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LIST OF 44 Leading Cases

- 1. T.M.A. Pai Foundation v. State of Karnataka
(2002) 8 SCC 481: AIR 2003 SC 355 (11J) –
P.A. Inamder vs. State of Maharashtra – 2005
(6) SCC 537 (7J) overruling Islamic Academy
2003 (6) SCC 697 (5J)**
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- 2. P.A. Inamdar v. State of Maharashtra: 2004
(8) SCC 139–(2J) referring to larger Bench**
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- 3. Minerva Mills v. Union of India: 1980 (3) SCC
625 (5J) – Parliament has limited amending
power – which is a basic structure of the
Constitution para 17 and 88**

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4. **S.R. Bommai v. UOI: 1994 (3) SCC 1 – (9J) – Federalism / Secularism Article 356 and Floor test.**

5. **L. Chandra Kumar v. UOI: 1995 (1) SCC 400 (7J) – validity of Administrative Tribunal Act 1965/ struck down 99th Constitutional Amendment referred to larger Bench.**

(not in course) 1997 (3) SCC 261 (7J) – held Article 323 A(2)(d) and 323B (d) unconstitutional Judicial Review is basic structure of the Constitution.

6. **Supreme Court Advocate-on-Record Association v. UOI: 1993 (4) SCC 441 (9J) follow in NJAC Case.**

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**7. Samsher Singh v. State of Punjab: 1974 (2)
 SCC 831: (7J) Function of
 President/Governor with aid and advice of
 Council of Ministers**

**8. Bangalore Water Supply & Sewerage Board v.
 A. Rajappa: 1979 (2) SCC 213 (5J) - Industry**
 now referred to larger Bench in **Bir Singh 2005 5 SCC 1**
 = JT 2005 5 SCC 170

**9. Maneka Gandhi v. UOI: 1978 (1) SCC 248:
 (7J) - Article 21 Right to travel abroad
 (Article 14, 19 and 21)**

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**10. A.R. Antulay v. R.S. Nayak: 1988 (2) SCC 602
(7J): S.C. ^{has} inherent power to rectify its error.**

**11. Rupa Ashok Hurra v. Ashok Hurra: 2002 (4)
SCC 388 (5J): - curative petition can be filed
after dismissal of review petition.**

**12. Indra Sawhney v. UOI: 1992 Supp.(3) SCC
217 (9J) - Mandal Commission - Creamy
lawyer test evolved.**

13. Vishaka v. State of Rajasthan: 1997 (6) SCC

241: (3J) – Sexual harassment of guidelines

given, *overruled by statute: Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013*

14. Pradeep Kumar Biswas v. Indian Institute of Chemical Biology: 2002 (5) SCC 111 (7J) –

'State' – Council of Scientific and Industrial Research *held by word "State" in Article 12 - covered has overruled 1975 - Sabhajit Ternary case. (1975) overruled*

15. SBP & Co. vs. Patel Engg. Ltd.: 2005 (8) SCC

618 (7J) (6:1) – Power u/section 11(6) of Arbitration Act by Chief Justice of Judicial Power

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16. I.R. Coelho v. State of Tamil Nadu: 2007 (2) SCC 1 (9J) – All Amendments after April 1973 to be tested on basic structure doctrine.

17. Ashoka Kumar Thakur v. UOI: 2008 (6) SCC 1 (5J) – OBC reservations valid but question as to whether they applied to private un-aided educational institutions left open.

18. CBSE v. Aditya Bandopadhyay: 2011 (8) SCC 497 (2J) – Right to Information ^{Act} ~~Facet~~ of Article 19(1)(a) – evaluating answer books of ^{at} Public examination. *held covered*

19. **Swamy Shraddananda (2) v. State of Karnataka: 2008 (13) SCC 767 (3J) para 98 and 99 - Sentence of Imprisonment for life (till its full Natural span) referred to 5 Judges in 2014 (5) Scale 600 para 48**

20. **Nandini Sundar v. State of Chattisgarh: 2011 (13) SCC 46 (2J) – Right of rehabilitation of tribals under Article 21, 46, 300A.**

21. **Selvi v. State of Karnataka: 2010 (7) SCC 263: (3J) Lie detector test and Brain Profice test) violates right to fair trial (Article 21) Voluntary permissible.**

22. Amarinder Singh v. Punjab Vidhan Sabha:
2010 (6) SCC 113 (5J) – Power and Privileges
of State and Parliament Legislature –
Expulsion held invalid.

23. State of West Bengal v. Committee for the
Protection of Democratic Rights: 2010 (3)
SCC 571 (5J): S.C. and H.C. ^{have} an obligation to
protect the Fundamental Rights under P-III,
and ^{to} direct CBI to investigate ~~a~~ cognizable
offences committed in a State without the
consent of ^{be concerned} State/Judicial ~~review~~ basic
structure of Constitution.

24. Kihota Hollohan v. Zachillhu: 1992 (Supp-2)
SCC 651 (5J): 3:2 Anti defection ^{law w} ~~th~~ ^{front}
Schedule ^{valid} speaker – ~~judicial~~ power. Para 7
struck down. ^(excluded judicial review) Speaker is ⁱⁿ ~~in~~ ^{ten to} ~~the~~ ^{to} ~~Schedule~~
expansive judicial power

**25. Centre for Public Interest Litigation v. UOI:
2012 (2) Scale 180: 2012 (3) SCC 1 (2J) –
Public trust doctrine (2G Cases)**

**26. In re: Special Reference No.1 of 2012 – 2012
(10) SCC 1 (5J) – "Auctions" method of disposal
of natural resources should be by auction.**

unavoidably

**27. Mafatalal Industries Ltd. v. Union of India
1997 (5) SCC (9J) – unjust enrichment case.**

28. Vodafone International Holdings BV v. Union of India (2012) 6 SCC 613 (3J)

29. Zahira Habibulla H. Sheikh v. State of Gujarat (2004) 4 SCC 158 (2J) Best Bakery Case - Failure of State machinery-transfer of case.

30. Malay Kumar Ganguly v. Dr. Sukumar Mukherjee (2009) 9 SCC 221 (2J) - a case of Medical Negligence. Heavy costs awarded ^{against} on the Hospital and doctor.

31. M. Nagaraj v. Union of India (2006) 8 SCC 212 (5J) J. Kapadia—overarching principles of basic structure of Constitution.

32. Aruna Ramachandra Shanbhaug v. Union of India (2011) 4 SCC 454 (2J) Right to die (euthanasia) not included in right to life. Active euthanasia ^{is} ~~are~~ illegal.

33. Sangeet v. State of Haryana (2013) 2 SCC 452 (2J) Principles of balancing ^{all} aggravating and mitigating circumstances of crime to be ^{balanced when} ~~adopted~~ in sentencing.

34. Society for Unaided Private Schools of Rajasthan v. Union of India (2012) 6 SCC 1 (3J) [overruled in 2014 (8) SCC page 1 (5J)]

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35. S.P. Gupta v. Union of India: 1982 (2) SCR 365-overruled in 1993 (4) SCC 44 (9 Judges)
(5J) - Five Judges Case

36. Kharak Singh 1964 (1) SCR 332 = AIR 1963 1295 (7J) - UP Police Regulations domiciliary visits' violative of Article 21 (Secret Picketing of house suspect). *not permitted*

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37. D.K. Basu V. State West Bengal 1997 (1) SCC 416 (2J) – Custodial Violence, Article 21, 22 and compensation, state vicariously liable of the acts of public servants.

38. Vellore Citizens Welfare Forum v. Union of India 1996 (5) SCC 647 (3J) – Environment pollution by Polluter Pays principle ^{applied on} tannery Industries.

39. Naga People's movements of Human Rights v. UOI 1998 (2) SCC 109 (5J) – validity of Armed Forces (Special Powers Act, 1958 upheld).

40. State of Maharashtra v. Sanghraj Damodar Ruparwate - 2010 (7) SCC 398 (2J) - Notification banning the book Shivaji-Hindu King Islamic India by Prof. James Laine (Oxford) - Notification ~~quashed~~ prescribing ^{to} a book ^{was quashed}

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41. Sodan Singh v. New Delhi Municipal Corporation - 1989 (4) SCC 155 (5J) - Pavement Hawkers held right to carry on trade on pavements subject to Article 19(6) ~~restrictions~~ - Right to livelihood Article 21.

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42. Ms. Githa Harlharan v. Reserve Bank of India - 1999 (2) SCC 228 (3J) - upholding right of petitioner mother to act as natural guardian ^{during} charging the lifetime of father. ^{to} Held Section 6(a) of Hindu Minority and Guardianship Act 1956 read down.

Short Notes

1. Concept of "Industry" and tests.

Reference Case:

Bangalore Water Supply and Sewerage Board vs. Rajappa

1978 (3) SCR 207 = 1978 (2) SCC 213


Sec 2 (j) of the Industrial Dispute Act 1947 defines Industry. It contains words of wide import. The problem of what limitations could and should be reasonably read in interpreting the wide words in Section 2(j). It has a wide import where there is a systematic activity, organised by co-operation between the Employer and employee for the production and or distribution of goods and services calculated to satisfy human wants and wishes. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the Employer-employee relations.

For further reading see Bangalore Water Supply and sewerage Board vs. A. Rajappa - 1978 (3) SCR 207. (5J)

This is referred to ^{now} a larger bench in State of UP Vs Jai Bir Singh (2005 (5) SCC 1) (5J) referred to larger Bench.

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2 What is the basic structure of the Constitution?

Reference case: (Minerva Mills vs. Union of India

Item 3 in the list

1981 (1) SCR 206)

(i) Kesavananda Bharti vs. State of Kerala

1973 (Suppl.) SCR 1

(ii) Indira Gandhi vs. Raj Narain

1976 (2) SCR 347

*Item 31 in the list
principles intended to
have stand*

Item 16 in the list
(iii) I. R. Coelho 2007 (2) SCC 1 (93)
2001
(ii) Mangalajodi

not in course

(iv) Recent judgment of NJAC 2015 (11) Scale 1 (53)

- basic structure of the Constitution

The validity of 24th Constitutional Amendment came for discussion in Kesavananda Bharati's case. A writ petition was filed to challenge the validity of Kerala Land Reforms Act 1963 as amended in 1969. But during the 1971 Emergency and pendency of the petition, the Act was placed in 9th Schedule by the 29th Constitutional Amendment. The Petitioner urged that if the power of amendment is to be construed as empowering Parliament to exercise the full constituent power of the people and authorising it to destroy or abrogate the essential features, basic elements and fundamental provisions of the Constitution such a construction must be held illegal and void. This is so because



having only such constituent power as is conferred on it by the Constitution which is given by the people unto themselves, Parliament cannot enlarge its own power so as to abrogate the its own power so as to abrogate the limitation in the terms on which the power to amend was conferred; Parliament being a functionary created under the Constitution cannot arrogate to itself the power of amendment so as to alter or destroy any basic features of the Constitution. Parliament does not become competent to destroy the basic fundamental freedoms which were reserved by the people for themselves. Thus Parliament has no power to alter or destroy all or any one of the fundamental rights or cannot abrogate the limits of its constituent power by repealing those limitations.

Seven Judges (C.J. Sikri, Shelat, Hegde, Grover, Jaganmohan, Reddy, Khanna and Mukherjea) held that the power to amendment under Article 368 is subject to certain implied and inherent limitations and that in the exercise of amending power Parliament cannot amend the basic structure or framework of the Constitution.

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C.J. Sikri explained the concept of basic structure by giving illustrations such as supremacy of Constitution; Republic and democratic form of government, federal character and secular character of the Constitution.

See for detail reading - 1973 (Suppl) SCR 1 Kesavananda Bharti's case and Indira Gandhi's case 1975 (Suppl.) SCC 1 = 1976 (2) SCR 347; Minerva Mills vs. Union of India 1981 (1) SCR 206

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4. Tests of Equality before Law.

It was in Maneka Gandhi's case 1978 (2) SCR 621⁽⁵³⁾ the procedure prescribed by the Passport Act, 1967 was under consideration. There was a conscious departure from the traditional time honoured classification test: Under the old rule unreasonableness and arbitrariness of the law perse could not result in the Court striking down the law. But in this case, Justice Bhagwati (JJ Untwalia and Fazal Ali) speaking of Article 14 said:

“Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades. Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be “right and just and fair” and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied.”

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See for further reading and discussion: Maneka

Gandhi's case – 1978 (2) SCR 621.

This case has been followed throughout in all Constitutional cases .



6. Power of Supreme Court under Article 142

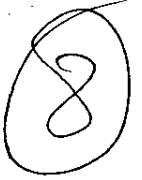
Reference case: A.R. Antulay vs. R.S. Nayak -1988 (2) SCC 602; AIR 1988 S.C. 1531

Antulay vs R.S. Nayak

The Article 142 provides that the Supreme Court in exercise of its our jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any “cause” or “matter” which would include any proceeding pending in Court and would cover almost every kind of proceeding in Court.

The inherent power of the Court under Article 142 coupled with the plenary and residuary powers under Article 32 and 136.

The plenary power of the Supreme Court cannot be curtailed by any statutory provision. Thus the Supreme Court can grant relief where there is some manifest; illegality or want of jurisdiction in the earlier order or some palpable injustice is shown to have resulted. Such a power can be traced either to Article 142 of the Constitution or to the powers inherent in the Supreme Court as the apex Court and the guardian of the Constitution (para 163)



See for further reading - A.R. Antulay vs. R.S. Nayak - 1988

(2) SCC 602

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5. Is a "Creamy Layer" as propounded in Indira Sawhney Case 1992 (Suppl.3) SCC 217 a backward class for reservation?

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See Reference case: Indira Sawhney vs. UOI -1992 (Suppl.3) SCC 217

The Indian Constitution is wedded to the concept of equality. Our Indian society is caste-ridden, yet it is the Constitutional mandate not to discrimination on the basis of caste alone and therefore caste alone cannot be the basis for reservation. Reservation can be for a backward class citizens of a particular caste. Creamy layers cannot be termed as socially for economically backward and therefore this layer and non-backward classes of citizens from that caste have to be excluded.

If forward classes are mechanically included in the list of backward classes or creamy layer among backward classes is not excluded, benefit of reservation will not reach the really backward among the backward classes. Most of the benefits will be then taken away by the forward castes and the creamy layer. That will leave the truly backward, backward for ever.

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Thus the "Creamy Layer" has no place in the reservation system and has to be identified and excluded.

The identification of creamy layer in every backward class is in fact based on horizontal division of every section of backward class into creamy and non-creamy layer. If there are a dozen backward classes and each has a particular percentage of quota in the reservation they can be arranged in a vertical distribution one after the other, and separate and aggregate quota meant for them can be spelled out. But in each of these named backward classes listed one below the other, it is not difficult to make horizontal divisions of those belonging to (i) constitutional offices (ii) particular service (iii) professions (iv) industry and trade (v) particular income level and (vi) particular holding of property etc to separate creamy and non-creamy layers in each vertical sub classification of backward class and say that children of such persons in these horizontal sub-divisions of backward classes will be creamy layer and therefore outside the backward classes.

For further reading see Indira Sawhney's Case 1992

(Suppl.3) SCC 217

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Further in 2000 (1) SCC 168 (33) Indira Sawhney VS State of Kerala
The state was held for contempt for not identifying creamy layer as held in the earlier Indira Sawhney's case (1992)

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Leading Cases Paper IV

1. Concept of Secularism

Reference: See S.R. Bommai vs. UOI (9 J) 1994 (3) SCC
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The words 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by 42nd Amendment. The term 'Secular' has not been defined presumably because it is a very elastic term not capable of a precise definition and perhaps best left undefined.

Secularism is a part of the fundamental law and basic structure of the Indian political system.

Freedom of religion is guaranteed to all persons from the point of view of the State, the religion, faith or belief of a person is immaterial. To the State, all are equal and are entitled to be treated equally. In matters of State, religion has no place. No political party can simultaneously be a religious party. Politics and religion cannot be mixed. Any State Government which pursues unsecular policies or unsecular course of action acts contrary to the Constitutional mandate and renders itself amenable to action under Article

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356. Thus, Secularism is more than a passive attitude to religious tolerance. It is a positive concept of equal treatment of all religions. This attitude is described as neutrality towards religion or as one of benevolent neutrality. In short, in the affairs of State, religion is irrelevant; it is strictly a personal affair.

India can rightly be described as the world's most heterogeneous society. It is a country with a rich heritage. Several races have converged in this subcontinent. they brought with them their own cultures, languages, religions and customs. These diversities threw up their own problems but the early leadership showed wisdoms and sagacity in tackling them by preaching the philosophy of accommodation and tolerance.

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8. Power of President under Article 356 regarding dissolution of Legislative Assembly + flow test.

See Reference case:

(i) S.R. Bommai vs. UOI

1994 (2) SCR 644; 1994 (3) SCC 1

(ii) State of Rajasthan vs. UOI

1978 (1) SCR (1); and AIR 1977 S.C. 1364

Article 356 (1) does empower the President to dissolve the Legislative Assembly. This view is also supported by the earlier case of State of Rajasthan vs. UOI 1978 (1) SCR 1, besides the fact that over the last four decades, the said power has never been questioned. The power to dissolve the Legislative Assembly is implicit in Article 356 Clause (1)(a) though there is no such thing as dissolution of the "Legislature of the State" where it consists of two houses. It must also be recognised that in certain situations, dissolution of Legislative Assembly may be found to be necessary for achieving the purpose of the proclamation. Power there is. Its exercise is a different matter. The existence of power does not mean that dissolution of Legislative Assembly should either be treated as obligatory or should invariably be ordered

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whenever a Government of the State is dismissed. It should be a matter for the President to consider, taking into consideration all the relevant facts and circumstances, whether the Legislative Assembly should also be dissolved or not. If he thinks that it should be dissolved, it would be appropriate, indeed highly desirable, that he states the reasons for such extraordinary step in the order itself. (at p=806; 807)

For further reading refer to S.R. Bommai vs. UOI

1994 (2) SCR 644 at 806 onwards.

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course
- This
was found
to read

See Rameshwar Prasad Vs UOI (S.J)
2006 (2) SCC (Bihar dissolution
Assembly case)

See recent Uttarakhand High Court judgement
at 21st April 2016 (S.R. Bommai - floor test
was followed. The test of any parties
majority is in the House i.e. floor test.)

75 (15)

3. Constitutional Amendments after 24-04-1973 viz a viz Ninth Schedule.

All Constitutional Amendments made on or after 24-04-1973 (Keshavananda Bharti's case) by which Schedule-IX is amended shall have to be tested on the touchstone of basic structure doctrine. Supremacy of Constitution mandates a mechanism for testing validity of legislative acts through an independent organ namely the Judiciary. I.R. Coelho vs. State of Tamil Nadu (9J)

Item 16
in list

2007 (2) SCC 1.

~~relied upon~~ follows Minerva Mills (1980)
(263 SCR)

6. **Executions of Sentence (sec. 302)**

The Sentence of imprisonment for life (till its full natural span) given to a convict as a substitute for the death sentence must be viewed differently and segregated from the ordinary life imprisonment given as the Sentence of first choice. Life imprisonment when awarded as a substitute for death penalty has to be carried out strictly as directed by the Court.

*See 194
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Swamy Shraddananda (2) vs. State of Karnataka

2008 (13) SCC 767 (3J), paras 94,95

This issue is pending before the Hon'ble Supreme Court in Subhash Singh Thakur vs. State of Maharashtra case W.P. Criminal 36/2008 and

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recently 3J Bench in Union of India vs. Shriharan@
Murugan 2014 (5) Scale 600 para 48. Scope of
power of remission under Article 73 and 162 -
^{has been}
referred to ^a Constitution Bench.

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7. Unjust Enrichment – Refund of Excise Duty Claims

Claims for refund on the ground that tax was levied under unconstitutional provision or misinterpretation or erroneous interpretation of the provision, or mistake of law.

Section 72 of Contract Act, Section 9 of CPC
Doctrine of restitution and defence of passing – on paras 52 to 56 and paras 297 to 299; 303 and 346.

1997 (5) SCC 536 (9J)

Para 27
v.
vii.

Mafatlal Industries Vs. Union of India paras 52 to 56; paras 297 to 303; 346.

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2. OBC Reservation – Reservation of 27% seats for OBC's in State aided institutions (93rd Constitutional Amendment) Act 2005 its validity upheld (Article 21A).

Is the inclusion of private unaided institution valid?

(Majority left it open) J. Bhandari said it violates the basic structure of the Constitution and hence invalid (Para 500 to 525 Ashoka Kumar Thakur Vs. Union of India – 2008 (6) SCC 1 (5J)).

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4. Powers, privileges and immunities of State Legislatures and Parliament

Article 105, 194 – nature scope and purpose. It is exercised to safeguard integrity of Legislative functions against obstructions which could be caused by members as well as non-members.

Punjab Vidhan Sabha exceeded its powers by expelling appellant (Amrinder Singh) on ground of breach of privilege when there existed none – Alleged improper exemption of land was an executive act and did not distort, obstruct or threaten integrity of legislative proceedings in any manner. Hence resolution of expulsion under Article 194(3) against appellant invalid.

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Amrinder Singh vs. Punjab Vidhan Sabha

2010 (6) SCC 113 (5J), paras – 92, 93

- ✓ 14. Selvi and Others Vs. State of Karnataka - 2010
(7) SCC 263 (3J) - See paras 247 to 253 (Nacro
analysis, polygraph test) - Lie-detector test.

See 21
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and

BEAP (Brain Electrical activation profile test)

Lie-detector and BEAP tests when conducted under compulsion violate right against self incrimination under Article 20(3) and Article 21 (Right to fair trial). It also violate the right to remain silent under Section 161 (2) Criminal Procedural Code. It violates right to fair trial (paras 247 to 253).

Voluntary undertaking of such tests is permissible provided safeguards as recommended by National Human Rights Commission is observed.

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15. State of Maharashtra vs. Sangharaj Damodar
Rupawate 2010 (7) SCC 398 (2J).

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This Court confirm^{ed} the High Court judgment which set aside and quashed the Notification dated 20-12-2006 issued by Governor under Section 95(1) of Criminal Procedural Code directing forfeiture of ~~the~~ every copy of the book captioned Shivaji - Hindu King in Islamic India written by Professor James W. Laine (Oxford Publication).

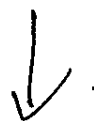
Forfeiture notification must state grounds ^{for} ~~from~~ its opinion under Section 95(1) Criminal Procedure Code and not mere citation of words of the Section.

Para 37 - laid ^{down} (tentative) guidelines for ~~the~~ ^a validity ~~of~~ notification issued under Section 95 of Criminal Procedural Code.

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1. Public trust doctrine - natural resources as natural assets. State as trustee on behalf of its people.
Distribution process must be fair and transparent affording equal opportunity to all parties (2G spectrum case). Level playing field policy of Government (i) Centre for Public Interest Litigation vs. Union of India - 2012 (3) SCC 1 (23) paras 74 to 96.



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Case

(2) In Special Reference ^{No:1} 2012
2012 (10) SCC 1 (53)

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in hand

Method of disposal of natural resources should be by Auction