Chapter 10 - Fundamental Rights

Have you ever wondered what makes a democracy truly democratic? Imagine living in a society where you cannot voice your opinions, join political movements, or even cast your vote. The denial of such basic freedoms highlights why rights form the very foundation of democracy. They ensure that every citizen has an equal stake in governance and in shaping the future of their country. Rights are claims individuals hold against one another, society, and the State. They define the boundaries of permissible action and lay down the rules of interaction, backed by legal sanction. This legal recognition makes rights enforceable, allowing citizens to approach courts whenever they are violated. Yet, rights are not absolute; they must be exercised with regard to the rights of others and the larger needs of society. Striking this balance is what sustains both individual freedom and collective harmony in a democracy.

Types of Rights Now that we understand what rights are and why are they significant, it is interesting to note that rights can be broadly delineated into various types, each serving a distinct purpose:

1. **Natural Rights**: These are the inherent, inalienable rights possessed by individuals simply by being creatures of nature. Such rights exist irrespective of customs, culture, or laws prevailing in a society. Natural rights have been in existence even before the origin of the state. For example, the right to procreate.
2. **Human Rights**: Human rights are the basic rights inherent to all individuals by virtue of being born a human. They are universal and apply to everyone irrespective of nationality, residence, gender, ethnicity, religion, or any other status. [Human Rights are further discussed under non-Constitutional bodies - NHRC]
3. **Legal / Statutory Rights**: Legal rights are granted by law and protected by it. Such rights are equally available to all citizens as defined under the ambit of law. For example, the right to '100 days of work' under MNREGA.
4. **Constitutional Rights:** The Constitution guarantees rights such as Fundamental Rights (e.g., Right to Equality) and others like the Right to Property. Since the Constitution is the supreme law, these are legal rights, but not all legal rights are constitutional. For example, the Right to Education under Article 21A is a constitutional right, while the Right to Information is a legal right created by statute.
5. **Fundamental Rights:** Fundamental Rights, unlike ordinary legal rights, are protected and guaranteed by the Constitution of the country. Enshrined in Part III of the Indian Constitution, these rights are justiciable, meaning they are enforceable through courts. Such rights are protected by the highest courts, i.e., aggrieved persons can directly approach the Supreme Court for their enforcement.
6. **Moral rights**: Moral rights arise from the prevailing sense of morality in a society. Such rights may or may not be protected by law. For instance, parents have a moral right to be assisted by their children in their old age.

Universal Declaration of Human Rights (UDHR):
Adopted by the United Nations in 1948, the Universal Declaration of Human Rights (UDHR) is a foundational document of international Human Rights law. It consists of 30 Articles, and a Preamble, that serves as the global roadmap for protecting Human rights. Eleanor Roosevelt, as the chair of the

United Nations Human Rights Commission (UNHRC), was the driving force in creating and formulating the content of UDHR. The UDHR outlines rights and freedoms that all people should enjoy. These include the right to life, freedom of speech, and the right to education. The document emphasizes that all human beings are born free and equal in dignity and rights, as outlined in Article 1. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Specifically, Article 3 of the UDHR states that everyone has the right to life, liberty and security of person. Article 22 highlights the importance of economic, social, and cultural rights for human dignity and the development of the human personality. Additionally, Article 29 discusses the duties that individuals have towards others and society. The UDHR also includes essential rights such as the right to education and the right to equal access to public services (PYQ 2011). Although it is not a treaty and is not legally binding, the UDHR provides a framework for the inclusion of Civil and Fundamental rights in modern Constitutions. The principles of the UDHR are also reflected in various provisions of the Indian Constitution like the Preamble, Fundamental Rights, DPSP, Fundamental Duties, etc. (PYQ 2020).

The International Bill of Human Rights includes three key documents: 'The Universal Declaration of Human Rights', 'The International Covenant on Civil and Political Rights' and 'The International Covenant on Economic, Social and Cultural Rights'. Together, these documents provide a framework for protecting human rights around the world. In terms of Indian contribution, Hansa Mehta and Lakshmi Menon played significant roles in shaping the UDHR. Hansa Mehta advocated for changing the phrase "All men are born free and equal" to "All human beings are born free and equal" in Article 1 of the UDHR.

Fundamental Rights: Fundamental Rights are a set of basic rights and freedoms that are considered essential for a dignified and fulfilling life of an individual in a democratic society. They are typically enshrined in the Constitution of a country and serve as a check on the power of the state while safeguarding the interests of the citizens. The *Magna Carta*, signed in 1215, was a Royal Charter of Rights that placed limits on the absolute power of the king and declared that the king was not above the law. It also outlined basic rights for the protection of citizens, which ultimately led to the development of modern Constitutions, which included Fundamental Rights. These rights are considered fundamental because – firstly, they are enshrined in the fundamental law of the land; secondly, they are essential for the overall development of an individual and lie at the core of a democratic society; lastly, these rights are generally enforceable in the highest court of the country. The Indian Constitution, for instance, is a general restriction on the power of the state, while Fundamental Rights are specific restrictions that ensure the protection of citizens' interests.

Key differences between Rights and Fundamental rights:

- Source - Rights may come from various sources like laws, customs, or social norms, while Fundamental rights are defined and protected by the Constitution.
- Enforceability - Rights may or may not be legally enforceable, but Fundamental rights are enforceable in a court of law. Importance - Fundamental rights are considered more crucial

and essential for human dignity and development compared to general rights.

- Limitations - Governments can abolish or put restrictions on general rights, but Fundamental rights have very limited grounds for reasonable restrictions.

Thus, we can say that all Fundamental Rights are rights, but not all rights are Fundamental rights. Fundamental Rights, thus, are a subset of the rights that are considered basic, inalienable, and constitutionally protected

Fundamental Rights in India:

The history of Fundamental Rights in India is closely tied to the freedom struggle and the vision of the Constitution's framers. The first systematic attempt came with the Nehru Report of 1928, which proposed nineteen rights such as equality for women, the right to form unions, and universal adult suffrage. This marked a clear demand for codified rights in an independent India. Building on this, the Indian National Congress at its Karachi Session in 1931 passed the *Resolution on Fundamental Rights*. It promised guarantees like freedom of speech and press, the right to assemble and form associations, universal franchise, and protection of minority cultures and languages. These early articulations laid the moral and political foundation for the inclusion of Fundamental Rights in the Constitution, reflecting the aspirations of a democratic and inclusive nation.

The development and evolution of Fundamental rights was also influenced by various international constitutional models and experiences. The framers of the Indian Constitution drew inspiration from - the Bill of Rights, 1791 (United States), the French Declaration of the Rights of Man and of the Citizen, 1789 and the UDHR, 1948. This cross- pollination of ideas and adaptation of relevant aspects from these global sources enriched the conception and formulation of Fundamental rights in the Indian Constitution.

Fundamental rights have been enshrined in Part III (Articles 12 - 35) of the Constitution. It became the cornerstone of the Constitution, providing essential protections and freedoms to individuals. Thus, Part III is often referred to as the '*Magna Carta of India*.'

Features of Fundamental Rights in India:

Fundamental Rights primarily act as safeguards against arbitrary state action, ensuring that the government does not infringe upon individual freedoms without valid justification. At the same time, certain rights also shield individuals from violations by private citizens, such as the Right against Untouchability under Article 17. These rights can be both positive and negative in nature: positive rights, like the Right to Education under Article 21A, require the state to take active steps to provide benefits, while negative rights, such as the freedom of speech under Article 19, place restrictions on the state by defining what it cannot do. Together, they uphold individual liberty and strengthen democratic governance.

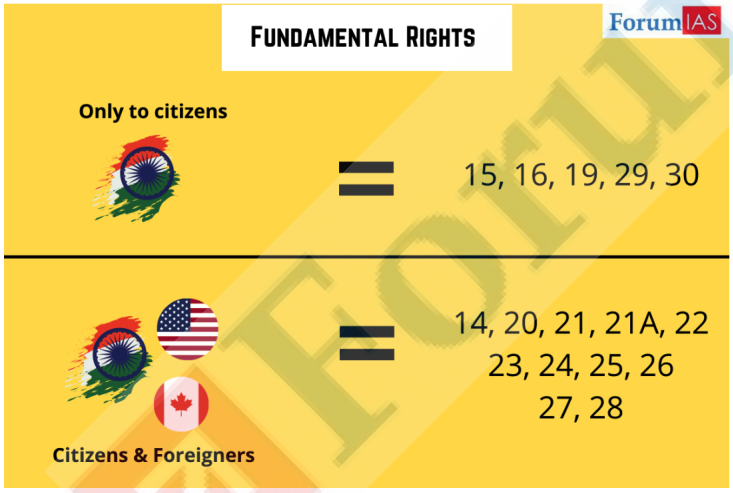
A key feature of Fundamental Rights is that they are justiciable, meaning individuals can approach the courts if their rights are violated. In India, this enforcement itself is guaranteed as a Fundamental Right under Article 32, described by Dr. B.R. Ambedkar as the "heart and soul" of the Constitution. Through this provision, citizens can directly move the Supreme Court, which has the power to issue writs for the

protection of rights, ensuring that Fundamental Rights are not just ideals on paper but practical guarantees.

Fundamental Rights can be broadly categorized as – a) Rights exclusively available to Indian citizens. The rights under Articles 15, 16, 19, 29, and 30 are only for the citizens of India b) Rights available to all individuals regardless of their nationality. All rights in Part III, except under Articles 15, 16, 19, 29, and 30 are available to all persons, whether citizens or foreigners.

Fundamental Rights in India are not absolute; they are subject to reasonable restrictions in the interest of public order, morality, and the sovereignty and integrity of the nation. For example, freedom of speech under Article 19 can be curtailed to prevent hate speech or threats to security. In *Shreya Singhal v. Union of India (2015)*, the Supreme Court struck down Section 66A of the IT Act, holding that vague restrictions on free speech violate Article 19(1)(a), but also reaffirmed that reasonable limits like those on incitement to violence are valid. Similarly, members of the armed forces, paramilitary, and police can have curtailed rights to maintain discipline.

Also, during a National Emergency, the operation of Fundamental Rights can be suspended, with certain exceptions. This suspension underscores the conditional and adaptable nature of Fundamental rights in India, ensuring that they are balanced with the broader needs of the state and society. Lastly, Fundamental rights are not sacrosanct or permanent as Parliament can amend, curtail or repeal them through a constitutional amendment.



'State' under Part III

Article 12: Definitions
In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

As the Fundamental Rights are guaranteed against the state, it becomes important and necessary to precisely and concisely define the meaning of the term 'state'. Thus, Article 12 defines the term "State" as used in various provisions of Part III of the Constitution. According to this definition, the State includes:

1. Government and Parliament of India i.e. the Executive and Legislature of the Union
2. Government and Legislature of each State i.e. the Executive and Legislature of the various States.
3. All 'local authorities' or 'other authorities' within the territory of India
4. 'Other authorities' under the control of the Government of India

'Local Authorities' and 'Other Authorities':
Though the Constitution does not explain the terms 'Local authorities' and 'Other authorities', the Courts have interpreted and expanded these terms in various cases:

- 'Local Authorities': It entails authorities of "local government", like Village Panchayats, Municipal Corporations, Improvement Trusts, District Boards, Mining Settlement Authorities, etc. In Mohammad Yasin vs Town Area Committee, the Supreme Court gave four criteria for an entity to be classified as a 'local authority' under Article 12: (a) created by a statute (b) vested with certain sovereign powers (c) possesses the authority to make rules with the force of law, and (d) be substantially financed by the government.

Judgements related to "Other Authorities" under Art 12?

- R D Shetty case, Hasan Ali Khan Case and Ajay Hasia Case: Instrumentality of state propounded by the judiciary to define Other Authorities.
- Instrumentality of state: lays down 4 criteria. The body if conforming with one or more criteria is sufficient and all 4 criteria need not be mandatorily met. The criteria are:
    - Substantial financial aid from government
    - Control by the government
    - Performance of public functions
    - Entrustment of government activities
- Star Enterprises vs CIDCO of Maharashtra case, 1990: Apex court held that even a private party which acts as an agency or instrument of state will fall within the definition of state under Art. 12.
- Zee Telefilms Ltd. and Anr. vs. Union of India (2005): Apex court held that Board of Cricket Control in India (BCCI) is not be considered a state under Art. 12.

Is the Judiciary considered a 'State' under Article 12?
The judiciary is not explicitly mentioned in Article 12 as part of the definition of "State." However, the courts have taken different positions on whether the judiciary can be considered a "State".

- Ujjam Bai v. State of Uttar Pradesh (1962): Supreme Court held that the judiciary, while exercising its judicial functions, does not fall within the definition of "State" under Article 12
- Sukhdev Singh v. Bhagatram (1975): the Supreme Court held that the term "State" includes not only the executive and legislative organs of the state but also other authorities exercising governmental or sovereign functions.
- Rupa Ashok Hurra vs Ashok Hurra case, 2002: demarcated the 'judicial' and 'administrative'

functions of the state. The judiciary performing 'administrative functions', they qualify as a state wrt to violation of FRs. However, when it comes to the judiciary performing 'judicial' functions is not be considered state.

'Laws' violating Fundamental Rights Article 13: Laws inconsistent with or in derogation of the Fundamental Rights

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

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

(3) In this article, unless the context otherwise requires - (a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; (b) "laws in force" include laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. *(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

* Inserted by the 24th Amendment, 1971

Article 13 declares that any law inconsistent with or infringing upon the Fundamental Rights in Part III shall be void. This empowers the higher judiciary to review the constitutionality of laws and strike them down if they violate citizens' rights. The term "law" under Article 13 is given a very wide meaning—it covers not only permanent laws made by Parliament or state legislatures but also temporary laws like Presidential or Governor's Ordinances, as well as rules, regulations, bylaws, orders, notifications, and even customs or usages having the force of law. This broad interpretation ensures that no form of state action escapes judicial scrutiny. In *A.K. Gopalan v. State of Madras (1950)*, the Supreme Court initially adopted a narrow view of Article 21, but later in *Maneka Gandhi v. Union of India (1978)* it widened the scope by holding that any "law" under Article 13 must also be just, fair, and reasonable.

Article 13 explicitly excludes constitutional amendments from the definition of "law," meaning they cannot ordinarily be challenged under this provision. However, in the landmark *Kesavananda Bharati v. State of Kerala (1973)* case, the Supreme Court held that while Parliament has wide powers to amend the Constitution, it cannot alter its "basic structure." This doctrine ensures that even a constitutional amendment is open to judicial review if it infringes Fundamental Rights or undermines core constitutional principles such as democracy, secularism, or the rule of law. Thus, the judgment placed an effective check on Parliament's amending power and reinforced the judiciary's role as the guardian of Fundamental Rights.

Judicial Review:
Judicial review is the power of the courts to examine the constitutionality of legislative and executive actions (PYQ 2017). It is a way to assure that governmental actors respect the constitution and do not use powers granted to them by the constitution to seize illegitimate power. This concept originated in the USA through the Marbury vs Madison case in 1803.

In India, Article 13 of the Constitution empowers the Supreme Court and High Courts to apply judicial review to all legislations or any provisions thereof and are authorised to declare any law unconstitutional to the extent of its inconsistency with the provisions of Part III of the Constitution. Under Article 13, Higher Courts have invalidated numerous legislations enacted by Parliament and State Legislatures. For example, in the Shreya Singhal case, Section 66-A of Information Technology Act, was struck down for being violative of Article 19(2).

The term judicial review is nowhere mentioned in the Indian Constitution. However, the fact that India has a written constitution, and the Supreme Court can strike down a law that goes against Fundamental Rights, implicitly gives the Supreme Court and the High Courts the power of judicial review. Moreover, in L Chandra Kumar Case(1997), the Supreme Court explicitly identified judicial review as part of the basic structure of the Constitution.

In contrast, the United States also practices robust judicial review, but its constitutional foundation is notably different. The U.S. Constitution does not explicitly mention judicial review. Instead, the power was established through judicial interpretation. The United Kingdom, however, presents a contrasting model rooted in the principle of Parliamentary supremacy. Here, Parliament is considered the supreme legal authority, and no court can declare a parliamentary statute invalid. Judicial review in the UK is therefore limited primarily to administrative actions rather than legislative acts.

Classification of Fundamental Rights: The Constitution has classified the Fundamental Rights into six broad categories.
A. Right to Equality (Articles 14-18)
B. Right to Freedom (Articles 19-22)
C. Right against Exploitation (Articles 23-24)
D. Right to Freedom of Religion (Articles 25-28)
E. Cultural and Educational Rights (Articles 29-30)
F. Right to Constitutional Remedies (Article 32)

Initially, the Constitution of India provided for seven Fundamental Rights, including the Right to Property (Article 31). However, through the 44th Amendment, 1978, the Right to Property was removed from the list of Fundamental Rights and was reclassified as a Constitutional right under Article 300A in Part XII of the Constitution. As a result, currently, there are six Fundamental Rights enshrined in Part III of the Indian Constitution. Let's have a look at these rights, one by one.

RIGHT TO EQUALITY: ARTICLES 14–18

While Article 14 deals with the principle of equality in general, Articles 15 to 18 contain particular aspects of equality.

Right to - Equality before Law & Equal Protection of Law

> 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.

Article 14 of the Constitution states that the State shall not deny to any person 'Equality before Law' or 'Equal Protection of Laws' within the territory of India.

The concept of equality implies that all people, as human beings, are entitled to the same rights, and opportunities to develop their skills and talents and to pursue their goals and ambitions. One of the key implications of equality in society is the absence of privileges, meaning no individual or group enjoys special rights, advantages, or status based on birth, caste, class, gender, or wealth (PYQ 2017). In an equal society, everyone is treated fairly and given the same opportunities, ensuring that success depends on merit and effort rather than inherited or unearned advantages. If a law grants excessive, unguided, and uncontrolled discretionary power to the executive or administrative authorities, it opens the door to arbitrary decisions. Such arbitrariness in the application or enforcement of the law directly violates Article 14 of the Constitution, as it goes against the principle of equality and fairness before the law. (PYQ 2021)

Equality before law:

The principle of "equality before law" means that no individual should receive special privileges and that everyone is equally subject to the law as applied by ordinary courts. The idea of "equality before the law" is a negative concept. This means it focuses on what should not exist—like special privileges for certain individuals. It ensures that everyone, regardless of their status, is equally subject to the same laws. This idea is part of what Prof. Dicey called the "rule of law" in England. According to him, no person is above the law, and everyone, whatever their rank or status, must be treated by the same ordinary courts. It is important to understand that equality before law does not mean absolute equality among all people, because that is not practically possible. It simply means that no one gets special treatment due to their birth, religion, caste, or status, and that those in similar situations should be treated equally under the law.

Equal protection of law

The concept of 'Equal Protection of Laws' provides that every citizen receives fair and equal treatment under the law, regardless of any differences. It implies that individuals should be treated equally in similar circumstances and unequally under unequal circumstances. For example- Under Section 497 of the erstwhile IPC, unlike men, women were not liable for prosecution under adultery nor can they charge their husbands for this crime. No offence can be made out if the husband consents to adultery of his wife. In Joseph Shine Case (2018), the Supreme Court held this section unconstitutional in violation of the principle of equality before law.

It was borrowed from the American Constitution and is a positive concept that implies that people who are in similar circumstances will be treated similarly, but differently from people in different circumstances.

Exceptions to Equality before Law:

The Indian Constitution and other laws provide several exceptions to maintain the stability and integrity of the political system while safeguarding the rights and dignity of those who serve the nation. These exceptions are:

- **Immunity for the President and the Governor**: Article 361 of the Indian Constitution grants immunity to the President and the Governor of a state. They are not answerable to any court for their actions during their term, and no criminal proceedings can be initiated against them during this time.
- **Parliamentary and Legislative Immunity**: The Indian Constitution, under Articles 105 and 194, grants certain immunities to members of Parliament and State Legislatures for their speeches, votes, and actions within the Legislature, ensuring that they can perform their duties without fear of legal repercussions.
- **Article 31C**: Article 31C of the Indian Constitution exempts laws enacted to implement certain Directive Principles (Part IV) from being challenged on the grounds of violating Articles 14 and 19, prioritizing social and economic welfare over the right to equality.
- **Immunity for Ambassadors and UNO officials**: Foreign sovereigns, ambassadors, diplomats, as well as entities like the United Nations and its agencies, are granted diplomatic immunity under international law, particularly the Vienna Convention. This immunity shields them from both criminal and civil proceedings, thus safeguarding their ability to carry out official duties without interference.
- **Security and Access Control**: In some situations, especially related to security concerns or special events, individuals might be subjected to separate lines or access points for screening or entry.

Rule of Law:

Rule of law means that all laws apply equally to all citizens of the country, and no one can be above the law. No one, whether a government official, a wealthy person, or even the President of the country, is above the law. It is based on the Latin phrase "Lex Rex," which translates to "Law is King." India has adopted the concept of the Rule of Law from England. According to A.V. Dicey, the three elements or aspects of the Rule of Law are:

1. Supremacy of Law: It means that the law is supreme, and no one, including the government, is above the law.
2. Equality before the Law: It ensures that all individuals, regardless of their social or economic status, are subject to the same laws and are equally accountable before the ordinary courts of the land.
3. Primacy of Individual rights: This element suggests that the rights of the individual are the source of the Constitution, rather than the Constitution being the source of individual rights.

The third limb of Dicey's Rule of law is ambiguous as it is majorly applicable in countries having an unwritten constitution, like the UK. In such countries, the rights of individuals are the outcomes of judicial decisions. In countries having written constitutions, like India, individual rights flow from a written constitution. Thus, the Indian Constitution is seen as the source of individual rights, rather than the individual rights being the source of the constitution. In modern democracies, the traditional principles of Dicey are supplemented and strengthened by additional features such as due process, access to justice, judicial independence, Liberty and Civil Rights etc. (PYQ 2017)

Rule By Law:

Rule by law refers to a system where the government uses law as an instrument of rule and control, rather than to protect individual rights and limit state power. It is based on the Latin term '*Rex Lex*' which means 'King is Law'. Under rule by law, the government enacts laws to serve its own interests and to maintain its authority, but these laws may be arbitrary, discriminatory, or inconsistent with the principles of justice and human rights. For example, the Nazi regime used Rule by Law to justify the persecution and genocide of Jews.

Right against Discrimination by State

Article 15: Prohibition of Discrimination on Certain Grounds
(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.
(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth, or any of them, be subject to any disability, liability, restriction or condition with regard to-
(a) access to shops, public restaurants, hotels, and places of public entertainment;
or
(b) the use of wells, tanks, bathing ghats, roads, and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
(3) Nothing in this article shall prevent the State from making any special provision for women and children.
*(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
**(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.
***[(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making, —
(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) 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, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten percent of the total seats in each category.
Explanation — For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

* Added by the 1st Amendment, 1951
** Inserted by the 93rd Amendment, 2005
*** Inserted by the 103rd Amendment, 2019

The caste system, religious divisions, and gender-based discrimination have historically marginalized large sections of Indian society. Against this backdrop, Article 15 was framed to promote justice and equality. It prohibits the state from discriminating against any citizen solely on the grounds of religion, race, caste, sex, or place of birth. Further, Article 15(2) extends this principle to everyday life by preventing discrimination in access to shops, hotels, public restaurants, places of entertainment, and state-maintained facilities such as wells, tanks, bathing ghats, and roads. By guaranteeing equal access to public spaces, this Article strikes at the root of entrenched social hierarchies. Its relevance continues today, as seen in judicial interventions against caste-based exclusion in temples, gender restrictions in places of worship (*Indian Young Lawyers Association v. State of Kerala, 2018* – the Sabarimala case), and debates on equal access for women in public and private spaces. Thus, Article 15 not only embodies constitutional morality but also remains a vital tool in dismantling social discrimination in contemporary India.

Despite the general prohibition on discrimination, subsequent provisions of the Article provide for certain exceptions that allow for special provisions, namely:

- The State is allowed to enact special provisions for women and children to address discrimination, exploitation, and social injustices through targeted legislation and policies. For instance, the reservation of 1/3rd of the seats in Local Bodies for women; Prohibition of employment of children below 14 years of age in factories; Enacting special laws like the Dowry Prevention Act, etc.
- The state can enact laws and provisions for the advancement of socially and educationally (not economically) backward classes of citizens, as well as for the Scheduled Castes and Scheduled Tribes. This clause, 15(4), was introduced through the 1st Amendment, 1951 to override the prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth. The provision paved the way for reservations in educational institutions and public employment for these groups. Notably, the term "backward classes" is not defined in the Constitution, and it is up to the central and state governments to identify the classes that are socially and educationally backward.
- It allows the state to make special provisions for the advancement of socially and educationally backward classes of citizens, as well as SCs and STs, particularly in relation to their admission to educational institutions, including private ones aided or unaided by the State, except minority educational institutions.
- It allows the state to make special provisions for the advancement of any economically weaker section (EWS) of citizens, including reservations in educational institutions. This reservation is in addition to the existing reservation and is capped at 10%. This clause was added by the 103rd Amendment, 2019. The constitutional validity of Article 15(6) has been upheld in Janhit Abhiyan vs. Union of India Case, 2022.

Reservation for OBCs in Educational Institutions: The 93rd Amendment, 2005 introduced a 27% quota for applicants from the Other Backward Classes (OBCs) in Central higher education institutions. This amendment aimed to promote the educational advancement of weaker sections of society. The Supreme Court upheld the validity of the amendment and the Central Educational Institutions (Reservation in Admission) Act, 2006, which implemented the quota. However, the Court also directed the government to exclude the "creamy layer" of OBCs, who are economically advanced and are no longer considered backward, from the reservation policy.

Reservation for EWS in Educational Institutions: The 103rd Amendment, 2019 introduced Article 15(6) and Article 16(6), enabling the state to make special provisions for economically weaker sections (EWS) in education and employment. This amendment allows for reservations up to 10% for EWS in educational institutions and public employment, excluding those already covered under existing reservation schemes for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).

Evolution of Constitutional Reservation in India: The idea of reservation in India is rooted in the effort to correct historical injustices and ensure social justice for disadvantaged groups. Its earliest expression can be traced to the 1902 order of Shahu Maharaj, ruler of Kolhapur, who reserved 50% of government jobs for backward communities—making it one of the first state policies of affirmative action. After Independence, this principle gained constitutional backing. Article 15(4), inserted by the First Constitutional Amendment, 1951, allowed the state to make special provisions for socially and educationally backward classes. This amendment was necessitated by the Supreme Court's ruling in *State of Madras v. Champakam Dorairajan (1951)*, where the Court struck down caste-based reservations in educational institutions on the ground that it violated Article 29(2). The judgment triggered widespread debate, leading Parliament to clarify that the right to equality does not prohibit affirmative action. Thus, the reservation policy became constitutionally sanctioned, laying the foundation for later expansions through amendments and landmark judgments such as *Indra Sawhney (1992)* and the recent *103rd Amendment (2019)*, which introduced 10% reservation for Economically Weaker Sections (EWS).

In *State of Madras v. Champakam Dorairajan (1951)*, the Supreme Court struck down caste-based reservations in educational institutions, holding that they violated **Article 29(2)**, which prohibits denial of admission on grounds of religion, race, caste, or language. The judgment generated widespread controversy as it curtailed affirmative action for disadvantaged communities. In response, the government enacted the **First Constitutional Amendment (1951)**, inserting **Article 15(4)** to empower the state to make special provisions for the advancement of socially and educationally backward classes, Scheduled Castes, and Scheduled Tribes.

A major development in the reservation debate came with the **Mandal Commission (1979)**, chaired by B.P. Mandal. Tasked with identifying socially and educationally backward classes, the Commission submitted its report in 1980, recommending **27% reservation for OBCs in government jobs and educational institutions**. The report also highlighted indicators such as social, educational, and economic backwardness in identifying these groups.

The recommendations aimed to ensure that a significant portion of the Indian population, historically backward and underrepresented, should have better access to employment and educational opportunities. The implementation of the Mandal Commission's recommendations in 1990, led to widespread protests and political debate. The matter eventually reached the Supreme Court, resulting in

the landmark judgment following the case of **Indra Sawhney vs Union of India** (1992), commonly referred to as the Mandal case. The major pronouncements of the Judgement were:

- Upholding Reservation for OBCs: The Supreme Court upheld the government's decision to implement a 27% reservation for OBCs, thereby endorsing the Mandal Commission's recommendations.
- Exclusion of the Creamy Layer: One of the critical aspects of the judgment was the establishment of the "creamy layer" concept. The court ruled that the "creamy layer" or the more affluent and better-educated members of the OBCs should be excluded from reservation benefits. This was to ensure that the advantages of reservation reach the truly disadvantaged sections within the OBCs. To determine the criteria for identifying the "creamy layer", the government constituted the **Justice Ram Nandan Prasad Committee** in 1993. The committee's recommendations on income, status, and other criteria were accepted by the government.
- Reservation Cap: The court also held that the total reservation for various categories should not exceed 50% percent of the available seats or positions, ensuring a balance between affirmative action and meritocracy.

Should there be a cap on reservation?

The case of M.R. Balaji vs. State of Mysore (1962) was the first major case after the First Constitutional Amendment that interpreted the newly added Article 15(4). In this case, the Mysore Government had issued an executive order reserving 68% seats in medical and engineering colleges for backward classes, "more" backward classes, Scheduled Castes (SCs), and Scheduled Tribes (STs). This order was challenged in the Supreme Court under Article 32. The court found the order unconstitutional for several reasons:

- Over-reliance on caste: The Court held that caste alone cannot determine backwardness; factors like poverty and education must also be considered, especially for non-Hindus.
- Improper classification: Dividing groups into "backward" and "more backward" exceeded Article 15(4)'s scope, though later cases allowed such distinctions using the creamy layer principle.
- Cap on reservation: The Court suggested a general 50% ceiling on reservations, later affirmed in Indra Sawhney, with exceptions only in extraordinary situations.

Creamy Layer concept:

The creamy layer concept, on the other hand, sets a threshold within which OBC reservation benefits are applicable, excluding the relatively advanced and better-off sections among OBCs from availing the reservation benefits. It was introduced by the Supreme Court to prevent the more advanced sections among OBCs from taking undue advantage of the reservation policy.

Sub-categorization of OBCs & Rohini Commission: The sub-categorization and creamy layer concepts deal with the groups within the Other Backward Classes (OBCs). Here, sub-categorization aims to create quotas for all categories within the existing OBC quota to provide more opportunities for historically underrepresented and crowded-out OBC communities. It intends to ensure a better equitable distribution of reservation benefits by further differentiating OBC caste groups based on

their social and educational backwardness.

In 2017, the Rohini Commission was formed by the President to examine the sub-categorization of over 2,600 caste groups listed in the Central OBC list. The Commission, headed by former Delhi High Court Chief Justice G. Rohini, was tasked with analysing how the 27% reservation in jobs and education for OBCs was being dominated by certain caste groups. After receiving 13 extensions, the Commission submitted its report to the President in July 2023.

Supreme Court Allows Sub-Classification of SCs/STs:

In State of Punjab vs. Davinder Singh, 2024, Supreme Court allowed states to sub-classify Scheduled Castes (SCs) and Scheduled Tribes (STs) to ensure that the most backward groups within them get targeted benefits. This 6:1 verdict by a seven-judge Bench led by Chief Justice D.Y. Chandrachud overturned the 2004 E.V. Chinnaiah judgment, which had held that SCs must be treated as a single, homogenous group and could not be further divided for sub-quotas.

Article 341 of the Constitution empowers the President to notify certain castes as SCs in each state, and only Parliament can alter that list. However, over the years, some castes have been seen to benefit more from reservations than others. Punjab had earlier attempted to give preference to Balmiki and Mazhabi Sikhs, its most backward SC communities, but such efforts were struck down by courts citing Chinnaiah, which said states had no power to sub-divide the SC list.

The recent ruling, however, rejected the idea of complete homogeneity among SCs. The Court clarified that the SC list is a legal tool meant to ensure benefits, and this doesn't mean all included castes are equally backward. Treating unequals equally, the Court said, could worsen inequality. Thus, states, using their powers under Articles 15(4) and 16(4), can now identify the most disadvantaged SC groups and create sub-quotas for them within the existing reservation system.

However, states must follow strict guidelines. Any sub-classification must be supported by data, showing that the selected group is more backward and underrepresented. The aim must be "effective representation" in public life, not just numbers. The Court emphasized that even if a group is numerically present, it may still lack real opportunities in higher roles.

Justice Gavai, in a separate opinion, also supported applying the 'creamy layer' concept to SCs and STs, as is already done for OBCs. This would mean excluding relatively better-off members from reservations to ensure the most needy benefit. However, this view was not shared by the majority and may be revisited in future cases.

Caste Census

A caste census refers to the inclusion of caste-wise data collection in India's decennial population census. While the Census of India, conducted every ten years since 1951, has consistently recorded the population figures of Scheduled Castes (SCs) and Scheduled Tribes (STs), it has not gathered similar

data for Other Backward Classes (OBCs). This omission persists despite estimates suggesting that OBCs constitute nearly 52% of the country's population. The demand for a caste census stems from the growing need for accurate data to formulate inclusive and targeted social policies.

Is There a Legal or Constitutional Basis for a Caste Census?

Though the Constitution does not explicitly mandate a caste census, Article 340 provides a foundational basis. It empowers the President to appoint a commission to investigate the conditions of socially and educationally backward classes and recommend measures for their advancement. The Mandal Commission, appointed under this provision in 1979, relied on data from the 1931 caste census, the last time such comprehensive data was collected. A fresh caste census is seen by many as a constitutional extension of this investigative and remedial mandate.

Why Is a Caste Census Important?

The argument in favor of a caste census rests on the principle that "what gets measured gets managed," as famously stated by management thinker Peter Drucker. Without reliable data on the caste composition of India's population, policymaking remains speculative and inefficient. A caste census would enable evidence-based governance, allowing better allocation of resources and benefits to the most disadvantaged groups. Provisions like Article 243D(6), which discuss the reservation of seats in local bodies, also underscore the need for accurate demographic data. Additionally, caste-based data could provide courts with factual clarity when adjudicating on issues related to reservations, helping ensure that such policies remain just, balanced, and constitutionally sound.

What Are the Concerns Regarding a Caste Census?

Despite its potential benefits, the caste census is not without criticism. One of the primary administrative concerns is the complexity and resource intensity of such an exercise. Enumerating and verifying caste identities on a national scale poses significant logistical challenges. Moreover, critics argue that caste enumeration could intensify social divisions and foster identity-based politics, leading to increased assertiveness and friction among various communities. There is also the fear that updated caste data could prompt fresh demands for reservations, possibly breaching the 50% ceiling on quotas established by the Supreme Court. Lastly, some view the push for a caste census as a tool for vote-bank politics rather than genuine social reform.

Right to Equality of Opportunity in Public Employment

Article 16 - Equality of Opportunity in Matters of Public Employment

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

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

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office * [under the Government of, or any local or

other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment
(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State
(4A) Nothing in this article shall prevent the State from making any provision for reservation in *[matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which in the opinion of State are not adequately represented in the services under the State].
****(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being fi lled up for determining the ceiling of fi ft y percent, reservation on total number of vacancies of that year.
(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.
*(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten percent of the posts in each category.

* Substituted by the 7th Amendment, 1956
** Inserted by the 77th Amendment, 1995
*** Substituted by the 85th Amendment, 2001
**** Inserted by the 81st Amendment, 2000
***** Inserted by the 103rd Amendment, 2019

The framers of the Indian Constitution recognized the deep social and economic inequalities that had historically marginalized certain sections of society. To promote inclusiveness and equal opportunity, they provided for reservation in government jobs as a tool of social justice. **Article 16** guarantees equality of opportunity in public employment and prohibits discrimination on grounds of religion, race, caste, sex, descent, place of birth, or residence. At the same time, it empowers the state to take affirmative action by reserving posts for disadvantaged groups, ensuring that representation in public services reflects the diversity of Indian society.

Resident vs Domicile:
The terms "resident" and "domicile" are often used interchangeably, but they are different. A "resident" refers to a person who is currently living in a particular place, such as a state or a city. This

concept is fluid and can change over time. For instance, a person may be a resident of a state for one year but may move to another state the next year. On the other hand, "domicile" refers to a person's permanent home, which can be different from their current place of residence. Domicile is a more permanent and fixed concept, often tied to a person's birthplace or the place where they have established a long-term residence.

The general principle of equal opportunity in public employment is subject to four exceptions:

1. **Parliament's Power to Prescribe Residence**: Parliament has the authority to prescribe residence as a condition for employment in certain cases under Article 16(3) of the Indian Constitution. This provision allows Parliament to enact laws that establish residency requirements within a State or Union Territory before an individual can be employed or appointed to an office in that State or Union Territory.
2. **Reservation of Appointments**: Article 16(4) allows the state to reserve appointments or posts in favour of any backward class that is not adequately represented in the state services. This provision ensures equal opportunities and representation in public employment. Thus, Article 16(4) is an enabling provision rather than an exception to Articles 16(1) and (2). Importantly, the term "backward class" used in Article 16(4) also covers SCs and STs.
3. **Religious or Denominational Institutions**: Article 16(5) provides that the incumbent of an office related to a religious or denominational institution, or a member of its governing body should belong to that particular religion or denomination. This provision respects the autonomy of religious institutions and ensures that their governing bodies are composed of individuals who share the same beliefs.
4. **Economically Weaker Sections**: Under article 16(6), the state is permitted to make a provision for the reservation of up to 10% of appointments or posts in favour of any economically weaker section of citizens. This reservation is in addition to existing reservations and is based on family income and other indicators of economic disadvantage.

Reservation in Promotion: Constitutional Developments

The landmark *Indra Sawhney vs Union of India* (1992) case shaped the scope of reservations under **Article 16(4)** by holding that they apply only to initial appointments and not to promotions. To overcome this limitation, Parliament enacted the **77th Constitutional Amendment (1995)**, which inserted **Article 16(4A)**, empowering the State to provide reservation in promotions for SC/ST employees if they were under-represented. Later, the **81st Amendment (2000)** added **Article 16(4B)**, allowing the carry-forward of unfilled SC/ST vacancies to subsequent years without counting them within the 50% cap on reservations fixed in *Indra Sawhney*. Together, these amendments reflected the State's commitment to ensuring effective representation of disadvantaged communities in public employment.

The **82nd Amendment (2000)** inserted a provision in **Article 335**, permitting the State to relax qualifying marks or evaluation standards for SC/ST candidates in promotions, while still keeping in view administrative efficiency. This was followed by the **85th Amendment (2001)**, which allowed reservation in promotions for SC/ST employees with consequential seniority, effective retrospectively from June 1995.

These amendments were aimed at addressing the disadvantages faced by SC/ST employees due to delayed promotions and ensuring their meaningful representation in higher echelons of public service.

In the **M. Nagaraj case (2006)**, the Supreme Court upheld the constitutional validity of the 77th, 81st, 82nd, and 85th Amendments but imposed strict conditions for granting reservation in promotions. It ruled that the State must collect **quantifiable data** to establish the backwardness of a community, its inadequate representation in public employment, and ensure that such reservations do not affect **administrative efficiency** under Article 335. The Court also clarified that providing reservation in promotions was not a constitutional obligation but a discretionary power of the State. Importantly, it extended the **creamy layer principle** to SCs and STs, previously applied only to OBCs. However, in the **Jarnail Singh case (2018)**, the Court partly relaxed these conditions by removing the need to prove the backwardness of SCs and STs, recognizing their **inherent historical disadvantage**, while retaining the requirements of proving inadequate representation and maintaining efficiency. At the same time, it reaffirmed the exclusion of the creamy layer within SC/STs from availing reservation benefits..

Economically Weaker Sections: The concept of providing reservation for Economically Weaker Sections (EWS) has a long and complex history. In 1991, the P.V. Narasimha Rao government introduced a 10% reservation for "other economically backward sections" of the people who are not covered by any of the existing schemes of reservations. However, this provision was struck down by the Supreme Court in the landmark Indra Sawhney vs Union of India (Mandal case) judgment on the grounds that the Constitution does not provide for reservation based on economic criteria alone.

The Economically Weaker Sections (EWS) reservation policy was reintroduced through the 103rd Amendment, 2019. This amendment provided for 10% reservation in government jobs and educational institutions for economically weaker sections (EWS) from the general category. The amendment inserted Articles 15(6) and 16(6) in the Constitution to enable the government to provide up to 10% reservation to EWS who are not covered under any existing reservation scheme. The Supreme Court in Janhit Abhiyan vs Union of India, 2022 has upheld the constitutional validity of the 103rd Amendment, allowing the reservation policy to continue.

Is there a Right to Reservation?

In the Mukesh Kumar Judgement, the Supreme Court has ruled that the reservation is not a Fundamental Right, but rather an enabling provision under Articles 16(4) and 16(4A) of the Constitution. The court has stated that the government has the discretion to provide reservation, however, individuals cannot claim reservation as a matter of right.

'Schedule Caste' status

Notably, the Constitution (Scheduled Castes) Order, 1950 mandates that only Hindus, Sikhs, and Buddhists can be deemed as SCs. The 2007 Ranganath Mishra Commission report had recommended SC status for Dalit Christians and Muslims but was discredited by the Centre. Now, interestingly, in November 2023, the Union government appointed K.G. Balakrishnan Committee to examine the possibility of

granting SC status to Dalit converts to religions other than Hinduism, Sikhism, or Buddhism. This move is in response to ongoing petitions in the Supreme Court seeking SC status for Dalits who have converted to Christianity or Islam.

Reservation in the private sector:

In recent years, several states have attempted to mandate **local reservations in private sector jobs**, such as the Haryana State Employment of Local Candidates Act, 2020, which required 75% reservation for locals, alongside similar moves in Maharashtra, Karnataka, Andhra Pradesh, and Madhya Pradesh. These laws have faced judicial scrutiny, with the **Punjab & Haryana High Court striking down the Haryana Act** as violative of **Article 14 (Right to Equality), Article 19(1)(g) (Freedom of Profession), and Article 21 (Right to Livelihood)**. The Supreme Court has consistently rejected such "sons of the soil" policies; in **Dr. Pradeep Jain vs Union of India (1984)**, it cautioned against domicile-based discrimination, and in **Sunanda Reddy vs State of Andhra Pradesh (1995)**, it struck down local preference in public employment. These precedents suggest that state-level local reservation laws may struggle to withstand constitutional scrutiny, as they clash with the principles of **equality, free mobility, and national integration**.

Reservation vs Merit: Reframing the Binary

The debate on reservation versus merit has long been framed as a conflict, with critics arguing that affirmative action compromises efficiency. In a string of rulings given over the last seven years, CJI Chandrachud has referred to substantive equality to stress that reservation is a facet of merit, and not an exception to the merit rule. In Neil Aurelio Nunes vs. Union of India Case, 2022 CJI Chandrachud states, "The rhetoric surrounding merit obscures the way in which family, schooling, fortune, and a gift of talents that society currently values aids in one's advancement."

A key argument is that merit should not be reduced to examination scores. The Court in Neil Aurelio Nunes Case cited scholars to highlight as to how cultural capital—the inherited advantages of privileged families—unconsciously prepares some for success, while first-generation learners struggle. The ruling notes, "The cultural capital ensures that a child is trained unconsciously by the familial environment to take up higher education or high posts commensurate with their family's standing. This works to the disadvantage of individuals who are first-generation learners." Competitive exams, often seen as neutral, actually reinforce privilege by favoring those with better schooling, networks, and social exposure.

The Court also challenges the stereotype that reservations reduce efficiency, emphasizing that true administrative efficiency should be inclusive. CJI Chandrachud in B.K. Pavitra II (2019) held: "The benchmark for the efficiency of administration is not some disembodied, abstract ideal measured by the performance of a qualified open-category candidate. Efficiency... must be defined in an inclusive sense, where diverse segments of society find representation." The ruling argues that the exclusion of marginalized communities is a bigger threat to efficiency than reservation itself.

The 2022 judgment also questions competitive exams as the sole measure of merit. "Exams can only reflect the current competence of an individual but not the gamut of their potential, capabilities, or excellence." The judgment further critiques how meritocratic discourse legitimizes inherited advantages, stating: "In addition to reaffirming social hierarchies, this obsession with scores in an examination serves to denigrate the dignity of those who face barriers in their advancement which are not of their own making."

Right Against Untouchability:

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

"If untouchability lives, humanity must die" – Mahatma Gandhi
"To the 'Untouchables', Hinduism is a veritable chamber of horrors." – Dr. B R Ambedkar

The practice of untouchability in India has a deep-rooted and complex history dating back to ancient times. Even during the Indian National Movement, prominent figures such as Raja Ram Mohan Roy, Jyotiba Phule and Dr. B.R. Ambedkar vigorously opposed the oppressive caste system and the practice of untouchability.

During the drafting of the Indian Constitution, the Constituent Assembly recognized the urgency of addressing this issue. Consequently, the abolition of untouchability and the right against its practice were enshrined as Fundamental rights under the right to equality (PYQ 2020). Article 17 of the Constitution explicitly abolishes untouchability and prohibits its practice in any form (PYQ 2004). It declares that enforcing any disability arising from untouchability is a punishable offence under the law. This provision is primarily aimed at private individuals who might engage in discriminatory practices based on untouchability.

In the landmark case of People's Union for Democratic Rights vs Union of India, 1982 the Supreme Court ruled that when Fundamental rights under Articles 17, 23, or 24 are violated by private individuals, the state is constitutionally obligated to intervene and prevent such violations. The state cannot evade this duty by expecting the aggrieved person to enforce their rights independently.

However, neither the Constitution nor other laws define "untouchability." But Mysore HC in Devarajiah vs B. Padmanna case, 1958 defined untouchability as social disability imposed on a certain class of persons by the reason of their birth in a certain caste.
Nevertheless, Article 17 empowers the Parliament to enact laws that enforce the abolition of untouchability and prescribe penalties for its practice. In response, the Parliament has established a

comprehensive legal and constitutional framework to combat this issue. The primary legislative instruments addressing untouchability include:

- The Protection of Civil Rights Act: Initially named as Untouchability (Offences) Act, 1955, it was amended in 1976 and renamed as The Protection of Civil Rights Act. This act criminalizes the practice of untouchability, imposing punishments such as imprisonment, fines, or both.
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: Commonly known as the Prevention of Atrocities Act, it addresses violence, discrimination, and exploitation against members of Scheduled Castes and Scheduled Tribes.

Titles and Awards:

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

Before independence, the colonial government frequently conferred titles such as *"Sir," "Raja," "Maharaja,"* and *"Rai Bahadur,"* which were not merely honorary distinctions but instruments of loyalty to the British Crown. These titles perpetuated social hierarchies and were viewed as relics of colonialism, inconsistent with the principle of equality. Recognizing their incompatibility with democratic values, the **Constituent Assembly abolished titles under Article 18 of the Constitution**, ensuring that no citizen is granted any title by the State, thereby affirming equality among all and marking a conscious departure from colonial traditions.

Consequently, Article 18 of the Indian Constitution imposes restrictions on the powers of the State, citizens, and non- citizens. It prohibits the State from granting titles except for military or academic distinctions. This restriction aims to prevent the creation of social inequality, or unfair advantages based on titles bestowed by the State.

Furthermore, **Article 18 of the Constitution** prohibits Indian citizens from accepting titles from foreign states. This safeguard was inserted to prevent any external influence over Indian citizens and to ensure that their allegiance remains solely with the Indian State. It also provides that **no person holding an office of profit or trust under the State, whether citizen or non-citizen, can accept any present, emolument, or office from a foreign state without the consent of the President of India.** This ensures that individuals entrusted with public responsibilities act with integrity and independence, free from external inducements.

Bharat Ratna and Padma Awards:
Bharat Ratna and Padma Awards are the highest civilian honours in India, instituted in 1954 (PYQ

2021). The Bharat Ratna, the highest civilian award, is conferred in recognition of "exceptional service/performance of the highest order" without distinction of race, occupation, position, or gender. The award was originally limited to achievements in the fields of arts, literature, science, and public services but was expanded in 2011 to include any field of human endeavour. The first recipients of the Bharat Ratna were C. Rajagopalachari, Sarvepalli Radhakrishnan, and C. V. Raman, who were honoured in 1954. It has also been awarded to non-Indian citizens, such as Mother Teresa, Khan Abdul Ghaff ar Khan, and Nelson Mandela.

The Padma Awards are given in three categories: (a) Padma Vibhushan for exceptional and distinguished service, (b) Padma Bhushan for distinguished service of a high order, and (c) Padma Shri for distinguished service. These awards are conferred annually on the eve of the Republic Day and are given in recognition of achievements in all fields of activities or disciplines where an element of public service is involved.

Also, the selection process for the Bharat Ratna is different from that of the Padma Awards. The Prime Minister of India recommends the name of a person to the President for the Bharat Ratna, with a maximum of three nominees honoured annually (PYQ 2021). However, there have been exceptions in the past. In 1999, four individuals received the honour, and in 2024, five individuals received the honour as well. Additionally, no formal recommendation is required for the Bharat Ratna award.

The Supreme Court's decision in Balaji Raghavan vs Union of India, 1996, addressed the validity of National awards such as the Bharat Ratna, Padma Vibhushan, Padma Bhushan, and Padma Shri under Article 18 of the Indian Constitution. SC ruled that these national awards do not amount to "titles" and merely denote state recognition of good work in various fields by citizens and do not confer any special privileges (PYQ 2021). However, the Supreme Court held that the awards should not be used as suffixes or prefixes to the names of the awardees.

Right to Freedom ARTICLES 19-22

Like the Right to Equality, the Right to Freedom is a Fundamental Right that lies at the core of democracy. On one end, the Preamble provides for 'Liberty' of thought, expression, belief, faith, and worship. Fundamental Rights, on the other hand, uses the term 'Freedom', instead of liberty with Article 21 being the exception.

The Fundamental Right to Freedom is not absolute and must be balanced to ensure that it does not infringe upon the freedom of others or compromise the rule of law and social order. Allowing such unchecked freedom would impede many others from enjoying their own freedoms. Therefore, Freedoms are defined and regulated to ensure that every individual can exercise their freedom without encroaching on the freedom of others and without endangering the law-and-order situation.

Right to Freedom in certain cases

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 peaceably and without arms;
c. to form associations or unions;
d. to move freely throughout the territory of India;
e. to reside and settle in any part of the territory of India; and
f. ----- *
g. to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of **[the sovereignty and integrity of India], the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of **[the sovereignty and integrity of India] or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of **[the sovereignty and integrity of India] or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
(5) Nothing in ***[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.
(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub- clause shall aff ect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—
(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

* Sub-clause (1)(f) omitted by 44th Amendment, 1978
** Inserted by 16th Amendment, 1963
*** Substituted by 44th Amendment, 1978

Originally, Article 19 contained seven rights. However, the right to property was removed from the list of Fundamental Rights by the 44th Amendment, 1978 and was made a Constitutional right under Article 300A (PYQ 2005, 2021). Previously, the six rights under Article 19(2) were protected only against state action and not against private individuals. However, in the case of *Kaushal Kishor vs The State of Uttar Pradesh*, 2023, the Supreme Court expanded the scope of Article 19, stating that these rights can be enforced not only against the state but also against private citizens on a case-to-case basis. Moreover, these rights are available only to the citizens but not to foreigners. The State can impose 'reasonable restrictions' on the enjoyment of Fundamental Rights only on the grounds specified within Article 19 itself and not on any other grounds. For example, the specific grounds on which restrictions can be imposed on the rights under Article 19(1)(a) are clearly outlined in Article 19(2). These grounds include:

1. **Public Order**: Restrictions can be imposed to maintain public order, which includes preventing public disturbances, maintaining law and order, and ensuring the security of the State.
2. **Security of the State:** The government can take measures to safeguard national security by preventing threats, espionage, and actions that undermine its authority.
3. **Sovereignty and integrity of India**: Restrictions can be imposed to protect the sovereignty and territorial integrity of India from any actions that may threaten it.
4. **Friendly relations with foreign states**: Restrictions can be imposed to maintain friendly relations with foreign states, which includes preventing actions that might harm these relations or compromise national interests.
5. **Decency or Morality**: To uphold standards of decency and morality, the government can regulate indecent or immoral acts that may harm society.
6. **Contempt of Court**: To maintain the authority and dignity of the courts, the government can prevent actions that undermine their power and respect.
7. **Defamation**: To prevent harm to individuals or groups, the government can limit the publication of material that may damage their reputation.
8. **Incitement to an offence:** To prevent violence and criminal offences, the government can prohibit speech or actions that incite such harmful behaviour.

Defamation:
Defamation is a legal concept that protects the reputation of an individual or entity from false statements that harm their character or standing in the community. In India, defamation is both a criminal offence and a civil tort. Criminal defamation can result in imprisonment, while civil defamation lawsuits seek monetary damages.

(a) **Freedom of Speech and Expression**

In *On Liberty* (1859), John Stuart Mill argued that **freedom of expression must extend even to false or unpopular ideas**. He gave four reasons: (a) no idea is wholly false, and even erroneous views may contain a fragment of truth, (b) truth evolves through the clash of opposing opinions, (c) continuous debate keeps truth alive and prevents it from becoming dogma, and (d) certainty of truth is never absolute, so silencing dissent risks losing knowledge that may later prove valid. Thus, for Mill, freedom of expression is vital for the pursuit of truth and progress of society.

The Right to Freedom of Speech and Expression under Article 19(1)(a) allows citizens to express opinions freely through speech, writing, print, or media. However, this right is not absolute and is subject to reasonable restrictions under Article 19(2) in the interests of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.

The Supreme Court has given an expansive interpretation to the Right to Freedom of Speech and Expression under Article 19(1)(a). It includes:

- Right to propagate one's views and those of others – upheld in Romesh Thappar v. State of Madras (1950), where the Court held that freedom of speech and expression is the foundation of all democratic organizations.
- Freedom of the Press – in Bennett Coleman & Co. v. Union of India (1973), the Court struck down restrictions on the number of pages in newspapers, holding that they violated press freedom.
- Right to commercial advertisements – recognized in Tata Press Ltd. v. MTNL (1995), where the Court held that commercial speech is also protected under Article 19(1)(a).
- Right against telephone tapping – in PUCL v. Union of India (1997), the Court ruled that phone tapping infringes the right to privacy, which is part of freedom of speech.
- Right to telecast – in Secretary, Ministry of I&B v. Cricket Association of Bengal (1995), the Court held that the airwaves are public property and citizens have the right to broadcast and receive information.
- Right against enforced bandhs – in Communist Party of India (M) v. Bharat Kumar (1998), the Court held that bandhs violate the rights of others and cannot be justified under Article 19(1)(a).
- Right to know about government activities – in State of UP v. Raj Narain (1975), the Court held that the people have a right to know about government activities, laying the foundation for the Right to Information.
- Right against pre-censorship – in Brij Bhushan v. State of Delhi (1950), pre-censorship of newspapers was struck down as unconstitutional.
- Right to demonstration or picketing – recognized in Kameshwar Prasad v. State of Bihar (1962), where peaceful demonstrations were held to be protected, though the Court clarified that the right to strike is not a fundamental right but only a legal right (All India Bank Employees' Association v. National Industrial Tribunal, 1962).

(b) Freedom of Assembly: The right to assemble peacefully and without arms under Article 19(1)(b) enables citizens to hold meetings, demonstrations, and processions to express collective views, but only on public land. The protection is available only to peaceful and unarmed gatherings, as violent or riotous assemblies fall outside its ambit. In *Babulal Parate v. State of Maharashtra (1961)*, the Supreme Court upheld restrictions under Section 144 CrPC when public order was threatened. In *Himat Lal Shah v. Commissioner of Police (1973)*, the Court ruled that while citizens have a right to hold meetings on public streets, the State can regulate it to maintain order and traffic. Similarly, in *Ramlila Maidan Incident v. Home Secretary (2012)*, the Court emphasized that the State must facilitate peaceful assemblies while ensuring law and order.

Reasonable restrictions can be imposed on two grounds: sovereignty and integrity of India, and public order. Thus, while the right to peaceful assembly is a crucial democratic freedom, its exercise is subject to regulation to balance individual rights with societal interests.

(c) Freedom to form Associations: The right to form associations, unions, or cooperative societies under Article 19(1)(c) empowers citizens to establish political parties, trade unions, companies, clubs, and other collective bodies, with the 97th Amendment (2011) explicitly including cooperative societies. This freedom encompasses both the positive right to form and maintain associations and the negative right not to join them. However, the State may impose reasonable restrictions in the interests of sovereignty and integrity of India, public order, and morality. In *All India Bank Employees' Association v. National Industrial Tribunal (1962)*, the Supreme Court clarified that while citizens have the right to form associations, they do not have a guaranteed right to achieve every objective of such associations, such as collective bargaining. Similarly, in *Damyanti Naranga v. Union of India (1971)*, the Court held that laws altering the composition of an association without its consent violate Article 19(1)(c). Thus, while the right is a cornerstone of democratic participation, it remains subject to constitutional checks to preserve public interest.

(d) Right to Freedom of Movement: It allows citizens to move freely throughout the territory of India and reside in any part of the country. This right has two dimensions - internal (right to move inside the country) and external (right to move out of the country and return). Article 19 protects only the internal dimension, while the external dimension is protected under Article 21.

However, the right to freedom of movement is not absolute and the government can impose restrictions on the freedom of movement in the interest of the general public or for protecting the interests of Scheduled Tribes. For example, during COVID-19, the government imposed restrictions on movement between states as a safety and precautionary measure to protect public health, as Inter-State quarantine is a Union subject under the Union List (PYQ 2024). Even the Supreme Court has held that the freedom of movement of prostitutes can be restricted on the grounds of public health and in the interest of public morals.

Inner Line Permit (ILP):
Inner Line Permit is a travel document required for Indian citizens who are not permanent residents of certain north-eastern states to enter and stay there for a limited period. It was originally introduced by the British in 1873 under the Bengal Eastern Frontier Regulations to protect their commercial interests in the region. After India's independence, the ILP system continued to safeguard the interests of the indigenous tribal populations in the Northeast.

Protected Area Permit (PAP): A Protected Area Permit is a special permit required for non-Indian citizens to visit certain border areas in India, primarily in the Northeastern region. The Foreigners (Protected Areas) Order, 1958 states that a PAP is necessary to enter and stay in these protected areas.

(e) Freedom of Residence: The right of residence and settlement is a Fundamental Right guaranteed to every citizen. It includes the freedom to reside temporarily or settle permanently in any part of the

country. However, the State can impose reasonable restrictions on this right in the interest of the general public and to protect the interests of the Scheduled Tribes.

(g) Freedom of Profession, Occupation, Trade, or Business: Article 19(1)(g) guarantees all citizens the right to practice any profession or engage in any occupation, trade, or business, covering all means of livelihood. However, the State may impose reasonable restrictions in the interest of the general public and prescribe professional or technical qualifications for specific fields. Further, under Article 19(6), the State can carry on trade, business, industry, or service, either exclusively or alongside citizens, and establish monopolies without the need to justify them. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005)*, the Supreme Court upheld restrictions on the slaughter of certain cattle as reasonable, stressing the balance between individual freedom and public interest. Similarly, in *Sadan Singh v. NDMC (1989)*, it was held that street vending is a fundamental right under Article 19(1)(g), though subject to regulation in the interest of public order and convenience.

Importantly, this right does not extend to professions, trades, or businesses that are immoral, such as the trafficking of women or children, or dangerous such as dealing in harmful drugs or explosives. The State has the power to absolutely prohibit these activities or regulate them through licensing.

Prostitution as avocation

In India, Prostitution/Sex work is recognized as a profession and the Supreme Court ruled that sex workers are entitled to dignity and equal protection under the law. Similarly, in Kajal Mukesh Singh vs State of Maharashtra, 2021 the Bombay High Court said, "Prostitution is not an offence, a woman has a right to choose her vocation".

The Struggle for Free Speech: The Case of Section 66A

The Information Technology Act (IT Act) was enacted in 2000 to regulate the use of the internet in India. As social media and mobile apps gained popularity, the misuse and abuse of these platforms became a significant challenge. In response, Section 66A was inserted into the IT Act in 2009. This section made sending offensive messages using a computer or any other communication device a crime. The police had to determine whether the information in the message was offensive, and the crime was punishable with a three-year jail term and fine.

Shreya Singhal filed a Public Interest Litigation Challenging Section 66A, arguing that it curbed the freedom of speech and expression and violated Fundamental Rights guaranteed under Articles 14, 19, and 21 of the Constitution. Consequently, Section 66A was struck down by the Supreme Court in 2015 in the Shreya Singhal vs Union of India Case, ruling that it was violative of the right to free speech and expression and not saved under reasonable restrictions on the exercise of this right. The Court observed that Section 66A was so broadly drafted that virtually any opinion on any subject could fall under it. If it were to withstand constitutional scrutiny, it would impose a total chilling effect on free speech.

Despite the Supreme Court's ruling, it was found that the law was still being invoked by police in around 11 states in 2021. The Supreme Court termed this "a shocking state of affairs." Later, Jan Vishwas (Amendment of Provisions) Act, 2022 officially removed Section 66A of the IT Act, 2000.

Sedition:

"There is enormous misuse. Use of sedition is like giving a saw to the carpenter to cut a piece of wood and he uses it to cut the entire forest itself." – Ex – CJI NV Ramanna

Sedition is conduct or speech inciting people to rebel against the government established by law.

Current status of sedition in India:

- New Bharatiya Nyaya Sanhita, completely repeal the offence of sedition, as prescribed under Section 124A of the Indian Penal Code (IPC)
- It will be replaced by new nomenclature under section 150 and a more expansive definition in line with a recommendation made by the Law Commission of India .
- Words "disaffection towards the Government established by law in India" have been removed from the old Section 124A of IPC in Section 150 of the Nyaya Sanhita.
- Section 150 of the Nyaya Sanhita is longer and adds references to "secession", "armed rebellion", "subversive activities" and "separatist activities". It also includes "electronic communication" and "use of financial means" as tools for perpetuating an act "endangering sovereignty unity and integrity of India."
- Terrorism offences, organised crimes and criminal activities added in the new Act.
- Punishment for sedition under Bharatiya Nyaya Sanhita includes Imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine.

Judiciary view on Sedition:

- Tara Singh Gopi Chand vs The State, (1950): Punjab High Court section 124A , restriction on the freedom of speech and expression
- Balwant Singh vs State of Punjab (1995) case: The Supreme Court of India merely shouting slogans, like Khalistan Zindabad, does not amount to sedition.
- Kedarnath Singh vs. State of Bihar (1962): The Supreme Court of India upheld the constitutional validity of IPC Section 124A.

Arguments in Favor of Sedition Charges

One of the primary arguments in favor of sedition charges is that they serve as a crucial tool to curb anti-national activities. By criminalizing acts that undermine the sovereignty and integrity of the nation, sedition laws aim to protect the country from internal threats. Proponents argue that the state's primary responsibility is to ensure national security and public order, and sedition laws act as a deterrent to those who might incite violence or rebellion.

Additionally, supporters contend that sedition charges help prevent disturbances to law and order. By targeting acts that could lead to large-scale unrest, these laws aim to maintain peace and stability in society. In this regard, sedition laws are seen as a preventive measure to safeguard against actions that could destabilize the nation.

Another argument often made is that the occasional misuse of sedition laws should not be a reason to strike them down entirely. While a few instances of wrongful application may occur, proponents argue that this should not overshadow the law's broader effectiveness in protecting the state from real threats. In fact, the law can be amended to address misuse without abolishing it altogether.

Drawing on the concept of sedition within liberal democracies, it is argued that sedition laws are not inherently detrimental but are necessary to preserve national integrity in the face of rising global challenges.

Arguments Against Sedition Charges

However, there are compelling arguments against sedition laws, with the most significant being their potential to create a chilling effect on free speech. Critics assert that the threat of sedition charges can stifle dissent, even when it is expressed peacefully and without intent to incite violence. The mere possibility of prosecution for expressing contrary views can make individuals wary of speaking out against government actions, leading to self-censorship and undermining democratic discourse.

Another concern is the vagueness of the definition of sedition, which gives disproportionate discretion to enforcement agencies. The lack of clear guidelines on what constitutes sedition allows authorities to interpret the law broadly, potentially using it against individuals who do not pose any real threat to national security. This ambiguity can lead to arbitrary arrests and punishments, often targeting critics of the government rather than genuine threats to the state.

Moreover, critics argue that the authorities often fail to follow the principles laid down in the Kedarnath Singh case (1962), which sought to ensure that sedition charges are only applicable in cases of incitement to violence or public disorder. The misuse of sedition laws without adhering to these principles further highlights the dangers of an overreaching legal framework.

Sedition laws are also criticized as a remnant of India's colonial past. Originally introduced by the British to suppress dissent against their rule, these laws were used to curb freedom of expression and control the population. As such, critics argue that the law represents an outdated colonial mindset that should have no place in a modern democratic society.

Lastly, the low conviction rate in sedition cases adds weight to the argument against such charges. Critics contend that if sedition charges are brought against individuals without sufficient evidence to secure a conviction, it only demonstrates that the law is being misused for political purposes rather than protecting national security.

Freedom of Press

> "If you're in favour of freedom of speech, that means you're in favor of freedom of speech precisely for views you despise." - Noam Chomsky

The freedom of the press is the right of the media to gather, process, and disseminate information without interference from the government or other authorities.

- Article 19 (1) (a) and 19 (2) of the Constitution of India: This article guarantees the right to freedom of speech and expression, which includes the freedom of the press.
- Press Council of India Act, 1978: This act established the Press Council of India, a statutory body that regulates the conduct of the press in India.
- Contempt of Courts Act, 1971: It also recognizes the right of the press to report on judicial proceedings and to criticize the judiciary fairly and objectively.

Key case laws regarding Freedom of press:

- In 2023, the Supreme Court ordered the restoration of the broadcasting license of MediaOne, a Kerala-based television channel.
- Romesh Thapar v. State of Madras (1950): The SC held that freedom of speech and expression includes freedom of the press.
- Brij Bhushan v. State of Delhi (1950): The SC held that freedom of the press cannot be curtailed unless there is an imminent danger to public safety.
- Indian Express Newspapers v. Union of India (1985): The Article 19(1)(a) expression means freedom from interference from an authority.
- Siddhartha Vashisht v State NCT of Delhi (2010): The court made the important distinction between trial by media and informative media
- Manohar Lal Sharma v Union of India, (2021): The SC recognised the link between the Right to Privacy and Freedom of Speech.
- Vinod Dua v. Union of India & Others (2021): The SC held that criticism of the government and its policies is not seditious.

Significance of Freedom of Press

The freedom of the press is often regarded as the fourth pillar of democracy, a vital component that upholds transparency, accountability, and the public's right to information. As a watchdog of democracy, it ensures that those in power are held accountable for their actions, acting as a check on potential abuses. Through its role as a powerful voice for the voiceless, the press amplifies issues often neglected or ignored, empowering marginalized communities and ensuring their concerns are heard.

Furthermore, the freedom of the press contributes to vibrant journalistic ethics and values. Journalists, guided by their responsibility to the truth, provide insights that shape informed public opinion and fuel meaningful discourse. This is particularly crucial in strengthening democracy, where an informed electorate is key to ensuring fair and just governance. Ultimately, the press serves as a vital bridge

between the state and the people, facilitating dialogue and keeping citizens engaged in the democratic process.

Challenges in Ensuring Freedom of Press

Despite its immense significance, the freedom of the press faces numerous challenges. One of the most prominent is political pressure and censorship, where governments or influential figures may attempt to suppress critical reporting or manipulate media narratives. This is often compounded by violence against journalists, who may be targeted for simply doing their job. In many cases, such attacks deter honest reporting and instill a climate of fear that inhibits journalistic freedom.

Legal challenges also pose significant barriers to press freedom, particularly through laws like the Official Secrets Act and defamation laws, which can be used to silence dissenting voices. Financial pressures further exacerbate the situation, as media outlets may face constraints on their resources, leading to compromises in editorial independence. Additionally, the rise of misinformation and propaganda has muddied the waters, making it increasingly difficult for the public to distinguish between credible news and false narratives.

Way Forward:

To safeguard the freedom of the press, a multi-faceted approach is necessary. Strengthening legal protections is crucial to ensure that journalists can operate without fear of retribution. This could involve revisiting outdated laws and ensuring that freedom of speech is enshrined in the legal framework. At the same time, promoting media pluralism is essential, ensuring that a diversity of voices and perspectives are represented, preventing monopolies from distorting the public discourse.

Encouraging self-regulation within the media industry is another important step. By fostering a culture of responsibility, media organizations can maintain ethical standards and accountability. The state, too, has a role to play in fostering openness and transparency, ensuring that it does not hinder journalistic endeavors but instead supports an environment where freedom of expression thrives. In addition, protecting whistleblowers is vital, as they often play a crucial role in exposing corruption or abuse of power. Finally, supporting media literacy programs will empower the public to critically evaluate news sources and distinguish fact from fiction, contributing to a more informed society.

Right to Internet and Internet Shutdowns in India

The right to access the internet has emerged as a fundamental aspect of modern life, intertwined with freedom of expression and the ability to carry out economic activities. This was explicitly recognised by the Supreme Court in the landmark case Anuradha Bhasin v. Union of India, where the Court held that Articles 19(1)(a) (freedom of speech and expression) and 19(1)(g) (freedom to practice any profession or to carry on any occupation, trade or business) extend to online spaces. The judgment affirmed that the State has a duty to protect internet access, subject to reasonable restrictions.

However, the exercise of this right has increasingly come under strain due to the rising instances of internet shutdowns. An internet shutdown refers to a deliberate disruption of internet services or

electronic communications by the government, making them inaccessible. This is often done with the intent to control the flow of information during periods of perceived unrest or emergency.

Proponents of internet shutdowns justify them on several grounds. One major argument is the maintenance of law and order, particularly in situations prone to violence or misinformation. Shutdowns are also employed to curb the spread of fake news, rumours, and propaganda that could incite communal tensions. Furthermore, governments argue that such measures are occasionally essential for national security, especially in conflict-sensitive regions.

On the other hand, internet shutdowns have drawn widespread criticism for their adverse consequences. Critics argue that such measures are often ineffective and disproportionate, failing to achieve their intended objectives while causing broader harm. They amount to a violation of fundamental rights, particularly in light of the Anuradha Bhasin verdict. Economically, shutdowns inflict substantial losses on businesses that rely on digital platforms. Moreover, they disrupt access to essential services such as banking, healthcare, and education, and are often viewed as arbitrary actions lacking transparency and accountability.

Legal Framework & Judgements

The legal framework governing internet shutdowns in India stems primarily from two sources. The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, framed under the Indian Telegraph Act, 1885, empower the government to impose such shutdowns. According to these rules, only the Home Secretary at the central or state level can issue such orders, which must be based on the grounds of public emergency or public safety. The rules further stipulate that shutdowns must be deemed "necessary" or "unavoidable" to be legally valid.

In its interpretation of these provisions, the judiciary has laid down important safeguards. In Anuradha Bhasin, the Supreme Court ruled that an indefinite suspension of internet services is unconstitutional. Any shutdown order must meet the tests of necessity and proportionality, and must be subject to judicial review. The Court also mandated that all shutdown orders must be made public, ensuring transparency. As a result of the ruling, the 2017 rules were amended in 2020, capping the maximum duration of any suspension order to 15 days.

Recognising the need for reform, the Standing Committee on Communications and Information Technology has made several progressive recommendations. It urged the government to clearly define the terms "public emergency" and "public safety" to prevent misuse. To enhance oversight, it suggested making review committees more inclusive by involving non-official members, such as retired judges or citizens. Instead of blanket bans, the committee proposed targeted restrictions on specific services, preserving broader internet access. Additionally, it called for a comprehensive study to assess the impact and effectiveness of internet shutdowns, and recommended that India should adopt global best practices suited to its democratic context.

In conclusion, while internet shutdowns may serve short-term administrative or security objectives, they must be weighed against their constitutional, social, and economic costs. With digital access now central

to the exercise of fundamental rights, India must strive to ensure greater transparency, accountability, and proportionality in the use of such extreme measures—aligning state action with constitutional mandates and democratic values.

Freedom of Speech and Expression – Hate Speech

The Right to Freedom of Speech and Expression is a cornerstone of Indian democracy, enshrined in Article 19(1)(a) of the Constitution. It empowers individuals to freely express their thoughts, opinions, and beliefs. However, this right is not absolute. Recognising the potential for misuse, the Constitution provides for reasonable restrictions under Article 19(2) to balance individual liberty with collective harmony. One such critical area where this balance is tested is hate speech.

Hate speech, in general, refers to any speech, gesture, or conduct that incites hatred, discrimination, or violence against individuals or groups based on characteristics such as religion, race, ethnicity, gender, or sexual orientation. The Supreme Court of India, in Pravasi Bhalai Sangathan vs Union of India, defined hate speech as any attempt to marginalise individuals by attacking their group identity. Such speech not only threatens public order but also undermines the constitutional ideal of equality and fraternity.

Legal Framework and Emerging Challenges

The regulation of hate speech, therefore, becomes essential in a pluralistic society like India. Article 19(2) provides the legal basis for imposing restrictions in the interest of public order, decency, morality, and the sovereignty of the State. The Indian Penal Code (IPC) has long served as the statutory framework to address hate speech. Under the proposed Bharatiya Nyaya Sanhita (BNS), while 295A is retained, 153A has been omitted, leading to concerns about the weakening of legal deterrents against hate speech.

The persistence and spread of hate speech in India stem from a combination of social, political, administrative, and technological factors. Socially, deep-rooted religious tensions and societal biases contribute to a culture of intolerance. Politically, vote bank strategies and xenophobic rhetoric often fuel divisive narratives. Administratively, the absence of robust laws and ineffective enforcement mechanisms hinder timely and effective action. Technologically, the widespread use of social media platforms, often under the veil of anonymity, enables the rapid dissemination of inflammatory content.

Consequences and Way Forward

The consequences of unchecked hate speech are grave and far-reaching. It can lead to violence and civil unrest, disrupt communal harmony, and pose serious challenges to democratic values. Societies become increasingly polarised, and vulnerable groups face cyberbullying, mob lynching, and even honour killings. Beyond domestic concerns, the prevalence of hate speech can also tarnish India's global image, impacting its reputation as a diverse and inclusive democracy.

Addressing hate speech requires a multi-pronged approach. Socially and politically, there is a need to promote awareness, tolerance, and dialogue, and take a firm stand against hateful narratives. Law enforcement agencies must ensure strict policing and swift prosecution of offenders. Additionally, regulation of social media platforms—including content moderation, algorithm transparency, and

accountability—is essential to prevent online radicalisation. Above all, there must be a collective resolve to uphold constitutional values of dignity, equality, and unity.

In conclusion, while freedom of speech is vital for a vibrant democracy, it must be exercised responsibly. Hate speech, if left unchecked, corrodes the very fabric of society. Striking the right balance between liberty and responsibility is essential to ensure both individual freedom and social cohesion in a democratic nation like India.

Rights in case of conviction

> Article 20: Protection in Respect of Conviction for Offences
> (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
> (2) No person shall be prosecuted and punished for the same offence more than once.
> (3) No person accused of any offence shall be compelled to be a witness against himself

Imagine if the state can arbitrarily declare anyone guilty without a fair trial, punish individuals multiple times for the same offence, and force confessions to crimes they didn't commit. In such a scenario, Article 20 acts as a shield, protecting individuals from the arbitrary application of law and ensuring fairness and justice within the legal system. It provides safeguards to the persons accused of crimes against arbitrary and unfair treatment by the state in respect of conviction for offences. Key protections under it are:

1. **Ex-Post Facto Law**: Article 20(1) prohibits retrospective criminal legislation, ensuring that no individual can be convicted for an act that was not an offence when committed, nor given a penalty greater than what was prescribed at that time. This safeguard upholds fairness in criminal justice by protecting individuals from arbitrary punishment. For instance, in the *Nirbhaya case (2012)*, there was a demand to impose the death penalty on the juvenile offender, but since the law then did not allow capital punishment for juveniles, it could not be applied retrospectively.

   Exception under Article 20(1): While retrospective criminal laws are barred, civil and tax laws can be applied retrospectively. For instance, in the *Vodafone case (2012)*, India amended the Income Tax Act retrospectively to tax a transaction from 2007. Importantly, though a person may still face trial under a retrospective criminal law, Article 20(1) strictly prohibits conviction or enhanced punishment under such legislation.
2. **Double Jeopardy:** Article 20(2) protects individuals from being prosecuted and punished more than once for the same offence. However, this protection is limited to proceedings before a court of law or judicial tribunal and does not apply to administrative or departmental proceedings.
3. **Self-Incrimination**: **Article 20(3)** protects individuals against self-incrimination by ensuring that no person accused of an offence can be compelled to testify against themselves. This safeguard upholds the principle of a fair trial and prevents coerced confessions. The protection extends to oral and documentary evidence but excludes compulsory production of physical evidence such as fingerprints, signatures, blood samples, or bodily examination, as clarified in *State of Bombay v. Kathi Kalu Oghad (1961)*.

Before the 44th Amendment of the Constitution in 1978, Article 20 could be suspended during an Emergency under Article 359. But post-44th Amendment, rights guaranteed by this article have become inalienable.

Narco and Polygraph Tests:

Narco analysis and Polygraph (Lie detector) tests are controversial investigation techniques used to extract information from suspects. A drug called sodium pentothal, also known as "truth serum", is injected into the suspect, inducing a hypnotic or sedated state.

In Selvi vs State of Karnataka, 2010, the Supreme Court addressed the legality and admissibility of Narco analysis, polygraph tests, and brain mapping techniques used in criminal investigations. The court ruled that involuntary administration of these "deception detection tests" violates the accused's right against self-incrimination under Article 20(3) of the Constitution. Thus, the Supreme Court emphasized that these techniques can only be administered with the full consent of the accused, after informing them of their rights and potential consequences.

The court clarified that any statements made by the accused during these tests are not admissible as evidence in court. However, any material evidence subsequently discovered based on information revealed by the accused while under the influence of these tests may be admitted. For example, if an accused discloses the location of a murder weapon during a narco test, and the police find it there, the physical evidence is valid, even though the accused's statement itself is not considered evidence.

New Criminal Laws:

The new criminal laws aim to eradicate the mentality and symbols of slavery and create a "new confident India."- PM Narendra Modi

What are the new criminal laws?

The three new criminal laws are:

- Bharatiya Nyaya Sanhita (BNS), having replaced the the Indian Penal Code (1860) (IPC, 1860)
- Bharatiya Nagarik Suraksha Sanhita (BNSS), having replaced the Code of Criminal Procedure (1973) (CrPC, 1973)
- Bharatiya Sakshya Adhiniyam (BSA), having replaced the Indian Evidence Act (1872) (IEA, 1872)

Context and the Need for Criminal Law Reforms

India's criminal laws—namely the IPC, CrPC, and IEA—were drafted during the colonial era to serve imperial interests, not the needs of an independent, democratic nation. Over time, these outdated laws have become misaligned with constitutional values and the demands of a modern society, making comprehensive reform both necessary and urgent.

A key driver of reform is the shift from a punitive to a reformative model of justice. The focus now is on rehabilitating offenders and reducing recidivism, rather than merely punishing them. This aligns with global trends that prioritize restorative over retributive justice.

Equally pressing is the need to improve the efficiency of the justice system. Chronic delays in FIR registration, bail processes, and trials have eroded public confidence. The new framework aims to streamline procedures, enable e-FIRs, and simplify bail provisions to expedite justice.

The rise of organized crime, mob violence, and cyber offenses has also exposed the limitations of existing laws. In response, the reforms introduce mandatory forensic support for serious crimes and codify judicial directions on issues like mob lynching and witness protection, ensuring better consistency and enforcement. Additionally, the new laws seek to reduce overlaps between general criminal laws and special legislations, creating a more coherent and accessible legal structure.

Salient Features of the New Criminal Laws

The reformed laws reflect a significant shift toward reformative, victim-centric justice. By prioritizing rehabilitation and protecting victims' rights, they aim to humanize the criminal justice system. They also respond to modern criminal challenges by incorporating specific provisions for organized crime, terrorism, and gender-based violence. This forward-looking approach enhances the system's ability to address evolving threats.

Technological integration is another cornerstone—ranging from forensic mandates to audio-visual recording of search and seizure. These measures promote transparency, accuracy, and public trust in investigations.

Victim empowerment is central to the new framework, with provisions for timely justice, support mechanisms, and sensitivity in procedures. Alongside this, greater police accountability is ensured through e-FIRs, documented arrests, and transparent investigation protocols.

New criminal laws and gender justice

- Criminalizing False Promises of Marriage (Section 69)
- Mental Harm as Cruelty (Section 86)
- Decriminalization of Adultery- aligns with the Joseph Shine judgment
- Gender-Neutral Offenses (Sections 77 & 74) - Offenses like voyeurism and assault with intent to disrobe, previously limited to male perpetrators
- Sensitive Procedures for Victims
- Timeline for Medical Reports for rape cases- within 7 days
- However, marital rape remains an exception under the BNS act

Prison Reforms:

"These days I hear that we need to set up more jails. Why do we need them? If we are moving ahead as a society, if we are making progress, why do we need more jails? Should we not be, in fact, closing down the existing ones?" - President Draupadi Murmu

The state of Indian prisons remains a significant concern, as highlighted in the recent report on prison conditions. Major issues such as overcrowding, understaffing, and inadequate rehabilitation measures continue to plague the system.

Current State of Indian Prisons

Indian prisons face severe overcrowding, with a national average occupancy rate of 130.2%, and 77.1% of inmates being undertrials. Prisons are also understaffed by 30%, hindering effective management and security. Women prisoners, numbering 22,918, face compounded challenges due to the lack of gender-sensitive facilities—with only 13.77% of prison staff being women. Additionally, just 0.6% of the prison budget is allocated to vocational and educational training, underscoring the system's failure to focus on prisoner rehabilitation.

Key Issues and Challenges

Human rights violations—including custodial torture and extrajudicial killings—remain a concern. Imprisonment also disproportionately affects those living in poverty, often exacerbating social and economic disparities. Overcrowding and poor hygiene contribute to public health crises, and incarceration disrupts family cohesion and social integration. Corruption and staff shortages further complicate effective prison administration.

Key approaches to effective prison reforms:

- Non-Incarceration Solutions: Address overcrowding through alternatives like release for the sick/elderly, affordable bail, reduced penalties, and non- carceral accountability.
- Expedited Trials: Speed up the trial process to reduce prolonged pre-trial detention.
- Social Reintegration: Begin reintegration programs early in the criminal justice process.
- NHRC's Expanded Role: Broaden the National Human Rights Commission's role in prison oversight.
- Increased Funding: Enhance budget allocations for prison infrastructure and programs.
- Independent Inspections: Establish regular, unbiased prison inspections by an independent body.
- Prisoners' Welfare Fund: Create a dedicated fund for prisoner welfare, alongside police reforms.
- UN Convention on Torture: Ratify the UN Convention against Torture for better rights protection.
- Updated Prison Management Rules: Modernize outdated prison rules based on committee recommendations.

Observation of judiciary on Indian Prisons

- Sunil Batra v. Delhi Administration (1978, 1983): Prisoners retain fundamental rights, including humane treatment and protection from punitive isolation or degrading conditions.
- Rudal Shah v. State of Bihar (1983): Acquitted prisoners must be released immediately.
- Sheela Barse v. State of Maharashtra (1983): Female prisoners suffering abuse must be provided state-funded legal aid.
- Sanjay Suri v. Delhi Administration (1988): Authorities must respect prisoners' human rights.
- DK Basu v. State of West Bengal (1997): Arrested individuals' families should be promptly informed to enable legal support.
- Dharambir v. State of U.P (2010): Prisoners should have annual, guarded visits with family.
- Re Inhuman Conditions in 1382 Prisons (2016): Prisoners, especially undertrials, should be treated with dignity, leading to Model Prison Manual reforms.

Major committee recommendations on prison reforms:

- Justice Mulla Committee (1983): Suggested an All-India cadre for prison staff and moving prisons under the concurrent list. Recommended a National Policy on Prisons and alternative punishments like community service.
- Justice V. R. Krishna Iyer Committee on Women Prisoners (1987): Proposed separate facilities with only female staff for women prisoners. Called for measures to uphold the dignity of women prisoners.
- BPR&D Committee (2005): Used previous reports to draft a National Policy on Prison Reforms and Correctional Administration (2007).
- Justice Amitava Roy Panel on Prison Reforms (2020):
    - Overcrowding: Special fast-track courts for petty crimes and one lawyer for every 30 prisoners.
    - Understaffing: Fill vacancies and use video conferencing for trials. Prisoners'
    - Welfare: Allow daily phone calls for new inmates and explore alternative punishments.

Steps Taken:

Several legal measures, including the Prisons Act (1894), Model Prison Manual (2016), and the Model Prisons and Correctional Services Act (2023), have been introduced to improve prison conditions. However, enforcement remains weak, and states' lack of coordination hinders effective implementation. India can learn from global best practices such as the UK's Ombudsman model for transparency and Singapore's Yellow Ribbon Project for rehabilitation.

In conclusion, while some progress has been made, more robust reforms are needed to transition from a punitive system to a rehabilitative one, focusing on rehabilitation, legal aid, and gender-sensitive facilities.

Police Reforms

Police reforms in India are crucial for the modernization of law enforcement and ensuring that the police force functions with efficiency, accountability, and fairness. Over the years, there has been increasing awareness about the need for a transformation in police culture and structure. The focus of these reforms is on improving police values, respecting democratic principles, and enhancing collaboration between various stakeholders in the criminal justice system.

Need for Police Reform in India

The urgency for police reform in India arises from multiple challenges that hinder effective policing. These include understaffing, overburdened personnel, and issues with the current structure, including problems within the Indian Police Service (IPS) and the center-state tussle over jurisdiction. The legacy of colonial-era laws and infrastructure problems, along with political interference, further complicates policing. Additionally, evolving crime trends, misconduct, corruption, and custodial deaths highlight the need for comprehensive reform.

Committee Recommendations on Police Reforms

Several committees have played a key role in shaping police reforms. The Gore Committee (1971-1973) focused on expanding police training to include human behavior understanding and sensitivity. Following this, the National Police Commission (1977) emphasized the need to insulate the police from political and bureaucratic interference, advocating for greater autonomy and accountability. The Padmanabhaiah Committee (2000) recommended standardizing recruitment and training processes while improving pay and benefits for police personnel. The Soli Sorabjee Committee (2005) called for a new police bill to replace the colonial-era Police Act of 1861, while the Second Administrative Reforms Commission (2007) pushed for separating criminal investigations from law and order duties and establishing state police boards for personnel welfare.

Supreme Court's Role in Police Reforms

The landmark judgment in Prakash Singh vs Union of India (2006) further accelerated police reforms by issuing seven binding directives. These directives included the establishment of state and national security commissions, merit-based appointment of Directors General of Police (DGP), ensuring security of tenure, and the separation of criminal investigation from law and order functions. Additionally, the creation of a Police Complaints Authority was recommended to ensure greater accountability.

National Human Rights Commission (NHRC) Recommendations (2021)

The NHRC's 2021 recommendations focused on modernizing the police force and making it more responsive to the needs of society. Key suggestions included developing a technology-friendly criminal justice system, ensuring police accountability, and promoting community policing to strengthen public trust.

Supreme Court Guidelines on DGP (2018)

The Supreme Court's guidelines on DGP appointments in 2018 aimed to ensure transparency and merit in police leadership. States are now required to submit proposals to the UPSC three months before the current DGP's retirement and appoint someone from the UPSC panel immediately. The guidelines also emphasized the importance of avoiding acting DGP positions to ensure stability and credibility in leadership.

Case Study: Tamil Nadu Police Inspector E. Rajeshwari

A case study of Tamil Nadu Police Inspector E. Rajeshwari demonstrates the positive impact of police reforms on the ground. Through her efforts in implementing community policing and improving police-public relations, she has become an exemplary figure in modernizing law enforcement practices in the state.

Initiatives in Police Reforms

Several initiatives have already been implemented to modernize policing in India. The e-FIR app by Delhi Police, for instance, has streamlined the process of filing First Information Reports, making it more accessible. The Delhi Police 8-hour shift system has improved the working conditions for officers, while the Modernisation Scheme aims to enhance police infrastructure and equipment. Technological advancements such as automated face recognition systems are also being integrated to assist in criminal identification and investigation.

Way Forward:
Looking ahead, police reforms in India must focus on addressing the core issues that plague the force. This includes reforming the outdated 'Thana' system, increasing police budgets, and enhancing infrastructure. Additionally, the criminal justice system should be reformed with a focus on the effective implementation of Malimath Committee recommendations. Training and capacity building, alongside the integration of technology, are crucial for developing a modern, efficient police force. Improving public perception through community policing, learning from international best practices, and increasing women's representation will also play a key role in shaping the future of policing in India.

Right to Life & Liberty

Article 21: Protection of Life and Personal Liberty
No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21 guarantees the protection of life and personal liberty and has been described by the Supreme Court in *Francis Coralie Mullin v. Administrator, Delhi (1981)* as the "heart of fundamental rights" and a constitutional value of supreme importance. It secures two core rights, the right to life and the right to personal liberty and prohibits their deprivation except through a "procedure established by law." This right extends to all persons, citizens as well as foreigners, though foreigners do not enjoy the right to reside and settle in India. Traditionally, Article 21 could be invoked only against State action as defined under Article 12, and violations by private individuals were excluded. However, this position has evolved with *Kaushal Kishore v. State of Uttar Pradesh (2023)*, where the Court held that fundamental rights like Article 21 can, in certain circumstances, be enforced even against non-State actors.

Kaushal Kishor vs The State Of Uttar Pradesh, 2023:
This case stemmed from remarks made by a government minister regarding victims of a criminal incident. The court deliberated on whether such statements by public officials could be attributed to the 'State' itself and whether they constituted a violation of the victim's constitutional rights. The Constitutional Bench of the Supreme Court with a 4:1 majority ruled that the Fundamental Rights under Articles 19 and 21 can be enforced not only against the state but also against private individuals and entities. This represents a significant shift towards the 'horizontal effect' of these Fundamental Rights, expanding their application beyond the traditional vertical relationship solely between citizens and the state.

'Procedure Established by Law' & 'Due Process of Law': The phrases "Procedure Established by Law" and "Due Process of Law" are two legal principles that protect individual rights and ensure the application of law in legal proceedings. While they may seem similar, they have distinct implications and are used in different legal systems.

Constituent Assembly Debate:

Article 21 was one of the most debated provisions in the Constituent Assembly. Initially, the draft stated that no person could be deprived of life or liberty without "due process of law." However, the Drafting Committee replaced this phrase with "except according to procedure established by law." This change sparked strong opposition, as many believed "due process of law" provided better protection of individual rights by allowing courts to examine whether a law was fair and just.

Supporters of the change, including Dr. B.R. Ambedkar and Sir Alladi Krishnaswami Ayyar, argued that the U.S. Supreme Court had interpreted "due process" inconsistently, leading to legal uncertainty. Dr. Ambedkar emphasized the need to maintain a balance between the powers of the Legislature (which makes laws) and the Judiciary (which interprets them). He also encouraged faith in elected representatives to protect people's rights. Ultimately, the Constituent Assembly accepted the revised phrase, taking inspiration from Japan's 1946 Constitution.

'Procedure Established by Law' means that a law is considered legal if it has been enacted by the appropriate authority and followed correctly. This doctrine originated in the English Constitution and grants limited authority to the Judiciary. Under this principle, courts apply three tests to determine the validity of state actions:

1. They check if there is a law that permits the executive to deprive someone of their life or liberty.
2. They verify if the legislature that passed the law had the authority to do so.
3. They ensure that the legislature follows the correct procedures when making the law.

If any of these tests fail, the court protects individuals from arbitrary executive actions. However, the court does not assess whether the law itself is fair, just, or reasonable. Even if a law is deemed arbitrary or oppressive, the court cannot declare it unconstitutional or void. This doctrine provides protection to individuals against arbitrary executive actions but not against legislative actions.

On the other hand, the doctrine of **'Due Process of Law'**, rooted in the U.S. Constitution grants the judiciary wider powers to scrutinize the fairness and reasonableness of laws. Unlike the Indian principle of "procedure established by law," which initially limited judicial review, due process requires that laws depriving life or liberty must be fair, just, and reasonable. If found arbitrary, courts can strike them down. This doctrine is closely tied to the **principles of natural justice** (PYQ 2023), which ensure fairness, impartiality, and protection against arbitrary actions not only of the executive but also of the legislature.

Evolution of interpretations of Article 21:

The Supreme Court initially adopted a narrow interpretation of Article 21 in **A.K. Gopalan vs State of Madras (1950)**, holding that the Constitution did not protect against arbitrary legislative encroachments on personal liberty. It ruled that once a competent legislature enacted a law authorising deprivation of liberty, its validity could not be challenged for being unreasonable or unjust. The Court thus preferred the phrase *"procedure established by law"* over the American doctrine of *"due process of law."* Further, it refused to read Article 21 in conjunction with Articles 14 and 19, resulting in a compartmentalised view of Fundamental Rights.

However, In **Maneka Gandhi vs Union of India (1978)**, the Supreme Court overruled the Gopalan judgment and substantially widened the scope of Article 21. A seven-judge bench held that the phrase *"procedure established by law"* must be fair, just and reasonable, thereby reading into it elements of the American concept of *"due process of law."* The Court clarified that Article 21 provides protection not only against arbitrary executive action but also against arbitrary legislative action. It stressed that the Constitution envisages personal liberty to be secured through equitable and reasonable procedures. Importantly, this judgment also ended the compartmentalised view of Fundamental Rights by establishing that Articles 14, 19 and 21 are interlinked, and every law must simultaneously satisfy the requirements of equality, freedom and the protection of life and liberty.

Further interpretation in Francis Coralie Mullin vs Union Territory of Delhi, 1981, reinforced that Article 21 guarantees that no person shall be deprived of their life or personal liberty except 129 by a fair, just, and reasonable procedure established by law. Any law depriving a person of their personal liberty must pass the test of reasonableness, fairness, and justice as per the court's scrutiny.

In **Francis Coralie Mullin vs Union Territory of Delhi (1981)**, the Supreme Court reaffirmed the expanded interpretation of Article 21 by holding that no person can be deprived of life or personal liberty except through a fair, just and reasonable procedure established by law.

Golden Triangle of Rights - Articles 14, 19 and 21: Articles 14 (Right to Equality), 19 (Right to Freedom), and 21 (Right to Life and Personal Liberty) are collectively known as the "**Golden Triangle**" of the Indian Constitution. These three rights form the core of the Fundamental rights guaranteed to every citizen of India and are essential for ensuring the principles of equality, freedom, and dignity.

Article 14 ensures equality before the law and equal protection of laws, providing the basis for the enforcement of democratic values. Article 19 guarantees several freedoms, including the freedom of speech and expression, which is essential for the realization of the principles of equality enshrined in Article 14. Article 21, on the other hand, protects life and personal liberty, thereby providing the necessary conditions for the enjoyment of the rights guaranteed by Articles 14 and 19.

The interrelation of these articles is such that a law infringing upon any of these rights would have to meet the requirements of all three articles. The 'Triple test' for any law to be held as constitutional under the Golden Triangle is that it must satisfy the requirements of Articles 14, 19, and 21. For example, in the case of Maneka Gandhi vs Union of India, the court held that a law depriving a person of personal liberty must stand the test of Articles 14, 19, and 21. This means that the law must not be arbitrary and must provide equal protection, it must not unduly infringe upon fundamental freedoms, and it must not deprive a person of their life or personal liberty except according to the procedure established by law, which must be fair, just,
and reasonable.

ADM Jabalpur vs Shivkant Shukla, 1976

This was a landmark case in Indian constitutional law that significantly impacted the interpretation of Article 21, which guarantees the right to life and personal liberty. The case, decided during the emergency era, involved the detention of Shivkant Shukla, a journalist, under the Maintenance of Internal Security Act (MISA). Shukla challenged his detention before the Supreme Court, arguing that it was unconstitutional. The Court, however, ruled that the President's order declaring a state of emergency, under Article 359, suspended all Fundamental rights, including Article 21. This meant that no person had locus standi to move any writ petition under Article 226 before the High Court for habeas corpus or any other writ to challenge the legality of the detention order.

However, Justice H.R. Khanna dissented from the majority view, arguing that the right to life and personal liberty under Article 21 was not suspended by the President's order under Article 359(1). He held that the right to life and personal liberty was a natural right that existed even before the Constitution and could not be suspended by the President's order.

The ADM Jabalpur case had far-reaching implications for civil liberties and the judiciary's role during a national emergency. The majority ruling was often criticized as the "darkest hour" of the Supreme Court, as it failed to uphold the Fundamental Rights during a time of crisis. Thus, it eventually contributed to the passage of the 44th

Amendment, 1978, which clarified that even during an emergency, the suspension of Article 21 cannot restrict the right to life and personal liberty. Interestingly, in 2017, the Supreme Court in K.S. Puttaswamy vs Union of India overruled the decision of ADM Jabalpur and held that the ADM Jabalpur case judgement was flawed. Maneka Gandhi vs Union of India, 1978

This case centred around the impounding of Maneka Gandhi's passport by the Regional Passport Office in New Delhi citing the Passport Act of 1967. The authorities did not provide any reason for the impounding, leading Maneka Gandhi to approach the Supreme Court against the order that violated her Fundamental rights under Articles 14, 19, and 21.

The key issues before the court included whether the Fundamental Rights guaranteed under Part III of the Constitution were absolute, the extent of the territory of such rights, whether the "Right to Travel Abroad" was included in Article 21, and whether the rights under Articles 14, 19, and 21 were connected. The petitioners argued that the right to travel abroad was part of "personal liberty" within Article 21 and that no one could be deprived of this right except under the procedure established by law.

The respondents argued that the objective of confiscating passports was to compel the petitioner to appear for a hearing before a government committee. The Supreme Court delivered its judgment in 1978, significantly expanding the scope of Article 21, emphasizing the importance of fairness, reasoning, and natural justice in the process of depriving an individual of their personal liberty.

Expanding Horizons of Article 21:

Article 21 of the Indian Constitution is a prime example of the transformative character of the Constitution. The Indian judiciary has significantly expanded the scope and meaning of Article 21, going beyond the original intentions of the Constitution makers. The Supreme Court of India has interpreted this article to include a wide array of rights, known as inferred rights. These rights are not explicitly mentioned in the text of Article 21 but are considered essential for living with dignity and for the meaningful exercise of personal liberty. Some of its examples are:

1. Right to a Clean Environment: The "Right to Life" under Article 21 has been expansively interpreted to include the right to live with dignity in a clean and healthy environment. The Supreme Court has consistently held that the maintenance of health and preservation of the environment fall within its ambit. In **Subhas Kumar vs State of Bihar (1991)**, the Court declared that the right to life includes the right to pollution-free water and air, and citizens can approach the Court under Article 32 for relief against environmental hazards. In **M.C. Mehta vs Union of India (1997)**, it directed measures to protect the Taj Mahal from environmental degradation, underscoring the need to safeguard monuments from pollution. Similarly, in **Vellore Citizens Welfare Forum vs Union of India (1996)**, the Court dealt with pollution caused by tanneries and invoked the "precautionary principle" and the "polluter pays principle," directing compensation for environmental damage. These rulings firmly establish environmental protection as an essential facet of the right to life.

Polluter Pays Principle:

The Polluter Pays Principle is a widely accepted concept in environmental law that holds the 'responsible party' accountable for the costs associated with environmental damage. This principle emphasizes that those who cause harm to the environment should bear the costs of managing and mitigating that harm. It was first introduced by the Organization of Economic Cooperation and Development (OECD) in 1972.

It has since become a cornerstone of environmental policies globally, aiming to internalize the costs of pollution into the prices of goods and services. This principle is not limited to compensating the victims of pollution but also includes the cost of restoring environmental degradation. The principle is often linked with the concept of sustainable development and is seen as a means for promoting environmentally responsible practices.

Precautionary Principle: The Precautionary Principle states that even without scientific evidence, measures must be taken to anticipate and prevent environmental degradation. It emphasizes the social responsibility of the State to protect the public from any plausible risk. This principle is often invoked in cases where there is uncertainty about the potential harm caused by a particular activity or substance, and it requires the State to take proactive measures to prevent harm.

2. Right against adverse effects of climate change: In **M.K. Ranjitsinh vs Union of India (2024)**, the Supreme Court held that the right to life under Article 21 cannot be fully realized without a clean and stable environment unaffected by climate change. It emphasized that the right to health, integral to

Article 21, is threatened by air pollution, changing patterns of vector-borne diseases, rising temperatures, droughts, crop failures, storms, and floods. The Court further observed that the inability of marginalized communities to adapt to such impacts violates not only their right to life but also the guarantee of equality under Article 14. By linking climate change with Fundamental Rights, the Court recognized that environmental degradation directly undermines constitutional guarantees.

Thus, one of the most significant achievements of modern Indian jurisprudence is the **constitutionalization of environmental issues**. Through landmark rulings, from *Subhas Kumar* to *M.C. Mehta*, *Vellore Citizens* and now *M.K. Ranjitsinh*, the judiciary has expanded Article 21 to encompass the right to a clean and healthy environment. This judicial activism underscores the central role of the Court in advancing environmental sustainability and climate justice in India.

3. Right to Livelihood: The right to livelihood is a fundamental aspect of the right to life under Article 21 of the Indian Constitution. The Supreme Court, in *Olga Tellis vs Bombay Municipal Corporation, 1985* emphasized that the right to livelihood is intrinsic to the right to life, as no person can live without the means of living. This interpretation underscores the importance of ensuring that individuals have access to resources like food, shelter, education, and occupation to sustain their lives and dignity.

4. Right to Privacy:

The right to privacy has been at the center of legal and constitutional debates in India, particularly following the landmark K. S. Puttaswamy vs Union of India judgment in 2017. This ruling affirmed right to privacy as a fundamental right under Article 21 (PYQ 2024, 2021, 2018).

At its core, privacy is often regarded as a human right enjoyed by individuals by virtue of their existence, encompassing aspects such as bodily integrity, personal autonomy, informational self-determination, protection from state surveillance, dignity, confidentiality, freedom of thought, speech, and movement.

Internationally, privacy is recognized as a fundamental human right in treaties such as the Universal Declaration of Human Rights (UDHR, 1948) and the International Covenant on Civil and Political Rights (ICCPR, 1966), which protect individuals from arbitrary interference with their private life, family, home, and correspondence.

Interestingly, the right to privacy was also discussed during the Constituent Assembly Debates. Mr. Kazi Syed Karimuddin moved an amendment to protect individuals against unreasonable search-and-seizures, inspired by the American and Irish Constitutions. While Dr. B.R. Ambedkar supported the idea, the right to privacy did not find an explicit mention in the final Constitution.

For decades, this lack of clarity led to judicial uncertainty. The Supreme Court in M.P. Sharma v. Satish Chandra, 1954 and Kharak Singh v. State of UP, 1962 held that privacy was not a fundamental right. However, this position was gradually challenged in subsequent years, culminating in the Puttaswamy case — triggered by concerns over the mandatory Aadhaar scheme and its implications for personal data and surveillance.

In Puttaswamy, the petitioners argued that the Aadhaar requirement violated privacy, while the Government contended that privacy was not a guaranteed right, relying on earlier precedents. The Court decisively overruled these outdated judgments, affirming that the right to privacy is intrinsic to human dignity, autonomy, and liberty, and must be safeguarded under Article 21. The verdict defined three core elements of privacy:

- Personal Autonomy – The right to make decisions about one's own body and personal life.
- Freedom of Choice – The ability to make independent choices without external interference.
- Control over Personal Information – The right to regulate the collection and use of one's personal data.

Impact on Indian Jurisprudence

The Puttaswamy judgment has had a profound influence on Indian legal developments. The Supreme Court has since expanded privacy rights in multiple areas:

- Decriminalization of same-sex relationships—The SC relied on privacy principles to strike down Section 377 of the IPC, affirming sexual autonomy.
- Right to marry across religions and castes— The SC reinforced individual autonomy and self-recognition.
- Decriminalization of adultery—The SC upheld sexual autonomy and reduced state interference in private life.
- Right to die with dignity – The SC reaffirmed privacy rights in end-of-life decisions.
- Right to be forgotten—High Courts have allowed individuals to request the removal of personal information from public records.
- Restrictions on state surveillance— Courts have imposed limitations on government surveillance, search, seizure, and DNA testing.

However, the right to privacy has not always prevailed. In some cases, such as the hijab ban in educational institutions, the Supreme Court ruled against individual privacy in public spaces. Additionally, the Sabarimala case (concerning the entry of women into temples) is under review, with religious and customary rights being weighed against individual privacy.

5. Right to Die with Dignity (Euthanasia): Euthanasia, also known as "mercy killing," is the deliberate ending of a person's life to relieve them of suffering and misery. There is an ongoing debate over whether the right to life also includes the right to die with dignity, especially for those who are terminally ill. Euthanasia can be classified into two main types: (a) Passive euthanasia occurs when a terminally ill person's life-sustaining treatment is withheld or withdrawn, allowing them to die naturally, (b) Active euthanasia, on the other hand, involves a doctor using lethal substances to directly end someone's life.

In India, there is currently no specific law regulating euthanasia. However, the Supreme Court has made two important rulings on the issue. In the 2011 case of *Aruna Shanbaugh vs Union of India*, the court held that active euthanasia is illegal, but passive euthanasia is permitted under certain circumstances. For non-voluntary passive euthanasia, where the patient is unable to give their consent, the court ruled that a team of medical experts and a relative must provide consent, and the decision must be approved by a high court consisting of at least two judges. In *Common Cause vs Union of India,* 2018 the Supreme Court

further expanded on the right to die with dignity. The court ruled that passive euthanasia and living wills (advance directives) for passive euthanasia are legally permissible.

6. **Fundamental Rights of Prisoners:** The right to life and personal liberty under Article 21 also extends to prisoners. It ensures that prisoners are not deprived of their dignity and are treated with respect and fairness. The right to life and personal liberty is not limited to mere physical existence but encompasses all aspects of human life, including the right to live with dignity and the right to be free from inhuman, cruel, or degrading treatment.

The Supreme Court of India has consistently expanded the scope of Article 21 to include various rights for prisoners. These rights include - right to free legal aid, right to a speedy trial, right to a fair trial, right to bail, and right to live with human dignity. The court has also emphasized the importance of ensuring that prisoners are not subjected to solitary confinement, handcuffing, or other forms of degrading treatment.

In addition, the court has recognized the right of prisoners to have interviews with friends, relatives, and lawyers, and to be protected from custodial violence. The right to a speedy trial (*Hussainara Khatoon vs State of Bihar, 1979*) is particularly significant, as it ensures that undertrial prisoners are not detained for longer periods than the maximum sentence they could have received if convicted.

7. Capital Punishment and Right to Life: The *Bachan Singh vs State of Punjab* case is significant because it deals with the right to life under Article 21 of the Indian Constitution. Bachan Singh was convicted of murder and sentenced to death. He argued that the death penalty violated his right to life, which is protected under Article 21. The Supreme Court had to decide whether the death penalty was constitutional. The court ultimately upheld the death penalty but introduced the "**rarest of rare**" doctrine to ensure that it was only imposed in exceptional cases where life imprisonment would be inadequate. This doctrine balances the right to life under Article 21 with the state's power to impose the death penalty, ensuring that it is not imposed arbitrarily.

Parole and Furlough

Parole and furlough are two types of temporary releases granted to prisoners. Parole allows prisoners to be released before their sentence ends, with a duration of up to one month and extendable under special circumstances. The purpose of parole is to help prisoners with social rehabilitation, maintain family cohesion, and avoid the negative effects of constant jail life. It can be granted on therapeutic or compassionate grounds, such as adhering to the law, avoiding drugs or alcohol, and keeping in touch with the parole officer. However, parole is granted at the prisoner's request and can be denied (PYQ 2021).

Furlough, on the other hand, is a type of leave from prison that can be granted 14 days a year but may be extended for specific reasons. It is a reward and remission of the sentence but disallowed for specific categories of prisoners, such as rape convicts, dacoity, or NDPS (Narcotic Drugs and Psychotropic Substances). Unlike parole, furlough is a basic right of a prisoner and is generally not

denied.

The distinction between parole and furlough lies in their granting process. Parole is granted at the prisoner's request and can be denied, whereas furlough is a basic right of a prisoner. The significance of parole and furlough lies in their ability to allow prisoners to maintain social and family ties, maintain their mental equilibrium, and ensure their sanity. The court recognizes the humanistic approach behind these rights, with reformation being one of the objectives. Short-term periods on furlough and parole are essential in preventing criminal activities after release and ensuring rehabilitation

8. Right to marry a person of one's choice: Regarding marriage and choice of partner, the Supreme Court of India has developed a progressive legal approach. In the *Lata Singh case, 2006*, the court affirmed the right to choose one's partner and that laws shouldn't prevent inter- caste marriages. Subsequent cases like *Shakti Vahini* reiterated this stance, linking personal choices in marriage to the Fundamental Rights of privacy and individual dignity under Articles 19 and 21 of the Constitution. The court emphasized in *Shafin Jahan's* case that marrying the person of one's choice is integral to Article 21 (PYQ 2019), unless restricted by a fair and reasonable law.

The Supreme Court in *Supriyo Chakraborty vs Union of India, 2023* made a clear distinction between the right to choose a partner and the right to marry. The court stated that previous judgments had addressed the former, implying that while individuals have the freedom to choose whom they live with, this does not necessarily translate into a Fundamental right to marry. Thus, it clarified that the Indian Constitution does not explicitly recognize the right to marry as a Fundamental Right for any person, whether heterosexual or non-heterosexual, despite recognizing broad personal freedoms related to partnership and cohabitation.

9. Section 377, IPC - A timeline of milestones

Section 377 of the Indian Penal Code (IPC), introduced in 1860, criminalized consensual sexual relations between individuals of the same sex and was long regarded as a draconian provision that violated the Fundamental Rights of the LGBTQIA+ community. The **Naz Foundation** challenged the law before the Delhi High Court, which in 2009 held that Section 377 infringed the rights to equality, privacy, and personal liberty, thereby decriminalizing same-sex relationships. However, this decision was overturned in *Suresh Kumar Kaushal vs Naz Foundation* (2013), where the Supreme Court reinstated the criminality of homosexuality, observing that only Parliament had the authority to amend the law. The judgment drew sharp criticism but gained renewed momentum for reform after *Justice K.S. Puttaswamy vs Union of India* (2017), in which the Court declared the right to privacy a Fundamental Right under Article 21. Finally, in *Navtej Singh Johar vs Union of India* (2018), the Supreme Court unanimously struck down the provisions of Section 377 insofar as they criminalized consensual same-sex relations among adults. The Court described the section as irrational, indefensible, and arbitrary, affirming that it was historically used as a tool of oppression against the LGBTQIA+ community. Importantly, the Court emphasized that constitutional morality must prevail over social morality, thereby expanding the ambit of Fundamental Rights and affirming dignity, autonomy, and equality for sexual minorities.

Other Judicial Recognition of Fundamental Rights Under Article 21:
The Supreme Court has recognized several other rights under Article 21. The Right to be Forgotten and the Right of Erasure are now part of the right to privacy. In PUCL vs. Union of India, the court emphasized the need for an effective public distribution system to combat malnutrition despite food availability. In Ashwani Kumar v. Union of India, it upheld the rights of elderly persons, including dignity, health, pension, and shelter.

Further, the Right to Public Health was reinforced in Vincent Panikurlangara v. Union of India, making the state responsible for maintaining health conditions. The Right to Security was addressed in M.C. Mehta v. Union of India, where security cover was deemed a matter for police discretion, and in S. Rajaseekaran v. Union of India, mandating long-term third-party vehicle insurance for road safety. Regarding Reproductive Rights, the court, in cases like Devika Biswas v. Union of India and Sarmishtha Chakrabortty v. Union of India, upheld women's bodily integrity and reproductive autonomy, though abortion remains regulated with exceptions beyond 20 weeks.

Right to Education

* Article 21A: Right to Education
The State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law, determine.

* Inserted by the 86th Amendment, 2002

Nelson Mandela, a champion of education and social justice said, "Education is the most powerful weapon which you can use to change the world." This quote highlights the transformative power of education in shaping individual lives and society as a whole. In India, the landmark case of Unnikrishnan vs State of Kerala (1993) emphasized the importance of education as a Fundamental Right. This judgment laid the foundation for the incorporation of Article 21A, which explicitly guarantees the right to education to all children.

Article 21A of the Indian Constitution, inserted by the 86th Amendment, 2002, declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years. This provision makes elementary education a Fundamental Right, but it does not extend to higher or professional education.

Earlier, the Constitution contained a provision for free and compulsory education for children under Article 45 in Part IV, which was a directive principle and not enforceable by the courts. The 86th Amendment also changed the subject matter of Article 45, which now reads: "The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years." Additionally, the amendment added a new Fundamental Duty under Article 51A, which states: "It shall be the duty of every citizen of India to provide opportunities for education to his child or ward between the age of six and fourteen years."

In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009.

Right against arrest and detention

Article 22: Protection against arrest and detention
(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
(3) Nothing in clauses (1) and (2) shall apply—
a) to any person who for the time being is an enemy alien; or
b) to any person who is arrested or detained under any law providing for preventive detention.
*(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless—
a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub- clause (b) of clause (7); or
b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).
(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making representation against the order.
(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.
(7) Parliament may by law prescribe—
**(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
(c) the procedure to be followed by an Advisory Board in an inquiry under sub- clause (a) of clause (4).
* Substituted by the 44th Amendment, 1978
** Omitted by the 44th Amendment, 1978

The colonial rule was marked by many instances of arbitrary detention and suppression of dissent. Prominent freedom fighters like Gandhi, Nehru, and Tilak were frequently imprisoned without trial under harsh laws like the Rowlatt Act of 1919. This Act allowed the colonial government to imprison individuals suspected of sedition without adhering to proper legal procedures.

Constituent Assembly Debate:
Article 22 was not originally part of the Draft Constitution but was added later by the Constituent Assembly as a safeguard against arbitrary detention. Dr. B.R. Ambedkar supported its inclusion, emphasizing that it introduced protections for individuals arrested or detained. His argument was that these provisions would address concerns about Article 21, which only required that life and personal liberty be restricted according to the law, without necessarily ensuring fairness or judicial oversight.

In essence, Article 22 strengthened Article 21 by filling its gaps. While Article 21 allowed the government to deprive a person of life or liberty as long as it followed the law, critics feared this could lead to misuse by the Executive. Article 22 addressed this by incorporating key elements of "due process," ensuring that detention and arrests followed a fair procedure.

After independence, the framers of the Indian Constitution were determined to prevent such abuses of power from happening again. They included Article 22 in the Constitution, which provides strong protections against arbitrary arrest and detention. There are two types of detention: (a) Punitive detention is used to punish someone for a crime after they have been tried and found guilty in a court, (b) Preventive detention occurs when someone is detained because there is a reasonable fear that they might do something harmful to public order and security, and this happens without a trial. The purpose of preventive detention is not to punish past actions but to prevent potential future offences, serving as a precaution based on suspicion. Thus, rights under Article 22 can be divided into two parts. The first part addresses cases under ordinary laws, while the second part deals with cases involving preventive detention laws.

Under the first part, specific rights are granted to individuals who are arrested or detained under regular criminal laws. It mandates that, upon arrest, the police must inform the person of the reasons for their arrest as soon as possible. The Supreme Court has underscored the importance of providing grounds of arrest in writing at the earliest opportunity. This principle was reaffirmed in *Pankaj Bansal vs Union of India*, 2023. Also, the arrested person has the right to talk to and be defended by a lawyer of their choice. Additionally, the police must bring the arrested person before a judge within 24 hours and cannot keep them in custody beyond that time without the judge's permission. These 24 hours don't include the transportation time. These safeguards are not available to enemy aliens, or a person arrested or detained under a preventive detention law. The Supreme Court also ruled that the arrest and detention in the first part of Article 22 do not cover arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien. They apply only to an act of a criminal or quasi-criminal nature or some activity prejudicial to the public interest.

The second part, on the other hand, deals with Preventive detention laws which allow the government to detain individuals without trial to prevent them from acting in a way that could threaten public order, state security, or national defence.

However, Article 22 also provides for strict safeguards on the use of preventive detention. These safeguards are intended to prevent the arbitrary use of preventive detention powers by the government and to protect the personal liberty of individuals. Firstly, there must be a law in place that authorizes preventive detention. Secondly, the detained person must be informed of the reasons for their detention as soon as possible.

Thirdly, the detained person must be given the earliest opportunity to make a representation against their detention. Most importantly, no person can be detained for more than three months without the approval of an advisory board. This Advisory Board must consist of judges or individuals qualified to be High Court judges, who will assess whether there is sufficient cause for the continued detention. The 44th Amendment, 1978 reduced the period of detention without obtaining an advisory board's opinion from three to two months. However, because this provision has not yet been implemented, the original three-month period remains in effect.

Preventive detention laws

Preventive detention laws are governed by the Constitution, which divides the legislative power between the Parliament and the state legislatures. The Parliament has the exclusive authority to enact preventive detention legislation for reasons related to India's defence, foreign affairs, and security. Additionally, both the Parliament and the state legislatures can pass preventive detention laws for reasons related to a state's security, the maintenance of public order, and the maintenance of supplies and services essential to the community.

The Parliament has enacted several preventive detention laws, which have faced criticism at times. Such laws include the National Security Act (NSA) of 1980, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) of 1974, and the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act of 1980. The Preventive Detention Act of 1950 expired in 1969, while the Maintenance of Internal Security Act (MISA) of 1971 was repealed in 1978. The Terrorist and Disruptive Activities (Prevention) Act of 1985 (TADA) was repealed in 1995, and the Prevention of Terrorism Act (POTA) of 2002 was repealed in 2004. The Unlawful Activities (Prevention) Act of 1967 (UAPA) has been amended several times, lastly in 2019.

Police Custody

Police custody refers to the physical custody of an accused individual by the police after arrest. This custody is usually limited to 24 hours, excluding travel time from the place of arrest, and is intended to prevent the accused from committing further offenses while the investigation is ongoing. During this period, the police have control over the accused and can conduct investigations, including interrogations.

Judicial Custody:
Judicial custody, on the other hand, involves the accused being held in the custody of a concerned magistrate or court. This custody can extend up to 90 days for non-bailable offenses punishable with life imprisonment or imprisonment for a term not less than 10 years, and up to 60 days for bailable offenses. In judicial custody, the accused is kept in a central jail, and the magistrate relies on evidence presented in the court rather than conducting investigations themselves. The police officer in charge of the case is not allowed to interrogate the suspect without the court's permission.

Differences between Police custody and Judicial custody (PYQ 2021): The key differences between police custody and judicial custody are:

- Control: Police custody is under the control of the police officer in charge of the police station, while judicial custody is under the control of the magistrate.
- Investigation: Police custody involves investigations conducted by the police, whereas judicial custody relies on evidence presented in court.
- Procedure: Police custody begins with the arrest and production of the accused before a magistrate within 24 hours, while judicial custody involves the magistrate deciding whether to release the accused on bail or send them to judicial custody.
- Period of detention: Police custody is limited to 15 days, while judicial custody can extend up to 90 days for severe offenses and 60 days for bailable offenses.
- Jail: Police custody involves detention in a prison or cell at the police station, while judicial custody involves detention in a central jail.
- Interrogation: Police officers can interrogate suspects in police custody without permission, while in judicial custody, permission from the court is required for interrogation.

Preventive Detention in India: Security Imperative or Democratic Dilemma
As we learnt that preventive detention allows the state to detain a person without trial based on the anticipation of a threat to public order or national security. As per NCRB data, over 1.1 lakh individuals were detained under preventive laws in 2021 alone, highlighting both its widespread use and potential for overreach. Key laws enabling such detention include the Unlawful Activities (Prevention) Act (UAPA), COFEPOSA, and the National Security Act (NSA)—each addressing threats ranging from terrorism to economic offenses and national security concerns.

However, the use of preventive detention faces substantial criticism. It is often labeled undemocratic, given that it bypasses the standard legal process and undermines Article 21 of the Constitution. Critics argue it contravenes global human rights norms, lacks procedural transparency, and provides scope for state misuse—especially for political or communal motives. The vague legal grounds and absence of protective procedures further compound concerns.
Supporters, on the other hand, view it as a necessary deterrent in a country grappling with insurgency, terrorism, and communal unrest. The availability of judicial remedies like writ petitions, and the limited scope and duration of such detentions, are cited as balancing factors. Governments claim such powers are used selectively to uphold national security.

Judicial Scrutiny

To prevent abuse, the Constitution and laws provide several safeguards: detention cannot be indefinite, and requires review by an Advisory Board within three months. The detainee has the right to early representation, and detention must be authorized under a valid law. Though these checks exist, their practical enforcement is often questioned. In landmark judgments like Alijav v. District Magistrate, Dhanbad, the Court emphasized the need for clear grounds of detention. In Ankul Chandra Pradhan v. Union of India, the Court upheld preventive detention laws but underscored strict compliance with procedural safeguards. These cases show the judiciary's effort to strike a balance, albeit sometimes tilting in favor of state interests.

In essence, preventive detention remains a double-edged sword—necessary for security, yet vulnerable to misuse. Its legitimacy lies not just in law, but in how responsibly it is enforced within the democratic framework.

Custodial Deaths: A Human Rights Challenge

Custodial death refers to the death of an accused individual during pre-trial detention or after conviction, caused directly or indirectly by the police while the person is in custody. Such incidents represent a serious violation of human rights and often reflect deep-rooted flaws in the criminal justice system. According to the National Human Rights Commission of India, in the financial year 2021–22 alone, there were 2,152 deaths in judicial custody and 155 in police custody up to February 2022. These statistics highlight the urgent need for systemic reform.

Custodial violence stems from a combination of institutional and cultural factors. A persistent disregard for human dignity, miserable prison conditions, and the unchecked power of the police often lead to the use of force or torture to extract confessions. The presumption of guilt rather than innocence further justifies harsh treatment in the eyes of some law enforcement officials. The absence of strict oversight mechanisms allows such abuse to continue with little accountability.

Legal Safeguards and Judicial Intervention

The Indian Constitution provides important safeguards to prevent custodial abuse. Article 20 protects individuals from arbitrary punishment, Article 21 guarantees the right to life and personal liberty, and Article 22 ensures protection against arbitrary arrest and detention. The judiciary has reinforced these provisions through landmark judgments. In Kishore Singh v. State of Rajasthan (1981), the Supreme Court ruled that the use of third-degree methods by police violates Article 21. In Nilabati Behera v. State of Orissa (1993), the Court held the state accountable for custodial deaths and ordered compensation. In Joginder Kumar v. State of Uttar Pradesh (1994), it emphasized the need to avoid unnecessary arrests, particularly in minor offences. Most significantly, the DK Basu case (1997) laid down specific guidelines for arrest and detention procedures to prevent torture, setting a precedent for custodial protections.

Reforms and the Way Forward

Addressing custodial violence requires a multipronged strategy. Legal reforms must focus on strengthening anti-torture laws, ensuring prompt and impartial investigations, and ratifying international conventions like the UN Convention Against Torture. Police personnel should receive training that emphasizes human rights, non-violent investigation techniques, and professional ethics. Independent

oversight bodies must be empowered to monitor custodial practices and hold violators accountable. Civil society organizations can play a crucial role in advocating for victims, raising awareness, and supporting institutional reforms. Technological interventions—such as body cameras, robotic surveillance, and advanced systems like AVATAR—can enhance transparency during interrogations, while neuroscientific tools may offer non-coercive methods of investigation. International collaboration with human rights bodies can also provide valuable frameworks and support.

In conclusion, custodial deaths are not just a failure of law enforcement but a fundamental breach of constitutional morality and human dignity. Combating this issue requires legal commitment, institutional accountability, civil engagement, and the strategic use of technology to uphold justice and preserve the rights of every individual under state custody.

Right against Exploration

ARTICLES 23-24

Articles 23 and 24 of the Indian Constitution establish Fundamental rights against exploitation (PYQ 2017). These provisions extend protections to both citizens and non-citizens, safeguarding individuals from exploitative practices by both state entities and private parties. It imposes a positive obligation on the State to eradicate such practices. These constitutional guarantees resonate with India's commitments under the Sustainable Development Goals, particularly Target 8.7, which aims to end forced labour, human trafficking, and child labour by 2030.

Right against trafficking and forced labour

> **Article 23**: Prohibition of traffic in human beings and forced labour
> 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.
> 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.

Article 23 of the Indian Constitution prohibits various forms of exploitation and forced labour. It makes trafficking in human beings, forced labour like begar, and similar practices illegal. This protection applies to everyone in India, whether citizens or non-citizens, safeguarding them from both the government and private individuals.

"Traffic in human beings" refers to selling people as commodities, including immoral activities like prostitution and the practice of devadasis. It also encompasses slavery. **The Immoral Traffic (Prevention) Act of 1956** addresses these offences. "Begar" specifically denotes making someone work without pay. Historically, it was enforced by local landlords compelling tenants to provide services without payment. In addition to begar, Article 23 prohibits other forms of forced labour, such as bonded labour. Forced labour is defined as compelling someone to work against their will, which can also include economic coercion, like paying less than minimum wage.

To combat these practices, several laws have been enacted in India, including the Bonded Labour System (Abolition) Act of 1976, the Minimum Wages Act of 1948, the Contract Labour Act of 1970, and the Equal Remuneration Act of 1976. These laws ensure fair treatment and prevent exploitation in various work settings.

Kafala System: The Kafala System, described as a form of 'modern slavery', binds migrant workers to their employers (sponsors) through their visas. This system is widespread in numerous Gulf countries, leading to significant power disparity and immense hardships for workers. Challenges include passport confiscation, limited job mobility, vulnerability to exploitation, and abuse by their employers.

Article 23(2) of the Indian Constitution creates an exception to the prohibition of forced labour under Article 23(1) by permitting the State to impose compulsory service for public purposes, such as military service, community service, or social welfare programs, without any obligation to provide remuneration. However, the provision explicitly bars the State from making any discrimination on grounds only of religion, race, caste, or class when imposing such compulsory service. Interestingly, sex is not mentioned among the prohibited grounds, which implies that women could be exempted from such obligations.

In the case of People's Union for Democratic Rights vs Union of India, 1982, Justice P.N. Bhagwati held that the scope of Article 23 is vast and unlimited. He rejected the argument that if some remuneration is paid, even if inadequate, it would not attract the Article 23 provisions. He stated that Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values.

Human Trafficking in India

Human trafficking—the illegal trade of human beings for sexual exploitation, forced labour, and organ removal—remains a severe human rights issue in India. The Global Slavery Index estimates that 8 million victims reside in India, out of 24.9 million globally. As per the NCRB, 6,036 individuals (including 2,878 children) were trafficked in India in 2022, highlighting the scale and complexity of the problem.

India addresses trafficking through Article 23(1) of the Constitution, which prohibits trafficking and forced labour. Key laws include the Immoral Traffic (Prevention) Act, 1956, the Criminal Law (Amendment) Act, 2013, and the POCSO Act, 2012. Other related laws tackle linked issues like bonded labour, child labour, early marriage, and organ trafficking. India is also a party to international conventions like UNCTOC and CEDAW, strengthening its legal and moral framework.

Causes and Consequences

Trafficking in India is fueled by poverty, displacement, lack of awareness, and social exclusion, making vulnerable populations easy targets. Traffickers also exploit digital platforms and the demand for cheap labour or sex work to operate efficiently.

The impact on victims is devastating. They suffer physical abuse, mental trauma, and loss of autonomy, often living in fear. Stigma and isolation further complicate their reintegration into society. At a larger scale, trafficking sustains organized crime networks, erodes human dignity, and threatens national and global security.

Way Forward:
Tackling trafficking requires a multi-layered response. Strengthening community surveillance, empowering local administrations, and conducting frequent raids are essential enforcement tools. Coordinated action between police, child welfare bodies, and district authorities is vital. Public engagement through awareness campaigns can prevent exploitation and reduce stigma.

Ultimately, curbing human trafficking demands both state action and community vigilance—only then can India protect its vulnerable and uphold the values of justice and human dignity.

Right against Child Labour

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.

"Children should have pens in their hands, not tools." - Kailash Satyarthi

Article 24 of the Indian Constitution prohibits the employment of children below the age of 14 years in factories, mines, or other hazardous activities such as construction work and railways. The primary objective of this provision is to protect children from exploitation and to ensure their safety, health, and overall well-being. However, it does not bar children from engaging in harmless or non-hazardous work, such as helping in family businesses or participating in artistic and cultural activities. Article 24 must be understood in harmony with Articles 39(e) and 39(f) of the Directive Principles of State Policy, which direct the State to ensure that the health and strength of children are not abused and that they are given opportunities for healthy development with dignity. Together, these provisions establish the constitutional commitment to safeguard children against exploitation and promote their holistic growth.
To give effect to these constitutional mandates, the Indian Parliament has enacted several important laws. The Child Labour (Prohibition and Regulation) Act of 1986 initially prohibited the employment of children under 14 in hazardous occupations. This framework was further strengthened through the 2016 amendment, which completely banned child labour below 14 years and restricted the employment of adolescents (14–18 years) in hazardous sectors. The Right to Education Act of 2009 also complements Article 24 by making education free and compulsory for children between 6 and 14 years of age, thereby reducing the likelihood of child labour. Additionally, legislations such as the Factories Act and the Mines Act prescribe minimum age requirements for employment and reinforce protections for children. Collectively, these constitutional and statutory measures aim to eliminate child labour and create an environment where children can grow, learn, and thrive in safety and dignity.

ILO Child Labour Conventions :

The two ILO Conventions on child labour are Convention No. 138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour. **(PYQ 2018)**

- ILO Convention No. 138: aims effective abolition of child labour by requiring countries to establish a minimum age for entry into work or employment; and establish national policies for the elimination of child labour.
- ILO Convention No. 182: requires ratifying countries to take immediate, effective, and time-bound measures to eliminate the worst forms of child labour as a matter of urgency.

Note: Target 8.7 of the 2030 Sustainable Development Goals (SDGs) aims to end child labour in all its forms by 2025.

RIGHT TO FREEDOM OF RELIGION

ARTICLES 25-28

India's commitment to religious freedom and diversity is enshrined in Articles 25-28 of its Constitution. These articles reflect India's vision of a secular state that respects and protects the pluralistic nature of its society, ensuring that the people of all faiths can coexist harmoniously. These provisions emphasize that the State shall not espouse or promote any religion but will ensure equal respect and protection for all religions. The State treats believers, atheists, and agnostics alike and maintains neutrality in matters of religion, focusing solely on civil relations among individuals. Although there was a proposal by K.T. Shah during the Constituent Assembly debates to adopt a U.S.-style complete separation of religion and State, it was ultimately rejected.

There are two main approaches to interpreting these articles: the subordinate approach and the optimum approach. The subordinate approach views freedom of religion as secondary to other fundamental rights, based on the text of Article 25, which subjects it to other provisions in Part III of the Constitution. In contrast, the optimum approach holds that freedom of religion should be upheld to its fullest extent, provided it does not directly conflict with other rights. This reflects India's constitutional principle that no right is absolute, and all rights must be balanced without giving preference to one over another.

Right to Freedom of Religion

Article 25: Freedom of conscience and free profession, practice, and propagation of religion

(1) Subject to public order, morality, and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise, and propagate religion.

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

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

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

Explanation I.—Th e wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
Explanation II. —In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina, or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

It states that all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate their religion subject to public order, morality, health, and other provisions of Part III. This article ensures that individuals have the liberty to follow and promote their religious beliefs without interference, as long as it does not come in conflict with societal norms or legal regulations. Though the term 'religion' is not defined in the Constitution, the key features of Article 25 include:

- **Freedom of conscience**: It refers to the right of all individuals to have their own beliefs, opinions, and convictions without interference from the state or others.
- **Right to Profess**: It refers to the freedom granted to individuals to openly and freely declare their religious beliefs and faith. Th is includes the inner freedom of an individual to shape their relationship with God or creatures as they wish.
- **Right to Practice**: It refers to declaration of religious beliefs, the performance of religious rituals, ceremonies, and the sharing of religious beliefs with others.
- **Right to Propagate**: It refers to spreading awareness about their religion and promoting their religious beliefs. It protects the right of religious communities to spread their religion through preaching, publishing religious texts, etc.

The state can regulate or restrict any activity associated with religious practice that may have economic, financial, political, or other secular aspects. The Article 25(2) (b) was intended by the framers of the Constitution as an antidote to certain untenable social discrimination in the Hindu society. It provides that the State can undertake 'social welfare and reform' to eliminate evil practices in a religion. For instance, banning of Sati. It must be noted that the Constitution allows the Hindu temples to be open to all religions and all genders. Herein, the definition of Hindu includes Buddhists, Jaina, and Sikhs.

Does the right to propagate religion include the right to convert?

The Supreme Court has addressed the issue of religious conversion in various judgments, such as the *Rev. Stainislaus vs State of Madhya Pradesh* case in 1977, where it was clarified that Article 25 does not grant the right to convert another person to one's own religion. The court has highlighted that forced conversion is dangerous as it infringes on the freedom of conscience guaranteed to all citizens and may impact the security of the nation and freedom of religion. Moreover, several states in India have enacted anti-conversion laws to restrict religious conversions carried out by force, fraud, or inducements.

Karnataka Hijab ban case

The Karnataka hijab ban case revolved around the Karnataka Government's Order in February 2022, which prohibited students from wearing hijabs in state educational institutions. Engaging with the doctrine of essential religious practices, the Karnataka High Court held that wearing of hijab is not a

part of essential religious practice in Islamic faith and thus, is not protected under Article 25 of the Constitution. While holding so, the court opined that prescription of school uniform by the State is a reasonable restriction on the students' right under Article 25. The case escalated to the Supreme Court, where a split verdict was delivered. Due to the differing opinions, the matter was referred to the CJI for the constitution of an appropriate bench for further consideration.

Essential Religious Practices: The doctrine of essential religious practices refers to those rituals, customs, and beliefs that are regarded as integral to a religion and are necessary for its followers. The absence of such practices would fundamentally alter the character of the religion itself. Denial of these practices is considered a violation of Article 25 of the Constitution, which guarantees freedom of conscience and the right to profess, practice, and propagate religion.

The origin of this doctrine can be traced to the Constituent Assembly, where B.R. Ambedkar highlighted the need to limit the scope of religion in India. He observed that religious conceptions in the country were so vast that they extended to almost every aspect of life, from birth to death. Ambedkar argued that it would not be practical to allow religion to govern areas like tenancy or succession, which are essentially secular in nature, and suggested that only those rituals and ceremonies which are fundamentally religious should be protected under the Constitution.

This laid the groundwork for the judiciary to evolve the essential religious practices test, first articulated in *The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt* (1954). Since then, courts have applied this doctrine to distinguish between what is essential to religion and what can be subject to regulation or reform, thereby balancing religious freedom with constitutional morality and social progress.

Earlier, the essential religious practices were to be regulated only by the religion itself. However, the Supreme Court started including personal laws in the definition of laws under Article 13. Thus, the Judiciary 145 has ruled on the question of the essential religious practices in certain prominent cases, like:

- **The Shirur Mutt case, 1954**: was the first to interpret Article 25 and laid down key principles on religious freedom in India. The Supreme Court held that "religion" under Article 25 includes not only faith and belief but also practices regarded as integral or essential to a religion. This judgment established the "essential religious practices" doctrine, which has guided the scope of religious freedom under the Constitution. The Court further ruled that religious denominations and institutions have the right to manage their own affairs in matters of religion, as long as such practices do not violate public order, morality, or health.
- ***Bijoe Emmanuel vs State of Kerala* (1986):** This case involved three Jehovah's Witness children who refused to sing the National Anthem in school assemblies due to their religious beliefs, though they stood respectfully in silence. The school expelled them, but the Supreme Court ruled in their favour, holding that this action violated their Fundamental Rights under Articles 19(1)(a) and 25(1). The Court clarified that standing silently during the anthem does not amount to disrespect and emphasized that the right to freedom of religion must be protected in a tolerant constitutional framework.
- **Acharya Jagadisharananda (Tandava Dance), 2004:** The Supreme Court ruled that the Tandava dance was not an essential practice of the Ananda Marga faith. It reiterated that the test for

determining whether a practice is an essential part of a religion is whether its absence would fundamentally alter the religion.

- **Shayara Bano vs Union of India, 2017**: In a 3:2 majority, the Supreme Court declared *Talaq-e-biddat* (instant triple talaq) unconstitutional, holding that it violated the basic tenets of the Quran and was not protected under Shariat law. The Court observed that a practice merely permitted or not prohibited by religion cannot be treated as an essential or positive tenet of faith. Following this judgment, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, making instant triple talaq illegal in India.
- **Sabarimala Temple**: In *Indian Young Lawyers Association vs the State of Kerala, 2018*, a five-judge bench with 4:1 majority ruled that the ban on women aged 10-50 from entering the Sabarimala Temple was not an essential religious practice. A review petition against this decision is, however, pending in the Supreme Court.

Essential Religious Practices (ERP) Doctrine: Scope, Significance, and Challenges

The doctrine of Essential Religious Practices (ERP) is a judicially evolved principle introduced by the Supreme Court of India in the landmark Shirur Mutt case (1954). Under this doctrine, only those religious practices deemed essential and integral to a religion are protected under the right to freedom of religion (Articles 25 and 26) of the Constitution.

Arguments in Favour:

Supporters of the ERP doctrine argue that it plays a vital role in upholding constitutional morality over religious morality. In a secular democracy, where all religions coexist under the umbrella of the Constitution, it becomes imperative to ensure that religious freedoms do not override fundamental rights such as equality and dignity. By limiting protection to only essential practices, the doctrine helps prevent discrimination, particularly against women and marginalized communities. For instance, in the Sabarimala case (2018), the Supreme Court invoked this doctrine to strike a delicate balance between the right to equality (Article 14) and the right to freedom of religion (Article 25), thus reaffirming the primacy of constitutional values.

Moreover, the ERP test ensures that the rule of law prevails over the rule of religion, preventing arbitrary or unjust practices from being shielded under the guise of religion. It becomes a tool to harmonize competing fundamental rights and promote social justice, especially in a diverse society like India where religious customs often intersect with civil rights. The doctrine thus acts as a constitutional check, ensuring that religious freedom does not become a license for oppression or exclusion.

Criticism:

Further, critics argue that the ERP doctrine infringes on religious autonomy, as it allows the State (through courts) to define religious tenets, thereby undermining the self-governance of religious communities. In some cases, the doctrine has even been used to nullify progressive laws. A notable example is the Dawoodi Bohra case (1962), where the Supreme Court struck down a law that restricted excommunication, thereby unintentionally enabling social ostracism under religious cover. Such decisions reveal the risk of the doctrine being misapplied, potentially thwarting the very goal of social reform.

Another significant challenge lies in the lack of clarity and consistency in applying the ERP test. There is often no consensus even among followers of a particular religion about what constitutes an essential practice. This makes the doctrine highly subjective, lacking fixed parameters or a uniform standard of interpretation, which in turn invites legal uncertainty and potential arbitrariness in judicial decisions.

Right to manage religious affairs

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

Article 26 protects collective freedom of religion by guaranteeing the rights of religious denominations and their sections. This collective freedom is subject to public order, morality, and health but not to other provisions relating to Fundamental Rights (like in 25). The rights under Article 26 include:

1. Establishment and Maintenance of Institutions: Every religious denomination or section thereof has the right to establish and maintain institutions for religious and charitable purposes.
2. Management of Affairs: It has the right to manage its own affairs in matters of religion.
3. Ownership and Acquisition of Property: It has the right to own and acquire movable and immovable property.
4. Administration of Property: It has the right to administer such property in accordance with law.

The Supreme Court i*n SP Mittal vs Union of India, 1983* has established a set of criteria to determine whether a group can be considered a religious denomination within the Hindu religion. These criteria are:

- **Collection of Individuals with a System of Beliefs:** A religious group must comprise individuals who follow a shared system of beliefs or doctrines aimed at their spiritual well-being. Such a system may include practices, rituals, and disciplines that guide members in attaining their spiritual goals.
- **Common Organization:** The group must have a common organization or structure that unites its members. This can include a central authority, a governing body, or a set of rules that govern the group's activities.
- **Distinctive Name:** The group must be designated by a distinctive name that identifies it as a distinct religious entity. This name can be a title, a label, or a description that sets the group apart from other religious groups.

In the context of the Ramakrishna Mission and Ananda Marga, the Supreme Court has held that both groups satisfy these criteria and can be considered religious denominations within the Hindu religion.

In **M. Ismail Faruqui vs Union of India (1994)**, the Supreme Court addressed the question of whether the State could acquire religious property. The case involved the acquisition of a mosque, and the Court ruled

that a mosque is not an essential component of Islam. Therefore, its acquisition by the State did not violate the right to religious freedom under Article 26 of the Constitution. The judgment was based on the **doctrine of essentiality**, which protects only those religious practices or institutions that are indispensable to the faith.

Right against taxation for promotion of any particular religion

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

Article 27 provides that no person shall be compelled to pay taxes for the promotion or maintenance of any particular religion or denomination. It reinforces the principle of secularism by ensuring that the State remains neutral and does not favour one religion over another. While tax revenues cannot be used exclusively for a specific religion, they may be used in a neutral manner for the promotion or maintenance of all religions collectively, thereby upholding equality in religious matters.
In the Shirur Mutt case, the Supreme Court clarified that Article 27 prohibits only the levy of taxes and not fees. The purpose of a fee is to control the secular administration of religious institutions, not to promote or maintain religion. Therefore, a fee can be levied on pilgrims to provide them with special services or safety measures, as this is not considered a promotion or maintenance of religion.
Similarly, in *Suresh Chandra Chiman Lal Shah vs Union of India* (1975), the Delhi High Court addressed the challenge to the government's celebration of the 2500th anniversary of Mahavir. The Court ruled that commemorating and honouring great figures like Mahavir, who form part of India's cultural and historical heritage, does not amount to the promotion of any particular religion and therefore does not infringe Article 27.

Rights related to religious instruction

> Article 28: Freedom from attending religious instruction
> (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
> (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

Article 28 of the Constitution deals with freedom regarding religious instruction and worship in educational institutions. It prohibits religious instruction in institutions wholly maintained by State funds but allows exceptions for institutions established under endowments or trusts that require such instruction. Further, no student in a State-recognized or State-aided institution can be compelled to attend religious instruction or worship without their consent, and in the case of minors, without the consent of their guardian. This provision upholds secularism while safeguarding individual freedom of choice.

Article 28 aims to ensure the separation of religious instruction from educational institutions funded by the State, while also respecting the freedom of individuals to choose their participation in religious activities within these institutions. It distinguishes between four types of educational institutions:

1. Institutions wholly maintained by the State.
2. Institutions administered by the State but established under any endowment or trust.
3. Institutions recognized by the State.
4. Institutions receiving aid from the State. In institutions wholly maintained by the State, religious instruction is entirely prohibited. In institutions administered by the State but established under an endowment or trust, religious instruction is permitted. For institutions recognized by the State and those receiving aid from the State, religious instruction is allowed on a voluntary basis.

Uniform Civil Code vs Religious Freedom: A crucial debate in constitutional law is reconciling Article 44's Directive Principle of a Uniform Civil Code (UCC) with the Fundamental Right to freedom of religion. The UCC aims for **common personal laws** irrespective of religion to ensure equality (e.g. in marriage, inheritance), while Article 25 guarantees the right to **profess, practice and propagate** one's faith. The Supreme Court has observed that a UCC, if enacted, **should not outright override essential religious practices** but rather balance community customs with fundamental rights. In cases like *Sarla Mudgal v. Union of India* (1995), the Court urged the government to move toward a UCC to curb injustice (e.g. polygamy or instant divorce) faced by women, noting that personal law cannot negate rights to equality and dignity. However, the implementation of UCC is left to the legislature's wisdom, given India's pluralism. Thus, while the Constitution envisions a UCC for national integration, it must be pursued with caution so as not to trample valid religious freedoms – harmonizing **social reform** with **cultural rights**.

Cultural and Educational Rights: ARTICLES 29-30

The Cultural and Educational Rights enshrined in the Indian Constitution are vital for protecting the interests of linguistic and religious minorities. They are fundamental in preserving the country's cultural diversity and ensuring that all communities, including marginalized groups, have the opportunity to safeguard and promote their heritage. Articles 29 and 30 specifically guarantee these rights, with Article 29 focusing on the protection of cultural identity and Article 30 granting minorities the right to establish and administer educational institutions. Together, these provisions uphold India's pluralism and maintain the richness of its social fabric. Key differences between them are:

- **Scope**: Article 29 focuses on the cultural and educational rights of minorities, while Article 30 specifically deals with the right to establish and administer educational institutions.
- **Objectives**: Article 29 aims to preserve minority cultures, while Article 30 ensures the establishment and administration of educational institutions by minorities.
- **Applicability**: Article 29 applies to any section of citizens having a distinct culture, language, or script, while Article 30 is specifically for religious and linguistic minorities

Rights of 'Any section of the citizens' in certain cases

Article 29: Protection of interests of minorities

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

The Constitution, under Article 29, is designed to protect the cultural and educational rights of minority groups. The main aim of this article is to safeguard the distinct language, script, and culture of any section of citizens residing in the territory of India. This includes both religious and linguistic minorities. The article is not limited to minorities only, as the term "any section of citizens" includes both minority and majority groups (*TMA Pai Case 2002*). This right is absolute and cannot be subject to reasonable restrictions for the general public interest.

Jallikattu case:
Jallikattu is a traditional bull- taming sport, practiced in Tamil Nadu, particularly during the Pongal festival. In Jallikattu, bulls are released into an arena, and participants attempt to tame them by grabbing their hump and holding on for a certain distance or time. The sport has a long history, with references dating back to ancient times, and is considered a significant part of Tamil culture and heritage. The controversy surrounding Jallikattu stems from the concerns over animal cruelty. Animal rights activists argue that sport inflicts unnecessary pain and suffering on the bulls, leading to injuries and fatalities. The issue reached the Supreme Court around the legality of the traditional bull-taming sport in Tamil Nadu. Initially, in 2014, a division bench of the Supreme Court outlawed Jallikattu and bullock cart races in Tamil Nadu and Maharashtra, citing concerns over cruelty to animals. In response, the Tamil Nadu government enacted the Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017 using its powers under Entry 17 of the Concurrent List of the Constitution, which allows both the Union and State legislatures to make laws on the "prevention of cruelty to animals".

This led to a legal battle challenging the amendment. The Supreme Court of India upheld the practice of Jallikattu in Tamil Nadu, ruling that it is protected as a cultural right under Article 29(1) of the Constitution. The court's decision emphasized that the amendments aimed to reduce cruelty to animals during these events and that the question of whether Jallikattu is an integral part of Tamil culture, should be decided by the legislature, not the judiciary.

Difference between Article 29(2) and Article 15(1)
While both articles deal with preventing discrimination, Article 29(2) is more narrowly focused on prohibiting discrimination in admission to educational institutions, while Article 15(1) has a broader scope in prohibiting discrimination by the state across various spheres. Key distinctions between them are:

- Scope: Article 15(1) prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth in general, while Article 29(2) specifically prohibits denial of admission to educational

institutions maintained or aided by the state on grounds of religion, race, caste, language, or any of them.

- Parties covered: Article 15(1) prohibits discrimination by the state, while Article 29(2) prohibits discrimination by the state and other educational institutions.
- Grounds of discrimination: Article 15(1) prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth, while Article 29(2) does not explicitly mention discrimination on the grounds of sex or place of birth.
- Purpose: The purpose of Article 29(2) is to ensure that minority communities have access to state-run or state- aided educational institutions, while Article 15(1) aims to provide a broader guarantee of equality.

Rights related to Minority Educational Institutions:

Article 30: Right of Minorities to Establish and Administer Educational Institutions
(1) All minorities shall have the right to establish and administer educational institutions of their choice.
*(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fi xed 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.

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.
* Inserted by the 44th Amendment,1978

Article 30 grants the right to all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. Article 30(1A), added by the 44th Amendment, 1978, ensures that the state cannot arbitrarily acquire the property of minority-run educational institutions without providing them fair compensation. It has three key provisions:

- **Right to Establish and Administer Educational Institutions**: All minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice.
- **Compensation for Acquisition of Property**: In the event of a compulsory acquisition of property of an educational institution established and administered by a minority, the State must ensure that the amount fixed for the acquisition does not restrict or abrogate the right guaranteed under Article 30(1).
- **Non-Discrimination in Aid**: The State shall not discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language while granting aid.

Minority educational institutions in India can be broadly classified into three types based on their relationship with the state:

- **Institutions that seek recognition and aid from the state:** These institutions are subject to the state's regulatory power regarding syllabus, academic standards, discipline, sanitation, and employment of teaching staff .
- **Institutions that seek only recognition from the state and not aid:** The right of minority communities to establish and administer educational institutions under Article 30 of the Constitution is not contingent on state recognition through an enabling statute. However, these institutions must still comply with regulatory provisions to ensure they meet national standards of excellence.
- **Institutions that neither seek recognition nor aid from the state**: These institutions are free to administer their affairs but are subject to general laws like contract law, labour law, industrial law, tax law, and economic regulations.

Unaided minority institutions enjoy wide autonomy in their functioning. In **T.M.A. Pai Foundation vs State of Karnataka (2002)**, the Supreme Court held that neither the government nor universities can interfere in their internal affairs. These institutions have the right to frame their own admission procedures, provided they remain fair, transparent, and non-exploitative. While the State may prescribe minimum qualifications for teachers and students to ensure academic standards, it cannot control or dictate the entire admission process.

However, minority educational institutions that receive government aid are subject to greater state regulation. While they retain their minority status, Articles 28 and 29(2) of the Constitution come into play, requiring them to admit a reasonable proportion of non-minority students.

Minority Educational Institutions: Significance and Challenges

Minority Educational Institutions (MEIs) are established and managed by religious or linguistic minorities to preserve and promote their unique cultural, linguistic, or religious identity. Recognized under Article 30(1) of the Constitution, MEIs empower minorities to create institutions that reflect their values and traditions, contributing to India's pluralistic society.

The significance of MEIs lies in their role in cultural and linguistic preservation and social inclusion. They provide marginalized communities with better access to quality education, helping reduce educational disparities. Moreover, MEIs introduce innovation and diversity to the educational landscape, offering perspectives rooted in their unique heritage.

However, the establishment and regulation of MEIs present several challenges. A key issue is balancing autonomy with regulatory oversight, particularly concerning admissions, curricula, and fee structures. Many MEIs also face financial challenges, relying on limited community resources. Moreover, inconsistencies in defining minority status at the state level create legal and administrative hurdles.

Political and social sensitivities further complicate MEIs' operations. While they aim to protect minority rights, there is a risk of isolation, potentially hindering broader social integration. Additionally, MEIs must ensure they maintain quality standards while remaining true to their cultural

ethos, and they sometimes clash with state reservation policies, raising concerns about equality and access.

In conclusion, MEIs are crucial to India's vision of an inclusive society, offering opportunities for marginalized groups and enriching education. A balanced policy approach is necessary to ensure their sustainability and integration with the broader educational system.

Reservation Policies in Minority Educational Institutions: The reservation policy in minority institutions has been shaped by two famous landmark cases. In the case of St. Stephen's College vs University of Delhi (1992), the Supreme Court held that the minority aided educational institutions may preserve up to 50% of their seats for candidates from their own community and give them preference in admission. This decision was based on the need to maintain the minority character of the institution and to ensure that it remains a haven for the community it was established to serve.

In contrast, the case of *P.A. Inamdar vs State of Maharashtra, 2005* took a different approach. A seven-judge bench of the Supreme Court ruled that the policy of reservation in admission cannot be made applicable to minority institutions. This decision was based on the principle that minority institutions have the autonomy to manage their own affairs and make decisions regarding admissions and employment without interference from the state.

The key takeaway from these cases is that minority institutions have a significant degree of autonomy in managing their own affairs, including admissions and employment. While the state has a role to play in ensuring that these institutions are accessible to all, the courts have consistently emphasized the importance of preserving the unique character and identity of these minority institutions.

AMU's Minority Status Case

In a 4:3 majority ruling, a seven-judge Constitution Bench of the Supreme Court overruled the 1967 S. Azeez Basha v. Union of India verdict, which had denied minority status to Aligarh Muslim University (AMU). The earlier judgment claimed AMU was established by Parliament through the AMU Act, 1920, and not by the Muslim community. The Court has now clarified that being established through legislation does not prevent an institution from claiming minority status under Article 30(1).

Chief Justice D.Y. Chandrachud held that "established" in Article 30(1) must be interpreted broadly. Courts must look into the origin of the institution, the idea behind it, who initiated it, and how it was funded or supported—rather than just relying on legal formalities in a statute. This ensures that constitutional rights are not overshadowed by technical legislative language.

The ruling also clarified that minority institutions need not be administered by minorities to retain their status. Administration flows from establishment; it is not a precondition. Even if government regulations later alter administration, the original minority intent still holds importance.

The court added that institutions created before the Constitution came into effect can also claim minority status. The key test lies in proving that the institution was founded predominantly for the benefit of a minority community, using primary evidence like letters, resolutions, or official records.

While the Supreme Court has not yet decided whether AMU is a minority institution, it has laid down a clear framework for assessing such claims. The matter will now be decided by a regular bench based on these guiding principles.

Right to Constitutional Remedies: Article 32

"An article without which this constitution would be a nullity. It is the very soul of the constitution and the very heart of it" - Dr. B.R. Ambedkar

Article 32 is the cornerstone of Fundamental rights because unlike the American Constitution, where the power of judicial review emerged after the Supreme Court's decision, the Indian Constitution explicitly provides courts with the power to issue writs and grant remedies. It would be meaningless, the Indian founders believed, to confer rights without providing effective remedies for their enforcement. Without it, the declaration of Fundamental rights would be meaningless. Dr. Ambedkar aptly referred to Article 32 as the "heart and soul" of the Constitution (PYQ 2002), stating that the Constitution would be "a nullity" without it. This article guarantees the right to move the Supreme Court for the enforcement of Fundamental rights, ensuring that these rights are not merely declaratory but can be effectively enforced.

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

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

(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.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (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).

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

Article 32 safeguards Fundamental rights through four key provisions. *Firstly*, it guarantees citizens the right to approach the Supreme Court for the enforcement of these Fundamental rights through appropriate legal procedures. *Secondly*, it empowers the Supreme Court to issue orders or writs, such as habeas corpus, mandamus, prohibition, certiorari, and quo warranto, to ensure the enforcement of these rights. *Thirdly*, Parliament has the authority to empower other courts to issue similar directions, orders, and writs. *Fourthly*, it stipulates that the right to move the Supreme Court cannot be suspended except under circumstances provided for by the Constitution, such as during a national emergency as outlined in Article 359. These provisions collectively ensure the protection and enforcement of Fundamental rights.

The Supreme Court has ruled that Article 32 is a basic feature of the Constitution, which means that it cannot be abridged or taken away even by a constitutional amendment. Thus, the right to have Fundamental Rights protected is, in itself, a Fundamental Right.

Emergency and suspension of the Fundamental Right under Article 32

The Constitution allows special curtailment of rights in a national emergency, but the 44th Amendment (1978) sharply limited this. **Article 358** provides that when an Emergency is declared on grounds of war or external aggression, **Article 19 is automatically suspended** for the emergency's duration – citizens cannot invoke freedoms like speech or movement against any action taken by the State. Meanwhile, **Article 359** permits the President to issue an order suspending the right to enforce specified Fundamental Rights (except Articles 20–21) for the period of Emergency. Notably, after the abuse of Emergency (1975–77), the Constitution was amended so that **rights to life and personal liberty (20 & 21) can never be suspended**, even during Emergency.

The Supreme Court's infamous *ADM Jabalpur (1976)* ruling – which had upheld even suspension of habeas corpus – was explicitly denounced in the *KS Puttaswamy (2017)* judgement. Today, even under Emergency, courts can review detentions and no citizen can be stripped of life or liberty without lawful authority. Thus, Emergency provisions strike a balance: they permit temporary suspension of certain rights for national security, but **core human rights remain inviolable**, ensuring a basic sanctity of Part III.

Writs under Article 32:

A writ can be defined as a written order issued by a court of higher authority. It is granted to a lower-level court or to an individual in the event of a breach of a citizen's basic rights. The Constitution of India has empowered the Supreme Court and the High Courts to issue writs under Articles 32 and 226 respectively. These were borrowed from the English Laws where they were known by the name of '**Prerogative Writs**'. There are five types of writ petitions. Let's learn about them one by one.

1. Habeas Corpus:

The Latin meaning of the term Habeas Corpus is "**To have the body of**" It serves to protect individual liberty from unlawful imprisonment. It allows the Supreme Court or High Courts to order a person detaining another to bring the detained person before the court. The purpose is for the court to review the legality and reasons for their detention. If the court determines that the detention is unlawful, the detained individual must be released. This legal writ serves as a crucial protection of personal freedom against unjust and arbitrary imprisonment. This writ applies to both public and private authorities. However, Habeas Corpus cannot be issued when the detention is lawful, when it concerns contempt of a legislature or a court, when the detainment is ordered by a competent court, or when it falls outside the jurisdiction of the court.

Principle of 'Locus Standi'

Locus standi, a Latin term, refers to the legal standing or the right to bring a particular lawsuit or legal

action. It is a concept in law that determines whether a person has sufficient interest in a case to justify bringing it to the court.

2. Mandamus:
The literal meaning of this writ is "**We command**." It refers to a court order asking a public official or entity to fulfill official duties that they have neglected or declined to perform. This legal directive can be directed at various entities including public bodies, corporations, lower courts, tribunals, or government agencies (PYQ 2022), ensuring that they execute their responsibilities as required by law. However, the writ of mandamus cannot be issued in the following situations:

- Against private individuals or bodies; (PYQ 2022)
- To enforce departmental instructions that do not have statutory authority; When the duty is discretionary rather than mandatory;
- To enforce a contractual obligation;
- Against the President of India or state Governors;
- Against the Chief Justice of a High Court acting in a judicial capacity.

Do You Know?
"Continuing Mandamus" is a special type of writ developed by the Supreme Court, similar to Public Interest Litigation (PIL). It was first used in Vineet Narain v. Union of India (1997). This writ ensures that during a court-monitored investigation, the investigating agency reports directly to the court instead of the government. The court keeps monitoring the investigation until it is satisfied. Once the chargesheet is filed, the writ loses its effect. It is called "continuing mandamus" because the investigation remains under continuous court supervision.

3. **Prohibition:** The literal meaning of "Prohibition" is "To forbid." A higher court issues a Prohibition writ against a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction it does not possess (PYQ 2024). This writ directs inactivity, preventing the lower court or tribunal from taking any action that is beyond its jurisdiction.
The writ of Prohibition can only be issued against judicial and quasi-judicial authorities. It cannot be issued against administrative authorities, legislative bodies, or private individuals or bodies. For example, the writ of Prohibition can be issued to prevent an inferior court or tribunal from deciding a case without jurisdiction or to stop them from acting against natural justice.

4. Certiorari: Certiorari, in simple terms, means to be informed or certified. It is a legal order issued by a higher court to a lower court or tribunal. This order serves two main purposes: **firstly**, to transfer a case from the lower court to itself, and **secondly,** to cancel or nullify the lower court's decision in a case. Certiorari is typically issued when the lower court has exceeded its jurisdiction, lacks jurisdiction altogether, or has made a legal error. Unlike the writ of prohibition, which only prevents action, certiorari can both prevent and correct legal errors. Thus, Writ of Prohibition restrains a tribunal or court from continuing ahead in excess of jurisdiction, whereas certiorari requires the record or the order of the court

to be sent up to the High Court to have its legality inquired into, and if necessary to have the order quashed.

Initially, this writ could only be used against judicial and quasi-judicial bodies and not against the administrative authorities. However, in 1991, the Supreme Court expanded its scope to include administrative authorities that affect individuals' rights. It is important to note that the certiorari cannot be used against legislative bodies or private individuals or organizations, similar to prohibition.

Can Writ of Certiorari be issued to coordinate or superior courts?

The Supreme Court clarified this in the Rupa Ashok Hurra case(2002):

- A High Court cannot issue a writ to another High Court.
- One Bench of a High Court cannot issue a writ to another Bench of the same High Court.
- A High Court cannot issue a writ of certiorari to the Supreme Court.
- While the Supreme Court can correct High Court judgments in its appellate jurisdiction, High Courts are not considered inferior courts.
- Even the Supreme Court cannot issue a writ under Article 32 to a High Court.
- Within the Supreme Court, neither a smaller Bench nor a larger Bench can issue a writ under Article 32 to another Bench of the Supreme Court.

5. **Quo-Warranto**: "Quo-Warranto" means "by what authority or warrant." It is issued by the Supreme Court or High Courts to prevent someone from illegally holding a public office. This writ allows the court to investigate the legitimacy of someone's claim to a public office. It can only be used when the office in question is a substantive public office of a permanent nature, established either by law or by the Constitution. It cannot be used against private or ministerial positions. Unlike other types of writs, Quo-Warranto can be requested by any concerned individual, not just the person directly affected by the alleged usurpation (PYQ 2022).

Difference between Writs issued by Supreme and High Courts:

The Supreme Court and the High Courts differ in their writ jurisdictions in several key ways. Firstly, the Supreme Court can issue writs solely for enforcing Fundamental rights, while a High Court can do so for both Fundamental rights and other legal rights, making its jurisdiction broader in this regard. Secondly, the Supreme Court can issue writs across all of India, whereas a High Court can only issue them within its territorial jurisdiction, extending beyond only if the cause of action arises within that territory. This gives the Supreme Court a wider territorial reach for issuing writs. Thirdly, the Supreme Court must entertain petitions under Article 32 as it is a Fundamental right, whereas a High Court's jurisdiction under Article 226 is discretionary, allowing it to refuse petitions. This makes the Supreme Court a staunch protector of Fundamental rights, distinct from the discretionary role of High Courts under Article 226.

Public Interest Litigation (PIL) and FR Enforcement: Traditionally, only an aggrieved person could approach courts for violation of their rights. However, the Supreme Court relaxed this rule in the late 1970s–80s, ushering in the era of **Public Interest Litigation**. Through landmark cases like *SP Gupta vs*

Union of India (1981), the Court held that **any public-spirited individual or NGO can file a writ petition under Article 32 or 226 on behalf of those who cannot approach the court** (for example, bonded labourers, inmates, or impoverished citizens). This liberalized *locus standi* doctrine meant that even letter petitions and media reports were treated as PILs by the courts. PIL has vastly expanded the enforcement of Fundamental Rights – it enabled judicial intervention to improve prison conditions, release undertrial prisoners (as in *Hussainara Khatoon*, 1979), ban hazardous child labor, protect the environment, and hold authorities accountable to perform their constitutional duties. In essence, PIL became a tool for **social justice**, making the judiciary more accessible and rights more real for the marginalized. It illustrates the living nature of Article 32 as "the heart and soul" of the Constitution, by not only providing a remedy for individual grievances but addressing **collective or diffuse rights violations** in society.

Other Rights under Part III

Beyond the Fundamental rights enshrined in Part III of the Indian Constitution, there are additional provisions that deal with Martial law and Parliament's power, impacting the Fundamental Rights.

Right to Property—No Longer a Fundamental Right

*Article 31: Compulsory acquisition of property * Omitted by the 44th Amendment, 1978

The right to property was originally a Fundamental right in India, enshrined in Article 19(1)(f) and Article 31 of the Indian Constitution. Article 19(1)(f) guarantees every citizen the right to acquire, hold, and dispose of property within the territory of India. Article 31, on the other hand, guaranteed every person, whether citizen or non-citizen, the right against deprivation of their property, ensuring that no person could be deprived of their property except by authority of law. This Fundamental Right was subject to certain conditions, including that the acquisition or requisition of property must be for a public purpose and must provide for payment of compensation to the owner.

However, the right to property has been a contentious issue in India, leading to numerous constitutional amendments and Supreme Court judgments. The 44th Amendment, 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1)(f) and Article 31 from Part III of the Constitution. Instead, a new Article 300A was inserted in Part XII, which states that, no person shall be deprived of their property except by authority of law. Thus, it is a legal right available to any person (PYQ 2021) As a constitutional right, the right to property now has different implications compared to its Fundamental Right status. It can be regulated or modified by ordinary laws of the Parliament without requiring a constitutional amendment. Additionally, it protects private property against executive action but not against legislative action. In case of violation, the aggrieved person cannot directly move the Supreme Court under Article 32 for its enforcement but can move the High Courts under Article 226.

Although the Fundamental right to property has been abolished, certain provisions in Part III still guarantee the right to compensation in specific cases, such as when the State acquires the property of a minority educational institution or when the State acquires land within the statutory ceiling limits. These

provisions were added by the 44th Amendment, 1978 and the 17th Amendment, 1964, respectively. Overall, the evolution of the right to property in India reflects the ongoing efforts to balance individual property rights with the need for public welfare and economic justice. Articles 31A, 31B, and 31C have been retained as exceptions to the Fundamental rights. These articles were inserted through various constitutional amendments to provide specific protections to certain laws and policies.

Rights related to acquisition of property, etc.

*Article 31A: Saving of laws providing for acquisition of estates, etc.
**(1) Notwithstanding anything contained in article 13, no law providing for—
(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by ***[article 14 or article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:
****Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.
(2) In this article, —
(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—
(i) any jagir, inam or muafi or other similar grant and in the States of *****[Tamil Nadu] and Kerala, any janmam right;
(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;
(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under proprietor, tenure-holder, ******[raiyat, under-raiyat] or other intermediary and any rights or privileges in respect of land revenue.
* Inserted by the 1st Amendment, 1951
** Substituted by the 4th Amendment, 1955
*** Substituted by the 44th Amendment, 1978
**** Inserted by the 17th Amendment, 1964
***** Substituted by the Madras State (Alteration of Name) Act, 1968
****** Inserted by the 4th Amendment, 1955

Article 31A safeguards specific laws from being challenged on the grounds of violating the Fundamental rights outlined in Article 14 and Article 19. These laws pertain to areas like agricultural land reforms and industry, covering actions such as the acquisition of estates, taking over property management, amalgamation of corporations, and modifying mining leases. Notably, Article 31A does not grant absolute immunity to state laws from judicial review unless they have been approved by the President. Moreover, it ensures compensation at market value when the state acquires land held for personal cultivation within the statutory ceiling limit. This provision serves to balance the rights of individuals with the broader societal and developmental goals outlined in the Constitution.

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

The 1st Amendment, 1951 made significant changes to the Fundamental Rights chapter of the constitution. One key amendment was the addition of the Ninth Schedule (PYQ 2003, 2019) which provided immunity from judicial review for laws included in it. Article 31B grants the legislature the power to include certain laws in the Ninth Schedule through constitutional amendments. These laws, once included, are protected from judicial review, ensuring their validity even if they appear to violate Fundamental rights. *In I.R. Coelho case, 2007*, the Supreme Court addressed the issue of whether Article 31B violated the basic structure doctrine. The court ruled that the laws in the Ninth Schedule which violated elements of Part III that were considered part of the basic structure and added to the constitution

after April 24, 1973 (when the basic structure doctrine was announced), could be challenged in the court and potentially struck down (PYQ 2018).

The Story Behind the First Amendment & Ninth Schedule

At independence, the right to property was a fundamental right under Article 19(1)(f), with Article 31 ensuring compensation for land acquisition. However, land reforms required acquiring large estates, leading to legal challenges. In 1951, Sankari Prasad Singh Deo, a zamindar from West Bengal challenged the Bihar Land Reforms Act, 1950. The Patna High Court struck it down, stating, "Any law that would fall foul of fundamental rights is unconstitutional." This verdict threatened the government's land reform agenda.

Prime Minister Nehru responded swiftly, introducing the First Amendment in 1951. He wrote to Chief Ministers, "If the Constitution itself comes in our way, then surely it is time to change that Constitution." The amendment added Articles 31A & 31B, ensuring land reform laws could not be invalidated for violating fundamental rights. It also created the Ninth Schedule, shielding such laws from judicial review. The Supreme Court upheld this move in Sankari Prasad v. Union of India (1951), ruling, "There is a clear demarcation between ordinary law… and constitutional law."

Over time, the Ninth Schedule evolved beyond its original focus on land reforms and came to be seen as a 'constitutional black hole.' Concerns grew over executive overreach, culminating in the Kesavananda Bharati case (1973), where the Supreme Court introduced the Basic Structure Doctrine, limiting Parliament's power to alter core constitutional principles. Granville Austin later noted that the First Amendment "seemed animated more by a desire to conserve the power of the executive than the rights of individuals." Interestingly, the Ninth Schedule was last used in 1995, when twenty-seven state-specific land reform legislations were added in it.

Fundamental Rights & DPSP

Article 31C: Saving of Laws Giving Effect to Certain Directive Principles

* Notwithstanding anything contained in article 13, no law giving eff ect to the policy of the State towards securing **all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by ***article 14 or article 19; ****and no law containing a declaration that it is for giving eff ect to such policy shall be called in question in any court on the ground that it does not give eff ect to such policy:* Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

* Inserted by the 25th Amendment, 1971

** Substituted by the 42nd Amendment, 1976

**** 44th Amendment, 1978, repealed Article 19 (1) (f) and also took out Article 31(1) from Part III and added a separate Article 300A in Chapter IV of Part XII.

**** The words in italics were struck down by the Supreme Court in the Kesavananda Bharati vs State

of Kerala case.

Article 31C was inserted by the 25th Amendment, 1971. It contained two provisions that aimed to protect laws implementing the socialistic directive principles specified in Article 39(b) or (c). The first provision stated that no law implementing these principles would be deemed void on the ground that it contravened the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws) or Article 19 (protection of six rights in respect of speech, assembly, movement, etc.). The second provision prohibited any law containing a declaration that it was for giving effect to such policy from being questioned in any court on the ground that it did not give effect to such a policy. The Supreme Court, in the landmark case of Kesavananda Bharati (1973), declared the second provision of Article 31C as unconstitutional and invalid. The Court held that judicial review is a basic feature of the Constitution and cannot be taken away. However, the first provision of Article 31C was held to be constitutional and valid.

The 42nd Amendment, 1976, extended the scope of the first provision of Article 31C by including within its protection any law to implement any of the directive principles specified in Part IV of the Constitution, not just those in Article 39(b) or (c). However, this extension was declared unconstitutional and invalid by the Supreme Court in the Minerva Mills case, 1980.

Exceptions to rights of certain classes

Article 33: Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.
Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,
(a) the members of the Armed Forces; or
(b) the members of the Forces charged with the maintenance of public order; or
(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counterintelligence; or
(d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, Bureau, or Organization referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Article 33 empowers **Parliament** to restrict or abrogate the application of Fundamental Rights to members of the armed forces, paramilitary forces, police, intelligence agencies, and similar forces. This is done to ensure discipline and the effective discharge of their duties. This power rests solely with Parliament and not with state legislatures, and any law made under this article cannot be challenged in court for violating Fundamental Rights. The **15th Amendment, 1984**, expanded the scope of Article 33 to include employees of intelligence and counterintelligence bureaus, as well as those working in telecommunication systems connected to such forces or organizations.

The Parliament of India has enacted various laws to restrict the Fundamental Rights of the armed forces and other forces charged with maintaining public order. These laws include the Army Act (1950), the Navy Act (1950), the Air Force Act (1950), the Police Forces (Restriction of Rights) Act, 1966, and the Border Security Force Act, among others. These laws impose restrictions on the freedom of speech, right to form associations, right to be members of trade unions or political associations, right to communicate with the press, and right to attend public meetings or demonstrations for the specified personnel. The term "members of the armed forces" also includes non-combatant employees such as barbers, carpenters, mechanics, cooks, chowkidars, bootmakers, and tailors.

Martial Law & Fundamental rights

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.

Article 34 allows for certain restrictions on Fundamental rights when martial law is in force in any area within the territory of India. It empowers Parliament to indemnify any person, including government servants and civilians, for acts done in connection with the maintenance or restoration of order during martial law. This provision is essential to enable military officers and other authorities to effectively deal with situations of insurrection, rebellion, or overthrow of the state.

Importantly, the Supreme Court has held that the declaration of martial law does not ipso facto result in the suspension of the writ of habeas corpus. This means that the Fundamental right to approach the courts for the enforcement of personal liberty is not automatically suspended when the martial law is imposed.

The scope of Article 34 is limited to acts done in connection with the maintenance or restoration of order during martial law. It protects public servants and other individuals from liability for such acts, provided that martial law is in force in the area where the acts were committed. However, the article does not provide blanket immunity for all acts done during martial law.

Martial Law & National Emergency		
Dimensions	**Martial Law**	**National emergency**
Suspension	It suspends the government and ordinary law courts.	It continues the government and ordinary law courts.
Imposition	It is imposed to restore the	National Emergency can be imposed

	breakdown of law and order due to any reason.	only on three grounds (Article 352)- War, External aggregation & Armed rebellion.
Affects	It affects only Fundamental Rights.	National Emergency affects: Centre-State Relationship, Tenure of the Parliament, Fundamental Rights, Legislative powers, and Revenue distribution.
Constitutional Provisions	It is implicit i.e., there is no specific provision in the constitution.	It has specific and detailed provisions in the constitution. It is explicit.

Armed Forces Special Powers Act (AFSPA)

The Armed Forces Special Powers Act (AFSPA) is a colonial legacy. After independence, AFSPA was enacted by the Parliament in 1958 to grant special powers and immunity to the armed forces to maintain public order in areas declared as "disturbed." A disturbed area is defined as one where there are differences or disputes among different religious, racial, language, or regional groups or castes or communities, making it necessary for armed forces to aid civil power.

The Central Government, Governor of the State, or Administrator of the Union Territory can declare a whole or any part of a state or union territory as a disturbed area. The special powers granted to the armed forces under AFSPA include the authority to prohibit gatherings of five or more persons, use force or open fire after giving due warning if a person is found to be in contravention of the law and arrest individuals without warrants based on reasonable suspicion. Additionally, the forces can enter and search premises without warrants and ban the possession of firearms.
Any person arrested or taken into custody must be handed over to the nearest police station along with a report detailing the circumstances that led to the arrest.

The armed forces are immune from prosecution unless the Union Government provides sanctions to the prosecuting agencies. AFSPA is currently in force in Nagaland, Jammu and Kashmir, Assam, Manipur (except Imphal), and parts of Arunachal Pradesh.

Contentious provisions of AFSPA

Section 4(a) of AFSPA, empowers any commissioned officer, warrant officer, non-commissioned officer, or any other person of equivalent rank to fire upon or otherwise use force, even leading to death, against individuals acting in contravention of the law or order issued under this Act. This broad mandate enables excessive use of force and leads to extrajudicial killings and other forms of abuse.

Also, section 6 of AFSPA provides immunity to armed forces personnel from legal proceedings

without the prior sanction of the central government. This immunity shield fosters a culture of impunity, where security personnel operate without fear of accountability for their actions.

While hearing petitions demanding an inquiry into 1,528 deaths in counter- insurgency operations and related incidents in Manipur in 2016, the Supreme Court ruled that the armed forces cannot escape investigation for excesses during the discharge of their duty even in "disturbed areas".

Should AFSPA be repealed?

In 2004, the Central government appointed a five-member committee headed by Justice B. P. Jeevan Reddy to review the provisions of the Armed Forces (Special Powers) Act, 1958 in the northeastern states. After thorough research, the committee firmly recommended that AFSPA should be repealed. The committee also suggested that appropriate provisions should be inserted in the Unlawful Activities (Prevention) Act, 1967 to tackle terrorism, instead of relying solely on AFSPA. The 5th report of the Second Administrative Reforms Commission (ARC) on public order has also recommended the repeal of AFSPA.

In contrast, the Supreme Court upheld the constitutionality of AFSPA in its 1998 judgment in the case of Naga People's Movement of Human Rights vs Union of India. The Court concluded that AFSPA cannot be considered violative of the Constitution and the court provided specific guidelines for the implementation of AFSPA, such as the use of minimal force necessary for effective action by authorized officers.

Power of Parliament to give effect to Fundamental rights

Article 35: Legislation to give effect to the provisions of this Part
Notwithstanding anything in this Constitution,
(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—
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 byParliament; and
ii. for prescribing 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);

(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—In this article, the expression "law in force" has the same meaning as in article 372.

Article 35 lays down that the power to make laws to give effect to certain specified Fundamental Rights, shall vest only in Parliament and not in the state legislatures. This provision ensures uniformity throughout India with regard to the nature of those Fundamental Rights and the punishment for their infringement. The article contains several provisions that outline the specific matters on which Parliament has the authority to make laws.

These matters include prescribing residence as a condition for certain employments or appointments in a state or union territory or local authority or other authority; empowering courts other than the Supreme Court and High Courts to issue directions, orders, and writs for the enforcement of Fundamental Rights; restricting or abrogating the application of Fundamental Rights to members of armed forces, police forces, etc., and indemnifying any government servant or any other person for any act done during the operation of martial law in any area.

Other than this, the Parliament shall have the power to make laws for prescribing punishment for those acts that are declared to be offences under Part III. These include the prohibition of untouchability and trafficking in human beings and forced labour. Additionally, the Parliament shall make laws for prescribing punishment for these acts after the commencement of the Constitution, making it obligatory on the part of the Parliament to enact such laws.

Lastly, any law in force at the commencement of the Constitution with respect to any of the matters specified above is to continue in force until altered or repealed or amended by Parliament. This provision ensures that the Parliament has the authority to make laws on these matters, even if they fall within the sphere of the state legislatures. Overall, Article 35 ensures uniformity and consistency in the laws relating to Fundamental rights across the country, thereby protecting the rights of citizens and maintaining the integrity of the Constitution.

Critique of Fundamental Rights:

One of the primary concerns is the excessive limitations imposed on these rights. Critics argue that the Constitution grants Fundamental Rights with one hand but takes them away with the other through numerous exceptions, restrictions, qualifications, and explanations. This ambiguity makes it difficult for citizens to understand and effectively exercise their rights.

Another significant criticism is that the list of Fundamental Rights is not comprehensive and primarily consists of political rights. It does not include important social and economic rights such as the right to social security, right to work, right to employment, and right to rest and leisure. This omission means that these essential rights are not constitutionally guaranteed, leaving citizens vulnerable to exploitation and economic insecurity. The language used to describe the Fundamental Rights is also criticized for being vague, indefinite, and ambiguous. Phrases like "public order," "minorities," "reasonable restriction," and "public interest" are not clearly defined, making it difficult for citizens to understand their rights and for the courts to interpret them. This lack of clarity also hinders the effective enforcement of these rights.

Furthermore, Fundamental Rights are not sacrosanct or immutable. Parliament can curtail or abolish them, as seen in the abolition of the Fundamental Right to property in 1978. This means that these rights

can become a tool in the hands of politicians with a majority support in Parliament, undermining the democratic system. The suspension of Fundamental Rights during national emergencies (except for Articles 20 and 21) is another significant criticism. This provision places the rights of millions of innocent people in continuous jeopardy, undermining the very fabric of the democratic system.

The judicial process for defending and protecting these rights is also criticized for being expensive and inaccessible to the common man. This hinders the effective enforcement of Fundamental Rights, as citizens are often unable to afford the legal costs associated with pursuing their rights through the courts. Lastly, some critics argue that the chapter on Fundamental Rights lacks a consistent philosophical principle. Sir Ivor Jennings, for instance, stated that the chapter on Fundamental Rights is not based on consistent philosophy. This lack of philosophical foundation creates difficulties for the Supreme Court and High Courts in interpretation

Rights outside Part III

Besides the six Fundamental Rights enshrined in Part III of the Indian Constitution, there are other rights contained in other parts of the Constitution. These rights are known as constitutional rights, legal rights, or non-Fundamental Rights. Examples of such rights include:

- 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).

Although these rights are also enforceable by the courts, they differ from the Fundamental Rights. In the case of a violation of a Fundamental Right, the aggrieved A person can directly move the Supreme Court for its enforcement under Article 32, which, in itself, is a Fundamental Right. However, in the case of a violation of these other rights, the aggrieved person cannot avail of this constitutional remedy. Instead, they can move the High Court through an ordinary suit or under Article 226 (writ jurisdiction of the High Court).

PYQs

Right to privacy is intrinsic to life and personal liberty and is inherently protected under Article 21 of the constitution. Explain. In this reference discuss the law relating to D.N.A. testing of a child in the womb to establish its paternity. 15 PYQ 2024

Approach: Introduce the answer by mentioning the SC's pronouncement of privacy as a fundamental right. In the body, explain the inherent nature of right to privacy within the ambit of Article 21. Then, identify the law related to DNA testing along with its benefits and shortcomings. Conclude with highlighting the need for protecting the right to privacy of the child as underlined by SC in a recent judgement.

In **K.S. Puttaswamy case (2017)**, the Supreme Court ruled that privacy is a fundamental right, protected as an intrinsic part of the right to life and personal liberty under **Article 21**. The right to privacy, while not

explicitly mentioned in the Indian Constitution, is **inherently protected under Article 21** within its multidimensional aspects explained below:

1. Privacy is essential for the exercise of **personal liberty** through autonomy in **decision making** (e.g. choices about relationships, health, personal beliefs, and lifestyle); curbing **unwarranted interference** from state or non-state actors which could **hinder personal growth**; allows a person to **maintain their psychological and emotional space** (right to be left alone), which is essential for living a meaningful life.
2. Privacy ensures **dignity** by protecting the freedom to make choices about **one's body** (reproductive rights, medical care, or sexual orientation); privacy also ensures that individuals can protect their **personal data, communications, and movements** from state intrusion (e.g. right against phone tapping).

D.N.A. testing of a child in the womb to establish its paternity is conducted **within the purview of Section 112** of Indian Evidence Act of 1872. The test has **multidimensional utilities,** such as:

1. It can determine a **child's legal rights** within the family structure, including inheritance and family ties; assist in the adjudication of issues of **custody, maintenance and child support** in case of separation or divorce; could **prevent breakdown of marriage** due to arbitrary allegations of infidelity; act as conclusive proof in establishing **citizenship** and **legal identity**; promote **truth and justice** through use of scientific evidence.
2. **Avoid adverse repercussions** of disputed paternity; can prevent the woman and the child from being subjected to **social stigma** and **discrimination;** provide **accurate medical history** of the child facilitating preventive care (e.g. early identification of hereditary diseases, genetic conditions, or predispositions to certain health risks).

However, there are concerns associated with DNA testing of an unborn child:

1. The right to **privacy of the mother** can be compromised (i.e. public disclosure of personal and intimate information); impingement upon the **genetic privacy of the unborn child**; ethical dilemmas originating from the inability of the unborn child to **consent** and treatment of child as **material object** for the resolution of marital disputes (dehumanization); could be used as a **guise for gender-determination** test (prohibited under PNTD Act, 1994).
2. Potential **psychological trauma** a child may suffer if her legitimacy is questioned (post-birth); **mechanical orders** for DNA tests can harm the **mother's reputation and dignity**; forcing a pregnant woman to undergo DNA testing without her consent can be seen as a violation of her **bodily integrity**; the **absence of an enabling legal framework** limits judicial recourse; the **potential health risks** to the mother and unborn child from invasive testing procedures (e.g. miscarriage, internal bleeding).

As per a recent **SC judgement (Aparna Foradia case**, 2023) a **child's genetic information is part of her fundamental right to privacy** and needs due consideration before resorting to paternity tests.

What do you understand by the concept "freedom of speech and expression"? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of

expression? Discuss. PYQ 2014

Freedom of speech and expression guaranteed under the constitution goes well beyond spoken words and written texts, but these rights are not absolute. Discuss. MGP 2025

Approach: Introduce the answer by elaborating on the right to freedom of speech and expression. In the first part of the body, elaborate on the expansive nature of freedom of speech and expression. Then, discuss arguments why it is not absolute. In conclusion, mention the importance of the right for a vibrant democracy.

Freedom of Speech and Expression means that every person has the **right to express her views freely without fear of persecution by the State or society. Article 19 (1) (a)** of Indian Constitution provides freedom of expression to every citizen against the State***.**

Right to Expression goes well beyond spoken words and written texts as it is **not a single right** but a **composite right**. It also includes:

1. Right to express one's thoughts through **peaceful action. E.g. Peaceful protest; Freedom of press; Right to information** about government activities.
2. Right to make **informed choices** during elections. E.g. obligation for election candidates to **disclose their financial assets and liabilities**. (**UOI vs Association for Democratic Reforms, 2002**).
3. **Political expression** through the act of voting or abstaining from voting**; Right to cast a negative vote** during elections (**People's Union for Civil Liberties vs UOI, 2003**); Right **to remain silent (Bijoe Emmanuel v. State of Kerala)**

However, despite its expansive scope, right is **not absolute and may be subject to limitations** due to following reasons:

1. To safeguard the **sovereignty and integrity** of India, ensure **security of state.** E.g. **BNS (clause 150) deals with "seditious matters".**
2. To ensure **friendly relations with foreign states, maintain public order, decency and morality, E.g. Nupur Sharma Case**
3. **The Supreme Court** had also reiterated that **hate speeches can't be protected** under freedom of speech and expression. **E.g., Amish Devgan vs UOI 2020).**
4. Every right entails **corresponding duty** also**.** Exercise of right should **satisfy the "Harm Principle" of J. S. Mill** which says, **"Your freedom to swing your fist ends where my nose begins"** E.g. No right to defame others **(section 499/500 of IPC)**

Freedom of speech and expression is crucial for a **vibrant democracy,** acting as the **foundation of all liberties**. The Supreme Court has interpreted this right widely, emphasizing need for adherence to **'principle of proportionality' (Anuradha Bhasin case 2020**)

Points to Ponder based on PYQ:

1. **Right to Vote – Legal vs Fundamental Right:** While political participation is vital in a democracy, the **right to vote** is **not a fundamental right** under the Constitution. It is a **constitutional/statutory right** granted by Article 326 and the Representation of People Act, 1951. The Supreme Court has affirmed that voting is a mere statutory privilege – for example, in *PUCL vs Union of India (2013)* it noted that the right to vote is conferred by law and can be regulated by it. This means citizens can claim voting as a right created by statute, but cannot directly invoke Part III for voting rights. By contrast, aspects like free expression of political views (e.g. the right to **NOTA** or to **campaign**) are protected by Article 19(1)(a). Thus, voting is a crucial right in practice but **not guaranteed as a Fundamental Right** – a distinction often tested in constitutional law.
2. **Censorship of Films:** Unlike print media, cinema in India has been held to a **different standard of free expression**. The Supreme Court in *K.A. Abbas vs Union of India (1971)* upheld prior censorship of films, reasoning that movies have a strong impact on society and thus **pre-screening** under the Cinematograph Act is justified. This means that **films can be subject to reasonable prior restraint**, placing them on a slightly different plane from other forms of speech. The censor board (CBFC) can demand cuts or deny certification to films that violate decency, morality, or security of the State. This ensures that cinema, a powerful audio-visual medium, does not incite hate or violence, while still enjoying protection of Article 19(1)(a).
3. **Doctrine of Severability and Eclipse:** Article 13 empowers courts to invalidate laws contravening Fundamental Rights. Over time, the judiciary evolved two key doctrines to handle such laws. Under the **Doctrine of Severability**, if only a part of a statute is unconstitutional, the court will **sever** (strike down) that offending provision while **upholding the rest** of the law, provided the remainder can function independently. This ensures that valid portions of a law are not sacrificed due to one infirm clause. Meanwhile, the **Doctrine of Eclipse** applies mainly to pre-1950 laws: any existing law that violates fundamental rights is not nullified ab initio but **eclipsed** – i.e., rendered unenforceable against citizens – so long as the incompatibility persists. If a future constitutional amendment or changed circumstance removes the conflict, the law's shadow lifts and it can operate again. These doctrines (articulated in cases like *Bhikaji Narain v. State of M.P.*, 1955) preserve legal continuity while safeguarding rights.
4. **Aadhaar and the Right to Privacy:** The advent of the Aadhaar identity program led to seminal rulings on the scope of privacy under Article 21. In *K.S. Puttaswamy vs Union of India* (2017), privacy was affirmed as an intrinsic Fundamental Right, and in the subsequent *Aadhaar Case* (2018) the Supreme Court applied the **"principle of proportionality"** to state schemes. The Court upheld the core of the Aadhaar Act, 2016 – noting that using Aadhaar for targeted welfare (e.g. PDS, LPG subsidy) is a *legitimate state interest* that serves the rights to life and dignity of the poor. However, it **struck down or read down provisions** that were not proportional to that aim: e.g. mandatory linking of Aadhaar to mobile phones and bank accounts was invalidated as unnecessary for welfare goals, and access to Aadhaar data by law enforcement was tightened. The judgment balanced two facets of Article 21 – **individual privacy vs. socio-economic welfare** – by ensuring Aadhaar's use is voluntary in many contexts and subject to strict data protection. It also prompted the enactment of a Data Protection law. The takeaway is that even beneficial policies must pass constitutional muster: the state cannot compel excessive data disclosure or

surveillance without adequate safeguards, as the right to privacy demands that any encroachment be minimal, lawful, and for a pressing public need.