

Part-III**Article 12 to Article 35**

The concept of rights or human rights, originates from the voice of the protest against oppression perpetuated by the dominant group in society. Rights are meant to safeguard the individual from the irresponsible and arbitrary use of power by the ruling class. The British rulers deprived Indians of their human rights, so we Indians, well acquainted with the misuse of state machinery, decided to provide safeguards against the state.

The inclusion of the Chapter of Fundamental rights in the constitution of India is in accordance with the trend of modern democratic thought, the idea being to preserve that which is an indispensable condition of a free society. The aim of having a declaration of fundamental rights is that certain elementary rights, such as right to life, liberty, freedom of speech, freedom of faith and so on, should be regarded as inviolable under all conditions and that the shifting majority in Legislature of the country should not have a free hand in interfering with these fundamental rights.

Why these rights are called fundamental?

These rights are regarded as fundamental because they are most essential for the attainment by the individual or his full intellectual, moral and spiritual status under all conditions. The negation of these rights will keep the moral and spiritual life stunted and his potentialities underdeveloped.

Sources of Inspiration for Fundamental Rights

- ❑ The development of such constitutionally guaranteed fundamental rights in India was inspired by the Bill of Rights of the USA.
- ❑ The first demand for fundamental rights came in the form of the "Constitution of India Bill, in 1895. In 1895, Bal Gangadhar Tilak presented the 'Swaraj Bill' to the British government. The bill asked for the right to freedom of thought and expression and equality under law. Annie Besant's 'Commonwealth

of India' Bill proposed in 1925 reiterated Tilak's demands.

- ❑ It was the first time in 1928, when Congress officially created a committee for the development of constitutional provisions for India. This committee was headed by Motilal Nehru (Nehru Committee).
- ❑ The report of this committee was accepted by the Congress in Karachi session (1931). This committee includes the provisions of Fundamental rights like universal adult suffrage, women's rights, minorities rights and so on. Soon after the independence Fundamental rights was incorporated in the constitution.

Rights

There are six fundamental rights are available in our constitution-

1. Right to Equality (Article 14 to 18)
2. Right to Freedom (Article 19 to 22)
3. Right against Exploitation (Article 23 to 24)
4. Freedom of Religion (Article 25 to 28)
5. Cultural and Educational rights (Article 29 to 30)
6. Right to constitutional remedies (Article 32)

Sr.No.	Article Number	Subject
1	Art 12	Definition of state.
2	Art 13	Laws inconsistent with or in derogation of the fundamental rights.
3 Right to Equality	Art 14	Equality before law.
	Art 15	Prohibition of discrimination on grounds of religion, race, caste,sex or place of birth.
	Art 16	Equality of opportunity in matters of public employment.
	Art 17	Abolition of untouchability.
	Art. 18	Abolition of titles.

4 Right to Freedom	Art 19	Protection of certain rights regarding freedom of speech, etc.
	Art. 20	Protection in respect of conviction for offences.
	Art 21	Protection of life and personal liberty.
	Art 21 A	Right to Education.
	Art 22	Protection against arrest and detention in certain cases.
5 Right Against Exploitation	Art 23	Prohibition of traffic in human beings and forced labour.
	Art. 24	Prohibition of children in factories etc.
6. Freedom of Religion	Art. 25	Freedom of conscience and free profession, practice and propagation of religion.
	Art. 26	Freedom to manage religious affairs.
	Art. 27	Freedom as to payment of taxes for promotion of any particular religion.
	Art. 28	Freedom as to attendance at religious instruction or religious worship in certain educational institutions.
7 Cultural and Educational rights	Art. 29	Protection of interests of minorities.
	Art. 30	Right of minorities to establish and administer educational institutions.
8	Art. 31	Right to Property (Repealed)
9 Right to constitutional remedies	Art. 32	Remedies for enforcement of rights conferred by this part.

Features of the Fundamental Rights-

The Fundamental rights guaranteed by the constitution are characterised by following:

- ❑ Some of the Fundamental Rights are available to only citizens of India like Article 15, 16, 19, 29 and 30 while rest of the articles are available for both citizens and aliens.
- ❑ Fundamental Rights are not absolute in nature that means State can impose reasonable restrictions on them if needed.
- ❑ Fundamental Rights acts against the arbitrary actions of State. That means, they provide the safeguard to the individuals.

- ❑ Fundamental Rights are negative in nature that means they impose limitation on the government.
- ❑ Fundamental rights are justiciable in nature.
- ❑ Fundamental rights are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgement of the high courts.
- ❑ Fundamental rights are not permanent. They can be suspended by the Parliament during the operation of the National Emergency except the rights guaranteed by Article 20 and 21.
- ❑ Parliament can amend the provision of the Fundamental Rights by the way of a constitutional amendment but it should not violate the basic structure of the constitution (Keshavananda Bharti Case).

Importance of the fundamental rights

Fundamental Rights are individual rights and without them democracy is meaningless. The purpose of the rights is to impose restrictions on the State and establish a 'limited government'. Because ultimately human uses the power of the state in the name of the government. An individual cannot function freely without Fundamental Rights.

In the historic judgement of *Maneka Gandhi v. Union of India* (1978), Bhagwati J. (the then Supreme court judge) stated: "These fundamental rights represent the basic values enshrined by the people of this country (India) since the Vedic times and they are calculated to protect the dignity of the individual and created conditions in which every human being can develop his personality to the fullest extent. They weave a 'pattern of guarantee' on the basic structure of human rights, and impose negative obligations on the State not to encroach on individual liberty in various dimensions".

Article 12: The State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Explanation:

Article 12 of the Indian Constitution deals with the term of 'State' as enshrined in the Fundamental Rights Chapter.

It includes-

- ❑ **Legislative and Executive Organs of the Union Government:**
 1. Union Government
 2. Parliament of India – President, Lok Sabha, Rajya Sabha
- ❑ **Legislative and Executive organs of the State Government:**
 1. State Governments
 2. State Legislature – Governor, Legislative Assembly, Legislative Council of State
- ❑ **All local authorities**
 1. Municipalities – Municipal Corporations, Nagar Palika, Nagar Panchayats
 2. Panchayats – Zila Panchayats, Mandal Panchayats, Gram Panchayats
 3. District Boards
 4. Improvement Trusts, etc.
- ❑ **Statutory and Non-Statutory Authorities**
 - Statutory Authorities:
 1. National Human Rights Commission
 2. National Green Tribunal
 3. National Consumer Disputes Redressal Commission
 4. Armed Forces Tribunal
 - Non-Statutory Authorities
 1. Lokpal and Lokayukta
 2. CBI

The actions performed by any of these bodies can be challenged in the courts as a violation of Fundamental Rights.

Article 12 of the Indian Constitution & 'Other Authorities'

The 'Other Authorities' mentioned under Article 12 means all such authorities that lie within the territory of India and are controlled by the government of India through its acts and amendments.

1. **Ujjain Bai v. State of Uttar Pradesh (UP)**– Supreme Court observed that Article 12 winds up the list of authorities falling within the definition by referring to "other authorities" within the territory of India which cannot be read as 'of or as the same kind' with either the Government or the Legislature or

Local authorities

2. **R.D Shetty v. Airport Authority of India** – Five points were mentioned by Justice P.N. Bhagwati to understand if the 'body' in news is instrumental to be called as the 'State' under Article 12 or not:
 - The 'Body' can be called as 'State' if its entire shared capital is held by the Government of India.
 - Such other authorities have a governmental functional character.
 - The absolute control of such authorities lies with the government.
 - Such authorities which have an element of command or authority.
 - The authorities discharging public service.

Article 13: Laws inconsistent with or in derogation of the Fundamental rights.

Article 13(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.

Article 13(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.

Article 13(3): (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.

Article 13(4): Nothing in this article shall apply to any amendment of this Constitution made under Article 368. Inserted by the Constitution (Twenty-fourth Amendment) Act, 1971.

Explanation-

- ❑ Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, it expressly provides for the doctrine of judicial review.
- ❑ This power has been conferred on the Supreme

Court (Article 32) and the High Courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

- ❑ Article 13 declares that a constitutional amendment is not a law and hence cannot be challenged. However, the Supreme Court held in the Keshavananda Bharati case (1973) that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the 'basic structure' of the Constitution and hence, can be declared as void.

Doctrine of Eclipse

- ❑ It is dealt under Article 13(1) of the Indian Constitution.
- ❑ The doctrine of eclipse means that an existing law that is inconsistent with a fundamental right, although it becomes inoperative from the date of the constitution's beginning, is not entirely dead. By amending the constitution's relevant fundamental rights, the conflict can be eliminated so that the eclipse vanishes and the entire law becomes valid. The first case in which this doctrine was applied was Bhikaji vs State of Madhya Pradesh.

Rule of Severability

- ❑ According to Art. 13(1) and 13 (2), any part of a 'law' which is inconsistent with the provisions of Part III of the Constitution shall be declared void to the extent of such inconsistency.
- ❑ The doctrine of severability lays down that, if the valid sections of a law can be severed from the void sections, and if such valid sections can be considered to form an independent statute, these sections will remain valid.
- ❑ The Supreme Court summarises the rules relating to doctrine of severability as follows:
 1. The intention of the legislature is a factor- whether the legislature enacted that law knowing well that the rest of the statute is invalid- to determine whether valid parts are separable or not.
 2. If valid & invalid are so inextricably mixed up, the whole law is declared void.
 3. If valid and invalid form part of a single scheme, the whole law is declared invalid.

4. After omitting the invalid part, if what remains is very thin and what emerges out is something different, the entire law is invalid.

The term 'law' in Article 13 has been given a wide connotation so as to include the following:

- a) Permanent laws enacted by the Parliament or the state legislatures;
- b) Temporary laws like ordinances issued by the president or the state governors;
- c) Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification; and
- d) Non-legislative sources of law, that is, custom or usage having the force of law.

Thus, not only a legislation but any of the above can be challenged in the courts as violating a Fundamental Right and hence, can be declared as void.

Article 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 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Explanation:

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

It has two connotations of equality i.e.

- I. Equality before Law
- II. Equal protection of Law

Equality before law

- ❑ This concept is adopted from the British Constitution.
- ❑ Equality before law is a negative concept.
- ❑ It means 'no man is above law and every person, whatever is his/ her social status, is subject to the jurisdiction of the courts.

Equal Protection of law

- ❑ This concept is adopted from the US Constitution.
- ❑ It only means that all persons in similar conditions/ circumstances shall be treated alike.

The right is extended to all persons whether citizens or foreigners, statutory corporations, companies, registered societies or any other type of legal person.

Exceptions of Article 14

There are certain provisions in the Constitution which, under certain circumstances, limit the effectiveness of Article 14.

- ❑ Article 361 lays down that the President and the Governors are exempted from any criminal proceedings during the tenure of their offices.
- ❑ The scope of the Right to Equality under Article 14 has been considerably restricted by the 42nd Amendment Act, 1976. The new Article 31-C added by the Amendment Act provides that laws made by the State for implementing the Directive Principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. Such laws will be exceptions to Article 14 of the Constitution.
- ❑ Under the International Law, foreign sovereign, ambassadors and diplomats, enjoy full immunity from any judicial process.
- ❑ Article 359 (1) provides that where a Proclamation of Emergency is in operation, the President may, by order, declare that the right to move to any Court for the enforcement of such rights conferred by Part III (except Articles 20 and 21) shall remain suspended. Thus, if the President of India issues an order, where a Proclamation of Emergency is in operation, enforcement of Art. 14 may be suspended for the period during which the Proclamation is in force.

Rule of Law

- ❑ The guarantee of Equality before Law is an aspect of, what Lord Dicey calls, the 'Rule of Law' that originated in England.
- ❑ It means no man is above law and that every person, whatever be his rank or status is subject to the jurisdiction of ordinary Courts.
- ❑ Also, it says that no person shall be subject to harsh, uncivilized or discriminatory treatment even for the sake of maintaining law and order.
There are three basic meanings of '**Rule of Law**'
- ❑ Absence of arbitrary power or supremacy of law- "a man can be punished for a breach of law but he cannot be punished for anything else".
- ❑ Equality before law- no one is above law.
- ❑ The Constitution is the Supreme law of the land and all laws passed by the legislature must be consistent

with the provisions of the Constitution.

Right to Equality is a Basic Structure of the Constitution

- ❑ In M. Nagaraj Vs Union of India (2007) case, the Supreme Court held that Right to Equality under Article 14 form part of the 'Basic Structure' of the Constitution.
- ❑ The Supreme Court opined that "equality is the essence of democracy" and accordingly, it is a basic feature of the Constitution.
- ❑ If Article 14 is withdrawn, the political pressure exercised by numerically large groups can tear the country apart by leading the legislature to pick and choose favoured areas and favourite classes for preferential treatment.

Article 15: Prohibition of discrimination on grounds of Religion, Race, Caste, Sex or Place of birth

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

Article 15(2): No citizen shall, on grounds only of religion, race, caste, sex place of birth or any of them, be subject to any disability, restriction or condition with regard to- Access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Article 15(3): Nothing in this article shall prevent the State from making any special provision for women and children.

Article 15(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 the Scheduled Castes and the Scheduled Tribes.

Article 15(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 provisions relate 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.

Explanation:

- ❑ Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. The two crucial words in this provision are 'discrimination' and 'only'.
- ❑ The word 'only' indicates that the discrimination cannot be made merely on the ground that one belongs to a particular caste, religion, race etc. It can be made on other grounds.
- ❑ Article 15 does not provide the safeguards against foreigners. It is available to the 'citizens' only.
- ❑ The third clause empowers the State to make special provisions for the protection of women and children.
- ❑ The fourth clause which was added by the 1st Constitutional Amendment Act 1951 enables the State to make special provisions for the protection of the interests of the Backward Classes and is, therefore, an exception to Article 15 and 29(2) of the Constitution.

What is the limit of Quotas?

- ❑ According to the Supreme Court, under Art 15 (4), state can make special and not exclusive provisions for backward classes. The state should not be justified if advancement of communities is ignored altogether. National interest would suffer if qualified and competent people are ignored.

93rd Amendment Act

The 93rd amendment to the Constitution came in 2006. It added a clause in Article 15 of the Constitution in the form of Article 15(5).

- ❑ The 5th clause of Article 15 empowers the centre and the states to provide for quota to the candidates of other backward classes (OBCs) in the higher educational institutions.
- ❑ Pursuant to the 93rd amendment, central government in 2006 made Central Institutions (Quota in Admission) Act 2006 to provide quota to the OBC candidates in the central institutions including AIIMS and IITs.

Latest judgement on 93rd Amendment

- ❑ The Supreme Court on April 10, 2008 upheld the constitutionality of the Central Institutions (quota in admission) Act 2006 and the 93rd amendment

but it has directed the central government to exclude the Creamy Layer' among the OBCs while implementing the law.

- ❑ The court said that the 93rd Amendment Act does not violate the basic structure of the Constitution so far as it relates to State maintained institutions and aided educational institutions. Article 15(5) of the Constitution is constitutionally valid and Articles 15(4) and 15(5) are not mutually contradictory.
- ❑ It agreed with the decision to exclude the minority institutions from Article 15(5). It does not violate Article 14 as minority educational institutions are a separate class and their rights are protected by other constitutional provisions.
- ❑ However, the court directed that a review of the lists of backward classes be made after five years.

Creamy Layer

The children of the following different categories of people belong to 'creamy layer' among OBCs and thus will not get the quota benefit:

- ❑ Persons holding constitutional posts like President, Vice-President, Judges of SC and HCs, Chairman and Members of UPSC and SPSCs, CEC, CAG and so on.
- ❑ Group 'A' / Class I and Group 'B' / Class II Officers of the All India, Central and State Services; and Employees holding equivalent posts in PSUs, Banks, Insurance Organisations, Universities etc., and also in private employment.
- ❑ Persons who are in the rank of colonel and above in the Army and equivalent posts in the Navy, the Air Force and the Paramilitary Forces.
- ❑ Professionals like doctors, lawyers, engineers, artists, authors, consultants and so on.
- ❑ Persons engaged in trade, business and industry.
- ❑ People holding agricultural land above a certain limit and vacant land or buildings in urban areas.
- ❑ Persons having gross annual income of more than 8 lakh or possessing wealth above the exemption or possessing wealth above the exemption Limit.

Article 16: Equality of opportunity in matters of public employment

Article 16 (1): There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

Article 16 (2): No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence

or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

Exceptions:

Article 16 (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 prior to such employment or appointment

Article 16 (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 the State, is not adequately represented in the services under the State

Article 16 (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.

Mandal Commission and Indra Sawhney Case

Background

- ❑ On January 1, 1979, the Government headed by the Prime Minister Morarji Desai constituted the second Backward Classes commission under Article 340 of the Constitution to research the SEBCs inside the region of India and recommend measures to be taken for their progressions.
- ❑ The commission submitted its report in December 1980 and recognized 3743 castes as socially and instructively in backward classes and recommended a reservation of 27 % in Government employments.
- ❑ Due to change in government the findings of the report were not implemented.
- ❑ In 1990, then Prime Minister P.V. Narasimha Rao declared reservation of 27% government jobs for the OBCs. Again in 1991, the Narasimha Rao Government introduced two changes:
 - (a) preference to the poorer sections among the OBCs in the 27% quota, i.e., adoption of the economic criteria in granting reservation, and
 - (b) reservation of another 10% of jobs for poorer (economically backward) sections of higher castes who are not covered by any existing

schemes of reservation.

Judgement:

Apex Court struck down the second provision and rejected the 10% reservation for economically backward classes among higher. Following are the highlights of the judgement:

1. Creamy layer must be excluded from the backward classes.
2. Article 16(4) grants characterization of backward classes into backward & more backward classes.
3. A backward class of citizen can't be distinguished just and solely with reference to financial criteria.
4. Reservation should not exceed 50% limit.
5. Reservation can be made by the Executive Order.
6. No reservation in promotion.
7. Permanent Statutory body to examine complaints of over – inclusion /under – inclusion.
8. Disputes with respect to new criteria can only be raised in the Supreme Court.

The 76th Amendment Act of 1994 has placed the Tamil Nadu Quotas Act of 1994 in the Ninth Schedule to protect it from judicial review as it provided for 69 per cent of quota, far exceeding the 50 per cent ceiling.

103rd Constitutional Amendment Act

The 103rd Constitutional Amendment Act provided 10 per cent quota in government jobs and education to economically backward section in the general category. Economic quota in jobs and education is proposed to be provided by inserting clause (6) in Articles 15 and 16 of the Constitution

SR Sinho Commission (2006) on Economically Backward Classes

- ❑ The quotas in government jobs and education should be given to general category poor and a constitutional amendment is necessary with this respect. The commission highlighted that non-income tax payee general category people were economically backward, at par with the OBCs, they should be treated like the latter.
- ❑ EBC children should be made eligible for soft loans for higher education, scholarships, coaching for central and state civil services examinations, subsidized health facilities and government support

in the housing sector and suggested establishing a National Commission for providing financial assistance to EBCs.

Background:

- ❑ The past few years have seen influential castes like the Marathas, Rajputs and Jats seeking quota benefits.
- ❑ Though governments in states have tried to pass laws to meet such demands in the past, they are often struck down by the courts on the grounds of the famous Indra Sawhney case, where the Supreme Court had set a cap of 50% on quotas.
- ❑ But in November 2018, the government in Maharashtra announced a 16% quota to the politically influential Marathas as a "social and educationally backward class".

Constitutional provisions of 103rd Constitutional Amendment Act:

- ❑ The Act amends Articles 15 and 16 of the Constitution, by adding a clause which allows states to make "special provision for the advancement of any EWS of citizens".
- ❑ These "special provisions" would relate to "their admission to educational institutions, including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions".
- ❑ It also said the quota would be "in addition to the existing quotas and subject to a maximum of 10 per cent of the total seats in each category".
- ❑ According to the objects of the act, "The directive principles of state policy contained in Article 46 of the Constitution enjoins that 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."

Who all are eligible for quota:

- ❑ To those who are not covered in existing quotas
- ❑ Family income below 8 lakhs a year or agricultural land below 5 acres.
- ❑ Residential flat of 1000 sq.ft. and above
- ❑ Residential plot of 100 sq.yards and above in notified municipalities.

- ❑ Residential plot of 200 sq.yards and above in areas other than the notified municipalities

Judicial scrutiny of 103rd Amendment Act:

- ❑ If the Supreme Court indeed agrees to lift the 50% cap, all States of India can extend the quantum of quota and "upper castes" will stand to lose in State services.
- ❑ If the Supreme Court rejects the idea of breaching the 50% cap, EWS quotas can be provided only by eating into the SC, ST and OBC quota pie, which will have social and political implications.

Supreme Court's views on Quota:

- ❑ Recently, the Supreme Court has ruled that quota in the matter of promotions in public posts is not a fundamental right, and a state cannot be compelled to offer the quota if it chooses not to. The idea that quota is not a right may be in consonance with the Constitution, however, the government is still under the obligation to perform Quota for vulnerable sections of society.
- ❑ The Supreme Court held that Quota programmes allowed in the Constitution are derived from "enabling provisions" and are not rights as such.
- ❑ In other words, it argued that there is neither a basic right to quotas nor a duty of the State government to provide it.
- ❑ The Supreme Court referred to Article 16(4) and 16(4A) while delivering its judgment in the matter. It had been inferred from Article 16(4) and 16(4A), that these are exceptions to the equality of opportunity in government jobs, which state can exercise in order to provide social mobility to vulnerable classes.
- ❑ Also, through this judgment, the court reiterated its stand in M. Nagaraj case, which stated that the state is not bound to provide quota in promotions, but if it does so, it must be in favour of sections that are backward and inadequately represented in the services based on quantifiable data.

Amendments to ensure Right to Equality

- ❑ **77th Amendment:** It introduced Clause 4A to the Constitution, empowering the state to make provisions for quota in matters of promotion to SC/ST employees if the state feels they are not adequately represented.
 - ❑ **81st Amendment:** It introduced Clause 4B, which
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says unfilled SC/ ST quota of a particular year, when carried forward to the next year, will be treated separately and not clubbed with the regular vacancies of that year to find out whether the total quota has breached the 50% limit set by the Supreme Court.

- ❑ **82nd Amendment:** It inserted a proviso at the end of Article 335 to enable the state to make any provision for SC/STs "for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for quota in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State".
- ❑ **85th Amendment:** It said quota in the promotion can be applied with consequential seniority for the SC/ST employee.

Article 335
<ul style="list-style-type: none"> ❑ Article 335 of the Constitution relates to claims of SCs and STs to services and posts. ❑ It reads: "The claims of the members of the SC's and ST's shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

Article 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.
- ❑ Untouchability: not to be understood in its literary or grammatical sense; to be understood as the practise as it has developed historically.
- ❑ Civil Rights: Any right accruing to a person by reason of the abolition of untouchability under Art 17 of the Constitution.
- ❑ The Constitution itself does not prescribe any punishment under this Article.
- ❑ The Parliament enacted the 'Untouchability (offences) Act, 1955' which prescribes the punishment for the practice of untouchability. This Act was amended by the 'Untouchability (offences) Amendment Act, 1976', in order to make the untouchability laws more stringent. The name of the original Act was changed to 'Civil Rights (Protection) Act, 1976'.
- ❑ Later, when there was spurt in physical violence

against members of Scheduled Castes and Scheduled Tribes, leading to brutalities such as mass murder, rape, arson, grievous injuries, etc. enactment of a special law for their protection was resorted to known as Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to provide for strong punitive measures which could serve as a deterrence.

- ❑ The Act does not define 'untouchability'. According to the Supreme Court, 'untouchability' should not be understood in its literal or grammatical sense. It is to be understood as the 'practice as it had developed historically'.
- ❑ Parliament has amended the SC/ST (Prevention of Atrocities) Act, 1979 in 2018.
- ❑ The Supreme Court has upheld the constitutional validity of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Amendment Act of 2018 in which Supreme Court nullifies the conduct of a preliminary enquiry before registration of an FIR, or to seek approval of any authority prior to arrest of an accused.

Article 18: Abolition of Titles

Article 18(1): No title, not being a military or academic distinction, shall be conferred by the State.

Article 18(2): No citizen of India shall accept any title from any foreign State.

Article 18(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.

Article 18(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.

Is Bharat Ratna a Violation of Article 18?

- ❑ The conferment of titles of 'Bharat Ratna', 'Padma Vibhushan', 'Padmashree', etc. are not violative of Article 18. These awards merely denote the State's recognition of good work by citizens in various fields of activities. These fit in the category of academic distinctions.
- ❑ But they cannot be used as a title and cannot be used as a suffix or prefix.

- ❑ It is necessary that there should be a system of awards and decorations to recognise the excellence in performance of duties. So, these awards are not violative of the provisions of Article 18.
- ❑ Art 18 doesn't prescribe any punishment for the offences. But Parliament is open to make a law for punishments.

Right to Freedom

Article 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 peacefully 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; and
 - f) The right to acquire hold and dispose of property. (Deleted by the 44th Amendment Act of 1978).
 - g) to practise any profession, or to carry on any occupation, trade or business.

These freedoms are pillars of democracy. But state can impose 'reasonable' restrictions on grounds of reasonable restrictions.

Restrictions:

1. the sovereignty and integrity of India,
2. the security of the State,
3. friendly relations with foreign States,
4. public order,
5. decency or morality
6. in relation to contempt of court, defamations incitement to an offence.

Article 19 (1) (a): Freedom of speech and expression meaning:

- ❑ Right to express one's opinion freely and openly
- ❑ Right to express other's opinion
- ❑ Right to have access to the opinion of other individuals.
- ❑ But right to information is subject to Official Secrets Act.

Article 19 (1) (b): Right to assemble peacefully

- ❑ Every citizen has the right to assemble peacefully

and without arms.

- ❑ It includes the right to hold public meetings, demonstrations and take out processions.
- ❑ This freedom can be exercised only on public land.
- ❑ This right does not include the Right to Strike.

Article 19 (1) (c): Right to form associations

- ❑ All citizens of India are given the right to form associations or co-operative societies, this includes the right to the formation of political parties, companies, partnership firms, clubs, etc.
- ❑ Is Right to strike a Fundamental Right?
 - Strike is the most effective and final resort in the hands of workers to secure economic justice.
 - This meaning of strike has undergone various changes across the world and most of the nations have given the right to strike to the workers.
 - The right to strike is a statutory right in India guaranteed under Section 22(1)(a) of the Industrial Disputes Act, 1957.
- ❑ Restrictions for Armed forces.

Article 19(1)(d): Right to freely move throughout the Indian territory

- ❑ This right guarantees the freedom of movement and entitles every citizen of India to move freely throughout the territory of India.
- ❑ Every citizen of India has been given the right to move freely from one state of the country to another. The purpose is to promote national feeling among the citizens of the nation.

Article 19(1)(e): Right to reside and settle also in any part of India

- ❑ This right grant every citizen of India with the right to reside and settle in any part of the territory of India.
- ❑ Article is also subjected to reasonable restrictions.

Article 19(1)(g): Right to practice any kind of profession or any occupation, trade, or business

- ❑ All the citizens of India have been granted the right to practise any profession or carry on any occupation or business of their wish. But this right does not include the right to carry on a profession or business which involves anything which is immoral (such as trafficking) or dangerous in nature (drugs or explosives).

- ❑ Previously, Article 19 contained seven rights but later on the right to acquire, hold and dispose of the property was removed by the Amendment Act of 1978.
- ❑ The State can also impose reasonable restrictions on the enjoyment of these rights which are mentioned in Article 19 itself.

Freedom of Press

- ❑ The Indian Constitution does not provide for the freedom of press separately.
- ❑ It is implicit in Art. 19, which grants freedom of speech and expression.
- ❑ Freedom of expression includes not only expression of one's own views but of others' as well.
- ❑ The restrictions that limit the freedoms in the case of individuals apply to the press also.
The laws that apply to press include:
- ❑ taxation;
- ❑ laws regulating industrial relations;
- ❑ regulations of the conditions of service of the employees;
- ❑ Defamation, contempt of House and Court etc.
- ❑ In its interpretation of Art. 19 in the 'airways case' (February, 1995), the Supreme Court reiterated that the press would be bound by the rules of the Government. expressed through an autonomous body.

Sedition Law Vs Freedom of Speech

Constitutional provisions:

- ❑ Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, subject to reasonable restrictions provided under article 19(2) of the Constitution.
- ❑ Article 19(2) imposes "reasonable restrictions" on the limited grounds of interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation etc.

What is sedition?

Section 124 A of the IPC:

- ❑ This section defines sedition and makes every speech or expression that "brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established

by law in India" a criminal offence punishable with a maximum sentence of life imprisonment.

- ❑ It is classified as "cognisable"- the investigation process (including the powers to arrest) can be triggered merely by filing an FIR, without a judicial authority having to take cognisance- and "non-bailable"- the accused cannot get bail as a matter of right, but is subject to the discretion of the sessions judge.

Brief about the History of Section 124A

- ❑ Drafted by Thomas Macaulay, it was introduced in the 1870s, originally to deal with 'increasing Wahabi activities between 1863 and 1870 that posed a challenge to the colonial government'.
- ❑ In the 19th and early 20th centuries, the law was mainly used against Indian political leaders seeking independence from British rule.
- ❑ Mahatma Gandhi, who was charged with sedition, famously said the law was 'designed to suppress the liberty of the citizen'.
- ❑ In 1962, the Supreme Court imposed limits on the use of the law, making incitement to violence a necessary condition.

Why section 124A of IPC is in debate?

- ❑ It is often under debate because Centre and the States have invoked the section against activists, detractors, writers and cartoonists seeking to silence political dissent by accusing dissenters of promoting disaffection
- ❑ According to the National Crime Records Bureau, 35 cases of sedition were reported in 2016. Many of these cases did not involve violence or incitement to violence.
- ❑ The sedition law came into focus in 2016 after the JNU row in which three students of the Jawaharlal Nehru University were arrested for allegedly raising anti-national slogans. Critics of sedition law have even demanded to scrap the law by calling it a "draconian law".

Maneka Gandhi case, 1978:

- ❑ In Maneka Gandhi judgement, Supreme Court stated that criticizing and drawing general opinion against the government policies and decisions within a reasonable limit that does not incite people to rebel

and is consistent with the freedom of speech.

- ❑ The judgment saved the citizens from unquestionable actions of Executive.
- ❑ Recently, in 2016 - The apex court held that criticism of government does not constitute sedition without incitement to violence.

Right to protest: a fundamental right with restrictions

- ❑ The Shaheen Bagh protest was an iconic protest launched in December of 2019 by women, children and senior citizens against the Citizenship (Amendment) Act, 2019.
- ❑ The protest was in the form of a mass-sit in the Kalindi Kunj-Shaheen Bagh present in the north-eastern part of Delhi and resulted in the closure of the entire stretch of road.

Because of the block-in, numerous petitions were filed demanding a clearance of the road. The petition on which the Court decided to give its judgment was *Amit Sahni v. Commissioner of Police and Ors.* (2020).

- ❑ The Court held that even when the right to protest was a fundamental right granted by the Indian Constitution, it had to be subjected to reasonable restrictions related to public order, sovereignty and integrity of India and “regulation by the concerned police authorities in this regard”.
- ❑ While recognizing the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1) (b), the Court held that public spaces could not be occupied, especially indefinitely. While “democracy and dissent went hand-in-hand”, dissent could take place only in designated places. Shaheen Bagh could not be a designated place because it was a road used frequently by commuters and the sit-in was causing a lot of inconvenience to said commuters.

Article 20: Protection in respect of conviction for offences

Article 20 (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.

Article 20 (2) No person shall be prosecuted and punished for the same offence more than once.

Article 20 (3) No person accused of any offence shall be compelled to be a witness against himself.

Explanation:

Article 20 of the Constitution of India allows protection against unreasonable and excessive punishment to an accused individual, whether a citizen of India or a citizen of any foreign nation or even a legal person like a company or a corporation.

a) Ex-post facto legislation

- ❑ This means enacting a law and giving it a retrospective (i.e. from a previous date /year) effect.
- ❑ This power has been conferred to the Parliament by the Constitution.
- ❑ This is applicable only for civil legislations while criminal legislations cannot be given retrospective effect.

b) Double Jeopardy

- ❑ This means that an individual can be punished for a crime only once and also not beyond the period prescribed by the authority.
- ❑ If a civil servant is dismissed on criminal charges, his dismissal does not come under Double Jeopardy and he could be well prosecuted further in the Court.

c) Prohibition against self-incrimination

- ❑ No person, accused of an offence, shall be compelled to be a witness against himself.
- ❑ The cardinal principle of criminal law is, an accused should be presumed to be innocent till the contrary is proved.
- ❑ It is the duty of the prosecution to prove the offence.

Article 21: Right to Life

“Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”

- ❑ This fundamental right is available to every person, citizens and foreigners alike.
- ❑ Article 21 provides two rights:

- Right to life
- Right to personal liberty
- ❑ The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees.
- ❑ The Supreme Court of India has described this right as the 'heart of fundamental rights'.
- ❑ The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that this right has been provided against the State only. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc.
- ❑ Any private individual encroaching on these rights of another individual does not amount to a violation of Article 21. The remedy for the victim, in this case, would be under Article 226 or under general law.
- ❑ The right to life is not just about the right to survive. It also entails being able to live a complete life of dignity and meaning.
- ❑ The chief goal of Article 21 is that when the right to life or liberty of a person is taken away by the State, it should only be according to the prescribed procedure of law.

Interpretation of Article 21

Judicial intervention has ensured that the scope of Article 21 is not narrow and restricted. It has been widening by several landmark judgements.

A few important cases concerned with Article 21:

- ❑ ***AK Gopalan Case (1950)***: Until the 1950s, Article 21 had a bit of a narrow scope. In this case, the Supreme Court held that the expression 'procedure established by law', the Constitution has embodied the British concept of personal liberty rather than the American 'due process'.
- ❑ ***Maneka Gandhi vs. Union of India Case (1978)***: This case overturned the Gopalan case judgement. Here, the Supreme Court said that Articles 19 and 21 are not watertight compartments. The idea of personal liberty in Article 21 has a wide scope including many rights, some of which are embodied under Article 19, thus giving them 'additional protection'. The court also held that a law that comes under Article 21 must satisfy the requirements

under Article 19 as well. That means any procedure under law for the deprivation of life or liberty of a person must not be unfair, unreasonable or arbitrary.

- ❑ ***Francis Coralie Mullin vs. Union Territory of Delhi (1981)***: In this case, the court held that any procedure for the deprivation of life or liberty of a person must be reasonable, fair and just and not arbitrary, whimsical or fanciful.
- ❑ ***Olga Tellis vs. Bombay Municipal Corporation (1985)***: This case reiterated the stand taken earlier that any procedure that would deprive a person's fundamental rights should conform to the norms of fair play and justice.
- ❑ ***Unni Krishnan vs. State of Andhra Pradesh (1993)***: In this case, the Supreme Court upheld the expanded interpretation of the right to life.

The Court gave a list of rights that Article 21 covers based on earlier judgments. Some of them are:

1. Right to privacy
2. Right to go abroad
3. Right to shelter
4. Right against solitary confinement
5. Right to social justice and economic empowerment
6. Right against handcuffing
7. Right against custodial death
8. Right against delayed execution
9. Doctors' assistance
10. Right against public hanging
11. Protection of cultural heritage
12. Right to pollution-free water and air
13. Right of every child to a full development
14. Right to health and medical aid
15. Right to education
16. Protection of under-trials

Speedy Trial is a Constitutional Guarantee

- ❑ Observing that speedy trial is a fundamental right of an accused, the Supreme Court has directed the Centre and all State Governments to prevent unreasonable delay in disposal of criminal cases.

The Article stands not merely for the right to life and personal liberty, but also for the right to dignity and all other attributes of human personality that is

essential for the full development of a person. Article 21 has become the 'Foundation Stone of Part III' of the Constitution.

- ❑ In some judgements, the Supreme Court held that the right to clean and hygienic conditions of life is a part of Right to Life.
- ❑ Article 21 protects an individual both against legislative and executive actions.
- ❑ Domiciliary visit by police during night is an invasion of personal liberty and hence Art 21.
- ❑ Flight to travel abroad: Part of personal liberty - hence part of Art 21.
- ❑ Right to have primary education is a fundamental right under Art 21.
- ❑ Art 21 includes the principles of Natural Justice.
- ❑ Right to health and medical assistance: It is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting for legal formalities.
- ❑ Right to get pollution free water & air: Protection of ecology and environment come under Art 21.
- ❑ Right to free legal aid and speedy trial are guaranteed under Art 21. According to Supreme Court - "This is the State's duty and not Government charity".
- ❑ Rights against hand-cuffing: There must be clear and present danger of escape—breaking out of police control—and for this there must be clear material evidence.
- ❑ In Chakma migrants' case, Supreme Court declared that even non-citizens are entitled for right to life.
- ❑ Right against inhuman treatment. According to Art 21, use of "third degree" method by police is violative of Art 21.
- ❑ Telephone tapping is an invasion on right to privacy, hence violates Art 21.

Right against Custodial Death

- ❑ In Hemadhar Hazarika vs Union of India, 2007 case, the Guwahati High Court declared that every citizen has a right to life and to live with human dignity under Art 21 of the Constitution.
- ❑ Since the death in police custody is a violation of the fundamental right to life, the legal heirs can claim compensation.

- ❑ Even the custodial death in Army is a violation of Art 21 by the state.

Procedure Established by Law and the Due Process of Law

- ❑ The procedure established by law means the uses and practices as laid down in the statute or law.
- ❑ Under this doctrine, the Court examines a law from the point of view of the Legislature's competence and sees whether the prescribed procedures have been followed by the Executive. The Court cannot go behind the motive of the law and cannot declare it unconstitutional, unless the law is passed without procedure established by law.
- ❑ Therefore, the Court relies more on the good sense of the Legislature and strength of the public opinion. This doctrine protects individual only against the executive actions.
- ❑ On the other hand, the phrase due process of law means that the court should examine the law, not only from the point of view of legislature's competence, but also from the broad view of the intention of the law. Thus, it provides greater power to the court.
- ❑ The Constitution of India provides for the procedure established by law.
- ❑ But, the Supreme Court in the Maneka Gandhi case, in 1978, interpreted Art. 21 to include the phrase "due process of law" in it.
- ❑ Thus, Art. 21 now protects an individual both against legislative and executive actions.

Right to Privacy

What is privacy?

- ❑ A precise legal definition of 'privacy' doesn't exist. Some legal experts define privacy as a human right and international charters, like the Article 12 of the Universal Declaration of Human Rights, protect persons against "arbitrary interference" with one's privacy.
- ❑ Privacy can mean a range of things: the right to be left alone, freedom to dissent or protection from state surveillance.

Is privacy an Indian citizen's right?

- ❑ The Supreme Court's landmark judgment

unequivocally declares privacy a guaranteed fundamental right.

How is privacy protected in India?

- ❑ Courts in India have interpreted that the constitution guarantees a limited right to privacy primarily through Article 21, the right to life and liberty. Such court rulings protect citizens' rights in a range of matters: from freedom of movement to interception of communication.

Why does privacy matter?

- ❑ The public debate about right to privacy arose after the government started collecting biometric data of citizens for Aadhaar. The government is pushing for Aadhaar, saying it is necessary to plug leakages in subsidy schemes and to ensure benefits reach the right people. But critics say the move violates privacy, is vulnerable to data breaches and potentially helps government spy on people.

Right to Internet Access

Recently, Citizens have witnessed a number of internet shutdown issues throughout the country whether it is Delhi, Mangaluru, Assam, and Jammu. These bans are imposed under various provisions like 144 of CrPC and Section 5(2) of Indian Telegraph Act, 1885 etc. It's imperative to understand the importance of the internet and are bans justified under the right to internet access.

Importance of internet:

- ❑ The Internet is certainly now not only the main source of information & communication and access to social media but it is much more than that.
- ❑ Today, the internet has entered into all the walks of life of a person for example:
- ❑ Thousands of delivery workers for Swiggy, Dunzo and Amazon and the cab drivers of Uber and Ola depend on the Internet for their livelihoods and affect the people involved in India's gig economy.
- ❑ It is a mode of access to education for students who do courses and take exams online.
- ❑ Provides access to transport for millions of urban and rural people.
- ❑ A mode to access health care for those who avail of health services online.
- ❑ More than anything, it is a means for business and occupation for thousands of small and individual-

owned enterprises that sell their products and services online, especially those staffed by women and home-based workers.

Is right to Internet access a Fundamental Right?

- ❑ Internationally, the right to access to the Internet can be rooted in Article 19 of the Universal Declaration of Human Rights which states that "everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."
- ❑ The Human Rights Council of the United Nations resolution affirmed that the same rights that people have offline must also be protected online, in particular, freedom of expression, which is applicable regardless of frontiers and through any media of one's choice and includes the Internet.

Way Forward:

- ❑ The High Court of Kerala made a start to the domestic recognition of the right to Internet access with its judgment in Faheema Shirin R.K. vs State of Kerala & Others which can be replicated pan India is opined.
- ❑ The time has come for the legislature and judiciary to recognize the right to internet access as a fundamental right within our constitutional guarantees.

Right to Education (Article 21A)

Art 21 A: 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.

- ❑ The Constitution (86th Amendment) Act 2002, enacted in December 2002 seeks to make free and compulsory education a Fundamental Right for all children in the age-group 6-14 years by inserting a new Article 21A in Part III of the Constitution.
 - ❑ It is intended to benefit India's 190 million 6 to 14-year-olds, especially some 35 million, currently not attending school.
 - ❑ The government is trying to target such children through a Sarva Shiksha Abhiyan and a series of measures and facilities - such as free mid-day meals, uniforms and textbooks.
-

- ❑ Steps are being taken to provide mobile schools to help certain students who are not staying long enough at one address - construction workers' children, for instance - or giving examination on demand to kids unable to meet regular schedules.
- ❑ Also, as per the Act, "the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years".

Article 22: Protection against arrest and detention in certain cases

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.

1. 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 no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Exceptions

- 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.

Preventive Detention

- ❑ A person can be detained under preventive detention, if there is a suspicion or reasonable probability of that person committing some act, which is likely to cause harm to the society and endanger the security of the society.
- ❑ Article 22 does not apply in the case of Preventive Detention.
- ❑ There are certain provisions in Article 22 for the protection of such persons, they are:
 1. A person detained on the ground of suspicion shall be detained for a maximum period of three months.
 2. The detained person must be informed about the reason of his arrest, as soon as possible.

3. The detained person must have the earliest opportunity to present his case before the authority of law.

- ❑ If the government seeks to detain the arrested person beyond the period of three months, his detention must be authorised by an 'Advisory body', which is purely judicial.
- ❑ The Parliament is given the power to determine the maximum period for which a person can be detained on the preventive grounds.
- ❑ India is one of the few countries in the world where laws allowing preventive detention enjoy constitutional validity even during peace time.
- ❑ Normally, preventive detention is resorted to against enemy aliens in emergencies such as war when the evidence in possession of the detaining authority is not sufficient to secure the immediate conviction of the detenu by the normal legal process.

Supreme Court ruling on preventive detention

- ❑ According to the Supreme Court judgement an order passed by a detaining authority under the preventive detention law cannot be set aside by the High Court at the pre-arrest stage unless it is satisfied that there are exceptional circumstances.
- ❑ The court must be conscious and mindful of the fact that this is a 'suspicious jurisdiction' and action is taken 'with a view to preventing' a person from acting in any manner prejudicial to certain activities enumerated in the relevant detention law.
- ❑ Interference by a court of law at that stage must be an exception rather than a rule and such an exercise can be undertaken by a writ court with extreme care, caution and circumspection. A detenu cannot ordinarily seek a writ of mandamus if he does not surrender and is not served with an order of detention and the grounds in support of it.
- ❑ The primary object of preventive detention is not to punish a person for having done something but to intercept him before he does it. It was not a penalty for past activities of an individual but was intended to pre-empt the person from indulging in activities be prohibited by a relevant law and to prevent him from doing harm in future.

- ❑ Underlining the need for striking a balance between personal liberty and security of the country, the Bench said: "Liberty of an individual has to be subordinated, within reasonable bounds, to the good of the people. Security of the state, maintenance of the public order and services essential to the community, prevention of smuggling and black-marketing activities, etc, demand effective safeguards in the larger interests of sustenance of a peaceful democratic way of life."
- ❑ The Bench said that without doubt, it is the duty of the court to safeguard against any encroachment on the life and liberty of individuals; at the same time the authorities who have the responsibility to discharge the functions vested in them under the law of the country should not be impeded or interfered with without justification.

Right of an Accused to be Defended

Recently the Karnataka High Court observed that it is unethical and illegal for lawyers to pass resolutions against representing accused in court. This is not the first time that bar associations have passed such resolutions, despite a Supreme Court ruling that these are "against all norms of the Constitution, the statute and professional ethics".

What does the Constitution say about the right of an accused to be defended?

- ❑ Article 22(1) gives the fundamental right to every person not to be denied the right to be defended by a legal practitioner of his or her choice.
- ❑ Article 14 provides for equality before the law and equal protection of the laws within the territory of India.
- ❑ Article 39A, part of the DPSP, states that equal opportunity to secure justice must not be denied to any citizen by reason of economic or other disabilities, and provides for free legal aid.

Unlawful Activities Prevention Act

Unlawful Activities (Prevention) Act or UAPA Act is Indian law aimed at effective prevention of unlawful activities associations in India. Its main objective was to make powers available for dealing with activities directed against the integrity and sovereignty of India.

The National Integration Council appointed a Committee on National Integration and Regionalisation to look into, the aspect of putting reasonable restrictions

in the interests of the sovereignty and integrity of India. Pursuant to the acceptance of recommendations of the Committee, the Constitution (Sixteenth Amendment) Act, 1963 was enacted to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India. In order to implement the provisions of 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in the Parliament.

It enables Parliament to impose by law, reasonable restrictions in the interests of sovereignty and integrity of India, on the:

- ❑ Freedom of Speech and Expression;
- ❑ Right to Assemble peaceably and without arms; and
- ❑ Right to Form Associations or Unions.

The objective of this Bill was to make powers available for dealing with activities directed against the integrity and sovereignty of India.

The most recent Amendment has been done in 2019. It was amended allowing the government to designate an individual as a terrorist without trial.

Right Against Exploitation

Article 23: Prohibition of Traffic in Human Beings and Forced Labour.

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

Article- 23(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, 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

Explanation-

- ❑ Traffic in human beings and forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- ❑ Traffic in Human Beings: Selling and buying men and women like goods and it includes immoral traffic in women and children for immoral and other purposes.
- ❑ It is prohibited making a person to render service where he was lawfully entitled not to work or to receive remuneration of services rendered by him.

- ❑ No one shall not be forced to provide labour or services against his will even if remuneration is paid.
- ❑ If remuneration is less than minimum wages, it amounts to forced labour under Art 23.

Human Trafficking: This refers to the sale and purchase of human beings mostly for the purpose of sexual slavery, forced prostitution or forced labour.

Begar: This is a form of forced labour which refers to forcing a person to work for no remuneration.

Other forms of forced labour: This includes other forms of forced labour in which the person works for a wage less than the minimum wage. This includes bonded labour wherein a person is forced to work to pay off his debt for inadequate remuneration, prison labour wherein prisoners sent in for rigorous imprisonment are forced to work without even minimum remuneration etc. One shall not be forced to provide labour or services against his will even if remuneration is paid.

Article 23 (2) also provides for an exception to this provision. It allows state to impose compulsory service for public purposes like military service or social service, for which state is not bound to pay. While imposing such services the state is not permitted to make any discrimination on grounds only of religion, race, caste or class or any of them.

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

Highlights of the Bill

- ❑ The Bill creates a law for investigation of all types of trafficking, and rescue, protection and rehabilitation of trafficked victims.
- ❑ The Bill provides for the establishment of investigation and rehabilitation authorities at the district, state and national level. Anti-Trafficking Units will be established to rescue victims and investigate cases of trafficking. Rehabilitation Committees will provide care and rehabilitation to the rescued victims.
- ❑ The Bill classifies certain purposes of trafficking as 'aggravated' forms of trafficking. These include trafficking for forced labour, bearing children, begging, or for inducing early sexual maturity. Aggravated trafficking attracts a higher punishment.

- ❑ The Bill sets out penalties for several offences connected with trafficking. In most cases, the penalties set out are higher than the punishment provided under prevailing laws.

Article 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.

Explanation-

- ❑ Article 24 must be read with Article 39(e) and Article 39(f) of DPSP which provides for the protection of health and strength of children and that the tender age of children should not be abused.
- ❑ This provision is in the interest of public health and safety of life of children.
- ❑ M.C. Mehta Vs State of Tamil Nadu: The Supreme Court held that state authorities should protect economic, social and humanitarian rights of millions of children working illegally in public and private sectors.

Child Labour (Prohibition and Regulation) Amendment Act, 2016 amended the Child Labour (Prohibition and Regulation) Act, 1986.

- ❑ The amendment act prohibited the employment of children below 14 years of age in all occupation and industries except those runs by the child's own family. Before the amendment employment of children below 14 years in domestic work was completely legal.
- ❑ A complete prohibition has been imposed on the employment of child labour (i.e. a person below the age of 14 years) in any establishment whether hazardous or not. A child is permitted to work only to help the family in family enterprise after school hours or during vacations.
- ❑ The act introduced a new category called adolescents which cover person between 14-18 years of age. The amendment permits the employment of adolescent labour except in hazardous processes or occupation.
- ❑ The number of hazardous occupations and processes has been reduced from 83 to only 3-mining, explosives, occupations mentioned in the Factories Act, 1948. It leaves children open

to employment in all other kinds of hazardous industries including construction, asbestos, brick kilns, glass factories and garbage picking.

- ❑ It provides for the setting up of the Child and Adolescent Labour Rehabilitation Fund in which all the amounts of penalty have to be realized. This provision has been drawn from MC Mehta judgment.
- ❑ India finally ratified convention number 182 of the International Labour Organization which deals with prohibition and elimination of worst forms of child labour and provides that no child shall be employed in a hazardous occupation. Interestingly, India is one of the last countries to ratify the convention.

Article 25 - Right to freedom of religion

Article 25 (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 to freely profess, practise and propagate religion.

Article 25 (2): Nothing in this article shall affect the operation of any existing law or prevent the State from making any law:

- ❑ **Article 25 (2) (a):** regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- ❑ **Article 25 (2) (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-

Article 25 (1):

- ❑ India is a secular state. It is never considered as an irreligious or atheistic state.
- ❑ It is the ancient doctrine in India that state protects all religions; but interferes with none.
- ❑ The State is concerned with relations between man and man; not man and God.
- ❑ **Definition of Religion:** A religion has its basis in "a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual wellbeing.
- ❑ **Conscience:** Absolute inner freedom of the citizen to mould his own relation with God in whatever

manner he likes.

- ❑ **Profess:** To declare freely and openly one's faith and belief.
- ❑ **Practise:** To perform the prescribed religious duties, rites and rituals and to exhibit his religious beliefs.
- ❑ **Propagate:** Spread and publicise his religious view for the edification of others. It only indicates persuasion and exposition without any element of coercion.

Article 25 (2):

Article 25 also consists of two explanations:

- ❑ One, the wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
- ❑ Two, Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

Karnataka Hijab Issue:

- ❑ Six female students belonging to the Government PU College for Girls in Udupi were not allowed to attend classes wearing Hijab. State Government passed an order regarding the dress code for students mentioning Karnataka Education Act. Students needed to follow the dress code decided by their respective college Development Committee. In case of not having a uniform, students are not allowed to wear any piece of clothing that affects public law and order, equality and integrity.
- ❑ The Karnataka High Court upheld the ban on Hijab by the educational institutes. The court ruled that Hijab is not an essential religious practice under Islam and, hence, it is not protected by the Article 25 of the constitution setting out the fundamental right to practice one's religion.

Restrictions on Freedom of Religion

Religious liberty is subject to public order, morality and health. For example: In the name of religion,

- ❑ One cannot practise untouchability.
- ❑ There cannot be indecent dressing.
- ❑ One cannot forcibly convert another person. In order to ensure this, various states government has implemented "Freedom of Religion" legislation to restrict religious conversions through force, fraud or

allurement. Freedom of Religion laws are currently enforced in Odisha, Madhya Pradesh, Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand and Uttarakhand.

The Supreme Court in Noise Pollution case, has given certain directions to be followed to control noise pollution in the name of religion:

- ❑ **Firecrackers:** A complete ban on sound-emitting firecrackers from 10 pm to 6 am.
- ❑ **Loudspeakers:** Restriction on the beating of drums, tom-tom, blowing of trumpets, or any use of any sound amplifier between 10 pm to 6 am except in public emergencies.
- ❑ **Generally:** A provision shall be made by the State to confiscate and seize loudspeakers and such other sound amplifiers or equipment that creates noise beyond the limit prescribed.

Article 26: Freedom to Manage Religious Affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

- ❑ To establish and maintain institutions for religious and charitable purposes;
- ❑ To manage its own affairs in matters of religion;
- ❑ To own and acquire movable and immovable property; and
- ❑ To administer such property in accordance with law.

Religious denomination

The word 'religious denomination' is not defined in the constitution. The word 'denomination' came to be considered by the Supreme Court in the case of Commissioner, Hindu Religious endowment Madras v. Shri Laxmindra Thirtha Swamiar of Shri Shirur Mutt. In this case, the meaning of 'Denomination' was picked out from the Oxford dictionary, "A collection of individuals classed together under the same name, a religious sect or body having a common faith and organization designated by a distinctive name".

Right to establish and maintain-institutions for religious and charitable purposes: Azeez Basha v. Union of India

In this case, certain amendments were made in the year 1951 and 1965 to the Aligarh Muslim University Act, 1920. These amendments were challenged by the

petitioner on the ground that:

- ❑ They infringe on the fundamental right under Article 30 to establish and administer educational institutions.
- ❑ Rights of the Muslim minority under Article 25, 26, 29 were violated.

It was held by the Supreme Court that prior to 1920 there was nothing that could prevent Muslim minorities from establishing universities. The Aligarh Muslim University was established under the legislation (Aligarh Muslim University Act, 1920) and therefore cannot claim that the university was established by the Muslim Community as it was brought into existence by the central legislation and not by the Muslim minority.

Right to manage its own affairs in the 'Matters of Religion'

- ❑ Matter of religion includes religious practices, rituals, observances, ceremonies, mode and manner of worship, etc., regarded as the essential and integral part of the religion.
- ❑ For instance, in Acharaj Singh v. State of Bihar it was held that, if Bhog offered to the deity is a well-established practice of that religious institution, such a practice should be regarded as a part of that religion.

Taking over management of secular activities of the temple: Bira Kishore Dev v. State of Orissa

- ❑ In this case, the validity of the Shri Jagannath Temple Act, 1954 was challenged on the ground that the Act is discriminatory in nature and violates Article 26 (d) of the Constitution. It was contended by the petitioner (Raja of Puri) that the temple was his private property and he had the sole right over management as well as superintendence of the temple.
- ❑ The Act took away the sole management of the temple from the appellant and vested it with the Committee. Dismissing the appeal, the Supreme Court held that there was no violation of the fundamental right of freedom of religion of the petitioner and the Act only dealt with the secular management of the institution.
- ❑ Chardham Devasthanam Board: Recently Uttarakhand govt aimed to form an autonomous body Chardham Devasthanam Board to regulate the Chardhams — Yamunotri, Gangotri, Badrinath

and Kedarnath — along with 45 other temples affiliated to them in Uttarakhand. High court ruled out that the ownership of the temple properties would vest in Chardham shrines and power of the board would be confined only to the administration and management of the properties.

Right to administer property owned by denomination

- ❑ **Article 26 (d)** says that a religious denomination has the right to administer its own property but it should be in accordance with Law. In *Durgah Committee Ajmer v. Syed Hussain Ali*, the Supreme Court observed that if the religious denomination never had the right to administer property or if it has lost its right then such right cannot be created under Article 26 and therefore cannot be invoked.
- ❑ The Supreme Court in the case of *State of Rajasthan v. Sajjanlal Panjawat* observed that even though the state has the power to administer or regulate the properties of a trust, but it cannot by law take away the right to administer such property and vest it in such other authority that does not even comprise the denomination. This would certainly amount to a violation of Article 26(d) of the Constitution.
- ❑ The right to religion under Article 26 is subject to certain limitations and not absolute and unrestricted. If any religious practice is in contravention to any public order, morality or health then such religious practice cannot claim the protection of the state.

Article 27: Freedom from taxes for promotion of any particular religion

Article 27: No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

- ❑ The state would not spend the public money for the promotion or maintenance of any particular religion. This provision prevents the state from favouring and supporting one religion over another. Money from the taxes can be used for promotion or maintenance of all religion. A fee can be levied on the pilgrims to provide them special or safety measures.
- ❑ In the case of *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha*

Swamiar of Sri Shirur Mutt, the Madras legislature enacted the Madras Hindu Religious and Charitable Endowment Act, 1951 and contributions were levied under the Act. It was contended by the petitioner that the contributions levied are taxes and not a fee and the state of Madras is not competent to enact such a provision. It was held by the Supreme Court that though the contribution levied was tax but the object of it was for the proper administration of the religious institution.

Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions

Article 28 (1) No religion instruction shall be provided in any educational institution wholly maintained out of State funds

Article 28 (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

Article 28 (3) No person attending any educational institution recognised 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 person or, if such person is a minor, his guardian has given his consent thereto Cultural and Educational Rights.

Explanation-

- ❑ In simpler words, religious instructions in educational institutions are,
 - **Prohibited** in institutions wholly maintained by state.
 - **Permitted** in institutions administered by state, but established by trust
 - **Voluntary** in institutions receiving aid from state and institutions recognised by state.

Cultural and Educational Rights- Article 29 & 30

Article 29: Protection of interests of minorities

Article 29(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.

Article 29(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

Explanation:

Religious minorities: Article 29 and Article 30 of the Constitution do not specify 'minorities' in India, it is classified into religious minorities and linguistic minorities.

Religious Minorities in India

The basic ground for a community to be nominated as a religious minority is the numerical strength of the community. For example, in India, Hindus are the majority community. As India is a multi-religious country, it becomes important for the government to conserve and protect the religious minorities of the country.

Section 2, clause (c) of the National Commission of Minorities Act, declares six communities as minority communities. They are:

- ❑ Muslims
- ❑ Christians
- ❑ Buddhists
- ❑ Sikhs
- ❑ Jains and
- ❑ Zoroastrians (Parsis)

Linguistic Minorities

Class or group of people whose mother language or mother tongue is different from that of the majority groups is known as the linguistic minorities. The Constitution of India protects the interest of these linguistic minorities.

- ❑ Every time minority has fear about losing their identity and culture, has been ensured by article 29.
- ❑ The first provision article 29(1) protects the right of a group.
- ❑ While the second provision article 29(2) guarantees the right of a citizen as an individual irrespective of the community to which he belongs.
- ❑ Article 29 (1) It is an absolute right for the minorities to preserve its language and culture through educational institutions and cannot be

subject to reasonable restrictions in the interest of the general public.

- ❑ Article 29(2) is an individual right given to citizen and not to any community. The present clause gives guarantee to an aggrieved person, who has been denied admission on the ground of his religion. If a person has the academic qualifications but is refused admission only on the grounds of religion, race, caste, language or any of them, then there is a clear breach of the fundamental right under this section.
- ❑ Article 29 grants protection to both religious minorities as well as linguistic minorities.
- ❑ This means only two types of minorities mentioned in the constitution-
 - Religious
 - Linguistic.
- ❑ Not mention the caste, representation, or other types of the minority.
- ❑ However, the Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as it is commonly assumed to be. This is because of the use of the words 'section of citizens' in the Article that includes minorities as well as the majority. The Supreme Court also held that the right to conserve the language includes the right to agitate (By maintaining Law and Order) for the protection of the language. Hence, the political speeches or promises made for the conservation of the language of a section of the citizens does not amount to corrupt practice under the Representation of the People Act, 1951.

Article 30: Right of minorities to establish and administer educational institutions

Article 30 (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice

Article 30 (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.

Article 30 (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language

Explanation:

In a significant ruling in T.M.A. Pai Foundation versus State of Karnataka case, the Supreme Court laid down the guidelines related to Article 29 and 30 of the Constitution. The religious and linguistic minorities shall be determined state-wise and not nationally. Regulation around the proper functioning, well-being of students and teachers can be imposed by the government. The government can impose standard regulations, they should not destroy the minority character of the institution and the interference of the government should be very limited in the minority educational institution.

Highlights:

- ❑ All citizens have right to establish and administer educational institutions.
- ❑ The right to administer Minority Education Institution (MEI) not absolute.
- ❑ State can apply regulations to unaided MEIs to achieve educational excellence.
- ❑ Aided MEIs should admit certain percentage of non-minority students.
- ❑ Percentage of non-minority students to be admitted to an aided MEI to be decided by the State or university.
- ❑ Fees to be charged by unaided MEI cannot be regulated but no institution can charge capitation fee.
- ❑ State can prescribe minimum qualification for teachers and principal in an unaided MEI.
- ❑ Tribunal headed by District Judge should be constituted for redressal of grievance of employees of MEI.
- ❑ State can provide the manner of admission in case of an aided MEI to ensure that it is done on the basis of merit.
- ❑ Merit could be determined through common entrance test.

- ❑ Unaided MEI could have their own procedure for admission but the same had to be fair and transparent.

There are three types of minority educational institutions –

- ❑ Institutions that demand recognition and aid from the State.
- ❑ Institutions that demand recognition from the State and not aid.
- ❑ Institutions that neither demand recognition nor aid from the State.

The institutions which demand recognition from the State and are aided or not from the State are bound to follow the rules of the State and these regulations are related to the employment of teaching staff, discipline, academic standards, and sanitation, etc.

And the institutions that neither demand recognition nor aid from the State are free to administer their rules but have to follow the general laws like labour law, contract, industrial law, etc. Furthermore, these institutions have to follow the eligibility criteria prescribed by the state. They are free to appoint teachers only by the rational procedure.

The judgment delivered in case of Malankara Syrian Catholic College (2006), the Supreme Court held that under Article 30 of the Constitution the right conferred to minorities is to ensure equality with the majority that does not mean to give the advantageous position to the minorities and the general laws will apply to all the educational institutions.

Rights of Minority Institutes not Absolute: Supreme Court [NEET Case]

- ❑ Few colleges challenged the notifications issued by the Medical Council of India (MCI) and the Dental Council of India (DCI) under Sections 10D of the Indian Medical Council Act of 1956 and the Dentists Act of 1948 for uniform entrance examinations.
- ❑ The management of such minority-run medical institutions held that uniformly bringing them under the ambit of NEET would be a violation of their fundamental right to occupation, trade and business [Article 19(1)(g)] and would violate their fundamental rights of religious freedom and to manage their religious affairs (Article 25-28) and to

administer their institutions (Article 30).

- ❑ The Supreme Court of India gave its judgement on the admission criteria of minority institutions. It held that National Eligibility cum Entrance Test (NEET) is mandatory for admission to all the medical colleges and the right of minority institutions is not absolute and is amenable to regulation.
- ❑ The SC held that the fundamental and religious rights of minorities and rights available under Article 30 are not violated by provisions carved out in Section 10D of the MCI and Dentists Act. The right to freedom of trade or business is not absolute. It is subject to reasonable restriction in the interest of the students' community to promote merit, recognition of excellence, and to curb the malpractices. A uniform entrance test qualifies the test of proportionality and is reasonable.

Article 31 Right to property repealed

Article 32: Right to Constitutional Remedies

Dr Ambedkar stated that:

“If I was asked to name any particular article in this Constitution as the most important- an article without which this Constitution would be a nullity— I could not refer to any other article except this one. It is the ‘heart and soul’ of the Constitution.”

Article 32: Remedies for enforcement of rights conferred for this Part

Article 32 (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

Article 32 (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Article 32 (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 exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

Article 32 (4) The right guaranteed by this article shall not be suspended except as otherwise provided for

by this Constitution

Explanation: The Supreme Court has been constituted as a defender and guarantor of a fundamental right of the citizens. It has been vested with the ‘original’ and ‘wide’ powers of that purpose. Original, because an aggrieved citizen can directly go to the Supreme Court. Wide, because its power is not restricted to issuing orders or directions but also writs of all kinds.

Types of Writs

There are five types of Writs as provided under Article 32 of the Constitution:

1. **Habeas Corpus:** It is one of the important writs for personal liberty which says “You have the Body”. The main purpose of this writ is to seek relief from the unlawful detention of an individual.

It is for the protection of the individual from being harmed by the administrative system and it is for safeguarding the freedom of the individual against arbitrary state action which violates fundamental rights under Articles 19, 21 & 22 of the Constitution. This writ provides immediate relief in case of unlawful detention.

When can it be issued?

Writ of Habeas Corpus is issued if an individual is kept in jail or under a private care without any authority of law. A criminal who is convicted has the right to seek the assistance of the court by filing an application for “writ of Habeas Corpus” if he believes that he has been wrongfully imprisoned and the conditions in which he has been held falls below minimum legal standards for human treatment. The court issues an order against prison warden who is holding an individual in custody in order to deliver that prisoner to the court so that a judge can decide whether or not the prisoner is lawfully imprisoned and if not then whether he should be released from custody.

2. **Mandamus:** Writ of Mandamus means “We Command” in Latin. This writ is issued for the correct performance of mandatory and purely ministerial duties and is issued by a superior court to a lower court or government officer. However, this writ cannot be issued against the President and the Governor. Its main purpose is to ensure that the powers or duties are not misused by the

administration or the executive and are fulfilled duly. Also, it safeguards the public from the misuse of authority by the administrative bodies. The person applying for Mandamus must be sure that he has the legal right to compel the opponent to do or refrain from doing something.

Conditions for issue of Mandamus

- ❑ There must rest a legal right of the applicant for the performance of the legal duty.
- ❑ The nature of the duty must be public.
- ❑ On the date of the petition, the right which is sought to be enforced must be subsisting.
- ❑ The writ of Mandamus is not issued for anticipatory injury.

3. ***Certiorari:*** Writ of Certiorari means to be certified. It is issued when there is a wrongful exercise of the jurisdiction and the decision of the case is based on it. The writ can be moved to higher courts like the High Court or the Supreme Court by the affected parties.

There are several grounds for the issue of Writ of Certiorari. Certiorari is not issued against purely administrative or ministerial orders and that it can only be issued against judicial or quasi-judicial orders.

When is a writ of Certiorari issued?

- ❑ Either without any jurisdiction or in excess.
 - ❑ In violation of the principles of Natural Justice.
 - ❑ In opposition to the procedure established by law.
 - ❑ If there is an error in judgement on the face of it.
- Writ of certiorari is issued after the passing of the order.

4. ***Prohibition:*** It is a writ directing a lower court to stop doing something which the law prohibits it from doing. Its main purpose is to prevent an inferior court from exceeding its jurisdiction or from acting contrary to the rules of Natural Justice.

When is the writ of Prohibition issued?

- ❑ It is issued to a lower or a subordinate court by the superior courts in order to refrain it from doing something which it is not supposed to do as per law.
- ❑ It is usually issued when the lower courts act

in excess of their jurisdiction. Also, it can be issued if the court acts outside its jurisdiction. And after the writ is issued, the lower court is bound to stop its proceedings and should be issued before the lower court passes an order. Prohibition is a writ of preventive nature. The principle of this is 'Prevention is better than cure'.

5. ***Quo Warranto:*** Writ of Quo Warranto implies thereby "By what means". This writ is invoked in cases of public offices and it is issued to restrain persons from acting in public office to which he is not entitled to. Although the term 'office' here is different from 'seat' in legislature but still a writ of Quo Warranto can lie with respect to the post of Chief Minister holding an office whereas a writ of Quo Warranto cannot be issued against a Chief Minister, if the petitioner fails to show that the minister is not properly appointed or that he is not qualified by law to hold the office. It cannot be issued against an Administrator who is appointed by the government to manage Municipal Corporation, after its dissolution. Appointment to public office can be challenged by any person irrespective of the fact whether his fundamental or any legal right has been infringed or not.

When can it be Issued?

- ❑ When the public office is in question and it is of a substantive nature. A petition against a private corporation cannot be filed.
- ❑ The office is created by the State or the Constitution.
- ❑ The claim should be asserted on the office by the public servant i.e., respondent.

Difference between the Writ Jurisdiction of the Supreme Court and High Courts

- ❑ The Supreme Court issues the Writ (under Art. 32) only in cases of the violation of the Fundamental Rights, whereas the High Court (under Art. 226) can issue the writs not only for the enforcement of the Fundamental Rights but also for redressal of any other injury or illegality, provided certain conditions are satisfied. Thus, in a way, the writ jurisdiction of the High Court is wider than the Supreme Court.
- ❑ Art. 32 imposes on the Supreme Court a duty to issue the Writs, whereas no such duty is imposed

on the High Court by Art. 226.

- ❑ The jurisdiction of the Supreme Court extends all over the country, whereas that of the High Court only to the territorial confines of the particular state and the Union Territory to which its jurisdiction extends.

Limitations to Article 32

There are certain circumstances during which the citizens do not get the privileges which they ought to get under Article 32

- ❑ Under Article 33, the Parliament is empowered to make changes in the application of Fundamental Rights to armed forces and the police are empowered with the duty to ensure proper discharge of their duties.
- ❑ During the operation of Martial law in any area, any person may be indemnified by the Parliament, if such person is in service of the state or central government for the acts of maintenance or restoration of law and order under Article 34.
- ❑ The President can suspend the remedies provided under Art. 32 during the period of National Emergency.
- ❑ Article 359 confers the power to the President to suspend Article 32 of the Constitution. The order is to be submitted to the Parliament.

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

Article 33(a) the members of the Armed Forces; or

Article 33(b) the members of the Forces charged with the maintenance of public order; or

Article 33(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

Article 33(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation 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.

Explanation:

- ❑ Article 33 gives the Parliament the authority to

limit or abolish the fundamental rights of members of the armed forces, paramilitary forces, police forces, intelligence agencies, and similar forces. The purpose of this provision is to ensure that they carry out their duties properly and that they maintain discipline among themselves.

- ❑ Article 33 grants the power to make laws only to Parliament, not to state legislatures. Any such law enacted by Parliament cannot be challenged in a court of law on the basis of a violation of any of the fundamental rights.
- ❑ The Armed Forces have imposed restrictions on a limited number of fundamental rights, as specified in Articles 14, 15, and 19 of the Constitution. The provisions of these special acts (Army Act, Air Force Act, or Navy Act) cannot simply be challenged on the grounds that they violate fundamental rights. This is because these acts are laws duly enacted by Parliament in the exercise of its plenary legislative jurisdiction, as stated in Article 33 of the Indian Constitution.
- ❑ Aside from the three branches of the armed forces, these rights have been revoked in respect of members of the police and paramilitary forces, persons employed in intelligence or counter-intelligence services, and communication systems set up for the aforementioned organizations.
- ❑ The Central Government, in exercising its rule-making power under the Army Act of 1950 (as well as the Air Force Act), has limited the rights to freedom of speech and expression, freedom of assembly, and freedom to form associations and unions enshrined in Article 19 of the Constitution.
- ❑ The Supreme Court has ruled that these rights can be limited even for members of the armed forces who serve in non-combat roles.

Article 34: Restriction on rights conferred by this Part while martial law is in force in any area
Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence

passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

- ❑ It provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India. The expression 'martial law' has not been defined anywhere in the Constitution but literally, it means 'military rule'.
- ❑ There are also no specific provisions in the constitution that authorises the executive to declare martial law. However, it is implicit in Art 34 under which martial law can be declared in any area within the territory of India. The martial law is imposed under extraordinary circumstances like war, invasion, insurrection, rebellion, riot or any violent resistance to law.
- ❑ Article 34 empowers the Parliament to indemnify (compensate) any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force.
- ❑ The Act of Indemnity made by the Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.
- ❑ During the operation of martial law, the military authorities are vested with abnormal powers to take all necessary steps they impose restrictions and regulations on the rights of the civilians, can punish them and even condemn them to death.

Article 35: It lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures.

Article 35: Legislation to give effect to the provisions of this Part Notwithstanding anything in this Constitution,

Article 35(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws

Article 35(i) with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and

Article 35 (ii) prescribe punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub

clause (ii);

Article 35(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub clause (i) of clause (a) or providing for punishment for any act referred to in sub clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament

Explanation:

- ❑ Powers of Parliament (only) to Make Laws:
- ❑ Prescribing residence as a condition for certain employment or appointments in a state/UT/local or any other authority (Article 16).
- ❑ Empowering courts other than the Supreme Court and the high courts to issue directions, orders and writs for the enforcement of fundamental rights (Article 32).
- ❑ Restricting or abrogating the application of Fundamental Rights to members of armed forces, police forces, etc (Article 33).
- ❑ Indemnifying any government servant or any other person for any act done during the operation of martial law in any area (Article 34).
- ❑ The Parliament has powers to make laws prescribing punishment for offences such as untouchability (Article 17) and traffic in human beings and forced labour (Article 23).
- ❑ Article 35 extends the competence of the Parliament to make a law on the specified matters even those matters which may fall within the sphere of the state legislatures (i.e., State List).

Exceptions to Fundamental Rights

Article 31A: Saving of Laws that provide for Acquisition of Estates

- ❑ Under Article 31A of the Constitution of India, five categories of laws have been defined from being challenged on the grounds of violation of Fundamental rights granted by Article 14 and 19 of the Constitution. These categories are related to
 - Acquisition of estates and the rights related to it by the State.
 - An amalgamation of various corporations.
 - Modification of mining leases or even Extinguishment.

- Taking over the management of properties by the State.
- Modification of the rights of the directors of various corporations.
- ❑ Article 31A does not immunise a state law from judicial review unless it has been reserved for the president's consideration and has received his assent.
- ❑ This article also provided for the payment of compensation at market values when the state acquires the land held by a person under his personal cultivation and the land is within the statutory limit.
- ❑ Uttar Pradesh government put a ceiling on a large number of permissible landholdings under the Land Holdings Act, 1960.
- ❑ Also, under Section 3(17) of the land acquisition act, only the 'male' was considered as the landholder and owner whereas 'unmarried female' or 'woman whose husband is the landowner', wasn't considered as the owner of the land. Apart from the acquisition part, many people have also looked at this discriminatory side of the Act. The court upheld the constitutional validity of Article 31(1)(a).

Article 31B: Validation of Some Acts and Regulations

- ❑ Under Article 31B of the Constitution of India, the Acts and the Regulations which are included in the Ninth Schedule are protected from being challenged on the grounds of violation of Fundamental right. Article 31B immunises any law which is included in the Ninth Schedule from all the Fundamental rights and it does not matter if any of the laws included in the Ninth Schedule falls under any of the five categories which are defined under Article 31A.
- ❑ Article 31B did not allow the government to make provisions blatantly against the provisions of the constitution but only which were fair with the provision of the constitution and which are inconsistent should be made void. This article stood as a shield for the laws contained in the Ninth Schedule as it makes certain that no question arises on any law contained in that schedule.
- ❑ Waman Rao v. Union of India 1981, On 24th April 1973, a famous case judgment laid down the Doctrine of the basic structure, Keshavananda Bharati v. the State of Kerala. In reference to that

judgment, this case ruled out that any amendment made in the IX Schedule before the Keshavananda Bharti case will not be challenged in the court but any amendments made after that, will be.

Article 31C: Saving of laws that give effect to some Directive Principles

Under Article 31C (which was inserted by the 25th Amendment Act of 1971), are contained two provisions, these are:

- i. It states that if there is a law which seeks to implement the socialistic directive principles defined under Article 39(b) or 39(c) then it shall not be declared void on the grounds of the violation of the fundamental rights defined under the Article 14 and Article 19 of the Constitution of India.
- ii. And, if there's a law which contains a declaration for giving effect to such a policy then it shall not be called in question in the Court of law.

Decisions given by court on the constitutionality of Article 31C

- ❑ The validity of the 25th Constitutional Amendment was questioned in Keshavananda Bharti v State of Kerala, Sikri C.J. held that since Parliament cannot under Article 368 abrogate fundamental rights; equally it cannot enable the legislature to abrogate them. Therefore, Article 31C must be declared unconstitutional. The second part of Article 31C was held unconstitutional on the ground that it ousted the jurisdiction of the Courts which is a basic feature of the constitution and which cannot be done away with an amendment under Article 368.
- ❑ Minerva Mills Ltd. v. Union of India, the extended version of Article 31C was struck down by the Supreme Court. The Court ruled that the extension of the shield of Article 31C to all the Directive Principles was beyond the amending power of Parliament under article 368 because by giving primacy to all Directive Principles over the Fundamental Rights in Articles 14 and 19, the basic or essential features of the constitution viz., judicial review has been destroyed.
- ❑ Waman Rao v. Union of India, The Supreme Court maintained that Article 31C as it stood prior to the 42nd Amendment Act made in 1978, was valid as its constitutionality had been upheld in Keshavananda Bharti case.

- ❑ I.R. Coelho v. State of Tamil Nadu the Supreme Court held that any law which infringes basic structure of the Constitution can be struck down. Parliament has power to amend Part III so as to abridge or take away fundamental rights but that power is subject to the limitation of basic structure doctrine. There should be a balance between fundamental rights and Directive Principles of State Policy.

Conditions for applicability of Article 31C

There are two conditions which must be fulfilled for the application of Article 31C

- ❑ A law for giving effect to the policy of the state to implement a Directive Principle in Article 39(b) or (c).
- ❑ The Legislature making a declaration to that effect.

But the question that whether the act is intended to secure the object contained in Article 39(b), (c) does not depend upon the declaration made by the legislature but upon the contents of the act as found by the court.

Criticism of Fundamental Rights

❑ Immoderate Limitations

- The Fundamental rights enshrined by the Constitution are subjected to reasonable restrictions as well as exceptions hence they are criticised on this remark.

❑ Lack of Social and Economic Rights

- The list of Fundamental rights mainly consists of political rights. There are no provisions which make important social and economic rights such as the right to social security, the right to work, right to employment, etc. Whereas the Constitutions of other nations such as China provides for such rights.

❑ Lacks Clarity

- Many phrases and words used under the definitions of various fundamental rights are found to be not clear or vague as their explanation is not given anywhere in the Constitution of India. Words such as, 'Public order', 'minorities', reasonable restrictions', etc. belong to this category.

❑ No Permanency

- The Parliament can curtail or abolish the fundamental rights. An example of this is the abolition of the fundamental right to property.

They have been criticised for becoming a play tool in the hands of the politicians having majority support in the Parliament. Hence, they lack permanency.

❑ Suspended during Emergencies

- Fundamental rights are criticised on the basis of their temporary suspension during the operation of a National Emergency (except for the fundamental rights defined under Articles 20 and 21) all fundamental rights are suspended during an emergency.

❑ Preventive Detention

- Provisions for the concept of Preventive Detention are criticised by many and the reason for this is said to be that it takes away the spirit and substance of fundamental rights as it confers arbitrary powers on the State.

❑ Expensive Remedy

- The judicial processes are way too expensive and hinder the common man from getting his rights enforced in the Courts as not every person has the money or even time to afford such proceedings.

Significance of Fundamental Rights

- They form a defensive wall of individual liberty.
- They protect the interest of minorities.
- They ensure the dignity and respect of individuals.
- They constitute the basis of the democratic system in the country.
- They strengthen the secular fabric of the Indian State.
- Check the absoluteness of the authority of the government.
- Facilitate the participation of people in the political and administrative process.
- Lays the foundation of social equality and social justice.

Some Rights that are mentioned in other parts of the Constitution

Apart from the Fundamental Rights included in Part III, there are certain other rights contained in other parts of the Constitution. These rights are known as constitutional rights or legal rights or non-fundamental

rights. They are:

- ❑ No tax shall be levied or collected except by authority of law (Article 265 in Part XII).
- ❑ No person shall be deprived of his property save by authority of law (Article 300-A in Part XII).
- ❑ Trade, commerce and intercourse throughout the territory of India shall be free (Article 301 in Part XIII).
- ❑ The elections to the Lok Sabha and the State Legislative Assembly shall be on the basis of adult suffrage (Article 326 in Part XV).

Though the above rights are also equally justiciable, they are different from the Fundamental Rights. In case of violation of a Fundamental Right, the aggrieved person can directly move the Supreme Court for its enforcement under Article 32, which is in itself a fundamental right. But, in case of violation of the above rights, the aggrieved person cannot avail this constitutional remedy. He can move the High Court by an ordinary suit or under Article 226 (writ jurisdiction of high court).

Conclusion

- ❑ The fundamental rights have been included in the Constitution because they were considered to be essential for the development of the personality of each and every individual and are there to preserve human dignity and respect. Most of these rights are enforceable against the state by way of their language while some of these rights can be directly enforced against both the state as well as, a private individual.
 - ❑ One of the most important aspects of the fundamental rights is that it gives Judiciary clear criteria as to how the regulation of relations between the citizens and the government will take place.
 - ❑ Another positive aspect of the Fundamental rights is that these empower the young children of our nation as they are granted the right to receive free education up to the age of 14. The fundamental rights may have flaws but it does provide more protection to the citizens of the nation than most of the flaws.
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