CHAPTER 3

HUMAN RIGHTS AND CONSTITUTION
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HUMAN RIGHTS AND CONSTITUTION

3.1 Introduction :-

We usually use the word human structure similar to constitution in daily life. As in colloquial English the Constitution is to Human Structure So in Political Science, the meaning of Constitution is the Structure of State or Organization. The Constitution is said to be a set of Written and Unwritten rules. By these set rules one side there is scope and rights of constitution of state and other side there is Citizen’s rights and duties and relation between State and Citizen. By these set of rules of citizen’s rights, duties and interactive relationship between state and citizen arrangements are made. These are so reliable a structure on which the nature of state and power and citizen’s rights and duties are dependent. All thinkers of political science have made different definitions and expressed different voice about what is constitution and what is the definition of constitution which is stated below:

3.2 Definition :-

According to Gaitil: Those Fundamental principles which determines the nature of any state is called constitution of any organization

Gill Christ says that Constitution is a set of written and unwritten rules or law by which organization of government, distribution power of government in different part, and determines the experiment of powers.

Herman Finer writes that Constitution is arrangement of reliable Political Institutions. \(^{(1)}\)

\(^{(1)}\)sanvidhan avam manav adhikar ch-1H.R. & Law P.No1&3
3.3 Human Rights and Constitution of India

Constitution of India has expressed full respect towards the human rights. Constitution of India considers unity in diversity like it considers different religion, race, caste, sex and color of people which all similar. As well as Constitution of India gives political, civil, economic, social, religion and cultural rights to all people. Main heading is given to the Fundamental Rights in part 3 of Constitution of India. No one can violate it. If anyone violates this then court procedure is to be taken. Remedy can be obtained.(2)

3.4 Sources of the Constitution

“While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in constitution. There should be certain flexibility. If you make anything rigid and permanent, you stop the nation’s growth, the growth of a living, vital, organic people… In any event, we could not make this Constitution as rigid that it cannot be adapted to changing condition. When the world is in turmoil and passing through a very swift period of transition, what we may do today may be fully incapable tomorrow” (3) -Pandit Jawaharlal Nehru

Our Constitution is a very pious document. It is the Fundamental Law of the land. Therefore, it occupies a supreme and unique position in the country’s political arrangements. All the Laws of the land are to be consistent with the provisions of the constitution. If any law has conflict with the Constitution, it can be declared as null and void. Our Constitution is written and rigid, and a beautiful amalgam of the good features of the different Constitution of the world.

3.5 HUMAN RIGHTS INDIAN

The Universal Declaration of Human Rights inspired Constitution of those state which emerged after its adoption. Universal Declaration of Human Rights was

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(2) Manva adhikar ke vividh sandarbh ch10p.no.84
(3) Constituent assembly debates dated 8/11/1948
adopted at the time when Indian Constitution was being drafted and hence almost all the rights enumerated in the declaration finds a place in the fundamental rights; justiciable or non-justiciable. However, in India the Human Rights or Civil liberties have their own history. It has its origin in the nation movement. Granting of some basic rights to people was one of the objectives of national movement, The Swaraj Bill of India, 1895 spoke about freedom of speech, right to privacy and equality, right of franchise and punishment for specific offences only.

The Constitution of India Bill 1895 contained provisions about the rights of citizens. It contains freedom of speech, equality before law, personal liberty, and free education from the State etc.

There was a gradual broadening of the sphere of the rights of the citizens. They were no longer confined to political rights but comprise other civil rights too. They were not yet called fundamental rights. The Congress resolution on Self determination contains as a first step in the practical application the principle of self determination in Indian. Free speech and freedom from arbitrary arrest etc The Common Wealth of Indian Bill, 1925 which was drafted and signed by prominent Indian political leaders was sent to the labour Party of England introduced in Parliament which contained rights of citizen. This document, for the first time gave the name ‘Fundamental Rights’ to the rights of citizens. It provided for personal liberty, freedom of conscience, freedom of speech and assembly, free elementary education, right to use roads, public places etc., equality before law and no discrimination on the ground of the sex. The Constitution recommended in the Nehru Committee Report (1928) contained a complete chapter on fundamental rights. It enlisted a number of rights like earlier documents and reiterated personal liberty, freedom of religion, freedom of speech and assembly, free elementary education, equality before law etc. It made a marked advance by incorporating social welfare provisions in the Fundamental Rights. It impos a duty on Parliament to make laws for the maintenance of health and fitness for work of all citizens securing of a living wage for every worker the protection of Motherhood, welfare of children and economic consequences of old age, infirmity and unemployment.
The national leaders continued their struggle for fundamental rights. Now, the content of fundamental rights came to include within its ambit the economic emancipation of the masses. The Resolution of Karachi Congress, 1931 is a very important document from this point of view. It formulates fundamental rights integrated with economic Programme. It provided for a living wage for industrial workers, limited hours of labour, healthy condition of work, protection against economic consequences of old age, sickness and unemployment, labour to be freed from Serfdom or Condition bordering on Serfdom; protection of women workers and specially adequate provision for leave during maternity period; prohibition against employment of children of school going age in factories etc. It included also a number of provisions regarding school welfare and upliftment. The declarations were reiterated in subsequent resolutions of the Congress.

With the passage of time, the content of Fundamental Rights came to include within its ambit the economic emancipation of the masses. The Resolution of Karachi Congress, 1931 is a very important document from this point of view. It formulated fundamental rights integrated with economic Programme. It contained provision for a living wage for industrial workers, limited hours of labour, healthy conditions of work, protection against economic consequences of old age, sickness and unemployment, labour to be freed from Serfdom or Conditions bordering on Serfdom; protection of women workers and specially adequate provisions for leave during maternity period; prohibition against employment of children of school going age in factories etc. It also included a number of provisions regarding social welfare and upliftment. The declarations were reiterated social welfare and upliftment. The declarations were reiterated in subsequent resolutions of the Congress.

However, the fundamental rights did not find place in the Government of India Act, 1935. But the demand for the fundamental rights continued to be made. The Act of 1935 was declared unacceptable by almost all the political parties. The demand for convening a constituent assembly for framing a Constitution for Indian grew and demanded that fundamental rights should form a part of Constitution was emphasized. The Constitutional proposal of the Sapru Committee contained very forceful arguments in support of the incorporation of fundamental rights in Indian Constitution. Ultimately, power was transferred to a national government and a
Constituent Assembly was formed for framing a constitution. The attainment of Socio-economic justice also became an important objective to be achieved by the nation.

This Charter reflects Indian’s Spirit to promote and Guarantee human rights and fundamental Rights without distinction. Indian Constitution also provides for effective machinery for the enforcement of fundamental rights. If a fundamental right is interfered by the executive or by a Federal or State Law, any person entitled to the right can move the Supreme Court to get the Executive act or Law declared unconstitutional initially the attitude of judiciary in Indian towards the Directive Principles was not favourable and it had nullified many important legislation embodying socio-economic reforms. However, with the passage of time, there has been a shift in the attitude of the Indian judiciary towards socio-economic rights in part IV of the Indian Constitution. The court felt the necessity of a change in its earlier outlook.

In India a number of welfare measures have been introduced, for instance, Employees Provident Fund Act Miscellaneous Provision Act, 1952, Drugs and Cosmetics Act, Consumer Protection Act, 1986 The Criminal Procedure Code 1973 has been amended for giving fair trial to the criminals and limiting pre-trial of the confinement detention. Capital punishment though not abolished has been restricted to exceptional cases of inhuman murders.

India is the greatest champion of Human Rights in the third world. However, the fact remains that there is a wide gap between theory and practice. It should not be forgotten that the emphasis in the Indian Constitution is on the individual citizen and not on the State. The guaranteed human rights have a definite purpose of saving executive arbitrariness and tyrannical conduct. The Supreme Court, the highest Court of the land, is the final interpreter and guardian of the Constitution and of the fundamental rights of citizens since century. The Supreme Court of India had many opportunities to elucidate the scope, amplitude and mode of operation of its power of judicial review, especially under Article 21 of the Constitution. It is to be pointed out that Supreme Court's opinion have not displayed that consistency which one usually expects from the highest judicial organs in the country.
The framers of the Constitution of India adopted American pattern of incorporating the Bill of Rights in the Constitution itself. Prior to independence of India, The Swaraj Bill of India, 1895 contained provisions about the freedom of Speech and expression, right of equality etc. It was felt by the political leaders that the human rights should be given priority so as to take cognizance of human dignity. Fundamental Rights drafted on the basis of the basic human rights were included by the framers of the Constitution in Part II so as to ensure that every individual, in general and every citizen, in particular should be conferred with some basic rights in accordance with the basic norms of democratic country which should not be withdrawn. On the basis of working experience of the Constitution of India till date, it could be safely commented that basic human rights incorporated in part III dealing with Fundamental Rights have been considered to sacrosanct and inviolable by the political parties who had been in power except during the brief period of emergency from 1975 to 1977, which witnessed suspension of Fundamental Rights and resulted in commission of wide spread attacked by government instruments.

In order to achieve this and other objectives, the Constitution laid down various right in Parts III and IV which are known as Fundamental Rights and Directive Principles of State Policy respectively. While the former guarantees certain rights to the individuals, latter gives direction to the State to provide some other rights to its people in specified matters. Directive, though not enforceable before the Courts, are not to be regarded inferior to the fundamental right. The Constitution under Article 37 lays down that the provision contained in this part shall not be enforceable by any Court. But the principles laid down therein are nevertheless fundamental in governance of the country. It shall be the duty of the State to apply these principles in making laws. It may be stated that fundamental rights and directive principles together constitute the conscience of the Constitution. In Keshvanand Bharti V. State of Kerala, Chandrachud, J. observed that our Constitution aims at bringing about a synthesis between fundamental rights and the Directive principles of State Policy by giving to the former place of pride and to the latter a place of permanence.\(^{(4)}\)

\(^{(4)}\) Understanding of H.R.-12
3.6 Indian Constitution and dimensions of Human Rights

The freedom fighters even before India as an independent Nation came into being have expressed their willingness to join attempts towards establishing peace harmony all over the world ensuring basic Human Rights to all members of Human society.\(^{(5)}\) In fact Congress Delegation had represented India in San Fransisco conference leading to signing of U.N. Charter. When the time for framing of the Constitution on attainment of independence came into the force, the commitment to the cause of Human rights was more than reflected in the final draft of India Constitution.\(^{(6)}\) The very preamble wedded to the idea of socialistic pattern of society ensured social economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and opportunity to all without any distinction as to race, cast, sex, religion, place of birth etc. Abolishing untouchability and titles of all kind barring military and academic distinctions, The Constitution instituted equality, provides right to freedom of speech and expression, peaceful assembly, freedom from arbitrary arrest, protection of life and liberty right against exploitation, freedom of conscience and free profession, practice and propagation of religion, and educational and cultural rights. It also provided teeth to these right by making them enforceable by direct access to the Supreme Court of India.\(^{(7)}\) India social system from the very beginning has responded has well to the Human Rights activism all over the world.

It may be noted the concept of Human Rights in a multiethnic, multireligious and diversified society like India which according to Pandit Nehru is the museum of world religions; has a special significance. This is due to the reasons.

(a) The instance and occasions for violation and suppuration of Human Rights are numerous due to need of security, unity and integrity and of law and order.\(^{(8)}\) would be right to observe that greater the variety of people and ethnicities, the greater shall be the kind of Relations amongst them and simultaneously there shall be greater number of occasions and instances of conflict wherein shall be called in the state to act as umpire amongst the people.

(b) In a society where the law has been conceived to be an instrument for bringing about the social change the people naturally develop the habit of looking towards the state for every social political or ethnic conflict. This leads to the State interference at every step of human relations and therefore numerous instances of suppression and abuse of Human Rights.\(^{(9)}\)

But one must also not forget that this situation also provides a fertile ground of experimentation in evolving means for combating Human Rights violations and oppressions and development of Human Rights jurisprudence.\(^{(10)}\)

This Herculean effort of the founding fathers of Indian Constitution of breaking ground with the traditions and providing far reaching and freedoms of all Indian citizens were further strengthened and added to by a vivacious and dynamic Judicial system with Supreme Court at the Apex. Gradually, over the years, the role of Supreme Court of India has been commendable in expanding the areas of human rights preponderantly while interpreting the Indian Constitution in article 21, as the most fruitful article. It is the human dignity that gives substance to human rights, and therefore right to life includes all those rights that make up man life worth Living. The right to live with human dignity must mean and include protection of health and strength to workers, men and women and of the tender aged children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of dignity, educational facilities and human conditions of work and maternity relief. These are the minimum requirements which must exit in order to enable a person to live with human dignity.

In the comprehension of the Supreme Court the right to life and liberty includes, right to human dignity, right of privacy, right to travel all over the world, right to speedy trial, right to free legal aid, right of prisoner to be treated with dignity and humanity, right to bail, right to compensation for custodial death, right of workers to fair wage and human conditions of work, right to social security, right of workers

\(^{9}\) P. N. Mishra International Law and the Violation of Human Rights AIR 2000
\(^{10}\) George Oliver Human Rights Dynamics: claims asserted and recognized 137
to participate in the management, right to shelter, right to education, right to healthy environment, Apart from these, are enshrined in the Constitution of India, the usual Civil and Political rights, right to freedom of speech and expression, freedom of assembly, freedom from to form association and union, right to free movement, right to practice anyprofession or vocation and carry on any trade movement, right to practice any profession or vocation and carry on any trade business or occupation, right to free elections and democratic from of Government and preservation of rule of Law have been declared as basic features of the Constitution.

3.7 Implication of Human Rights under Indian Constitution

All human beings, whatever their cultural or historical background, suffer when they are intimidated, imprisoned or tortured….We must, therefore, insist on a global consensus, not only on the need to respect human rights worldwide, but also on the definition of these rights….for it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal right to achieve that.

- The Dalai Lama

People in democratic countries enjoy certain rights, which are protected by judicial system of the country concerned and which are very essential for human existence. Their violation, even by the State, is not allowed by the courts. In Indian context, India respects the rights of the people, which are listed in our Constitution under the heading “Fundamentals Rights.” The objectives of this chapter are: to explain the meaning and importance of human rights; to explain the meaning and importance of Fundamental Rights; to explain the implication of human rights under Indian Constitution by name of Fundamental Rights; to highlight that the dignity of an individual is protected and safeguarded through Fundamental Rights; to recognize that the enforcement of Fundamental Rights is ensured through High Court and the Supreme Court; recall the safeguards against deprivation of life and personal liberty except according to the procedure establish by law to identify the right to constitutional remedies
3.7.1 HUMAN RIGHTS: ITS MEANING AND SIGNIFICANCE

Democracy, as Lincoln defined it, is a government of the people, for the people and by the people. It gives every citizen some basic human rights to pursue his career, express his views, and pursue his happiness Thomas Jefferson said:

We hold these truths to be sacred and undeniable; that all men are created equal and independent, that form that equal creation they derive rights inherent and undeniable, among which are the preservation of life and liberty, and the pursuit of happiness.

Basic human rights have been the cornerstone of every civilized society and democratic set-up for centuries, though it is only during the past one or two decades that there is so much talking about them in the national and international form. How these rights are respected in a democratic country is evident from the remark of a British M.P. who felt quite offended by words of an opponent: “I absolutely disagree with the gentleman but I will defend until my death his rights to say so.” Thus, the people who do not enjoy such rights and liberties are scarcely better than slaves. Abraham Lincoln opposed slavery system in America and put efforts to abolish slavery system. He was of the view: “just as I would not like to be a slave, so I would not like to be a master.”

Keeping this fast in view, the United Nations General Assembly came out with its historic Universal Declaration of Human Rights on December 10, 1948 and expected these rights to be respected and honored by all members States. The Preamble of Universal Declaration of Human Rights reads as:

The General Assembly proclaim this Universal Declaration of Human Rights as a common standard of achievement for all people and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

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The basic human rights enshrined in the Universal Declaration are the foundation of justice, peace, and freedom in the world and the recognition to this individual’s dignity and equality with his fellow citizens. According to this declaration, every human being has a right to lead a life of dignity and respect. He is free to follow any political ideology; and to express it freely in speech and writing. He is free to choose his trade or profession and to realize his potential through hard and honest means. He has a right to food, health, shelter and other basic necessities of life.

3.7.2. Human Rights: Historical Background And Their Implementation in Indian Context

It is accepted from very early time that man has certain essential, basic, natural and inalienable rights or freedoms and it is the function of the state, in order to overall development of a human being, to recognize these right and freedoms and allow them. The concept of human rights can be traced to the natural law philosophers, such as, Locke and Rousseau. The natural law philosophers philosophized over such inherent human rights and sought to preserve these rights by propounding the theory of “social compact.”

According to Locke, man is born “with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the Law of Nature” and he has by nature a power “to preserve his property that is, his life, liberty, and estate, against the injuries and attempts of other men.” In history of human rights French Revolution, 1789, this may be regarded as a concrete political on human rights. The concept of human rights protects individuals against the arbitrariness of the state. The concept of human rights represents an attempt to protect the individual from oppression and injustice. In modern era, it is widely accepted that the right to liberty is spirit of a free society and must be protected all times.

It was observed by the Supreme Court in the case of Chairman Rly. Board v. Chandrima Dasthat the purpose of enumerating Fundamental Rights in the Constitution “is to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of the political parties who, by virtue of their majority may come to form government at the centre or in the State.”
The modern trend of guaranteeing Fundamental Rights to the people may be traced to the Constitution of the U.S.A. drafted in 1787. The U.S. Constitution was the modern Constitution to give concrete shape to the concept of human rights. The original U.S. Constitution did not contain any Fundamental Rights. Consequently, the Bill of Rights came to be incorporated in the Constitution in 1791 which protected life, liberty and property.

In modern times, the concept of the people’s basic rights have been given a more concrete and universal texture by the Charter of Human Rights enacted by the United Nations and the European Convention on Human Rights. The Preamble to the Universal Declaration of Human Rights inter alia declares: Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

While interpreting the Fundamental Rights provisions mentioned under part III in the Indian Constitution, the Supreme Court has drawn from the International Declarations on Human Rights. We can understand it through an example as in the case Madhu Kishwar v. State of Bihar, the Supreme Court referred to the declaration on “The Right to Development”, adopted by the UN General Assembly on December 4, 1986, and also to Vienna Conventions on the Elimination of all forms of Discrimination against women (CEDAW) ratified by UNO on Dec. 18, 1979.

In Indian context, a few reasons made the enunciation of the Fundamental Rights in the Constitution. Main reason was the demand of these rights against the British rule for a very long period. During the British rule, human rights were violated by the rules on a very scale. Therefore, the framers of the Constitution had a very positive attitude towards these rights. The second main reason was that, the India is fragmented into many religious, cultural, and linguistic groups, and it was necessary to declare Fundamental Rights to give to the people a sense of security and confidence. The need to have the Fundamental Rights was so very well accepted on the all hands in the constituent assembly the point was not even considered whether or not incorporate such rights in the constitution. In fact, the fight all along was against the restriction being imposed on them and all along was to have the fundamental rights on as broad and pervasive a basis as possible.
It was held in Pratap Singh v. State of Jharkhand that Part III of the
Constitution protects substantive as well as procedural rights. And it was held in
People’s Union for Civil Liberties v. Union of Indian, that the Indian Constitution
guarantees essential human rights in the form of Fundamental Rights under Part III
and also directive principles of State policy impart IV which are fundamental in the
government of the country. Freedoms granted under Part III have been liberally
construed by various pronouncements of the Supreme Court in the last half a century
keeping in view the International Covenants to which India is party. The object has
been to place citizens at a centre stage and make the State accountable.

In case Maneka Gandhi, the landmark case which initiated the process of
expansion of the scope of Art.21, the Court observed: “The attempt of the Court
should be to expand the reach and ambit of the Fundamental Rights rather than to
attenuate their meaning and content by a process of judicial construction.” The great
metamorphosis that has occurred in the judicial view as regards Art.21 can be
appreciated if the restrictive view adopted by the Supreme Court in Gopalan is set
against the expansive interpretation of Art.21 in a series of cases beginning Maneka
Gandhi in 1977. In a nutshell, it may be said that On the whole. The Supreme Court
has displayed judicial creativity of a high order in interpreting the Fundamental
Rights, especially during the last two decades. Reference may be made in this
connection inter alia to such landmark Supreme Court cases as Maneka Gandhi, Indra
Sawhney, Asiaa cases. In the case of Ajay Hasia v. Khalid Mujib, Bhagwati, J., has
observed: “It must be remembered that the Fundamental Rights are constitutional
guarantees given to the people of India and are not merely paper hopes or fleeting
promises and so long as they find a place in the Constitution, they should not be
allowed to be emasculated in their application by a narrow and constricted judicial
interpretation.”

The rights, which are enshrined in Part III of the Constitution, are called
‘Fundamental Rights’. These rights ensure the fullest physical, mental and moral
development of every citizen. They include those basic freedoms and condition which
alone can make life worth living. Fundamental Rights generate a feeling of security
amongst each and every sector in the country. They establish the framework of
‘democratic legitimacy’ for the rule of the majority. It is. But, obvious that no
democracy can function in the absence of basic rights such as freedom of speech and expression. Fundamental Rights provided standards of conduct, citizenship, justice, and fair play. They serve as a check on the government. Various social, religious, economic, and political problems in our country make Fundamental Rights important. In our Constitution, Fundamental Rights are enumerated in Part III from Articles 12 to 32. These rights are justifiable. Justifiable means that if these rights are violated by the government or anyone else, the individual has the right to approach the Supreme Court or High Courts for protection of his Fundamental Rights.

Our Constitution does not permit the legislature and the executive to curb these rights either by law or by an executive ordered Supreme Court or the High Court can set aside any law that is to and the abridging the Fundamental Rights. Some of the Fundamental Rights are also enjoyed by foreigners, for example, the Right to Equality before Law and Right to Freedom of Religion. The Fundamental Rights though justiciable are not absolute. The Constitution empowers the government to impose certain restrictions on the enjoyment of these rights in the interest of public good. India, like other countries of the world, is a signatory to the Universal Declaration of Human Rights. It is, perhaps, because of this reason that Part III of our Indian Constitution covers 24 Articles (Articles 12 to 35) which mainly deals with the Fundamental Rights of Indian Citizen. In fact, this Part III of India Constitution is also known as Indian Citizen. Declaration of Human Rights.\textsuperscript{(11)}

3.8 Fundamental Rights In Indian Constitution

Fundamental Rights in India Constitution

The Fundamental Rights are defined as basic human rights of all citizens. These rights, defined in Part III of the constitution, apply irrespective of race, place of birth, religion, caste creed or gender. They are enforceable by the courts subject to some restrictions.

\textsuperscript{(11)}Human Rights Ch.-11
Significance and characteristic of Fundamental Rights

The fundamental rights were included in the Constitution because they were considered essential for the development of the personality every individual and to preserve human dignity. The writers of the Constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognized and protected by the State. According to them, ”democracy” is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the Constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the fundamental rights.

All people, irrespective of race, religion, caste or sex, have been given the right to move the Supreme Court and the High Courts for the enforcement of their fundamental rights. It is not necessary that the aggrieved party has to be the one to do so. Poverty stricken people may not have the means to do so and therefore, in the public interest, anyone can commence litigation in the court on their behalf. This is known as “Public interest litigation”, In some cases, High Court judges have acted on their own on the basis of newspapers reports.

These fundamental rights help not only in protection but also the prevention of gross violations of human rights. They emphasize on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background. Some fundamental rights apply for person of any nationality whereas others are available only to the citizens of India. The right to life and personal liberty is available to all people and so is the right to freedom of religion. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are reserved to citizens alone, including non-resident Indian citizens. The right to equality in matters of public employment cannot be conferred to overseas citizens of India.

Fundamental rights primarily protect individuals from any arbitrary state action, but some rights are enforceable against individuals. For instance, the Constitution abolishes untouchability and also prohibits beggar (forced labour). These provisions act a check both on state action as well as the action of private individuals.
However, these rights are not absolute or uncontrolled and are subject to reasonable restrictions as necessary for the protection of general welfare. They can also be selectively curtailed. The Supreme Court has ruled that all provisions of the Constitution, including fundamental rights can be amended. However, the Parliament cannot alter the basic structure of the Constitution. Features such as Secularism and Democracy fall under this category. Since the fundamental rights can only be altered by a Constitutional amendment rights inclusion is a check not only on the executive branch but also on the Parliament and Legislatures.

A state of national emergency has an adverse effect on these rights. Under such a state, the rights conferred by Article 19 (freedoms of speech, assembly and movement, etc.) remain suspended. Hence, in such a situation, the Legislature may make laws which go against the rights given in Article 19. Also, the President may be order suspend the right to move court for the enforcement of other rights as well.

3.8.1 FUNDAMENTAL RIGHTS

12. Definition – In this part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the State and all local or other authorities within the territory of Indian or under the control of the Government of India.

13. Laws inconsistent with or in derogation of the fundamental rights.
(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,-

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

[(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]^{(12)}

Notes on Article 13

The main object of Article 13 is to secure the paramount of the Constitution in regard to fundamental rights. The first clause related to the laws already existing in force and declares that pre-Constitution laws are void to the extent to which they are inconsistent with the fundamental rights. The second clause related to post-Constitution laws and prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. The expression “the State” is to be construed in conformity with Article 12 as judicially interpreted. The ambit of the expression “law” is defined in Article 13(3)(a) itself, so as to ensure that the paramount of the Constitution extends also to:-

(a) Temporary laws, such as Ordinances, Acts as well as permanent laws;
(b) Statutory instruments in the nature of subordinate legislation, specifically described as “order, bye-law, rule, regulation, notification” having in the territory of India the force of law;
(c) Non-legislative sources of law, that is to say, custom or usage having in the territory of India the force of law.

The object of the definition in Article 13 is to ensure that instruments emanating from any source of law-permanent or temporary, legislative or judgment or any other source-will pay homage to the Constitutional provision relating to fundamental rights. At the same time, clause (4) seeks to ensure that a Constitutional amendment does not fall within the definition of law in Article 13, and its validity cannot be challenged on the ground that it violates a fundamental rights. But it should be noted that

^{(12)}Ins. By the Constitution (24th Amendment) act 1971 Section 2
fundamental rights as such, while not immune from Constitutional amendment, may, in some cases. Form part of the theory of basic features, enunciated in certain decision by the Supreme Court. The chronology of important Supreme Court decisions on the subject is as under:

2. Keshavanada Bharati v. State of Kerala, AIR 1973 SC 1461: (1973) 4 SCC 225: 1973 Supp SCR 1, which, while upholding the validity of the Constitution (24th Amendment) by which Article 13(4) was inserted, laid down (by majority) the theory that there were certain basic features which could not be amended the amending power.
3. Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789: (1980) 3 SSC 625, which declared that even though the 42nd Amendment sought to amend Article 368 (relating to the amending power) there shall be no limitation whatsoever on the Constituent power of Parliament to amend, by way of addition, variation or repeal, the provisions of the Constitution under Article 368, a Constitutional amendment which relates to a basic feature (e.g. total exclusion of judicial review) would be void.

**Act of State**

In State of Haryana v. Amar Nath Bansal, AIR 1997 SC 718 (paragraph 10): (1997) 10 SCC 700: 1997 Lab IC 550: (1997) 1 SLR 55 it has been held that as a result of the Covenant entered into by the Rulers of the States there was the establishment of a new sovereign over the territories comprising the States of the Rulers. The Covenant is, therefore, an Act of the State. With regard to the Act of the State, the law is settled. The residents of the territories which are acquired do not carry with them the rights which they possessed as subjects of the ex-sovereign. As
subjects of the new sovereign they possess only such rights as are granted or recognized by him.

**Basic features**

The “basic features” of the Constitution cannot be amended by exercising the power of amendment under Article 368. The Constitution (Forty-second Amendment) Act, 1976, which inserted in article 368(5) a provision that there is no limitation on the constituent power of the Parliament to amend the Constitution, has been invalidated by the Supreme Court, adhering to the doctrine of basic features. Though fundamental rights, as such, are not immune from amendment en bloc, particular rights or parts thereof may be held as basic features. See the under mentioned cases:


**Severability**

When a particular provision of an enactment (or of subordinated legislation) is found to be void as violating a Constitutional provision (e.g., a provision as to fundamental rights) the question may arise as to what is the impact of such finding on the other provisions of the Act, etc. The answer to this question depends on the answer question, namely:- Is the other provision so intimately connected with the void provision-

(a) That each is inextricably to bound up with the other, or

(b) It can be assumed that the legislature would not have enacted the one without enacting the other? If the answer under (a) or (b) above is in the affirmative then the other provision also becomes void.
Treaties on human rights

The most remarkable institutional development in human rights has been the evolution of an international multilateral treaty regime, with appropriate monitoring bodies. At the time of the only previous World Conference on Human Rights that held in Teheran in 1968 not a single human rights treaty body existed. By the time of the world conference in Vienna, several treaty bodies had come into existence under seven treaties namely the International Covenant on Civil and Political Rights, 1966 the In International Covenant on Economic, Social and Cultural Rights, 1966 the Convention on the Elimination of all Forms of Racial Discrimination, 1966 the Convention on the Suppression and Punishment of the Crime of Apartheid, 1973 the Convention on the Elimination of Discrimination against Torture, and the Convention on the Rights of the Child, 1989. At the time of the Vienna Conference 168 States were parties to these treaties, all plugged into their monitoring procedures?

These are Universal treaties, in the sense that they are upon to all States. At the center stands the International Covenant on Civil and Political Rights, with its detailed provisions and rather substantive monitoring procedures. The Covenant on Economic, Social and Cultural Rights has also developed monitoring procedures-in part modeled on the committee under the Civil and Political Covenant, and, in part fashioned for their own separates need. The other treaties specify in future detail specific rights already contained in the International Covenant on Civil and Political Rights, and provide further monitoring mechanisms.

The most important of these monitoring mechanisms has been the examination, in their presence, of reports submitted by the States parties. The fact that all States are required to participate in this monitoring procedure and that the calling in, on State for examination does not, of itself, indicate an adverse finding rather it has encouraged even state with adverse human rights situation to participate. Some of
these treaties provide for Optional Protocols, under which State can agree to individuals within their jurisdiction bringing legal claims of human rights violations. This procedure is particularly well developed under the International Covent on Civil and Political Rights, where the Human Rights Committee has now established a very substantial jurisprudence. As of 15 May, 1994, there are 126 States parties to the Covenant, and 74 of them accept the Optional Protocol. The number is growing rapidly.

**Voidness**

Clause (1) of Article 13 provided that the existing laws which clash with the exercise of the fundamental rights conferred by Part III of the Constitution shall, to that extent, be void; Keshavan v. State of Bombay, (1951) SCR 228: AIR 1951 SC 128: 53 Bom LR 458.

But they are not void ab initio. Existing laws which are inconsistent with any provision of Part III are rendered void only effect from the commencement of the Constitution.


Clause (1) of Article 13 is no uncertain terms states that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part III there, shall, to the extent of such inconsistency, be void, Where the Act is a pre-Constitution enactment, the question as regards its Constitutionality will, therefore, have to be judgment as being law in force at the commencement of the Constitution of India; johan Vallamattom v. Union of India, AIR 2003 SC 2902: (2003) 6 SCC 611: (2003) 3 KLT 66.

**Working of Act**
How an Act has been worked may be looked at for assessing validity; Charan lal Sahu v. Union of India, (1990) 1 SCC 613 (667): AIR 1990 SC 1480.

Right to Equality

14. Equality before law. - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Notes on Article 14

Admission in college

For admission to LL.B. course in the Department of Laws in the PunjabUniversity, reservation of seats for employees of the University and their wards in unconditional. It has no reasonable nexus with the object of selection; Parveen Hans v. Registrar, AIR 1990 NOC 107 (P&H): 1 Serv LR 808. Such reservation cannot be made as a measure of welfare. Following decisions were referred:

(ii) Ajay Kumar v. Chandigarh Administration, AIR 1983 P&H 8.
(iii) Ajay Kumar Mittal v. HaryanaAgricultureUniversity, AIR 1984 P&H 278.
(iv) Ashwinder Kaur v. PanjabUniversity, AIR 1989 P&H 190.

The High Court of Madhya Pradesh has held that the Madhya Pradesh Government Rules for selection for Post Graduate medical Course 1984 Rule 8.5 (b)(iii) which allots market for participation in NCC (the National Cadet Corps) is arbitrary and void for the following reason.

(i) It has no nexus with the object of selection,
(ii) All institutions do not have NCC facilities,
(iii) The rule does not provide for any (level of) achievement by the candidates. All certificates are given weightage.

In the same judgment, it has been held that a rule giving choice of discipline to only the children of Government servants is void. Besides this, the judgment invalidates a rule which provides that 10 marks shall be added for securing distinction in each subject. Such a rule has no rational basis. A candidate securing distinction has

Similarly Rule 95 (a) and (b) Madhya Pradesh Rules, which provides for the weightage of marks to Assistant Surgeons on the basis of their rural service, is arbitrary. It has no nexus with the object of selecting the best candidate for Post Graduate course; P.S. Doshi v. State of Madhya Pradesh, AIR 1990 MP 171.(Rules for Post Graduate Medical courses).

On the question of reservation in educational institutions (particularly medical institutions) see further the following cases:-


**Backward areas**


Industrial units were set up in backward areas at the instance of States Government. Special treatment was given to them assuring supply of Sal seeds at concessional rates for oil extraction. It was held that the distinction was reasonable; M.P. Oil Extraction v. State of Madhya Pradesh, AIR 1998 SC 145: (1997) 7 SCC 592.

**Doctrine of natural justice**

While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if it may said so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket
formula cannot be made applicable but compliance of the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and of on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance of the doctrine, the law courts in that event ought to set right the wrong inflicted upon the concerned person and to do would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action; Kumar Mandal Vikas Nigam Ltd. v. Girja Shankar Pant, AIR 2001 SC 24: (2001) 1 SCC 182: 2001 Lab IC 11.

**Education**

Rules of admission (to medical courses) specifying length of service for purpose of claiming admission in the quota reserved for children of ex-servicemen, are valid; G. Been v. Andhra Pradesh University of Health Science, AIR 1990 AP 247, paragraph 16 (Full Bench of 5 judges). “The reservation made in favour of the children of ex- servicemen is not one of the categories mentioned in article 15(4) of the Constitution. But such reservations have been upheld by the courts on the ground of reasonable classification.”

**Equal Citizens**

The superiors of disabled employees are duty bound to follow law and it is not open to them to allow their bias to defeat their lawful rights.

What the law permits to them is no charity or largess but their right as equal citizens of the country; Bhagwan Das v. Panjab state Electricity Board, AIR 2008 SC 990.

**Equal pay for equal work**

The doctrine of equal pay for work postulates equal pay for equal work for those who are equally placed in all respects, Uttar Pradesh Sugar Corpn. Ltd. v. Sant Raj Singh, AIR 2006 SC 2296.
Equality

The equality clause enshrined in Article 14 is of wide import. It guarantees equality before the law or the equal protection of the laws within the territory of India. The restriction imposed by reason of a statute, however, can be upheld in the event it the event it be held that person to whom the same applies, forms a separate and distinct class and such classification is a reasonable one based on intelligible differentia having nexus with the object sought to be achieved; John Vallamattom v. Union of India, AIR 2003 SC 2902: (2003) 6 SCC 611: (2003) 3 KLT 66.

Equals and Unequals

Unequals are not only permitted to be treated unequally but also they have to be so treated; St. Stephen’s College v. University of Delhi, (1992) 1 SCC 558, paragraphs 97-100: AIR 1992 SC 1630.

The ‘creamy layer’ in the Backward Class is to be treated ‘on par’ with the forward classes and is not entitled to benefits of reservation. If the ‘creamy layer’ is not excluded, there will be discrimination and violation of Articles 14 and 16(1) in as much as equals (forwards and creamy layer of Backward Classes) cannot be treated unequally. Again, non-exclusion of creamy layer will also be violative of Articles 14, 16(1) and 16(4) since unequals (the creamy layer) cannot be traded as equals that is to say, equal to the rest of the Backward Class; Indra Sawhney v. Union of India, AIR 2000 SC 498: (2000) 1 SCC 168: 2000 SCC (L&S) 1.

The equal treatment to unequals is nothing but inequality. To put both categories-tainted and the rest-at par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution; Onkar Lal Bajaj v. Union of India, AIR 2003 SC 2562: (2003) 2 SCC 673.

Principle of equality

Procedural discrimination

Article 14 forbids discrimination in matters of procedure also.

(iv) Special Courts Bill (In re :), AIR 1979 SC 478: (1979) 1 SCC 380: (1979) 2 SCR 476.

Rajasthani language


Reasonable restriction

A limited power of exemption from the operation of noise rules granted by the Central Government in exercise of its statutory powers is not unreasonable. The power to grant exemption is a reasonable restriction placed in public interest; Forum, Prevention of Envn. & Sound Pollution v. Union of India, AIR 2006 SC 348.

Reasonableness

An important consequence of the rights to equality is the element of reasonableness. Classification which is unreasonable is open to challenge and to this extent the policy of legislation is open to judicial review. This aspect is illustrated inter alia, in the following decisions:-
Any act of the repository of power legislative or administrative or quasi judicial is open to challenge if it is in conflict with Constitution or the governing Act or the general principles of the law of the land or if is so arbitrary or unreasonable that no fair-minded authority could ever have made it; Shri Sita Ram sugar Co. Ltd. v. Union of India, AIR 1990 SC 1277 (1297): 3 SCC 223.

15. **Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.**— (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and place of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

(3) Nothing is this article shall prevent the State from making any special provision for women and children.

[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for Scheduled Castes and the Scheduled Tribes.][13]

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[13] Added by the constitution first amendment act 1951 section 2
[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provision related to their admission to educational institutions including private educational institutions whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

**Notes on Article 15**

To promote the educational advancement of the socially and educationally backward classes of citizens, i.e., the OBCs or the Scheduled Castes and Scheduled Tribes in matters of admission of students belonging to these categories in unaided educational institutions, other than the minority educational institutions referred to in clause (1) of article 30 of the Constitution, in article 15 clause (5) has been inserted after clause (4). The new clause (5) shall enable the Parliament as well as the State Legislatures to make appropriate laws for the purposes mentioned above.

**Area-wise reservation**

Area-wise reservation (article 371D 0 prevails over reservation under article 15(4); D. Rajesh babu v. Nizam Institute of Medical science, AIR 1998 AP 162 (FB).

**Backward class**

Clause (4) article 15 may at the first sight appear to be blanket provision, protecting any kind of beneficial discrimination in the nature of special provisions for the benefit of the classes mentioned therein. However, apart from questions as to when a particular class can be legitimately regarded as backward class, discriminatory provisions of such a nature may be struck down as unreasonable in the circumstances. This is no on that the general right of equality guaranteed by article 14, would override the special provision under article.15 (4), in such circumstances. Hence,

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[^14]: Ins. By the Constitution (93rd Amendment) act 2005
reservation of an excessively high percentage of seats in technical institutions for classes would be void. In fact, ordinarily speaking, reservation in excess of 50 per cent of available seats may not be upheld. The under mentioned decisions may be seen on this point.


In making reservation by executive order by virtue of article 15(4), the State has to take care that it is not unduly wide. Apart from Schedule Castes and Scheduled Tribes, the order classes' eligible for reservation, if made by the State, is the category of “socially and educationally backward classes of citizens”. In article (a directive principle of State policy) it is the obligation of the State to promote with special care the educational and economic interests of “the weaker sections of the people” and in particular, “of the Scheduled Castes and the Scheduled Tribes” which is provided for. By articles 335, it is provided that the claim of the members of the Scheduled Castes and the Tribes shall be taken into consideration consistently with maintenance in the administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. But this article does not mention backward classes. Virtually, the Supreme Court has held the element of efficiency of administrations as a limitation on article 16(4). Incidentally, article 16 (4) speaks of reservation of appointment of posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service under the State.
But this article has to be interpreted in the background of article 335 as mentioned above. Under mentioned decisions may be seen on the above aspect:


If the whole of the States of Arunachal Pradesh is socially and educationally backward, the whole of the State’s population becomes a class in itself and no reservation in such a case is possible under article 15 (4), because no one living in any particular area can justify receiving reservation as socially and educationally backward class unless the people living in such area/region are distinguishable from rest of the State’s population; Miss Tumnyak Ete v. State of Arunachal Pradesh, AIR 2003 Gau 50.

**Discrimination**

The crucial word in this article is ‘discrimination’, which means ‘making an adverse distinction with regard to’ or ‘distinguishing unfavourably from others’; Kathi Raning Rawat v. State of Saurashtra, (1952) SCR 435 (442): AIR 1952 Cri LJ 805. Another crucial word is ‘only’ so that if the discrimination is based on some ground not connected with religion, etc., but with some other rational factor, the discrimination would be valid.
The discrimination forbidden by article 15 is only such discrimination as is based, inter alia, on the ground that a person belongs to a particular religion. The said rights conferred by clause (1) of article 15 being only on a ‘citizen’, the same is an individual rights by way of a guarantee which may not be subject to discrimination in the matter of rights, privileges and immunities pertaining to him as a citizen. In other words, the right conferred by article 15 is personal. A statute, which restricts a right of a class of citizen in the matter of testamentary disposition who may belong to a particular religion would, therefore, not attract the wrath of clause (1) of article 15 of the Constitution of India; John Vallamattom v. Union of India, AIR 2003 SC 2902: (2003) 6 SCC 611: (2003) 3 KLT 66.

**Discrimination on grounds of sex**

The exclusion of women not exclusively based on sex but taking into consideration peculiar nature of duties to be performed by electricity workers is not violative of Article 15 of Constitution; Kerala State Electricity Board, Thiruvananthapuram v. Siniya Mol C.S., AIR 2008 (NOC) 730 (Ker).

**Medical collages**


**Relationship to Article 14**

In a sense, the general and abstract principle of equality laid down in article 14 is spelt out for certain situations in greater details in article 15 and in some of the succeeding articles. But it should be noted that article 15 is limited to citizens, while article 14 extends to all person. Secondly, article 15, clause (1) and both 15(2) are both limited to discrimination on the ground of religion, race, sex, place of birth or any of them. Thirdly, the article permits the State to make special provisions for women and children. Fourthly, the article also permits the State to make any special provision for the following:-

(a) Socially and educationally backward classes of citizens;
(b) Scheduled Castes; and
(c) Scheduled Tribes.

Article 14 prohibits the State from denying to any person equality before the law, etc. Articles 15(1) and 16(2) protect the citizen against discrimination; State of Sikkim v. Surendra Prasad Sharma, JT (1994) 3 SC 372: (1994) 5 SCC 282: AIR 1994 SC 2342: (1994) 2 SLR 685.

**Reservation**

Children born to inter-caste marriage of which either father or mother belongs to SC/ST category can claim reservation benefits only on proof that he is subjected to some handicap and disadvantages having been as member of SC/St; M.C. Valsala v. State of Kerala, AIR 2006 Ker 1.

**Reservation on the basis of domicile**

The term ‘place of birth’ occurs in clause (1) of article 15 but not ‘domicile’. If a comparison is made between article 15 (1) and article 15 (2), it would appear that whereas the former refers to ‘place of birth’ alone, the latter refers to both ‘domicile’ and ‘residence’ apart from ‘place of birth’. A distinction, therefore, has been made by the makers of the Constitution themselves to the effect that the expression ‘place of birth’ is not synonymous to the expression ‘domicile’ and they reflect two different concepts. It may be true, that both the expression appeared to be synonymous to some of the members of the Constituent Assembly but the same cannot be a guiding factor. Reservation on the basis of domicile is not impermissible in terms of clause (1) of article 15 of the Constitution of India; Saurabh Chaudri v. Union of India, AIR 2004 SC 361: (2003) 11 SCC 486.

**Reservation within reservation**

Allotment of a quota of seats (in post graduate medical course) for candidates to be selected out of persons in Government service sponsored by the State Government is not a “reservation.” It amounts to laying down a source for filling up the seats and is “classification” within article 15(1). Hence, reservation for SC/ST in the Government quota is not reservation within reservation. It is permissible; Pranatosh Roy (Dr.) v. University of Calcutta, AIR 1998 Cal 181.
Scheduled Casts – Acquiring of Scheduled Caste status

A person by reason of marriage alone cannot if so factor become a member of Scheduled Caste or Scheduled Tribe; Meera Kanwaria v. Sunita, AIR 2006 SC 597.

University – Wise reservation

(a) University-wise preference is valid if it is reasonable.
(b) Domicile-wise preference is valid if it does not exceed reasonable limits.
(c) College-wise preference is bad


(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, sex, descent, place of birth residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory]^{(15)} prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of State, is not adequately represented in the services under the State.

\(^{(15)}\) Subs by the constitution (7th amendment) act 1956 section 29
[(4A)\(^{(16)}\) Nothing in this article shall prevent the State from making any provision for reservation in matters\(^{(17)}\) of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State are not adequately represented in the services under the State.]

[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. Reservation on total number of vacancies of that year\(^{(18)}\)]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

**Notes on Article 16**

**Arbitrariness**


That was given promotion when he approached the High Court. He was an employee belonging to backward classes. Another employee who was similarly placed was denied promotion. It was held that the discrimination was illegal; Vishwas Anna Sawant v. Municipal Corporation of Greater Bombay, JT (1994) 3 SC 573: (1994) 4 SCC 434: AIR 1994 SC 2408.

\(^{(16)}\) Ins by the Constitution (7th amendment) act 1995
\(^{(17)}\) Subs by the constitution (85th amendment) act 2001
\(^{(18)}\) Ins by the Constitution (81st amendment) act 2000

Scheduled Caste or Scheduled Tribe status is not carried by a member when he migrates to another State; JT (1994) 4 SC 423.

**Constitution (Seventy-seventh Amendment) Act, 1995**

The Scheduled Castes and the Scheduled Tribes had been enjoying the facility of reservation in promotion since 1995. The Supreme Court, in its judgment dated 16th November, 1992, in the case of Indra Sawhney v. Union of India, however, observed that reservation of appointments or posts under article 16(4) of the Constitution is confined to the initial appointment and cannot extend to reservation in the matter of promotion. This ruling of the Supreme Court was considered to adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since the representation of Scheduled Castes and the Scheduled Tribes in services in the State had not reached the required level, it was thought necessary to continue the existing dispensation of providing reservation in promotion in the case of Scheduled Castes and Scheduled Tribes. In view of its commitment to protect the interests of the Scheduled Castes and the Scheduled Tribes, the Government decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled tribes. To carry out this it was necessary to amend article 16 of the Constitution by inserting a new clause (4A) to provide for reservation in promotion for the Scheduled Castes and Scheduled tribes. The Constitution (Seventy-seventh Amendment) Act, 1995 seeks to achieve the aforesaid object.

Section 2 of this Act insert a new clause (4A) in article 16 of the Constitution, empowering the State to make a provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State, are not adequately in the services under the State, notwithstanding anything contrary contained in article 16.
Discrimination

Besides the right to equality of opportunity in general terms, article 16(2) prohibits discrimination against a citizen on the grounds of-

(i) Religion,
(ii) Race,
(iii) Caste,
(iv) Sex
(v) Descent
(vi) Place of birth, and
(vii) Residence, subject, of course, to article 16(3).

In case of this particular article, the courts have held that the general rights given by the first two clauses should be construed liberally and the exceptions may be construed strictly. Decisions on this point are;


However, the provision in clause (4) regarding backward class of citizens seems to possess a double character. As regards person not belonging to such class, the provision may appear to be a sanction for discrimination against them or special reasons. But as regards the backward classes themselves, they view it as a corrective to remedy the imbalance which has resulted from historical cause. As a result, considerable controversy and uncertainty exists as to the extent to which the quantum of reservation may override the general right to equality. Broadly speaking, it may be stated that reservation in excess of 50% may be, prima facie, regarded as discriminatory. Decisions relevant to this particular point are:

Employment

The words ‘employment or appointment’ are wide enough to include tenure, duration emoluments and duties and obligations, whether the employment is temporary or permanent. They cover amongst themselves not merely the initial appointment, but also salary, increments, revision of pay, promotion, gratuity, leave, pension and age of superannuation. Decisions relevant to this point are:

(ii) Champakkal v. Union of India, AIR 1964 SC 1854: (1964) 5 SCR 190: (1964) 1 LLJ 752.

A Naib in the Army had not as laid down in the relevant criteria for promotion, obtained the grade of “High Average” for three years during the last five immediately preceding. The screening Board considered his case and he was not found fit in the medical examination. It was held that, he could not make any grievance on the ground that pursuant to the selection by the Board, five officers who were junior to the Naib Subedar in question were promoted to the next higher grade. In the connection, he could not urge that grading ‘B’ given in the particular year in the Confidential Record should be treated as high average, when in the C.R. from for Naib Subedar for the year in question, grading ‘B’ was shown to be ‘average’; Naib Subedar Kartar Singh v. Union of India, AIR 1990 SC 17: 1989 Supp (2) SCC 104: 1991 SCC (L&S) 956.
Medical colleges

Although the India Constitution permits reservation of states (and other similar special privileges) for person belonging to Scheduled Castes and Tribes, it does not make it obligatory that such reservation should be made in every case for Government service or for admission to educational institutions. It is because of this position, that the Gujarat High Court held in Sujal Atul Munshi v. State of Gujarat, AIR 1996 Guj 170, that Government is not bound to reserve seats for such persons in payment seats for admission to medical educations. Mr. Justice S.M. Soni held that, if reservation is to be made in payment seats, it would strike at the very purpose of reservation. If students of category are not available, then less meritorious students may take advantage of payment seats.

Object of articles 16

The main object of article 16 is to create a constitutional right to equality of opportunity and employment in public offices. This article is confined to citizens as distinguished from other persons. Further, it is confined to employment or appointment to an office ‘under the State’.

Certain exceptions to the rights created by clause (1) and clause (2) of article 16 flow from clauses (3), (4) and (5) of the article. These relate, respectively, to a requirement of residence if sanctioned by Parliamentary legislation, reservation for backward class of citizens, if not adequately represented in the State services and prescription of a particular religion or belonging to a particular denomination, if the office is in connection with the affairs of any religious or denominational institution.

Other safeguards

On the question whether article 16 (4) is subject to any safeguard, it is relevant to point out that courts has insisted that it must be read with article 335 which directs that in taking into consideration the clime of member of the Scheduled Cast and Scheduled Tribes, the State should bear in mind that the claim should be consistent
with the maintenance of efficiency of administration, The incidentally calls upon the judiciary to read together article 16, 46, 335.

Decisions on this point are:

(i) Devadasan v. Union of India, AIR 1964 SC 179: (1964) 4 SCR 680, paragraph 1.

Pay Scales

When the employees continue to work up to the retirement age of 60 years their pay scales cannot be reduced for the period between 58 to 60 years. There cannot be two types of pay scales one for the purpose of continuing in service upto the age of retirement and the other for the period between 58 to 60 years. It must be kept in mind that pension is not a bounty but it is hard-earned benefit for long service, which cannot be taken away; Grid Corporation of Orissa v. Rasananda Das, AIR 2003 SC 4599: (2003) 10 SCC 297.

Qualifying minimum marks


Relaxation in standard of eligibility


Reservation

Children born to inter-caste marriage of which either father or mother belongs to SC/ST category can claim reservation benefits only on proof that he is subjected to some handicap and disadvantages having been as member of SC/ST; M.C. Valsala v. State of Kerala, AIR 2006 Ker 1.

Reservation and promotion

Article 16(4) and article 16(4A) do not confer any fundamental rights nor do they impose any constitutional duties but are only in the nature of enabling provision vesting a discretion in the State to consider providing reservation of the circumstances mentioned in those articles so warranted; Ajit Singh v. State of Punjab, AIR 1999 SC 3471: (1999) 7 SCC 209: 1999 SCC (L&S) 1239.

It is well settled position that while making entries in the character roll proper assessment on the basis of objective standards should be made since character role is a primary material which forms the basis for further progress of the employee in his service career; State of Uttar Pradesh v. Dr. K.U. Ansari, AIR 2002 SC 208: (2002) 1 SCC 616: (2002) 1 SLR 301: (2002) 92 FLR 513.

Reservation to single post

Reservation to single post cadre (even through rotation or roaster) is void as it creates 100 per cent reservation; P.G.I.M.R. v. Narasimhan, (1997) 6 SCC 283: 1997 SCC (L&S) 1449: 1997 Lab IC 2317.
Revision of pay scales

Being employees of the companies, it is responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners, cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scale; Officers and Supervisors of I.D.P.L. v. Chairman and M.D., I.D.P.L., AIR 2003 SC 2870: (2003) 6 SCC 490: 2003 SCC (L&S) 916: (2003) 3 LLN 870.

Right to go anywhere and live with any person

A man and a woman, even without getting married can live together if they wish. This may be regarded immoral by society but it is not illegal. There is a difference between law and morality; Payal Sharma alias Kamal Sharma alias Payal Kalara v. Superinment, Nari Niketan Kalindri Vihari Vihar, Agra, AIR 2001 All 254.

Scheme

Article 16(4) is not an exception to article 16 but gives a permissible basis; Indra Sawhney v. Union of India, AIR 1993 SC 447: 1992 Supp (3) SCC 217: 1992 SCC (L&S) 1.

This is in the largest of the administration that it is the employer, who is best suited to the percentage of posts in the promotional cadre, which can be earmarked for different category of persons. This provision actually effectuates the constitutional mandate engrafted in article 26(1) as it would offer equality of opportunity in the matters relating to employment and it would not be the monopoly of a specified category of persons in the feeder category to get promotions. There is no infraction of the constitutional provision engrafted in article 16(4) while providing a quota in promotional cadre; Kuldeep Kumar Gupta v. Himachal Pradesh State Electricity board, AIR 2001 SC 308: (2001) 1 SCC 475: 2001 Lab IC 409: (2001) 1 LLN 842.

Prescribing a cut-off date prior to the date of appointment for the purpose of satisfying the eligibility qualifications pertaining to age is permissible under the Punjab Panchayat Secretaries (Recruitment and Conditions of Services) Rules, 1993;
17. Abolition of untouchability.

“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

Note on Article 17

Article 17 has been implemented by the protection of Civil Rights Act, 1955 whose earlier title was “The Untouchability (Offences) Act, 1955”. The principles object of article 17 is to ban the practice of untouchability in any form. This expression refers to the social disabilities imposed on certain classes of person of their in certain cast and does not cover on certain classes of person by reason of their birth in certain cast and does not cover social boycott based on conduct; Devarajiah v. Padminna, AIR 1961 Mad 35, 39. A curious question was raised in a Madras case. The State Legislature passed a law to improve the conditions of living of untouchables, by providing for the acquisition of land to construct a colony for them. The argument that such a construction would result in the segregation of those persons and would not be in conformity with article 17, but the argument was accepted; Pavadai v. State of Madras, AIR 1973 Mad 458.

18. Abolition of titles.

(1) No title, not being a military or academic distinction, shall be conferred by the State.
(2) No citizens of India accept any title from any foreign State.
(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.
Notes on Article 18

National awards, not titles

It has been held that Award, Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri called as “The National Awards” would not amount to “title” within the meaning of article 18(1) and they should not be used as suffixes or prefixes. If this is done, the defaulter should forfeit the National Award conferred on him or her, by following the procedure laid down in Regulation 10 of each of the notifications creating the National Awards; Balaji Raghavan v. Union of India, AIR 1996 SC 770 (paragraphs 32, 35): (1996) 1 SCC 361.

Title

Where an award is not yet formally conferred and the Government communiqué relating thereto is cancelled on account of sentiments expressed by family members of the proposed deceased recipient, writ would not be issued for formal annulment of conferment of national award; Union if India v. Bijan Gosh, AIR 1997 SC 3019: (1997) 6 SCC 535.

19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—
(a) To freedom of speech and expression;
(b) To assemble peaceably and without arms;
(c) To form associations or unions;
(d) To move freely throughout the territory of India;
(e) To reside and settle in any part of the territory of India;\(^{(19)}\) [and]
(g) To practice any profession, or to carry on any occupation, trade or Business [(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State,

\(^{(19)}\)Ins by the Constitution (44th amendment) act 1978 Section 2
friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.)

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in [sub-clauses (d) and (e)] of the said clause shall effect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the rights conferred by the said clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-

(i) The professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) The carrying on the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

(20) Subs by the Constitution (1st amendment) act 1951
(21) Ins by the Constitution (60th amendment) act 1978 Section 2
Notes on Article 19

Business aspects of the media

Where an activity involves questions of freedom of speech as well as questions of freedom to carry on a business, profession or vocation, then it is legitimate for the State to regulate the business aspect in terms of article 19(1) (g); A. Suresh v. State of Tamil Nadu, AIR 1997 SC 1889: (1997) 1 SCC 319.

Business with Government

There is no right to carry business with the Government as such; nor is there a right that one’s product (e.g. text books) must be recognized by the Government. Nor there is any right that at a public auction or in tender invited by the Government, the highest bid or the lowest tender must be accepted. But by virtue of article 14, it is now established that rejection of the highest bid or the lowest tender by Government must not be arbitrary. Decisions in support of these propositions are the following:-


Constitutionality

One to whom the application of a statute is constitutional will not be heard to attack the statute on the ground that it must also be taken as applying to other persons or other situations in which its application might be unconstitutional; State of Gujarat v. Shri Ambica Mills Ltd,(1974) 4 SCC 656: AIR 1974 SC 1300.

Contempt of court

Guidelines for the use of contempt of court law have been suggested in the case of Mulgaonkar (in re:), AIR 1978 SC 727: (1978) 3 SCC 339: 1978 SCC (Cri) 402. They are as under:
(1) Economic use of this jurisdiction is desirable.

(2) Harmonisation between free criticism and the judiciary should be the goal.

(3) Confusion between personal protection of a libeled judge and prevention of obstruction of public justice should be avoided.

(4) Press should be given free play within reasonable limits, even when the focus of its critical attention is the court.

(5) Judges should not be hypersensitive, even where distortions and criticism overstep the limits.

(6) If after taking into account all these considerations, the court finds contempt of court beyond condonable limits, then the strong arm of the law must be used in the name of public interest and public justice.

Lastly, Mr. Justice K. Iyer stated “Justice” and not judge should be the keynote and creative legal journalism and activist statesmanship for judicial reform cannot be jeopardized by an undefined apprehension of contempt action.


**Convicts**

If a convict is prepared to give an interview to journalists and videographers, the facility should be allowed to the latter. Position of a person sentenced to death is in this respect not inferior to that of a citizen; M. Hasan v. Government of Andhra Pradesh, AIR 1998 AP 35.

**Educational institution**

Article 19 (1) (g) employs four expressions, viz., profession, occupation, trade and business. Their field may overlap, but each of them does have a content of its own. Education is per se regarded as an activity that is charitable in nature. Education
has so far not been regarded as a trade or business where profit is the motive. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that result in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in article 19(1) (g); T.M.A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355: (2002) 8 SCC 481.

False news item about Judges

A newspaper published a news item, stating that two sons of a senior Judge of the Supreme Court and two sons of the Chief Justice of India had been favoured by allotment of petrol outlets from the discretionary quota of the Petroleum Minister. Falsity of the news item was later admitted by the concerned editor, publisher and newspaper. They said that it had been published inadvertently. It was held that they could not escape responsibility for careless publication. However, as they had tendered unqualified apology, the apology was accepted with a warning to be careful in future; Hari Jai Singh (in re:), AIR 1997 SC 73: (1996) 6 SCC 466.

Freedom of assembly

The freedom of assembly can be restricted for the purpose mentioned in article 19(3) by a reasonable Law; moreover, the freedom can be exercised only on public land. Restrictions imposed under Article 19(3) would cover restrictions to maintain the sovereignty and integrity of India and public order, including the maintenance of traffic in the area concerned. But the restrictions cannot attain the status of absolute prohibition at least in normal times.

Freedom of association

The right to freedom of association covers a variety of right, so long as the association is for a lawful purpose. The right includes the right to start or continue an association subject to reasonable restrictions in the interest of sovereignty or integrity of India, public order and morality. Decisions relevant to this right are the following:-


(vi) Sitharmachary v. Senior Deputy Inspector, AIR 1958 AP 78 (right of an individual to refuse to be member of an association Uphed).


(ix) R.R.W. Union v. Registrar, AIR 1967 Cal 507 (508)

Rights to form an Association or Union being a fundamental right of every citizen including the students of the colleges, that rights can only be curtailed or put under cloud by legislative action, State Government has no authority to pass executive orders regarding amendment or alteration in the eligibility criteria for contesting the elections of the Student’s Unions or Associations; Suresh Swami v. State of Rajasthan, AIR 2001 Raj 244.

**Freedom of expression**


Expulsion of the three children from the school for the reason that because of their conscientiously held religious faith, they do not join the singing of the National Anthem in the morning assembly thought they do standup respectfully when the anthem is sung, is a violation of their fundamental right to freedom conscience and freely to profess, practice and propagate religion- Fundamental rights of the appellate under Articles 19(1)(a) and 25(1) have been infringed and they are entitled to be protected; Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615: AIR 1987 SC 748: 1986 KLT 1037.
**Freedom of movement**

The freedom of movement guaranteed by clause by (d) of article 19 (1) is in addition to the rights to personal liberty guaranteed under article 21. Orders of externment and internment violate this right unless they fall within the permissible restrictions. While judicial decisions confine this article to physical movement, the intangible aspect of freedom may receive protection under article 21. For example, domiciliary visits by the police at night disturbing a person’s sleep infringe personal liberty under article 21 and may not be to constitutionally valid, except in the case of surveillance needed for the legitimate purpose of prevention of crime. In particular, entries in the ‘Bad Character Register’ at a police station, if mala fide, are subject to judicial scrutiny. A combined reading of article 19(1)(d) and article 21 has led to the proposition that resident of hilly areas have a right to be provided access to the roads, which access is necessary for the proper exercise of the right of life. Generally, a person proposed to be extreme must be given a hearing. A permanent on the freedom of movement is prima facie suspect. Decisions ringing out these propositions are the following:-


**Freedom of profession, etc**
The right guaranteed by clause (g) of article 19(1), namely, freedom of profession, trade or business, is intended to that citizens right to business does not depend on grant by the State and that the State cannot prevent a citizen from carrying on business, except by a law imposing as reasonable in the interest of the general public. Of course, there is no right where the business is dangerous or immoral; such a business may be absolutely prohibited or may be required to be licensed. Moreover, there is no right to carry on a business at any place or at any time restrictions may be imposed in that regard. A citizen cannot be compelled to do a certain business. Relevant cases are:


**Freedom of residence**

Denial of benefits to migrating member of Scheduled Cast and Scheduled Tribes does not violate article 19; See JT (1994) 4 SC 423.

Freedom to reside and settle in any part of India guaranteed by clause (e) of article 19 (1) is subject to reasonable restrictions in the interest of the general public or for the protection of interest of Scheduled Tribes. In general, Substantive as well as procedural reasonableness would be required. This freedom is said to be intended to remove internal barriers in India or between any of its parts, but is limited to citizens. Moreover, even citizens can be subjected to reasonable restrictions such as passport regulations. Besides this, certain areas may be banned for certain kinds of persons, such as prostitutes. These propositions bear support from the following decisions:-


Right to practice profession

The properties enclosed within the compound walls of the Sub-Registrars’ office are the properties of the State. It is not the case of document writers that there exist contracts between them and the State as per which they are entitled to carry on their profession within the compound of the Sub-Registrars’. Offices If that is the factual position, the right of ownership exercised by the State and State authorities prohibiting the document writers from practicing their profession within the enclosed of the Government properties would not violate the fundamental right guaranteed to the document writers under article 19(1)(g) of the Constitution of India; Inspector General of registrations and Stamps, Hyderabad v. Andhra Pradesh State Document Writers’ Associations, AIR 2003 AP 193: (2003) 4 Andh LD 141: (2002) 3 Andh LT 245.

Test of reasonableness

In applying the test of reasonableness (which is the most crucial consideration), the broad criterion is whether the law strikes a proper balance between social control on the one hand and the rights of the individual on the other hand. The court must take into account the following aspects:-

(a) Nature of the right infringed;
(b) Underlying purpose of the restriction n imposed;
(c) Evils sough to be remedied by the law, its extent and urgency;
(d) How far the restriction is or is not proportionate to the evil; and
(e) Prevailing conditions at the time.
Decisions relevant to these propositions are the following:-


The Supreme Court has considered the question of reasonableness on several occasions and has laid down several tests and guidelines, to indicate what, in particular circumstances, can be regarded as a reasonable restriction. One of the tests is to bear in mind the directive Principles of State Policy.


20. Protection in respect of conviction for offences - (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.
(3) No person accused of any offence shall be compelled to be a witness against himself.

Notes on Article 20

Applicability

To attract applicability of article 20 (2) there must be a second prosecution and punishment for the same offence for which the accused has been prosecuted and punished previously. A subsequent trial or a prosecution and punishment are not barred if the ingredients of the two offences are distinct; State of Rajasthan v. Hat Singh, AIR 2003 SC 791: (2003) 2 SCC 152: 2003 SCC (Cri) 451.

Caution to speak

It is not unconstitutional to give a caution to speak the truth; Sampath Kumar v. Enforcement Directorate, Madras, AIR 1998 SC 16: (1997) 8 SCC 358.

Clash between fundamental rights

Where there is a clash of two fundamental rights, the right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral considerations cannot be kept at bay and the judges are not expected to sit mute but have to be sensitive; Mr. X v. Hospital Z, AIR 1999 SC 495: (1998) 9 SCC 296.

Commencement of protection

The protection given to the accused commences as soon as a formal accusation is made, whether before or during prosecution. It follows that the loading of a First Information Report, the filing of a complaint in court or the issue of a show-cause notice under a special criminal statute bring article 20(3) into play. But there must be a proceeding contemplating action against a particular person. Important cases on this point are the following:-

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Compulsion to be a witness

(a) The immunity under article 20(3) does not extend to compulsory production of material object or compulsion to give specimen writing, specimen signature, finger impression or compulsory exhibition of the body or giving of blood specimens. Following cases may be seen on this point:


(iii) Palani, (in re), AIR 1955 Mad 495; 56 Cri LJ 1197.

(iv) Subbiah v. Ramaswami, AIR 1970 Mad 85.


(b) Compulsion regarding documents is prohibited only if the documents convey the personal knowledge of the accused relating to the charge; State of Bombay v. Kathi Kalu, AIR 1961 SC 1808 (1962) 2 SCR 10; 64 Bom LR 240.
Double jeopardy

As regards article 20(2) dealing with double jeopardy what is bars is prosecution and punishment after an earlier punishment for the same offence. ‘Offences’ here means an offence as defined in section 3(38) of the General Clauses Act, 1897 applied to the Constitution by article 367. The offence must be the same, that is to say, involving the same ingredients in all respect and a trial for a separate and distinct offence is not barred under articles 20(2). However, this article must be taken as supplemented by section 26 of the General Clauses Act, 1897 and the provisions of the Code of the Criminal Procedure, 1973 as to second prosecution after conviction or acquittal for an offence where the second prosecution is excluded by the doctrine of autrefois convict or autrefois acquit. The word ‘prosecution’ would not normally cover departmental proceedings not held before a criminal court. The object of this provision is to avoid the harassment which must be caused to a person for successive criminal proceeding where only one crime has been committed. Important decisions interpreting this clause of article 20 are the following:


Foreign Exchange Regulation Act, 1973

Where a person is summoned and examined under section 40 of the Foreign Exchange Regulation Act, 1973, it cannot be presumed that the statement was obtained under pressure or duress. The statement cannot be attacked on the ground of infringement of the constitutional guarantee of protection against self incrimination under article 20(3) of the Constitution; C. Sampath Kumar v. Enforcement Officer, AIR 1998 SC 16: (1997) 8 SCC 358.
No right in procedure

It should be noted that while substantive law imposing liability or penalty cannot be altered to the prejudice of the person supposed to be guilty with retrospective effect, there is no vested rights in procedure. Besides this, the thrust of article 20(1) is in the field of criminal law only; sine the word ‘offence’ as defined in article 367 read with the General Clauses Act, 1897 can only denote an act or omission punishable by law. Important decisions on the above aspect are the following:-


Penalty not prescribed

Scope

The prohibitions imposed by article 20 are directly relevant to the criminal process. While clause (1) is concerned with the substantive law of criminal liability and penalty, clauses (2) and (3) are concerned mainly with the stage of procedure. In the jurisprudence of constitutional law, article 20(1) incorporates a prohibition against ‘ex post facto penal law’; article 20(2) incorporates a prohibition against ‘double jeopardy’ article 20(3) gives protection against ‘testimonial compulsion’. Because of the word ‘person’ used in each clause, the article must be regarded as applicable to a corporation which is accused, prosecuted, convicted or punished for an offence; Sharma v. Satish, (1954) SCR 1077: (1954) 1 MLJ 680: 1954 Cri LJ 865. Thus, article 20 is not confined to individuals.

Testimonial compulsion for the accused

The protection against compulsion ‘to be a witness’ is confined to persons ‘accused of an offence’ There is no constitutional protection for witness (i.e. persons other than the accused). However, the India Evidence Act, 1872, in section 132 and 148, confers a limited protection against self-incrimination to witness in civil and criminal courts. Important cases on the above limitation of article 20(3) are following:-


To be a Witness

Taking specimen fingerprints and handwriting from accused is not hit by Article 20(3) as being “witness against himself”; State through SPE and CBI, A.P. v. M. Krishna Mohan, AIR 2008 SC 368.

Violation of law and common law offences

Although clause (1) is mainly concerned with retroactive penal legislation, it also seems to give constitutional recognition to the principle that there cannot be a
conviction except for violation of a ‘law in force’. It would seem, therefore, that in India, there can be no ‘common law’ offences; and the judiciary cannot, in India, create an offence not created by statute. How for the word ‘violation’ would require that the violation should be personal, is a matter not specifically provided for in the article? The question must await judicial decisions at a later stage and article 21 may also be relevant to this aspect.

21. Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.

Notes on Article 21

AIDS and employment

It has been held that a person cannot be regarded as medically unfit and denied employment, merely on the ground that he is found to be HIV positive; MX of Bombay India Inhabitant v. M/s ZY, AIR 1997 Bom 406.

Assault on child

In Saheli v. Commissioner of Police, AIR 1990 SC 513: (1990) 1 SCC 422: 1990 SCC (Cri) 145, police officers had, at the behest of the landlord, beaten up lady tenant “K” and her minor son “ N”. The son succumbed to the injuries. The mother was held entitled to compensation against the Delhi Administration. The compensation so awarded included:

(a) Solatium for mental pain;
(b) Solatium for distress and indignity;
(c) Damages for loss of liberty;
(d) Damages for death.

It was further directed that the Delhi Administration may recover the amount from the officers responsible for the beating.
Atomic energy

Under article 21 and 32, the court has directed that the Gamma Chambers housed in Jawaharlal Nehru University, Delhi, be sent to Bhabha Atomic Research Center, Bombay, for recharging; M.C. Mehta v. Union of India, AIR 1987 SC 1086: (1987) 1 SCC 395: 1987 SCC (L&S) 37.

Bail

Pre-trial release on personal bond (i.e. without surety) should be allowed where the person to be released on bail is indigent and there is no substantial risk of his absconding; Hussainara v. Home Secretary, State of Bihar, AIR 1979 SC 1360: (1980) 1 SCC 93: 1980 SCC (Cri) 35: 1979 Cri LJ 1036.

Beauty contests

It has been held that beauty contests, in their true form, are not objectionable. But, if there is indecent representation of the figure of a woman or if there is any matter derogatory of woman, then it would offend the Indecent Representation of Women Act, 1986, and also article 21; Chaandra Rajkumari v. Police Commissioner, Hyderabad, AIR 1998 AP 302.

Child offenders

Child offenders are entitled to speedy trial; Sheela Barse v. Union of India, AIR 1986 SC 1773: (1986) 3 SCC 596: 1986 SCC (Cri) 337, paragraph 12.

Compensation


Along with this, another step was taken by the judiciary. In Nilabati Beheras’ case, the court made it clear that the liability of the State was direct and was not
vicarious liability as an employer. This approach was actually anticipated by the Andhra Pradesh High Court in Challa Ramkonda Reddy v. State of Andhra Pradesh, AIR 1989 AP 235.

India is not alone in awarding compensation for “constitutional torts”. Such compensation has been awarded in the United States, for a long time. See J.C. Love, “Damage”: A Remedy violation of constitutional rights (1979) 67 California Law Rev 1242.

Such compensation has been awarded in Canada also. See Lorne Sossiu, “Crown Proceeding and Constitutional Torts” referred to by Vikrem Raghan, Article in AIR 1998 Journal 102 (June). It is also being awarded in Ireland, see Andrew S. Butter, “Constitutional Rights in Private Litigation”, (1993) 6 Anglo American L. Rev. 1.

Custodial death

For custodial death, the writ court can award compensation. Custodial death has been described as “one of the worth crimes in a civilized society, governed by the rule of law”; D.K. Basu v. State of West Bengal, AIR 1997 SC 610 paragraph 36: (1997) 1 SCC 416: 1997 SCC (Cri) 92.


Death sentence: Mandatory


Debtor

A debtor can be put in civil prison for non-payment of decretal debt, only if there is (i) willful default by him, notwithstanding his having sufficient means to pay, or (ii)

**Delay in bringing to trial**

Inordinate delay by the State in bringing an accused to trial or in preferring an appeal against his acquittal, violates article 21, if there is no fault by the accused, see the under mentioned decisions:


**Delay in executive**


**Drugs**

Where a ban imposed on the import and manufacture of certain drugs under sections 10A and 26A of the Drugs and Cosmetics Act, 1940 is not implemented (according to complaint made in public interest litigation), the court may call for explanation from the Government of India; Vincent Parikulangara v. Union of India, (1987) Supp SCC 90: AIR 1987 SC 990.

**Ecology: Ecological balance**

Every attempt should be made to preserve the fragile ecology of the forest area and to protect the Tiger Reserve and the right of tribals in the State of

Ecology and “Public Trust” Doctrine

The Supreme Court has enunciated the doctrine of “Public Trust”, based on the legal theory of the ancient Roman Empire. The idea of this theory was that certain common properties such as rivers, seashores, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The concept “environment” bears a very close relationship to the doctrine. The doctrine enjoins upon the resources for the enjoyment of the general public, rather to permit their use for private ownership or commercial purposes. It was thus held that the State Government committed breach of public trust, by leasing the ecologically fragile land to the Motel management; M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388.

Environment

Chemical or other hazardous industries which are essential for economic development may have to be set up. But measures should be taken to reduce the risk of hazard or risk to the community by taking all necessary steps for locating such industries in a manner that would pose the least risk or danger to the community and for maximizing safety requirements in such industries. The Supreme Court directed the High Court to set up a Green Bench; Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715: (1996) 5 SCC 647.

Environment: Hazardous chemicals

Certain directions regarding hazardous chemicals were given by the Supreme Court in M.C. Mehta v. Union of India, (1987) Supp SCC 131: AIR 1987 SC 1086, relying partly on article 21. In the above judgment, there are dicta that life, public health and ecology have priority over unemployment and loss of revenue.
Right to pollution free air falls within article 21; Subhash v. State of Bihar, AIR 1991 SC 420: (1991) 1 SCC 598 paragraph 7

Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for “life”, would be hazardous to “life” within the meaning of article 21 of the Constitution; M.C. Mehta Nath, AIR 2000 SC 1997: (2000) 6 SCC 213.

**Environment: Precautionary principle**

The “precautionary principle” requires the State to anticipate, prevent and attack the causes of environmental degradation; M.C. Mehta v. Union of India, (1997) 3 SCC 715.

**Fair procedure**

Subsequent to Maneka Gandhi’s case, AIR 1978 SC 597: (1978) 1 SCC 248:(1978) 2 SCR 612 so many aspects of fair procedure or reasonable and just procedure in the context of article 21 have come up before the court. The stream is endless and the case law can be surveyed only in a full fledged commentary Some important points laid in the case law are mentioned in the succeeding paragraphs, by way of illustrations. For convenience of reference, the topic to which the case relate have been arranged alphabetically as far as possible, in the following paragraphs.

**Fair trial**


**Foreign travel**

Forests


Handcuffing

The Supreme Court has given directions to the Union of India to frame rules or guidelines as regards the circumstances in which handcuffing of the accused should be resorted to. See the following cases:-

(i) Prem Shanker Shukla v. Delhi Administration, AIR 1980 SC 1535.


Health


Housing

Dicta in Shantistar v. Narayanan, (1990) 2 SCJ 10, paragraphs 8 and 13, speaks of a right to housing. Later it was been held that shelter is not a fundamental right; Shankar Gauri v. Union of India, JT (1994) 5 SC 634: (1994) 6 SCC 349.

However, the following propositions emerge from a Supreme Court judgment relating to encroachments:-
(a) There is no right to encroach on public paths, etc.
(b) But the State and Municipal Corporations have constitutional as well as statutory duty to provide to poor and indigent weaker sections, residential accommodation by utilising urban vacant land available under the Urban Land Ceiling Act.
(c) But is not obligatory for the State or the Municipal Corporation to provide alternative accommodation in every case.
(d) In view of the consistent influx of rural population into urban areas and consequent growth of encroachments, local bodies should also prepare plans in accordance with article 243G and 243W of the Constitution.


It has been held that the right to shelter is a fundamental right. It spring from:

(a) Right to residence [article 19(1)a] and
(b) Right to life [Article 21]


Illegal detention

In a Madras case, the State of Tamil Nadu was ordered to play compensation (Rs. 50,000) to a lady who illegally detained; Meera v. State of Tamil Nadu, (1991) Cri LJ 2395 (Mad).

Illegal encroachment

An encroacher has no right whatsoever to put forth a claim that he has the protection of Article 21 of the Constitution: Rantial Chowk Vyapari Sangh, Jabalpur v. State of Madhya Pradesh, AIR 2006 NOC 299 (MP).

Inhuman treatment
In a Delhi case, the High Court came to the conclusion that, having regard to the inhuman manner in which the deceased had been treated by the police compensation should be awarded. The High Court further held that the fact that the matter was under investigation on an FIR Registered with the police, could not come in the way of compensation being awarded in writ jurisdiction; P.V. Kapoor v. Union of India, (1992) Cri LJ 140 (Del).

Insane person


Irish Constitution

Under the Constitution of Ireland, (1973), article 4.3.1, the Judges are invested with the obligation of protecting and enforcing the rights of individuals and provisions of the Bunchreacht in proceedings before them.


[Meskill v. CIE, 1973 IR 121, Kennedy& Arnold v. Ireland, 1987 IR 587, here an unjustified phone taps was redressed with damages]. These developments have given rise to the evolution of a theory of constitutional torts that have been enabling the judiciary to vindicate and protect the rights of an Irish Citizen, by ordering the payment of compensation for the infringement of rights.


Compensation was awarded to the dependents of persons killed in firing on persons of backward classes and to persons injured in the firing; Union for

Legal aid

An accused person at least where the charge is of an offence punishable with imprisonment, is entitled to be offered legal aid, if he is too poor to afford counsel. Further, counsel for the accused must be given sufficient time and facility for preparing the defense. Breach of these safeguards of fair trial would invite the trial and conviction, even if the accused did not ask for legal aid. See the under mentioned cases:

(iv) Suk Das v. Union Territory of Arunachal Pradesh, 1986 SC 991.

Livelihood


The violation of the right to livelihood is required to be remedied. But the right to livelihood as contemplated under article 21 of the Constitution cannot be so widely construed which may result in the defeating the purpose sought to be achieved by the aforesaid article. It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all sort of clime to the legal or contractual rights of parties completely
ignoring the person approaching the court and the alleged violation of the said right; State of Himachal Pradesh v. Raja Mahendra Pal, AIR 1999 SC 1786: (1999) 4 SCC 43.

**Medical aid in Government hospitals**

Failure on the part of a government hospital to provide timely medical treatment to a patient in need of such treatment amounts to violation of the right to life. See the under mentioned cases:


**Medical confidentiality**

The Supreme Court has held that if a prospective spouse has an apprehension that the other (prospective) spouse is suffering from AIDS, the former has a right to seek information about the latter’s disease from the hospital where blood reports of the latter are available. This right is part of the right to life; Tokugha Yepthom (Dr.) v. Apollo Hospital, JT (1998) 7 SC 626.

**Medical Test**

The Court has power to order a person to undergo medical test and such an order would not be in violation of the right of personal liberty under Article 21 of the Constitution; Shaik Fakruddin v. Shaik Mohammmed Hasan, AIR 2006 AP 48.

**Minimum punishment**

Minimum punishment provided by statute for anti-social offences is not per se unconstitutional; Inderjeet v. State of Uttar Pradesh, AIR 1979 SC 1867: (1979) 4 SCC 246 (Food adulteration).
Natural justice

Natural justice is implicit in article 21. See the under mentioned cases:


Whether the procedure laid down in a particular case if fair, depends on the facts of each case; Charan Lal Sahu v. Union of India, (1990) 1 SCC 613: AIR 1990 SC 1480.

Non-revision of pay scale


Obstruction of movement

Obstruction of movement along highway by the police is constitutional, provided the obstruction is reasonable and in the interest of public order, Rupinder v. Union of India, AIR 1983 SC 65: (1983) 1 SCC 140: 1983 SCC (Cri) 136.

Oppression of peasants

about 600 peasants who had assembled peacefully were harassed by the police. The Supreme Court awarded compensation of Rs. 20,000 in case of death and Rs. 5,000 in case of injury.

**Passport**

A citizen’s passport cannot be impounded for an indefinite period of time; Maneka Gandhi v. Union of India, AIR 1978 SC 597, paragraphs 68, 84, 135, 143: (1978) 1 SCC 248: (1978) 2 SCR 621.

**Passports Act, 1987**

The requirement of natural justice being implicit in article 21, the Passports Act, 1967 would be construed by the court as requiring hearing before taking prejudicial action; Maneka Gandhi v. Union of India, AIR 1978 SC 597, paragraph 56: (1978) 1 SCC 248: (1978) 2 SCR 621.

**Police atrocities**

In People’s Union for Democratic Rights v. Police Commissioner, (1989) 4 SCC 730, under article 32, compensation was awarded to victims of police atrocities.


**Position in USA**

In the United State of America, a constitutional tort is redressed in two ways. There is available a stator cause of action under the Civil Rights Act of 1871, for a violation of the constitutional rights and other rights based on common law principles.

**Preventive detention**


Where a person is detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 the member of the family of the detenu must be informed about the passing of the order of detention and the place of detention. See the under mentioned cases.


**Prison restrictions**

Prison restrictions amounting to torture, pressure or infliction, beyond that awarded by the court must pass the test of scrutiny with reference to article 21. See the under mentioned cases;

**Prisoners: Classification**

Classification of prisoners (under prison rules) on the basis of ordinary or dangerous prisoners and prisoners under sentence of death is valid; Charles Sobhraj v. Superintendent, Tihar Jail, AIR 1978 SC 1514: (1978) 4 SCC104.

**Prisoners: Interview**

Public spirited citizens should be allowed to interview prisoners in order to ascertain how far article 21 is being complied with. But the interview has to be subject to reasonable restrictions which themselves are subject to judicial review. Special permission should be obtained for taps recording the interview. See the under mentioned cases:


**Prisoners: Torture**

An under trial or convicted prisoner cannot be subjected to a physical or mental restraint-

(a) Which is not warranted by the punishment awarded by the court, or
(b) Which is in excess of the requirement of prisoners discipline, or
(c) Which constitutes human degradation

See the under mentioned cases on the above point


Prisoners: Wrongful detention

A prisoner already in jail for 8 years (who would have served out the maximum punishment for the offence) cannot be detained on the basis of a production warrant issued with the application of mind; Rama Dass Ram v. State of Bihar, AIR 1987 SC 1333: (1987) Cri LJ 1055: (1987) Supp SCC 143.

Privacy


The act of recording conversation of his wife by husband without her knowledge would amount to infringement of her right to privacy; Rayala M. Bhaubaneswari v. Nagaphanender Rayala, AIR 2008 AP 98.

Right to privacy vis-à-vis freedom of press is available as long as privacy is maintained by parties; Managing Director v. V. Muthulakshmi, AIR 2008 (NOC) 381 (Mad).

Private industries and pollution

If an industry is established without requisite permission and in blatant disregard of law to the detriment of citizens’ right to life, the Supreme Court can interfere to project right to life – Rule of absolute liability applies in such cases; Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1446, paragraphs 55, 56.

Prostitution

In a case dealing with the plight of prostitutes the Supreme Court placed emphasis on the need to provide to prostitutes opportunities for education and training.
so as to facilitate their rehabilitation; Gaurav Jain v. Union of India, AIR 1997 SC 3021 (3035,3036): (1997) 8 SCC 114.

Public hanging

Public hanging (the execution of death sentence) is violation of article 21, which mandates the observance of a just, fair and reasonable procedure; Attorney General of India v. Lachma Devi, AIR 1986 SC 467: 1986 Cri LJ 364.

An order passed by the High Court of Rajasthan for public hanging was set aside by the Supreme Court on the ground inter alia, that it was violative of article 21; Attorney General v. Lachma Devi, AIR 1986 SC 467: 1986 Cri LJ 364.

Public trial

The requirement of public hearing in court, as a component of fair trial that is subject to the need to hold proceedings in camera, in order to safeguard the public interest and to avoid prejudice to the accused; Vineet Narain v. Union of India, AIR 1998 SC 889: (1998) 1 SCC 226: 1998 Cri LJ 1208.

Punishment for attempted suicide

Punishment for attempted suicide has been held to be unconstitutional by the Supreme Court on the reasoning that a person cannot be forced to enjoy the right to life to his detriment, disadvantage or dislike; P. Rathinam Nagbhusam Patnaik v. Union of India, JT (1994) 3 SC 392: (1994) 3 SCC 394: 1994 SCC (Cri) 740: 1994 Cri LJ 1605.

Radiation (X–ray)

In a case filed by the workers of a public sector undertaking claiming compensation for being exposed to the ill-effects of X-ray radiation, the court issued directions as to check and safeguards to be adopted to guard against radiation; M.K. Sharma v. Bharat Electronic Ltd. (1987) 3 SCC 231: AIR 1987 SC 1792: (1987) Cri LJ 1908.
Right of Appeal

The right of appeal from a judgment of conviction as under section 374 of Cr. P.C. is a fundamental right. It is obvious. Neither can be inferred with or impaired nor can it be subjected to any condition; Dilip S. Dahanekar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528.

Right to die (Provision in I.P.C.)


See also


Right to life: Various rights included

Declaring that the right to life included the “finger graces of human civilization”, the Supreme Court in P. Nalla Thumpi v. union of India, AIR 1958 SC 1133: 1958 Supp SCC 189, virtually rendered this fundamental right a repository of various human rights.

Thus, it includes:

(c) Donation of Organ – Donation of organ by husband to his ailing father cannot be objected to by wife on ground of violation of her fundamental right
to life; Sumakiran Mallena v. Secretary, Medical & Health Secretariat Building, Saifabad, AIR 2008 (NOC) 374 AP.

This right [healthy environment], itself includes the following:-


(f) Privacy; People Union for Civil Liberties v. Union of India, AIR 1997 SC 568: (1997) 1 SCC 301.


(m) Right to free legal aid, where conviction for an offence may involve loss of life or personal liberty.


Right to livelihood or work

Article 21 cannot be stretched so far as to mean that everyone must be given a job. Article 41 has been deliberately kept by the founding Fathers in the directive principles chapters and hence made unenforceable; Indian Drugs & Pharmaceuticals Ltd. v. Workmen, (2007) 1 SCC 408.

Right to life and Liberty

Right to electricity is also right to life and liberty in terms of Article 21 because no one in the modern days can survive without electricity; Molay Kumar Acharya v. Chairman-cum-Managing Director, W.B. State Electricity Distribution Co. Ltd., AIR 2008 Cal 47.

Right to work

Right to work can be considered as fundamental right only in cases where legislative guarantee is given in the form of legislation; State of Maharashtra v. Sau Shobha Vitthal Kolte, AIR 2006 Bom 44.

Right to work is not a fundamental right. But can be claimed after employment; Air India Statutory Corporation v. United Labour Union, AIR 1997 SC 645: (1997) 9 SCC 377: (1997) 1 LLJ 1113.

Scope of Article 21
Article 21, if read literally, is a colourless article and would be satisfied, the moments it is established by the State that there is law provides a procedure which has been followed by the impugned action. But the expression “procedure established by law” in article 21 has been judicially construed as meaning a procedure which is reasonable, fair and just. Read with article 39A, it would further imply legal aid being made available to the indigent accused and a prisoner. The concept of ‘fairness’, so evolved, has been imported into article 22(3) also, so that a prison regulation which arbitrarily deprives a detenu of opportunity to interview his relatives or friends or a lawyer is invalid. See under mentioned cases as to the scope of article 21 on above points:


The Right to life and the right to personal liberty in India have been guaranteed by a constitutional provision, which has received the widest possible interpretation. Under the canopy of article 21 of the Constitution, so many rights have found shelter, growth and nourishment. An intelligent citizen would like to be aware of the developments in this regard, as they have evolved from judicial decision.

Article 21 ies down that no person shall be deprived of life or personal liberty, except according to procedure established by law.

Thought the article appears to be negative in its grammatical from, it has, in reality been given a positive effect by judicial interpretation. The right is a fundamental right, enforceable against the State; and judicial decision have imposed, on the State, several positive obligations. For example a person who cannot pay for medical expenses must be given free medical treatment and that too, without delay. A
person should not be hand-cuffed (after arrest on a criminal charge) save in certain exceptional situations.

A lay man may perhaps ask a simple but basic question, as to why a constitutional provision is needed on the subject. Is the ordinary law not sufficient? Now, it is true that the Indian Penal Code (45 of 1860) (like the Penal Codes in all countries) contains adequate provisions to punish a person who takes away or attempts to take away the life of another human being. But the impact of a constitutional provision lies in the fact, that by being elevated to the pedestal of a fundamental right, the right is placed beyond the reach of ordinary legislation inspired by political motives.

“Life”, in article, 21 is not merely the physical act of breathing. This has been recognized by the courts. In fact, as philosophers tell us, life is lived at many levels. The Rig Veda [10.177.2], gives a subtle description of the mundane activity of speech. The soul (which, in the Rig Veda, is compared to a bird soaring high in the heavens), inspires or fills up the mind with speech. The “Gandharva” (the mind) carries it to the heart; and then, the luminous inspired speech take shape, in words that can be heard. One can pursue this imagery further. While the external mundane activities of life have their own place, they are the manifestations of an inner, unseen, unperceived activity-which indeed is the real “life” that a human being lives. It is true that judicial decisions on article 21 do not embark upon such an analysis in depth. But they do take note of the width of the right to life. What follows, is a brief narration of this wide approach. It has been recognized that the mere right to life (article 21) means more than the right to service; Samatha v. State of Andhra Pradesh, AIR 1997 SC 3297: (1997) 8 SCC 191. (Empowerment of tribals)

Scheduled Tribes Woman

Denial of right of succession to women of Scheduled Tribes amounts to deprivation of their right to livelihood under article 21; Madhu Kishwar v. State of Bihar, (1996) 5 SCC 125: AIR 1996 SC 1864.

Sentence: Plea of guilty
If a sentence is passed on the accused on his plea of guilty, it cannot be enhanced in appeal or revision without his being given a fresh opportunity of defending himself against the charge; Thippeswamy v. State of Karnataka, AIR 1983 SC 747: (1983) 1 SCC 194: 1983 Cri LJ 1271.

**Sexual harassment**

Sexual harassment in the workplace is a violation of articles 15 and 21 of the Constitution. (The court gave detailed directions on the subject, which guidelines are to be strictly observed by all employers, publish or private, until suitable legislation is enacted on the subject; Vishakha v. State of Rajasthan, AIR 1997 SC 3011: (1997) 6 SCC 241: 1997 SCC (Cri) 932

Smoking in public place

In any case, there is no reason to compel non-smokers to helpless victims of air pollution, Murli S. Deora v. Union of India, AIR 2002 SC 40: (2001) 8 SCC 765.

**Solitary confinement**


**Special Courts**

The Special Courts Bill, 1978 (as originally drafted) was held to lack fair procedure because-

(i) the accused was to be tried by a retired High Court Judge, in whose appointment the concurrence of the Chief Justice of India was not required and his service could be terminated at the pleasure of Government.

(ii) There was no provision for transfer of cases from the Special Court on any ground; Special Courts Bill, 1978 (in re:), AIR 1979 SC 478
paragraphs 94-98, 145, 147, 156, 161 and 167: (1979) 1 SCC 380: (1979) 2 SCR 476.

**Speedy Justice**

In the matter of denial of speedy justice, the court expressed the concern at delay in disposal of cases. The concerned authorities were directed to do needful in the matter urgently before situation goes totally out of control; Moses Wilson v. Kasturiba, AIR 2008 SC 379.

**Speedy trial**

A procedural law is void if does not provide for speedy trial. See the undermentioned cases:


(iii) Hussainara v. Home Secretary, State of Bihar, AIR 1979 SC 1369


Accused was charged for offences under the Prevention of Corruption Act, 1947. About 13 years had elapsed since the institution of the F.I.R. Accused applied for quashing the prosecution on the ground of undue delay. High Court rejected the application on the ground that there was only one court of CBI functioning and large number of cases were pending before it. It was held that the rejection was not proper.
(Supreme Court issued guidelines in addition to those issued in 1992); Raj Deo Sharma v. State of Bihar, AIR 1998 SC 3281: (1999) 7 SCC 507

Summary dismissal of appeal

A provision for summary dismissal of criminal appeals is not unfair if certain safeguards against arbitrary dismissal are incorporated; Sita Ram v. State of Uttar Pradesh, AIR 1983 SC 65.

Telephone tapping

Telephone tapping would infringe article 21 of the Constitution, unless it is permitted “under procedure established by law”. The court issued guidelines for the exercise of power of interception of telegrams under section 5(2) of the India Telegraphs Act, 1885; People’s Union for Civil Liberties v. Union of India, AIR 1997 SC 568: (1997) 1 SCC 301.

Terrorists Act

To a person arrested under the Terrorists Act, 1986 the designated court refused bail. It was held that the High Court in writ jurisdiction, could not examine the correctness of the view of the designated court; State of Maharashtra v. Abdul Hamid Kajo Mohamed, JT (1994) 2 SC 1: 1994 Supp (1) SCC 579: 1994 SCC (Cri) 723.

Traffic control

Taking into account the need to have proper management and control of traffic, which is a matter of public safety and falls within the ambit of article 21 of the Constitution, the Supreme Court empowered the authorities under the Motor Vehicles Act, 1988 to delegate their authority to responsible persons, including member of the public; M.C. Mehta v. Union of India, AIR 1998 SC 186: (1998) 1 SCC 363.

Under trial prisoners

(a) An under trial prisoner kept in jail for a period exceeding the maximum prison term awardable on conviction must be released. See the under mentioned cases:


(b) Person kept in jail without trial or without charge must be released. See the under mentioned cases.


(C) Non-production of the accused (an under trial prisoner) before the court on dates of trial after obtaining judicial remand is improper. Matter was disposed of, on an assurance given by the State Government. Accused was not entitled to be released on bail merely on above but costs were awarded to him; Ramesh Kumar Singh v. State of Bihar, (1987) Supp SCC 335: 1988 SCC (Cri) 89.

Water

Right to life under article 21 includes the right to enjoyment of pollution-free water; B.L. Wadhera v. Union of India, AIR 1996 SC 2969: (1996) 2 SCC 594.

[21A. Right to education.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.] (22)

[22. Protection against arrest and detention in certain cases.- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.] (23)

(22) Ins by the constitution (86th amendment) act 2002 Section 2
(23) on the enforcement of section of the constitution (44th amendment) act 1978
(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and so such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply-

(a) To any person who for the time being is an enemy alien; or

(b) To any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of a person for longer period than three months unless –

(a) an Advisory Board consisting of person who are, or have been, or are qualified to be appointed as, Judges of a High Court has report before the expiration of the said period of three months that is in its opinion sufficient cause for such detention:

Provide that nothing in this sub-clause shall authorizes the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) Such person is detained in accordance with the provision of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose fact which such authority considers to be against the publish interest to disclose.

(7) Parliament may by law prescribe-
(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
(c) the procedure to be followed by Advisory Board in an inquiry under sub-clause (a) of clause (4).

Notes on Article 22

Analysis

Article 22 consists of two parts. Clause (1) and (2) apply to persons arrested or detained under a law otherwise than a preventive detention law. Clause (4) to (7) apply to persons arrested or detained under a preventive detention law.

The word “grounds” used in clause (5) of article 22 means not only the narration or conclusions of facts, but also all material on which those facts or conclusions which constitute grounds are based; Sophia Mohd. Bham v. State of Maharashtra, AIR 1999 SC 3051: (1999) 6 SCC 593

“Arrest”: Meaning thereof

It should be noted that ‘arrest’ and ‘detention’ in articles 22(1) and 22(2) do not cover civil arrest, or deportation of an alien or action by the court itself. See the under mentioned cases:


**Article 21 may supplement article 22**


**Consideration of representation**

Consideration by the Board is an additional safeguard. It is not a substitute for consideration by the Central Government; Gracy v. State of Kerala, AIR 1991 SC 1090: (1991) 2 SCC 1: 1991 SCC (Cri) 467.

If a representation is sent to the Chairman, Advisory Board through the Superintendent of the jail, the Central Government must consider it. Even when the detenu’s representation under the COFEPOSA Act is received after the order is confirmed by Government, the Government must consider it; K.M. Abdulla Kumhi and B.L. Abdul v. Union of India, AIR 1991 SC 574, paragraphs 19-20: (1991) 1 SCC 476: 1991 Cri LJ 790 (CB).

Government cannot delay consideration of the representation on the ground that it awaits the Board’s advice; Issac Babu v. Union of India, (1990) 4 SCC 135: 1990 SCC (Cri) 564 (Delay of 11 months).

**Delay**

Real test for article 22(4) is whether delay is explained; State of v. Sukhpal, AIR 1990 SC 23: (1990) 1 SCC 35.

Documents

Every document casually referred to in the order of detention need not be supplied. Only a document relied on by the detaining authority need be given; Farooq v. Union of India, (1990) 2 SCJ 225, paragraph 10: AIR 1990 SC 1597: 1990 Cri LJ 1622.

Detention is vitiated, if the following documents are not supplied-

(a) Documents which are considered by the detaining authority, or
(b) Documents which are vital, though not considered by the detaining authority; P.U. Abdul Rahiman v. Union of India, AIR 1991 SC 336 paragraph 9: 1991 Supp (2) SCC 274: 1991 Cri LJ 430 (3 Judge Bench).

Document, which are vital should be supplied; Ahmed Kutty v. Union of India, (1990) 2 SCC 1.

Information about grounds of arrest

Information about grounds of arrest is mandatory under clause (1). See under mentioned cases:


Language

Where the ground of detention are served in the detenue's language, there is no irregularity even if the order is not in his language; Kubic v. Union of India, (1990) 2 SCJ 132, paragraphs 11 and 14: AIR 1990 SC 605: (1990) 1 SCC 568.

Preventive detention

A detention order (for preventive detention) is not void, merely because it does not specify the period, if the parents Act under which it is made does not require that
the order should specify the period. In such a case, the order is deemed to be for the maximum period for which detention is authorized. The case was under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (T.N. Act 14 of 1882). Section 3(1) of the Act reads as under:

(1) The state Government may, if satisfied with respect to any bootlegger or drug offender (or forest offender) or goonda or immoral traffic offender of slum grabber that with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order it is necessary so to do make an order directing that such person to be detained; T. Devaki v. Government of Tamil Nadu, AIR 1990 SC 1086 (1097), paragraphs 18 and 19: (1990) 2 SCC 456: 1990 Cri LJ 1140.

Where the applicant was already in custody, detention order under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 section 33, cannot be made, except where the grounds of detention show, that (i) the detaining authority was aware of the fact that the detenu was already in detention, and (ii) there were compelling reasons justifying such detention, despite the fact that detenu was already in detention. The expression “compelling reasons” here implied that there must be content material on the basis of which the detaining authority is satisfied (i) that the detenu is likely to be released in the near future, and (ii) that, taking into account the nature of the antecedent activities of the detenu, it was likely that, after his release from custody, he would indulge in prejudicial activities, and that (iii) it was necessary to detain him in order to prevent him from engaging in such activities. See the under mentioned cases:

(iii) Sanjeev Kumar Agarwal v. Union of India, AIR 1990 SC 204.

A detention order passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, section 3 (in the Gurumukhi version),
state that detention was necessary to prevent the detenu from abetting smuggling. But the grounds of detention spoke of “concealing etc.” of smuggled goods. The order of detention was held to be void; Vijay Kumar v. Union of India, AIR 1990 SC 1184: (1990) 1 SCC 606: 1990 SCC (Cri) 247 reversing (1989) 4 Delhi Lawyers 298. (The reason is, that in such cases, the detenu cannot make an effective representation). In this case, there was also a variance between the English version and the Gurumukhi version of the order of detention.

Extraneous matters mentioned in the documents annexed to the detention order were not referred to, in the grounds of detention. These might have influenced the decision of the detaining authority. Detention was held to be void; Vashisht Narain Karwaria v. State of Uttar Pradesh, AIR 1990 SC 1272: (1990) 2 SCC 629: 1990 Cri LJ 1311 reversing (1990) Cri LJ NOC 36 (All). (This was a case under the National Security Act, 1980)

In the above case, particulars of offences referred to in the enclosed documents were also not supplied and hence the detenu could not make an effective representation; Mehboob Khan Nawab Khan Pathan v. Police Commissioner, Ahmedabad, AIR 1989 SC 1803: (1989) 3 SCC 568: (1989) Cri LJ 2111 followed.

On the question of extraneous matter, see the under mentioned cases:


There was delay in passing an order on the representation of detenu under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 section 3. But it did not show negligence, callousness in action or a avoidable red tapism. It was held that the order was not vitiated; Abdul Salam v. Union of India, AIR 1990 SC 1446: (1990) 3 SCC 15: 1990 Cri LJ 1502.
If a foreigner detained under preventive detention law has working knowledge of English then the fact that the order to detention was communicated in English, does not vitiate the detention; Kubic Dariusz v. Union of India, AIR 1990 SC 605: (1990) 1 SCC 568: 1990 SCC (Cri) 227.

Where the detention order specifically states that the order was passed to ‘prevent’ the detenue from engaging in illegal traffic in psychotropic substance, it means that order was passed so that in future detenues could not indulge in such acts, rules. The order did not deserve challenge on the ground that ‘Satisfaction’ was not recorded; State of Maharashtra v. Umraniswaminathan Laxman, (1997) 11 SCC 426.

Safeguards to be observed in preventive detention have become now a highly specialized subject. What has been provided in Clauses (4) to (7) of article 22 should now be read, along with numerous judicial decisions on these Clauses and on various preventive detention laws, as also with the case laws on article 21?

Production before the nearest Magistrate


Representation: Preventive detention

Representation in case of preventive detention is to be made to the competent authority. To ascertain who is the competent authority, the scheme relating to the authority is to be examined; Veeramani v. State of Tamil Nadu, JT (1994) 1 SC 350.

Right to consult and to be defended by legal practitioner of his choice

Right against Exploitation

23. **Prohibition of traffic in human beings and forced labour.**- (1) Traffic in human being and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

**Notes on Article 23**

**Child labour**

The Supreme Court has issued elaborate guidelines to child labour. Child labour shall not be engaged in hazardous employment. There shall be set up child rehabilitation welfare fund in which offending employer should deposit Rs. 20,000. Adult member of such child should be given employment; M.C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699: (1996) 6 SCC 756.

Supreme Court has further directions as to education, health and nutrition of child labour.

The judgment is a sequel to the judgment in-


**Children of prostitutes**

Directions were issued by the Supreme Court in public interest litigation, as to the children of prostitutes. See the under mentioned cases:


Legislation relevant to Article 23

Article 23(1) envisages legislation for the enforcement of the constitutional prohibition. Section 374 of the India Penal Code is one such enactment, though a pre-Constitution one. Specific legislation also exists regarding immoral traffic in women and girls regarding bonded labour.

Scope

This article prohibits-

(a) Traffic in human beings;
(b) Beggar; and
(c) Other similar forms of forced labour.

An exception is made for compulsory service for public purpose, under clause (2). Although clause (2) does not say so, obviously the imposition of such service has to be by law, as a mere executive order of the State would not suffice for the purpose. It has been held that even if remuneration is paid for the labour still, if it is ‘forced’, then it is unconstitutional. Judicial decisions in support of these propositions are


Traffic in human beings


24. Prohibition of employment of children in factories, etc.- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion.- (1) subject to public order; morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.- In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Notes on Article 25

Ananda Marg


Charity

Article 25 merely protects the freedom to practice rituals and ceremonies etc. which are only the integral parts of the religion. A disposition towards making gift for charitable or religious purpose may be a pious act of a person but the same cannot be

Foreigners

An order issued under the Foreigners Act, 1946, imposing a duty on petitioners, cannot be challenged by the petitioners on the ground that they are professing Christianity and the order infringes article 25 of the Constitution; P. Innaiah v. Government of India, AIR 1990 AP 203.

Priests

Service of priest is a secular activity and can be regulated by the State under article 25(2); Bhuri Nath v. State of Jammu & Kashmir, AIR 1997 SC 1711: (1997) 2 SCC 745.

Regulation by the State

Article 25, clause 2(a) saves the power the power of the State to regulate or restrict secular activities associated with religious practice. These restrictions or regulations should be primarily concerned with the secular aspect of religious practice rather with the essentials of religion as per judicial pronouncement. This view, enunciated for the first time in Ratilal v. State of Bombay, (1954) SCR 1055: AIR 1954 SC 388: (1954) 1 MLJ 718: 56 Bom LR 1184, has been followed in all later cases though the test is not easy to apply. What is the dividing line between the two is for the court to determine. But, subject to that, the religious denomination is entitled to lay down its rites and ceremonies – an aspect illustrated by Sehanmal v. State of Tamil Nadu, AIR 1972 SC 1586: (1972) 2 SCC 1: (1972) 3 SCR 815.

As the various limbs of article 25, particularly article 25(1) and article 25(2)(a) are interconnected, it is advisable to study a number of cases when a concrete question arises. The following list of cases would be helpful:


Religion

(a) ‘Religion” is a matter of faith but belief in God is not essential to constitute religion.
(b) Doctrines of each religion constitute its essential part, but the court is competent to examine them.
(c) ‘Philosophy’ is different from religion.

Following decisions support the above propositions as to the scope of ‘religion’:-


Religious Freedom

Where temple and other religious institutions of Hindus are affected by frequent communal violence, the State is duty-bound to maintain public order; Shyamal Ranjan Mukherjee v. Nirmal Ranjan Mukherjee, AIR 2008 (NOC) 568 (All).

Restrictions that can be imposed

By article 25(1), the Constitution itself makes freedom of religion subject to –

(a) Public order.
(b) Morality.
(c) Health.
(d) ‘Other provisions of this Part’ – which, inter alia, includes clause (b) of article 25(2) itself; Venkataramana v. State of Mysore, AIR 1958 SC 255: 1958 SCR 895.

The expression ‘public order’ course elsewhere in the Constitution – e.g. article 19(2) – and should bear the same meaning here also. For the meaning of ‘public order’ under the Constitution, See the under mentioned cases:

(ii) Ramji Lal v. State of Uttar Pradesh, AIR 1957 SC 620 (Discusses article 25 also).

Scope and object

With article 25 begins a group of provisions which ensure equality of all religions, thereby promoting secularism. The emphasis in this article is on the practice of religious freedom by individuals. The emphasis in article 26 is on the establishment of institutions. But article 25 may be available even where the practice of religion by individuals is through institutions.

The freedom guaranteed by article 25 is to ‘profess, practice and propagate’ religion. The act of ‘practice’ is concerned primarily with religious worship, ritual and observations. Propagation is concerned with right to communicate beliefs to another person or to expound the tenets of one’s religion, but does not include a right to forcible conversions; Stainislaus v. State of Madhya Pradesh, AIR 1977 SC 908: (1977) 1 SCC 677: 1977 Cri LJ 551.

The logic underlying the constitutional guarantee regarding ‘practice’ of religion is that religious practices are as such a part of religion as religious faith or doctrines;

Use of loudspeaker

No religion prescribes that prayers should not be performed by disturbing the peace of others nor does it preach that they should be through voice-amplifiers or beating. In any case if there is such practice, it should not adversely affect the rights of other including that of being not disturbed in their activities; Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association, AIR 2000 SC 2773: (2000) 7 SCC 282: 2000 SCC (Cri) 1350.

26. Freedom to manage religious affairs. – Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purpose;
(b) to manage its own affairs in matters of religion;
(c) to own and acquire movable and immovable property; and
(d) to administer such property in accordance with law.

Notes on Article 26

Administration of property of religious endowments

The broad principle is that a State made law can regular the administration of property of religious endowment, but the law cannot take away the right of administration altogether. See the under mentioned decisions:

(vi) S. Azeez Basha v. Union of India, AIR 1968 SC 662: (1968) 1 SCR 833.
Affairs of religion

As under article 25, under article 26 also, courts have made a distinction between the essentials of religion and non-essentials. See the under mentioned decisions:


Common burden (land revenue)

A common burden (e.g. land revenue) imposed on all does not violate article 26(c) and article 26(d); Government of Tamil Nadu v. Ahobila, AIR 1987 SC 245: (1987) 1 SCC 38.

Denomination

In the case of a denomination tannest are important, thus distinguishing it from an individual; Acharya jagdishwarananda Avadhuta v. Commissioner of Police, AIR 1990 Cal 336.

Directive Principles

In this context, court have also relied on the Directive Principle of State Policy (particularly article 37), and have taken the view, that property of a religious institution can be acquired under article 31A (1)(a) , for effecting agrarian reform. It may also be acquired, if it exceeds the ceiling allowed by the relevant legislation. But the core of the religious institution should not be interfered with; Narendra v. State of Gujarat, AIR 1974 SC 2098: (1975) 1 SCC 11: (1975) 2 SCR 317.

Right to own property

The right to own and administer property is not an absolute right. It is subject to reasonable regulation by the State, the important condition being that such regulation

On this basis, acquisition of its property (under the authority of law), is valid, subject to the condition mentioned above; Suryapalsingh v. State of Uttar Pradesh, (1952) SCR 1056.

Rituals

Article 25 and 26 extend to rituals also are not confined to doctrine. However courts have to be pragmatic. Right to manage a temple is not an integral part of religion. It can be regulated by law; Sri Adi Visheshwara of KashiVishwanathTemple v. State of Uttar Pradesh, (1997) 4 SCC 606.

Where the ritual in temple cannot be performed except by a person belongings to a denomination, the purpose of worship will be defeated; Seshanmal v. State of Tamil Nadu, AIR 1972 SC 1586: (1972) 3 SCR 815: (1973) 1 MLJ 58 (SC).

Scope and object

Article 26 protects- (i) religious denominations, and (ii) selections thereof. The four rights guaranteed by the article are subject to ‘publish order, morality and health’- as in article 25. But article 26 is not subject to other provision of a Part III – an aspect noticed in Narendra v. State of Gujarat, AIR 1974 SC 2098: (1975) 1 SCC 11: (1975) 2 SCR 317.

The rights under clause (a) of article 16(a) is a group right and is available to very religious denomination or any section thereof, be it of majority or any section thereof. It is evident from the opening words of article 26 that this right is subject to publish order, morality and health; T.M.A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355 94400; 920020 8 SCC 481.
27. Freedom as to payment of taxes for promotion of any particular religion.

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses of the promotion or maintenance of any particular religion or religious denomination.

Notes on Article 27

Article 27 is one the essential consequences of secularism. A ‘tax’ is compulsory exactions of money for publish purpose. If the State exacts money through a tax whose proceeds are assigned for the benefit of a particular religion, obviously the State favours, patronises and support that particular religion. Hence the prohibition against such taxes. The distinction between ‘tax’ and ‘fee’ has been adhered to in the context of this article so that fees for secular regulation can be charged for defraying expenses of administrative regulation. See the cases cited under article 25 supra.

28. Freedom as to attendance religious instruction or religious worship in certain educational institutions.- (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such persons or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

29. Protection of interests of minorities.- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Notes on Article 29

The leading cases on article 29 are:


Although, commonly article 29 (1) is assumed to relate to minorities, its scope is not necessarily so confined, as it is available to “any section of citizens resident in the territory of India”. This may well include the majority, as Ray, C.J. pointed out in the Ahmedabad St Xaviers College Society v. State of Gujarat, AIR 1974 SC 1389: (1974) 1 SCC 717: (1975) 1 SCR 173.


An important consequence of the ‘right to conserve’ one’s script is that citizens have the right to agitate for the protection of their language. ‘Political’ speeches for the conservation of the language of a section of the citizens
cannot, therefore, be regarded as a corrupt practice within the meaning of section 123(3) of the Representation of the People Act, 1951; Jagdev Singh Sidhanti v. Partap Singh, AIR 1965 SC 183 (188): (1964) 6 SCR 750.

**Minorities**

Although the word ‘minorities’ occurs in the marginal note to article 29, it does not occur in the text. The original proposal of the Advisory Committee in the Constituent Assembly recommended the following:-

“(1) Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respects.” [B. Siva Rao, “Select Documents” (1957) Vol. 2, page 281.] But after the clause was considered by the Drafting Committee on 1st November 1947 it emerged with substitute of ‘section of citizens.’[B Siva Rao, Select Documents (1957) Vol. 3 pages, 525-26, Clause 23, Draft Constitution]. It was explained that the intention had always been to use ‘minority’ in a wide sense, so as to include (for example) Maharashtrians who settled in Bengal. (7 C.A.D. pages 922-23)

**Regional language**


**30. Right of minorities to and administer educational institutions.-**

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or
determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.\(^{(24)}\)

(2) The State shall not, in granting aid to education institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

**Note on Article 30**

**Condition as to admission fees**

It is legal position is that the State cannot impose any restriction on the right of the minorities to administer educational institution so long as such institutions are unaided by the State, except to the limited extent that regulation can be made for ensuring excellence in education; Father Thomas Shingare v. State of Maharashtra, (2002) 1 SCC 758: AIR 2002 SC 463: 2002 SCC (Cri) 273).

Article 30(1A) requires a State, that is to say, Parliament in the case a central legislation or a State legislature in the case of a State legislation, to make a specific law to provide for the compulsory acquisition of the property of minority education institutions, the provision of which law should ensure that the amount payable to the such institution or the acquisition so its property will not be such as will in many manner impair the functioning of educational institutions; Society of St. Joseph’s Collage v. Union of India, (2002) 1 SCC 273: AIR SC 195: (2002) 1 KLT 438.

**Conditions for aid or recognition**

As condition of condition of granting aid or recognition to an institution coming under article 30(1), the State may impose reasonable regulations for the purpose of ensuring sanitation, competence of teachers, maintenance of discipline and the like. See the following cases:-


\(^{(24)}\)Ins by the constitution (44th amendment) act 1978 section 4
Conditions: Void

Thus, the State cannot prescribe a condition that if an institution, including one entitled to the protection of article 30(1), seeks to receive State aid, it must submit to the condition that the State may take over the management of the institution or acquire it, under certain condition. Such a condition would completely destroy the right of the community to “administer” the institution; St. Xavier’s College v. State of Gujarat, AIR 1974 SC 1389, paragraphs 6, 73, 124: (1974) 1 SCC 717; (1975) 1 SCR 173.

Similarly, there is no constitutional or other right for institution to receive State recognition, and the State may impose reasonable conditions for receiving its recognition, e.g. as to the qualifications or pay of teachers or qualifications of governing bodies. See the under mentioned cases:


But the State cannot impose conditions which are of such a nature, that the acceptance thereof would virtually deprive a minority community of the right guaranteed by article 30(1); Sidhrajbhai v. state of Gujarat, AIR 1963 SC 540: (1963) 3 SCR 837: 1962 Ker LJ 135 (SC).

Crucial words

In article 30(1), the crucial words are:

(a) Minorities;
(b) Establish and administer;
(c) Educational institutions;
(d) Of their own choice.

The words ‘of their own choice’ are important; Shri Krishna v. Gujarat University, AIR 1962 Guj 86 (FB). The word ‘establish’ has been construed by Wanchoo, C.J. in S. Azeez Basha v. Union of India, AIR 1968 SC 662: (1968) 1 SCR 833.
Educational standards

Right of a minority to administer educational institution has been dealt with by the Madhya Pradesh High Courts. It has been held that the provisions contained in paragraph 17(1) of statute 28, Devi Ahilya University, in regard to the Constitution of the Selection Committee in the case of teaching posts [(except in so far as they provide in sub-clause (a) that the Kulpati or his nominee shall be Chairman of such Committee] are aimed at ensuring educational standards and maintaining excellence therefore and cannot be said to be in violation of article 30(1) of the Constitution. The same is the positive with regard to clause (1) of the said paragraph 17(1), which deals with the constitution of a Selection Committee in the case of Principle. Sub-clause (a), which provides that the Kulpati (or his nominee), shall be the Chairman, is void. But the other sub-clauses do not offend article 30(1) of the Constitution, inasmuch as they have apparently been enacted for ensuring educational standards and maintaining excellent thereof; Islamia Karimia Society, Indore v. Devi Ahilya Vishwavidyalaya, Indore, AIR 1988 MP 22.

Reasonable regulations can be made to prescribe the syllabus; State of Tamil Nadu v. Joseph, (1991) 3 SCC 87: (1991) 2 SLR 605.

Maladministration

Maladministration would defeat the very object of article 30, which is to promote excellence of minority institutions in the field of education; All Saints High School v. Government of Andhra Pradesh, AIR 1980 SC 1042, paragraphs 12, 65: (1980) 2 SCC 478.

Minorities

The word; minorities’ has been defined in the Constitution. The Motilal Nehru Report (1928) showed a prominent desire to afford protection to minorities, but did not define the expression. The Sapru Report (1945) also proposed, inter alia, a Minorities Commission but did not define minority. The Year Book on Human Rights (1950), page 490. The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities has defined ‘minority’ (by an inclusive definition), as under:
(i) The term ‘minority’ includes only those non-document groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population; (ii) such minority should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; and (iii) such minorities must be loyal to the State of which they are national.

Article 27 of the International Covenant on Civil and Political Rights does not define the expression but gives the following right to them:-

In those State in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their groups, to enjoy their own culture, to profess and practice their own religion or to use their own language.

The word ‘minority’ is not defining in the Constitution but literally it means ‘a non-dominant’ groups. It is a relative term and is referred to, to represent the smaller of two number, sections or groups called ‘majority’. In that sense, there may be political minority, religious minority, linguistic minority, etc.; T.M.A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355: (2002) 8 SCC 481.

**Minorities based on religion or language**

Backward classes are not minorities within article 30. As K.M. Munshi [5 C.A.D. page 227] pointed out, “The Harjians generally knows as the Scheduled Castes, are neither a racial minority nor a linguistic minority… The Harjians are part and parcel of Hindu community.”

Following judicial decisions are relevant as to the concept of ‘minorities’:-


(ii) Shri Krishna v. GujaratUniversity, AIR 1962 Guj 88 (Shelat, C.J.) (A judgment worth perusal).

**Regulation by the State**

The “regulation” by the State cannot go to the length of annihilating the right guaranteed by article 30(1). Regulation must be related to the interests of the institution as an educational institution (and not merely in the interests of the general public); St. Xavier’s College v. State of Gujarat, AIR 1974 SC 1389, paragraphs 6, 73, 124: (1974) 1 SCC 717: (1975) 1 SCR 173.

**Regulatory laws**

The right under article 30(1) is subject to the regulatory power of the State. Article 30(1) is not a charter for maladministration. Legislation for social welfare and similar regulatory measure do not constitute an infringement of article 30(1). So long as the minority is not deprived of the actual management of the institution, a law regulating certain matters concerning industrial relation, academic matters and the like does not infringe article 30(1); Virendra Nath v. Delhi, (1990) 2 SCC 307: AIR 1990 SC 1148: 1990 Lab IC 929.

The above broad statement of the legal position is illustrated by, and draws support from the following cases:-


Requirements of regulation

In order to be consonant with article 30(1), a regulation imposed by the State upon a minority institution should satisfy the following requirements:

(a) it must be reasonable;
(b) It must be regulative of the educational character of the institution;
(c) It must be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.


(d) It must not annihilate the institution.

Right: Not absolute

The right under article 30 is not absolute. The State has power to regulate the administration of the institutions established by the minority communities. State has the right to regulate the administration or religious institutions. Right to “administer” does not include right to maladminister. See the following cases:


Right to receive aid

There is no constitutional right to receive State aid outside article 337. But if the State does, in fact, grant aid to educational institutions, it cannot impose upon the
right to receive such aid under such conditions as would virtually deprive the member of a religious or linguistic community of their right under article 30(1); St. Stephen’s College v. Delhi University, AIR 1992 SC 1630: (1992) 1 SCC 558.

Scope

Article 30 is confined to minorities—whether based on religion or language—and unlike article 29(1); it cannot be availed of by any ‘section of citizens.’ At the same time, article 30(1) is not confined to the conservation of language, script or culture—unlike article 29(1). It may be, that the right given by article 29(1) is fortified, as regards minorities, by article 30(1). But the two rights are separate; Rev. Father Proost v. State of Bihar, AIR 1969 SC 465: (1969) 2 SCR 73. The right to establish an educational institution under article 30 is not confined to the conservation of language, script or culture. This was pointed out by Mathew, J. in Ahmedabad St. Xaviers College Society v. State of Gujarat, AIR 1974 SC 1389: (1974) 1 SCC 617.

Article 30 confers two rights:

(a) Right to establish an institution, and
(b) Right to administer it.

The former means the right to create the institution, while the latter (right to administer) means that the management of the affairs of the institution must be free of external control, so that the founders or their nominees can manage the institution as they think fit and in accordance with their ideas of how best the interest of the community in general and the institution in particular will be served; Md. Joynal Abedin v. State, AIR 1990 Cal 193 (201,202) paragraphs 12 and 13.


Standards

A “standard” of education is not a part of “Management” as such; All Saints High School v. Government of Andhra Pradesh, AIR 1980 SC 1042, paragraphs 12, 65: (1980) 2 SCC 478.

31. Compulsory acquisition of property.- [Rep. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 6 (w.e.f. 20-6-1979).]

[ Saving of Certain Laws]

31. A Saving of laws providing for acquisition of estates, etc.-

(1) Notwithstanding anything contained in article 13, no law providing for-

(a) The acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) The taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) The amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) The extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) The extinguishment or modification of any rights accruing by virtue of any agreement, lease or license for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or license,

Shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [article 14 or article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved

\(^{25}\) subs. by the constitution (44th amendment) act 1978 Section 7
for the consideration of the President, has received his assent:

[Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.][26]

(2) In this article,-

(a) the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-

(i) any jagir, inam or muafi or other similar grant and in the State of [Tamil Nadu] andKerala, any janmam right;
(ii) any land held under ryotwari settlement;
(iii) any land held or for purpose of agriculture or for purpose ancillary thereto, including waste land, forest land, land for pasture or sites of building and other structures occupied by cultivators of land, agricultural labourers and village artisans;]
(c) the expression “rights”, in relation to an estate, shall include any rights testing in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under- raiyat or other intermediary and any rights or privileges in respect of land revenue.

[26] Ins by the constitution (70th amendment) act 1964 Section 2
[27] Subs by the Madras State Act 1968 (53rd of 1968) Section 4
Note on Article 31A

Land reform legislation

(1) Laws providing for acquisition of estates, takeover of corporation, etc., have been saved by article 31A against challenge on the ground of alleged infringement of article 14 or article 19.

(2) By article 31B, Act and Regulation specified in the Ninth Schedule have been saved against challenge on the ground of inconsistency with, taking away or abridging any fundamental right. However, after the decision in Keshavanada’s case, inclusion in the Ninth Schedule of any law is open to challenge on the ground of damage to the basic structure of the Constitution; Keshavanada Bharati v. State of Kerala, AIR SC 1461: (1973) 4 SCC 225; 1973 Supp SCR 1; Waman Rao v. Union of India, AIR 1981 SC 271: (19814) 2 SCC 362: (1981) 2 SCR 1; Srinivasa v. State of Karnataka, AIR 1987 SC 1518: (1987) 2 SCC 692, paragraphs 6-7. Article 31C, inserted by the Constitution (Twenty-fifth Amendment) Act, 1971, protected laws giving effect to the Directive Principles in article 39(b) and 39(c) from unconstitutionality on the ground of contravention of article 14, 19 and 31. By the 42nd (Amendment) Act, 1976, the protection was extended to legislation for implementation of any directive principle. But the Supreme Court in 1980 (by majority) held this extension of the protection to be unconstitutional on the ground that such an omnibus withdrawal of legislation from judicial review would undermine the basic structure of the Constitution. In 1983, the Supreme Court has declared the relevant observation in its 1980 judgment to be obiter. See the following case:-


Article 31C in its main paragraph, second part (as amended by The Constitution (Twenty- fifth Amendment) Act, 1971) provides as under:
And no law containing a declaration that it is for giving effect so such policy shall be called in question in any court on the ground that it does not give effect to such policy.

In 1973, the Supreme Court struck down this portion as unconstitutional on the ground that it was beyond that it was beyond the competence of the Constitution (Twenty-fifth Amendment) Act, 1971 (Which introduced article 31C), to take away the power of judicial review to question whether a particular law which professed to give effect to a Directive Principles was, in reality, a law having that object or whether that was only its colourable purpose; Keshavananda Bharati v. State of Kerala, AIR 1973 SC 1461: (1973) 4 SCC 225: 1973 Supp SCR 1.

It follows that the court can still consider whether a particular law purposing to implement any directive principle is valid if it finds that the nexus between that law and the Directive Principle relied on is illusory or colourable or whether it has ‘direct and reasonable’ nexus with the directive principle in article 39(b) or article 39(c); Bhim Singhji v. Union of India, AIR 1981 SC 234, paragraph 13: AIR 1986 SC 1466.


[31B. Validation of certain Acts and Regulations.- Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]

Notes on Article 31B

Article 31B saves conflict with any fundamental right, including the right guaranteed by article 19(1) (g); S.S.K. Niyami v. Union of India, AIR 1990 SC 2128: (1990) 4 SCC 516.

[31C. saving of laws giving effect to certain directive principles.-]
Notwithstanding anything contained in article 13, no law giving effect to the policy of
the State towards securing [all or any of the principles laid down in Part IV][28] shall
be deemed to be void on the ground that it is inconsistent with, or takes away or
abridges any of the rights conferred by [article 14 or article 19] [and no law
containing a declaration that it is for giving effect to such policy shall be called in
question in any court on the ground that it does not give effect to such policy]:

Provided that where such law is mad by the Legislature of a State, the provisions
of this article shall not apply thereto unless such law, having been reserved for the
consideration of the President, has received his assent.]

Notes on Article 31C
As to effect of article 31C on article 19 see Elizabeth v. State of Kerala, AIR 1991
Ker 161 (FB).

Article 31C does not bar judicial review to examine the nexus between impugn
law and article 39; Assam Sillimanite v. Union of India, AIR 1992 SC 938: (1992)
Supp (1) SCC 692.

[31D. saving of law in respect of national activities. – [ Rep. by the Constitution
(Forty-third Amendment) Act, 1977, section 2 (w.e.f. 13-4-1978).]][29]

Right to Constitutional Remedies

32. Remedies for enforcement of right conferred by this Part. –

(1) The right to move the Supreme Court by appropriate proceeding for the
enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue direction or orders or writs,
including writs in the nature of habeas corpus, mandamus, prohibition, quo
warrant and certiorari, whichever may be appropriate, for the enforcement of
any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1)
and (2), Parliament may by law empower any other court to exercisable by the
Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended expect as otherwise
provided for by this Constitution.

[28] Subs by the constitution (42nd amendment) act 1976 Section 4
[29] Ins by the constitution (42nd amendment) act 1976 Section 5
Notes on Article 32

Administrative Tribunals Act, 1985

Section 28 of the Administrative Tribunals Act, 1985 has left untouched the writ jurisdiction of the Supreme Court; Chopra v. Union of India, AIR 1987 SC 357: (1987) 1 SCC 422: (1987) 1 LLJ 255

Thus wide power under article 323A (2)(d) of the Constitution has not been exercised.

Administrative Tribunals themselves have writ procedure under section 14(1) of the Administrative Tribunals Act, 1985.

Bail

If, after rejection of bail by the magistrate, High Court grants bail, Supreme Court may interfere; Bimla v. State of bihar, (1994) 1 UJSC 326: (1994) 2 SCC 8: 1994 Cri LJ 638 paragraph 2.

Basic feature


Certiorari

(a) Certiorari may be issued where the law under which the decision was given is void; Himmat Lal v. State of Madhya Pradesh, AIR 1954 SC 403: 1954 SCR 1122: (1954) 5 STC 115.

(b) The decision itself violates a fundamental right (see below); or

(c) The decision violates the law or is without jurisdiction; Ranjit Singh v. Union Territory of Chandigarh, AIR 1991 SC 2296: (1991) 4 SCC 304: 1991 SCC (Cri) 965.
(d) The decision is against natural justice, mala fide, perverse or based on non-applicability of avenue.


**Child prostitution**

Supreme Court has issued directions to check the evil of child prostitution; Vishal Jeet v. Union of India, (1990) 3 SCC 318, paragraph 16: AIR 1990 SC 1412: 1990 Cri LJ 1469.

**Closed of industry**

Supreme Court issued directions for revival of a company (viable units) having regard to the fact living had been denied to 10,000 workers for five years; Workers of M/s. Rohtas Industries Ltd. v. Rohtas Industries Ltd., AIR 1990 SC 481: 1989 Supp (2) SCC 481.

**Commissioner**

Court may appoint a person to act as Commissioner to inquire into allegations made against Government officers for breach of fundamental right. A request made after an objective inquiry would not be rejected unless good reasons are shown to exist for rejection; Delhi Judicial Service Association v. State of Gujarat, (1991) 4 SCC 406: AIR 1991 SC 2176.

**Compensation**

For deprivation of right to life and personal liberty, compensation may be awarded; Saheli v. C.P., (1990) 1 SCJ 300, paragraphs 11-14: (1990) 1 SCC 422: AIR 1990 SC 513.

**Composite petition**

**Contempt**


**Continuing mandamus**


**Counter-affidavits: Detention**

Counter affidavits field as in replay to allegations of (i) mala fide, (ii) abuse of power, or (iii) bias, should be field by the detaining authority himself; Gazi Khan v. State of Rajasthan, AIR 1990 SC 1361 (1367), paragraphs 9-14: (1990) 3 SCC 459: 1990 Cri LJ 1420.

**Damages**


**Death in custody**


**Detention**


Court may order release of a detenu if he is not given opportunity to appear before the Board within the statutory period; State of Punjab v. Sukhpal Singh, AIR 1990 SC 231: (1990) 1 SCC 35: 1990 Cri LJ 584.
Court may order the release of as debenture if there is failure to obtain Government approval within statutory period; Kiran Pasha v. Government of Andhra Pradesh, (1990) 1 SCC 328: 1990 SCC (Cri) 110.


**Doctrine of Parens patriae**
The Supreme court in Charan Lal Sahu v. Union of India, AIR 1990 SC 1480: (1990) 1 SCC 613 has Upheld the validity of the Bhopal Gas Disaster (Processing of Claims) Act, 1985. The judgment discusses the doctrine of parens patriae. It also takes note of the fact that the legislation in question related to “actionable wrong” under the Seventh Schedule, Concurrent list, entry 8. It also contains a suggestion (in para 129) to lay down certain norms and standards in regard to the industries dealing with materials which are of dangerous potentialities. In the judgment of Mr. Justice Ranganathan, there is a suggestion that either the Fatal Accidents Act, 1855 should be amended or fresh legislation enacted to deal with victims of mass disaster; Inter alia, the suggested legislation should deal with the following matter:-

(i) Fixed minimum compensation on no fault basis, pending filing adjudication of the case.

(ii) Creation of a special forum with specific power to grant interim relief in appropriate cases.

(iii) Evaluation of a procedure to be followed by such (special) forum, which will be conducive to the determination of the claims and avoid high degree of formalism in proceedings.

(iv) A provision requiring industries and concerns engaged in hazardous activities to take out compulsory insurance against third party risk.

The court did not uphold the argument that the Act was against article 14 of the Constitution.
Earlier decision

Writ petition cannot be filed to circumvent an earlier decision of the Supreme Court; Gopi Aqua Farma v. Union of India, AIR 1997 SC 3519: (1997) 6 SCC 577.

Economic policy

Judicial review is not concerned with economic policy. The court does not substitute its judgment for that of the legislature or its agents, as to matters within the province of either. The court does not supplement the “feel of the expert” by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive, provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of the fact are reasonably based on evidence, and whether such findings are consistent with the laws of the land; Shri Sitaram Sugar co. Ltd v. Union of India, AIR 1990 SC 1277 (1299), paragraph 86: (1990) 3 SCC 223 (Judgment of Dr. Justice Thommen at page 1297, paragraph 52 and footnote 8, contains an exhaustive survey of case law as to arbitrary action. It covers several English, American and Commonwealth cases.)

Enforcement of Act


Estoppel against petitioner

Petitioner who has voluntarily accepted benefit under a statute, cannot object to its validity; Pramod v. Medical Council, (1991) 1 UJ SC 400: (1991) 2 SCC 179.

Estoppel against State

Where a State party supports a petition on the merits, it cannot be allowed to raise a technical plea after a long lapse of time; T.N. Sangam v. Union of India, AIR 1990 SC 1917, paragraph 6: (1990) 3 SCC 440.
False plea

A petition may be dismissed at any stage (even after rule nisi is issued) if petitioner has made a false plea; A.I.S.B.O.F. v. Union of India, (1990) Supp SCC 336, paragraphs 12-13: 1991 SCC (L&S) 429.

Infringement of fundamental right

Threat of infringement of fundamental right is enough to justify issue of writ; Simranjit v. Union of India, (1993) 1 UJ SC 32, paragraph 7: (1992) 4 SCC 653:

Introduction of Bill in the Legislature


Irrigation

Where a dam under construction is apprehended to endanger safety, court can look into the matter; Tehri Baandh v. State of Uttar Pradesh, (1991) 1 UJ SC 121, paragraph 13: 1992 Supp (1) SCC 44.

Laches


But delay is no bar to quo warranto; Kashinath v. Speaker, (1993) 2 SCC 703, paragraphs 34-36: AIR 1993 SC 1873.

Where the Government in view of the policy decision to construct dam (Sarder Sarovar Project) on river Narmada, had granted the environment clearance after
conducting studies, the petition opposing the construction of dam filed by way of public interest litigation after commencement of execution of project would be barred by laches; Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751: (2000) 10 SCC 664.

Recently refusal for delay has been described as a rule of practice; D.R.L.R.C. v. Dt. Board, (1992) 2 SCC 598: AIR 1993 SC 602.

**Law making**


**Legislation on personal law**

Writ petition is not maintainable to challenge legislation on personal law, where policy matters are involved; Ahmedabad Women Action Groups v. Union of India, (1997) 3 SCC 573: AIR 1997 SC 3614.

**Liability**


In the above case Supreme Court relied inter alia on (a) its duty to enforce fundamental right under articles 14, 21, 32, (b) need to make the guaranteed remedies effective, (c) to do complete justice; Union Carbide v. Union of India, (1991) 4 SCC 584: AIR 1992 SC 248.

**Liability of officers**

It is now well-settled, that the bureaucracy is also accountable for the acts done illegally, when the court exercises judicial review; State of Bihar v. Subhash Singh, AIR 1997 SC 1390, paragraph 3: (1997) 4 SCC 430.
**Limits of writ jurisdiction**


Non-justifiable and political matters cannot be dealt with under the guise of public interest litigation; Maharishi v. State of Uttar Pradesh, AIR 1990 ALL 52, paragraph 18.


A directive principle cannot be enforced by writ under article 32; B. Krishna Bhat v. Union of India, (1990) 3 SCC 65.

A question that can be agitated under the Industrial Disputes Act, 1947 will not be normally allowed to be agitated under article 32; F.C.I. Workers Union v. Food Corporation of India, (1990) Supp SCC 296, paragraph 11: AIR 1990 SC 2178: (1990) 2 LLN 664.

**Locus Standi**

Any person complaining of infraction of any fundamental right guaranteed by the Constitution is at liberty to move to the Supreme Court but the right that could be invoked under article 32 must ordinarily be the rights of the person who complains of the infraction of such rights and approaches the court for relief and the proper subject for investigation would however be as to the nature of the rights that is stated to have been infringed; Narinderjit Singh Sahni v. Union of India, (2002) 2 SCC 210: AIR 2001 SC 3810.
Locus standi to file a particular petition under article 32 depends on the facts as they existed at the time when the petition was filed; Ruqmani v. Achuthan, AIR 1991 SC 983: 1991 Supp (1) SCC 520.

A journalist may move a writ petition, if the case falls within the recognized category of cases for public interest litigation; Bhola Nath v. State of Uttar Pradesh, (1990) Supp SCC 151, paragraph 1: 1990 SCC (Cri) 543.

If personal litigation is wrongly fought, in the shape of public interest litigation, cost may be imposed on the person instituting such litigation; Chhetriya Pradushan v. State of Uttar Pradesh, AIR 1990 SC 2060: (1990) 4 SCC 449.

The classes of persons for whom public interest litigation may be fought, are death within a judgment of the Supreme Court; Subhash v. State of Bihar, AIR 1991 SC 420, paragraphs 7 and 8: (1991) 1 SCC 598.

Mandamus

(a) Mandamus should be issued under article 32 where a fundamental right is infringed by a statute.

(b) Statutory order.


Natural justice

It is not always necessary for the court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The court can under article 32 or article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law; M.C. Mehta v. Union of India, AIR 1999 SC 2583: (1999) 6 SCC 237.
PIL

Public Interest Litigation cannot be entertained where stand taken was contrary to stand taken by those who are affected by any action; Rameshwar Prasad v. Union of India, AIR 2006 SC 980.

Pleadings


Policy of Government

Court cannot-


Political question


Pollution

Direction can be issued to control pollution; Subhash v. State of Bihar, AIR 1991 SC 420, paragraph 7: (1991) 1 SCC 598.
Price fixation

Price fixation is not within the province of the court. Judicial review is exhausted when there is found to be rational basis for the conclusions reached by the concerned authority. See the under mentioned decisions:

(iii) Shri Sitaram Sugar Co. Ltd. Union of India, AIR 1990 SC 1277, paragraphs 8 and 58: (1990) 3 SCC 223.

Prostitutes’ children

Segregating children of prostitutes by locating separate schools and providing separate hostels would not be in the interest of such children. Once are born to prostitutes, it is in the interest of such children and of society at large, that the children of prostitutes should not be segregated from their mothers and be allowed to mingle with others and become part of the society; Gaurav Jain v. Union of India, AIR 1990 Supp SCC 709 (Ranganath Misra, M.N. Venkatachaliah and P.B. Sawant, JJ.)

Public interest of litigation

The development of publish interest litigation during the decade has largely modified the traditional rule as to standing to litigate in constitutional matters. The following decisions may be particularly seen in this context:-


A public litigation may be transferred to the appropriate High Court; Kasturi Lal v. State of Uttar Pradesh, AIR 1965 SC 1039: (1965) 1 SCR 375

A petition in public interest litigation filed before the Supreme Court may be transferred to the appropriate High Court; Subramaniam v. Union of India, (1990) Supp SCC 775.


Relief

There is no theoretical limit to the relief to be granted. Court gave direction for insurance of workers in match factories; Mehta v. State of Tamil Nadu, AIR 1991 SC 417: (1991) 1 SCC 283.

Where two persons were detained by the Punjab police and political rivalry was alleged, the Supreme Court directed the District Judge, Ludhiana to conduct an inquiry; Tirath Ram Saini v. State of Punjab, JT (1994) 1 SC 420: 1994 Supp (2) SCC 16: 1994 SCC (Cri) 675

Relief given up in High Court may be disallowed under article 32; Bhattacharya v. Union of India, AIR 1991 SC 468, paragraph 6: 1991 Supp (2) SCC 109: (1991) 17 ATC 355.

Court may refuse relief to a person who has voluntarily accepted benefit under a challenged statute and filed the challenge after considerable lapse of time; Pramod v. Medical Council, (1991) 1 UJSC 400: (1991) 2 SCC 179.

Even where the court does not grant relief as prayed for on the merits, it may give orders to do justice to petitioner who might otherwise suffer by reason of delay in granting interim relief; Prem v. Union of India, (1991) USJC 690 paragraph 19.

Res judicata

If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a ban of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly
suggest that the court took the view that there was no substance in the petition at all; but in the absence of speaking order it would not be easy to decide what factors weighed in the mind of the court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a ban of res judicata against a similar petition filed under Art. 32. If the petition is dismissed as withdrawn it cannot be ban to a subsequent petition under art. 32, because in such a case there has been no decision on the merits by the court; Daryao v. State of Uttar Pradesh, AIR 1961 SC 1457; (1962) 1 SCR 574.


**Scope of article 32**

Only fundamental rights falling within category (a) above can be enforced under article 32. Cases illustrating this proposition about the scope of article 32 are the following:-


Supreme Court cannot determine an issue not involving fundamental right; Indian Express Newspapers v. UN ion of India, (1986) 1 SCC 633, paragraphs 200 and 207.
Supreme Court cannot go into and examine the ‘need’ of Prevention of Terrorism Act, 2002 (POTA). It is a matter of policy. Once legislation is passed the Government has an obligation to exercise all available options to prevent terrorism within the bounds of the Constitution; People’s Union for Civil Liberties v. Union of India, AIR 2004 SC 456.

Selection Committee

It is not the function of the court to hear appeals over the decisions of the Selection Committees in Universities and to scrutinize the relative merits of the candidates. The decisions of the Selection Committee can be interfered with, only on limited grounds, such as, illegality or patent material irregularity in the Constitution of the committee or its procedure vitiating the selection or proved mala fides, affecting the selection etc. Setting aside the selection on the grounds of the so called comparative merits of the candidates, as assessed by the court while sitting in appeal over the selection so made, would not be permissible; Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan, AIR 1990 SC 434: (1990) 1 SCC 305: (1990) 60 FLR 172 (Kuldip Singh, P.B. Sawant and K. Ramaswamy, JJ.).

Service matters

Where the petitioner’s fundamental rights are impaired by legislation or rules, or Government order, the court can interfere even if it is a matter concerning service; F.C.I. Workers v. Food Corporation of India, AIR 1990 SC 2178: 1990 Supp 296: (1990) 4 SCR 745.

Similarly, the court may interfere where the fundamental rights of a public sector employee are infringed; Bhagwati v. D.S.M.D.C., (1990) 1 SCJ 433, paragraph 6: (1990) 1 SCC 361: AIR 1990 SC 371.

If the fundamental rights of a member of the Armed Forces are violated or if there is a jurisdictional error, judicial review is available; S.M. Mukherjee v. Union of India, AIR 1990 SC 1984: (1990) 4 SCC 594: 1990 Cri LJ 2148.

However, if mala fides are alleged, there must be proper pleading; Suresh v. Defense Secretary, AIR 1991 SC 483: (1991) 2 SCC 198: (1991) 16 ATC 486.

Direction under article 32 would not be issued to the opposite party to regulate the services of the petitioner in the post of helper where petitioner does not approve the Commission set up for the purpose; A Hansavani v. State of Tamil Nadu, JT (1994) 4 SC 651.

For violation of fundamental right (this includes observance of natural justice) in service matters writ is available under article 32. This is illustrated by violation of article from-


A candidate who has been illegally denied selection can approach, the court for quashing the selection and issuing directions for selection, but court cannot be evaluator of the fitness; I.A.C. v. Shukla, (1993) 23 ATC 407 (SC), paragraph 9: (1993) 1 SCC 17: (1993) 1 LLJ 215.

Sovereign Power of Legislature

Court cannot direct legislature to make particular enactment; Suresh Seth v. Commissioner, Indore Municipal Corporation, AIR 2006 SC 767.
Stock Exchange

Increase in the number or a member of the Delhi Stock Exchange is a matter of policy. Court would not issue a mandate in such matters; Om Prakash Poplai v. Delhi Stock Exchange Association, JT (1994) 1 SC 114: (1994) 2 SCC 117: (1994) 79 Comp CAS 756.

Supreme Court and High Court: Concurrent Jurisdiction

(a) On the text of articles 32 and 226, where a fundamental right is involved, a party should be free to approach either of the two courts. And this, in fact, has been the earlier judicial approach; M.K. Gopalan v. State of Madhya Pradesh, (1955) 1 SCR 168 (174): AIR 1954 SC 362. In fact, some decisions have pointed out that since the remedy under article 32(1) is itself a fundamental right, the Supreme Court is under duty to grant relief for violation of a substantive fundamental right. See the under mentioned cases:


Even still stronger are decisions holding article 32 to be a basic feature of the Constitution which cannot be taken away by even amending the Constitution; Fertiliser Corporation of India v. Union of India, AIR 1981 SC 344, paragraph 11: (1981) 1 SCC 568: (1981) 2 SCR 52.

(b) Notwithstanding the above position, the Supreme Court has, in the following decisions stated that where relief through High Court is available under article 226, the party should first approach the High Court:-


It is submitted with great respect that this view goes against the intendment of the Constitution and is contrary to earlier case law.

**Variety of rights coming up for enforcement**

Right given by law or recognized by law can be analysed into the following categories:-

(i) Fundamental rights given by the Constitution;
(ii) Constitutional rights not having the status of fundamental rights;
(iii) Statutory rights;
(iv) Rights flowing from subordinate legislation;
(v) Rights based on case law;
(vi) Customary rights;
(vii) Contractual rights;

**Writ Petition**

The writ petition under Article 32 against the contravention of Article 351 is not maintainable; Aashriwad Films v. Union of India, (2007) 6 SCC 624.

**Writ petition by workers in winding up proceedings**

The Supreme Court had entertained a writ petition with the object of rival of an undertaking and rehabilitation of workers. In spite of the best efforts, revival was not feasible. The court then directed resumption of winding up proceedings; Workers of M/s. Rohtas Industries v. Rohtas Industries, AIR 1996 SC 467 (paragraphs 15, 17, 19): 1995 Supp (4) SCC 5: 1996 SCC (L&S) 125.

**Writ petition to determine age of Chief Justice of India**

Writ petition filed article 32 to determine the age of Chief Justice of India (Dr. Justice A.S. Anand) by declaring that he was born on 1-11-1934 and then declare that he had attained the age of superannuation on 31-10-1999. President of India already had
determined relating to age of Chief Justice of India in 1991 which has attained finality. Supreme Court has held that the writ petition filed by the petitioner is an abuse of the process of the Court. Apart from the non-disclosure of what fundamental right of the petitioner has been infringed or to be enforced by the writ petition, it is a reckless action to malign and scandalize the highest judicial institution of this country; Madras High Court Advocates’ Association v. Dr. A.S. Anand, Hon’ble Chief Justice of India, AIR 2001 SC 970: (2001) 3 SCC 19: 2001 SCC (Cri) 422.

[32A. Constitutional validity of State laws not to be considered in proceedings under article 32.- [Rep. by the Constitution {Forty-third Amendment) Act, 1977, sec.3 (w.e.f. 13-4-1978).]]

[33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.- Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,

(a) The members of the Armed Forces; or
(b) The member of the forces charged with the maintenance of public order; or
(c) Persons employed in any bureau or other organization established by the State for purposes of intelligence or counter intelligence; or
(d) Persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organization referred to in clauses (a) to (c),

Be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]

3.8.2 Critical Analysis of Fundamental Rights

The fundamental rights have been criticized for many reasons. Political groups have demanded that the right to work, the right to economic assistance in case of

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(30) Ins by the constitution (42\textsuperscript{nd} amendment) act 1976 Section 6
(31) Subs by the constitution (50\textsuperscript{th} amendment) act 1984 Section 2
unemployment, old age, and similar rights be enshrined as constitutional guarantees to address issue of poverty and economic insecurity, though these provisions have been enshrined in the Directive Principles of State Policy. The right to freedom and personal liberty has a number of limiting clauses, and thus have been criticized for failing to check the sanctioning of powers often deemed “excessive”. There is also the provision of preventive detention and suspension of fundamental rights in times of Emergency. The provisions of acts like the Maintenance of Internal Security Act (MISA) and the National Security Act (NSA) are a means of countering the fundamental rights, because they sanction excessive powers with the aim of fighting internal and cross-border terrorism and political violence, without safeguards for civil rights. The phrases “security of State”, “public order” and “morality” are of wide implication. A person of alternate sexuality is criminalized in India with prison term up to 10 years. The meaning of phrases like “reasonable restriction” and “the interest of public order” have not been explicitly stated in the constitution, and this ambiguity leads to unnecessary litigation. The freedom to assemble peaceably and without arms is exercised, but in some cases, these meetings are broken up by the police through the use of non-fatal methods."Freedom, which is necessary for formulating public opinion and to make freedom of expression more legitimated. Employment of child labour in hazardous job environment has been reduced, but their employment even in non-hazardous jobs, including their prevalent employment as domestic help violates the spirit and ideals of the constitution. More than 16.5 million children are employed and working in India. India was ranked 88 out of 159 in 2005, according to the degree to which corruption is perceived to exist among public officials and politicians worldwide. The right to equality in matters regarding public employment shall not be conferred to overseas citizens of India according to the Citizenship (Amendment) Bill, 2003.\(^{(32)}\)

\(^{(32)}\)Understanding of H. R. Ch. – 12.
3.8.3. **Concluding Observation:**

There are some very beautiful lines written by a very famous poet Edward Everett:

“I am only one,

But still I am one.

I cannot do very thing,

But still I can do something;

And because I cannot do every thing

I will not refuse to do the something that I can do.”

It means everyone has to work at his best, wherever he is, whatever he can do, for the protection of human rights.

Therefore, it was once said by Eleanor Roosevelt that:

“The destiny of human rights is in the hands of all our citizens in all our communities.”

Fundamental Rights have been incorporated in Part III of India Constitution from Article 12-32. These right protect and safe the dignity and status of the individuals. These rights are Justiciable i.e. are enforceable by the court of law. The Supreme Court and High Court have been given powers of issue order directions, and writs for the enforcement of Fundamental Rights. Dr. B.R. Ambedkar has rightly called the writs as the “soul of the Part III of the Constitution”. It is all about whatever is written in books but in reality and in concluding statement, we can say that though Indian Citizen do enjoy basic human rights, the violations of such rights do take place at times, both from the Government agencies and private agencies. But two wrongs do not make one right. Every individual will have to keep in mind that the limit of his rights ends where the rights of others starts. The need is to ensure that neither the
Government agencies nor private entities deprive innocent people of their basic, inalienable rights.\(^\text{33}\)

### 3.9 Directive Principles of State Policy

Article 36:- In this part, on less the context otherwise requires. “The State” has the same meaning as in part III.

Article 37:- Application of the principles contained in this part:-

The provisions contained in this part shall not be enforceable by any court, but the Principles. Their laid down are never the less fundamental in the governance of the country and it shall be the duty of state to apply these principles in making laws.

**Notes on Article -37**

**Directive principles and UN convention**

The directive principles have been described as forerunners of the U.N. convention on right to Development on an inalienable human right; Air India statutory corporation v/s United labour Union AIR 1997 SC 645: (1997) 9 SCC 377: 1997 Lab IC 365 paragraph 39. [Observations that they stand elevated to human Rights.]

**Effect: The positive aspect**

At the same time, the Directive Principles have, according to later decisions of the Supreme Court, a positive aspect. Thus, the Directive Principles have been held to supplement fundamental rights in achieving a Welfare State. Parliament can amend fundamental rights for implementing the Directives, so long as the amendment does not touch the basic features. Legislation enacted to implement

\(^\text{33}\)Understanding of Human Rights Ch. - 17
the Directive Principles should be upheld, as far as possible. In fact, when necessary, even constitutional provisions as to fundamental rights should be adjusted in their ambit so as to give effect to the Directive Principles. Even Legislative entries may (within the limits of the total federal scheme) be given a wide interpretation for effecting Directive Principles. Constitutional provisions (apart from fundamental rights) may be construed in the light of Directive Principles. Under mentioned decisions illustrative the above propositions:

(vi) Jalan Trading Co. v. Aney, AIR 1979 SC 233:

Harmony

Directive principles and fundamental rights are to be harmoniously construed;
Grih Kalyan Kendra Workers’ Union of India, (1991) 1 SCC 611, paragraph 6;
1990 SCC (L&S) 274: 1990 Lab IC 625.

Scope and object: The negative aspect

The object of Directive Principles is to embody the concept of a welfare State;
paragraphs 134, 139, 174. However, the Directives do not confer any enforceable rights and their alleged breach does not invalidate a law, nor does it entitle a citizen to complain of its violation by the State so as to seek mandatory relief against the State. If a legislative power does not exist in a particular legislature, then the legislature cannot seek to rely on a Directive Principle for claiming that power. Under mentioned decisions support the above propositions:


38. State of secure a social order for the promotion of welfare of the people.-

[(1)] The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

[(2)] The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst group of people residing in different areas or engaged in different vocations.]

39. Certain principles of policy to be followed by the State.- The State shall, in particular, direct its policy towards securing-

(a) That the citizens, men and women equally, have the right to an adequate means of livelihood;

(34) A. 38 renumbered as clause (1) thereof by the constitution 44th amendment 1978 Section 9
(35) Ins by the constitution (44th amendment) act 1978 Section - 9
(b) That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) That there is equal pay work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

[(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

Notes on Article 39

Child labour: Employment of parent

Provision of articles 39 (e), 39 (f), 41 and 47 can be pressed into service to make suitable provisions regarding child labour.

Accordingly, the Supreme court has issued directions to the State to see that an adult member of the family whose child is in employment in a factory, mine or hazardous employment gets employment anywhere, in lieu of the child; M.C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699, paragraphs 29, 30, 31: (1996) 6 SCC 756: 1997 SCC (L&S) 49.

Declaration in law

An express legislative declaration in the law itself that the law was enacted for giving effect to the principles of State Policy in article 29(b) and 39(c), is not a condition precedent to the attraction of the protection under article 31C to the impugned law.

\(^{36}\) Subs by the constitution (42\textsuperscript{nd} amendment) act 1976 Section - 7
The nexus between the law and the objects of article 29(b) could be shown independently of any such declaration by the legislature. The absence of evidence of nexus in the form of an express declaration, is not, by itself, evidence of the absence of such nexus; Maharashtra State Electricity Board v. Thana Electricity Supply Co., AIR 1990 SC 153: (1989) 3 SCC 616 (R.S. Pathak, C.J., Sabyansachi Mukherji, S. Natrajan and S. Ranganathan, JJ.).

**Equal pay for equal work**

Person employed on contract cannot claim equal pay on the basis of equal pay for equal work; State of Haryana v. Charanjit Singh, AIR 2006 SC 161.

The doctrine of equal pay for equal work postulates equal pay for equal work for those who are equally placed in all respects, Uttar Pradesh Sugar Corpn. Ltd. v. Sant Raj Singh, AIR 2006 SC 2296


Writ can be to enforce the principle of equal work if article 14 is infringed; F.C.I. Union v. Food Corporation of India, AIR 1990 SC 2178: 1990 Supp SCC 296: (1990) 4 SLR 445 paragraph 20; See under mentioned cases as to equal pay:


Whether a particular work is same or similar in nature to another work can be determined on three considerations:

(i) The Authority should take a broad view;
(ii) In ascertaining whether any differences are of practical importance, the authority should take an equally broad approach, for the very concept of similar work implies differences in detail. These small deference however, should not defeat a claim of equality on trivial grounds;
(iii) One should look at the duties actually performed and not at those theoretically possible.

In making a comparison the Authority should look at the duties generally performed by men and women. Both men and women work at inconvenient times, there is no requirement that all those who work, e.g. at night shall be paid the same basic rate as those who work normalday shifts. Thus, a woman who works in a day cannot claim equality with a man at a higher basic rate for working nights if, in fact there are women working in nights at that rate too, and the applicant herself would be entitled to that rate if she changed the shifts; Mackinnon Mackenzie & Co. Ltd. v. Audrey D. Costa, AIR 1987 SC 1281: (1987) 2 SCC 469: (1987) 11 LJ 536

See the under mentioned cases:

Object

This article has been described as having the object of securing a Welfare State and may be utilized for construing provisions as to fundamentals rights. See the under mentioned decision:

(iii) State of Tamil Nadu v. Abu, AIR 1984 SC 326: (19841) 1 SCC 515.

Prices

A statutory corporation (even if it is not a public utility) must comply with article 39 and charge only fair prices; O.N.G.C. v. Association, AIR 1990 SC 1851: 1990 Supp SCC 397. Paragraphs 15 and 30

[39 A. Equal justice and free legal aid. – The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.]

Notes on Article 39A

Legal aid

An important impact of article 39A read with article 21 has been to reinforce the right of a person involved in a criminal proceeding to legal aid. The article has been thus to interpret (and even expand) the right conferred by section 304 of the Code of Criminal Procedure, 1973; See the under mentioned cases:


In a suitable case, Supreme Court may direct District Judge to arrange legal aid; Bajiban Chauhan v. U.P.S.R.T.C., (1990) Supp SCC 769.

40. Organisation of village panchayats.- The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

41. Right to work, to education and public assistance in certain cases.- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Notes on Article 41


42. Provision for just and humane conditions of work and maternity relief.- The State shall make provision for securing just and humane conditions of work and for maternity relief.

43. Living wage, etc., for worker.- The State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas.
[43 A. Participation of workers in management of industries.-The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertaking, establishments or other organizations engaged in any industry.](37)

44. Uniform civil code for the citizens.-The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

Notes on Article 44

Uniform law for all persons may be desirable. But its enactment in one go may be counterproductive to the unity of the nation; Pannalal Bansilal Patil v. State of Andhra Pradesh, AIR 1996 SC 1023 paragraph 12: (1996) 2 SCC 498.

Personal law

The Supreme Court of India has, in a large number of cases, rejected attempts (through public interest litigation) to seek the issue of writs:-

(a) Praying for the introduction of uniform civil code: or
(b) Declaring certain enactments relating to family law (alleged to be discriminatory) as unconstitutional.

Certain petitioners prayed as under:

(a) to declare Muslim Personal Law which allow polygamy as void, as offending articles 14 and 15 of the Constitution;
(b) to declare Muslim Personal Law which enables a Muslim male to give a unilateral Talaq to his wife without her consent and without resort to judicial process of courts, as void, offending articles 13, 14 and 15 of the Constitution;
(c) to declare that the mere fact that a Muslim husband takes more than one wife is an act of cruelty within the meaning of sub-section (8) of section 2 of the Dissolution of Muslim Marriages Act, 1939.

In another writ petition, the reliefs prayed for were the following:-

(37) Ins by the constitution (42nd amendment) act 1970 Section-9
(a) to declare sections 2(2), 5(ii) and (iii), 6 and Explanation to section 30 of the Hindu Succession Act, 1956, as void, as offending articles 14 and 15 read with article 13 of the Constitution of India;

(b) to declare section 2 of as the Hindu Marriage Act, 1955, as void, offending articles 14 and 15 of the Constitution of India.

The court stated at the very outset that the petitions mentioned above did not deserve disposal on the merits, as the issues involved were matters of policy with which the Supreme Court would not ordinarily have concern. (The court cited numerous earlier cases, adopting the same approach).

Further, the issue regarding Muslim Women etc Act was already pending before another Bench. The above judgment shows that the court is somewhat reluctant to interfere in matters of personal law. There have been other decisions exhibiting the same approach; Ahmedabad Women Action Group v. Union of India, (1997) 3 SCC 573: AIR 1997 SC 3614.

Religious trusts


The court made these observations-

In a pluralist society like India, in which people have faith in their respective religious belief or tenets propounded by different religions or their offshoots, the founding fathers, while making the Constitution, were confronted with problems to unify and integrate people of India professing different religious faiths, born in different castes, creeds or sub-sections in the society, speaking different languages and dialects in different regions and provided a secular Constitution to integrate all sections of the society as a united Bharat. The directive principle of the Constitution themselves visualize diversity and attempt to foster uniformity among people of different faiths. A uniform law, though it is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by the rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore,
be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief of defect which is most acute can be remedied by process of law at stages.

**Uniform Code**

In Maharishi Avadhesh v. Union of India, (1994) 1 Supp SCC 713, the Supreme Court dismissed a petition seeking a writ of mandamus against the Government of India to introduce a common civil code. The court took the view that it was a matter for the legislature. “The court cannot legislate in these matters”.

In the same petition, the Supreme Court declined to grant a declaration nullifying the Muslim Women’s Protection of Rights on Divorce Act, 1986.

The court also dismissed the prayer to direct the Government, not to enact a Shariat Act so as to affect the rights of Muslim women; Maharishi Advadhesh v. Union of India, (1994) Supp 1 SCC 713.

In Reynold Rajamani v. Union of India, AIR 1982 SC 1261 (1263, 1264): (1982) 2 SCC 4728 the court rejected a prayer to remove the discrimination between men and women under section10 of the India Divorce Act, 1869 (applicable to Christians). The court based its approach on the “limits” of the courts’ jurisdiction. It held that when a legislative provision enumerates the grounds of divorce, those grounds limit the courts’ jurisdiction and the court cannot re-write the law, so as to add ground of divorce not permissible under the section.

[45.Provision for early childhood care and education to children below the age of six years.-The State shall endeavor to provide early childhood care and education for all children until they complete the age six years.]\(^{(38)}\)

46. **Promotion of educational and economic interest of Scheduled Castes, Scheduled Tribes and other weaker sections.**- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

\(^{(38)}\) Subs by the constitution (86\(^{th}\) amendment) act 2002
Notes on Article 46

A law prohibiting transfer of land belonging to a member of a Scheduled Tribes to a non-tribals is valid; Lingappa v. State of Maharashtra, AIR 1985 SC 389: (1985) 1 SCC 479.

Regarding the expression “weaker sections of the Society”, the Supreme Court has directed the Central Government to lay down appropriate guidelines; Shantistar Builders v. Narayan Khimalal Totame, AIR 1990 SC 630: (1990) 1 SCC 520, paragraphs 12-13.

An employee belonging to backward classes has a fundamental right to be considered for promotion on the basis of article 16 read with article 46. M, an employee in the backward class category, was granted promotion when he approached the High Court. It was held that promotion could not be denied to another employee, who was similarly placed; Vishwas Anna Sawant v. Municipal Corporation of Greater Bombay, JT 1994 (3) SC 573: (1994) 4 SCC 434: (1994) 27 ATC 600: AIR 1994 SC 2408.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-The State shall regard the raising of the level of nutrition and the Standard of living of its people and the improvement of public health as among its primary duties and, in particular the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48. Organisation of agriculture and animal Husbandry. The State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the bedded, and prohibiting the slaughter of cows and calves and other milch and draught cattle.

[48A. Protection and improvement of environment and safeguarding of forests and wild life.-The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.]

Notes on Article 48A

Article 14, 21 and 51A (G) are to be read together; Subhash v. State of Bihar, AIR 1991 SC 420: (1991) 1 SCC 598.

Through public interest litigation brought by an institution in the locality on the basis of article 21, the duty under article 48A can be enforced; Satish v. State of Uttar
Duty under article 48A can be enforced through a letter, based on article 21; M.C. Mehta v. Union of India, (1992) Supp 2 SCC 85 (633,637).

49. Protection of monuments and place and objects of national importance.- It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, [declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

50. Separation of judiciary from executive.- The State shall take steps to separate the judiciary from the executive in the public services of the State.

51. Promotion of international peace and security.- The State shall endeavor to-

(a) Promote international peace and security;
(b) Maintain just and honourable relations between nations;
(c) Foster respect for international law and treaty obligations in the dealings of organized in the dealing of organized peoples with one another; and
(d) Encourage settlement of international disputes by arbitration.

3.9.1 Critical Analysis of Directive Principles of State Policy

Many critics have called Directive Principles of State policy as not better then ‘New Year Greetings’. Even the rational of inserting such high sounding promises has been questioned. It has been asserted that Directive is in the form of half wishes having no legal sanction behind them. Government is not bound to implement them. Critics point out:

1. Fewer children are now employed in hazardous environments, but their employment in non-hazardous jobs, prevalently as domestic help, violates the spirit of the constitution in the eyes of many critics and human rights advocates. More than 16.5 million children are in employment.
2. India was ranked 88 out of 159 countries in 2005, according to the degree to which corruption is perceived to exist among public officials and politicians.
3. Corruption has now spread like wild fire, everywhere. Now corruption is eating the very vital nerve of the Nation.
4. The recent financial corruption in organizing Common Wealth Games, is talk of day and may give blow to National reputation.

5. The implementation of a uniform civil code for all citizens has not been achieved owing to widespread opposition from various religious groups and political parties. The Shah Bano case (1985-86) provoked a political firestorm in India when the Supreme Court ruled that Shah Bano, a Muslim woman who had been divorced by her husband in 1978 was entitled to receive alimony from her former husband under Indian law applicable for all Indian women. This decision evoked outrage in the Muslim community, which sought the application of the Muslim personal law and in response the Parliament passed the Muslim Women (Protection of Rights on Divorce) Act. 1986 overturning the Supreme Court’s verdict. This act provoked further outrage, as jurists, critics and politicians alleged that the fundamental right of equality for all citizens irrespective of religion or gender was being jettisoned to preserve the interests of distinct religious communities. The verdict and the legislation remain a source of heated debate, with many citing the issue as a prime example of the poor implementation of Fundamental Rights.

Despite all this, it cannot be said that these principles are absolutely useless. They have their own ability and significance. The Directive Principles are just like polestars that provide direction. Their basic aim is to persuade the government to provide social and economic justice in all spheres of life, keeping in view its limited material resources at the earliest possible. Many of them have been implemented very successfully. Actually no government can afford to ignore these instructions as they are the mirror of public opinion and also reflect the basic spirit of the Preamble of our Constitution. Some of the steps taken in this direction are being listed below:

1. Land reforms have been introduced and Jagirdari and Zamindari systems have been abolished.
2. There has been rapid industrialization and tremendous increase in the agricultural production through Green Revolution.
3. National Commission for the Welfare of Women has been established.
4. Ceiling has been placed on land and property to fix the limit of person’s holdings.
5. The privy purses of ex-princes have been abolished.

6. Life Insurance, General Insurance and most of the banks have been nationalized.

7. In order to reduce economic disparity, Right to Property has been deleted from the chapter on Fundamental Rights.

8. Subsidized public distribution schemes have been launched to help the poor people.

9. The rules require that both men and women are paid equal wages for equal work.

10. Untouchability has been abolished. Sincere efforts have been made for the upliftment of the SCs, STs and of other Backward Classes.

11. Through 73rd and 74th Amendments to the constitution (1991 & 1992 respectively), Panchayati Raj has been given the constitutional status with more powers.

12. One-third of the total numbers of seats have been reserved for women in Panchayats at every level; and in the case of Bihar, half the seats have been reserved for women.

13. Small scale and village industries and Khadi Gram Udyog have been encouraged to bring prosperity to the rural areas.

14. The year 1990-1991 was declared as the “Year of Social Justice” in the memory of B.R. Ambedker. The government provides free textbooks to students belonging to scheduled castes and tribes pursuing medicine and engineering courses. During 2002-2003, a sum of Rs. 4.77 crore (47.7 million) was released for this purpose.

15. The Equal Remuneration Act of 1976 provides for equal pay for equal work for both men and women.

16. The Sampoorna Grameen Rozgar Yojana (Universal Rural Employment Programme) was launched in 2001 to attain the objective of providing gainful employment for the rural poor. The Programme was implemented through the Panchayati Raj institutions.

17. The judiciary has been separated from the executive “in all the status territories except Jammu and Kashmir and Nagaland.”
18. India’s foreign policy has been influenced by the Directive Principles. India supported the United Nations in peace-keeping activities, with the India Army having participated in 37 UN peace-keeping operations.

The above steps on the part of central and state governments indicate that many Directive Principles of State Policy have been implemented to lay down the formations of a secular, socialistic welfare state. However, still there is long way to go to achieve all of them in full.

There are many hindrances in the non-implementation of Directive Principles of State Policy. The main reasons are —lack of political will among political parties, lack of awareness and organized action on the part of the people and limited material resources. (39)

3.9.2 Fundamental Duties

51A Fundamental duties.- It shall be the duty of every citizen of India-

(a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
(b) To cherish and follow the noble ideals which inspired our national struggle for freedom;
(c) To uphold and protect the sovereignty, unity and integrity of India;
(d) To defend the country and render national service when called upon to do so;
(e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
(f) To value and preserve the rich heritage of our composite culture;
(g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
(h) To develop the scientific temper, humanism and the spirit of inquiry and reform;
(i) To safeguard public property and to abjure violence;

(39) Understanding of H. R. Chapter 12
(j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

(k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Notes on Article 51A

Environment

Fundamental duties have been particularly invoked in litigation concerning the environment. See the under mentioned cases:


3.10 Relationship Between The Fundamental Rights, Directive Principles And Fundamental Duties

The Directive Principle have been used to uphold the Constitutional validity of legislation in case of a conflict with the fundamental rights Article 31C, added by the 25th Amendment in 1971, provided that any law made to give effect to the Directive Principles in Article 39(b) - (c) would not be invalid on the grounds that they derogated from the Fundamental Rights conferred by Article 14, 19 and 31.

The application of this article was sought to be extended to all the Directive Principles by the 42nd Amendment in 1976, but the Supreme Court struck down the extension as void on the ground that it violated the basic structure of the Constitution. The Fundamental Rights and Directive Principles have also been used together in forming the basis of legislation for social welfare. The Supreme Court, after the judgment in the Kesavananda Bharati case, has adopted the view of the Fundamental Rights and Directive Principles being complementary to each other, each supplementing the other’s role in aiming at the same goal of establishing a welfare

(40) Ins by the Constitution (86th amendment) 2002 Section - 4
state by means of social revolution. Similarly, the Supreme Court has used the
Fundamental Duties to uphold the Constitutional validity of statutes which seeks to
promote the objects laid out in the Fundamental Duties. These Duties have also been
held to be obligatory for all citizens, subject to the State enforcing the same by means
of a valid law. The Supreme Court has also issued directions to the State in this
regard, with a view towards making the provision effective and enabling a citizens to
properly perform their duties.

Here we have defined the six fundamental rights as per the constitution of India:

1. Right to Equality
2. Right to Particular Freedom
3. Cultural and Educational Rights
4. Right to Freedom of Religion
5. Right Against Exploitation and
6. Right to Constitutional Remedies.\(^{(41)}\)

### 3.11 Conclusion

Fundamental goal of Human Rights is the welfare in Human Rights. According to
Rigveda:

अ गच्छत्वं सं वो मनासि जानताम ।

dेवा भागं यथापूर्वं संज्ञानानं उपासते ॥

To keep similarity amongst all different people in respect of behaviour and thinking
Not to be adverse in intellect and mind amongst all different people. Only then human
being can protect human rights between each other. If human being starts opposing
themselves then one cannot keep tolerance. Then any human being should dream of
protection of human rights. Independence rights is not conflicting each other.
Therefore, it is said that:

\(^{(41)}\)Understanding of H. R. Ch. 12 to Ch. 15
Spirit of equality between all human being is the root base according to Veda. Human being had rights to live life with cooperation, with love to each other since Vedic time. We can find good Incantation in Atharva. Saint says that:

As Cow loves Calves so one person should love and behave lovingly with another person. No Human Rights can be achieved without intimate and loving equality. This fact is the finding from ancient Vedic life.

One person hates, discriminate, persecute, exploit another person is the breach of Human Rights. Every person has to live with rights amongst all members of family and society who are there with the birth and to make others live so. No animosity with any other. Every person to live happily

It is said by the saint of Ayurveda that every men of the earth is believed son of GOD. People’s Rights of Wealth and Happiness is established by birth. Any person wants to enjoy other person’s rights by violation without taking care of other’s happiness and unhappiness is the violation of human rights. Every person should possess rights with equality. Therefore, human being has one limit to enjoy the human rights and under this limit everyone should behave properly.

यस्तु सर्वाणि भूतानि आमन्नेवातु पश्यति
In today's time the way discussion of human rights are seen under the prevailing law was not seen in the Vedic time. In Vedic times Omni where Human Rights is defined by emotions by joining self to eternal self. There the effort is being made of understanding human rights in relation to human deed. This type of understanding is seen in the times of Ramayàn and Mahabhárat. Our Scriptures, Memories, Puráns defines in the relation to social similarity or favour of fundamental human rights in the different form. These definitions are seen in the different form of Thinking. Ideas of Human Rights are seen in different relations. A right of protection of life is given by the GOD to every human being. But the protection can be ascertained through state.

Thus, what all talk of Human Rights in ancient time are demonstrated in Notifications and Promissory Notes at international level. All those as well as necessary human rights are incorporated nicely in our Indian Constitutions and amongst these rights whatever essential rights are approved and incorporated in part 3 as Main Rights for which we have seen before. Other Useful Rights are included in part 4 and gave promise to come into India with protection of rights, as well as rightly demonstrated sacred duty of human being that when human rights are protected by the constitution then human being or people are also ascertain or decide to maintain ideals and do group actions which should be their sacred duty. Thus, when constitution has ensured the protection of people by state nicely then constitution get confirmed from people to officiate the sacred duty. Thus, the Constitution offers the verification of compliance in the form of duties and rights in human rights nicely which are given at international level.\(^{(42)}\)

\(^{(42)}\) Manav adhikar ka bhartiya parivesh pg. no. 16 to 18