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**28 September 2018**
**Daily News Pedia**

### **Reservation In Promotions: Disquiet Over SC's Ruling On Creamy Layer For Scs, Sts**

Government's dilemma over Supreme Court ruling on concept of creamy layer for SC/STs. In the present judgment, the Supreme Court has decided not to collect data of backwardness to provide reservation to SC/STs but it may consider the concept of creamy layer for SC/ST.

Supreme Court has said the concept of creamy layer to be applicable for SC/STs, which, so far, was applicable to OBC only (Families with income above Rs. 8 lakhs/ annum are not eligible for reservation).

*It has been argued concept of creamy layer for SC/STs will defeat the very purpose of reservation because: Since the SC/STs are already considered backward, further dividing them on the basis of economic backwardness to avail reservation may not sound appropriate. This verdict is in contrast to the judgment in the Ashok Thakur case in 2008 when judges while providing the reservation to SC/ST did not considered the concept the Creamy Layer. Economically prosperous SCs will continue to face discrimination in employment. Decision may also encourage the demand to implement the creamy layer criteria in the overall recruitment of SC/STs (from selection to promotion). Nowhere in the world is the reservation provided for equal access to job/education based on the economic criteria. Many sectors are being privatized and there is no reservation in private sector.*

*Supreme Court stands on its Judgement: To ensure there is no discrimination against the poor/backward category within the same class. Will enable the backward classes of citizen to move forward with other citizen of India on an equal basis. SC judgement is within the principal of equality under article 14 and 16 when excluding the creamy layer. Parliament will have complete freedom to include or exclude persons from the Presidential Lists based on relevant factors under Article 341 and 342 of the constitution.*

Source: The Hindu.

### **Adultery is not a crime, rules SC; strikes it off IPC**

A five-judge Constitution Bench held that adultery is not a crime and struck it off the Indian Penal Code. The bench observed that Section 497 (adultery) of the Code "commands" married couples to remain loyal to each other.

*Section 497 in The Indian Penal Code: Adultery-Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.*

Court's observations: Two individuals may part if one cheats, but to attach criminality to infidelity is going too far. There is no data to back claims that abolition of adultery as a crime

would result in “chaos in sexual morality” or an increase of divorce. How married couples deal with adultery is “absolutely a matter of privacy at its pinnacle”. Loss of moral commitment in a marriage creates a dent in the relationship, but it is left to each individual to deal with the problem — some may forgive while others may seek divorce. Punishing each other or the wife’s lover is unlikely to re-ignite commitment. Section 497 treats a married woman as the commodity of her husband. Adultery is not a crime if the cuckolded husband connives or consents to his wife’s extra-marital affair. Section 497 treats a married woman as her husband’s “chattel”. The provision is a reflection of the social dominance of men prevalent 150 years ago.

Source: The Hindu.

### **MDR Reimbursement Pending From Banks**

The Payments Council of India (PCI) has said that reimbursement of merchant discount rates from banks to service providers and merchant aggregators are yet to be received.

MDR is the fee that a merchant has to pay to a bank for every transaction that is split between the bank which issued the card, the payment service providers, and payment gateways (PayUbiz and PayUMoney)

Payment Service Provider – A payment service provider (PSP) offers online services for accepting credit card, debit card, online banking payments. In December 2017, the Ministry of Electronics and Information Technology, had said that MDR would be reimbursed by the government on transactions up to Rs.2000. It is applicable on transactions made through debit cards, BHIM UPI or Aadhaar enabled payment systems.

Payment Council of India: PCI is an apex non-governmental body representing companies in payments and settlement system. It was formed in 2013 under aegis of IAMAI (Internet and Mobile Association of India) to cater needs of digital payment industry in India

Source: The Hindu

### **Section 497 of IPC**

The Supreme Court has declared *Section 497 of the Indian Penal Code as unconstitutional* saying that the penal provision on adultery was manifestly arbitrary and dents the individuality of women.

Section 497 of the 158-year-old IPC says, “Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.”

Past Supreme Court judgements on adultery:

The adultery law had come up in court thrice in the past — in 1954, in 1985, and in 1988.

- In 1954, the SC rejected that Section 497 violated the right to equality.
- In 1985, it said that women didn’t need to be included in the law as a party which can make complaints.
- In 1988, the Supreme Court said that the adultery law was a “shield rather than a sword”.

Important observations made by the Supreme Court: Adultery might not cause of an unhappy marriage, but it could be result of an unhappy marriage. In case of adultery, criminal law expects people to be loyal which is a command which gets into the realm of privacy. Adultery can be ground for civil issues including dissolution of marriage but it cannot be a criminal offence. Any provision treating woman with inequality is not constitutional. Mere adultery can't be a crime, unless it attracts the scope of Section 306 (abatement to suicide) of the IPC.

Section 497 perpetuates subordinate status of women, denies dignity, sexual autonomy, and is based on gender stereotypes. Section 497 based on women as chattel, seeks to control sexuality of woman, hits the autonomy and dignity of woman. Besides, Section 497 perpetrates subordinate nature of woman in a marriage.

Therefore, it should be struck down for violation of Articles 14, 21.

*Problems with Section 497 which the petitioners wanted to be addressed:* The petitioners want the adultery law to be made gender neutral. This is because the law calls for the man to be punished in case of adultery, but no action is suggested for the woman. As per Section 497, a woman whose husband has had sexual intercourse with another woman cannot file a complaint because the law makes no such provision for her. Moreover, the adultery law in IPC reduces women to an object because no consent of the married woman is required for a man to have sexual intercourse with her. As per Section 497, if the woman's husband agrees, the act is not a crime. This is the reason many have called this law an anti-women law.

Source: The Hindu.

### **WAYU- Air Pollution Mitigation Device**

Air pollution control device WAYU (Wind Augmentation Purifying Unit) for traffic junctions was recently inaugurated in Delhi.

WAYU is developed by Council of Scientific and Industrial Research – National Environmental Engineering Research Institute (CSIR-NEERI) as a part of Technology Development Project funded by Department of Science and Technology. The device has the capacity to purify air in an area of 500 meter square. The device consumes only half a unit of electricity for 10 hours of running and has a maintenance cost of only Rs. 1500 per month.

The device works on two principles mainly Wind generation for dilution of air pollutants and Active Pollutants removal. The device has filters for Particulate Matter removal and activated carbon (charcoal) and UV lamps for poisonous gases removal such as VOCs and Carbon Monoxide. The device has one fan and filter for sucking and removing Particulate Matter. There are two UV lamps and half kg of activated carbon charcoal coated with special chemical Titanium Dioxide.

Source: PIB.

### **Umbrella scheme of Border Infrastructure and Management (BIM)**

The Centre has approved ₹8,606 crore for 60 projects being implemented under the umbrella scheme of Border Infrastructure and Management (BIM) to meet special development needs of people living in those areas.

The projects are being implemented in 17 states having the international borders with Pakistan, China, Nepal, Bhutan, Myanmar and Bangladesh. The projects are implemented in 111 border districts to meet special development needs of border population with focus on people living within 50 kms of the international border. The schemes include construction of roads, schools, primary health centres, promotion of rural tourism, border tourism, promotion of sports activities, cleanliness mission, protection of heritage sites, supply of drinking water, community centres, connectivity, drainage, to enable sustainable living in border areas. Construction of helipads in remote and inaccessible hilly areas which do not have road connectivity, skill development training to farmers for the use of modern and scientific technique in farming, organic farming are some of the other areas where the projects are being implemented.

Source: PIB.

## EDITORIAL

To Read

### **Time for Aadhaar to get back to basics**

The Supreme Court has recognized its benefits, but also pushed back against its mission creep

Retired Justice K.S. Puttaswamy has provided a rich vein of jurisprudence for future courts to mine. His petition in 2012 was the foundation of the Supreme Court's (SC's) recognizing a fundamental right to privacy last year and reading down Section 377 of the Indian Penal Code earlier this month. Now, it has led the SC—in what is in many ways is a sequel to the right to privacy judgement—to finally sign off on the Aadhaar programme, albeit a truncated version.

Few issues have generated more heat and light in recent years. Writing the majority opinion, Justice A.K. Sikri has cut through the accusations and counter-accusations pithily: "Howsoever benevolent the scheme may be, it has to pass the muster of constitutionality." The SC's answer to this is a strange one in some ways. On the whole, the majority opinion arrives at the correct conclusion. But it makes missteps along the way. On the other hand, Justice D.Y. Chandrachud, writing the lone dissent, makes several telling points that should help guide future debates about Aadhaar's implementation. This is unsurprising; he has racked up a series of impressive rulings.

Aadhaar infringes the fundamental right to privacy. There can be no reasonable argument against this. Although there are several other aspects of Aadhaar that the judgement has examined, the core issue is thus one of proportionality: Is the extent of the infringement proportionate with the goal of the Aadhaar legislation?

Among the different flavours of judicial review, the 'strict scrutiny' standard, originating in US courts, is the sternest. It is generally reserved for assessing legislation that is discriminatory—reservation laws, for instance. But it can also be used to assess other infringements of fundamental rights. Its recent high points notwithstanding, the SC has a patchy record when it comes to protecting these rights. Employing the strict scrutiny standard, which demands that compelling governmental interest be proved, would have established a healthy precedent. Instead, Sikri has gone with the most lenient standard, "just, fair and reasonable". This is not surprising; the same standard was used in *Justice K. S. Puttaswamy (Retd.) and Anr. vs. Union of India and Ors* last year when reading the fundamental right to privacy into the Constitution. It is, however, disappointing.

The ruling finds that Aadhaar passes the proportionality check—but only by lopping off chunks of it as it exists today and tightening its provisions to prevent misuse or unnecessary use of

citizen data. This is to the good. This newspaper has supported Aadhaar but cautioned against its mission creep. Using it to deliver essential subsidies and benefits that draw upon the Consolidated Fund of India is one thing. Tying it to everything from mobile phone connections to bank accounts is another. Aadhaar was not conceived of as a means for making it easier for the government to track financial activity or kickstart a fintech boom. It has been disheartening to see it metamorphize into exactly that.

This retrofitting has allowed the majority opinion to justify the Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits and services) Act, 2016 being passed as a money bill. If this bit of chicanery hadn't taken place, the mission creep may not have happened to the extent it did. Chandrachud's calling out the government for this in his dissent is not unreasonable. Likewise, his criticism of the government's pushing ahead with Aadhaar in ways that ran counter to the Supreme Court's interim orders while the matter was sub judice. As he puts it, "If governments or citizens were allowed to ignore judicially enforceable directions, that would negate the basis of the rule of law."

He is too harsh, however, in finding that Aadhaar doesn't pass the test of proportionality because "The state has failed to demonstrate that a less intrusive measure other than biometric authentication will not sub serve its purposes." Such a counterfactual is difficult to prove one way or the other. At any rate, the long and well-documented history of leakages and corruption in the country's subsidies and benefits regime shows that the less intrusive measures that have been tried so far have had glaring gaps.

The Aadhaar initiative has been viewed through the lens of political partisanship almost since inception. This has led to an arrogance in its implementation as a pushback against the attacks on it. The rulings—both majority and dissent—show that such heedlessness is dangerous. Plenty of questions remain, from data security to the issue of marginalized individuals being excluded and suffering for it. As Chandrachud has put it, "Constitutional guarantees cannot be subject to the vicissitudes of technology." Safeguards, not bluster, are needed. And what of the Aadhaar data already with banks, telecom companies and others who are no longer authorized to use it?

### **MAINS QUESTION**

**Q: With reference to National Disaster Management Authority (NDMA) guidelines, discuss the measures to be adopted to mitigate the impact of the recent incidents of cloudbursts in many places of Uttarakhand?**