

# LAW CAPSULE

FOR LAW COMPETITIVE EXAMINATIONS

## GUIDELINES LAID DOWN BY THE SUPREME COURT



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### Introduction

Article 141 and Article 142 of the Constitution of India emanates power of Supreme Court to lay down guidelines. Article 141 states that the law declared by the Supreme Court shall be binding on all Courts within the Territory of India and Article 142 constitutionally enforces the orders/decrees/judgments of the Supreme Court as is necessary for doing complete justice in any cause or matter pending before it.

Supreme Court, post 1975, exercised the said powers liberally and has laid down array of guidelines for complete justice or to fill the void, where no legislation exists on the subject of dispute. Some of the landmark and path breaking judgments are enumerated below.

performances etc. in busy commercial localities on the days of weekly offs. It was submitted that such musical interruptions had become nuisance for residential areas and had made life miserable. As landmark case on Environment Law, it has made creating noise at night (between 10 p.m. and 6 a.m.) as an offence punishable and also given stringent guidelines as to the reduction of noise pollution in the country as a whole wherein regard has been made to every noise creating source in particular.

Guidelines for giving a child in adoption to foreign parents have been laid in the case of *Laxmi Kant Pandey v. Union of India*, AIR 1984 SC 469. Similarly in the case of *Sunil Batra (ii) v. Delhi Administration*, AIR 1980 SC 1579 the Supreme Court laid down guidelines for

### LANDMARK CASES AND GUIDELINES

Cases	Guidelines
<i>Bandhua Mukti Morcha v. Union of India</i> , AIR 1984 SC 802	Set of 21 guidelines to Government to keep a check on gross abuses and to assure observance of social welfare and labour laws enacted for securing workmen a basic human dignity.
<i>D.K. Basu v. State of West Bengal</i> , AIR 1997 SC 3017	Set of 11 guidelines to protect an arrested person.
<i>Forum, Prevention of Env. and Sound Pollution v. Union of India</i> , (2005) 5 SCC 733	Guidelines to reduce noise pollution.
<i>Laxmi Kant Pandey v. Union of India</i> , AIR 1984 SC 469	Guidelines for giving a child in adoption to foreign parents.
<i>Vishaka v. State of Rajasthan</i> , AIR 1997 SC 3011	Guidelines for the protection of the working women from sexual harassment at the work place.
<i>Sunil Batra (ii) v. Delhi Administration</i> , AIR 1980 SC 1579	Guidelines for the protection of the rights of the prisoners.

In the very famous case of *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802, the Apex Court held that 'State' is bound to assure observance of social welfare and labour laws which are enacted for securing workmen a basic human dignity. Thereupon the Apex Court gave a set of 21 guidelines to Government to keep checks and balances on the gross abuses of workmen's rights in future.

In *D.K. Basu v. State of West Bengal*, AIR 1997 SC 3017 while deciding a landmark case dealing with the protection of rights of arrested person Apex Court gave eleven measures to be followed by the police while securing arrest of any person. This judgment of the Supreme Court has given sufficient rights and remedies to have a dignified existence at the time of being imprisoned. The abuse of powers by the police at the time of securing imprisonment has been significantly curtailed by this decision and the Court has in fact also directed that any violation of these guidelines shall be considered as contempt of court and shall be dealt with accordingly.

In *Forum, Prevention of Env. and Sound Pollution v. Union of India*, (2005) 5 SCC 733, guidelines to reduce the noise pollution were laid. These guidelines regulate, noise created by the use of the loudspeakers in religious

the protection of the rights of the prisoners. *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 has focussed attention towards societal aberration, and the assisting in finding suitable methods for realization of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process. The Court defined 'sexual harassment' as 'such unwelcome sexually determined behaviour (whether directly or by implication) as:

- physical contact and advances;
- a demand or request for sexual favours;
- sexually coloured remarks;
- showing pornography;
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.'

### Conclusion

Supreme Court guidelines have played positive role in filling the voids in the legislative scheme of the nation. They are a welcome move towards establishing justice based egalitarian nation.

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		the water of three western rivers of the Indus basin (Indus, Jhelum, and Chenab), except for some portion for the State of Jammu and Kashmir was to be made available to Pakistan and the rest of the rivers (i.e. eastern rivers of the Indus basin) were to be exclusively used by India.
2.	Tashkant Declaration	In 1965 Pakistan infiltrated armed men into the State of Jammu and Kashmir leading to a war with India, ending with Tashkant Declaration, 1965.
3.	Shimla Agreement	In 1971 to divert the attention of the world from atrocities in Bangladesh (then East Pakistan), Pakistan extended the conflict to Jammu and Kashmir. This brought about formation of a new State of Bangladesh. The passage between India and Pakistan ended with Shimla Agreement, 1972.
4.	Lahore Declaration	In 1999 the Prime Ministers of India and Pakistan (i.e. Atal Behari Vajpayee and Muhammad Nawaz Sharif) signed Lahore Declaration agreeing that their respective Governments, <i>inter alia</i> , shall intensify their efforts to resolve all issues, including the issue of Jammu and Kashmir. However subsequent Kargil war has again made any meaningful dialogue difficult for India.

In addition to the above, following can be safely said as salient features of the Legal System of the State of Jammu and Kashmir as on the year 2007:-

- While the Indian Penal Code, 1860, is applicable in other States of India, the penal code in Jammu & Kashmir is called the Ranbir Penal Code (RPC) *Samvat* 1989 *Vikrami* (1932 A.D.).
- Special Status under Article 370 of the Constitution.
- President cannot declare National Emergency and Financial Emergency without the consent of the State Government.
- There is a separate Constitution for Jammu and Kashmir, which came into force on January 26, 1957.
- If Government is not run according to the Constitution, then Governor Rule is imposed for a period of six months. President's Rule can be imposed under Article 356 of the Constitution of India.
- Directive Principles are not applicable in Jammu and Kashmir.
- Right to acquisition of property and residence are given only to the permanent residents of the State.
- Parliament cannot change the name and boundaries without consulting the State Government.
- Powers of Jurisdiction of Election Commission, CAG and Supreme Court have been extended to the State.
- Article 370 cannot be amended by the Parliament.
- It can be made inoperative by an order of the President, which can be issued, with the prior recommendation of Constituent Assembly of the State. To that effect for the purpose a fresh Constituent Assembly will have to be constituted.

## Conclusion

In 1996, after years of terrorist violence, the people of Jammu and Kashmir exercised their democratic rights and chose their government headed by Dr. Farooq Abdullah, President of the National Conference. Presently Jammu and Kashmir has a coalition Government of Peoples Democratic Party (PDP) and Congress. After a long spell of strife and violence, Rule of Law and Justice is slowly returning back to the State of Jammu and Kashmir.

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