20, 2018 judgment diluting the stringent provisions of the Dalit protection law.
- The March 20 judgment had diluted the original 1989 legislation, saying its provisions are being misused to file false criminal complaints against innocent persons. In this judgement the Supreme Court had directed that no arrests under the Act could be made without prior permission — from the appointing authority in case of public servants, and from the Senior Superintendent of Police (SSP) for others — and a preliminary enquiry should be conducted before registration of FIR.
- The Supreme Court had itself earlier recalled the March 20 judgment on October 1, 2019 in a review petition filed by the government. It had said it was wrong on the part of the March 20 judgment to treat all SC/ST community members as "a liar or crook". It was against "basic human dignity".

SC/ST Amendment Act, 2018

- The government had enacted the Amendments, stating that the SCs and STs continued to face the same social stigma, poverty and humiliation which they had been subjected to for centuries.
- The SC/ST Amendment Act, 2018, rules out any provision for anticipatory bail for a person accused of atrocities against SC/STs.

- In the amended SC/ST Act, preliminary inquiry is not a must and no prior approval is required for appointing authorities for senior police officers to file FIRs in cases of atrocities on SC and ST.
- The 2018 Act had nullified a March 20 judgment of the Supreme Court, which allowed anticipatory bail to those booked for committing atrocities against Scheduled Castes and Scheduled Tribes members. The original 1989 Act bars anticipatory bail.

Supreme Court Panel Recommends Several Prison Reforms

- Recently, a Supreme Court-appointed committee headed by Justice Amitava Roy (retd.) to reform prisons submitted its report to the Chief Justice of India giving several suggestions to improve the living conditions in Indian prisons.
- In September 2018 the court had appointed the Justice Roy Committee to examine the various problems plaguing prisons, from overcrowding to lack of legal advice to convicts to issues of remission and parole.
- The decision was in reaction to a letter written by former Chief Justice of India R.C. Lahoti highlighting the overcrowding of prisons, unnatural deaths of prisoners, gross inadequacy of staff and the lack of trained staff.

Justice Amitava Roy (Retd.) Committee Recommendations

- Every new prisoner should be allowed a free phone call a day to his family members to see him through his first week in jail.
- The report described the preparation of food in kitchens as "primitive and arduous". The kitchens are congested and unhygienic and the diet has remained unchanged for years now. Therefore, there should be cleaner Kitchens, modern cooking facilities and canteens to buy essential items.
- The Committee concluded that most prisons are "teeming with undertrial prisoners", whose numbers are highly disproportionate to those of convicts. It said there should be at least one lawyer for every 30 prisoners. Speedy trial remains one of the best ways to remedy the unwarranted phenomenon of over-crowding.
- It recommended the use of video-conferencing for trial as physical production in courts continued, which however remains far below the aspired 100% in several States, mainly because of unavailability of sufficient police guards for escort and transportation.

Issues in Prisons of India

- **Overcrowding** is a common bane in the **under-staffed** prisons with some of the prisons overcrowded by 1004% and few by a staggering 500%. Both the prisoner and his guard equally suffer human rights violation.
- The **undertrial prisoner**, who is yet to get his day in court, **suffers the most**, languishing behind bars for years without a hearing.
- The Prison Department has a perennial average of **30%-40% vacancies**.
- **Corruption** and **crime** breeding inside the prisons.

- **Neglect of health and hygiene** of inmates.
- **Difficult living conditions** for **women inmates** and **their children** below the age of 6 years living with them in the prison itself.

Way Forward

- We must look into the holistic development of prisoners as they will come out one day and rejoin the society. So **prison stay** should be **reformative and rehabilitative** instead of retributive.
- Once a person is jailed his whole life undergoes a metamorphosis with changed living conditions, newer adjustments in the jail, separation from family etc. Thus reforms must look into the **human rights aspects** of the inmates.
- Also, the government should **increase the budget** for increasing the jail infrastructure. This is also important in context of fugitives who we wish to repatriate to India as other governments do not agree to send them as one of the conditions under UN anti-torture law prohibits inhuman and degrading conditions in jails as a factor to deny extradition.
- Judiciary should **speed up the trials**.
- The **open prisons** with minimum-security can be set up as per the **Nelson Mandela Rules** (United Nations Standard Minimum Rules for the Treatment of Prisoners).
- The women prisoners should be treated more generously and allowed to meet their children frequently.
- The government must implement the recommendations of various committees set up for prison reforms from time to time like Justice Mulla Committee, Justice Krishna Iyer Committee etc.

Reservation in Job Promotions not a Fundamental Right: Supreme Court

In its 7th February 2020 judgement, the Supreme Court said that reservation in promotion in public posts cannot be claimed as a fundamental right. The Supreme Court's judgment overturned a 2012 ruling by the Uttarakhand High Court that directed the state to provide quotas to specified communities.

Supreme Court's Verdict

- The Supreme Court while deciding on group of appeals pertaining to the reservations for SC/ST community members in promotions to Assistant Engineer (Civil) posts in the Public Works Department of the Uttarakhand government, stated that there was **no "fundamental right"** that allowed for such claims.
- The top court said it **could not compel states** to provide quotas and states could not be forced to make such provisions **without data showing imbalance** in representation of certain communities in public service. Also, **no mandamus** can be issued by the court directing state governments to provide reservations.
- Similarly, **state** is **not bound to make reservation** for SCs/STs **in matters of promotions.**

- The court pointed out that while **Articles 16(4) and 16(4-A)** of the Constitution give power to make reservations, it did so only "if in the opinion of the state they are not adequately represented in the services of the state".

Criticism

- If no quotas are implemented and no study on backwardness and extent of representation is done, it may result in a perceptible imbalance in social representation in public services.

Way Forward

- Ensuring adequate representation to disadvantaged sections is a state obligation.
- The idea that reservation is not a right may be in consonance with the Constitution allowing it as an option, but there should be government obligation to continue with affirmative action if the social situation that keeps some sections backward and at the receiving end of discrimination persists otherwise it will render the entire system unequal.

Article 16(4)

- Article 16(4) states that State shall make provisions for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Article 16(4-A)

- The 77th Constitutional Amendment Act introduced Article 16(4A). It confers power on the state to reserve seats in favour of SC and ST Communities in promotions in Public Services if the communities are not adequately represented in public employment.
- The Supreme Court in M. Nagraj v. Union Of India 2006 case while upholding the constitutional validity of Art 16(4A) held that any such reservation policy in order to be constitutionally valid shall satisfy the following three constitutional requirements:
    - The SC & ST community should be socially and educationally backward.
    - The SC& ST communities are not adequately represented in Public employment.
- Such a reservation policy shall not affect the overall efficiency in the administration.

Article 335

- Article 335 states that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.
- In saying reservation for appointment and promotion was a matter of discretion, the court also cautioned that if the state wishes to exercise its discretion and make such provision, the State has to **collect quantifiable data** showing inadequacy of

representation of that class in public services. However, this data collection exercise, is not required when the state government decided not to provide reservations.

- The State can form its own opinion on the basis of the material it has in its possession already or it may gather such material through a Commission/Committee, person or authority. The court should show due deference to the opinion of the State. However, such **opinion of the state** is **not beyond judicial scrutiny**.
- It added that if the decision of the State Government to provide reservations in promotion is challenged, the State concerned shall have to place before the Court the requisite quantifiable data and satisfy the Court that such reservations became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes in a particular class or classes of posts without affecting general efficiency of administration as mandated by **Article 335** of the Constitution.

SC Directs States to Issue Notification for Establishing Gram Nyayalayas

The Supreme Court has directed the states, which are yet to come out with notifications for establishing ***'Gram Nyayalayas'***, to do so within four weeks, and asked the high courts to expedite the process of consultation with state governments on this issue.

Issues with Gram Nyayalayas

- The major reason behind the non-enforcement includes financial constraints, reluctance of lawyers, police officials and other State functionaries to invoke jurisdiction of Gram Nyayalayas (GN), lukewarm response of the Bar, inadequate infrastructure etc
- So far several states have issued notifications for establishing GN but all of them were not functioning except in Kerala, Maharashtra and Rajasthan.
- Only 208 GN are functioning in the country as against *2,500 estimated to be required by the 12th five-year plan.*

Significance of Gram Nyayalayas

- **Reducing Pendency:** According to one estimate GN can reduce around 50% of the pendency of cases in subordinate courts and can take care of the new litigations which will be disposed of within six months.
- **Fulfilling Constitutional mandate:** GN are a step in the direction of fulfilling the objectives of Article 39A of the Constitution which directs the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Way Forward

- Expedite the notification of Gram Nyayalayas in the remaining states.
- Additionally focus on providing adequate infrastructure, funds, and skilled functionaries apart from creating awareness among various stakeholders.

Gram Nyayalayas

- *The Gram Nyayalayas Act 2008 establishes GN in the rural areas* for providing access to justice to citizens at the doorstep and to ensure that opportunities for securing justice are not denied to anyone by reason of social, economic or other disabilities.
- Sections 5 and 6 of the 2008 Act provide that state government in consultation with the high court will appoint a **Nyayadhikari** for each GN, who will be a person eligible to be appointed as a Judicial Magistrate of the First Class.
- GN have jurisdiction over an area specified by a notification by the State Government in consultation with the respective High Court.
- They can be a mobile court and can exercise the powers of both Criminal and Civil Courts.
- The pecuniary jurisdiction of the Nyayalayas is fixed by the respective High Courts.
- The GN are not bound by the rules of evidence provided in the Indian Evidence Act, 1872 but are guided by the principles of natural justice and subject to any rule made by the High Court.
- They allow for conciliation of the dispute and settlement of the same in the first instance.
- Appeal in criminal cases lies to the Sessions Court, which is to be heard and disposed of within a period of six months from the date of filing of such appeal.
- Appeal in civil cases lies to the District Court, which is to be heard and disposed of within a period of six months from the date of filing of the appeal.

Supreme Court Ruling Against Judicial Transparency

In its recent decision, in the Chief Information Commissioner v. High Court of Gujarat case, the Supreme Court, barred citizens from securing access to court records under the Right to Information (RTI) Act.

Supreme Court's Verdict

- The verdict hinged on Section 22 of the RTI Act which states that the RTI Act shall override any other law like Official Secrets Act 1923 etc to the extent that the latter is inconsistent with the former.
- It held that court records can be accessed only through the rules laid down by each High Court under Article 225 of the Constitution.
- The decision does not preclude the application of the RTI Act to the administrative side of the court, it does firmly slam the door shut on accessing, under the RTI Act, the millions of court records filed on the judicial side.

Importance of Sharing Court Records

- **Ensuring Accountability:** A significant number of decisions taken by the courts influence our daily life. Every prosecution before a criminal court is essentially an opportunity to hold the police accountable just as every writ petition is an opportunity to hold the government accountable.

- **Source of Information:** The pleadings filed by either party contain reams of information that are useful to a range of stakeholders such as citizens, journalists, academics, shareholders, etc., who can better inform the public discourse on the ramifications of these decisions. This is especially true in cases of public interest litigation, where the courts indulge in policymaking on the basis of the report of an amicus curiae or an expert committee set up by judges.

Critical Analysis of Court's Reasoning

- First, it concludes that there is no inconsistency between the RTI Act and the court rules. This is factually incorrect because the Gujarat High Court Rules unlike the RTI Act require the submission of an affidavit stating the purpose of seeking copies of the pleadings. The RTI Act requires no reasons to be provided while seeking information.
- Second, the court argues that, a special enactment or rule cannot be held to be overridden by a later general enactment simply because the latter opens up with a non-obstante clause, unless there is clear inconsistency between the two legislations.But that is exactly the point of an non-obstante clause. The accompanying factual inaccuracy, is its conclusion that there is no inconsistency between the Gujarat High Court rules and the RTI Act.
- Third, it concluded that Section 22 could not be read in a manner to imply repeal of other laws, such as the Gujarat High Court Rules. The court states that if the intention was to repeal another law, the legislature would have specifically stated so in the RTI Act, as was done in Section 31 when the RTI Act repealed the previous Freedom of Information Act, 2002. This reasoning is bewildering because it would render non-obstante clauses entirely useless.

Issues with the Decision from Citizen's Perspective

- **Administrative Discretion:** Most High Court Rules allow only parties to a legal proceeding to access the records of a case. Some High Courts may allow third parties to access court records if they can justify their request. This is entirely unlike the RTI Act, where no reasons are required to be provided thereby vastly reducing the possibility of administrative discretion.
- **Logistical Perspective:** Unlike the RTI Act, the procedure under the Rules of most High Courts is challenging from a logistical perspective as an application under the RTI Act can be made by post, with the fee being deposited through a postal order. But most High Courts and the Supreme Court require physical filing of an application with the Registry, and a hearing before a judge to determine whether records should be given.

Conclusion

- The judiciary's track record of transparency is vastly inferior when compared to other arms of the state. In today's world where every public institution is striving to become

more transparent, the continued resistance from the judiciary to making itself transparent in a meaningful manner will have an eroding effect on its legitimacy.

Madras High Court Sets Aside Restraints on Puducherry Lt.Governor

A Madras High Court 2019 order restraining Puducherry Lt. Governor from interfering in the day-to-day affairs of the elected government was set aside by a division bench recently stating that the elected Chief Minister and the appointed Lt. Governor should work in unison.

Court's Verdict

- The Bench stated in its that its role is not to lay down who has residual control — whether it is the Council of Ministers or the Administrator — but to stress the existing legal framework under which their powers are defined.
- The main ground to set aside the previous verdict is that it was based on an inappropriate parallel sought to be drawn between a 'Union Territory' and a 'State'.

Procedure in Case of Difference of Opinion

- The Supreme Court in relation to the National Capital Territory of Delhi Case held that Lt. Governors and Chief Ministers must work in unison as far as possible.
- In the event of an unresolved difference of opinion, the L-G should refer it to the President for a decision.

Constitutional Provisions for Puducherry

- Article 239A of the constitution allows Parliament to create a law for Puducherry.
- In lieu of this parliament enacted the Government of Union Territories Act, 1963, which states that Puducherry,is a Union Territory with an elected legislative Assembly and the executive constituted by the Lieutenant Governor and Council of Ministers.
- The Lt. Governor is appointed as the nominal head of Puducherry by the President of India for a term five years.
- The Government of Union Territories Act, 1963 which governs Puducherry vests the legislative assembly with the power to make laws on "any of the matters enumerated in the State List

Supreme Court Modifies Order: Free COVID-19 Tests in Private Labs Only for Persons Covered Under 'Ayushman Yojana'

The Supreme Court recently modified its April 8 order which asked private labs to conduct free COVID-19 tests and said the benefit will be available only to "economically weaker sections" who are covered under a government scheme such as the Ayushman Bharat. The top court said it never intended to make testing free for those who can afford to pay.

Supreme Court's Verdict

- Supreme Court had on April 8 directed that private labs, which were allowed to charge Rs 4,500 for COVID-19 tests, would not charge for the tests observing that they need to be philanthropic in the hour of national crisis.
- The apex court had also said that tests must be carried out in NABL accredited labs or any agencies approved by World Health Organisation (WHO) or Indian Centre for Medical Research (ICMR).

Reasons For Overturning the Previous Verdict

- **Financial Viability:** A bench of Supreme Court took note of the pleas of two persons who said that if the testing is made free for all, private labs will be overburdened financially and would slow down the tests for the novel coronavirus or COVID-19.
- **Judicial Activism:**The verdict of the top court inching towards judicial activism had raised much debate about not only the competence of the courts to pass such orders mandating philanthropy on few private players, but also its possible counter-productive impact of demotivating private players from undertaking testing, owing to uncertainty regarding reimbursement of testing charges.
- **Implementation Challenges:** There was ambiguity over ensuring the implementation of the order. Making the tests free for persons who have the ability to pay for it would have unnecessarily shifted the burden to the government or private labs. Additionally, asking the government to reimburse the cost at a time when it is already overburdened by expenses on food supplies, funding for public healthcare and economic support, would have also been equally difficult.
- **Government's Prerogative:** The court said it was conscious of the fact that framing of the scheme and its implementation were in the government's domain who are the best experts in such matters.
- **Existing Arrangement:** All government hospitals and government labs are conducting COVID-19 test free of cost.

Conclusion

- The SC acted true to its Constitutional obligation as a ***sentinel qui vive*** as under Article 142, the court has sufficient powers to make an interim arrangement and invoke the government's obligations and powers under the Disaster Management Act, 2005 and Epidemic Act, 1897 read with Article 21 of the Constitution of India.
- Further, the court with the latest modification in its verdict has balanced the rights of all parties concerned.

Ayushman Bharat Scheme

- Ayushman Bharat Pradhan Mantri Jan ArogyaYojana (PMJAY) is a centrally sponsored scheme launched by government of India in September 2018.

- PMJAY provides health coverage up to Rs. 5 lakh per family per year for secondary and tertiary hospitalization to around 10.74 crore poor and vulnerable families (approx. 50 crore beneficiaries).
- It is an entitlement based scheme which covers poor and vulnerable families based on deprivation and occupational criteria as per SECC database.
- It provides cashless and paperless access to services for the beneficiary at the point of service in any (both public and private) empanelled hospitals across India. In other words, a beneficiary from one State can avail benefits from an empanelled Hospital anywhere in the Country.
- Under PMAJY, the States are free to choose the modalities for implementation. They can implement the scheme through insurance company or directly through the Trust/ Society or mixed model.
- There is no restriction on family size, ensuring all members of designated families specifically girl child and senior citizens get coverage.
- At National level, National Health Authority (NHA) has been set up as an attached office to Ministry of Health and Family Welfare to manage the implementation of the scheme.

Celebrating 47 years of Kesavananda Bharati Case

Supreme Court gave the landmark Kesavananda Bharti vs State of Kerala verdict forty seven years ago on 24th April 1973.This judgement is hailed for giving us the famous doctrine of basic structure of the Constitution which has time and again prevented many constitutional crises.

Keshavananda Bharti Verdict

- Since the Indian Constitution was first adopted, debates have raged as to the extent of power that Parliament should have to amend key provisions.
- 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 (1951) and Sajjan Singh (1965).
- In subsequent years, as the Constitution kept being amended at will to suit the interests of the ruling dispensation, the Supreme Court in Golaknath (1967) held that Parliament's amending power could not touch Fundamental Rights, and this power would be only with a Constituent Assembly.
- In the early 1970s, the government of then Prime Minister Indira Gandhi had enacted major amendments to the Constitution (the 24th, 25th, 26th and 29th) to get over the judgments of the Supreme Court in RC Cooper (1970), Madhavrao Scindia (1970) and the Golaknath Case.
- In RC Cooper, the court had struck down Indira Gandhi's bank nationalisation policy, and in Madhavrao Scindia it had annulled the abolition of privy purses of former rulers.

- All the four amendments, as well as the Golaknath judgment, came under challenge in the Kesavananda Bharati case– where relief was sought by the religious figure Swami Kesavananda Bharati against the Kerala government vis-à-vis two state land reform laws.
- Since Golaknath was decided by eleven judges, a larger bench was required to test its correctness, and thus 13 judges formed the Kesavananda bench.
- By a 7-6 verdict, the Constitution Bench ruled that the 'basic structure' of the Constitution is inviolable, and could not be amended by Parliament. The basic structure doctrine has since been regarded as a tenet of Indian constitutional law.
- The court held that under Article 368, which provides Parliament amending powers, something must remain of the original Constitution that the new amendment would change.
- The court did not define the 'basic structure', and only listed a few principles — federalism, secularism, democracy — as being its part. Since then, the court has been adding new features to this concept.

Basic structure Since Kesavananda Bharti Case

- The 'basic structure' doctrine has since been interpreted to include the supremacy of the Constitution, the rule of law, Independence of the judiciary, doctrine of separation of powers, federalism, secularism, sovereign democratic republic, the parliamentary system of government, the principle of free and fair elections, welfare state, etc.
- An example of its application is SR Bommai (1994), when the Supreme Court upheld the dismissal of BJP governments by the President following the demolition of the Babri Masjid, invoking a threat to secularism by these governments.
- Critics of the doctrine have called it undemocratic, since unelected judges can strike down a constitutional amendment. At the same time, its proponents have hailed the concept as a safety valve against majoritarianism and authoritarianism.

Supreme Court Declares 'Secrecy of Ballot' a Cornerstone of Free and Fair Elections

In a recent judgement Supreme Court has held that Secrecy of ballot is the cornerstone of free and fair elections. It asserted that the choice of a voter should be free and the secret ballot system in a democracy ensures that.

Supreme Court's Verdict

- The Supreme Court observed that it is the policy of law to protect the right of voters to secrecy of the ballot.Even a remote or distinct possibility that a voter can be forced to disclose for whom she has voted would act as a positive constraint and a check on the freedom to exercise of franchise.
- It held that the principle of secrecy of ballots is an important postulate of constitutional democracy.

- Section 94 of the Representation of People Act, upholds the privilege of the voter to maintain confidentiality about her choice of vote.
- However, a voter can also voluntarily waive the privilege of non-disclosure.
- The secret ballot is a voting method in which a voter's choice in an election is anonymous, forestalling attempts to influence the voter by intimidation, blackmailing, and potential vote buying. The system is one means of achieving the goal of political privacy.
- It was introduced in India with the first elections in 1951 along with paper ballots.

Background of the Case

- The judgment came on an appeal against the Allahabad High Court decision setting aside the voting of a no-confidence motion in a zila panchayat in Uttar Pradesh in 2018.
- The High Court found that some of the panchayat members had violated the rule of secrecy of ballot by displaying the ballot papers or by their conduct revealed the manner in which they had voted.
- The apex court referred to Section 28(8) of the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961. This provision states that a motion of no confidence shall be put to vote in the prescribed manner by secret ballot.

Issue with the Secret Ballot System

- With the introduction of Electronic Voting Machines (EVMs), the concept of secret ballot has become notional and wanting as tally and counting of votes is done booth-wise thereby easily giving away the voting pattern.
- The booth-wise data in turn is used by political parties for "constituency mapping" and "booth management" and targeting "dissidents" who voted against them.

Way Forward

- The practice of almost accurately identifying the voting pattern by political parties can be neutralised if the Election Commission introduces totaliser machines for a constituency. The Totaliser received the backing of the Law Commission in 2015 and Election Commission itself is in its favour.
- Using totalisers is akin to the practice of mixing ballots of a constituency in the big drum prior to counting. This will not only mask the voting pattern but will also safeguard the interest of people from the wrath of political parties for voting against them.

Right to Reservation is not a Fundamental Right: SC

The Supreme Court recently ruled that reservation of seats to certain communities is not a Fundamental Right and refused to act on a petition filed by all political parties from Tamil Nadu who sought 50% OBC reservation in the all-India NEET seats surrendered by states.

Key Highlights

- The petitioners argued that the Centre is neither following the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993 to provide 50% reservation for OBC candidates in All India Quota in undergraduate as well as postgraduate medical and dental courses in Tamil Naduoffered by privateand government institutions within Tamil Nadu, nor providing 27% reservation for OBC candidates in All India Quota in undergraduate as well as postgraduate medical courses to other States. This essentially violates the right of the people of Tamil Nadu to have a fair education.
- They further argued that the provisions of the Central Educational Institutions (Reservation and Admission) Act, 2006 to grant reservation of 27% to OBC candidates only in central educational institutions was an anomaly as the institutions run by States and private parties would be treated as a "different class having a different rule of reservation". They asserted that the action of the Centre and the Medical Council of India to fill All India Quota seats reserved for Backward Classes from the open category was unconstitutional.
- Petitioners also argued that they were not asking the court to add to existing reservations but to implement the existing reservations and insisted that non-implementation of OBC reservations in the state amounted to violation of Fundamental Rights of its residents.
- However, Supreme Court dismissed the plea stating that Article 32 of the Constitution is available only for violation of Fundamental Rights butreservation of seats to certain communities is not a fundamental right. Therefore, petitioners should seek remedy in Madras High Court.
- All the parties agreed to withdraw the petitions from the Supreme Court and move the High Court.

Supreme Court's Previous Verdict on Reservation

- In it February 7, 2020 verdict, Supreme Court ordered that reservation is not a fundamental right. The judgment was based in a batch of appeals pertaining to the reservations to Scheduled Castes and Scheduled Tribes in promotions in the posts of Assistant Engineer (Civil) in Public Works Department of Uttarakhand in which government had filled the posts in 2012 without giving reservation to SCs and STs.
- The top court had ruled that there is no fundamental right to reservation in appointments and promotions in public services under Articles 16(4) and 16(4A) of the Constitution. The Articles empower the State to make reservation in matters of appointment and promotion in favour of the SCs and STs"only if in the opinion of the State they are not adequately represented in the services of the State".

- However, if a State wishes to exercise its discretion and make reservation in promotions, it has to first collect quantifiable data showing inadequacy of representation of a class or community in public services.
- If the decision of the State government to provide reservation in promotion is challenged, it would have to place the data and prove before the court that reservation was necessary and does not affect the efficiency of administration.

SC Verdict on Padmanabhaswamy Temple Management Rights

- Reversing the 2011 Kerala High Court decision, the Supreme Courtupheld the right of the Travancore royal family to manage the property of deity at Sree Padmanabha Swamy Temple in Thiruvananthapuram.
- The ruling ends the legal battle the temple and members of the royal family have fought with the Kerala government for decades over control of one of the richest temples in the world following the death of Travancore ruler Sree Chithira Thirunal Balarama Varma in July 1991.

Highlights of the Verdict

- The SC has given a ruling which is in line with Chapter 3 of the **Travancore-Cochin Hindu Religious Institutions Act (TC Act) 1950,** which exclusively deals with the affairs of the Padmanabhaswamy temple.
- The Court held that as per customary law, the shebait rights (right to manage the financial affairs of the deity) survive with the members of the Travancore royal family, even after the death of the last ruler as it is the"human ministrant" or the shebait of the properties belonging to Sri Padmanabha , Chief deity of the temple.
- The Court accepted the royal family's claim that it no longer considered the temple as its private property, and that it only sought shebaitshipand thus directed setting up of two committees:
    - **Administrative Committee:** The Chairperson is the Thiruvananthapuram District Judge and the other members of the Committee include nominee of the trustee (royal family), the chief thanthri of the temple, a nominee of the State and a member nominated by the Union Ministry of Culture.
    - **Advisory Committee:** It will be headed by a former High Court Judge nominated by the Chief Justice of the Kerala High Court, and have a chartered accountant and a nominee of the royal family as members.
- The administrative and the advisory committees do not prevail over the exclusive rights of the ruler as per the provisions of **Section 18 (2)** of the **Travancore–Cochin Hindu Religious Institutions Act (TC Act) 1950.** The decision on the opening of vaults, especially the Vault B, would be taken by the administrative committees.

Background of the Case

- The legal genesis of the dispute lies in the agreement of accession signed between the Kings of Travancore with the Government of India in 1949 by which the princely state of Travancore became a part of the Indian Union but the administration of the Padmanabhaswamy Temple remained "vested in trust" in the Ruler of Travancore.
- In 1971, privy purses to the former royals were abolished through 26th constitutional amendment stripping their entitlements and privileges. However, the last ruler of Travancore, Chithira Thirunal Balarama Varma, continued to manage the affairs of the temple till his death.
- In 1991, when the last ruler's brother, Utradam Thirunal Marthanda Varma, took over the temple management, devotees and the government entered into a long-drawn legal battle claiming that he had no legal right to claim the control or management of the temple.
- In 2007, Varma claimed that the treasures of the temple including its six vaults ('Kallara' in Malayalam) were the family property of the royals.
- The Kerala High Court in the 2011 had ruled that the successor to the erstwhile royals could not claim to be in control of the Sree Padmanabhaswamy Temple as per the amendment of the definition of 'Ruler' in **Article 366 (22)**. Article 366 (22) states "Ruler" means the Prince, Chief or other person who, at any time before the commencement of the Twenty Sixth (Constitutional) Amendment Act, 1971, was recognised as the Ruler of an Indian State or was recognised as the successor of such Ruler.
- The Supreme Court in May 2011 ordered a detailed inventory of the articles in the temple vaults. When five vaults were opened out of the six (A, B, C, D, E and F), vast treasure of gold and other priceless objects were discovered whose intrinsic value was estimated to be more than Rs 90000 crore. But vault B was not opened as the royal family had claimed that a mythical curse is associated with the opening of vault B.
- Subsequently senior advocate Gopal Subramaniam was appointed amicus curiae (friend of the court) and in 2014 former CAG Vinod Rai was appointed to do a special audit of the temple accounts.

Sri Padmanabhaswamy temple

- The temple dates back to the 8th century but the present structure was built in the 18th century by the then Travancore Maharaja Marthanda Varma.
- It is built in the Chera style of architecture.
- The presiding deity, known as Padmanabha Swamy, depicts the emergence of Lord Brahma seated on a lotus blooming out of Lord Vishnu's navel. '*Padma*' refers to the lotus, '*Nabha*' means navel and '*Swamy*' is Lord.
- The main deity Lord Vishnu is found in the AnanthaShayana posture (reclined posture of eternal yoga) on Adishesha or king of all serpents.

- The temple was first made of wood but later constructed with granite and has 365 pillars, one for each day of the year.
- It is known to be one of the 108 holy temples associated with Vaishnavism in India.

SC's verdict on Hindu women's inheritance rights

Through its latest verdict, the Supreme Court expanded on a Hindu woman's right to be a joint legal heir and inherit ancestral property on terms equal to male heirs.

Supreme Court Ruling

- A three-judge Bench of the Supreme Court ruled that a Hindu woman's right to be a joint heir to the ancestral property is by birth and does not depend on whether her father was alive or not when the law, **Hindu Succession (Amendment) Act, 2005** was enacted.
- The court looked into the rights under the **Mitakshara** coparcenary. Since Section 6 of the 2005 creates an "unobstructed heritage" or a right created by birth for the daughter of the coparcener, the right cannot be limited by whether the coparcener is alive or dead when the right is operationalised. The court said the 2005 amendment gave recognition of a right that was in fact accrued by the daughter at birth.
- Moreover, the Hindu Succession (Amendment) Act, 2005 gave Hindu women the right to be coparceners or joint legal heirs in the same way a male heir does. Since the coparcenary is by birth, it is not necessary that the father coparcener should be living on the date when the amendment came into force.
- The court also directed High Courts to dispose of cases involving this issue within six months since they would have been pending for years.

Background

- The Mitakshara school of Hindu law codified as the Hindu Succession Act, 1956 governed succession and inheritance of property but only recognised males as legal heirs. The law applied to everyone who is not a Muslim, Christian, Parsi or Jew by religion. Buddhists, Sikhs, Jains and followers of Arya Samaj, Brahmo Samaj are also considered Hindus for the purposes of this law.
- In a Hindu Undivided Family, several legal heirs through generations can exist jointly. Traditionally, only male descendants of a common ancestor along with their mothers, wives and unmarried daughters are considered a joint Hindu family. The legal heirs hold the family property jointly.
- The Hindu Succession Act, 1956 was amended in 2005 and consequently Women were recognised as coparceners or joint legal heirs for partition arising from 2005. Section 6 of the Act was amended that year to make a daughter of a coparcener also a coparcener by birth 'in her own right in the same manner as the son'. The law also gave the daughter the same rights and liabilities 'in the coparcenary property as she would have had if she had been a son.

- The law applies to ancestral property and to intestate succession in personal property — where succession happens as per law and not through a will.
- The 174th Law Commission Report had also recommended this reform in Hindu succession law. Even before the 2005 amendment, Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu had made this change in the law, and Kerala had abolished the Hindu Joint Family System in 1975.

Need for the latest Clarification

- While the 2005 law granted equal rights to women, questions were raised in multiple cases on whether the law applied retrospectively, and if the rights of women depended on the living status of the father through whom they would inherit. Different benches of the Supreme Court had taken conflicting views on the issue. Different High Courts had also followed different views of the top court as binding precedents.
- In **Prakash v Phulwati (2015),** held that the benefit of the 2005 amendment could be granted only to "living daughters of living coparceners" as on September 9, 2005.
- In February 2018, contrary to the 2015 ruling, a two-judge Bench held that the share of a father who died in 2001 will also pass to his daughters as coparceners during the partition of the property as per the 2005 law.
- Then in April 2018, yet another two-judge bench, reiterated the position taken in 2015.
- These conflicting views by Benches of equal strength led to a reference to a three-judge Bench in the current case.
- The ruling now overrules the verdicts from 2015 and April 2018. It settles the law and expands on the intention of the 2005 legislation to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have.

Conclusion

- The expansive reading of the law allows equal rights for women.
- Since the Mitakshara coparcenary law not only contributed to discrimination on the ground of gender but was oppressive and negated the fundamental right of equality guaranteed by the Constitution of India, the latest verdict of supreme court comes as a progressive approach for gender parity.

Supreme Court Verdict on Right to Public Protest

The Supreme Court on 7th October 2020 verdict in **Amit Sahni v Commissioner of Police & Others**., held that public spaces cannot be occupied indefinitely for protesting or expressing dissent. The landmark judgment was passed on a batch of petitions seeking directions for removing protesters from a public road in Delhi's Shaheen Bagh.

- The demonstration at Shaheen Bagh was the centre of the dissent against the Citizenship (Amendment) Act, 2019, or CAA.

- The protests began in December 2019 and ended only after the nationwide lockdown was announced following the coronavirus outbreak in March 2020.

Highlights of the Verdict

- The three-judge division bench held that though **Article 19(1)(b)** of the Constitution guarantees the right to assemble peacefully without arms, these rights are subject to **reasonable restrictions** imposed in the interest of sovereignty, integrity and public order.
- It held unequivocally that public ways and **public spaces cannot be occupied** in such a manner as in Shaheen Bagh and that, too, **indefinitely**. Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone.
- The Court said that the present case was not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters. Fundamental rights do not live in isolation. The right of the protester has to be balanced with the right of the commuter. They have to co-exist in mutual respect.
- The court held it was entirely the responsibility of the administration to prevent encroachments in public spaces. They should do so without waiting for courts to pass suitable orders. It also held that the administration ought to take action to keep the areas clear of encroachments or obstruction caused by such protests.
- The judges also highlighted the boons and fallacies of digitally-fuelled movements. Its ability to scale up quickly while evading the usual restrictions of censorship has a flipside where a highly polarized environment is created, resulting in no constructive outcome, the bench said.

Significance of the Verdict

- The judgment sets precedence, but it has also set boundaries for spaces to protest in the future.
- The judgment has also drawn boundaries to protesting in public. It confirms the right to protest, but the place will be of the state's choice.

Denying Overtime Wages Affront to Worker's Right to Life: SC

- The Supreme Court recently struck down Gujarat government's decision to exempt industries from paying overtime wages and increasing the working hours of employees by citing the public emergency and economic downturn caused by the Covid-19 pandemic and the subsequent lockdown.
- The court also invoked its powers under **Article 142** to do complete justice and directed that all workmen who had worked overtime be paid overtime wages at double the ordinary rate of wages as provided under **Section 59 of the Factories Act.**

Background of the Case

- The labour and employment department of Gujarat had issued a notification on April 17 under **Section 5 of the Factories Act** to exempt all units registered under the Act from various provisions relating to weekly hours, daily hours, intervals for rest etc. for adult workers.
- The stated aim of the notification was to provide "certain relaxations for industrial and commercial activities" from April 20 to July 19. Another notification was issued on July 20 extending the relaxation until October 19.
- The notifications allowed factories to increase the daily limit of working hours from 9 to 12 with a 30-minute break after every 6 hours as opposed to every 5 hours before the notification. It also did away with the requirement to give double the wages for overtime work and provided that wages proportionate to the ordinary rate can be paid even for overtime work.
- The notification was issued under section 5 of the Factories Act, which allows the government to exempt industries from the purview of Factories Act on grounds of a public emergency. Section 5 defines public emergency as one that threatens the internal security of the country whether by war or external aggression or even internal disturbances.

Supreme Court's Verdict

- A three-judge bench of the Supreme Court held that a worker's right to life cannot be deemed conditional on the mercy of the employer or the government and the right to overtime wages and decent working conditions under the Factories Act of 1948 cannot be curtailed citing such grounds.
- Exempting factories from the purview of Factories Act, denying humane working conditions and overtime wages provided by law, are an affront to the workers' **right to life (Article 21)** and **right against forced labour (Article 23).**
- The state cannot permit workers to be exploited in a manner that renders the hard-won protections of the Factories Act illusory and the constitutional promise of social and economic democracy into a paper tiger.
- The apex court held that section 5 cannot be invoked to provide a blanket exemption to all factories citing the COVID 19 pandemic and the contagion cannot be considered a public emergency threatening national security.
- Unless the threshold of an economic hardship is so extreme that it leads to disruption of public order and threatens the security of India or of a part of its territory, recourse cannot be taken to such emergency powers, which are to be used sparingly under the law.

Right to Residence at Shared Household for Victims of Domestic Violence: SC

- The Supreme Court has allowed women fighting domestic violence cases the right to reside in the 'shared household' even if her husband had no legal right to the house and the same was owned by the father-in-law or mother-in-law.
- A three-judge bench passed the landmark ruling in **Satish Chander Ajuha v. Sneha Ahuja** while considering the petition of a septuagenarian couple from Delhi who filed a civil suit to dispossess their daughter-in-law even as the proceedings initiated by her under the Protection of Women from Domestic Violence Act, 2005, was ongoing.

Highlights of the Judgement

- In a judgment that would bring relief to many victims of domestic violence, the Supreme Court held that "shared household", under the protection of women from Domestic Violence Act 2005, can also be a house owned by the joint family or any relative of the husband, provided that the woman has lived in that house after her marriage as a long-term resident "in a domestic relationship".
- Whether or not the residence is in fact a "shared residence" would be determined by the family court where the domestic violence case is being heard. In the event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in **Section 2(s)**of the domestic violence act are satisfied and the said house will become a shared household.
- The court additionally said that the right to residence under **Section 19** is not an indefeasible right of residence in the shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law.
- Relief for the daughter-in-law would also depend on whether the allegation of domestic violence can be proved in the trial. Also, the court held that a suit for eviction of the woman from household would be maintainable before a competent court, but this would depend on the facts of each case.

Significance of the Verdict

- This judgment would come as a massive relief to women who have been thrown out of the matrimonial home and denied relief on grounds that the house is the sole property of their father-in-law or mother-in-law.
- The judgment overturns a 2006 judgment of the apex court in **S.R. Batra Vs. Taruna Batra Case**, which had held that "shared household" is limited to a house that is owned or rented by her husband, or by the joint family of which the husband is a member.

Protection of Women from Domestic Violence Act 2005

- It is an act to provide for more effective protection of the rights of Women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.
- The act recognises domestic abuse as a punishable offence, extends its provisions to those in live-in relationships, and provides for emergency relief for the victims, in addition to legal recourse.

SC Asks Trial Courts to Consider Witness Protection in Cases Against MPs, MLAs

The Supreme Court has asked trial courts hearing criminal cases against sitting and former legislators to consider providing protection to witnesses under the Witness Protection Scheme, 2018 even without making any specific application for the same, keeping in mind their vulnerability.

- The three-judge bench of the supreme court issued the directive during the ongoing deliberations on the petition seeking fast-tracking of cases involving MPs and MLAs.
- Over 4,400 criminal trials are pending against legislators. Of this over 2500 trials involve sitting legislators. One of the reasons for delay of these cases is stay granted by the higher courts.

Supreme Court's Directive

- The Witness Protection Scheme, 2018, approved by the Supreme Court in the case of Mahender Chawla v. Union of India, (2019) 14 SCC 615 should be strictly enforced by the Union and States and Union Territories.
- The court ordered that keeping in mind the vulnerability of the witnesses in such cases, the Trial Court may consider granting protection under the said Scheme to witnesses without their making any specific application in this regard.
- It directed that no unnecessary adjournments be granted in cases related to lawmakers keeping in mind the public interest involved in these matters.

Need for Witness Protection

- There is high possibility of witnesses becoming vulnerable in cases pertaining to MPs and MLAs especially due to power asymmetry.
- An interminable delay in the cases related to the legislators on account of witnesses turning hostile makes it a matter of public concern too.

Conclusion

- Witnesses are the eyes and ears of justice. Timely and adequate protection to them will surely go a long way in upholding the principle of justice even if the odds are stacked against the witnesses.

- This direction of the apex court has now placed the ball in the court of law. It pushes trial courts to grant protection to witness, without the witness having to ask for it. Naturally, all that is needed now is for trial courts to take it upon themselves, and follow through this legally sound practice to steer criminal jurisprudence in the right direction that will ensure justice, in the truest sense of the word.

Witness Protection Scheme 2018

- Witness Protection Scheme, 2018 provides for protection of witnesses based on the threat assessment and protection measures inter alia include protection/change of identity of witnesses, their relocation, installation of security devices at the residence of witnesses, usage of specially designed Court rooms, etc.
- The Scheme provides for three categories of witness as per threat perception:
    - **Category 'A':** Where the threat extends to life of witness or his family members, during investigation/trial or thereafter.
    - **Category 'B':** Where the threat extends to safety, reputation or property of the witness or his family members, during the investigation/trial or thereafter.
    - **Category 'C':** Where the threat is moderate and extends to harassment or intimidation of the witness or his family member's, reputation or property, during the investigation/trial or thereafter.
- The Scheme provides for a State Witness Protection Fund for meeting the expenses of the scheme.

Contempt of Court and the Role of Attorney General

Recently the role of Attorney General has come into focus with a spate of contempt cases seeking his approval under the Contempt law of India.

Procedure to Initiate Contempt of Court Provisions

- The Contempt of Courts Act, 1971, lays down the law on contempt of court. Section 15 of the legislation describes the procedure on how a case for contempt of court can be initiated.
- In the case of the Supreme Court, the Attorney General (highest law officer of the country provided under Article 76 of the Constitution) or the Solicitor General, and in the case of High Courts, the Advocate General, may bring in a motion before the court for initiating a case of criminal contempt.
- However, if the motion of contempt of court against a person is brought by any private person, the consent in writing of the Attorney General or the Advocate General is mandatory, to determine if it requires the attention of the court at all.
- If the Attorney General denies the consent, the matter all but ends.
- The law has a limitation period of one year for bringing in action against an individual. The complainant can, however, separately bring the issue to the notice of the court and urge the court to take suo motu (on its own motion) cognizance.

- When the court itself initiates a contempt of court case, the AG's consent is not required. This is because the court is exercising its inherent powers under the Constitution to punish for contempt and such Constitutional powers cannot be restricted because the AG declined to grant consent.
- Article 129 of the Constitution gives Supreme Court the power to initiate contempt cases on its own, independent of the motion brought before it by the AG or with the consent of the AG.
- Once the Court takes cognizance, the matter is purely between the Court and the contemnor. The only requirement is that the procedure followed is required to be just and fair and in accordance with the principles of natural justice.

Reason for taking Consent of Attorney General

- **Legal Obligation:** In in cases of criminal contempt of court, the consent of the Attorney General is required under the law.
- **Safeguard Court's Time:** The objective behind requiring the consent of the AG before taking cognizance of a complaint is to save the time of the court. Judicial time is squandered if frivolous petitions are made and the court is the first forum for bringing them in. The AG's consent is meant to be a safeguard against frivolous petitions, as it is deemed that the AG, as an officer of the court, will independently ascertain whether the complaint is indeed valid.

Contempt of Court

- Contempt of court refers to actions, which defy a court's authority, cast disrespect on a court, or impede the ability of the court to perform its function.
- The Contempt of Courts Act, 1971 was passed by the Parliament in December 1971 and it came into force with effect from 24th December, 1971.

Classification of Contempt

- **Civil Contempt:** Under Section 2(b) of the Contempt of Courts Act of 1971, civil contempt has been defined as wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.
- **Criminal Contempt:** Under Section 2(c) of the Contempt of Courts Act of 1971, criminal contempt has been defined as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:
    - Scandalises or tends to scandalize
    - Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding
    - Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Contempt under Indian Constitution

- **Article 129** states thatthe Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.
- **Article 215**states thatvery High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.
- High Courts have been given special powers to punish contempt of subordinate courts, as per Section 10 of the Contempt of Courts Act of 1971.
