

## Balancing Articles 14 and 25: Constitutional Morality in the Sabarimala Case

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### ABSTRACT

The case involving the Sabarimala temple is among the most significant constitutional cases in modern-day India, as it places the tension between equality and religious freedom front and center. The Sabarimala dispute involved the challenge to and defense of the temple's ban of access to women of the menstruating age. The Sabarimala case provides the Supreme Court the necessity to determine and discern which predominates among the law's guarantees of equality and the liberty to practice faith. The case has become prominent in the legal sphere not only because it involves the question of entry of women to the temple, but also because it illustrates the nature of constitutional morality as it is proposed to resolve the deadlock between fundamental rights and society's customs. The Sabarimala case serves as a reminder that the liberties of individuals from discriminatory practices have to be prioritized and protected. Therefore, the Sabarimala case also serves to show the necessity for the Courts to intervene and actively protect the liberties of individuals from the systems and practices that serve to reinforce the social structures of oppression<sup>1</sup>.

**Keywords:** Sabarimala, Article 14, Article 25, Constitutional Morality, Gender Equality, Religious Freedom, Essential Religious Practices.

### Introduction

The Indian Constitution recognizes the complexity of religious freedom and equality and does not see them as opposing. Article 14 recognizes equality, while Article 25 recognizes the freedom to practice religion, therein placing religion within the sphere of other constitutional rights. In this light, the Sabarimala case was of great importance as it required the Court to examine the boundaries of a religious practice championed in the name of faith, which excluded a class of women from a temple open to all Hindu devotees.<sup>2</sup>

The issue of the Sabarimala case was beyond the controversy of women's access to a particular physical space. The issue was about the constitutional status of women in all spheres of life. The rationale provided for the aforementioned exclusion was the understanding of the deity in the temple as a celibate deity, and the temple discipline of a particular religious pilgrimage. The challenge was to treat the practice as a form of constitutional exclusion and as incompatible with gender equality, dignity, and non-discrimination. The constitutional recognition of such a practice resulted in the Court examining whether the Constitution allowed a public religious institution to inconvenience women and justify the burden because of religion and the stigma associated with menstruation.<sup>3</sup>

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<sup>1</sup>Constitution of India, art. 14.

<sup>2</sup>Constitution of India, art. 25.

<sup>3</sup>Indian Young Lawyers Ass'n v. State of Kerala, (2019) 11 S.C.C. 1 (India).

The judgment positioned constitutional morality at the center of this discussion. It is imperative to know that what is denoted as constitutional morality should not be assumed to mean the personal morality of judges, or the moral preference of the majority. It is the discipline that controls public power, social institutions, and the application of the law, informed by constitutional values. Where the social order is characterized by social stratification, inherited social custom and stratification, and socially exclusionary social practices, constitutional morality is invoked and should encourage and empower the challenge of tradition to equalization. Sabarimala should be perceived as a case on the boundary of the role of Constitutionalism in social order and the Constitution's assertion on the social order. Whether the Sabarimala judgment states that the Constitution reflects social order as it existed, or whether the Sabarimala judgment asserts that the Constitution should transform social order to extend dignity and equality, is at the heart of this manifest, social order challenge.<sup>1</sup>

### **Constitutional Framework of Articles 14 and 25**

Article 14 is considered to be the cornerstone of Indian constitutionalism. It guarantees that the law does not permit the government to make arbitrary decisions and that the law should be based on a classification that is both constitutional and rational. The interpretation, and application of, equality stipulated by Article 14 has extended, and evolved, to mean providing a broader, and more substantive, guarantee in not permitting arbitrariness and exclusion. Equality cannot be said to have been achieved by mere uniform application of a law to a confined class.<sup>2</sup>

Article 25 pertains to freedom of conscience and the right to freely profess and practice religion, and fosters religious pluralism around the conviction that religion lies at the core of the individual and collective spirit of humanity. Article 25 is not an absolute right and is restricted by the regime of public order, morality, and health, as well as by other fundamental rights. Furthermore, by permitting the State to determine the immediate secular religious practices, and even the normative practices of the religion and the practices of social justice, provides a manifestation that an absolute religious realm is not enshrined in the Constitution. Religious freedom enjoys an important status in the Constitution, but exists in association with the rights of others.<sup>3</sup>

The Sabarimala case demanded the Court to integrate the aforementioned provisions. A limited interpretation of Article 25, in this case, would focus on the religious nature of the practice. A limited interpretation of Article 14 would theorize that the practice of exclusion constitutes a mere case of discrimination. The fundamental constitutional question was addressing the manner in which the two could be reconciled. The exclusion was inequitable as it diminished the equal status of a protected class. In matters of religion, discrimination cannot be held in abeyance to the inequitable nature of religious discrimination.<sup>4</sup>

Sabarimala is a major site of pilgrimage in India. The pilgrimage is connected to austere devotion and a specific devotional culture. The ban on women in the pilgrimage in this site from ages approximately ten to fifty is explained as an ancient traditional practice of the Lord Ayyappa's celibacy. A number of supporters believed that the practice to some extent, did not seek to show belittlement to women. Rather, they considered that the practice preserved the identity of the shrine. It was also supported with arguments about the freedom of belief and judicial restraint in regards to faith.<sup>5</sup>

From constitutional consideration, there was objection to the practice as an equal access denial. It considered the ban as a restriction of access to a certain part of the temple that is open to the public. The restriction was not practice equally to all the pilgrims. The restriction that was practice inequitable was against women in the specific age group, causing the ban to practically offer men and women not in the age group meaningful participation in the religious life, thus denying the banned women a religious experience. The ban therefore poses concerns relating to sex equality and bodily dignity, and the constitution also rejects any notion of impurity or disability that is attached to menstruation.<sup>6</sup>

<sup>1</sup>KantaruRajeevaru v. Indian Young Lawyers Ass'n, (2020) 2 S.C.C. 1 (India).

<sup>2</sup>S.P. Mittal v. Union of India, (1983) 1 S.C.C. 51 (India).

<sup>3</sup>The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, A.I.R. 1954 S.C. 282 (India).

<sup>4</sup>Ratilal Panachand Gandhi v. State of Bombay, A.I.R. 1954 S.C. 388 (India).

<sup>5</sup>Sri Venkataramana Devaru v. State of Mysore, A.I.R. 1958 S.C. 255 (India).

<sup>6</sup>Durgah Committee, Ajmer v. Syed Hussain Ali, A.I.R. 1961 S.C. 1402 (India).

This controversy also sheds light on the lingering challenges in Indian constitutional law. How will courts deal with claims that a specific religious practice is integral to a religion? If every such claim is left unexamined, the brute application of law and the constitutional order will become obfuscated by tradition. On the other hand, if courts engage in the determination of theology, the law is, in effect, become riddled with risks of crossing the prescribed constitutional boundaries. The Sabarimala verdict took a new approach to this problem, by examining the asserted religious justification, and the constitutional dimensions of the practice in focus. The focus turned from simply antiquity of a practice to the balance of the practice with constitutional values.<sup>1</sup>

#### **Article 14 and the Equality Analysis**

The Sabarimala case contained a powerful and compelling equality dimension. Under the biological and the sociological rubric of menstruation, women of a certain age were prevented from entering a temple. This created a burden not faced by men. It also resulted in discrimination among women. The question arose whether this discrimination could be constitutionally justified.<sup>2</sup>

Article 14 states that classification has to be non-arbitrary. On the other hand, it has to be grounded on an intelligible and rational basis having a nexus with a legitimate goal. Even if such discrimination could be construed in relation to age, its legal substance was tied to inequality of a biological and gendered nature. A constitutional court is obliged to address the true effect and the legal ground of a discrimination. A law that purports to be neutral in its wording, can still be effaced with inequality if in its application, the burden was borne by a protected group in a manner that was impacted by discrimination or were prejudiced on the basis of stigma.<sup>3</sup>

The restriction creates an irreconcilable contradiction with the contemporary views of equality. Worshipping elsewhere is not attributed to any mala fide intention but rather to the identity of women. The Constitution prohibits equal citizenship to rest on biological predispositions. We cannot allege, let alone allow, the natural phenomenon of monthly menstruations to be an unconstitutional restriction on a woman's right to access a public religious place. It will be maddeningly foolish to ground this arbitrary restriction on a natural biological phenomenon and will be inconsistent with women's dignity. It will treat women as pure and autonomous constitutional persons, but will also treat them as women of natural impurity, and, accordingly, as grossly inconsistent.<sup>4</sup>

Article 14 also contains an anti-arbitrariness principle. This is a practice that is a burden that rests on the defendant, is without any constitutional justification, and is still arbitrary. The exclusion at Sabarimala was a burden on women's right to religious practice. The justification was an arbitrary restriction of the celibate character of the deity and the discipline of the pilgrimage. This was sufficient for a constitutional challenge and constitutional justification of the rest of the discipline. The exclusion of women and the rest of the altogether celibate women were highly disproportionate to the interests of dignity and equality at stake.<sup>5</sup>

#### **Article 25 and Religious Freedom**

Article 25 guarantees the right to freely profess one's religion. When women devotees to the Sabarimala shrine sought access, they also appealed to religious freedom. Their appeal, therefore, was not against religion, like many of the respondents claimed. This case is interesting because the conundrum cannot be seen only as a clash of secularism and religion. It is also of the religious freedom of the women devotees, and the claimed religious freedom of the respondents that opposed the entry. It is the religious freedom of secular feminists pitted against the religious freedom of women devotees. Therefore, the constitution not only protects the collective conscience and practices of devotees, but also protects the preserving of the uniqueness of individual religious practices that, if lost as a result of collective practices, would be an affront to individual dignity.<sup>6</sup>

Proponents of the ban relied on the principles of religious self-governance and the customs of the temple. Religious entities must be granted the autonomy to control their internal affairs and sustain their specific practices. It is especially important in the context of a diverse pluralistic society. Yet, the

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<sup>1</sup>Tilakayat Shri Govindlalji Maharaj v. State of Rajasthan, (1964) 1 S.C.R. 561 (India).

<sup>2</sup>Seshammal v. State of Tamil Nadu, (1972) 2 S.C.C. 11 (India).

<sup>3</sup>N. Adithayan v. Travancore Devaswom Board, (2002) 8 S.C.C. 106 (India).

<sup>4</sup>Adi Saiva Sivachariyargal Nala Sangam v. State of Tamil Nadu, (2016) 2 S.C.C. 725 (India).

<sup>5</sup>Acharya Jagadishwaranand Avadhuta v. Commissioner of Police, Calcutta, (2004) 12 S.C.C. 770 (India).

<sup>6</sup>Bijoe Emmanuel v. State of Kerala, (1986) 3 S.C.C. 615 (India).

autonomy is limited by the Article 25 itself. It is an important aspect that religious rights, along with the right to freedom, the obligation to protect the rights of others.<sup>1</sup>

The fundamental religious practices doctrine has sparked debates concerning courts and what is considered essential to a religion. In the Sabarimala case, the temple's religious practices and its identity as a temple were evaluated. It was held that the practice could not be deemed vital to religion to the point of infringing on women's rights. While practices may be defended with a sense of conviction, it does not guarantee it will be constitutionally protected. Although sincerity may account for the genesis of a practice, it does not prevail over the rights and dignity of the others.<sup>2</sup>

### **Constitutional Morality as a Balancing Principle**

Constitutional morality corresponded with the balancing function in the Sabarimala case. It called upon the court to look beyond popular sentiments, and social and inherited customs. While social morality may be a reflection of the beliefs of a community at a certain period of time, constitutional morality may be viewed as a reflection of a commitment to the constitutional order. Such commitment includes the equality and liberty, and the dignity fraternity, and the rejection of subordination in terms of status.<sup>3</sup>

In the Sabarimala case, constitutional morality mandated that women not be denied access to a public temple with respect to assumptions of purity, bodily capacity, or ritual convenience. It also meant that religion could not be interpreted so that women were consigned to a peripheral position within the practice of religion. The Constitution does not demand that the courts be disrespectful or hostile to religion. It requires courts to protect the equal status of citizens. This is done by regulating the practice of religion in the public sphere.<sup>4</sup>

The principle assumes even more significance when many means of exclusion culturally justified by the adherence to 'tradition' in society come to be justified. Untouchability, a hierarchy of castes, segregation of the sexes, and social segregation, which were all as provided by custom, were all as provided be eventually justified as breaches of the Constitution. Consequently, constitutional morality becomes a means of bridging the gulf that lies between the law and social transformation. It ensures that the jurisdiction of fundamental rights is not rendered a mere rhetoric. It provided the normative grounds of equality and dignity as the thresholds of exclusionary religious practices in the Sabarimala case.<sup>5</sup>

Constitutional morality must be exercised with restraint and cannot become a nebulous interpretative tool for judges. Drawing from the Constitution provides boundaried content for judicial self-restraint. The Sabarimala judgment rooted its legitimacy in the understanding of constitutional reasoning. The Court assessed and pronounced its judgment based on the constitutional command which posits that the freedom to practice a religion is always subject to the core constitutional principles of equality, dignity, and the rights of others. Thus, the constitutional balance was not about religion versus non-religion, but religion versus a competing constitutional demand regarding the preservation of a practice and the right to access a public space to practice religion.<sup>6</sup>

### **Denominational Autonomy and Public Character of the Temple**

Excluding devotees of Lord Ayyappa as a separate denomination with a distinct faith, name, and organization further strengthens the argument of autonomy under Article 26. However, in order to answer the question, the Court would have to address whether devotees of Sabarimala would be treated as a separate denomination, or whether the temple was a part of the larger Hindu religious tradition. The Court presumed that the temple, in this instance, as a public Hindu temple, could not be treated as an institution belonging to an isolated denomination with an independent constitutional identity.<sup>7</sup>

This distinction was relevant public religious institutions cannot deny a category of worshippers to the extent a closed private institution may. A temple that provides services to the

<sup>1</sup>Constitution of India, art. 26.

<sup>2</sup>Constitution of India, art. 15.

<sup>3</sup>Constitution of India, art. 17.

<sup>4</sup>E.P. Royappa v. State of Tamil Nadu, (1974) 4 S.C.C. 3 (India).

<sup>5</sup>Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).

<sup>6</sup>Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 S.C.C. 722 (India).

<sup>7</sup>Shayara Bano v. Union of India, (2017) 9 S.C.C. 1 (India).

general body of devotees is a temple of a public character. There is a reasonable basis for the Constitution to be concerned about who is allowed equal access to a place of public worship. While religious management is a right that is conferred under Article 26, management cannot be exclusion that becomes a direct breach of a fundamental right.<sup>1</sup>

The value of denominational autonomy always must be in preserving the scope of religious pluralism, and must not be a justification for an act that undermines protective equal citizenship. If every public temple could define itself in a way that justified exclusion, the constitutional mandate to equal temple entry and social reform would be eroded. In this way, the Sabarimala judgment stated that the balance of autonomy and the public character of religious institutions dictates the equal right of worshippers.<sup>2</sup>

### **Gender, Dignity, and Menstruation**

In the Sabarimala case, the most human aspect, the treatment of women's dignity, comes to the fore. Discrimination was not just an administrative norm. Symbolism ran deep. It meant women at a certain stage in their lives were incompatible with the shrine's ritual geometry. Discrimination was also an imposition of a menstruation-linked disability. Law, being a crucial pillar of social order, demands constitutional equality and so must be sensitive to such symbolic discriminations and associated social meanings.<sup>3</sup>

The dignity of individuals must also be protected under the Constitution. It means that not all people are simply a sum of their biological functions or social generalizations. Women cannot be positioned as being subservient in religious hierarchies because of their biological make-up. Menstruation has no implications on constitutional impurity. A norm of being in a menstruating age to be excluded from rituals, even by claims of ritual imposition, leads to stigma. The Constitution's hope of a progressive society cannot confine itself to the preservation of such stigma.<sup>4</sup>

It also involves how autonomy is defined. Many women, with religious fervor, might want to make the pilgrimage. When the shrine was supposed to be barred from entry because of menstruating women, it was assumed that their bodies were the reason and their religious devotion was being undermined. The loss of autonomy in being religious is greater. The Sabarimala case expressed the Constitution's urgency in addressing such social and religious stigmas. The Constitution's aim of transforming society will not be served by the endurance of such stigmas.<sup>5</sup>

### **Judicial Role and the Limits of Review**

The Sabarimala example raised the question of whether courts should exercise their jurisdiction in matters of religion. Courts must maintain jurisdictional restraint, as religion and its accompanying dogma and doctrines place courts themselves at the limit of their theocratic prerogatives. Preserving religion's pluralistic nature and the negative social response toward the courts' hegemony are serious issues that courts must afford due concern and consideration.<sup>6</sup>

This, however, is not. Courts are commanded by the Constitution to exercise their prerogatives to the full extent in protecting the various and diverse domain and sub-domain of fundamental rights, especially those that have historically been eviscerated and/or vulnerable by exclusion. It is not the prerogative of the Court to reconstruct beliefs, but to restrain practices that have a civil and constitutional impact from infringing via the vacuum of fundamental rights.<sup>7</sup>

The Sabarimala decision articulated the balance perfectly. The Court practiced jurisdiction by assessing whether the exclusion of women pilgrims to Sabarimala, a place of significant religious and spiritual import from a dogmatic and religious pluralistic perspective, was constitutionally justifiable. The Constitution commands the courts to strike a balance by protecting the dignity of individuals from exclusion, unnecessary, and excessive religion.<sup>8</sup>

<sup>1</sup>Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).

<sup>2</sup>Joseph Shine v. Union of India, (2019) 3 S.C.C. 39 (India).

<sup>3</sup>National Legal Services Authority v. Union of India, (2014) 5 S.C.C. 438 (India).

<sup>4</sup>Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

<sup>5</sup>Minerva Mills Ltd. v. Union of India, (1980) 3 S.C.C. 625 (India).

<sup>6</sup>Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India).

<sup>7</sup>Air India v. Nergesh Meerza, (1981) 4 S.C.C. 335 (India).

<sup>8</sup>Anuj Garg v. Hotel Ass'n of India, (2008) 3 S.C.C. 1 (India).

### The Ongoing Controversy

The Sabarimala case generated considerable debate. Many argued it was a case of judicial activism. Others argued it was a step toward gender justice and equality. There are yet others, the group of passionate devotees, who argue the case represents a lack of concern and sensitivity toward the devotees' faith and religious beliefs.<sup>1</sup>

The case evidences an important reality which is the complexity and the interplay of the various social, religious, and community emotions that govern a democracy as a whole and the various changes that it is constitutionally permitted to undergo. The reality of a transformed constitution, after a judicial pronouncement of law, is the eventual slow social and societal acceptance and adherence to it. The law and society transform together, and the law's role emerges as of considerable weakness, and social and religious interest plays on. Transformative constitutionalism requires a slow, gradual convergence of multiple forces, which include the judiciary, the legislature, the community, and active civil society.<sup>2</sup>

The debate shows the need for nuance when incorporating rights language. Many adherents did not experience the restriction as oppression. Rather, they viewed it as a discipline they inherited. However, many women did experience the restriction as oppression. Adjudicators must take hesitation to act on practice as an answer to a restriction breach, however, emotional attachment must not be viewed as an answer to a constitution breach. Constitutional law must establish a baseline to assess opposing claims without removing the substance or importance from either claim. For this reason, Sabarimala is critical as a case because it shows that courts can respect the substantive belief, even while holding that the form of exclusion is incompatible with a democracy that is constitutionally bound.<sup>3</sup>

The review proceedings, as well as the case's continuing developments, have shown that the issues Sabarimala raises are not simply about one temple. The issues are about the broader approach courts must take to the conflicts between equality and the right to a given religion. The case is significant for consistently addressing a range of concerns bounded by equality, dignity, and the discipline of the Constitution.<sup>4</sup>

### Balancing Articles 14 and 25

The real balancing act in the Sabarimala case was not in making Article 14 triumph over Article 25, or otherwise. It was about balancing them. Freedom to practice religion, when integrated with the principle of equality, is the most secure. Meaning of equality is deepened when the focus is on the protection of individuals in the context of social and religious structures, and not just in the context of appearances of secularism. The Constitution does not expect the citizens to abandon their dignity in the name of religion when they enter a religious celebration.<sup>5</sup>

Balancing also entails appreciating the importance of religious practice while also appreciating that exclusion comes at a constitutional price. A practice which is symbolic of practicing a religion is deserving of greater protection. A practice that is about denial of access to a public institution on the basis of gender demands a greater intensity of scrutiny. In Sabarimala, the burden on women was direct and substantial. The justifying practice, however sincerely and religiously, could not overshadow the constitutional principle of equal dignity and access.<sup>6</sup>

A balanced reading also safeguards the judgment from being perceived as a simple victory of one right over the other. The right to practice one's religion under Article 25 of the Constitution is also a critical right guaranteed to religious communities and individuals. What Sabarimala illustrates is that the freedom to exercise one's religion under Article 25 is embedded in a constitutional framework in which a State cannot treat women as 'imperfect' members. The protection of faith and the protection of equality are not mutually destructive, especially when both are viewed within the realm of dignity.<sup>7</sup>

This setup refines the essence of religious freedom. No Constitutional religious freedom means the liberty to impose exclusion on others in the clergy space. It is the liberty to believe and

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<sup>1</sup>C.B. Muthamma v. Union of India, (1979) 4 S.C.C. 260 (India).

<sup>2</sup>Charu Khurana v. Union of India, (2015) 1 S.C.C. 192 (India).

<sup>3</sup>Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241 (India).

<sup>4</sup>State of Bombay v. Narasu Appa Mali, A.I.R. 1952 Bom. 84 (India).

<sup>5</sup>Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, A.I.R. 1962 S.C. 853 (India).

<sup>6</sup>A.S. Narayana Deekshitulu v. State of Andhra Pradesh, (1996) 9 S.C.C. 548 (India).

<sup>7</sup>Dr. M. Ismail Faruqui v. Union of India, (1994) 6 S.C.C. 360 (India).

practise in a space that upholds the equal personhood of others. Therefore, religious freedom is the right to worship, and the practice of free belief and free conscience. It is the cardinal right to worship. So, it is not out of reason to see that freedom of religion is the godly right of people to practice and to worship belief and conscience.<sup>1</sup>

### Conclusion

It is the Sabarimala Case. It is the relationship of freedom of faith and its substratum in the obtained equality to the rights of faith belief and practices. It is the relationship of Section 25 and the practices of faith belief from the exclusion subjective nature of Section 25 – in the context of faith exclusion to constitutional practices. It is the boundary of Section 25 and the exclusionary practices belief and faith subjective from the context of belief and faith practices to 'common law'. It is the borderline of faith/practices freedom of belief and worship to 'common law', it is the practice of faith belief, and its basis, being a woman exclusion practices belief.<sup>2</sup>

This conclusion was based on Constitutional morality, which takes a normative stance. It called upon the Court to treat the interpretation of religion in the context of dignity, equality, liberty, and social reform. The Principle does not stop religion. Instead, it argues that religion, like all other practices, is a free and equal exercise, must be granted the same value and equality. Thus, with equality and the respect for equal personhood. Consequently, in the case of Sabarimala, the assumption that menstruation rules of purity and the temple do not allow women to be temple devotees.<sup>3</sup>

The decision is still contentious to date, not to mention the already difficult task of drawing a language for the faithful and Constitutional law. However, as a Constitution should be able to address complex layered subordination and exclusions, especially of groups that have been subjugated and marginalized, Sabarimala will be an example of plural and complex Constitutionalism. It will be a legal system that incorporates the essence of equality and dignity to the legal system, and the elements of subordination and inequality. It will be a system of dignity. It will be a system of Constitutional morality.<sup>4</sup>



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<sup>1</sup>T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 S.C.C. 481 (India).

<sup>2</sup>St. Stephen's College v. University of Delhi, (1992) 1 S.C.C. 558 (India).

<sup>3</sup>Bramchari Sidheswar Shai v. State of West Bengal, (1995) 4 S.C.C. 646 (India).

<sup>4</sup>Deoki Nandan v. Murlidhar, A.I.R. 1957 S.C. 133 (India).