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I: Cases That Shaped Constitutional Values in India

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SHAYARA BANO V. UNION OF INDIA (2017)

THE TRIPLE TALAQ JUDGEMENT

By *Tanmay Radendra Darekar*

(LLM 1st year)

INTRODUCTION

The judgement in *Shayara Bano v. Union of India* stands as a landmark decision in India's constitutional and gender justice jurisprudence. In this historic case, the Supreme Court examined the validity of *talaq-e-biddat*, commonly known as instant triple talaq, and ultimately declared the practice unconstitutional. By a narrow majority of 3:2, the Court held that instant triple talaq was manifestly arbitrary and therefore incompatible with the constitutional guarantee of equality enshrined in Article 14. The majority further concluded that the practice did not qualify as an essential religious practice deserving protection under Article 25 of the Constitution. The ruling marked a significant step towards safeguarding the rights and dignity of Muslim women while reaffirming the supremacy of constitutional principles over discriminatory practices.

FACTS OF THE CASE

Shayara Bano married Rizwan Ahmad on 11 April 2001 in accordance with the principles of Muslim personal law. The marriage resulted in two children, a son and a daughter. After nearly fifteen years of matrimonial life, Rizwan Ahmad dissolved the marriage on 10 October 2015 by invoking *talaq-e-biddat*, commonly referred to as instant triple talaq, through the pronouncement of the word “talaq” three times in a single sitting. Challenging the legality of this form of divorce, Shayara Bano approached the Supreme Court of India in February 2016 by filing a writ petition under Article 32 of the Constitution. In her petition, she questioned the constitutional validity of three practices recognized under Muslim personal law: Triple Talaq (*Talaq-e-Biddat*), Polygamy, and *Nikah Halala*. The petitioner argued that these practices were inconsistent with the fundamental rights guaranteed by the Constitution, particularly those enshrined under Articles 14, 15, 21, and 25. According to her, such practices discriminated against Muslim women, undermined their dignity and autonomy, and deprived them of equal protection under the law. The challenge also extended to *Nikah*

Halala, a practice requiring a divorced woman who seeks to remarry her former husband to first marry another man, consummate that marriage, and subsequently obtain a valid divorce before returning to her previous spouse. Additionally, the petition questioned the permissibility of polygamy, which allows a Muslim man to have more than one wife at the same time. The case therefore raised significant constitutional issues concerning gender equality, personal liberty, religious freedom, and the compatibility of personal laws with the framework of fundamental rights.

ISSUES BEFORE THE COURT

The Supreme Court was called upon to determine several important constitutional and legal questions arising from the challenge to the practice of instant triple talaq. The principal issues before the Court were:

1. Whether the practice of *talaq-e-biddat* (instant triple talaq) infringes the fundamental rights of Muslim women, particularly the rights to equality, non-discrimination, and dignity guaranteed under Articles 14, 15, and 21 of the Constitution of India.
2. Whether the practice enjoys constitutional protection under the freedom of religion provisions contained in Articles 25(1), 26(b), and 29, thereby placing it beyond judicial scrutiny.
3. Whether instant triple talaq forms an essential and integral part of Islamic religious practice and is therefore entitled to constitutional protection.
4. Whether the practice derives legal recognition from the Muslim Personal Law (Shariat) Application Act, 1937, and if so, the extent to which such recognition affects its constitutional validity.
5. Whether the unilateral and irrevocable nature of instant triple talaq is compatible with the constitutional framework and can be sustained as a valid legal practice in a democratic society governed by the rule of law.

RATIO DECIDENDI

The majority opinion, authored by Justice Rohinton F. Nariman, held that the practice of *talaq-e-biddat* was constitutionally unsustainable because it conferred upon a Muslim husband the unilateral authority to terminate a marriage instantly and irrevocably without any scope for dialogue, mediation, or reconciliation. Such unchecked and arbitrary power,

exercised at the sole discretion of one spouse, was found to be inconsistent with the guarantee of equality enshrined in Article 14 of the Constitution.

The Court reiterated that the protection afforded by Article 25 extends only to those practices that constitute essential and integral components of a religion. Customs or practices that are merely optional, non-essential, or incompatible with constitutional values cannot claim immunity from judicial review solely on the ground of religious association. In reaching its conclusion, the Court noted that numerous Muslim-majority countries had either abolished or substantially regulated the practice of instant triple talaq, demonstrating that it was not an indispensable element of Islamic faith.

The majority also relied upon the principles laid down in the case of *Shamim Ara v. State of Uttar Pradesh*, which recognized that a valid talaq must be supported by reasonable grounds and preceded by genuine efforts toward reconciliation. Consequently, the Court held that *talaq-e-biddat* was arbitrary in nature and therefore unconstitutional.

DECISION OF THE COURT

In a closely divided 3:2 judgement, the Constitution Bench of the Supreme Court declared the practice of *talaq-e-biddat* (instant triple talaq) unconstitutional and legally invalid. The majority held that the practice was incompatible with the constitutional principles of equality and justice. The Court concluded that instant triple talaq was manifestly arbitrary because it enabled a Muslim husband to dissolve a marriage unilaterally and irrevocably without any reasonable justification or procedural safeguards. Such a practice, the Court observed, violated Article 14 of the Constitution, which guarantees equality before the law and equal protection of the laws.

The Bench further held that the provisions of the Muslim Personal Law (Shariat) Application Act, 1937, to the extent that they recognized and enforced the practice of triple talaq, constituted “laws in force” within the meaning of Article 13(1) of the Constitution. Consequently, they were subject to constitutional scrutiny and could be invalidated if found inconsistent with fundamental rights.

The Court also rejected the argument that instant triple talaq was protected as an essential religious practice under Article 25. It found that the practice lacked the status of an

indispensable component of Islamic faith and therefore could not claim constitutional immunity on the basis of religious freedom. In his concurring opinion, Justice Kurian Joseph emphasized the relationship between religious doctrine and legal validity, observing that a practice inconsistent with the fundamental teachings of the Quran could not be sustained in law. He reasoned that since *talaq-e-biddat* was not sanctioned by the core principles of Islam and deviated from the Quranic procedure governing divorce, it could not be accorded legal recognition.

MINORITY OPINION

In their dissenting judgement, Chief Justice J.S. Khehar and Justice Abdul Nazeer expressed the view that although the practice of instant triple talaq was undesirable and capable of causing hardship to women, it formed a part of Muslim personal law and was therefore beyond the scope of judicial invalidation. The minority emphasized that matters relating to personal law and religious practices should ordinarily be addressed through legislative reform rather than judicial intervention. Accordingly, they held that any change to the practice of triple talaq should be introduced by Parliament through an appropriate statutory framework, respecting the separation of powers and the domain of religious personal laws.

SIGNIFICANCE OF THE JUDGEMENT

The decision in *Shayara Bano v. Union of India* marked a significant milestone in the development of constitutional jurisprudence and gender justice in India. The ruling reaffirmed that personal law practices are not immune from constitutional scrutiny when they infringe upon fundamental rights guaranteed by the Constitution. The ruling had far-reaching implications as it:

- Advanced the cause of gender justice and women's empowerment.
- Reinforced the constitutional guarantees of equality, dignity, and personal liberty.
- Established judicial oversight over arbitrary religious practices that adversely affect fundamental rights.
- Encouraged a progressive interpretation of personal laws in harmony with constitutional principles.

The judgement also laid the foundation for legislative intervention in the area of Muslim family law. It ultimately led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019, which formally prohibited and criminalized the practice of instant triple talaq, providing greater legal protection to Muslim women across the country.

CONCLUSION

The judgement in *Shayara Bano v. Union of India* stands as a watershed moment in India's constitutional and human rights jurisprudence. By declaring the practice of instant triple talaq unconstitutional, the Supreme Court reaffirmed the supremacy of constitutional values over practices that undermine fundamental rights. The decision not only protected Muslim women from arbitrary and unilateral divorce but also reinforced the principles of equality, dignity, and justice enshrined in the Constitution. Beyond its immediate impact on Muslim personal law, the judgement carries broader significance in advancing gender justice and promoting a rights-based approach to legal reform. It reflects the judiciary's commitment to ensuring that constitutional morality prevails over discriminatory practices and serves as an important step toward aligning personal laws with the ideals of equality and social justice. As such, the case remains a landmark precedent in the continuing evolution of women's rights and constitutional governance in India.

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I.R. COELHO V. STATE OF TAMIL NADU (2007)

PROTECTING THE CONSTITUTION'S BASIC STRUCTURE

By: Aryan Patel

(LLM 1st year)

INTRODUCTION

I.R. Coelho v. State of Tamil Nadu is a landmark constitutional law judgement that reaffirmed the supremacy of the Constitution and significantly strengthened the doctrine of the Basic Structure. Delivered by a nine-judge Constitution Bench of the Supreme Court, the case addressed a crucial question: whether laws placed in the Ninth Schedule of the Constitution could enjoy absolute immunity from judicial review, even when they infringed upon Fundamental Rights. The Court held that Parliament cannot use the Ninth Schedule as a mechanism to shield legislation from constitutional scrutiny if such laws violate the basic structure of the Constitution.

The judgement clarified that constitutional amendment inserting laws into the Ninth Schedule remain subject to judicial review when they damage or destroy fundamental constitutional principles. By upholding the primacy of the Constitution and preserving the power of judicial review, the Supreme Court reinforced the system of checks and balances that forms the foundation of Indian democracy. The decision is widely regarded as a significant milestone in safeguarding constitutional governance, the rule of law, and the protection of Fundamental Rights.

BACKGROUND

The Ninth Schedule of the Constitution was introduced through the **Constitution (First Amendment) Act, 1951** with the objective of protecting land reform and agrarian legislation from challenges based on Fundamental Rights. Article 31B was enacted to provide immunity to laws included in the Ninth Schedule, ensuring that such laws could not be declared invalid merely on the ground that they violated Fundamental Rights guaranteed under Part III of the Constitution. Over time, however, the scope of the Ninth Schedule expanded considerably, and numerous laws unrelated to agrarian reforms were placed within it. This development

raised serious constitutional concerns regarding the possibility of Parliament using Article 31B to insulate legislation from judicial scrutiny and thereby circumvent constitutional limitations.

The Supreme Court had previously addressed this issue in landmark decisions such as *Waman Rao v. Union of India* and *Minerva Mills Ltd. v. Union of India*. In these cases, the Court indicated that laws inserted into the Ninth Schedule after **24 April 1973**—the date of the landmark judgement in *Kesavananda Bharati v. State of Kerala* would not automatically enjoy absolute immunity and could be tested against the Basic Structure Doctrine. Given the continuing uncertainty surrounding the extent of protection available to Ninth Schedule laws, the matter was referred to a larger Constitution Bench in *I.R. Coelho v. State of Tamil Nadu*. The case provided the Supreme Court with an opportunity to conclusively determine whether Parliament could place laws beyond judicial review by including them in the Ninth Schedule, even when such laws threatened or undermined the basic structure of the Constitution.

EVOLUTION OF THE BASIC STRUCTURE DOCTRINE

While deciding *I.R. Coelho v. State of Tamil Nadu*, the Supreme Court examined a series of landmark constitutional decisions that shaped the doctrine of Parliament's amending power and the limits imposed upon it.

In *Shankari Prasad v. Union of India* and *Sajjan Singh v. State of Rajasthan*, the Court upheld Parliament's authority to amend any part of the Constitution, including Fundamental Rights, under Article 368. These decisions adopted a broad interpretation of the constituent power of Parliament and affirmed the validity of constitutional amendments affecting fundamental rights.

A different approach emerged in *I.C. Golaknath v. State of Punjab*, where the Supreme Court held that Parliament lacked the power to amend or abridge Fundamental Rights. The Court reasoned that Fundamental Rights occupied a special position within the constitutional framework and were beyond the reach of the amending process.

The constitutional controversy was ultimately settled in the landmark decision of *Kesavananda Bharati v. State of Kerala*. In that case, the Supreme Court held that although Parliament possesses extensive powers to amend the Constitution, those powers are not

unlimited. The Court introduced the Basic Structure Doctrine, holding that Parliament cannot alter, damage, or destroy the essential features that form the foundation of the Constitution.

This doctrine became the cornerstone of constitutional jurisprudence in India and played a decisive role in *I.R. Coelho*. The nine-judge bench relied heavily on the principles established in *Kesavananda Bharati* to determine whether laws placed in the Ninth Schedule could be insulated from judicial review when they threaten the Constitution's basic structure.

The Court ultimately reaffirmed that constitutional supremacy prevails over parliamentary supremacy and that even Ninth Schedule laws remain subject to scrutiny if they undermine fundamental constitutional principles.

ISSUES BEFORE THE COURT

The Constitution Bench in *I.R. Coelho v. State of Tamil Nadu* was called upon to determine several important constitutional questions concerning the scope of Parliament's amending power and the extent of judicial review over laws placed in the Ninth Schedule. The principal issues before the Court were:

1. Whether Parliament possesses the power to confer complete immunity on legislation by placing it in the Ninth Schedule under Article 31B of the Constitution.
2. Whether laws included in the Ninth Schedule are entirely exempt from judicial review and constitutional scrutiny.
3. Whether statutes inserted into the Ninth Schedule after 24 April 1973 the date of the landmark judgement in *Kesavananda Bharati v. State of Kerala* can be tested against the Basic Structure Doctrine.
4. Whether constitutional amendments that place laws in the Ninth Schedule can be challenged if their effect is to damage or destroy Fundamental Rights that form part of the Constitution's basic structure.
5. Whether Article 31B grants absolute protection to Ninth Schedule laws, or whether such protection is subject to the limitations imposed by the Basic Structure Doctrine.

➤ PETITIONERS' ARGUMENTS

The petitioners contended that Parliament cannot employ Article 31B and the Ninth Schedule as instruments to place legislation beyond the reach of constitutional scrutiny. They argued

that granting absolute immunity to laws merely because they are included in the Ninth Schedule would effectively allow Parliament to circumvent Fundamental Rights and undermine the supremacy of the Constitution. According to the petitioners, such an interpretation would erode the Basic Structure Doctrine established in *Kesavananda Bharati v. State of Kerala* by enabling constitutional amendments to destroy essential constitutional features without judicial oversight. They further emphasized that the Ninth Schedule, originally intended to protect a limited category of agrarian reform laws, had expanded considerably over the years. This substantial enlargement, they argued, created a serious risk of abuse, allowing governments to shield a wide range of legislation from constitutional review simply by placing it within the Schedule. The petitioners therefore maintained that laws inserted into the Ninth Schedule must remain subject to judicial examination, particularly where they infringe Fundamental Rights that form part of the Constitution's basic structure.

➤ RESPONDENTS' ARGUMENTS

The respondents defended the constitutional validity of Article 31B and the protection accorded to laws included in the Ninth Schedule. They argued that the provision was deliberately enacted to safeguard certain categories of legislation from challenges based on Fundamental Rights and had long been recognized as a legitimate constitutional mechanism.

According to the respondents, the inclusion of a law in the Ninth Schedule does not completely eliminate judicial review. They submitted that such laws could still be challenged on grounds such as legislative incompetence, lack of constitutional authority, or violations of other constitutional provisions. Consequently, they argued that Article 31B does not create an unrestricted or arbitrary immunity. The respondents also relied upon earlier judicial decisions that had upheld the validity of the Ninth Schedule and acknowledged Parliament's power to place laws within it. On this basis, they maintained that the constitutional protection afforded by Article 31B should continue to operate and that the Court should respect the intention of Parliament in providing such protection to specified legislation.

JUDGEMENT

The Supreme Court, speaking through a unanimous nine-judge Constitution Bench, held that all laws inserted into the Ninth Schedule after **24 April 1973** the date of the landmark

judgement in **Kesavananda Bharati v. State of Kerala** are subject to judicial review. The Court categorically ruled that inclusion of a law in the Ninth Schedule does not grant it absolute immunity from constitutional scrutiny. While Article 31B provides a degree of protection to such laws, that protection cannot extend to legislation that violates the Constitution's basic structure.

The principal findings of the Court were as follows:

- Laws placed in the Ninth Schedule are not beyond the scope of judicial review.
- Judicial review itself constitutes an essential feature of the Constitution's basic structure and therefore cannot be excluded or curtailed.
- If a law included in the Ninth Schedule infringes Fundamental Rights that form part of the basic structure, the law may be declared unconstitutional and invalid.
- Constitutional amendments inserting legislation into the Ninth Schedule must be examined in light of their effect on the fundamental principles and identity of the Constitution.

In arriving at this conclusion, the Court developed important constitutional standards known as the “**rights test**” and the “**essence of the right test.**” These tests require courts to assess whether a law merely regulates a Fundamental Right or whether it substantially damages its core content and thereby affects the Constitution's basic structure. If the essence of a protected constitutional right is destroyed or significantly impaired, the law cannot be sustained merely because it has been placed in the Ninth Schedule.

The judgement therefore reaffirmed the supremacy of the Constitution, strengthened the Basic Structure Doctrine, and ensured that Parliament cannot immunize legislation from constitutional review by simply placing it within the Ninth Schedule. It remains one of the most significant decisions safeguarding Fundamental Rights and preserving the balance between parliamentary authority and judicial oversight.

CONCLUSION

The judgement in **I.R. Coelho v. State of Tamil Nadu** is widely regarded as a landmark in the evolution of Indian constitutional law. Through this decision, the Supreme Court firmly established that laws placed in the Ninth Schedule are not beyond judicial scrutiny if they

infringe upon the Constitution's basic structure. By doing so, the Court reinforced the foundational principles of constitutional supremacy, democracy, and the rule of law.

The ruling made it clear that Parliament's amending power, though extensive, is not unlimited. No constitutional amendment or legislation can be used to undermine the core values and principles that form the foundation of the Constitution. The decision also strengthened the doctrine of judicial review, affirming the judiciary's responsibility to protect constitutional guarantees and prevent the erosion of fundamental rights.

As a result, ***I.R. Coelho*** remains a defining precedent that preserves the delicate balance between legislative authority and constitutional limitations. It serves as an enduring reminder that all organs of the State, including Parliament, must function within the framework of the Constitution and remain accountable to its fundamental ideals.

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URMILA DIXIT V. SUNIL SHARAN DIXIT (2025)**A LANDMARK JUDGEMENT FOR SENIOR CITIZENS' RIGHTS**

By- Vijaysh Babulal Sukul

(LLM 1st year)

INTRODUCTION

The Supreme Court's judgement in *Urmila Dixit v. Sunil Sharan Dixit and Others (2025)* marks an important development in the protection of senior citizens' rights in India. While interpreting Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the Court adopted a purposive and welfare-oriented approach, ensuring that elderly parents are not denied statutory protection due to technical deficiencies or procedural irregularities in legal arrangements. The decision underscores the principle that social welfare legislation must be construed in a manner that furthers its underlying objective of safeguarding vulnerable individuals. By prioritizing substance over form, the Court reaffirmed that the law must serve the interests of justice and the welfare of senior citizens. The judgement also reiterates the legal as well as ethical obligation of children and heirs to provide care, support, and dignity to their ageing parents. In doing so, it strengthens the protective framework established under the 2007 Act and reflects the judiciary's commitment to upholding the rights and well-being of senior citizens in contemporary society.

FACTS OF THE CASE

The dispute arose from a property owned by Urmila Dixit, which she had acquired in 1968. In September 2019, she transferred the property to her son, Sunil Sharan Dixit, through a registered Gift Deed. According to the appellant, the transfer was made on the understanding that her son would provide her with care, financial support, and other essential needs for the remainder of her life. This understanding was allegedly reflected in a promissory note executed on the same day as the Gift Deed. Subsequently, the relationship between the parties deteriorated. Urmila Dixit alleged that her son failed to fulfill his obligations, neglected her welfare, and subjected both her and her husband to mistreatment. Claiming that the very basis of the transfer had been violated, she invoked Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, seeking cancellation of the Gift Deed. The Sub-

Divisional Magistrate allowed her claim and ordered the cancellation of the transfer. This decision was later affirmed by the Collector and subsequently upheld by a Single Judge of the Madhya Pradesh High Court. However, the Division Bench of the High Court set aside these findings, holding that the Gift Deed did not contain any explicit condition requiring the son to maintain or care for his mother. Challenging this interpretation, Urmila Dixit approached the Supreme Court, which was called upon to determine the scope and application of Section 23 of the 2007 Act.

ISSUES BEFORE THE COURT

The Supreme Court was called upon to determine several important questions concerning the interpretation and scope of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The principal issues before the Court were:

1. Whether a transfer of property can be declared void under Section 23 of the Act when the deed of transfer does not expressly stipulate a condition requiring the transferee to provide maintenance and care to the senior citizen.
2. Whether the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, being welfare-oriented legislation, should be interpreted liberally to advance its protective objectives or construed strictly based on the literal wording of the statute.
3. Whether the authorities and tribunals constituted under the Act possess the power not only to invalidate a transfer of property but also to direct restoration of possession to the affected senior citizen after such transfer is declared void.

Appellant's Contentions

The appellant asserted that the transfer of property in favor of her son was not an unconditional gift but was made with the clear expectation that he would provide her with care, maintenance, and essential support throughout her lifetime. In support of this claim, she relied upon a promissory note executed contemporaneously with the Gift Deed, which allegedly recorded the son's commitment to fulfill these obligations. It was argued that the son's subsequent neglect and failure to maintain his mother constituted a breach of the very basis on which the property had been transferred. The appellant further contended that adopting a narrow or technical interpretation of Section 23 of the Maintenance and Welfare

of Parents and Senior Citizens Act, 2007 would frustrate the welfare-oriented objective of the legislation and undermine the protection intended for senior citizens.

Respondents' Contentions

The respondents challenged the appellant's claims by disputing the evidentiary value and authenticity of the promissory note. They argued that the registered Gift Deed did not contain any express condition requiring the son to provide maintenance or care to the appellant. According to the respondents, the transfer was a voluntary gift motivated by love and affection, and therefore could not be revoked solely on account of subsequent disagreements or deterioration in family relations. They maintained that, in the absence of a specific maintenance clause in the Gift Deed, the requirements of Section 23 were not satisfied.

SUPREME COURT'S DECISION

The Supreme Court allowed the appeal and overturned the judgement of the Division Bench of the Madhya Pradesh High Court, thereby restoring the orders passed by the competent authorities under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Court observed that Section 23 of the Act is a welfare-oriented provision intended to safeguard senior citizens from neglect, abuse, and exploitation after transferring their property to children or relatives. Emphasizing the beneficial nature of the legislation, the Court held that an overly technical interpretation requiring an express maintenance clause in every transfer document would defeat the very object of the Act. While examining the facts of the case, the Court took into account the surrounding circumstances, including the promissory note executed contemporaneously with the Gift Deed and the evidence demonstrating the respondent's failure to provide adequate care and support to the appellant. It held that the absence of an explicit maintenance condition in the Gift Deed was not conclusive if the overall circumstances indicated that the transfer had been made in expectation of such care and maintenance. Accordingly, the Court concluded that the property had been transferred subject to an implied obligation on the part of the son to maintain and look after his mother. Since this obligation had not been fulfilled, the requirements of Section 23 stood satisfied, rendering the Gift Deed liable to be declared void. The Court therefore upheld the cancellation of the transfer and granted relief in favour of the appellant.

CONCLUSION

The decision in *Urmila Dixit v. Sunil Sharan Dixit* marks a significant development in the jurisprudence relating to the rights and welfare of senior citizens in India. Through a liberal and purpose-oriented interpretation of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the Supreme Court reaffirmed that welfare legislation must be applied in a manner that effectively protects vulnerable individuals from neglect, exploitation, and injustice. By acknowledging the practical realities faced by elderly parents and recognising that maintenance obligations may arise from the surrounding circumstances of a property transfer, the Court ensured that substantive justice prevails over rigid technicalities. The judgement also reinforces the authority of tribunals to provide meaningful and effective relief to senior citizens whose expectations of care and support have been disregarded. More broadly, the ruling underscores the legal and moral responsibilities owed by children to their ageing parents. It strengthens the protective framework established under the 2007 Act and sets an important precedent for future disputes involving conditional property transfers and the welfare of senior citizens. As a result, the judgement stands as a noteworthy affirmation of dignity, social justice, and the rights of the elderly within India's constitutional and welfare-oriented legal system.

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JUSTICE K.S. PUTTASWAMY (RETD.) V. UNION OF INDIA (2017)

THE CONSTITUTIONAL RECOGNITION OF PRIVACY

By- Pallavi Uday Turuk, Shruti Chavan, Nitish Vijay Bhalerao

(LLM 1st year)

INTRODUCTION

The decision in *Justice K.S. Puttaswamy (Retd.) v. Union of India* stands among the most influential constitutional judgements in Indian legal history. Through this landmark ruling, a unanimous nine-judge Constitution Bench of the Supreme Court unequivocally recognised the Right to Privacy as a fundamental right protected under the Constitution of India. The judgement marked a significant expansion of the scope of fundamental rights by affirming that privacy is intrinsically linked to human dignity, personal liberty, and individual autonomy. The case emerged against the backdrop of growing concerns regarding the Aadhaar programme and the collection, storage, and use of citizens' biometric and demographic information by the State. These concerns raised important constitutional questions about the extent to which personal information could be gathered and regulated by governmental authorities. A central issue before the Court was whether the right to privacy, despite not being expressly enumerated in the Constitution, could be derived from the guarantees of liberty, equality, and dignity enshrined in Part III. In answering this question, the Supreme Court not only recognised privacy as a constitutionally protected right but also reaffirmed the Constitution's commitment to safeguarding individual freedoms in an evolving technological and digital age.

BACKGROUND

The constitutional debate surrounding the right to privacy gained renewed significance with the implementation of the Aadhaar programme, which required residents to provide biometric and demographic information for identification purposes and to access various government services and welfare schemes. The collection and storage of such sensitive personal data raised concerns regarding the extent of State power and the protection of individual freedoms in a rapidly evolving digital environment. Justice K.S. Puttaswamy (Retd.), a former judge of the Karnataka High Court, challenged the constitutional validity of the Aadhaar scheme

before the Supreme Court. He contended that the mandatory collection and use of personal information without adequate constitutional safeguards posed a threat to the privacy and autonomy of citizens. The case also provided the Supreme Court with an opportunity to revisit its earlier decisions on the status of privacy under the Constitution. In particular, the Court examined the rulings in **M.P. Sharma v. Satish Chandra (1954)** and **Kharak Singh v. State of Uttar Pradesh (1963)**, which had either rejected or left unresolved the question of whether privacy constituted a fundamental right. Consequently, the matter assumed broader constitutional importance, requiring the Court to determine the existence, scope, and constitutional foundation of the right to privacy within India's framework of fundamental rights.

ISSUES BEFORE THE COURT

The nine-judge Constitution Bench was called upon to address several fundamental constitutional questions concerning the scope and status of privacy rights in India. The principal issues before the Court were:

1. Whether the Right to Privacy constitutes a fundamental right protected under the Constitution of India.
2. Whether the right to privacy can be inferred from Articles 14, 19, and 21, despite the absence of an explicit constitutional provision recognising such a right.
3. Whether earlier judicial precedents, particularly those that declined to acknowledge privacy as a constitutionally protected right, were correctly decided and continued to hold good law.
4. What limitations should govern the State's authority to collect, retain, and utilise personal information, and whether such actions must conform to constitutional safeguards protecting individual liberty and dignity.

Petitioners' Arguments- The petitioners asserted that the right to privacy is an intrinsic aspect of personal liberty, dignity, and autonomy protected under the Constitution, particularly under Article 21. They argued that individuals must have control over their personal information and that unchecked collection, storage, and use of such data by the State could seriously threaten civil liberties. According to the petitioners, the absence of robust constitutional safeguards against excessive governmental intrusion could lead to surveillance practices that undermine individual freedom and the ability to make personal choices without

interference. They therefore contended that privacy deserved recognition as a fundamental right enforceable against the State.

Respondents' Arguments The Union Government maintained that the Constitution does not expressly recognise a separate fundamental right to privacy. It argued that the Aadhaar programme was designed to serve legitimate public objectives, including efficient delivery of welfare benefits and the prevention of duplication and fraud. The Government further submitted that the information collected under the scheme was limited in nature and was accompanied by adequate procedural safeguards to ensure data protection and prevent misuse. It was also argued that the Aadhaar framework did not authorise indiscriminate surveillance and that the collection of personal information was proportionate to the public purposes sought to be achieved.

JUDGEMENT

On 24 August 2017, a unanimous nine-judge Constitution Bench of the Supreme Court delivered a historic judgement recognising the Right to Privacy as a fundamental right under the Constitution of India. The Court held that privacy is an inherent aspect of the right to life and personal liberty guaranteed under Article 21 and is closely connected with the freedoms and protections embodied in Articles 14 and 19. The judgement affirmed that privacy is indispensable to the preservation of human dignity, personal autonomy, and the development of individual identity. The Court observed that the ability of individuals to make personal choices, control their personal information, and maintain a private sphere free from unwarranted intrusion forms an essential component of constitutional liberty. In reaching this conclusion, the Supreme Court expressly overruled the earlier decisions in ***M.P. Sharma v. Satish Chandra (1954)*** and ***Kharak Singh v. State of Uttar Pradesh (1963)*** to the extent that those judgements denied or failed to recognise privacy as a constitutionally protected right. At the same time, the Court clarified that the right to privacy is not absolute and may be subject to reasonable restrictions. Any State action that interferes with privacy must satisfy a three-part constitutional test:

- **Legality** – the restriction must be supported by a valid law.
- **Legitimate State Purpose** – the measure must pursue a lawful and legitimate governmental objective.

- **Proportionality** – the interference must be necessary, reasonable, and proportionate to the purpose sought to be achieved.

Through this framework, the Court sought to balance individual freedoms with legitimate State interests while ensuring that privacy remains protected against arbitrary or excessive intrusion.

CONCLUSION

The judgement in *Justice K.S. Puttaswamy (Retd.) v. Union of India* represents a defining milestone in the evolution of Indian constitutional jurisprudence. The Court further established that any interference with privacy must satisfy the constitutional standards of legality, legitimate state purpose, and proportionality, thereby creating a robust framework for balancing individual rights with governmental interests. In an era increasingly shaped by technology, data collection, and digital governance, the judgement serves as a vital safeguard against arbitrary intrusions into personal life. Beyond the immediate context of the Aadhaar scheme, the ruling has had a profound influence on discussions relating to data protection, surveillance, informational privacy, and civil liberties. It continues to guide courts and policymakers in addressing emerging challenges posed by technological advancement. As a result, the *Puttaswamy* decision remains one of the most influential constitutional judgements in modern India, reaffirming the Constitution's enduring commitment to protecting individual freedom and dignity.

References

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 2. *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.
 3. *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.
 4. Constitution of India, Articles 14, 19 and 21.
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 6. *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
 7. *Joseph Shine v. Union of India*, (2019) 3 SCC 39.
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JOSEPH SHINE V. UNION OF INDIA (2018)

DECRIMINALISING ADULTERY IN INDIA

By- Shinde Sakshi Ravindra

(LLM 1st year)

INTRODUCTION

The decision in *Joseph Shine v. Union of India (2018)* stands as a landmark judgement in the evolution of constitutional rights, gender justice, and personal autonomy in India. In this historic ruling, a five-judge Constitution Bench of the Supreme Court unanimously declared Section 497 of the Indian Penal Code, which criminalized adultery, to be unconstitutional. The Court observed that the provision was based on outdated patriarchal assumptions that viewed a married woman as the property of her husband rather than as an independent individual possessing equal rights and dignity. The Bench held that Section 497 violated the guarantees of equality, non-discrimination, and personal liberty enshrined in Articles 14, 15, and 21 of the Constitution. Emphasizing the principles of constitutional morality and individual autonomy, the Court ruled that while adultery may constitute a ground for civil remedies such as divorce, it cannot be treated as a criminal offence warranting state punishment. The judgement therefore marked a significant departure from colonial-era legal thinking and reaffirmed the constitutional commitment to gender equality, human dignity, and the freedom of individuals to make personal choices within the framework of the law.

BACKGROUND OF THE CASE

Section 497 of the Indian Penal Code made adultery a criminal offence only when a man engaged in a sexual relationship with a married woman without the consent or connivance of her husband. The provision treated the husband as the aggrieved party and did not recognise the married woman as an equal participant in the act. Consequently, while the man involved could be prosecuted and punished, the woman was exempt from criminal liability. Furthermore, the law did not grant a wife the right to initiate criminal proceedings against her husband for engaging in an extramarital relationship. Challenging the constitutional validity of this provision, Joseph Shine filed a writ petition before the Supreme Court under Article 32 of the Constitution. The petition also questioned Section 198(2) of the Code of Criminal

Procedure, which restricted the right to file a complaint for adultery primarily to the husband of the woman concerned. The petitioner argued that these provisions were founded on archaic and patriarchal assumptions, treated women as subordinate to their husbands, and denied them equal legal status. It was contended that the provisions were arbitrary, discriminatory, and inconsistent with the constitutional guarantees of equality, non-discrimination, dignity, and personal liberty embodied in Articles 14, 15, and 21 of the Constitution of India.

Issues Before the Court

The Supreme Court was called upon to examine several important constitutional questions concerning the validity of the adultery law. The principal issues before the Court were:

1. Whether Section 497 of the Indian Penal Code was inconsistent with the fundamental rights guaranteed under Articles 14, 15, and 21 of the Constitution of India.
2. Whether the provision amounted to gender-based discrimination by treating men and women unequally and by reinforcing patriarchal assumptions regarding the status of married women.
3. Whether the criminalisation of adultery infringed the constitutional rights to privacy, dignity, personal autonomy, and individual liberty guaranteed under the Constitution.
4. Whether adultery should continue to attract criminal liability or whether it ought to be regarded solely as a civil wrong capable of forming a ground for matrimonial remedies such as divorce or judicial separation.

These issues required the Court to balance the interests of marriage and family with the constitutional values of equality, personal freedom, and human dignity, while also determining the extent to which the State could interfere in the private lives of consenting adults.

SUPREME COURT'S DECISION

On 27 September 2018, the Constitution Bench of the Supreme Court unanimously declared Section 497 of the Indian Penal Code unconstitutional and struck it down in its entirety. The Court held that the provision was manifestly arbitrary and incompatible with the constitutional guarantees of equality, dignity, and personal liberty. The Bench observed that Section 497 was founded on patriarchal assumptions that treated married women as lacking

independent identity and decision-making capacity. By making the husband's consent or acquiescence a decisive factor in determining criminal liability, the law effectively reduced women to the status of property under the control of their husbands. Such a classification, the Court held, was inconsistent with the constitutional vision of equality and individual autonomy. The Court further emphasised that marriage does not result in the surrender of a woman's constitutional rights. A married woman remains an autonomous individual entitled to the full protection of the Constitution. The rights to dignity, privacy, personal liberty, and equality continue to operate within the marital sphere and cannot be curtailed merely because a person is married. While recognising that adultery may constitute a valid ground for divorce or other matrimonial remedies under civil law, the Court concluded that it should not attract criminal sanctions. Consequently, Section 497 IPC was struck down as unconstitutional, and the related provisions under Section 198(2) of the Code of Criminal Procedure were also rendered invalid to the extent that they were dependent upon the offence of adultery.

CONCLUSION

The judgement in *Joseph Shine v. Union of India* stands as a landmark reaffirmation of the constitutional principles of equality, dignity, and personal liberty. By declaring Section 497 of the Indian Penal Code unconstitutional, the Supreme Court dismantled a colonial-era provision that was founded on patriarchal assumptions and treated women as subordinate within the institution of marriage. The decision reflects the judiciary's commitment to ensuring that laws conform to contemporary constitutional values rather than outdated social norms. In recognising women as autonomous individuals entitled to equal protection of the law, the Court strengthened the constitutional guarantees of gender justice and individual freedom. The ruling also reaffirmed that matters involving consensual relationships between adults fall primarily within the realm of personal choice and privacy, and should not ordinarily attract criminal sanctions. While adultery continues to remain a valid ground for divorce and other civil matrimonial remedies, the judgement clarified that it cannot be regarded as a criminal offence against society. Consequently, the decision represents a significant step towards a more rights-oriented and egalitarian legal framework. As a milestone in India's constitutional journey, *Joseph Shine v. Union of India* continues to influence discussions on personal autonomy, gender equality, and the evolving relationship between law, morality, and individual rights.

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 5. *Sowmithri Vishnu v. Union of India*, 1985 Supp SCC 137.
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COMMON CAUSE V. UNION OF INDIA (2018)

RECOGNISING THE RIGHT TO DIE WITH DIGNITY

By- Chhaya Chandakant Kunjir

(LLM 1st year)

INTRODUCTION

The Supreme Court's decision in ***Common Cause v. Union of India (2018)*** is a landmark ruling that affirmed the **Right to Die with Dignity** as a component of the **Right to Life under Article 21** of the Constitution. The Court recognized the legality of **passive euthanasia** and validated **living wills (advance medical directives)**, allowing individuals to decline life-sustaining treatment in cases of terminal illness or irreversible medical conditions. The judgement strengthened the principles of personal autonomy, human dignity, and informed medical decision-making within Indian constitutional jurisprudence.

BACKGROUND OF THE CASE

The petition was instituted by **Common Cause**, a public interest organization, under Article 32 of the Constitution seeking recognition of **passive euthanasia** and **living wills**. The petitioner argued that the constitutional guarantee of living with dignity necessarily includes the right to die with dignity in circumstances involving terminal illness or irreversible medical conditions. It was contended that advances in medical technology often prolong life artificially, resulting in unnecessary suffering for patients and emotional hardship for their families. Therefore, individuals should have the autonomy to decide whether life-support measures should continue when recovery is no longer possible. The case also drew upon earlier Supreme Court decisions, particularly ***Gian Kaur v. State of Punjab (1996)*** and ***Aruna Ramachandra Shanbaug v. Union of India (2011)***, which had previously addressed issues relating to euthanasia and end-of-life care.

ISSUES BEFORE THE COURT

The Supreme Court was called upon to determine several important constitutional and legal issues:

1. Whether the Right to Life under Article 21 encompasses the Right to Die with Dignity.
2. Whether passive euthanasia, involving the withdrawal or withholding of life-sustaining treatment, can be legally permitted in India.
3. Whether a competent individual has the right to decline medical treatment, including artificial life-support measures.
4. Whether advance medical directives, commonly known as living wills, should be granted legal recognition and enforceability.

ARGUMENTS OF THE PARTIES

The petitioners submitted that the principles of **personal autonomy, choice, and self-determination** are integral to human dignity and form part of the protections guaranteed under Article 21 of the Constitution. They argued that individuals suffering from terminal illnesses or irreversible medical conditions should be entitled to refuse treatment that merely extends physical suffering without any realistic prospect of recovery. Conversely, the Union Government raised concerns about the possible misuse of euthanasia and stressed the State's obligation to preserve and protect human life. It maintained that the sanctity of life must remain a fundamental consideration and warned that permitting euthanasia could create ethical and legal challenges within the medical profession.

SUPREME COURT'S DECISION

The Constitution Bench unanimously ruled that the **Right to Die with Dignity** is an integral part of the **Right to Life under Article 21** of the Constitution. The Court permitted **passive euthanasia**, allowing the withdrawal or withholding of life-sustaining medical treatment in cases where a patient is terminally ill or suffering from an irreversible condition. At the same time, it clarified that **active euthanasia**, which involves a deliberate act to end a person's life, remains unlawful in India. A significant aspect of the judgement was the recognition of **Living Wills (Advance Medical Directives)**. The Court held that a competent individual has the right to make decisions in advance regarding medical treatment and may choose to refuse life-support measures in situations where they are no longer capable of expressing their wishes.

IMPACT OF THE JUDGEMENT

The judgement marked a major shift in India's approach to **end-of-life care and patient rights**. By recognising passive euthanasia and living wills, the Supreme Court strengthened the principle of individual autonomy in medical decision-making. The ruling empowered individuals to determine their future healthcare preferences and ensured that their choices would be respected even if they later became incapable of expressing them. It also provided a clear legal framework for doctors and healthcare institutions dealing with terminally ill patients. Above all, the decision reaffirmed that the constitutional guarantee under Article 21 protects not only life itself but also the values of **dignity, autonomy, and freedom from unnecessary suffering**.

CONCLUSION

The decision in *Common Cause v. Union of India* stands as a landmark development in Indian constitutional and medical jurisprudence. By recognising passive euthanasia and granting legal validity to living wills, the Supreme Court reinforced the principle that human dignity must be preserved throughout every stage of life, including its final moments. The judgement carefully balanced the sanctity of life with the individual's right to autonomy and self-determination, ensuring that end-of-life decisions are guided by compassion, dignity, and constitutional values. It continues to serve as a significant precedent in safeguarding patients' rights, promoting ethical medical practices, and upholding personal liberty in India.

References

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