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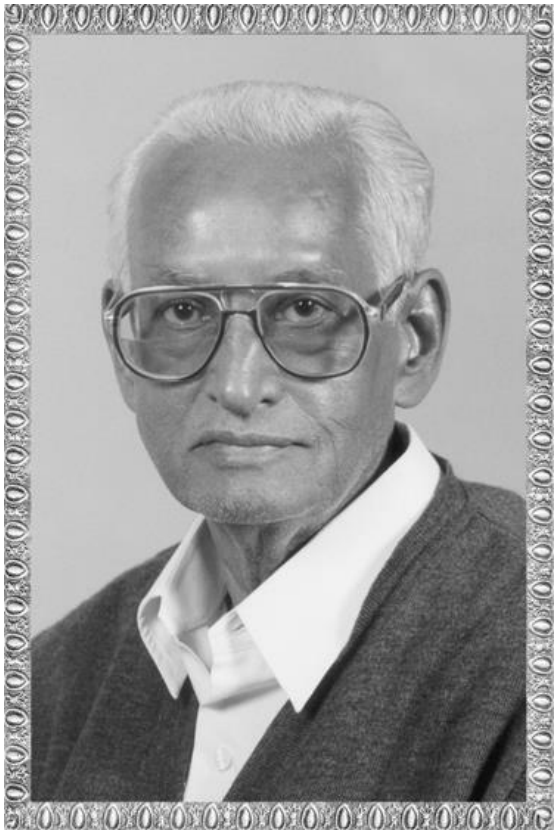

Lt. Shree Chimanbhai Shukla

Shree H.N.Shukla College
2, Vaishali Nagar,
Nr. Amrapali Railway under bridge,
Raiya Road, Rajkot.
Ph. (0281)2440478

Shree H.N.Shukla College
3, Vaishali Nagar,
Nr. Amrapali Railway under bridge,
Raiya Road, Rajkot.
Ph. (0281)2471645

Shree H.N.Shukla College of Legal Studies *"Sky is the Limit"*

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UNIT -1- PREAMBLE

SR. NO.	TOPIC NAME
1.1	PREAMBLE : PURPOSES, OBJECTIVES, IMPORTANCE
1.2	PREAMBLE: WHETHER A PART OF CONSTITUTION , APPLICATION OF BASIC STRUCTURE THEORY OF PREAMBLE
1.3	AMENDMENT MADE IN THE PREAMBLE : EFFECTS THEREOF
1.4	USE OF PREABLE IN INTERPRETATION OF CONSTITUTIONAL PROVISIONS
1.5	SAILENT FEATURES OF THE CONSTITUTION OF INDIA

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1.1 Preamble: purposes, objectives, importance :

26th February 1948 and 26th January 1950 embarks the two remarkable events in the legal chronicles of India. These dates mark the public release of the Constitution and its enforcement, respectively. This resulted in the birth of a new republic in the world. Before delving further into the article, the question that arises is, what does the term 'Constitution' mean? In common parlance, it connotes a document having special legal sanctity. It sets out the legal framework and the predominant functions of all the governing bodies of a State. It further lays down the principles that will govern the operation of these organs.

The fundamental law of the land, i.e., the Constitution deals with the institution of the State and its organs. By setting up a legal framework, the Constitution regulates the relationship between the State and its population. Also, it constrains and restricts the powers bestowed upon the State and its instrumentalities.

The introductory part of the Constitution, which reflects the core constitutional values embodied in the Constitution, is termed the 'Preamble'. It is drafted to explain certain crucial facts and substance before diving into the provisions of the Act or statute. It sets out the aims and objectives of the statute, which it intends to achieve.

The article in its initial part gives a brief introduction regarding the Indian Constitution, its historical background and its salient features. It then explains the meaning of the term 'Preamble' from a general perspective and then discusses the Preamble of the Constitution of India, its history, its objectives, key components and the important amendments done in the Preamble. Further, it deals with important judicial developments pertaining to the Preamble of the Constitution.

Before discussing in detail the preamble to the Indian Constitution, let's have a brief overview of the Constitution.

Constitution of India, 1950

The Indian Constitution is a statute containing provisions which establish the powers of the State and its instrumentalities, citizen's rights, and the relationship between the state and its population. The enforcement date of this remarkable legal document is 26th January 1950. The Constitution of India is undoubtedly a product of research and deliberations of the body of eminent representatives of the people. It is certainly not a product of a political revolution. It is the result of the hard work of these distinguished representatives who wanted to improve the administration of the country and in general, improve the existing system of the country. In order to have a better understanding of any Constitution, having a look at the historical process and events which led to its enactment plays a very significant role. The historical background helps in having a better insight and understanding of its provisions and the purpose behind it. Let's have a brief overview of the critical events that led to the enactment of the lengthiest written Constitution in the world.

Historical Background of the Indian Constitution

Under the British regime, India was divided into two parts, namely, the British provinces and the princely states. In the British ruling period, the Union of India was a combination of more than 550 princely states in addition to approximately 52 per cent of the Indian territory, which was under the direct rule of the Britishers, namely the British provinces. In order to understand the historical background of the Constitution, getting a hold of the events of the colonial period is sufficient, since the main political institutions originated and developed in that period only. Our Constitution has significantly adopted many provisions from the Acts and Rules enacted by the British and the Constitution's Preamble is the result of the principles written by the Constituent Assembly.

The enactment of the Constitution has been a result of various events which are broadly divided under various phases. These events can be classified under the following period as discussed in the below-mentioned subheadings.

1600-1765: The coming of the British

Initially, the British came to India for trading in the year 1600. The Britishers started trading under the company named British East India Company. The company derived its constitution, authorisation to work, privileges, and other powers from a Charter signed by Queen Elizabeth in December 1600. By way of this Charter, the company had a monopoly over trading in India. Initially, the period was 15 years which was later extended. The management of the company was in the hands of a governor and 24 other members who had the authorization to carry out and organise the trade expeditions in India. Such authorization and power were vested through the Charter. Eventually, when the Britishers made so much money with trading, they started establishing their trading centres with the consent of Indian rulers in several places of India. The Britishers even managed to get permission from the Indian rulers to retain their own laws. These concessions gradually paved the way for the Britishers and the Crown to exercise undivided sovereignty throughout British India.

In the year 1601, a new Charter was enacted by the Crown which granted the East India Company legislative power, thereby empowering them to make rules, laws and ordinances for the good governance of the company. This legislative power granted to the company was not a power to legislate or rule a foreign territory but was just restricted to the trading concerns of the company. However, these charters that bestowed the company with various powers were of great significance as these were the gems out of which ultimately the Anglo-Indian Codes were developed. Later on in the year 1609 and 1661 similar powers were granted by the Crown, thereby affirming the earlier charters.

In the year 1726, a new charter was enacted which had great legislative significance. Previously, the legislative powers were vested in the Court of Directors in England. However, these people were not well-acquainted with the prevailing conditions of India. Hence, a decision was taken by the Crown that the law-making power be vested with the ones who are acquainted with the Indian conditions. Accordingly, the Charter gave power to the Governor and a Council that constituted three other members, for formulating bye-laws, rules and ordinances along with penalty provisions in case of contravention of laws. The Charter further established the Mayor's Court in Calcutta, Bombay and Madras, thereby introducing English laws into the Presidencies.

In the second half of the 18th century, the death of Emperor Aurangzeb led to instability in India due to which India became a battleground of rival contesting principalities. Britishers took advantage of this chaotic situation and established themselves as the master of the Indian subcontinent. This gradual shift of power to the Britishers was due to the Battle of Plassey (1857), which was fought between the East India Company and Sirajudullallah (the then Nawab of Bengal). Britishers won this battle and thus the foundation of the British Empire was laid in India.

1765-1858: Beginning of the British Rule

Around 1765, Emperor Shah Alam granted the responsibility of collecting revenue to the East India Company. This eventually led to the handover of the administration of the civil justice system up to a certain extent. This year is often regarded as the year of starting the era of territorial sovereignty by the East India Company over India. However, the company did not start to take over this task of revenue collection immediately, the reason being the unfamiliarity with the revenue collection system. The Britishers decided that for the time being let the Indians perform the task, but they appointed English officers to supervise the working of the system of revenue collection. This system proved very harmful for the Indians as the Britishers started exploiting the Indians.

In the year 1772, a committee was formulated by the Crown to look into the working of the Company, and the results were published after the inquiry. The Crown came to know about the insufficiencies of the company, and hence a new Regulation Act was enacted by the Parliament. This Regulating Act of 1773 holds great importance in the history of the Constitution. It was for the very first time that a right was conferred on the Parliament to regulate the matters of the company. This Act mainly enacted the following things- recognition of the government of Calcutta, change in the Company's Constitution, Presidencies of Madras and Bombay were brought under the Control of Bengal's Governor General, and an establishment of the Supreme Court in Calcutta.

Later on, to remove the ambiguity and irregularities of the Regulating Act of 1773 a new Act, i.e., the Regulating Act of 1781 was passed. This Act came up with certain new provisions like- the exemption of government employees from certain punishment for the actions done while they were on duty, questions pertaining to the jurisdiction, a clarification regarding what laws were to be applied by the Supreme Court provided, and Governors under various capacities were empowered to make laws.

In the year 1784, Pitts India Act was enacted which separated the political affairs from the commercial affairs of the Company. The Court of Directors were authorised to manage the commercial affairs of the company whereas a committee consisting of six members was constituted for managing the political affairs of the Britishers. Later on, the Charter Act of 1813 snatched the monopoly of trading from the British East India Company. The Charter also asserted better control over the power bestowed on the various Councils.

The Charter Act of 1833 in a way centralised the power of the Britishers. It appointed a Governor General Of India, who was previously titled the Governor General of Bengal. A council under his leadership was also formulated which was empowered to make laws and regulations for both Britishers as well as the Indians living in British India. The Act also appointed a law member who had no say in the executive matters and was purely directed to deal with the law matters. The previous laws were called Regulations, however, the Acts from 1833 were the Acts of Parliament.

Thereafter, in 1853 a new Charter was enacted which in a way though not expressly introduced the concept of separation of powers. This Charter of 1853 separated the executive machinery from the legislative machinery. Also, the concept of local representatives was introduced in the Indian Legislature for the first time. These Acts certainly paved the way for the transfer of Indian sovereignty to the Crown almost completely.

1858-1919: End of British East India Company's Rule

The establishment of a double government via the Pitts India Act 1784 failed miserably. The Company was also not having proper control over the affairs of the country and was also losing trade profits in many regions. Simultaneously, the people of India were furious because of the atrocities caused by the Britishers. The first war against the Britishers, i.e., the Sepoy Mutiny of 1857 came as a shock before the Britishers. All these adverse circumstances against the company's ruling led to the enactment of a new Act by the Parliament, which came to be known as the Government of India Act 1858. This Act transferred the ruling of India to the Crown from that of the British East India Company. India was now governed and ruled by Her Majesty. The Crown on its behalf empowered the Secretary of India who was assisted by a Council, comprising 15 members to manage the affairs of India. The Act also constituted the Secretary of the State and the Council as a corporate body which was capable of suing and being sued in India and England. This Act officially established the "direct rule by the Crown".

In the later period, the Indian Council Act of 1861 was enacted, which formed the basis of or the beginning of representative institutions. Indians for the very first time were associated with the matters of government, especially with the work of legislation. This Act holds great importance in Constitutional history. Firstly because it associated Indians with law-making and secondly because it granted power of legislation to the government of Bombay and Madras. In a way, it granted internal autonomy to the Provinces.

In the year 1892, a new Indian Council Act was passed. This Act introduced three important things, namely, the introduction of election systems, the number of members in the Central and Provincial Councils was increased and the Council's functions and tasks were enlarged. This Act laid the foundation of the representative government. However, it still had some differences pertaining to various provisions like an election system, lack of representation for certain people, etc. and hence the Indian Council Act of 1909 was enacted which was also associated with the Morley- Minto Reforms.

The 1909 Act introduced an increase in the size of Legislative Councils for both Central as well as Provincial. The Council was also conferred with the right of holding discussion and moving a resolution on the financial statement, however, they were not conferred with the power of voting.

1919-1947: Introduction to Self Government

This phase holds a remarkable place in Constitutional history as the most important Act, i.e., the Government of India Act, 1919 which was a result of the Montagu Chelmsford Report was passed. The Act established the concept of responsible government along with introducing the idea of federal structure. For the first time, a Public Service Commission was established. It also introduced the concept of dyarchy in the Provinces.

The Act of 1919 had various shortcomings. Along with that, the Britishers faced an increasing demand for formulating better reforms and this resulted in the appointment of the Simon Commission. A report was submitted by the commission, after which the report was discussed at a Round-Table Conference. This Conference has members of the British government as well as the State rulers. After the

recommendations of the report and the discussions made at the conference the Government of India Act, 1935 (hereinafter referred to as Act of 1935).

The Government of India Act, 1935 introduced the dyarchy system at the Central level which was initially established at the Provincial level. The Act further officially marked the beginning of the autonomy of the Provinces. It also established the concept of the federal legislature which was to consist of two houses, namely, the Council of States and the Legislative Assembly. A more stable and regulated government with a better separate legislative system was formulated. Also, the provision for the distribution of legislative power between the centre and the provinces was introduced. Not only this, the Act also established a Federal Court. This court was supposed to have one Chief Justice along with a maximum strength of 6 other judges.

The Indians were still not happy with the Britishers and wanted Swaraj. Hence, the British then sent Sir Stafford Cripps to negotiate with the Indian leaders and to secure their cooperation in the World War. Certain proposals like the making of a constitution body, responsibility for control and defence, etc. were made by the Britishers, however, the Indians rejected them. The Indians wanted the Congress in the Cabinet Government.

Later on, in 1946 the Cabinet Mission came to India with certain recommendations by the British which were accepted. The proposal included the lapse of the paramountcy of the Crown, the setting up of a Constituent Assembly for making the Constitution, the set up of an interim government and the existence of a Union of India constituting both British India as well as the states.

In 1947, the Indian Independence Act was passed. This Act provided the establishment of two independent Dominions, namely, India and Pakistan from the fifteenth of August, 1947. A Governor-General for each Dominion was to be appointed by the King. The Act empowered the Constituent Assemblies of both Dominions to frame laws for their territories. This Act ended the paramountcy of British rule in India. It further stated that until the Dominions frame their respective Constitutions, they were to be ruled by the provisions of the Act of 1935.. Thus, the British rule in India came to an end.

1947-1950: The framing of the new Constitution

With the ceasing of the rule of the Britishers, a new challenge was standing in front of the Indian leaders. They wanted India to stand as an independent nation, along with establishing a democracy based on the principles of equality, justice, liberty and fraternity.

The Constituent Assembly after several debates and meetings, released its first draft of the Indian Constitution in January 1948. The citizens were given eight months to suggest amendments to the draft of the Constitution that was published in 1948. After a sitting of 2 years, 11 months and 18 days, India received its Constitution. Initially, the Constitution was a compilation of 395 articles spread in twenty-two parts and eight schedules.

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Preamble of Constitution of India :

The principle by which the preamble was set was the Objectives Resolution of Jawaharlal Nehru. The ideals were accepted on 22nd January 1947 by the Constituent Assembly. But the Objective Resolution for the Preamble of the Constitution was drafted and transferred to the Constituent Assembly on December 13, 1946, by Jawaharlal Nehru. Within the Indian people, the Preamble of the Constitution indicates the authority's source of the Constitution. The keywords by which the Preamble of India is determined are Socialist, Sovereign, Secular, Democratic, Republic.

Socialist

In the form of some Directive Principles of State Policy, the Constitution of India has socialist content included in the preamble, then after the term, 'socialist' was added in the 42nd Amendment in the year 1976. Here, in the Preamble of the Constitution socialist means democratic socialism which is defined as achieving the socialist goals in an evolutionary, democratic, and non-violent way. It keeps faith in the mixed economy in which both the public sectors and private sectors are present.

Sovereign

The word 'sovereign' as described by the Preamble of the Constitution means that India is not dominated by any external power and the state is having its independent authority. Simply sovereignty means that a state is having independent authority.

Secular

The term 'secular' was added in the 42nd Amendment in the year 1976. Secularism in the Preamble of the Constitution of India is described as all the religions i.e. Buddhism, Hinduism, Sikhism, Islam, Jainism are Christianity are all equal in this state. India is not a state with only one religion.

Democratic

The term 'democratic' was added in the 42nd Amendment in the year 1976, it explains that every citizen of India has the right to vote and select the governments of their choice. The voting right is for all the people who have citizenship in India and are 18 years or above. Economic and social democracy is also included in this.

Republic

The term 'secular' was added in the 42nd Amendment in the year 1976, it explains that the state's head is elected by the people, which means that public power is not a proprietary right and the leaders can be changed by election every 5 years.

Objectives of Preamble :

The Constitution of India reflects a symbol of unity in diversity, uniquely crafted by the makers of the Constitution to adequately protect the interests of every person and community. The striking features of the Constitution, exemplify the herculean task done by the makers to achieve the objectives the Constitution sought to achieve.

As said by Dr. B.R. Ambedkar, *"Constitution is not a mere lawyers' document, it is a vehicle of Life, and its spirit is always the spirit of Age."* The makers of the Constitution desired an ideal model of governance that would serve the country with the needs of its people being the priority. This Constitution, with the farsightedness and visionary leadership of some of the eminent personalities of that time, was framed with the objective of promoting harmony in the country, along with maintaining equality, liberty, justice, and fraternity in the country. This document of significant importance has served the country and worked as a beacon for the nation for the past 75 years.

With a long vision for the future in mind, the objectives that the Constitution sought to achieve are mentioned as under:

Sovereignty

The starting words of the Preamble of the Constitution, i.e., *"we the people of India"*, make a clear announcement that the ultimate sovereignty rests with the people of India and the government and its organs derive its power from the people of India. The word also connotes complete political freedom. A Country free from all external forces and a will of its own.

Socialism

Our Constitution has several provisions that clarify our country's policy of promoting a welfare state, which is free from exploitation in all spheres in existence. The state is duty-bound to work in order to promote social order, where social, economic and political justice supersedes all the institutions of national life. The main motive of socialism is providing *"a basic minimum to all"*.

Secularism

The term means that the state will have no religion and all the religions will have equal protection. The ideal concept of secularism in our country upholds that the state is not guided by any religion or religious consideration.

Justice

The term 'Justice' comprises three elements that complete the definition, which is social, economic, and political. Justice among the citizens is necessary to maintain order in society. Justice is promised through various provisions of Fundamental Rights and Directive Principles of State Policy provided by the Constitution of India.

Equality

The term 'Equality' means no section of society has any special privileges and all the people have been given equal opportunities for everything without any discrimination. It means removing all types of discrimination from society to build a healthy environment for people to live in. Everyone is equal before the law.

Liberty

The term 'Liberty' means freedom for the people to choose their way of life, and have political views and behaviour in society. It means no unreasonable restrictions can be imposed on the citizens in terms of their thoughts, feelings, and views. But liberty does not mean freedom to do anything, a person can do anything but within the limit set by the law. Anything that creates public disorder can not come under liberty. It is important to understand that liberty in no way means 'absolute liberty'. These limits or reasonable restrictions are set by the Constitution to avoid injuries in the name of liberty.

Fraternity

The term 'Fraternity' means a feeling of brotherhood and an emotional attachment to the country and all the people. It refers to a feeling which helps to believe everyone is the child of the same soil and is connected with each other. Brotherhood is above social norms or regulations, it is the relationship above caste, age, or gender. Fraternity helps to promote dignity and unity in the nation. The preamble of the Indian Constitution does not grant any power or superiority to anyone while it gives direction and purpose to the Constitution. It only gives the fundamentals of the Constitution.

Unity and integrity of the nation

The Preamble and the Constitution by emphasising on the word fraternity, make it clear that the country seeks to foster unity amongst its people. In order to retain the independence of our country, which was the gift of our freedom fighters, keeping the unity and integrity of the nation intact is of significant importance.

Components of Preamble of the Indian Constitution

The components of the preamble are:

We the people of India

The opening words of the preamble show that the people of India are the source of authority and that the Constitution of India is the result of the will of the people of India. It means power lies with the citizens to elect their representatives and they also have the right to criticise their representatives.

In the case of *Union of India v. Madan Gopal Kabra (1954)*, the Apex Court opined that the people of India are the source of the Indian Constitution as written in the Preamble.

Sovereign, Socialist, Secular, Republic, Democratic

The Preamble by the will of the people declares India as a 'sovereign', 'socialist', 'secular', 'democratic', and 'republic'. These four terms reflect the nature of the Indian State.

Let's have a brief overview of these terms.

Sovereign

The preamble of the Constitution states that India is a Sovereign State. The term 'Sovereign' means the independent authority of the state. It means the state has control over every subject and no other authority or external power has control over it. So, the legislature of our country has the powers to make laws in the country with restrictions keeping in mind imposed by the Constitution.

Sovereignty, in general, has two types: external and internal. External sovereignty means the sovereignty in International Law which means the independence of the state against other states while internal sovereignty talks about the relationship between the state and the people living in it.

In the case of *Synthetic & Chemicals Ltd. v. the State of Uttar Pradesh (1989)*, the Supreme Court decided that the word 'sovereign' means that the state has the authority to control everything within the restrictions given by the Constitution. Sovereign means supreme or independence. This case helped in differentiating between external and internal sovereign. This case proposed that 'No country can have its own constitution unless it is not sovereign'.

Socialist

The term 'Socialist' was added after the 42nd Amendment, 1976, during the emergency. The term socialist denotes democratic socialism. It means a political-economic system that provides social, economic, and political justice.

Mrs. Indira Gandhi explained socialist as 'equality of opportunity' or 'better life for the people'. She said socialism is like democracy, everyone has their own set of interpretations but in India socialism is a way for the better life of the people.

- In the case of *Excel Wear v. Union of India (1978),* the Supreme Court found that with the addition of the word socialist, a portal was opened to learn the judgments in favour of nationalisation and state ownership of the industry. But the principle of socialism and social justice can not ignore the interest of a different section of the society, majorly the private owners.
- In the case of *D.S. Nakara v. Union of India (1982),* the Court held that *"the basic purpose of socialism is to provide a decent standard of life to the people living in the country and to protect them from the day they are born till the day they die".*

Secular

The term 'Secular' was also added by the 42nd Amendment Act, 1976, during the emergency. The Constitution states India as a secular state as the state has no official religion. The citizens have their own view of life and can choose their religion as they like. The state provides full freedom to the people to practise any religion of their choice. The state treats all religions equally, with equal respect and can not discriminate between them. The state has no right interfering with the people with their choice of religion, faith or idol of worship.

Important Components of Secularism are:

- The right to equality is guaranteed by Article 14 of the Constitution.
- Discrimination on any grounds such as religion, caste, etc is prohibited by Article 15 and 16 of the Constitution.
- Article 19 and 21 of the Constitution discuss all the freedoms of the citizens, including freedom of speech and expression.
- Article 24 to Article 28 covers the rights related to practising religion.
- Article 44 of the Constitution abandoned the fundamental duty of the state to enact uniform civil laws treating all citizens as equal.

In the case of *S.R. Bommai v. Union of India (1994),* the nine-judge bench of Apex Courts found the concept of secularism as the basic feature of the Constitution.

In the case of *Bal Patil v. Union of India (2005),* the Court held that all religions and religious groups must be treated equally and with equal respect. India is a secular state where people have the right to choose their religion. But the state will have no specific religion.

In the case of *M.P. Gopalkrishnan Nair v. the State of Kerala (2005),* the Court stated that the secular state is different from an atheist society, which means the state allows every religion and disrespect none.

Democratic

The term 'Democratic' is derived from the Greek words where *'demos'* means 'people' and *'Kratos*' means 'authority'. These terms collectively mean the government is constructed by the people. India is a democratic state as the people elect their government at all levels, that means, union, state, and local or ground level. Everyone has the right to vote irrespective of their caste, creed or gender. So, in a democratic form of government, every person has a direct or indirect share in administration.

In the case of *Mohan Lal v. District Magistrate of Rai Bareilly (1992)* , the Court stated that Democracy is a philosophical topic related to politics where the people elect their representatives to form a government, where the basic principle is to treat the minority the same way people treat the majority. Every citizen is equal before the law in the democratic form of government.

In the case of *Union of India v. Association of Democratic Reforms (2002),* the Court states that the basic requirement of a successful democracy is awareness of the people. A democratic form of Government can not survive without fair elections as fair elections are the soul of democracy. Democracy also improves the way of life by protecting human dignity, equality, and the rule of law.

Republic

India has a republic form of government as the head of state is elected and not a hereditary monarch like a king or queen. The term 'Republic' is obtained from *'res publica'* that means public property or commonwealth. It means the power to elect the head of the state for a fixed term lies within the people. So, in conclusion, the word 'republic' shows a government where the head of state is elected by the people rather than any birthright. The term as embodied in our Preamble, firmly connotes that the country will be run by the people and not by the wills and whims of the ones elected. Everything and anything shall be legislated, executed and governed by keeping the will of the people of the country as a priority.

Justice, Liberty, Equality and Fraternity

The Preamble further declares to secure all the citizens of the country 'justice', 'liberty', 'equality' and 'fraternity'.

Justice

As discussed earlier also, the term justice is to include social, economical, and political justice.

- Social Justice – Social justice means that the Constitution wants to create a society without discrimination on any grounds like caste, creed, gender, religion, etc. Where people have equal social status by helping the less privileged people. The Constitution tries to eliminate all the exploitations which harm equality in the society.
- Economic Justice – Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status. It means wealth must be distributed on the basis of their work, not with any other reason. Every person must be paid equally for an equal position and all people must get opportunities to earn for their living.
- Political Justice – Political Justice means all the people have an equal, free and fair right without any discrimination to participate in political opportunities. It means everyone has equal rights to access political offices and have equal participation in the processes of the government.

Liberty

The word liberty includes freedom or liberty of thought, expression, belief, faith, and worship.

Equality

The term equality connotes equal status and opportunity to every person.

Fraternity

Lastly, the term fraternity aims to maintain the unity and integrity of the nation along with a pledge to protect the dignity of every individual.

Purposes of Preamble:

The Preamble indicates that the validity behind the constitution is from the people of the country itself. It reflects the Democratic, sovereign and secular character of the country

Indian Preamble nurtures the objectives set out within the scope of the constitution. It sets out clear objectives and goals for all classes of people who strive to achieve equal status

A sovereign country is not dependable on external powers or political influence. a sovereign nation is free from all ties and independent to take decisions on its own for the country's benefit

To preach socialism, a country should provide social, economic and political justice to its citizens. In the words of the Preamble, equality of status and opportunity to the citizens

Every civilisation has the right to worship their faith and beliefs, and The preamble indicates that faith and beliefs invite a way to a more secular environment in the country

The Preamble is a reflection of the democratic nature of the country. A country where the government is defined by the people, people, and people! Republic signifies that the elected head or representative of the country will always be elected and appointed as a king or a monarch. Every individual will get a fair chance to be elected as the head of the nation

Importance of Preamble :

The Constitution's Preamble defines the document's fundamental ideas and philosophy, and the policy aims and objectives that the Constitution's founding authors strived for

In several decisions, the Supreme Court of India has stressed the relevance and value of the Preamble

It incorporates all of the beliefs and aspirations for which the country struggled throughout the British Regime

The Constitution's objective is to bring justice, liberty, equality, and fraternity to its citizens

It is a type of statute primer, and it helps figure out the policy and legislative purposes

It communicates 'for a long time what we had been contemplating or dreaming about'

The Constitution's source is identified as the people of India

The enacting provision, which brings the Constitution into force, is included

The Preamble is essential to any reading of the Constitution

The Preamble begins the Constitution

The Preamble has shaped India's fate

The enacting clause, which puts the Constitution into effect, is also found in the Preamble

It declares the enormous rights and liberties that Indian citizens have as citizens of this country

It establishes the fundamental rights that the Indian people wished to protect for all citizens and the foundational type of governance and politics

It assists the Supreme Court in deciding whether a specific law or piece of legislation is in accordance with the Constitution

1.2 Preamble : whether a part of the constitution, application of Basic Structure theory to the preamble:

The Preamble is the preface of the Constitution. It contains the ideals and principles of the Constitution and reflects the purpose or the objectives that the Constitution sought to achieve. Punit Thakur Das (elected to the central Legislative Assembly) while a debate going on in the Constituent Assembly emphasised on the significance of the Preamble and said that, *"the Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution."*

The question whether the preamble is a part of the Constitution or not was a topic of debates for a long time and was finally settled in the Kesavananda Bharati case (as discussed in the later section). In order to understand whether or not the preamble is a part of the Constitution, the two cases, namely the *Berubari* Case and *Kesavananda Bharati* case play an important role. Initially, the view taken by the highest court was that the Preamble is not a part of the Consitution of India. However, later on, the same was reversed in the Kesavananda *Bhart*i case.

Let's have an overview of the above mentioned two cases.

The Berubari Union and…. v. Unknown (1960)

The *Berubari Case* arose through a presidential reference under Article 143(1) of the Constitution, which was on the implementation of the Indo-Pakistan Agreement related to Berubari Union. The issue before the court was to decide whether Article 3 of the Constitution gives Parliament the power to give any part of the country to a foreign country. The second issue before the court was whether the legislative action necessary for complying with the Nehru-Noon Agreement. However, the relevant part for this article is limited to the question of the Preamble being part of the Constitution, which was also dealt with in this case.

Through this case, the Court stated that 'Preamble is the key to open the mind of the makers' but it can not be considered as part of the Constitution. The court while saying so, relied on a quote by a renowned Professor Willough of America, wherein he has emphasised on the fact that the Preamble to the American Constitution has never been a source of power. The Professor said and I quote *"it has never been regarded as the source of any substantive power conferred on the Government of the United States, or on any of its departments. Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted."*

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Kesavananda Bharati v. State Of Kerala and anr. (1973)

This case created history and holds great importance. A bench comprising 13 judges was constituted to hear this landmark case, wherein the question before the court was, whether the Parliament has the power to amend the Preamble and the extent to which this power can be exercised. Along with this the petitioner also challenged the 24th and 25th Amendment of the Constitution. The Court, in this case, has held that:

1. The Preamble of the Constitution will now be considered as part of the Constitution.
2. The Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.

So, it can be concluded that preamble is part of the introductory part of the Constitution.

After the judgement of the Kesavanand Bharati case, it was accepted that the preamble is part of the Constitution. The court relied on various excerpts from the Constituent Assembly, wherein it was contended that Preamble will be a part of the Constitution. So, as a part of the Constitution, it can be amended under Article 368 of the Constitution, but the basic structure of the preamble can not be amended. Because the structure of the Constitution is based on the basic elements of the Preamble.

Application of Basic Structure theory to the Preamble:

There is no mention of the term "Basic Structure" anywhere in the Constitution of India. The idea that the Parliament cannot introduce laws that would amend the basic structure of the constitution evolved gradually over time and many cases. The idea is to preserve the nature of Indian democracy and protect the rights and liberties of people. This Basic Structure doctrine of the Indian Constitution helps to protect and preserve the spirit of the constitution document.

It was the Kesavananda Bharati case that brought this doctrine into the limelight. It held that the "basic structure of the Indian Constitution could not be abrogated even by a constitutional amendment". The judgement listed some basic structures of the constitution as:

Supremacy of the Constitution

Unity and sovereignty of India

Democratic and republican form of government

Federal character of the Constitution

Secular character of the Constitution

Separation of power

Individual freedom

Over time, many other features have also been added to this list of basic structural features. Some of them are:

Rule of law

Judicial review

Parliamentary system

Rule of equality

Harmony and balance between the Fundamental Rights and DPSP

Free and fair elections

Limited power of the parliament to amend the Constitution

Power of the Supreme Court of India under Articles 32, 136, 142 and 147

Power of the High Court under Articles 226 and 227

Any law or amendment that violates these principles can be struck down by the SC on the grounds that they distort the basic structure of the Constitution.

Evolution of the Basic Structure Concept

The concept of the basic structure of the constitution evolved over time. In this section, we shall discuss this evolution with the help of some landmark judgement related to this doctrine.

Shankari Prasad Case (1951)

In this case, the SC contended that the Parliament's power of amending the Constitution under Article 368 included the power to amend the Fundamental Rights guaranteed in Part III as well.

Sajjan Singh case (1965)

In this case also, the SC held that the Parliament can amend any part of the Constitution including the Fundamental Rights.

It is noteworthy to point out that two dissenting judges, in this case, remarked whether the fundamental rights of citizens could become a plaything of the majority party in Parliament.

Golaknath case (1967)

In this case, the court reversed its earlier stance that the Fundamental Rights can be amended.

It said that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13 and that to amend the Fundamental rights a new Constituent Assembly would be required.

Also stated that Article 368 gives the procedure to amend the Constitution but does not confer on Parliament the power to amend the Constitution. This case conferred upon Fundamental Rights a 'transcendental position'.

The majority judgement called upon the concept of implied limitations on the power of the Parliament to amend the Constitution. As per this view, the Constitution gives a place of permanence to the fundamental freedoms of the citizens.

In giving to themselves the Constitution, the people had reserved these rights for themselves.

Kesavananda Bharati case (1973)

This was a landmark case in defining the concept of the basic structure doctrine.

The SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be abrogated even by a constitutional amendment."

The judgement implied that the parliament can only amend the constitution and not rewrite it. The power to amend is not a power to destroy.

This is the basis in Indian law in which the judiciary can strike down any amendment passed by Parliament that is in conflict with the basic structure of the Constitution.

Indira Nehru Gandhi v. Raj Narain case (1975)

Here, the SC applied the theory of basic structure and struck down Clause(4) of Article 329-A, which was inserted by the 39th Amendment in 1975 on the grounds that it was beyond the Parliament's amending power as it destroyed the Constitution's basic features.

The 39th Amendment Act was passed by the Parliament during the Emergency Period. This Act placed the election of the President, the Vice President, the Prime Minister and the Speaker of the Lok Sabha beyond the scrutiny of the judiciary.

This was done by the government in order to suppress Indira Gandhi's prosecution by the Allahabad High Court for corrupt electoral practices.

Minerva Mills case (1980)

This case again strengthens the Basic Structure doctrine. The judgement struck down 2 changes made to the Constitution by the 42nd Amendment Act 1976, declaring them to be violative of the basic structure.

The judgement makes it clear that the Constitution, and not the Parliament is supreme.

In this case, the Court added two features to the list of basic structure features. They were: judicial review and balance between Fundamental Rights and DPSP.

The judges ruled that a limited amending power itself is a basic feature of the Constitution.

Waman Rao Case (1981)

The SC again reiterated the Basic Structure doctrine.

It also drew a line of demarcation as April 24th, 1973 i.e., the date of the Kesavananda Bharati judgement, and held that it should not be applied retrospectively to reopen the validity of any amendment to the Constitution which took place prior to that date.

In the Kesavananda Bharati case, the petitioner had challenged the Constitution (29th Amendment) Act, 1972, which placed the Kerala Land Reforms Act, 1963 and its amending Act into the 9th Schedule of the Constitution.

The 9th Schedule was added to the Constitution by the First Amendment in 1951 along with Article 31-B to provide a "protective umbrella" to land reforms laws.

This was done in order to prevent them from being challenged in court.

Article 13(2) says that the state shall not make any law inconsistent with fundamental rights and any law made in contravention of fundamental rights shall be void.

Now, Article 31-B protects laws from the above scrutiny. Laws enacted under it and placed in the 9th Schedule are immune to challenge in a court, even if they go against fundamental rights.

The Waman Rao case held that amendments made to the 9th Schedule until the Kesavananda judgement are valid, and those passed after that date can be subject to scrutiny.

Indra Sawhney and Union of India (1992)

SC examined the scope and extent of Article 16(4), which provides for the reservation of jobs in favour of backward classes. It upheld the constitutional validity of 27% reservation for the OBCs with certain conditions (like creamy layer exclusion, no reservation in promotion, total reserved quota should not exceed 50%, etc.)

Here, 'Rule of Law' was added to the list of basic features of the constitution.

S.R. Bommai case (1994)

In this judgement, the SC tried to curb the blatant misuse of Article 356 (regarding the imposition of President's Rule on states).

In this case, there was no question of constitutional amendment but even so, the concept of basic doctrine was applied.

The Supreme Court held that policies of a state government directed against an element of the basic structure of the Constitution would be a valid ground for the exercise of the central power under Article 356.

1.3 Amendment made in the Preamble: Effects thereof:

Every amendment to the Constitution is written as a law. The "Constitution (First Amendment) Act" is the name of the first amendment, the "Constitution (Second Amendment) Act" is the name of the second, and so on. The lengthy title "An Act further to valter the Constitution of India" is frequently attached to each one.

Article 368 of Part XX of the Indian Constitution establishes two forms of constitutional modifications.

By a two-thirds majority vote in the House of Commons

With the ratification of half of the total states, by a special majority of Parliament

Other articles, on the other hand, allow for the alteration of specific elements of the Constitution by a simple majority of the members present and voting in each House. For the purposes of Article 368, these modifications are not regarded to constitute constitutional amendments.

Procedure Related to Amendability of the Preamble

Only by introducing a Bill in each House of Parliament can the Constitution be amended. The Bill must next be passed by a majority of the entire membership of each House, as well as a majority of at least two-thirds of the members present and voting in each House.

This is what is referred to as a "special majority." In the event that the two Houses disagree, there is no provision for a combined sitting. The Bill is subsequently forwarded to the President, who must grant his approval to it if it has received the requisite majority of votes.

If the amendment attempts to modify any of the provisions stated in the provision to Article 368, it must be approved by at least one-half of the states' legislatures. Although ratification has no time constraint, it must be finished before the amended Bill is given to the President for his signature.

Types of Amendments in the Indian Constitution

By a simple majority in the House of Commons, an amendment can be made.

Parliamentary amendment with a special majority

The amendment must be approved by a special majority of Parliament and at least half of the state legislatures

Amendments in the Indian Constitution Under Article 368

Part-XX Article 368 (1) of the Indian Constitution grants constituent power to make official amendments and enables Parliament to amend the Constitution by adding, modifying, or repealing any provision in accordance with the procedure set forth therein, which differs from that for ordinary legislation. The 24th and 42nd Amendments, enacted in 1971 and 1976, respectively, altered Article 368.

24th Amendment Act in 1971

It modifies Article 13 of the Constitution to make it inapplicable to any constitutional modification made according to Article 368.

The 24th Amendment added Articles 13(4) and 368(3) to the Constitution. “Nothing in this article shall apply to any amendment of this Constitution made under article 368,” reads Article 13 (4).

The President’s consent to a Constitutional Amendment Bill is now required.

It restored Parliament’s unlimited ability to change any provision of the Constitution, including Part III (fundamental rights).

42nd Amendment Act in 1976

In the Preamble, the terms ‘Socialist,’ ‘Secular,’ and ‘Integrity’ were inserted

Three new DPSPs have been added to the current list, and one has been changed:

Article 39: to provide chances for children’s healthy growth.

Article 39 A: promoting fair justice and providing free legal assistance to the underprivileged.

Article 43 A: must take initiatives to ensure employees’ participation in industrial management.

Article 48 A: to conserve forests and animals, as well as to protect and develop the environment.

10 Fundamental Duties were added for the citizens

Part XIV A (Articles 323A and 323B) was added, which established 'administrative tribunals' and 'tribunals for other issues'

Article 74(1) was amended to require the President to act in line with the Council of Ministers' advice

Amended Article 102 (1)(a) to ensure that if a person occupies any profit-making post under the Government of India or any State government that has been deemed disqualifying by Parliamentary legislation, he shall be disqualified, and that authority will be placed in Parliament rather than the State Legislature

Scope of Amendability in Indian Constitution

The current situation is that the Parliament can alter any element of the Constitution, including the Fundamental Rights, under Article 368 without harming the Constitution's 'fundamental structure.' The Supreme Court, on the other hand, has yet to define or explain what the Constitution's 'fundamental structure' is.

1.4 Use of Preamble in Interpretation of constitution Provisions:

As discussed below, the Apex Court has made it clear that Preamble forms a part of the Constitution, although this does not mean that Preamble has got the authority to override the express provisions enunciated in the Indian Constitution. In case the terms used in any of the Articles mentioned in the Constitution have two meanings or are ambiguous, Preamble acts as a valuable aid in interpreting and understanding the purpose of that provision. An assistance can be taken up to a great extent from the objectives enshrined in the Preamble.

Justice Sikri while emphasising on the significance that the Preamble holds, in the case of *Kesavananda Bharati* opined that, *"It seems to me that the Preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble."*

The Preamble was even used and relied upon while imposing implied limitations on the power of amendment given to the Parliament under Article 368 of the Constitution.

In the case of *Randhir Singh v. Union of India (1982),* the Supreme Court while taking into considerations the key words of Preamble, held that Article 39(d) of the Constitution also includes "equal pay for equal work", which is a constitutional right, irrespective of the gender. Our preamble expressly provides for providing equality of status and opportunity to its people and in pursuance to this, the court acknowledged equal pay for equal work as a constitutional right.

Preamble of the Indian Constitution, different from the Preamble of an Act

As far as the Preamble of the Indian Constitution is concerned, it stands entirely on a different footing from the preamble of any other Act. Generally, the preamble of any Act in general, is not enacted by the legislature, and this is the reason why its use is limited to removing the ambiguity of the provisions of an Act, and hence the interpretation is restricted to helping with the ambiguity of the provisions present in the Act. However, as far as the Preamble of the Indian Constitution is concerned it was enacted and adopted by the Constituent Assembly in the same manner and procedure as that of the Constitution.

This fact can further be corroborated by the history of the Preamble. Initially, the Preamble was introduced in the Constituent Assembly in the form of Objective resolutions. These resolutions were the first few substantive issues that were to be discussed and decided as the guide for further deliberations. The Preamble was finalised at the end, i.e., after the completion of the entire Constitution. The reason behind this was that the makers of the Constitution wanted to be consistent with the Constitution since it is a part of it.

Is the Preamble a part of the Constitution

The Preamble is the preface of the Constitution. It contains the ideals and principles of the Constitution and reflects the purpose or the objectives that the Constitution sought to achieve. Punit Thakur Das (elected to the central Legislative Assembly) while a debate going on in the Constituent Assembly emphasised on the significance of the Preamble and said that, *"the Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution."*

The question whether the preamble is a part of the Constitution or not was a topic of debates for a long time and was finally settled in the Kesavananda Bharati case (as discussed in the later section). In order to understand whether or not the preamble is a part of the Constitution, the two cases, namely the *Berubari* Case and *Kesavananda Bharati* case play an important role. Initially, the view taken by the highest court was that the Preamble is not a part of the Consitution of India. However, later on, the same was reversed in the Kesavananda *Bhart*i case.

Let's have an overview of the above mentioned two cases.

The Berubari Union and…. v. Unknown (1960)

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1.5 Salient features of Constitution:

Every Constitution is unique in its way. The Indian Constitution was developed in the mid-twentieth century which in a way benefited the making of the Constitution. By this time, various countries across the world had developed their constitutions. This helped the makers to draw a vast amount of knowledge pertaining to various laws, rules, government systems, etc. Analysing these constitutions and understanding what provisions could be taken from various constitutions helped in making our Constitution much better. The influence of different laws from different parts of the world is quite pervasive. Our Constitution in its unique way turned out to be an excellent document having distinctive features. Though we might have taken certain provisions from the Constitutions of other countries, our Constitution has created a separate path, new patterns, and approaches of its own. Let's have a look at the salient features of the Constitution of India.

Lengthiest written Constitution

Our Constitution is the lengthiest written constitution in the world having detailed provisions pertaining to almost all the important aspects that a democratic country must consider. The original draft of the Constitution consisted of 395 Articles and eight Schedules.

Elaborate preamble

The preface of the Constitution, i.e., the Preamble, is a very detailed and elaborate document. It does not grant any power, rather it gives a purpose and direction to the Constitution.

Socialist, welfare and a secular state

The word 'socialist' was initially not present in the preamble of the Constitution of India. It was inserted by the 42nd Amendment in 1976. Also, our Constitution establishes India as a welfare state. The Constitution also states that our Country is a secular state, i.e., despite being a country of religion, the Indian Constitution stands for a secular state of India.

Parliamentary form of government

The Constitution establishes a parliamentary form of Government, both at central and state level. In this system, the executive organ of the government is responsible to the elected legislature.

Fundamental rights and duties

The Constitution guarantees the people certain rights and these rights are enforceable by law. These fundamental rights are enshrined under Part IV of the Constitution. Apart from this it also confers certain duties and obligations on the people which are enshrined in Part VI-A of the Constitution.

Federal structure

The Constitution of India is federal in nature. The Indian Constitution establishes a dual polity, i.e., the government at the central and state level.

Independent judiciary

The Constitution of India establishes an independent judiciary, which is free from the other organs of the government.

A unique blend of rigidity and flexibility

The amendment procedure of the Constitution is neither very flexible nor is it rigid constitution, leaving zero scope for amendment. The Constitution is a living document having a unique blend of rigidity and flexibility.

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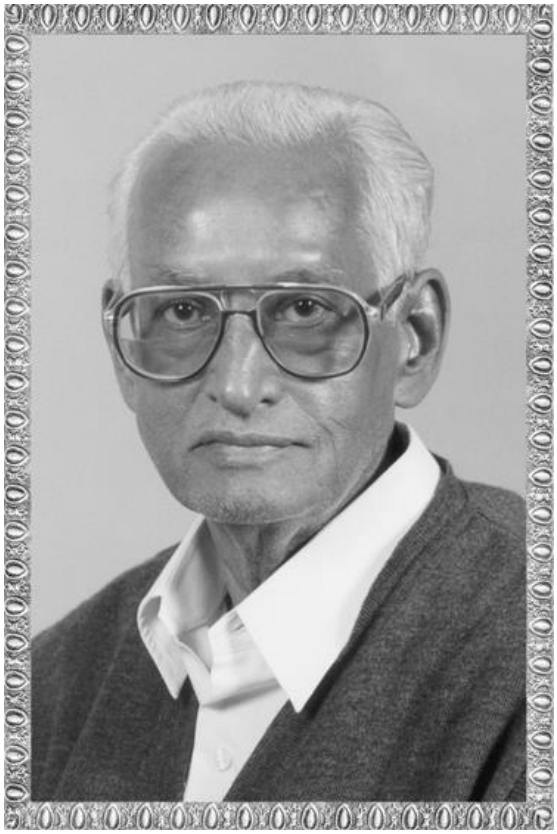

Lt. Shree Chimanbhai Shukla

Shree H.N.Shukla College
2, Vaishali Nagar,
Nr. Amrapali Railway under bridge,
Raiya Road, Rajkot.
Ph. (0281)2440478

Shree H.N.Shukla College
3, Vaishali Nagar,
Nr. Amrapali Railway under bridge,
Raiya Road, Rajkot.
Ph. (0281)2471645

Shree H.N.Shukla College of Legal Studies *"Sky is the Limit"*

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UNIT -2- FUNDAMENTAL RIGHTS –I

SR. NO.	TOPIC NAME
2.1	UNDER ARTICLE 12 AND JUDICIAL APPROACH AND MEANING OF LAW UNDER ARTICLE 13
2.2	RIGHT TO EQUALTIY AND PROTECTIVE DISCRIMINATION, EQUALITY OF OPPORUNITY IN THE MATTER OF PUBLIC EMPLOYMENT
2.3	FREEDOMS GURANTEED TO CITIZENS OF INDIA UNDER ARTICLE 19 AND RESONABLE RESTRICTIONS
2.4	RIGHT AGAINST EXPLOITATION , ABOLITION OF UNTOUCHABILITY AND TITLES
2.5	RIGHT TO SELF –INCRIMINATION AND PRINCIPLE OF DOUBLE JEOPARDY
2.6	CONSTITUTIONAL REMEDY FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS(WRIT REMEDIES UNDER ARTICLE 32 , DISINCTION FROM WRIT UNDER ARTICLE 226)

2.1 Article 12 and Judicial Approach:

Introduction

Fundamental rights are a group of rights which are guaranteed to all the citizens of the nation by the Constitution of India under Part III. These rights apply universally to all citizens residing in the nation, irrespective of their race, place of birth, religion, caste or gender. They are recognized by law as rights requiring a high degree of protection from the government and they cannot be violated by the Government. Fundamental rights cannot be enforceable against individuals and private entities. The obligation of protecting these rights lies on the government or the state or its authorities.

Most of the Fundamental rights provided to the citizens are claimed against the State and its instrumentalities and not against the private bodies. Article 12 gives an extended significance to the term 'state'. It is very important to determine what bodies fall under the definition of a state so as to determine on whom the responsibility has to be placed.

The framers of the Constitution used the words 'the State' in a wider sense than what is understood in the ordinary or narrower sense. It does not merely mean the states in the Union. The word 'includes' in the article shows that the definition is not exhaustive and through judicial interpretations, the court has widened the scope of the Article way beyond what even the framers of Article 12 may have had in mind during the framing of the constitution.

Purpose and need to define state

Under the Constitution of India, the purpose of the state is to establish a welfare society. The framers of the Constitution were inspired by the idea of a welfare state. The concept of welfare state was developed in Germany and it envisages the creation of a state which ensures the basic economic security to all its citizens. The Constitution imposes a negative duty on the state in the form of fundamental rights and a positive duty on the state in the form of directive principles of state policy. The fundamental rights are contained in Part III of the Constitution and the directive principles are enumerated in Part IV of the Constitution.

Most of the Constitutions around the world guarantee fundamental rights only against the state, that is, the citizens can approach the courts if their rights are infringed by the state but they may not be able to seek remedy in court if their fundamental rights are violated by private individuals. This holds true even where the Constitution does not expressly state that the fundamental rights would be enforceable against the State. VN Shukla, in his book Constitution of India stated that even though under the Constitution of the United States, it is not expressly stated that the fundamental rights are guaranteed only against the state, yet the judiciary has interpreted it to mean that the fundamental rights can be enforced only against the state and not private individuals.

Similar is the case with the Indian Constitution. Thus, it becomes important and necessary to precisely and concisely define the meaning of the term 'state'. Under the Indian Constitution, the State has been defined under Article 12, which is the opening Article of Part III of the Constitution of India which enumerates the fundamental rights.

In P.D. Shamdasani v. Central Bank of India (1951), some shares of the petitioner were sold by the Central Bank of India to recover the debt owed by the petitioner. This was challenged on the ground of being violative of Articles 19 and 31 (now omitted). The Supreme Court of India, while dismissing the petition, observed that since the rights of the petitioner were violated by a private bank, remedy cannot be sought under Article 32. Resort to Article 32 can be taken only in cases where the state infringes the right. Remedies against private parties are available under the ordinary law.

Recently, in Kaushal Kishore v. State of U.P. (2023), the Supreme Court held that fundamental rights guaranteed under Articles 19 and 21 respectively can be enforced against the state as well as non-state actors.

While defining the term 'state', it is necessary to note that fundamental rights can be violated by the state directly as well as indirectly. In direct infringement, the government infringes fundamental rights through its legislative or other powers. In indirect infringement, the rights of the citizens are infringed upon through the agencies and officials acting on behalf of the state. Thus, it is necessary to interpret the state in an inclusive manner to protect the rights of the citizens from being infringed by any arbitrary action of the state.

The Indian Constitution also enumerates certain fundamental duties which the citizens owe to the state. The 42nd Amendment of 1976 incorporated the fundamental duties to the Indian Constitution. These duties are enumerated under Article 51A of the Indian Constitution. Some of the fundamental duties are respecting the National Flag, protecting the sovereignty and integrity of India and preserving the cultural heritage.

Meaning of State under Article 12

Article 12 of the Indian Constitution states that,

"Definition in this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

In other words, for the purposes of Part III of the constitution, the state comprises of the following:

Government and Parliament of India i.e the Executive and Legislature of the Union
Government and Legislature of each State i.e the Executive and Legislature of the various States of India
All local or other authorities within the territory of India
All local and other authorities who are under the control of the Government of India
Key terms discussed under the article
Government (Union and state)
Parliament and state legislature
Local authorities
Other authorities
Territory of India
Control of the government of India
The above-mentioned terms are better explained in the following section along with relevant cases.

Government (Union and state), Parliament and State Legislature

Parliament: The parliament comprises of the President of India, the lower house of the parliament that is the Lok Sabha as well as the upper house of the Parliament, that is the Rajya Sabha.

Executive: It is that organ which implements the laws passed by the legislature and the policies of the government. The rise of the welfare state has tremendously increased the functions of the state, and in reality, of the executive. In common usage, people tend to identify the executive with the government. In contemporary times, there has taken place

A big increase in the power and role of the executive in every state. The executive includes the President, Governor, Cabinet Ministers, Police, bureaucrats, etc.

Legislature: The legislature is that organ of the government which enacts the laws of the government. It is the agency which has the responsibility to formulate the will of the state and vest it with legal authority and force. In simple words, the legislature is that organ of the government which formulates laws. Legislature enjoys a very special and important in every democratic state. It is the assembly of the elected representatives of the people and represents national public opinion and power of the people.

Government: The law-making or legislative branch and administrative or executive branch and law enforcement or judicial branch and organizations of society. Lok Sabha (the lower house) and Rajya Sabha (the upper house) form the legislative branch. Indian President is the head of the state and exercises his or her power directly or through officers subordinate to him. The Supreme Court, High Courts, and many civil, criminal and family courts at the district level form the Judiciary.

State Legislature: The legislative body at the state level is the State Legislature. It comprises of the state legislative assembly and the state legislative council.

Local Authorities

Before understanding what a local authority is, it is important to define Authorities. According to Webster's Dictionary; "Authority" means a person or body exercising power to command. When read under Article 12, the word authority means the power to make laws (or orders, regulations, bye-laws, notification etc.) which have the force of law. It also includes the power to enforce those laws

Local Authority: As per Section 3(31) of the General Clauses Act, 1897,

"Local Authority shall mean a municipal committee, district board, body of commissioner or other authority legally entitled to or entrusted by the Government within the control or management of a municipal or local fund."

The term Local authority includes the following:

Local government: According to Entry 5 of the List II of VII Schedule 'local government' includes a municipal corporation, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

Village Panchayat: In the case of Ajit Singh v. State of Punjab, it was held that within the meaning of the term local authority, village panchayat is also included.

Test to determine Local Authorities

In Mohammad Yasin v. Town Area Committee, the Supreme Court held that to be characterized as a 'local authority' the authority concerned must;

Have a separate legal existence as a corporate body

Not be a mere government agency but must be legally an independent entity

Function in a defined area

Be wholly or partly, directly or indirectly, elected by the inhabitants of the area

Enjoy a certain degree of autonomy (complete or partial)

Be entrusted by statute with such governmental functions and duties as are usually entrusted to locally (like health, education, water, town planning, markets, transportation, etc.)

Have the power to raise funds for the furtherance of its activities and fulfilment of its objectives by levying taxes, rates, charges or fees

Other Authorities

The term 'other authorities' in Article 12 has nowhere been defined. Neither in the Constitution nor in the general clauses Act, 1897 nor in any other statute of India. Therefore, its interpretation has caused a good deal of difficulty, and judicial opinion has undergone changes over time.

The functions of a government can be performed either the governmental departments and officials or through autonomous bodies which exist outside the departmental structure. Such autonomous bodies may include companies, corporations etc.

So, for the purpose of determining what 'other authorities' fall under the scope of State, the judiciary has given several judgements as per the facts and circumstances of different cases.

In the University of Madras v. Shanta Bai, the Madras High Court evolved the principle of 'ejusdem generis' i.e. of the like nature. It means that only those authorities are covered under the expression 'other authorities' which perform governmental or sovereign functions. Further, it cannot include persons, natural or juristic, for example, Unaided universities.

In the case of Ujjammabai v. the State of U.P., the court rejected the above restrictive scope and held that the 'ejusdem generis' rule could not be resorted to the in interpreting 'other authorities'. The bodies named under Article 12 have no common genus running through them and they cannot be placed in one single category on any rational basis.

Lastly, in Rajasthan Electricity Board v. Mohan Lal, the Supreme Court held that 'other authorities' would include all authorities created by the constitution or statute on whom powers are conferred by law. Such statutory authority need not be engaged in performing government or sovereign functions. The court emphasized that it is immaterial that the power conferred on the body is of a commercial nature or not.

Doctrine of instrumentality of state

In the modern world, the state has a lot of functions to perform. In order to discharge its functions and duties, the state operates through certain instrumentalities. The instrumentalities also fall within the scope of the expression 'state' as used in Article 12.

Instrumentalities are the means through which the state discharges its functions and the doctrine of instrumentality provides that the agencies through which it discharges its functions are also to be considered embodiments of the state. For example, Article 298 of the Indian Constitution empowers the central as well as state governments to carry on trade and business. The government carries on trade through certain corporations and these corporations are called the instrumentalities of the state.

In Ramana Dayaram Shetty v. International Airport Authority of India and Ors. (1979), the Supreme Court held that corporations acting as agents or instrumentalities of the government would fall within the meaning of the expression 'other authorities' under Article 12.

However, it is often difficult to determine whether an entity is an instrumentality of the government or not.

Test to determine instrumentality

To determine whether an entity is an agency or instrumentality, the following factors are to be taken into consideration:

Share capital and financial assistance: If the whole of the share capital of the corporation is owned by the central or any of the state governments, then it will show that the corporation is an instrumentality of the state. The state may also provide financial assistance to the corporation.

In Sukhdev Singh v. Bhagatram (1975), the Court observed that it is not necessary for the state to provide direct financial aid to the corporation. The state may provide tax exemptions or other forms of indirect financial assistance to the corporation. Indirect financial aid will also be a relevant factor while determining whether a corporation is an instrumentality of the State or not.

State control: If the central or any of the state governments exercises pervasive control over the entity, then it can be concluded that the corporation is an agency of the state.

Monopoly: Certain corporations enjoy monopolies in their respective markets because the state prevents other corporations from operating in the same market. Thus, if an entity enjoys monopoly status due to the restrictions imposed by law enacted by the state, then such entity is likely to be considered an agency or instrumentality of the state.

Functions: The nature of the functions performed by the corporation is another relevant factor. If the corporation performs or discharges functions which are largely of a public nature, then such a corporation will be considered as an instrumentality.

Territory of India

Article 1(3) of the Constitution of India states that;

"The territory of India shall comprise- (a) the territories of the States;(b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired."

In the case of Masthan Sahib v. Chief Commissioner, the court held that the territory of India for the purposes of Article 12 means the territory of India as defined in Article 1(3).

Control of the government of IndiaUnder Article 12, the control of the Government does not necessarily mean that the body must be under the absolute direction of the government. It merely means that the government must have some form of control over the functioning of the body. Just because a body is a statutory body, does not mean that it is 'State'. Both statutory, as well as non-statutory bodies, can be considered as a 'State' if they get financial resources from the government and the government exercises a deep pervasive control over it.

For example- State includes Delhi Transport Corporation, ONGC and Electricity Boards, but does not include NCERT as neither is it substantially financed by the government nor is the government's control pervasive.

The test laid down in the case of Ajay Hasia is not rigid and therefore if a body falls within them, then it must be considered to be a State within the meaning of Article 12. It was discussed in the case that– "whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of Government. Such control must be particular to the body in question and must be pervasive.

Whether the state include the judiciary?

Article 12 of the Constitution does not specifically define 'judiciary'. This gives the judicial authorities the power to pronounce decisions which may be contravening to the Fundamental Rights of an individual. If it was taken into the head of 'State', then as per the article, it would be by the obligation that the fundamental rights of the citizens should not be violated. Accordingly, the judgements pronounced by the courts cannot be challenged on the ground that they violate fundamental rights of a person. On the other hand, it has been observed that orders passed by the courts in their administrative

capacity (including by the Supreme Court) have regularly been challenged as being violative of fundamental rights.

The answer to this question lies in the distinction between the judicial and non-judicial functions of the courts. When the courts perform their non-judicial functions, they fall within the definition of the 'State'. When the courts perform their judicial functions, they would not fall within the scope of the 'State'.

So, it can be noted that the judicial decision of a court cannot be challenged as being violative of fundamental rights. But, an administrative decision or a rule made by the judiciary can be challenged as being violative of fundamental rights, if that be supported by facts. This is because of the distinction between the judicial and non-judicial functions of the courts.

In the case of Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1, a 9-judge bench of the Supreme Court held that a judicial decision pronounced by a judge of competent jurisdiction in or in relation to a matter brought before him for adjudication cannot affect the fundamental rights of the citizens since what the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. Therefore, such a judicial decision cannot be challenged under Article 13.

Under the Constitution, the judiciary has the power to determine the scope of the fundamental rights guaranteed to citizens. In exercising this power, the Courts might make some errors. However, the errors made by the courts in interpreting the fundamental rights would not amount to infringement of the fundamental rights itself. The writ jurisdiction cannot be invoked against the decision of the courts. The appropriate remedy against judicial decisions is review or appeal before the appellate court. In case the decision is made by the Supreme Court, the aggrieved party can file a review petition or a curative petition.

In Khoday Distilleries Limited v. Registrar General, Supreme Court of India (1995), the Supreme Court held that once the final decision of the Court under Article 136 has been pronounced and the same has been upheld in the review petition, the writ jurisdiction of the Court under Article 32 cannot be invoked to challenge the validity of the order.

It is pertinent to note that only the decisions of the courts cannot be challenged on the ground of violation of fundamental rights. However, if a quasi-judicial authority or administrative authority such as a tribunal exceeds its jurisdiction or fails to exercise its jurisdiction, then the decision of the tribunal can be challenged on the ground of being violative of the fundamental rights of the aggrieved party. Thus, writ jurisdiction can be invoked to challenge the decisions of the tribunals and administrative authorities.

The position of not including judiciary within the meaning of the expression 'state' is justified in view of the fact that India has a single integrated judicial system. The decisions of one court can be challenged before the appellate court and the aggrieved party is not remediless against the decisions of the courts.

Landmark judgements

Rajasthan Electricity Board v. Mohan Lal and Ors (1967)

Facts

In the case of Rajasthan Electricity Board v. Mohan Lal and Ors. (1967), 14 permanent employees of the State Government were deputed to the Electricity Board. 11 employees of the Board were promoted as assistant engineers but the first respondent was not promoted. He challenged the decision of the Electricity Board of not promoting him and pleaded that the decision violated his fundamental right under Article 14 of the Constitution. He had approached the High Court under Articles 226 and 227 of the Constitution and the High Court found the petition to be maintainable.

Issue

The issue was whether an Electricity Board constituted under the Electricity Supply Act, 1948 could be considered an 'other authority' under Article 12.

Contentions

The appellants had contended that the Board cannot be considered to be a state. Article 12 should be interpreted ejusdem generis and since the Board was a separate legal person in law which was established for the purpose of carrying on certain commercial activities, it could not be considered as a state. The Board was not covered under the authorities enumerated under Article 12, that is, the Board was neither a part of the Union or State Government, nor was it a part of the Union or State Legislature. The appellants also placed reliance on the Shantha Bai case.

The appellants further stated that only those bodies which perform government functions are covered by Article 12. However, the Board performed commercial activities which cannot be considered government or public functions.

Judgement

The Supreme Court had held the Electricity Board to be an 'other authority' falling within the ambit of Article 12. It was stated that since the Electricity Board acts as an instrumentality of the government and therefore falls within the meaning of the term 'state'. It was immaterial that the Board carried on some activities which were commercial in nature.

The Board is a sovereign body which is entrusted with the task of generating and distributing power to the public. It was also empowered to initiate certain schemes and carry out hydraulic surveys for the purpose of fulfilling its functions. The Board could also make rules and regulations to exercise control over the electricity undertakings and thus it was held to be an 'other authority' under Article 12.

With respect to the application of the principle of ejusdem generis, the Court held that this principle cannot be applied while interpreting Article 12. For the application of this principle, there must be a 'distinct genus' or some commonality between the bodies enumerated in Article 12. Since the bodies mentioned in Article 12 have no genus, the principle of ejusdem generis could not be applied while interpreting Article 12.

Sukhdev Singh v. Bhagatram (1975)

Facts

In this case, the petitioner, who was an employee of a statutory corporation, was dismissed from service. He approached the Supreme Court pleading that the removal was violative of Article 14 of the Constitution.

Issue

The Court had to determine statutory corporations such as the Life Insurance Corporation, Oil and Natural Gas Corporation and Industrial Finance Corporation could be considered as 'state'.

Judgment

The Supreme Court, by a 4:1 majority, held the three statutory corporations to be state within Article 12. The Court held that three corporations are the agencies and instrumentalities of the state. They have the power to make binding rules and assist the state in discharging its functions. The government also exercises pervasive control over these corporations.

Dissent

In his dissent, Justice Alagiriswami noted that there was no difference between the rules framed by the statutory corporations and rules made by ordinary corporations. Since the corporations do not exercise sovereign functions, they cannot be considered as a state under Article 12.

Ajay Hasia v. Khalid Mujib (1980)

Facts

In this case, an Engineering College was managed by a society which was registered under the Jammu and Kashmir Registration of Societies Act, 1898. One of the candidates who applied for admission to the college was called for an interview. In the interview, he was asked questions about his parents and residence. These questions had no relation with the subject for which the interview was being conducted. Subsequently, the candidate challenged the interview process for being arbitrary and violative of Article 14 of the Constitution.

Issue

The Court had to determine whether the society registered under the Act qualified to be a state within the meaning of Article 12.

Judgment

The 5-judge bench of the Supreme Court unanimously held that the society which administered the college was state within Article 12 and held that society was an instrumentality of the state. It was immaterial as to how the juristic person was brought into existence. The factor which was relevant was the purpose for which the college was constituted.

The society which administered the college was registered under a statute. The government exercised control over the functioning of the society. Thus, the society was an agency of the government.

Zee Telefilms v. Union of India and Ors. (2005)

Facts

In this case, the issue was whether the Board of Control for Cricket in India (BCCI), a society registered under the Tamil Nadu Societies Registration Act, 1975 is a state or not.

Contentions

The petitioner had pleaded that BCCI should be considered a state. The BCCI enjoys monopoly control over cricket, which is a prominent sport in India. The team selected by BCCI is termed as Indian team which wears the Indian national flag and is considered to be the representative of the nation in international tournaments. The BCCI can also debar cricketers from playing in the exercise of its disciplinary powers. The petitioner contended that since BCCI can affect the fundamental rights of the players, who are considered to be the nation's representatives, it should be deemed to be a State within Article 12.

Judgement

The Supreme Court observed that the government neither owns a substantial part of BCCI nor does it exercise any deep or pervasive control over its management and affairs. BCCI was not established by any statute and it does not function as an agency of the government.

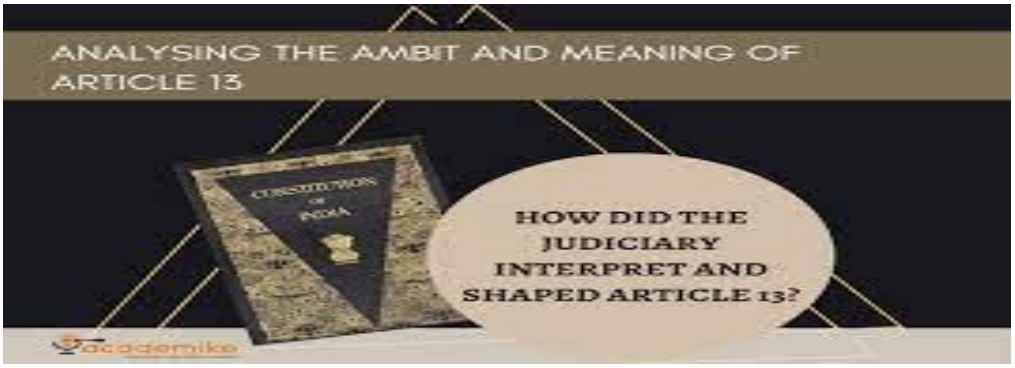
The Court held that the BCCI cannot be considered as a state under Article 12. Thus, if BCCI infringes the fundamental rights of any person, then a writ petition under Article 32 will not be maintainable as Article 32 can be invoked only if the state infringes the fundamental rights of any person. An action against the BCCI for the infringement of the fundamental rights would lie under Article 226 of the Constitution.

Meaning of Law under Article -13:

'People believe in law' and to keep that belief the Drafting committee gave the concept of Fundamental Rights in Part III of the Indian constitution. It gives liberty to the citizens of India and protects it from being infringed by the state. It also provides for the remedy if their fundamental right is violated.

And to keep the belief of people in the State, Articles 12 and 13 were introduced. Article 12 gives the definition of state and tells about the responsibility the state has towards people and their fundamental rights whereas Article 13 of the Indian constitution which presents itself in four parts, makes the concept of fundamental rights more powerful and gives it a real effect.

Article -13:



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

13(2): The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

13(3): In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes 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

13(4): Nothing in this article shall apply to any amendment of this Constitution made under Article 368 Right of Equality

Personal laws and Article 13

There have been several cases in which the judiciary has deliberated upon the issue of personal laws being covered by Article 13. The first landmark case in this regard was the Narasu Appa Mali case.

State Of Bombay vs Narasu Appa Mali

The Bombay High Court in the landmark case of State Of Bombay vs Narasu Appa Mali (1951), held that personal laws are not covered within the ambit of the expression “laws” and “laws in force” contained in Article 13. In this case, the validity of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, which prohibits bigamous marriages amongst Hindus, was challenged.

The petitioners contended that the whole bigamy is an offence under the Indian Penal Code, the Hindu Bigamous Marriages Act imposes a greater punishment on the abettors as compared to the Penal Code. The petitioners contended that the State cannot impose greater punishment on members of one community when the other communities are also prohibited from performing the same offense. The petitioners pleaded that the expression "laws in force" under Article 13 should be interpreted to include personal laws and thus, all personal laws which permit polygamy could be declared void.

The two-judge bench held that personal laws fall outside the ambit of Article 13. The Bench was of the view that the expression "laws in force" only refers to statutory laws.

The judges also relied on the Government of India Act, 1915. The Court referred to Section 113 of the Government of India Act, 1915 which provides that in case of inheritance, succession and other similar matters, when both parties are followers of the same personal laws, the High Court should apply the same in deciding the matter and when the parties follow different personal laws, the High Court should apply the defendant's personal laws. Thus, the Government of India Act recognised a clear distinction between personal laws, statutory laws and customs. The fact that the Constituent Assembly included customs and usages in Article 13 but omitted personal laws is a clear indication that the dreamers of the Constitution did not want personal laws to be covered by Article 13.

The two judges, however, differed on the issue of whether customs and usages are covered within the scope of Article 13. Justice Gajendragadkar noted that if Article 13 is interpreted to cover the customs and usages, then it would render Article 17 obsolete as the evil of untouchability, which has its origin in customs, would be void under Article 13 read with Article 15 of the Constitution. Thus, Article 17, which prohibits untouchability would be meaningless. Chief Justice Chagla, on the other hand, held that customs and usages are covered within the scope of Article 13 and hence, if any custom violates the fundamental rights then it would be declared void.

Indian Young Lawyers Association vs The State Of Kerala

However, the Narasu Appa Mali judgment was overruled by Justice Chandrachud in the Indian Young Lawyers Association v. the State Of Kerala (2018). In this case, the custom of not allowing women into the Sabarimala temple was challenged before the Apex Court and the question arose whether customs come within the ambit of Article 13.

Justice Chandrachud noted that the definition of "law" under Article 13 is an inclusive definition. The Court observed that the Articles of the Constitution are not essentially independent of each other and in

some instances, there may be overlapping with the Articles. Thus, merely because the inclusion of customs within Article 13 would affect Article 17, it could not be held that customs are not covered within the expression "laws in force". The Court also referred to the judgment of Shayara Bano v. Union Of India (2017) in which the Apex court had expressed doubt over the Narasu Appa judgment. The Court pointed out that personal laws, customs and usages have a significant impact on the civil life of individuals. Hence, customs and personal laws cannot be exempted from the preview of judicial scrutiny. The Court thus came to the conclusion that customs are covered by Article 13 and can be subjected to judicial review.

Retrospective effect of Article 13

In the landmark case of Keshavan Madhava Menon v. the State Of Bombay (1951), the issue that came before the 7-judge bench of the Apex Court was whether laws found abridging the fundamental rights under Article 13 would be void ab initio or void with prospective effect. The Supreme Court supported the latter concept and held that the laws would be void and ineffectual prospectively. Those who committed an offense under a law infringing the fundamental rights before the law was declared void would not be protected. However, the Court noted that where a person committed an offence under a law that was effective at the time of offence but was subsequently found to be violative of the fundamental right and where the prosecution has not been concluded, the proceedings under the void law cannot be continued. Thus, if at any time when the question is raised before the Court whether the person committed an offense under the concerned law or not, it is found that the law has been declared void under Article 13, the person cannot be prosecuted under the concerned law.

Applicability of Article 13 to Constitutional Amendments

One of the most contentious issues in relation to Article 13 has been whether Constitutional amendments are covered within the expression "law" as used in Article 13.

The Supreme Court firstly decided this issue in the case of Shankari Prasad Singh Deo v. Union of India (1951). In this case, the Constitution (1st Amendment) Act, 1951 was challenged as being violative of fundamental rights and thus void under Article 13 of the Constitution. However, the Apex Court held that the constitutional amendments made by the Parliament under Article 368 of the Constitution cannot be subjected to review under Article 13.

However, the Court took a different stand in the case of I.C. Golak Nath v. State of Punjab (1967). In this case, the court held that constitutional amendments fall within the scope of Article 13 and can be declared void if found violating the fundamental rights enshrined in Part III of the Constitution. The Golak Nath judgment was subsequently overruled in the case of Kesavananda Bharati v. State of

Kerala where the Supreme Court upheld the validity of the 24th Amendment Act and held that any fundamental right can be amended by the Parliament but the basic structure of the Constitution cannot be altered.

2.2 Right to Equality and Protective Discrimination , Equality of Opportunity in the matter of public employment:

Article 14 :

In general sense, everybody here is capable of understanding Article 14 of the Indian Constitution i.e. "Right to Equality". Even after 73 years of independence, our country is not able to gain actual independence. Evils like discrimination are still prevailing in our country. Even the one who created our Constitution suffered from this anathema. Even now there are some places where people are not treated equally and they are discriminated on different basis like religion, race, sex, caste, place of origin, etc.

By knowing the scenario of India our Constitution-makers added Article 14 in Indian Constitution as the fundamental right to citizens as well as those who are not a citizen of our territory.

The main purpose of writing this article is to bring clarity about Article 14. When we see a husband treating his wife badly, a girl who is not able to complete her education due to family pressure, a lower caste man being shown inferior to upper caste people. These are examples of discrimination. Here we can understand how important the role of the state is to maintain the equality of citizens.

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

To treat all citizens equally is the basic concept of liberalism and Article 14 ensures the same to our citizens. The liberty of any person is directly connected to the equality he/she is getting in society.

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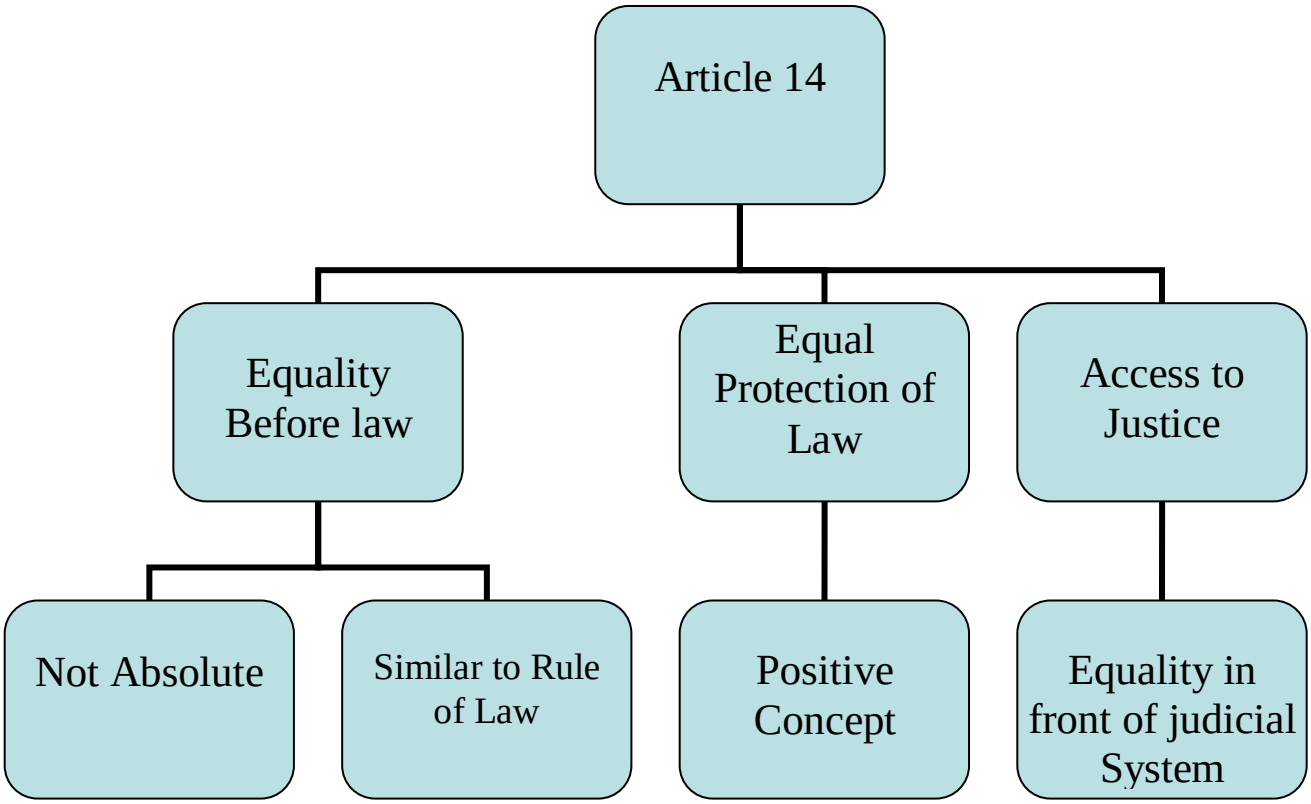


Equality before Law

Our country as we all know is a democratic country and in fact the largest democratic country in the world. Here all are independent to think about anything, do anything (with reasonable restriction though) and our state is there to put reasonable restriction. In the eyes of law, all persons within the territory of our country should be treated equally.

Equality before Law basically means that all persons should be treated equally no matter whether they are poor or rich, male or female, upper caste or lower caste. This state cannot provide any special privileges to anyone in the country. It is also known as legal equality.

Equality before the law and absolute equality

On one hand, Equality before Law prohibits providing any special privilege to any community or people. It does not talk about equal treatment in equal circumstances. According to it, there must be a very ideal condition and the state does not need to interfere in society by providing additional privileges in society.

On the other hand Right to Equality is not absolute and has several exceptions to it. Accordingly, equals should be treated equally. Equality before Law has several exceptions, for example, the Immunity provided to the President and Governor. Reservation is also a typical example that defines that the Right to Equality is not absolute and can be restricted (or rather used properly) according to the need of the society.

In the very famous case of State of West Bengal v. Anwar Ali Sarkar, the question of whether the Right to Equality is absolute or not was raised. Here Supreme Court held that the Right to equality is not absolute. In this case, the State of Bengal was found to use its power arbitrarily to refer any case to the Special Court which was made by them. It was thus held that the Act of State of Bengal violates the Right to Equality.

Equality before the law and Rule of Law

We have already discussed the Equality before Law in detail however there is also a direct connection between Equality before Law and Rule of Law. In Fact, the Rule of Law which is given by Prof. Dicey says that no one here is beyond or above the law and is equal in front of the law. Rule of Law guarantees every person the Equality before Law.

The Rule of Law states that in a country all should be treated equally and as there is no state religion so it (state) should not discriminate against any religion here the concept of uniformity should be applied. Basically, it is derived from Magna Carta (is a charter of rights signed in the UK) which prohibits the arbitrary power of the state.

Equal protection of the Laws

This is one of the positive concepts of Equality. Equal protection of the law is incurred from Section 1 of the 14th Amendment Act of the US constitution. According to this principle, everybody who resides in India should be treated equally and will get equal protection of the law. It guarantees all people inside the territory of India should be treated equally and the state cannot deny it (for equal protection of the law).

It puts the positive obligation on the state to prevent the violation of rights. This can be done by bringing socio-economic changes.

The same concept has been discussed in Stephens College v. The University of Delhi. In this case, the admission process of college was checked and the main issue raised was the validity of preference given to Christian students in the admission process. Here the Supreme Court held that minority institution which is receiving aid from state funds is entitled to grant preference or to reserve seats for the students of its community.

The Supreme Court held that differential treatment of candidates in the admission programme does not violate Article 14 of Indian Constitution and it is needed for the minority section.

Equality – A positive concept: Basawaraj v. the Spl. Land Acquisition Officer

In the famous case of Basawaraj v. The Spl. Land Acquisition Officer where the appellant went to the Supreme Court for the unsatisfactory decision of High Court of Karnataka. According to the appellant, the High Court committed an error by not condoning the delay as there were enough reasons for them to be not able to reach the High Court on time. It is a well established legal proposition that Article 14 of the Indian Constitution is not there to create perpetual illegality, even by extending the previous wrong decision.

It was held that here the appellant was negligent on their part as the appellant was not able to show the sufficient cause for the delay and thus here their appeal was rejected.

Access to Justice

By equality before the law, it means everyone has access to justice. No one can be barred from access to justice. Here all should be treated equally in front of the judicial system. The word “Access to Justice” includes some basic rights of a person. By term access to justice, we mean that every person should have the right to appear in court.

Also, there are many people who are deprived of access to justice due to economical knowledge or due to lack of awareness. Here it means that the government needs to play a vital role in providing justice to them. For granting Access to Justice we need to reform our judicial system. We need to work on the legal aid system.

Protection against arbitrariness

There is a thin line of difference between being arbitrary and non-arbitrary actions. The right to equality prevents the arbitrary action of the state. This article speaks about the Equal Protection of Law and it is against the doctrine of arbitrariness. For protection against arbitrariness, there are several restrictions put on every organ of the state. It is an important part to prevent the organ of the state from making any arbitrary decision.

The doctrine of legitimate expectation

The doctrine of legitimate expectation is basically not a legal right but rather it is a moral obligation on the part of the administration to look and make laws that provide equality to all people in a territory. It gives the right of judicial review in administrative law to protect the interest of people when public authority fails to do so (or when Public authority rescinds from the representation made to a person).

It acts as a bridge between the expectation of individuals and any act of authority. However, these expectations needed to be reasonable and logical that's why they are called legitimate expectations.

There are several instruments provided by the court for achieving the motive of authoritative law (here motive is to meet the legitimate expectation). These instruments are provided to prevent everyone against the misuse of power by the organs of the state. It put a type of restriction(although it is a moral restriction) on a state to use its power arbitrarily.

Constitutional Validity of Special Courts

It was discussed earlier that Equality before Law is not absolute and has several exceptions to it Article 246(2), is one of such exceptions. Article 246(2) states that:

"Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule"(here List III is Concurrent List).

The validity of Special Courts which were established under the Special Courts Act has been questioned in The Special Courts Bill v. Unknown case. It was questioned whether the formation of special courts under this Act was not violating Article 14 of the Indian Constitution. It was held that as there was reasonability and logicality information of these special courts so these courts are constitutionally valid.

Article -15:

The Constitution of India guarantees various rights to its citizens, including no discrimination on account of religion, race, caste, or place of birth. Part III of the Indian Constitution establishes this right under the heading of Fundamental Rights. In India, religion and caste-based discrimination have existed for a very long time. In every part of India before independence, discrimination was evident, whether through untouchability or the division of upper and lower castes. Discrimination still exists today; however, the consequences of such discrimination are much more severe and punishable.

According to the 8th Schedule of the Constitution, India recognises a total of 22 languages. But in reality, there are more than 1,500 languages spoken in India other than the official languages of Hindi and English. The Hindi language is spoken by roughly 44.63 percent of the Indian population. Diversity often leads to differences of opinion, and those differences of opinion sometimes lead to discrimination. A major source of discrimination in India is caste discrimination, which still occurs in some parts of the country. Traditionally, the general divide in society was between the lower castes and the upper castes. There had been untouchability for the lower castes. India has now outlawed this rule because it is so unacceptable.

The stories of women being beaten up for drawing water from wells, people being harassed if their shadow falls on other men, devotees being stopped from entering the temple, and being beaten up for touching idols of gods have become a common affair in newspaper headlines whenever I go through one. It seemed to me like a nightmare that has compelled me to look into the provisions in force that prohibit such differentiation.

A number of cases involving discrimination are based on a variety of variables. Caste and religion have been the major causes of discrimination in India for most of its history. The practice of discriminating on the basis of gender is not new either. This includes discriminating against women as well as LGBTIQA+ individuals. Decriminalising Section 377 of the Indian Penal Code, 1860, in 2018 marked the first step in recognising the LGBTIQA+ community. A discriminatory act causes emotional pain, mental distress, and social isolation. Article 15 of the Constitution has been widely needed and has existed ever since it came into force. There are five clauses in Article 15 that specify types of discrimination that are strictly prohibited.

This article examines the provisions of Article 15 of the Indian Constitution, which protects its citizens from discrimination of any kind. Considering India has so many religions, beliefs, languages, cultures,

etc., and has such a diverse population, there is no doubt that discrimination can occur in such a country. Thus, the purpose of Article 15 is to protect the rights and interests of citizens.

Scope of the word 'discrimination'

Discrimination occurs when you are distinguished or treated in a less favourable manner than another person under similar circumstances, or if you are disadvantaged by being placed on equal footing with another under different circumstances, for example, because you are disabled or pregnant. This action cannot be reasonably and objectively justified.

Article 15 restricts discrimination on the grounds of:

Religion – It means that a state or any group cannot discriminate against a person on the basis of religion from accessing any public place or policy.

Race – A person should not be discriminated against on the basis of his/her ethnic origin. For example, a citizen of Afghan origin should not be discriminated against by those of Indian origin.

Caste – It prohibits the discrimination on the basis of caste. Generally, it is to prevent atrocities committed by the upper caste.

Sex – No individual should be discriminated against on the basis of their gender. For example, discriminating against females, transgenders, etc.

Place of birth – The place where an individual is born should not become a reason for discrimination.

Often, the word 'Discrimination' is perceived to be contrary to the principles of equality. Individuals tend to confuse discrimination with a breach of equality. Can something that is disadvantageous and against the general classification of the individual be taken as discrimination? The answer remains 'NO'. The Supreme Court has observed in the following cases that every classification does not constitute discrimination in the first place.

In the case of Kathi Raning Rawat v. State of Saurashtra (1952), special courts under the Saurashtra State Public Safety Measures Ordinance 1949 were set up by the state of Saurashtra to adjudicate on the matters of Section 302, Section 307 and Section 392 read with Section 34 of the Indian Penal Code (IPC), 1860. The contention brought before the court was that these provisions are discriminatory for the residents depending upon the territory.

The court stated that all kinds of legislative differentiation are not discriminatory. The legislation did not refer to certain individual cases but to offences of certain kinds committed in certain areas, and hence it is not discrimination.

In another significant case of John Vallamattom v. Union of India, (2003), the petitioners were prevented from bequeathing property for religious and charitable purposes by the Indian Succession Act 1925. The petitioner contended it to be discriminatory against the testamentary dispositions by a Christian.

The Supreme Court stated that the Act was to prevent people from making injudicious death-bed bequests under religious influence but had a great impact on a person desiring to dispose of his property upon his death. Hence, the legislation is clearly discriminatory, as the properties of any Hindu, Muhammadan, Buddhist, Sikh, Jain or Parsi were excluded from the provisions of the Act. Further, the respondents could not provide any acceptable reasoning as to show why the provision regulates religious and charitable bequests of Christians alone.

When the concept that a reasonable classification can never amount to discrimination is clear, we suddenly get stuck by the idea of reservation. Is it not discriminatory to differentiate between two candidates who are appearing for the same post or exam with the same qualifications? What allows provisions for such differentiation to be made?

Overview of Article 15 of the Indian Constitution

In India, Article 15 protects citizens from racism, untouchability, and various forms of discrimination based on religion and gender. In India, caste discrimination is the type of discrimination that is most prevalent. Discrimination and untouchability are a result of caste division. Untouchability is now an offence in India; however, in some areas due to a lack of legal awareness and caste beliefs, people still face untouchability. It is assumed that those born in lower castes are considered lower than those born in higher castes, and this leads to discrimination against them. Such discrimination is described as an offence in Article 15 and those found guilty of the offence are punished. In order to facilitate the economic advancement of the socially and economically backward sections of India's citizens, the Constitution of India provides reservations to the Scheduled Castes, Scheduled Tribes, and Other Backward Classes.

Interestingly, in 2019, the Central Government introduced the 124th Constitution Amendment Bill (2019) in Parliament in order to provide reservations to economically weaker sections (EWS). The bill was intended to provide a 10% reservation in higher education and government employment to EWS. Consequently, the Constitution (One Hundred and Third Amendment) Act, 2019 was passed and thus, Article 15 was amended to include clause (6). This was done to provide equal opportunity to EWS, as

they had been disadvantaged economically and socially due to pre-independence discrimination and difficulties.

Besides discrimination on the basis of backwardness, Article 15 also addresses gender-based discrimination. For a long time, women have been fighting for their rights and opportunities, and slowly, these provisions are gaining recognition despite the fact they have existed since the 1950s. Thus, the scope of this article extends to women too, which provides them with special protection in order to achieve the aforementioned objective of equal rights.

Clause 1 of Article 15 of the Indian Constitution

As stated in Article 15(1), there shall be no discrimination against any citizen of India on the basis of religion, race, caste, gender, or place of birth. Despite the fact that castes are divided into scheduled castes/tribes, backward classes, no one should be discriminated against. As a broad term, discrimination has many aspects, and it is unjust. People of lower castes, like Dalits have been the target of unjust treatment in numerous instances. Based on the survey by the Hindu, there has been an increase of 6% in unfavourable bias towards Dalits since 2009.

There are laws to protect them, including the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but still, cruelty occurs towards the SCs/STs in certain parts of the country. In some situations, the lower caste people face many troubles, such as women being raped and people being killed as a result of protests and caste-related conflicts. In September 2020, a gang rape case took place in Hathras, a district in Uttar Pradesh, in which a 19-year-old Dalit girl was raped (Satayama Dubey & Ors v. Union of India, 2020).

Additionally, Dalits are also often targeted for atrocities for no apparent reason. For example, there was a case where the houses of 18 Dalits were set on fire in April 2010. The incident occurred because of a dog barking at a higher-class man. Several laws have been passed over the years to protect the rights of people, but discrimination still exists. One of the major reasons for this can be a lack of appropriate punishments and an inability of people to adapt. Only when people agree completely with what is enacted in law will we be able to end discrimination against them.

The scope of this clause is very wide. It is levelled against any State action in relation to the citizens' rights, be it political, civil or otherwise. The prohibition of discrimination on grounds such as religion or caste identities does not deny the pluralism of Indian culture but rather preserves it.

Religion

Article 15(1) ensures that religion shall not be the ground for any disqualification or discrimination in any public matter. In State of Rajasthan v. Pratap Singh (1960), an order under Section 15 of the Police Act 1861 was under question, which declared certain areas as 'disturbed areas' and made the inhabitants of those areas bear the cost of posting additional police. It was held that the provision violates Article 15(1) insofar as it exempts the 'Harijan' and 'Muslim' inhabitants of those areas from such liability, without assigning any reason for the exemption.

In Danial Latifi v. Union of India (2001), the Apex court upheld the validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, holding that the liability of the husband to provide "reasonable and fair provision and maintenance" under Section 3(1)(a) of the Act is not limited to the exact period. If it is permitted to be so limited, then the Act would violate Article 15 as it excludes the Muslim women alone on the basis of their religion from getting maintenance in reasonable provision from their divorced husband.

Race

Due to the vast geographical diversity in India from north to south and from east to west, certain regions of the country face discrimination based on their race or ethnicity. The first step towards abolishing racial discrimination was taken by the passing of the Criminal Law (Removal of Racial Discrimination) Act 1949 on the eve of the commencement of the Constitution. By this Act, the privileges which were enjoyed by the Europeans and Americans under the British regime, relating to matters of criminal law and procedure, were taken away.

In Sanghar Umar Ramval v. State of Saurashtra (1952), a law of Saurashtra was under consideration which restricted the movement of certain communities by insisting on their reporting to the police daily. It was held to be invalid because it was a discrimination based on race.

Caste

The word 'caste' is not an indigenous Indian term. It comes from the Portuguese word 'casta' which has various meanings. In the Indian context, it may be taken to mean a 'Jati' i.e., a group having a common name, common origin, hereditary membership and which is linked to one or more traditional

occupations. It imposes certain obligations and restrictions on its members in matters of social intercourse and demonstrates having a more or less determinate position in a hierarchical scale of ranks. In Ashok Kumar Thakur v. Union of India (2008), it was held that 'caste' is often used interchangeably with the term 'class' and it can be called one of the basic units in the social stratification.

In Balaji v. State of Mysore (1963), it was held that where the persons in whose favour a discrimination is made as to belonging to the backward classes under clause 4 of Article 15, the discrimination will be void if it is solely based on caste consideration and not on economic or social backwardness. Moreover, in Rajendran v. State of Madras (1968), it was held that if the members of the caste as a whole were socially and educationally backward, then the reservation in favour of a caste under Article 15(4) would not be unconstitutional.

Gender

The Article guarantees that the State shall not discriminate between citizens only on the grounds of sex while simultaneously retaining an exception in Article 15(3) to enable the State to make 'special provisions' for women. It is important to note that neither a male nor a female can be discriminated against, as per the general law under Article 15(1). In the case of Rani Raj Rajeshwari v. State of UP (1954), a provision under the UP Courts of Wards Act (1879) was under question wherein, a male proprietor could be declared incapable of managing the property on five grounds mentioned therein. Moreover, he was also given an opportunity of showing cause as to why such a declaration should not be made, while a female proprietor could be declared incapable of managing her property on any ground, and there was no opportunity to even show cause. This provision was held to be discriminatory.

In Navtej Singh Johar v. Union of India (2018), Justice DY Chandrachud noted that Article 15 prohibits discrimination, direct as well as indirect, which is founded on a stereotypical understanding of the role of sex. It was observed that the usage of the word 'sex' in Article 15(1) encapsulates stereotypes that are based on gender. It was observed that sexual orientation is also covered within the meaning of 'sex' in Article 15(1) because (i) non-heterosexual relationships question the male-female binary and gendered roles that are attached to them; and (ii) discrimination based on sexual orientation indirectly discriminates based on gender stereotypes, which are prohibited by Article 15. Therefore, a law that directly or indirectly discriminates against an individual based on sexual orientation is constitutionally suspect. It was also pointed out that the common thread that runs through the grounds mentioned in Article 15 is that they impact the personal autonomy of an individual.

Place of birth

This ground in effect declares 'provincialism' to be unlawful. It says that in no public matter, there can be discrimination by any authority against a citizen of India on grounds of his birth in any particular part of India. In State v. Husein (1951), Section 27(2A) of The Bombay Police Act (1951) was held to be violative of Article 15(1) and thus void on the ground that it discriminates between persons born in Greater Bombay and those born outside Greater Bombay.

Clause 2 of Article 15 of the Indian Constitution

Under Article 15(2), it is prohibited for an Indian citizen to discriminate against another Indian citizen on the grounds outlined in Clause (1). Article 15(2)(a) provides that citizens should not be prevented from accessing public places, such as shops, restaurants, hotels or any other place which is open to the general public solely because of their religion, race, caste, gender, place of birth, or any other similar basis.

Article 15(2)(b) states that no individual can restrict another individual on the basis of religion, race, caste, gender, or place of birth from using septic tanks, wells, roads, or any other public facility maintained by the state funds or specifically designated for public use. This provision explains how discrimination should be prevented instead of being practiced. Any discrimination mentioned above shall be prohibited and unlawful. It is illegal and unjust to restrict or prevent access to a public place established by the state exclusively for public use.

Clause (2) of the present Article is levelled not only against the State but also against the private individuals who may be in control of the public places mentioned in the clause. It is worth noting that Article 15(2) is not self-executing, i.e., the provision will remain nugatory unless legislation is made in order to make it operative. Importantly, the Protection of Civil Rights Act 1955 has made a violation of Article 15(2) punishable only if exclusion from such places by a private individual is committed on the ground of untouchability. Thus, it is unknown what will happen if a citizen is excluded on the grounds of his race, caste or sex from using a well dedicated to the public by another private person. Moreover, an action under Article 32 is also difficult to succeed because the Apex Court has held that remedy is only against State action and not against private individuals.

Clause 3 of Article 15 of the Indian Constitution

Article 15(3) provides that the state may continue to make laws that provide special provisions for women and children. In Yusuf Abdul Aziz v. State of Bombay (1954), an adultery charge was filed against the appellant under Section 497 of the Indian Penal Code, 1860. In this case, the main issue was to determine whether Section 497 of the Indian Penal Code, 1860, is in contradiction with Articles 14 and 15 or not. This case presented the argument that Section 497 of the Indian Penal Code, 1860, dictates that adultery can only be committed by men and that women cannot even be punished as abettors. As a result of this argument, there was a contradiction with regard to whether this was in violation of Article 15, which prohibits discrimination based on gender. However, it was further stated that Clause (3) of Article 15 clearly states that nothing contained in Article 15 limits the state's ability to make special provisions for women and children.

Additionally, it was argued that Article 15(3) should not shield women from the threat or commission of crimes. Additionally, in this case, the appellant was not even a citizen of India. Thus, the appellant, in this case, could not invoke Articles 14 and 15 because the fundamental rights can only be granted to Indian citizens. Therefore, the appeal was dismissed.

Further, in Paramjit Singh v. State of Punjab (2009), the petitioner was elected as a Panch for a seat that was reserved exclusively for the women of Scheduled Castes. The petitioner challenged the election of respondent number 5 as Sarpanch, on the grounds that she was not eligible to contest for the elections of Sarpanch which were reserved for the SCs and not SCs (women), because the respondent was elected as Panch for Gram Panchayat only against the reserved seat for SCs (women). It was ruled that, if the seat of the Sarpanch for a village was reserved for Scheduled Castes, then both men and women belonging to those categories could stand for election for the Sarpanch's post because the eligibility was basically being a Scheduled Caste and representing the constituency as Panch.

This clause is in the nature of an exception to clause (1) and provides that notwithstanding clause (1), it would be permissible for the State to make "special provision for women and children". This exception is not confined to beneficial provisions only and any special provision that the State considers necessary in the interest of women, whatever its nature may be, would be valid under this clause. Thus, Article 15(3) can be considered a charter for affirmative action in favour of women and children.

In Govt. of A.P. v. P.B. Vijaykumar (1995), it was held that Article 15(3) also sustains reservation for women because it is a special provision to support women with a view of promoting equalisation of their status. In this case, a provision relating to the Andhra Pradesh State and Subordinate Service Rule, 1996 was under question which provided that in cases where women and men are equally suited, preference is to be given to the women, 'other things being equal' in order to select for direct recruitment to an extent of at least 30% of certain specified posts.

In Vijay Lakshmi v. Punjab University (2003), the reservation of posts for women in women's colleges and hostels was held valid.

National Commission for Women – By the National Commission for Women Act 1990, the Indian Government has set up a Commission to examine and report on "all matters relating to the safeguards provided for women under the Constitution and other laws", including suggestions for improving the existing safeguards.

Special provision for Women and Children

The thought of this legislation being carte blanche (complete freedom to act as one wishes) to impose differential benefits ostensibly to the advantage of women at the cost of burdening men may ponder in your mind. But it is justified as it compensates for the early injustice met by women and children at the hands of a male-dominated society. Right to free and compulsory education for children under the age of 14 years, Section 56 of the CPC 1908, the Maternity Benefit (Amendment) Act 2017, etc. are some of the best examples of such provisions.

In the case of Rajesh Kumar Gupta v. State of Uttar Pradesh (2005), the U.P. government made provision for providing a reservation BTC training programme as follows:

50% of the candidates to be selected shall be from the Science stream,

50% from the Arts stream,

further 50% would be female candidates,

And the other 50% would be male candidates.

This reservation format was contended to be arbitrary and violative of Article 15. The Apex Court held that the reservation format introduced was not warranted by the provisions of the Indian Constitution, being over and above the constitutional reservations in favour of backward classes.

Whereas in Union of India v. K.P. Prabhakaran (1997), the railway administration took the decision to appoint enquiry cum reservation clerks in four metropolitan cities, i.e., Mumbai, Delhi, Kolkata, and Chennai. The decision stated that the post would be held by women only. The court rejected the contention of the government, urging that this provision is protected under Article 15(3). It said that Article 15(3) cannot be read as a provision or as an exception to what is guaranteed under Article 16(1)(2).

These cases clearly explain the applicability of the phrase 'Special provisions for women and children' in matters ranging from reservation to education and employability. But what if there are laws that differentiate or prefer women over men? Can it be called discrimination?

In the case of Girdhar v. State (1953), the petitioner was convicted under Sections 342 and 354 of the Indian Penal Code. The petitioner claimed that, as there are no provisions relating to assault against men with the intention to outrage his modesty, providing such laws for women is discriminatory. Section 354 is contrary to Article 15(1). The petition was dismissed, stating that the law was in consonance with Article 15(3).

In Choki v. The State of Rajasthan (1957), Mt. Choki and her husband conspired and murdered their child, the application for bail was presented on the plea that she was an imprisoned woman, with no one to look after her young son. The judge rejected the application saying that there were no extenuating circumstances and the Constitution has no provisions under which leniency could be shown to women on account of their sex. The same was challenged before the Supreme Court.

It was held that Article 15(3) talks about special provisions for women and children. And under the light of this provision, Mt. Choki was granted bail as she was a woman and there is a young child dependent on her; thus, it became necessary for the state to protect the rights of the child.

Women and sexual harassment under Clause 3 of Article 15 of the Indian Constitution

Clause 3 of Article 15 also allows the government to frame special laws regarding the protection of women and the abolition of sexual harassment. Sexual harassment is a clear violation of the fundamental rights of equality guaranteed under Article 14(2) and Article 15(3). The sexual harassment of women that had become a frequent story of everyday newspapers was dealt with by the Supreme

court in the famous Vishaka & Ors v. State Of Rajasthan (1997) and this case led to the formulation of what we call as the Vishakha guidelines.

Clause 4 of Article 15 of the Indian Constitution

Article 15(4) stipulates that nothing in Article 15 or Article 29(2) prevents the state from creating special provisions for socially and educationally backward classes of citizens, or the STs/SCs. There were two major instances that motivated the inclusion of such a clause in Article 15. First, in the State Of Madras v. Srimathi Champakam (1951), it was the government of Madras that issued an order setting out how seats would be allocated in medical and engineering colleges based on a student's community and caste. Upon examination, it was determined that the order violated Clause (1) of Article 15 which stated that seats were allotted based on castes of students and not merit. The seven-judge bench then overturned this order that allotted seats based on caste and not merit.

Secondly, in Jagwant Kaur v. State of Maharashtra (1952), the construction of a colony solely for Harijans was considered to be violative of Article 15(1). Clause (4) under Article 15 was thus introduced for the purpose of helping the socially and educationally disadvantaged citizens without violating any other provisions.

Furthermore, Article 29(2) [which is also mentioned under Article 15(4)] indicates that no citizen of India is discriminated against when applying for admission to a state-run educational institution or receiving financial aid out of state funds based on their religion, caste, race, or language. Therefore, Article 15(4) is not an exception but rather a special provision for socio-economically and educationally backward sections of society.

It was held by the Supreme Court in A. Periakaruppan v. State of Tamil Nadu (1971) that classifying socially and educationally backward classes on the basis of caste was in violation of Article 15(4). According to the Court, it was, however, necessary for the conditions of such a class of people to change, as that was the main reason for providing them with a reservation. In Balaji v. State of Mysore (1963), the Mysore Government issued an order and decided to provide 68% reservation for students belonging to backward classes for their admissions in medical and engineering colleges. The government left only 32% of reservations for students getting admission on merit. Because of this reservation, students with higher marks than those in the reserved category failed to obtain a seat. In the opinion of the Court, the categorisation of backward and even more backward classes was not justified under Article 15(4). In order to be considered 'backward', both socially and educationally backward can be included. Clause (4) of Article 15 does not talk about caste but class. Additionally, the Court stated that reserving 68% of seats in medical and engineering schools would constitute

constitutional fraud, as Clause (4) of Article 15 prohibits exclusive provisions for backward classes. Therefore, reservations could not exceed 50%.

The Supreme Court in State of AP v. USV Balaram (1972) held that caste should not be a determining factor in whether a person belongs to a backward class. The backward class shall be defined as an entire caste that is both socially and academically backward. Further, the Supreme Court stated that in the event a backward class improves educationally and socially to such an extent that it no longer requires special aid from the state, the list of backward classes will automatically be updated.

In the State of UP v. Pradeep Tandon (1974), the Apex Court held that providing reserved seats to students who live in rural areas was unconstitutional. It cannot be justified under Clause (4) of Article 15. In this case, the state of Uttar Pradesh was providing reservations in medical colleges to students from rural areas, hilly regions, and students from Uttarakhand. According to the Supreme Court, reservations for students from hill regions and Uttarakhand were valid since the people from these areas are socially and educationally backwards due to a lack of awareness and inadequate facilities for education. The Court stated that the rural area does not represent a backward social or educational status, and poverty does not equate to backwardness in rural areas.

Clause (4) provides for 'special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes'. Article 15(4) was inserted by the Constitution (First Amendment) Act in the year 1951. The amendment was introduced in order to enable the government to make special provisions for backward classes. The special provision may be by way of reservation of seats in public educational institutions. This amendment brings Article 15 and Article 29 in line with Articles 16(4), 46 and 340.

This clause strengthens the concept of promoting the socio-economic empowerment of the disadvantaged. Social equality is realised through the facilities and opportunities given to them to live with dignity and equal status in society. Economic equality also gives empowerment as a measure to improve excellence in every walk of life. This being the objective, what is required to be kept in mind while adjudging the constitutionality of the scheme/rule of reservation is the equality and adequacy of representations as per the percentage prescribed by the rules or administrative instructions.

Clause 5 of Article 15 of the Indian Constitution

Article 15(5) states that nothing in Article 15 or Article 19(1)(g) prevents the government from making special legal provisions to improve the lives of socially and educationally backward citizens, as well as those from Scheduled Castes and Scheduled Tribes. In some cases, special provisions may apply to the admission of backward classes, SCs, and STs in educational institutions, either private or public, with or without state funding, except for those minorities identified in Article 30(1). Under Article 19(1)(g) of the Indian Constitution, every citizen of the country is free to follow any profession, trade, business, or occupation of their choice. There is a provision in Article 30 that expresses the right of every minority in India to establish and administer schools of their choice, regardless of whether the minority is religious or linguistic. The Supreme Court decided that Article 15, Clause 5, did not violate Article 14 of the Constitution. Indian citizens are guaranteed equality before the law and equal protection within the territory of the country under Article 14.

This clause was inserted by virtue of the Constitution (Ninety-Third Amendment) Act 2005. The constitutionality of this amendment was challenged in the Ashok Kumar Thakur case (supra), and the Apex Court upheld the amendment so far as it relates to the State maintained institution and aided educational institutions. It was further declared that backward classes falling under the “creamy layer” would not benefit under the amendment, and the state was directed to remove the “creamy layer” backward classes from the ambit of Article 15(5).

It was also observed that the classification on the basis of caste in the long run has the tendency of inherently becoming pernicious, and hence the test of reasonableness has to be applied. It was held that when the object is the elimination of castes and a society free from discrimination based on caste, judicial review within permissible limits can’t be ruled out.

Clause 6 of Article 15 of the Indian Constitution

In 2019, the Parliament enacted the Constitution (One Hundred and Third Amendment) Act, which inserted Clause 6 in Article 15, enabling the State to make special provisions for the advancement of any economically weaker section of citizens, including reservations in educational institutions. It states that such reservations can be made in any educational institution, including both aided and unaided private institutions, except minority educational institutions covered under Article 30(1). It further states that the upper limit of EWS reservations will be 10%.

In the case of Janhit Abhiyan v. Union of India (2022), the Supreme Court, with a 3-2 majority, upheld the 103rd Constitutional Amendment providing EWS reservation. With this, the Court extended the net of reservation benefits to include solely economic backwardness.

Article -16:

Article 16 of the Indian Constitution covers the right to equality of opportunity in matters relating to public employment. This right is specifically guaranteed to Indian citizens only. Article 16 (1) guarantees equality of opportunity in matters relating to 'appointment' or 'employment' to any post under the State. It is applicable only to offices or employment relating to or held by the Government/State.

Article 16(2) states that no citizen shall be discriminated against in any employment or office under the State on the basis of race, caste, gender, place of birth, residence, or descent. Article 16 clause (1) provides for the general rule which entails that there shall be equality in appointment in public sector jobs and there shall be no discrimination for such employment under the State, only on the grounds of religion, caste, race, sex, place of birth, descent or residence. Furthermore, Article 16 (1) and (2) are only applicable to State appointments or employment. Clauses (3), (4), (4-A), (4-B) and (5) of Article 16 of the Indian Constitution provide for exceptions to the general rule of equality of opportunity.

Clause (3) of Article 16 states that the Parliament can enact any legislation requiring residence in a state or union territory as a pre-condition for particular employment or appointments in the respective state or union territory or in local authorities or other authorities within that state or union territory.

Clause (4) of Article 16 provides that the State can enact legislation for the reservation of posts in the government sector or jobs in favour of the backward classes of citizens, which the State considers to have not been adequately represented in the services of the State. The central government took the view that since the Indra Sawhney case relates to the backward classes only, the reservation in the promotion of SCs and STs should not be affected and shall continue. However, the Parliament enacted the 77th Amendment Act, 1995 and added clause 4-A to Article 16 of the Constitution, thereby enabling the Parliament to make provisions for reservation for SCs and STs in promotion posts. This simply meant that even after the judgement of mandal case, the reservation in promotion in government jobs, shall continue.

Clause (4-B) was added after Clause (4-A) to the Indian Constitution under Article 16 by way of 81st Amendment, 2000. It was added to the Constitution with the intent that the backlog vacancies which could not be filled due to unavailability of eligible candidates of the SEBC category in a previous or

preceding year, shall not be clubbed with the 50 percent reservation for the SCs and STs and Other Backward Classes on the total number of vacancies in the next year.

Clause (5) exempts a law from the application of clauses (1) and (2), which require the incumbent of any office to be religiously qualified for appointment.

Clause (6) was added to Article 16 by the 103rd Amendment, 2019, which came into effect on January 14, 2019, and empowers the State to make various provisions for reservation in appointments of members of the Economically Weaker Sections (EWS) of society to government posts. However, these provisions must be within the 10% ceiling, in addition to the existing reservations.

Important aspects of Article 16 of Indian Constitution

One Hundred and Third Amendment Act, 2019

By way of the 103rd constitutional amendment, Clause (6) was inserted in Article 15 and Article 16, which came into effect on January 14, 2019.

Article 15(6) of the Indian Constitution empowers the State to make special provisions for the advancement of economically weaker citizens of India. These special provisions would help the economically weaker sections of the society in obtaining admissions in educational institutions including private institutes, either aided or non-aided by the State. Whereas, the amendment to Article 16(6) of the Constitution empowers the State to make provisions for reservation of the economically weaker citizens of the society, except the classes already reserved, in appointment in State jobs or Govt. posts. It must be noted that the reservation under both the newly added clauses, under Article 15(6) and Article 16(6), shall be subject to a maximum of 10% in addition to the existing reservations for SCs, STs, and non-creamy layer OBCs. Furthermore, the term ‘economically weaker sections’ mentioned under Articles 15(6) and 16(6) shall be the citizens who shall be culled out based on the income of the family and various other indicators of economic disadvantage by the State on a regular basis.

The 103rd Amendment was challenged on the ground of being violative of the basic structure of the Indian Constitution in Janhit Abhiyan v. Union of India, (2022). However, by a majority of 3:2, the amendment was held to be constitutionally valid. Justice Maheshwari explained that reservation is not only affirmative actions or measures to counter social and educational backwardness; instead, they help in fighting different kinds of disadvantages. The majority also held that a 10% EWS reservation above the existing 50% reservation limit, as established in Indra Sawhney Case, is constitutional.

Furthermore, all three judges agreed that the 50% limit is flexible and may be exceeded, but only in exceptional circumstances. They further discovered that the 50% limit would be applicable only to reservations for socially and educationally backward classes and not to the rest.

Descent and Residence under Clause (2) of Article 16

Under clause (2) of Article 16 of the Indian Constitution, the words – "descent" and "residence" were added, thereby guaranteeing that no discrimination can be made on these grounds. 'Descent' is another reason for individual discrimination. In the case of Gazula Dasaratha Rama Rao v. State (1961), the Hon'ble Supreme Court held that the office of the village Munsif was an office under the State and that Section 6(1) of the Madras Act, which required the Collector to select persons from among the last holders of the office, discriminated on the grounds of descent only and was hence void for contravening Article 16(2).

Residence can be a ground for reservation

Clause (3) of Article 16 is an exception to Clause (2) of this Article, which prohibits discrimination based on residence. However, there may be compelling reasons for reserving certain posts in the office of the State for residents only. This Article empowers the Parliament to legislate the extent to which a State may deviate from the preceding principle. In the exercise of powers conferred by Article 16(3), the Parliament has enacted the Public Employment (Requirement as to Residence) Act 1957. It states that no one can be disqualified because they are not a resident of a particular state, though the Act makes an exception for employment in Tripura, Himachal Pradesh, Manipur, and Telangana. This exception is for a period of five years due to the backwardness of these areas.

Reservation for backward classes

Clause (4) of Article 16 is another exception to the general rule established in Article 16 clauses (1) and (2). It empowers the State to make special provisions for the reservation of appointments for posts in favour of the backward class of people who, in the opinion of the State, are underrepresented in the State's services. Thus, Article 16(4) is applicable only if the following two conditions are met:

The class of citizens is backward, and the said class is underrepresented in State services;

The class of citizens is underrepresented in State services.

Catch-up rule and consequential seniority

Following the constitutional recognition of reservation in promotion, the reserved category candidates who were promoted ahead of their general class counterparts became their seniors due to their earlier

promotion. The Hon'ble Supreme Court addressed this anomaly by introducing the concept of a catch-up rule in two cases: Union of India v. Virpal Singh (1995) and Ajit Singh v. State of Punjab (1996). According to this rule, the senior general category candidates who were promoted after SC/ST candidates would regain their seniority over general category candidates who were promoted earlier.

Consequential seniority allows reserved category candidates to maintain seniority over general category peers. In other words, it is open to the State to provide that the candidate promoted earlier by way of the reservation rule shall not be entitled to seniority over his senior in the general category and that as and when a general candidate who was senior to him is promoted, he will regain his seniority over the reserved candidate notwithstanding that he is promoted subsequently to the reserved candidate.

The concepts of catch-up rule and consequential seniority are not constitutional requirements; neither are they implied in Article 16 clauses (1) and (4), nor are they constitutional limitations. Obliteration of these rules does not change the equality code indicated by Articles 14, 15, and 16 of the Constitution. Clause (1) of Article 16 cannot prevent the state from taking cognizance of the compelling interests of backward classes in society. Clause (4) of Article 16 refers to affirmative actions by way of reservation, under which the government is free to provide reservation if it is satisfied on the basis of quantifiable data that backward classes are inadequately represented in the service. Therefore, in every case where the States decide to provide reservation, there must be two circumstances, namely, "backwardness" and "inadequacy of representation." These limitations have not been removed by the impugned amendments. If the States fail to apply these tests, the reservation would be invalid. These amendments do not alter the structure of Articles 14, 15 and 16 (Equality Code). The parameters mentioned in Article 16 (4) are retained. These amendments do not change the identity of the Constitution.

2.3 Freedoms Guaranteed to citizens of India under Article 19 and reasonable Restrictions:

Article 19(1) of the Constitution of India guarantees six fundamental freedoms to every citizen of India, namely-

Freedom of speech and expression;

Freedom to assemble peacefully and without arms;

Freedom to form associations, unions or co-operative societies;

Freedom to move freely throughout the territory of India;

Freedom to reside and settle in any part of the territory of India, and

Freedom to practice any profession, or to carry on any occupation, trade or business.

These six fundamental freedoms are the natural and basic freedoms inherent in the status of a citizen. However, these freedoms are not absolute or uncontrolled but are subject to certain reasonable

restrictions. In this article, the author will take you through the six fundamental freedoms provided under Article 19 along with the relevant case laws.

6 fundamental freedoms

Freedom of speech and expression [Article 19(1)(a) and 19(2)]

Article 19(1)(a) guarantees the freedom of speech and expression to all citizens. Freedom of speech and expression is the foundation of a democratic society and is one of the most cherished rights of a citizen. It is the first condition of liberty and plays an important role in forming public opinion.

Meaning of freedom of speech and expression

Freedom of speech and expression means the right to speak, and the right to express oneself through any medium-by words of mouth, writing, pictures, signs, internet etc. Every citizen has a right to hold an opinion and to be able to express it, including the right to receive and impart information. The expression 'freedom of speech and expression' has a wide connotation. It includes the freedom of the propagation of ideas, their publication and circulation.

Scope of freedom of speech and expression

There are various facets of the freedom of speech and expression which have been recognised by the courts. Some of those facets or rights that constitute the freedom of speech and expression are mentioned below:

Freedom of the press: Freedom of the press is perhaps the most important freedom under the right to free speech and expression. Freedom of the press does not find an explicit mention in the Constitution. However, it has been indisputably held to be an important aspect of the freedom of speech and expression and is implied under Article 19(1)(a). Freedom of press means:

There can be no pre-censorship in the press;

No-pre stoppage of publication in newspapers of articles or matters of public importance;

Freedom of circulation;

No excessive taxes on the press, etc.;

However, restrictions can be imposed in the interests of justice, but those restrictions must withstand the test of Article 19(2).

In Bennett Coleman & Co v. Union of India(1972), the Hon'ble Supreme Court held that the freedom of the press embodies the right of the people to free speech and expression. It was held that "Freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in content."

In the landmark case of Romesh Thappar v. The State Of Madras(1950), the Supreme Court observed that, "freedom of speech and of the press lay at the founda- tion of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible". The Court in this case held that the freedom of circulation is as important as the freedom of publication.

Right to know and to obtain information: In the State of U.P. v. Raj Narain (1975), the Supreme Court observed that the right to know is derived from the concept of freedom of speech. The Court further held that the people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. It is a basic postulate of a democracy that every citizen must have a right to know about what the government is doing. It is only when the public is aware of the acts of government that transparency and accountability in governance can prevail. Thus, the right to obtain information and disseminate it is an important fundamental right. In India, we have the Right to Information Act, 2005 which provides for the right of a citizen to secure access to information under the control of public authorities.

Right to know the antecedents of the candidates at election: In Union of India v. Association For Democratic Reforms (2002), the Hon'ble Supreme Court held that the voters have a fundamental right to know the antecedents of the candidate contesting election including his/her criminal past.

Right to reply: In LIC v. Prof. Manubhai D. Shah(1992), the Supreme Court ruled that the right to reply, including the right to get that reply published in the same news media in which something was published against or in relation to a citizen, is protected under Article 19(1)(a).

Right to silence: Right to speak includes the right to not speak or the right to remain silent. In Bijoe Emmanuel v. State of Kerala (1986), the Supreme Court upheld the right to silence of three children who were expelled from school because they refused to sing the National Anthem. The Court held that no person can be compelled to sing the National Anthem if he has genuine conscientious objections based on his religious belief. Hence, the right to speak and the right to express includes the right not to express and to be silent.

Right to fly the national flag: In the case of Union of India v. Naveen Jindal (2004), the Supreme Court held that flying the National Flag with respect and dignity is an expression and manifestation of one's

allegiance and feelings and sentiments of pride for the nation and therefore, is a fundamental right protected under Article 19(1)(a). However, the flying of the National Flag cannot be for commercial purposes or otherwise and can be subject to reasonable restrictions.

Reasonable restrictions on the right to free speech and expression

The right to free speech and expression is not an absolute right and is subject to reasonable restrictions. As per Article 19(2), restrictions can be imposed upon the freedom of speech and expression in the interests of:

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.

Freedom of assembly [Article 19(1)(b) and 19(3)]

The object of holding an assembly or a meeting is the propagation of ideas and to educate the public. Hence, the right to assemble is a necessary corollary of the right to free speech and expression. Article 19(1)(b) provides for the right to assemble peaceably and without arms. This includes the right to hold public meetings, hunger strikes, and the right to take out processions. However, the assembly must be peaceful and without arms.

It is pertinent to note that there is no right to hold an assembly on government premises or private property belonging to others.

In Himmat Lal v. Police Commissioner, Bombay (1972), the Supreme Court struck down a rule that empowered the police commissioner to impose a total ban on all public meetings and processions. It was held that the state could only make regulations in aid of the right of assembly of citizens and could impose reasonable restrictions in the interest of public order but no rule could be prescribed prohibiting all meetings or processions altogether.

Reasonable restrictions on right to freedom of assembly

According to Clause 3 of Article 19, the right to freedom of assembly could be restricted on the following grounds:

In the interests of the sovereignty and integrity of India, or

In the interests of public order.

Freedom to form associations, unions or co-operative societies [Article 19(1)(c) and 19(4)]

Article 19(1)(c) provides for the right to form associations, unions or cooperative societies. An association refers to a group of persons who have come together to achieve a certain objective which may be for the benefit of the members of the welfare of the general public or a scientific, charitable or any other purpose.

The right to form associations is considered as the lifeblood of democracy, as without such a right, the political parties critical to the functioning of a democracy cannot be formed.

The right to form associations and unions includes the right to form companies, societies, trade unions, partnership firms and clubs, etc. The right is not confined to the mere formation of an association but includes its establishment, administration and functioning as well.

Some of the facets of the right to form associations are as follows:

The right to form associations means the right to be a member of an association voluntarily. It also includes the right to continue to be or not to continue to be a member of the association.

In Damyanti v. Union of India(1971), the Supreme Court upheld the right of the members of an association to continue the association with its composition as voluntarily agreed upon by the persons forming the association.

The right to form an association includes the right not to be a member of an association.

The right under Article 19(1)(c) does not prohibit the state from making reservations or nominating weaker sections into the cooperative societies and their managing committees.

No prior restraint can be imposed on the right to form an association.

There is no fundamental right of recognition of the association or union by the government.

The right to form an association includes no right to achieve the objects of the association.

Reasonable restrictions on right to form association

According to Article 19(4), reasonable restrictions can be imposed on the right to form associations, unions and co-operative societies, etc. on the following grounds:

In the interests of the sovereignty and integrity of India, or

In the interests of public order or morality.

Freedom of movement and residence [Article 19(1)(d), 19(1)(e) and 19(5)]

Article 19(1)(d) and (e) are complementary to each other and confer a right upon the citizens to move freely or/and to reside and settle in any part of the country.

Freedom of movement

Article 19(1)(d) provides for the right to move freely throughout the territory of India. This means the right to locomotion, i.e., the right to move as per one's own choice. This right includes the right to use roads and highways.

In Chambara soy v. Union of India (2007), some unscrupulous elements had blocked the road due to which the petitioner was delayed in taking his ailing son to the hospital and his son died on arrival at the hospital. The Supreme Court held that the right of the petitioner to move freely under Article 19(1)(d) has been violated due to the road blockage. The Court held that the State is liable to pay the compensation for the death of the petitioner's son due to the inaction on the part of the State authorities in removing the aforesaid blockage.

Freedom of residence

Article 19(1)(e) states that it is the fundamental right of every citizen to reside and settle in any part of the territory of India.

In the case of U.P. Avas Evam Vikas Parishad v. Friends Co-op. Housing Society Ltd.(1995), it was held by the Supreme Court that the right to residence under Article 19(1)(e) includes the right to shelter and to construct houses for that purpose.

Reasonable restrictions on right to freedom of movement and residence

As per Article 19(5), the right to freedom of movement and residence could be restricted on the following grounds:

In the interests of the general public, or

For the protection of the interests of any Scheduled Tribe.

Freedom of profession, occupation, trade or business [Article 19(1)(g) and 19(6)]

Article 19(1)(g) provides for the fundamental right of the citizens to practice any profession or to carry on any occupation, trade or business.

Scope: What's included and what's not

The right to carry on a business also includes the right to shut down the business.

In Excel Wear v. Union of India (1978), the Supreme Court declared Section 25-O of the Industrial Disputes Act, 1947, which required an employer to take prior permission from the government for closure of his industrial undertaking, as unconstitutional and invalid on the ground that it violated Article 19(1)(g).

There is no right to hold a particular job of one's choice. For example, in the case of closure of an establishment, a man who has lost his job cannot say that his fundamental right to carry on an occupation is violated.

There is no right to carry on any dangerous activity or any antisocial or criminal activity.

No one can claim a right to carry on business with the government.

The right to trade does not include the right of protection from competition in trade. Thus, loss of income on account of competition does not violate the right to trade under Article 19(1)(g).

The Hon'ble Supreme Court in Vishaka v. State of Rajasthan (1997) has observed that the sexual harassment of working women in workplaces violates the fundamental right under Article 19(1)(g). In

this case, comprehensive guidelines and binding directions were issued by the court to prevent the incidents of sexual harassment of women at workplaces in both public and private sectors.

Reasonable restrictions on freedom of profession, occupation, trade or business

Article 19(6) provides that the fundamental right under Article 19(1)(g) can be restricted in the following ways:

By imposing reasonable restrictions in the interest of the general public.

By state monopoly: Sub-clause (ii) of Article 19(6) enables the state to make laws for creating state monopolies either partially or completely in respect of any trade or business or industry or service. The right of a citizen to carry on trade is subordinated to the right of the state to create a monopoly in its favour.

Also, Sub-clause (i) of Article 19(6) empowers the state to lay down, by law, "the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business".

In State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamat (2005), the Supreme Court has held that the expression 'in the interest of general public' in Article 19(6) is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution.

Test of Restrictions under Article 19(2) to 19(6)

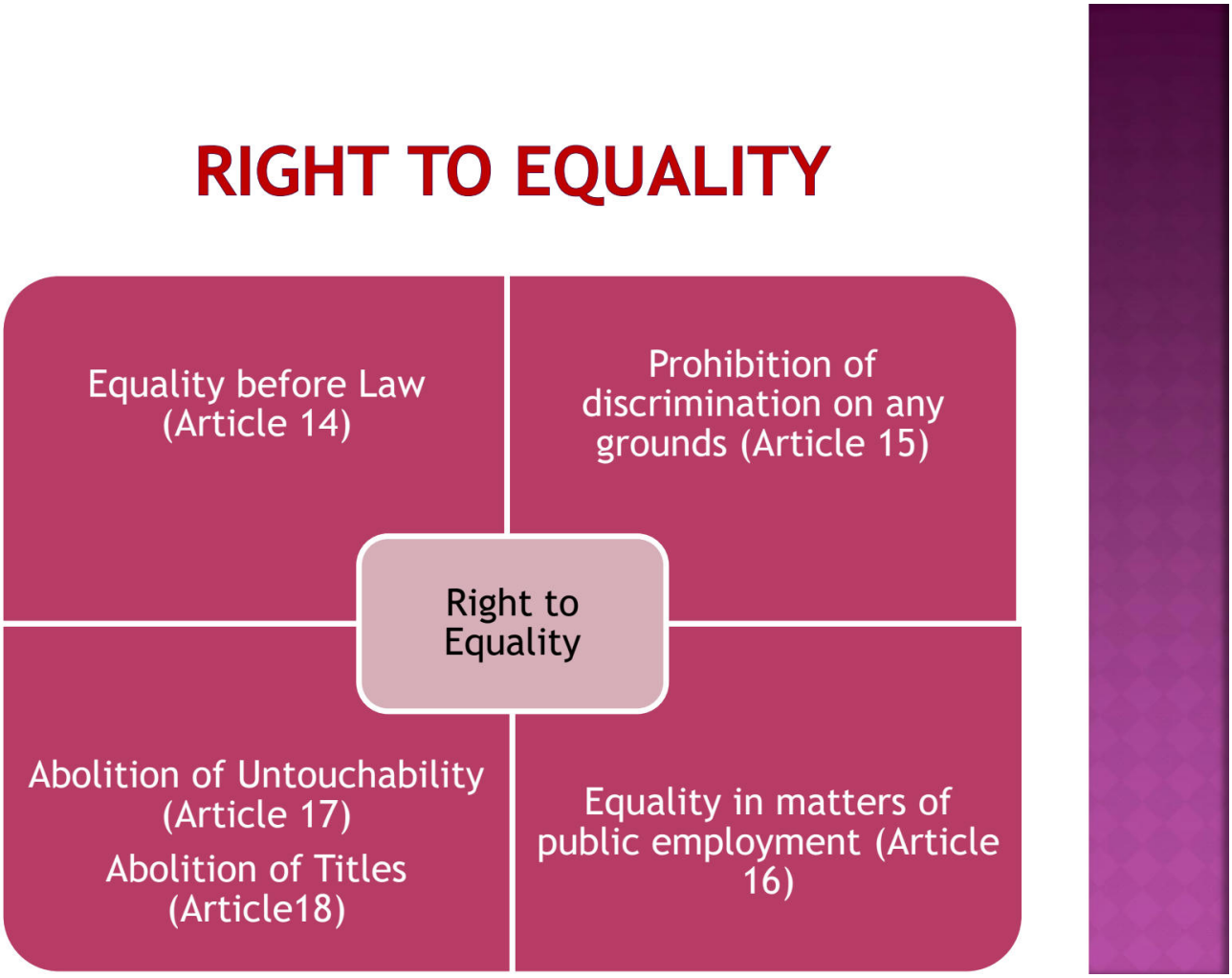
The restrictions to be imposed on the fundamental freedoms under Article 19(2) to Article 19(6) must satisfy the following tests:

The restriction must be imposed by or under the authority of a law duly enacted by the appropriate legislature. The law authorising the restriction must be reasonable.

The restriction imposed must be for the particular purpose or object envisaged in the specific clauses, i.e., Article 19(2) to 19(6). There has to be a reasonable nexus between the restriction imposed and the objects mentioned in the respective clause.

The restriction must be reasonable.

2.4 Rights against Exploitation, Abolition of Untouchability and titles:



Abolition of Untouchability: Article 17

Untouchability has been abolished by the Indian Constitution through Article 17. The Article states that the practice of untouchability is prohibited in all forms. Article 17 of the Constitution abolishes the practice of untouchability. The practice of untouchability is an offense under the Untouchability Offences Act of 1955 (renamed to Protection of Civil Rights Act in 1976) and anyone doing so is punishable by law. This Act states that whatever is open to the general public should be open to all the citizens of India.

Devarajjah v. Padmanna, AIR 1958 Mys 84

In the case of Devarajjah vs. Padmana, the term untouchability was defined. It was stated that the Untouchability Offences Act, 1955 fails to define the word 'untouchability'. The Court observed that 'untouchability' under Article 17 of the Constitution should not be taken in the literal sense but should be understood as a practice that has prevailed and developed in India. The framers of the Constitution had clearly indicated untouchability as a practice that developed historically in this country. The existence and practice of untouchability in this country and the efforts which have been made for its eradication during the past decades are matters of common knowledge and can be taken judicial notice of.

Article 17 of the Constitution which was intended to abolish the practice of untouchability, fails to define the term 'untouchability' nor is it defined anywhere else in the Constitution. Through this case, the Court gave a broader interpretation of the word 'untouchability' under Article 17 of the Constitution.

Asiad Project Workers Case

In the Asiad Project Workers Case, the PUDR filed a case against the Delhi Administration. People's Union for Democratic (PUDR) is an organization which was formed for the purpose of protecting the democratic rights of the citizens. It commissioned three social scientists for inquiring about the conditions under which the workmen were working in Asiad Projects. Based on the inquiry, the PUDR addressed Justice Bhagwati by writing a letter about the various violations of labor laws that were taking place in Asiad Projects. The Supreme Court treated the letter as a writ petition and issued a notice to the Union of India, Delhi Administration, and Delhi Development Authority. The violations were as follows:

(i) The provisions of the Equal Remuneration Act, 1976 were violated. The female workers were being paid less than male workers and the amount of wage was being misappropriated by the Jamadars. The workers who belonged to lower castes were treated as untouchables and were forced to work without wages. It resulted in a violation of Article 17 and 23 of the Constitution.

(ii) There was a violation of labor law as well as Article 24 of the Constitution as children below the age of 14 years were employed in the project.

(iii) There was a violation of the Right to life under Article 21 of the workers as they were denied of proper living conditions and medical facilities.

The judgment which was given by the Supreme Court was in favor of the petitioners. The Court observed that it is the duty of the State to protect the fundamental rights of the citizens. A set of guidelines were given for minimum wages and many other provisions were introduced to ensure proper working conditions for the workers.

Abolition of Titles: Article 18

The Article 18 of the Constitution forbids the State from conferring any titles on the citizens of India and also they are prohibited from accepting any title given by a foreign State. However, Military and academic distinctions can be conferred upon. The title which comes along with awards such as Bharat Ratna and Padma Vibhushan do not fall within the constitutional prohibition and thus, they do not fall under the definition of title under Article 18 of the Constitution.

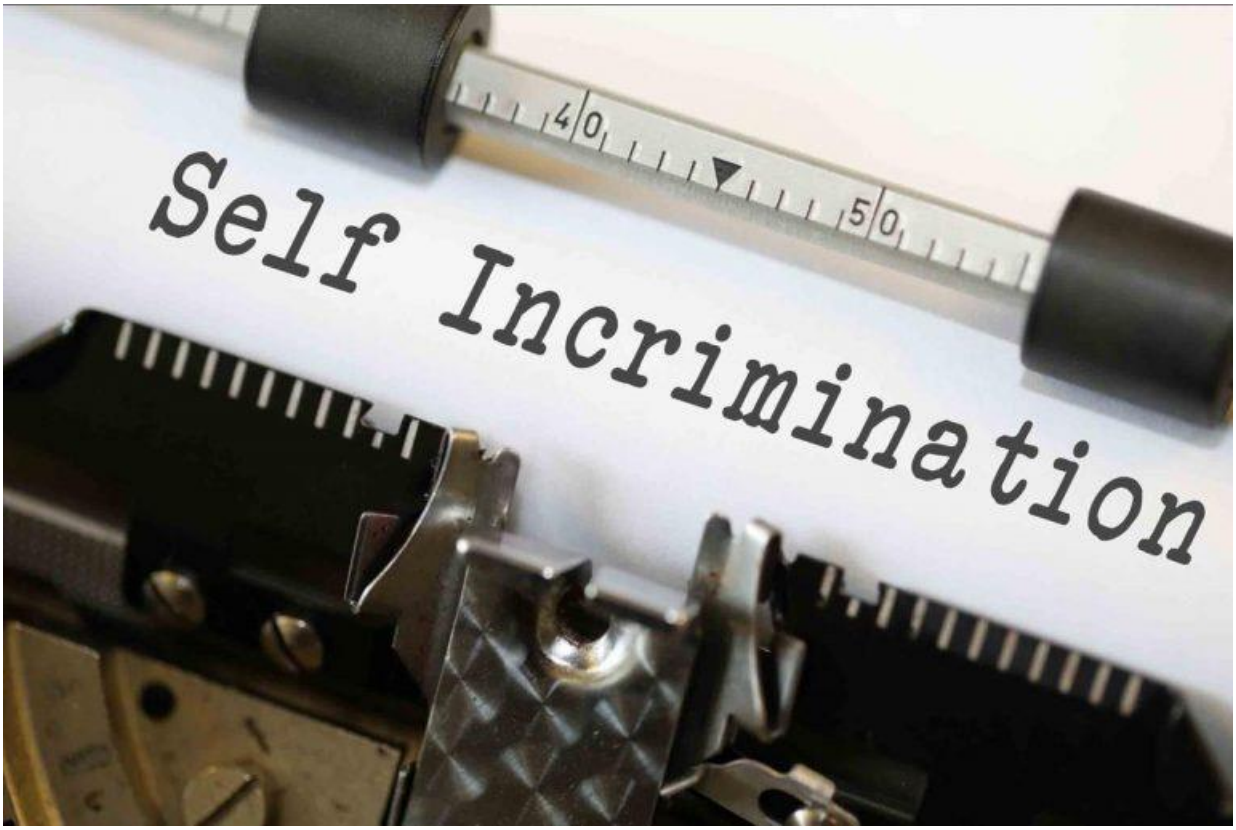
Balaji Raghavan v. Union of India, (1996) 1 SCC 361

In the case of Balaji Raghavan v. Union of India, the petitioners contended that National Awards like Padam Vibhushan, Padam Bhushan, Padam Shri, and Bharat Ratna should not be given to the individuals as it is a violation of Article 18. It was argued in the court that the National Awardees very often misuse the title which is given to them by the Government. The Supreme Court held that National Awards are not subject to titles as per Article 18 and receiving a National Award was not a violation of equality under the Constitution. Article 51(A)(f) of the Constitution speaks about the necessary recognition and appreciation of excellence in the performance of a person's duty. The Court criticized the Government's failure in selecting the right candidates for National Award and also stated that the whole criteria for selection were vague and the main object of recognition and appreciation of work was wholly missing.

Designation of Senior Advocate

In the case of Indira Jaisingh vs. Supreme Court of India, the designation of the Senior Advocate was questioned as the appointment of the Senior Advocates were based on different norms and guidelines in different High Courts. Subsequently, the Supreme Court framed a new set of guidelines for the appointment of Senior Advocates. The petitioner Indira Jaisingh filed a petition on the grounds that the guidelines which are set by the Supreme Court for the appointment of Senior Advocates are flawed and need to be rectified. From the year 2015, no lawyer has been with the title of senior advocate by the Supreme Court. The last time the court made the designation of the Senior Advocate was in April 2015. The issue came before the Court when the Senior Advocate Indira Jaisingh filed a petition questioning the biased view when it comes to 'giving them the gown'. This petition came right after when Supreme Court-appointed 5 new senior advocates in 2015. She contended that this was a violation of the fundamental rights under Article 14 & 15 of the Constitution. She also contended that this led to the monopoly of the senior lawyers in a court of law and the method of appointing senior designation also leads to unhealthy lobbying with the judges. The Courts have stopped the appointment of advocates for the designation of senior advocates after the said petition.

2.5 Right to Self –Incrimination and Principles of Double Jeopardy :



According to Black's Law Dictionary, a declaration or an act that occurs during an investigation where a person or witness incriminates themselves either explicitly or implicitly is known as self-incrimination. In simpler words, it is the act of implicating or exposing one's own self to criminal prosecution.

Right against Self-incrimination in India

The Indian Constitution provides immunity to an accused against self-incrimination under Article 20(3) – 'No person accused of an offence shall be compelled to be a witness against himself'. It is based on the legal maxim "nemo teneteur prodre accussare seipsum", which means "No man is obliged to be a witness against himself."

The Supreme Court widened the scope of this immunity by interpreting the word 'witness' to include oral as well as documentary evidence so that no person can be compelled to be a witness to support a prosecution against himself. This prohibition cannot be applied in cases where an object or document is searched or seized from the possession of the accused. For the same reason, the clause does not bar the medical examination of the accused or the obtaining of thumb-impression or specimen signature from him. This immunity is available only against criminal proceedings. The Supreme Court has made it clear that in order to claim this immunity from being compelled to make a self-incriminating statement, it is necessary that a formal accusation must have been made against the person at the time of interrogation. He cannot claim the immunity at some general inquiry or investigation on the ground that his statement may at some later stage lead to an accusation. The compulsory administration of the narco-analysis technique amounts to 'testimonial compulsion' and thereby triggers the protection of Article 20(3) of the Constitution.

Right against Self-incrimination in other countries

U.S.A.

The fifth amendment of the U.S. Constitution provides that- 'No person shall be compelled in any criminal case, to be a witness against himself'

After being judicially interpreted in many cases, the above privilege has been given a wide connotation. This privilege against self-incrimination can be applied to witnesses as well as parties in both civil or criminal proceedings. It covers oral and documentary evidence and extends to all disclosures including answers which by themselves support a criminal conviction or furnish a link in the chain of evidence needed for a conviction.

Britain

Under Common Law, it is a basic principle that a person accused of any offence shall not be compelled to discover documents or objects which incriminate himself. No witness, whether party or stranger is, except in a few cases, compellable to answer any question or to produce any document the tendency of which is to expose the witness (or the spouse of the witness), to any criminal charge, penalty or forfeiture. The purpose of this privilege is to encourage people to come forward with evidence in courts of justice, protecting them, as far as possible, from injury, or needless annoyance, in consequence of doing so.

Ingredients of Article 20(3)

1. The person accused of an offence

This privilege is only available to a person accused of an offence i.e. "person against whom a formal accusation relating to the commission of an offence has been levelled, which may result in prosecution". In India, a formal accusation can be made by lodging of an F.I.R. or a formal complaint against a person accusing him of committing a crime, it is not necessary that the trial or enquiry should have commenced before a court. Article 20(3) operates only on the making of such formal accusation. It is imperative to note that, "a person cannot claim the protection if at the time he made the statement, he was not an accused but becomes an accused thereafter." Article 20 (3) does not apply to departmental inquiries into allegations against a government servant since there is no accusation of any offence.

In M.P. Sharma v. Satish Chandra, it was held that a person whose name is mentioned in the first information report as an accused can claim protection under Article 20(3). The privilege against self-incrimination is available at both trial and pre-trial stage i.e. when the police investigation is going on and the person is regarded as an accused, or even if his name is not mentioned in the FIR as an accused.

In Nandini Satpathy v. P.L. Dani, the appellant, a former Chief Minister was called to the Vigilance Police Station for the purpose of examination for a case filed against her under the Prevention of

Corruption Act, 1947. During the investigation, she was served with a long list of questions in writing which she denied to answer and claimed protection under Article 20(3). The Supreme Court held that the objective of Article 20(3) is to protect the accused from unnecessary police harassment and the right against self-incrimination is available to witness and the accused in the same manner, and it is applicable at every stage where information is furnished. The privilege under Article 20(3) is applied at the stage of police investigation when the information is extracted.

This right to silence is not limited to the case for which the person is being examined but further extends to other matters pending against him, which may have the potential of incriminating him in other matters. It was also held that the protection could be used by a suspect as well.

In the case of Balasaheb v. State of Maharashtra, it was held that a witness in a police case, who is also an accused in the complaint case for the same incident, cannot claim absolute immunity from testifying in the case. However, he may refuse to answer those questions which tend to incriminate him.

2. Compulsion to be a witness

The application of the narco-analysis test as a technique for investigation raises the issue of encroachment of human rights. In State of Bombay v. Kathi Kalu Oghad, the court held that it must be shown that the person was compelled to make a statement which was likely to incriminate him. Compulsion is duress: it should be a physical objective act and not a state of mind like beating, threatening, imprisonment of wife, parent or child of a person. Art.20(3) does not apply if a person makes a confession without any inducement or threat.

In the case of State (Delhi Administration) v. Jagjit Singh, the court held that if an accused has been granted pardon under section 306 of the Criminal Procedure Code, he ceases to be an accused and becomes a witness for the prosecution and his evidence cannot be used against him in other cases. Section 132 of the Indian Evidence Act protects a witness from being prosecuted on the basis of the information given by him in a criminal proceeding which tends to incriminate him.

3. Compulsion resulting in giving evidence against himself

An accused can be compelled to submit to investigation by giving thumb impressions or specimen for writings or exposing body for the purpose of identification. In Kathi Kalu's case, it was held that it must be necessarily shown that the witness was compelled to make a statement likely to incriminate him. Compulsion is an essential ingredient but if a person makes a confession without any inducement, threat or promise Article 20(3) does not apply. The accused may waive his right against self-

incrimination by voluntarily making an oral statement or producing documentary evidence, incriminatory in nature.

In Amrit Singh v. State of Punjab, the accused had charges of rape and murder of an eight year old girl. When the body of the deceased was discovered, some strands of hair were found in the closed fist of the child. The Police wanted to analyse the hair of the accused, but the accused refused to give the sample. The court found the accused to be protected against self-incrimination, so he had the right to refuse to give hair sample. But if the right against self-incrimination is considered in such a broad manner, then it might lead to misuse of this right by the accused.

In an interesting case of X v. Y, the divorce proceedings on the ground of adultery were going on in the Delhi High Court. The Court allowed the paternity test of the preserved foetus as it was no longer a part of the wife's body. She was not subjected to compulsion as the right against self-incrimination does not extend to search and seizure of documents and any other object under a search warrant.

Narco-analysis Test vis-à-vis Self-Incrimination

The admissibility of scientific techniques such as narco-analysis tests, brain mapping test, etc for improving the investigation has been a matter of debate about whether these tests violate the right against self-incrimination under Article 20(3). In Gobind Singh v. State of Madhya Pradesh, the Court held that the mental state of an individual comes under the ambit of 'Right to Privacy'. Later, developments in this area observed that the authority of the State to compel an individual to expose the parts of his life which he wishes to keep to himself is ultra vires the Constitution as it is in contravention of the rights guaranteed under Article 20(3) and 21.

This issue was brought before the Supreme Court in the case of Selvi v. State of Karnataka, the apex court rejected High Court's reliance on the utility, reliability and validity of narco analysis test and other such tests as methods of criminal investigation. The Court found that it is a requisite compulsion to force an individual to undergo narco-analysis test, polygraph tests and brain-mapping. The answers given during these tests are not consciously and voluntarily given, so the individual is unable to decide whether or not to answer a question, hence it amounts to testimonial compulsion and attracts protection under Article 20(3). The Court stated that narco-analysis test is a cruel and inhuman treatment which violated the right to privacy of an individual. That courts cannot permit administration of narco-analysis test against the will of the individual except in cases where it is necessary under public interest.

DNA Test and Article 20(3)

The courts are reluctant in accepting evidence based on DNA Test because it challenges the Right to privacy and the Right against self-incrimination of an individual. Right to privacy is a right inherent in Right to Life and Personal Liberty under Article 21. However, in some cases, the Supreme Court held that the Right to Life and Personal Liberty is not absolute and can be subject to certain restriction. In Kharak Singh v. State of Uttar Pradesh, the apex court held that Right to Privacy is not guaranteed under the Constitution. The courts have allowed DNA tests on certain occasions to be used in an investigation for producing evidence.

In the case of Kanchan Bedi v. Gurpreet Singh Bedi, the question arose on the parentage of the infant, and the mother filed an application for conducting DNA test, to which the father opposed arguing that his rights would be violated. The Court held that where the parentage of a child is in question, directing a person to undergo a DNA Test does not amount to a violation of fundamental rights. The Court relied on the judgment given in Geeta Saha v. NCT of Delhi, where the Division Bench ordered a DNA Test to be conducted on the foetus of the rape victim.

Principles of Double –Jeopardy:

The doctrine of double jeopardy is a legal defence that protects an accused/defendant from being tried again for the same accusations and facts after a lawful acquittal or conviction. Double jeopardy is a doctrine from the Indian Constitution, specifically Article 20(2), which deals with and specifies the meaning of the double jeopardy doctrine. It has been incorporated as a part of our basic right by the founders of the Indian Constitution under Part III. The criminal justice system works on the assumption of some principles where no compromise is acceptable, such as the double jeopardy principle, in which values are defended by the system.

In general, Article 20 of the Indian Constitution deals with the protection from criminal convictions. There are three safeguards in place to keep an accused person from being convicted, namely, ex post facto law [Article 20(1)], double jeopardy [Article 20(2)], and self-discrimination [Article 20(3)].

Protection against a conviction

Article 20 of the Indian Constitution deals with protection in the case of a conviction for a crime. It relates to the right to freedom, which is one of the fundamental rights granted by the Indian Constitution. Articles 19, 20, 21A, and 22 protect the right to liberty. Article 20 is a part of the right to freedom, as it establishes three types of safeguards for accused criminals, which are as follows:

Ex post facto law [Article 20(1)]

An ex post facto legislation is one that imposes punishments or convictions on already committed offences and increases the punishment for such acts. This is based on the Constitution of the United States of America. It also has a retrospective effect. It means when a law enforces a penalty or punishment for an act that was not subject to punishment at the time of the commission of the offence, or enforces an extra penalty to what was prescribed at the time of the commission of the offence, or when there is a change in the rule of evidence or procedure that requires conviction.

Double jeopardy [Article 20(2)]

The doctrine of double jeopardy is a rule that states that no one should be put twice in peril for the same offence. "No individual shall be arrested and punished for the same offence more than once," the Indian Constitution said in article 20(2). The doctrine evolved from the Fifth Amendment of the United States Constitution, however, there are differences between the United States and England. In India, the scope of protection is restricted. The doctrine existed in India prior to the Constitution of India, as evidenced by the General Clauses Act of 1897, Sections 26 and 300 of the Criminal Procedure Code of 1973.

Self-discrimination [Article 20(3)]

Self-discrimination is prohibited because "no person accused of any offence will be compelled to be a witness against himself," according to the law. It is based on the maxim 'Nemo tenetur prodere accusare seipsum,' which says that no one is obligated to blame oneself. It relates to the admissibility of confessions made under pressure, which are not allowed to be used as evidence. Furthermore, no one will be required to make remarks against oneself that are considered self-harming or confessional statements.

Grounds for applicability of the doctrine of double jeopardy

In legal terms, jeopardy refers to the danger that defendants in criminal cases suffer, such as jail time or penalties. In three situations, double jeopardy has been stated as a valid defence:

First and foremost, the individual must be charged with a crime. In the General Clauses Act of 1897, the term 'offence' is defined. Any act or omission that is criminal under the law in force at the time.

Before a court or a judicial tribunal, the investigation or proceeding must have occurred.

In the prior process, the person must have been arrested and punished.

The offence must be the same as the one for which he was previously convicted and sentenced.

Conditions where the doctrine of double jeopardy does not apply

The double jeopardy clause's protection may not always be applicable. The courts have evolved some principles for determining the application of double jeopardy as a valid defence, mostly through legal interpretations over history.

Civil lawsuit: Double jeopardy is a defence that can only be used in criminal court and cannot be used in civil court. The defendant cannot defend himself against punishment in civil court for the same crime committed in criminal court. For example, if 'A' killed 'B' in a drunk and drive case, 'B's family can sue in both civil and criminal courts. They can sue in civil court to recover the 'B's financial damages. In a civil proceeding, 'A' cannot defend himself with double jeopardy to protect him from punishment for his crime. However, he could use double jeopardy to defend himself in criminal court.

Jeopardy must begin: The executive authorities must first put the defendant in jeopardy before applying the double jeopardy doctrine. This requires that defendants must be tried first before claiming double jeopardy doctrine as a defence. After the trial jury is called in, jeopardy begins or attaches to the case.

Jeopardy must end: Jeopardy must begin and conclude in the same way. To put it another way, before the double jeopardy doctrine may be utilised to prevent the defendant from being arrested and punished for the same offence, the case must come to a conclusion. When a judge enters an acquittal judgement before submitting the matter to the jury or when the sentence has been served. When the court renders a decision, jeopardy is usually over.

Origin of the doctrine of double jeopardy

The word 'double jeopardy' comes from the English common law rule 'Nemo bis punitur pro eodem delicto,' which means "no one should be punished twice for the same offence." The word 'double jeopardy' comes from the common-law rule 'Nemo debet bis vexari,' which means "a man must not be put in peril twice for the same offence." In simple terms, it implies 'penalty twice' or "punishment given more than once for the same offence."

There is no specific origin for this doctrine, which is mentioned in one court and appears to be part of the common law in England in addition to every other system of jurisprudence, concluding that it does not have a beginning and has always existed. The doctrine of double jeopardy was known to the Greeks and Romans, and it was eventually acknowledged in Justinian's Digest as the rule that the governor should not allow the same person to be charged for a crime for which he had previously been tried and

convicted. The criminal procedure at the time was different from what we have now, with the defendant subject to arrest by the prosecutors within 30 days following acquittal.

The doctrine of double jeopardy in the Magna Charta has not been discussed, nor can it be interpreted by implication. Continental and English systems have drawn the doctrine of double jeopardy from the shared source of Canon law. As early as 847 A.D., Canon law stated that no one, not even God, can be judged again for the same offence. This idea has been incorporated into Roman law through the Justinian Code.

Double Jeopardy was also recognised as a constitutionally protected right in a number of nations, including the United States, Canada, Mexico, and India. In India, double jeopardy existed in the form of Section 403 (1) of the old Code of Criminal Procedure, which has now been replaced by Section 300 Amendment, and Section 26 of the General Clauses Act of 1897. This doctrine existed before the formation of the Indian Constitution. Article 14(7) of the International Covenant on Civil and Political Rights, Article 4(1) Protocol 7 of the European Convention on Human Rights, and Article 50 of the European Union Charter of Fundamental Rights are all recognised as international documents.

If a person has been tried for an offence in the United States or England, he cannot be tried for the same offence twice, whether or not he was acquitted in the first trial. However, in India, a person who has been convicted and acquitted might be prosecuted and punished again under Article 20(2). If he or she was prosecuted and convicted for an identical crime, he or she might use Article 20(2) as a defence. Article 20(2) of the Constitution provides protection against double jeopardy. It states that no one shall be arrested and punished more than once for the same offence.

Judicial perspective on the doctrine of double jeopardy

The courts in India have made certain observations relating to the doctrine through their judgements in various cases, the courts state that the doctrine of double jeopardy is embedded the maxim, ‘nemo debet bis vexari si constat curiae quod sit pro una et eadem causa’, which means that no one should be vexed twice if it appears to be for the same cause. The court declared this in the case Union of India v. P.D. Yadav (2001). There were certain details of the concept that the courts examined and defined in later decisions.

The judgements make it clear that an investigation is not the same as a prosecution. This was asserted in the case Venkataraman v. Union of India (1954), where the accused was subjected to an

investigation by the inquiry commissioner after being fired from his job. Following his discharge, he was accused of violating the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988. He argued double jeopardy, but the Supreme Court decided that the investigation conducted by the inquiry commissioner to end his employment was not prosecution and therefore the charges may be brought, and the defence of double jeopardy was dismissed.

The doctrine of double jeopardy, on the other hand, may only be used when the punishment is for the same offence. The doctrine cannot be applied if the offences are of a different nature, as mentioned in the case Leo Roy v. Superintendent District Jail (1957), where the Supreme Court stated that even though the person had been tried and convicted under the Sea Customs Act, 1878 they could be put on trial again under the Indian Penal Code, 1860 because there were two distinct charges and offences.

In the case of a continuous offence, each day when a person commits a crime is considered as a separate crime, and the accused may be punished separately for each one. This does not constitute double jeopardy, as the High Court of Judicature at Allahabad determined in the case of Mohammad Ali v. Sri Ram Swaroop (1963).

2.6 Constitutional Remedy for the Enforcement of Fundamental Right(Writ remedies under article 32, distinction from writ article 226) :

Article 32 of the Indian Constitution gives the right to individuals to move to the Supreme Court to seek justice when they feel that their right has been 'unduly deprived'. The apex court is given the authority to issue directions or orders for the execution of any of the rights bestowed by the constitution as it is considered 'the protector and guarantor of Fundamental Rights'.

Under Article 32, the parliament can also entrust any other court to exercise the power of the Supreme Court, provided that it is within its Jurisdiction. And unless there is some Constitutional amendment, the rights guaranteed by this Article cannot be suspended. Therefore, we can say that an assured right is guaranteed to individuals for enforcement of fundamental rights by this article as the law provides the right to an individual to directly approach the Supreme Court without following a lengthier process of moving to the lower courts first as the main purpose of Writ Jurisdiction under Article 32 is the enforcement of Fundamental Rights.

Dr Ambedkar stated that:

"If I was asked to name any particular article in this Constitution as the most important- an article without which this Constitution would be a nullity— I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance."

Types of Writs

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

1. Habeas Corpus

Meaning

It is one of the important writs for personal liberty which says "You have the Body". The main purpose of this writ is to seek relief from the unlawful detention of an individual. It is for the protection of the individual from being harmed by the administrative system and it is for safeguarding the freedom of the individual against arbitrary state action which violates Fundamental Rights under Articles 19, 21 & 22 of the Constitution. This writ provides immediate relief in case of unlawful detention.

When Issued?

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

Important judgments on Habeas Corpus

The first Habeas Corpus case of India was that in Kerala where it was filed by the victims' father as the victim P. Rajan who was a college student was arrested by the Kerala police and being unable to bear the torture he died in police custody. So, his father Mr T.V. Eachara Warrier filed a writ of Habeas Corpus and it was proved that he died in police custody.

Then, in the case of ADM Jabalpur v. Shivakant Shukla which is also known as the Habeas Corpus case, it was held that the writ of Habeas Corpus cannot be suspended even during an emergency (Article 359).

While deciding whether Habeas Corpus writs are civil or criminal in nature, it was held in Narayan v. Ishwarlal that the court would rely on the way of the procedures in which the locale has been executed.

This writ has been extended to non-state authorities as well which is evident from two cases. One from the Queen Bench's case of 1898 of Ex Parte Daisy Hopkins in which the proctor of Cambridge University detained and arrested Hopkins without his jurisdiction and Hopkins was released. And in

the case of Somerset v. Stewart wherein an African Slave whose master had moved to London was freed by the action of the Writ.

Circumstances when the writ of Habeas Corpus cannot be issued:

The detention is lawful.

The case is being prosecuted for failure to comply with a legislative or judicial mandate.

A competent court authorized the detention.

The jurisdiction of the court on detention is ultra vires.

2. Quo Warranto

What does the writ of Quo Warranto mean?

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

The court issues the Writ of Quo Warranto in the following cases:

When the public office is in question and it is of a substantive nature. A petition against a private corporation cannot be filed.

The office is created by the State or the Constitution.

The claim should be asserted on the office by the public servant i.e. respondent.

Important Case Laws

In the case of Ashok Pandey v. Mayawati , the writ of Quo Warranto was refused against Ms Mayawati (CM) and other ministers of her cabinet even though they were Rajya Sabha members.

Then in the case of G.D. Karkare v. T.L. Shevde , the High Court of Nagpur observed that "In proceedings for a writ of quo warranto, the applicant does not seek to enforce any right of his as such nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from that office."

The Writ of quo warranto was denied by the court in the case of Jamalpur Arya Samaj v. Dr D. Ram . The writ was denied on the ground that writ of quo warranto cannot lie against an office of a private nature. And also it is necessary that office must be of substantive character. Whereas in the case of R.V. Speyer the word 'substantive' was interpreted to mean an 'office independent to the title'. Also in H.S. Verma v. T.N. Singh , the writ was refused as the appointment of a non-member of the state legislature as C.M. was found valid in view of Article 164(4) which allows such appointment for six months.

Circumstances when the writ of Quo Warranto cannot be issued

The writ of Quo Warranto cannot be issued for any private organization or person.

The writ of Quo Warranto cannot be issued for any body or an organisation that does not fall under the definition of "State" as defined under Article 12.

Absence of alternative remedy cannot be a ground for issuing a writ of Quo Warranto.

In the case of Bharati Reddy v. The State Of Karnataka (2018), the Hon'ble Supreme Court held that a writ of quo warranto cannot be issued based on assumptions, inferences, or speculations concerning the fact of accomplishment of qualifying conditions. There must be an establishment of the fact that a public officer is abusing lawful powers not vested to him within the public authority.

3. Mandamus

Writ of Mandamus

Writ of Mandamus means "We Command" in Latin. This writ is issued for the correct performance of mandatory and purely ministerial duties and is issued by a superior court to a lower court or government officer. However, this writ cannot be issued against the President and the Governor. Its main purpose is to ensure that the powers or duties are not misused by the administration or the executive and are fulfilled duly. Also, it safeguards the public from the misuse of authority by administrative bodies. The mandamus is "neither a writ of course nor a writ of right but that it will be granted if the duty is in nature of public duty and it especially affects the right of an individual, provided there is no more appropriate remedy" . The person applying for mandamus must be sure that he has the legal right to compel the opponent to do or refrain from doing something.

Conditions for issue of Mandamus

There must rest a legal right of the applicant for the performance of the legal duty.

The nature of the duty must be public.

On the date of the petition, the right which is sought to be enforced must be subsisting.

The writ of Mandamus is not issued for anticipatory injury.

Limitations

The courts are unwilling to issue the writ of mandamus against high dignitaries like the President and the Governors. In the case of S.P. Gupta v. Union of India , judges were of the view that a writ cannot be issued against the President of India for fixing the number of judges in High Courts and filling vacancies. But in Advocates on Records Association v. Gujarat , the Supreme Court ruled that the

judges' issue is a justiciable issue and appropriate measures can be taken for that purpose including the issuance of mandamus. But in C.G. Govindan v. State of Gujarat , it was refused by the court to issue the writ of mandamus against the governor to approve the fixation of salaries of the court staff by the Chief Justice of High Court under Article 229. Hence, it is submitted that the Governor or the President means the state or the Union and therefore issuance of mandamus cannot take place.

Important Judgements

In Rashid Ahmad v. Municipal Board , it was held that in relation to Fundamental Rights the availability of alternative remedy cannot be an absolute bar for the issue of writ though the fact may be taken into consideration.

Then, in the case of Manjula Manjori v. Director of Public Instruction, the publisher of a book had applied for the writ of mandamus against the Director of Public Instruction for the inclusion of his book in the list of books which were approved as text-books in schools. But the writ was not allowed as the matter was completely within the discretion of D.I.P and he was not bound to approve the book.

In the case of Binny Ltd. & Anr v. V. Sadasivan & Ors (2005), the Hon'ble Supreme Court laid down the scope of mandamus. It stated that a writ of mandamus is not applicable against any private wrong. It can be issued only when any public authority exercises its duty unlawfully or refuses to perform its duty within the ambit of the law.

In the case of Ramakrishna Mission v. Kago Kunya (2019), The Supreme Court ruled that where a contract is of private nature or has no connection with any public authority, it does not fall within the purview of the writ of mandamus.

In the Hari Krishna Mandir Trust v. State Of Maharashtra (2020), the Hon'ble Supreme Court held that the High Courts are obligated by law to issue Writs of Mandamus in order to enforce a public duty.

4. Certiorari

What does Writ of Certiorari mean?

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

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

When is a writ of Certiorari issued?

It is issued to quasi-judicial or subordinate courts if they act in the following ways:

Either without any jurisdiction or in excess.

In violation of the principles of Natural Justice.

In opposition to the procedure established by law.

If there is an error in judgement on the face of it.

Writ of certiorari is issued after the passing of the order.

Important Judgements on writ of Certiorari

In Surya Dev Rai v. Ram Chander Rai & Ors., the Supreme Court has explained the meaning, ambit and scope of the writ of Certiorari. Also, in this it was explained that Certiorari is always available against inferior courts and not against equal or higher court, i.e., it cannot be issued by a High Court against any High Court or benches much less to the Supreme Court and any of its benches. Then in the case of T.C. Basappa v. T. Nagappa & Anr. , it was held by the constitution bench that certiorari maybe and is generally granted when a court has acted (i) without jurisdiction or (ii) in excess of its jurisdiction. In Hari Bishnu Kamath v. Ahmad Ishaque , the Supreme Court said that “the court issuing certiorari to quash, however, could not substitute its own decision on the merits or give directions to be complied with by the court or tribunal. Its work was destructive, it simply wiped out the order passed without jurisdiction, and left the matter there.” In Naresh S. Mirajkar v. State of Maharashtra , it was said that High Court’s judicial orders are open to being corrected by certiorari and that writ is not available against the High Court.

Circumstances when the writ of Certiorari cannot be issued:

The writ of certiorari cannot be issued against:

An individual

A company

Any private authority

An association

To amend an Act or Ordinance

An aggrieved party who has an alternative remedy

In the case of General Manager, Electrical Rengali Hydro Electric Project, Orissa and Others v. Giridhari Sahu and Ors. (2019), the Hon'ble Supreme Court laid down the factors determining the validity of the writ of certiorari.

5. Prohibition

What does Writ of Prohibition mean?

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

When is the writ of Prohibition issued?

It is issued to a lower or a subordinate court by the superior courts in order to refrain it from doing something which it is not supposed to do as per law. It is usually issued when the lower courts act in excess of their jurisdiction. Also, it can be issued if the court acts outside its jurisdiction. And after the writ is issued, the lower court is bound to stop its proceedings and should be issued before the lower court passes an order. Prohibition is a writ of preventive nature. The principle of this is 'Prevention is better than cure'.

Important Case Laws

In case of East India Commercial Co. Ltd v. Collector of Customs , a writ of prohibition was passed directing an inferior Tribunal prohibiting it from continuing with the proceeding on the ground that the proceeding is without or in excess of jurisdiction or in contradiction with the laws of the land, statutes or otherwise. Then in the case of Bengal Immunity Co. Ltd , the Supreme Court pointed out that where an inferior tribunal is shown to have seized jurisdiction which does not belong to it then that consideration is irrelevant and the writ of Prohibition has to be issued as a right.

Circumstances when the writ of Prohibition cannot be issued:

A writ of prohibition cannot be issued when a subordinate or a tribunal court is acting within the ambit of its jurisdiction.

A writ of prohibition cannot be issued in the situation of a mistake of a fact or law.

A writ of prohibition is not allowed for administrative authorities discharging administrative, executive or ministerial functions.

Against whom a writ can be issued

Part III of the Indian Constitution deals with fundamental rights. Article 32 is a fundamental right in itself. Violation of fundamental rights can be relieved by the filing of a writ petition under Article 32 to the Supreme Court or under Article 226 to the High Court. Writs are public law remedies. The rights granted to citizens through fundamental rights as outlined in Part III of the Constitution are a safeguard against state misconduct. Article 12 defines the word "State," which includes the following:

The Government and Parliament of India, i.e. the Union's Executive and Legislature.

Each state's government and legislature, i.e., the executive and legislative branches of government.

All local or other authorities in Indian territory.

All local and other authorities controlled by the Government of India.

In the case of Ajay Hasia v. Khalid Mujib (1981), under Article 12, the term "local authority" refers to a unit of local self-government such as a municipal committee or a village panchayat.

In the case of Kishor Madhukar Pinglikar vs Automotive Research Association (2022), the Hon'ble Supreme Court held that the presence of some aspect of public duty or function does not automatically constitute a body as a "state" under Article 12.

Suspension of fundamental rights

The six Fundamental Rights outlined in Article 19 are immediately suspended when a declaration of national emergency is made, in accordance with Article 358. The 44th Amendment Act of 1978 included two restrictions on the application of Article 358, namely:

When the national emergency is proclaimed owing to war or foreign invasion, rather than an armed rebellion and the six fundamental rights outlined in Article 19 be suspended.

At the times of emergency, Article 32 will be suspended.

The fundamental rights are merely suspended in their enforcement under Article 359, not their totality. During the emergency, the rights outlined in Articles 20 and 21 cannot be suspended.

Recent developments under Article 32 of Indian Constitution

The Supreme Court ruled in Shashidhar M. v. Poornima C (2019) that writ petitions for recalling directives in Special Leave Petition (SLP) are not maintainable.

In the case of Skill Lotto Solutions Pvt Ltd. v. Union Of India (2020), the Hon'ble Supreme Court held that "Article 32 is an important and integral part of the basic structure of the Constitution. Article 32 is meant to ensure observance of rule of law. Article 32 provides for the enforcement of fundamental rights, which is the most potent weapon."

In the case of Mohammad Moin Faridullah Qureshi v. The State Of Maharashtra (2020), the Hon'ble Supreme Court held that when a judgement is declared final under Article 32, it cannot be disputed.

In the case of Gayatri Prasad Prajapati v. State of Uttar Pradesh and Others (2022), the Hon'ble Supreme Court held that writ petitions cannot be filed for quashing a criminal proceeding or a First Information Report (FIR).

In the case of Sharad Zaveri vs Union Of India (2022), the Hon'ble Supreme Court ruled that not all conflicts involving places of worship may be taken before the Supreme Court under Article 32.

In the case of Dharmraj Singh vs The State Of Bihar (2022), the Hon'ble Supreme Court warned against submitting petitions pertaining to Section 482 of the Criminal Procedure Code, 1973 under the guise of Article 32.

Key differences between Article 32 and Article 226 :

Article 32

1. Article 32 is a fundamental right in itself. The Supreme Court cannot refuse to consider any petition under Article 32.

2. Under Article 32, writ petitions are issued to enforce fundamental rights.

3. During the time of emergency, Article 32 is suspended.

4. Orders passed under Article 32 will supplant orders passed under Article 226.

5. Article 32 has territorial jurisdiction over the entire country of India.

Article 226

1. Article 226 has discretionary powers to High Court within judicial principles to consider any petition.

2. Under Article 226, writ petitions can be issued to enforce fundamental rights or for any other purpose.

3. During the time of emergency, Article 226 cannot be suspended.

4. The orders passed under Article 226 cannot supplant orders under Article 32.

5. Article 226 has limited territorial jurisdiction.

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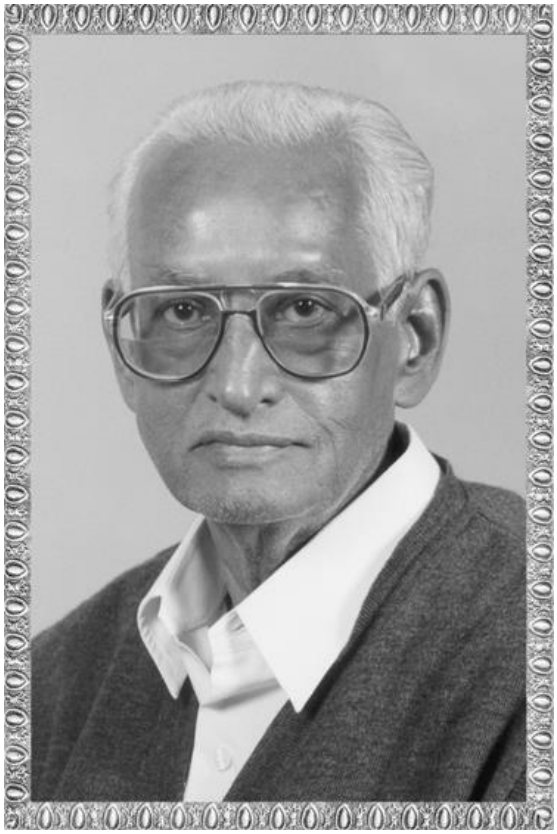

Lt. Shree Chimanbhai Shukla

Shree H.N.Shukla College
2, Vaishali Nagar,
Nr. Amrapali Railway under bridge,
Raiya Road, Rajkot.
Ph. (0281)2440478

Shree H.N.Shukla College
3, Vaishali Nagar,
Nr. Amrapali Railway under bridge,
Raiya Road, Rajkot.
Ph. (0281)2471645

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UNIT -3- FUNDAMENTAL RIGHTS –II

SR. NO.	TOPIC NAME
3.1	RIGHT TO LIFE AND PERSONAL LIERTY, DUE PROCESS OF LAW (ARTICLE 21)
3.2	SAFEGUARDS AGAINST ARBITRARY ARESST AND DETENTION
3.3	RIGHT TO FREEDOM OF RELIGION AND SECULARISM
3.4	PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR
3.5	PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES ACT
3.6	RIGHT TO EDUCATION (ARTICLE 21 AND ARTICLE 21A AND ITS DEVELOPMENT)
3.7	CULTURAL AD EDUCATIONAL RIGHT: ARTICLE 29 AND 30

3.1 RIGHT TO LIFE AND PERSONAL LIBERTY , DUE PROCESS OF LAW (ARTICLE 21) :

The sanctity of human life is probably the most fundamental of human social values. It is recognised in all civilized societies and their legal systems, as well as in internationally recognized statements of human rights. Every person is entitled to live their life on their own terms, with no unfair interference from others. A successful democracy can only be one that guarantees its citizens the right to protect their own life and liberty.

In India, the Protection of Life and Personal Liberty is a Fundamental Right granted to citizens under Part III of the Constitution of India, 1950. These Fundamental Rights represent the foundational values cherished by the people and are granted against actions of the state, meaning that no act of any state authority can violate any such right of a citizen except according to the procedure established by law. Article 21 of this part states that "No person shall be deprived of his life or personal liberty except according to the procedure established by law", and this is known as the Right to Life and Personal Liberty.

Hence, this Article prohibits the encroachment upon a person's right to life and personal liberty against the state. The state here refers to all entities having statutory authority, like the Government and Parliament at the Central and State level, local authorities, etc. Thus, violation of the right by private entities is not within its purview.

Evolution from International Charters

The principle of ensuring the right to life and personal liberty was not new to the Indian Constitution makers before they incorporated it into the Constitution. In fact, this principle was recognized much earlier in the Magna Carta of England (1215) and in the US Constitution (1791). In England, it was reiterated in the Petition of Rights 1628, and since then, the observance of this principle has established what is known as the Rule of Law in the UK. The Americans also appeared to have borrowed the phrase 'due process of law' which was first used in a statute of the 14th century. However, the expression 'law of the land' used in England has a different meaning than the 'due process of law' used in the US Constitution.

Internationally, on a broader level, the Universal Declaration of Human Rights 1948 recognised this principle for the first time. Article 3 of the Declaration says, "Everyone has the right to life, liberty, and security of person." Article 9 further provides that "No one shall be subjected to arbitrary arrest, detention, or exile." This right has also been strongly emphasized in the European Convention on Human Rights 1950 (Articles 2, 3, and 5) and the Covenant on Civil and Political Rights 1966 (Articles 6, 7, 9, 10, and 11). While ensuring the specific right to life and personal liberty, these international documents also recognise the subsidiary rights at great length. These rights are often taken into account while deciding cases related to the movement of refugees/illegal migrants across national borders.

In Vishakha v. State of Rajasthan (1997), the Hon'ble Supreme Court of India held that the provisions of international instruments and norms can be read into justiciable fundamental rights in order to fill any gaps or to enlarge the scope thereof as a canon of statutory construction unless there is any inconsistency between them. Thus, several aspects of this right have evolved in Indian jurisprudence through the accepted principles of the international arena itself.

Understanding Article 21 of the Indian Constitution

Though couched in negative language, Article 21 confers the fundamental right to life and personal liberty on every person, including foreigners, and these two rights have been given paramount importance by the courts. These rights enjoy a fundamental ascendancy over all other attributes of the political and social order, and thus, the Legislature, Executive and the Judiciary are more sensitive to them than to the other attributes of daily existence. Moreover, though the word 'person' indicates an individual, through 'Public Interest Litigation' under Articles 32 and 226, the collective rights of the people have also come to be enforced under Article 21.

The early approach to Article 21 was circumscribed by the 'literal interpretation'. But over the course of time, the scope of application of the Article has been expanded by 'liberal interpretation' of the components of the article in tune with the relevant international understanding. Thus, protection against arbitrary privation of 'life' no longer means mere protection against physical injury/death but also an invasion of the right to 'live' with human dignity and would include all these aspects of life that would go to make a man's life meaningful and worth living.

In fact, citizens who are detained in prison either as under-trials or as convicts are also entitled to the benefits of the guarantee, subject to reasonable restriction. The state can't violate their rights merely because the person is an under-trial or a convict, as the prisoner doesn't cease to be a human being.

It must also be noted that while the protection of Article 21 is extended to foreigners as well, the same is confined to the article for life and liberty and does not include the right to reside or stay in India. It has been held in the case of Sarbananda Sonowal v. Union of India, (2005) that the power of the Government to expel foreigners, when necessary, is absolute and unlimited, and there is no provision in the Indian Constitution fettering its discretion.

Important cases to understand basic evolution of Article 21 of the Indian Constitution

The terms 'life' and 'personal liberty' encompass a wide variety of rights of the people, which are a result of the evolution in the interpretation of Article 21 by the courts over the years. Here, we shall examine the various aspects of this Fundamental Right. However, before that, it is important to have a look at the jurisprudential evolution of this concept and the significance of most famous judgements related to it.

(1)A.K. Gopalan v. State of Madras (1950): Prevention Detention

Facts

In this case, the Petitioner, a communist leader, was detained under the Preventive Detention Act, 1950. He claimed that such detention was illegal as it infringed upon his freedom of movement granted in Article 19(1)(d) of the Constitution of India and thus also violated his Personal Liberty as granted by Article 21 since freedom of movement should be considered a part of a person's personal liberty.

Judgement

The court stated that personal liberty meant liberty of the physical body and thus did not include the rights given under Article 19(1). Hence, Personal liberty was considered to include some rights like the right to sleep and eat, etc. while the right to move freely was relatively minor and was not included in one's "personal" liberty.

Kharak Singh v. State of U.P. and Ors. (1964): Personal Liberty Curtailed

Facts

The petitioner, in this case, was accused of dacoity but was released due to a lack of evidence against him. The Uttar Pradesh Police then began surveillance over him which included domiciliary visits at night, periodical enquiries, verification of movements and the like. The petitioner filed a writ petition challenging the constitutional validity of this State action.

Judgement

It was held that the right to personal liberty constitutes not only the right to be free from restrictions placed on one's movements but also to be free from encroachments on one's private life. Thus, personal liberty was considered to include all the residual freedoms of a person not included in Article 19(1).

(2)Maneka Gandhi v. Union of India (1978): Right to Travel

Facts

The petitioner, in this case, was ordered by the Regional Passport Office, Delhi to surrender her newly-made passport within 7 days due to the Central Government's decision to impound it "in public interest", in accordance with the Passport Act of 1967. Upon requesting a statement of the reasons for such impounding, the Government replied that they could not furnish a copy of the same "in the interest of the general public." A writ petition was filed by the petitioner challenging the Government's decision of impounding and also of not providing the reasons, as well as not allowing the petitioner to defend herself.

Judgement

The Honourable Supreme Court held that the right to travel and go outside the country must be included in the Right to Personal Liberty. It stated that "personal liberty" given in Article 21 had the widest amplitude and covered a variety of rights related to the personal liberty of a person. The scope of personal liberty was, hence, greatly increased and it was held to include all the rights granted under Article 21, as well as all other rights related to the personal liberty of a person. Such a right could only be restricted by a procedure established by law, which had to be "fair, just and reasonable, not fanciful, oppressive or arbitrary."

Hence, the Court adjudged in the case that:

The Government action was not justified as there was no pressing reason for the impounding of the petitioner's passport and it was a violation of her Fundamental Rights.

The principles of Natural Justice were violated as the petitioner was not given the opportunity to be heard.

Since this landmark case, the courts have sought to give a wider meaning to "personal liberty". The principles of natural justice have also been emphasized upon, as any procedure which restricts the liberty of a person must be fair, just and reasonable.

Interrelation between Articles 14, 19 and 21 of the Indian Constitution

As discussed above, it can be deciphered that the interrelation between Articles 14, 19 and 21 has evolved with the evolution in the meaning of Personal Liberty.

Firstly, let's consider Articles 14 and 19 given in the Indian Constitution. Article 14 grants equality before the law and equal protection of the laws to all persons in the Indian territory and prohibits discrimination on the basis of religion, race, caste, sex and place of birth.

Clause 1 of Article 19 grants all citizens the right to freedom of speech and expression, to assemble peaceably and form associations, to move freely and reside anywhere throughout the country, and to practice any profession, occupation or trade.

All other clauses of this Article allow the State to impose reasonable restrictions on the rights granted in the above 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."

Earlier, Articles 19 and 21 were held to be completely exclusive and separate from each other. The position changed slowly as Personal Liberty evolved to include all rights other than those mentioned in Article 19, and they were considered complementary to each other.

The Maneka Gandhi case (supra) however, brought a sea change. The Supreme Court held that Articles 19(1) and 21 are not mutually exclusive as the Right to Life and Personal Liberty covers a wide variety of rights, some of which have been given additional protection under Article 19(1).

Article 19 and Article 21 go hand-in-hand and the procedure established by law restricting these rights should stand the scrutiny of other provisions of the Constitution as well – including Article 14. Thus, a law encroaching upon one's personal liberty must not only pass the test of Article 21 but also of Article 14 and Article 19 of the Constitution. These three rights are, hence, interconnected and provide safeguards against arbitrary actions of the government. They are meant to be read together and interpreted in accordance with each other. All three of them grant basic human rights and freedoms to

the citizens and their immense collective importance has given them the name "Golden Triangle" in jurisprudence.

Judicial Pronouncment :

(1)Occupational Health and Safety Association v. Union of India (2014)

Facts

In this case, a non-profit organization filed a petition seeking guidelines for occupational safety and health conditions in various industries, especially thermal power plants. This was in view of the various skin diseases, lung abnormalities, etc. suffered by their workers due to unhealthy working conditions. It also called for compensation to victims of occupational health disorders.

Judgement

The court recognised the State's duty to protect workers from dangerous or unhygienic working conditions and remanded the matter to various High Courts to check the issue of thermal power plants in their respective states. Thus, in this case, the protection of health and strength of workers and their access to just and humane conditions of work were taken as essential conditions to live with human dignity.

(2)Olga Tellis and Ors. v. Bombay Municipal Corporation (1986)

Facts

The petitioners, in this case, were slum and pavement dwellers in the city of Bombay. They filed a writ petition against an earlier decision of the State of Maharashtra and the Bombay Municipal Corporation to forcibly evict dwellers and deport them, which led to the demolition of certain dwellings. They challenged these actions on the grounds that evicting a person from his pavement dwelling or slum meant depriving him of his right to livelihood, which should be considered a part of his constitutional right to life.

Judgement

The court concluded that though the slum and pavement dwellers were deprived of their Right to Livelihood, the government was justified in evicting them as they were making use of the public property for private purposes. However, they should not be considered trespassers as they occupied the filthy places out of sheer helplessness. It was ordered that any evictions would take place only after the

approaching monsoon season and the persons who were censused before 1976 would be entitled to resettlement.

While the case failed to bring successful resettlement to the dwellers and, in fact, is sometimes cited as justification for eviction of people by the State, it did play its part in establishing the Right to Livelihood as part of the Fundamental Right to Life.

(3)Subramanian Swamy v. Union of India, Ministry of Law and Ors. (2016)

Facts

In this case, the petitioners challenged the validity of the criminal defamation under Section 499 and 500 of the Indian Penal Code, 1860, claiming that it violated their right to freedom of expression under Article 19(1)(a) of the Indian Constitution.

Judgment

The Court examined the meaning and interpretation of the terms “defamation” and “reputation.” Further, it discussed a number of international treaties highlighting the value of honour and respect for one’s life. It was emphasized that once the reputation of an individual has been held to be a basic element of Article 21 of the Constitution, it is extremely difficult to accept the view that criminal defamation has a chilling effect on freedom of speech and expression.

(4)M.C. Mehta and Anr. v. Union of India (1987) or the Shriram Food and Fertilizer Case

Facts

In this case, the chemical plant Shriram Food and Fertilizer Ltd. in Delhi suffered a major leakage of the deadly oleum gas in October 1986 and faced another minor leakage two days later. This incident affected almost two lakh people in the near radius.

Judgement

The court held the industry liable for its negligence and ordered it to pay Rs 20 lakh as compensation to the victims. It also ordered the establishment of an Expert Committee to overlook the operation of the industry. It was directed for all workers to be properly trained, and for loudspeakers to be installed in the premises to warn people in case of any leakage.

Thus, this proved to be a landmark case in environmental legislation as it established the principle of absolute liability, which involves holding the industry dealing in hazardous substances absolutely liable for all damages caused by its faulty operations.

3.2 Safeguards against arbitrary arrest and detention:

Given that India is the largest democracy in the world, it is crucial that its Constitution upholds the fundamental principles of democracy as a whole. By enshrining fundamental rights in Part III of the Indian Constitution, the Constitution aims to safeguard the fundamental civil and human liberties of its citizens. One such fundamental right is Article 22 of the Indian Constitution, which guarantees protection against being detained or arrested in certain circumstances. Both citizens and non-citizens are entitled to exercise this fundamental right in opposition to any arrest or detention that is imposed against them as a result of a capricious or arbitrary use of authority.

Due to its conflict with the freedom given by Article 21, which deals with the right to life and liberty, Article 22 has long been the subject of discussions. Originally intended to protect society from undermining the sanctity of the Constitution, the provision instead restricted the freedom of the general public. It is challenging for this article to achieve absolute stability within the constitutional framework because its subject matter has always remained highly arbitrary and open to interpretation. It has been criticised numerous times throughout India's history, with references to the greatest excesses of the emergency in 1975 as an illustration of the abuse that Article 22 permits. Article 9(1) of the International Covenant on Civil and Political Rights and Article 9 of the Universal Declaration of Human Rights protect individuals from arbitrary arrest and detention by execution authorities, demonstrating the significance of Article 22 as an indispensable component of fundamental rights. The present article is an overview of the protection against arbitrary arrest and detention under the Indian Constitution.

Laws on preventive detention

Article 22(4) to (7) spells out the steps that must be taken when a person is arrested and detained under any law that allows for preventive detention. In Indian laws, there is no official definition of preventive detention, but it is defined as an opposite of the word "punitive." Preventive detention is sometimes called a "necessary evil" of the Constitution because it can be used in many different ways, not all of which are fair and reasonable. People were put in jail to keep them from undermining the sanctity of the Constitution, putting the security of the state at risk, upsetting India's relationships with other countries, or making it harder to keep the peace.

The Preventive Detention Act of 1950: The Act was passed as a temporary measure to give the central and state governments the power to detain a person who poses a risk to India's security, defence, relations with other countries, public order, and the continuation of services and essentials that the community needs.

Maintenance of Internal Security Act, 1971: The Preventive Detention Law was brought back to life in the form of the Maintenance of Internal Security Act, 1971.

Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980: In less than two years, the preventive detention law was brought back in the form of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

National Security Act, 1982: In 1980, the President signed the National Security Ordinance, which was later replaced by the Act. It allowed for the preventive detention of people who were responsible for starting communal or caste riots that were a serious threat to the security of the state. In the case of A.K. Roy v. Union of India (1981), the legality of this Act and rejected the idea that it was unclear or arbitrary.

Terrorist and Disruptive Activities (Prevention) Act of 1987: The act was passed to stop terrorism in the country, and in order to do that, the state governments were given a lot of power. There was a lot of misusing of these powers, so in Kartar Singh v. State of Punjab (1994), the Apex Court put limits on how it could be used.

India uses preventive detention even when the country is at peace and there is no threat to the national security of the State. This is one of the main reasons why preventive detention laws and rules are put in place and followed. During peacetime, this is something that no other civilised country does.

Article 22 : protection against preventive detention laws in the Constitution

Before the Constitution (44th amendment) Act of 1978, Article 22(4)(a) stated that no person could be detained for longer than 3 months under preventive detention law unless an advisory board made up of individuals who are or have previously been qualified to serve as high court judges has given their opinion that the cause of the detention is justified before expired month.

The government is required to remove the order if the advisory board finds the detention to be unwarranted. In a similar situation, the detaining authority is free to choose the length of the imprisonment.

However, in the second scenario, the detention may only last for the maximum amount of time allowed by any statute established by the parliament for that class of detainees, as specified in sub clause (b) of paragraph (7).

Any statute that permits detention for a period longer than 3 months without the advisory board's previous permission must explain the class or classes of detainees it applies to as well as the conditions surrounding its applicability, according to clause 7(a).

Conclusively, the aforementioned clauses remain in effect because the modification hasn't yet gone into effect. The amendment sought to reduce the maximum period of detention without the advisory board's reference from three to two months, change the advisory board's membership to a chairman and two members chosen on the advice of the Chief Justice of the relevant high court, and repeal clause 7(a), which gave the parliament the authority to enact laws allowing for detention longer than three months without the advisory board's reference.

Article 22 is an incomplete as a code

In the case of Maneka Gandhi v. Union of India (1978), it was determined that the law governing preventive detention must not only meet the requirements of Article 22 of the Constitution, but also meet the requirements of Article 21. In other words, the mechanism outlined in the law governing preventive detention must be reasonable, just, and fair in accordance with Articles 14, 19, and 21 of the Indian Constitution.

In recent times, approximately, 5558 people were detained in Uttar Pradesh during the CAA protest. While this number varied among states, the scenarios in Kashmir during the time of revocation of Article 370 of the Constitution, should not be shadowed. Further, there were arbitrary arrests of several political personalities who had dissented with the ongoing decision-making concerning Article 370. These arrests not only served as a precedent detrimental for democracy, but also have had severe consequences in terms of how nations across the globe viewed India. Violation of the fundamental right to freedom of speech in the name of reasonable restrictions imposed on the same have been a common sight in such incidents. Several student leaders such as Kanhaiya Kumar, Umar Khalid, Dalit activist Chandrashekhar Azad, Dr. Kafeel Khan were subject to detention by government authorities hereby infringing their fundamental rights and personal liberty guaranteed by the Indian Constitution.

Owing to the scenarios above and many in the past, the existence of Article 22 of the Constitution have often been the subject-matter of debates with contentions both for and against its function. Although we continue to presume the reckless implementation of this law by the controlling authorities, what we can think of is a more governed process in executing this provision.

3.3 Right to freedom of religion and secularisim:

Religion is a matter of belief or faith. The constitution of India recognizes the fact, how important religion is in the life of people of India and hence, provides for the right to freedom of religion under Articles 25 to Article 28. The Constitution of India envisages a secular model and provides that every person has the right and freedom to choose and practice his or her religion. In a number of cases, the Apex Court has held that secularism is the basic structure of the Constitution, the most important being the Kesavananda Bharati case. People in India mainly practice Islam, Hinduism, Jainism, Buddhism, Sikhism and, Christianity. In India, there are religion-specific laws and Goa is the only state to have a Uniform Civil Code known as the Goa Civil Code. The Constitution supports religious harmony which means the people of India show love and affection to different religions of the country.

What is Secularism?

Secularism means developing, understanding and respect for different religions. It is believed that the word 'Secularism' has its origin in late medieval Europe. In 1948, during the constituent assembly debate, a demand was made by the KT Shah to include the word 'Secular' in the Preamble to the Constitution. The members of the assembly though agreed to the secular nature of the constitution but it was not incorporated in the Preamble. Later, in 1976 the Indira Gandhi government enacted the 42nd Amendment Act and the word 'Secular' was added to the Preamble. The 42nd Amendment Act also known as the 'Mini Constitution', is the most comprehensive amendment to the Constitution.

S. R. Bommai v. Union of India, AIR 1994 SC 1918

The 9 judge bench, in this case, ruled that Secularism is the basic feature of the Constitution of India. It also observed that religion and politics cannot be mixed together. If the State follows unsecular policies or courses of action then it acts contrary to the constitutional mandate. In a State, all are equal and should be treated equally. Religion has no place in the matters of State. Freedom of religion as a fundamental right is guaranteed to all persons in India but from the point of view of the State, religion, faith, and belief are immaterial.

Constitutional Provisions relating to Right of Religion

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

Article 26: Freedom to manage religious affairs.

Article 27: Freedom as to payment of taxes for promotion of any particular religion.

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

Freedom of Religion in India (Art. 25)

Article 25 of the Constitution guarantees freedom of religion to all persons in India. It provides that all persons in India, subject to public order, morality, health, and other provisions:

Are equally entitled to freedom of conscience, and

Have the right to freely profess, practice and propagate religion.

It further provides that this article shall not affect any existing law and shall not prevent the state from making any law relating to:

Regulation or restriction of any economic, financial, political, or any secular activity associated with religious practice.

Providing social welfare and reform.

Opening of Hindu religious institutions of public character for all the classes and sections of the Hindus.

The Supreme Court in Tilkayat Shri Govindlalji Maharaj V. State of Rajasthan held that the test to determine the question in deciding what is an integral part of a religion is whether it is regarded as integral by the community following that religion or not.

What is religion?

The German philosopher Immanuel Kant defines religion as “Religion is the recognition of all our duties as divine commands”.

Milton Yinger, American sociologist defines religion as “a system of beliefs and practices by means of which a group of people struggles with the ultimate problems of human life”.

The constitution does not define the term ‘religion’ and ‘matters of religion’. Hence, It is left to the Supreme Court to determine the judicial meaning of these terms.

A.S. Narayan v. State of Andhra Pradesh, AIR 1996 SC 1765

In this case, Justice Hansaria observed that “our constitution makers had used the word “religion” in these two articles (Articles 25 and 26) in the sense conveyed by the word ‘dharma’.” He further explained the difference between religion and dharma as “religion is enriched by visionary methodology and theology, whereas dharma blooms in the realm of direct experience. Religion contributes to the changing phases of a culture; dharma enhances the beauty of spirituality. Religion may inspire one to build a fragile, mortal home for God; dharma helps one to recognize the immortal shrine in the heart.”

The National Anthem Case

Bijoe Emmanuel v. State of Kerala, (Popularly known as the national anthem case.)

The facts of this case were that three children belonging to a sect (Jehovah's witness) worshipped only Jehovah (the creator) and refused to sing the national anthem "Jana Gana Mana". According to these, children singing Jana Gana Mana was against the tenets of their religious faith which did not allow them to sing the national anthem. These children stood up respectfully in silence daily for the national anthem but refused to sing because of their honest belief. A Commission was appointed to enquire about the matter. In the report, the Commission stated that these children were 'law-abiding' and did not show any disrespect. However, the headmistress under the instruction of the Dy. Inspector of Schools expelled the students.

The Supreme Court held that the action of the headmistress of expelling the children from school for not singing the national anthem was violative of their freedom of religion. The fundamental rights guaranteed under Article 19(1)(a) and Article 25(1) has been infringed. It further held that there is no provision of law which compels or obligates anyone to sing the national anthem, it is also not disrespectful if a person respectfully stands but does not sing the national anthem.

Acquisition of place of worship by State

The Supreme Court in the case of M Ismail Faruqi v. Union of India held that the mosque is not an essential part of Islam. Namaz (Prayer) can be offered by the Muslims anywhere, in the open as well and it is not necessary to be offered only in a mosque.

In M Siddiq (D) Thr. Lrs v. Mahant Suresh Das Supreme Court held that the State has the sovereign or prerogative power to acquire the property. The state also has the power to acquire places of worship such as mosque, church, temple, etc and the acquisition of places of worship per se is not violative of Articles 25 and 26. However, the acquisition of place of worship which is significant and essential for the religion and if the extinction of such place breaches their (persons belonging to that religion) right to practice religion then the acquisition of such places cannot be permitted.

Triple Talaq: Shayara Bano v. Union of India

Talaq-e-biddat known as triple talaq, a kind of divorce through which a Muslim man could divorce his wife by uttering the words talaq talaq talaq. A 5 judges bench of the Supreme Court heard the controversial Triple Talaq case. The main issue, in this case, was whether the practice of Talaq-e-biddat (triple talaq) is a matter of faith to the Muslims and whether it is constituent to their personal law. By a 3:2 majority, the court ruled that the practice of Talaq-e-biddat is illegal and unconstitutional. The court also held that, an injunction would continue to bar the Muslim male from practicing triple talaq till a legislation is enacted for that purpose.

To which the government formulated the Muslim Women (Protection of Rights on Marriage) Bill, 2017. Later, Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 was passed. As the 2018 ordinance was about to expire, the government formulated a fresh bill in 2019 and an ordinance was passed for the same in 2019 which was approved by the President and finally the Muslim Women (Protection of Rights on Marriage) Act, 2019 came into force on July 31st, 2019 with an objective "to protect the rights of the married Muslim women and prohibit the Muslim male to divorce the wife by pronouncing talaq".

Freedom to manage religious affairs (Art. 26)

Article 26 (subject to public order, morality, and health) confers a right on every religious denomination or any section of such religious denomination of:

Establishing and maintaining institutions for religious and charitable purposes;

Managing its affair with regard to religion;

Owing and acquiring property (movable and immovable);

Administering the property in accordance with the law.

Religious denomination

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

Freedom from taxes for promotion of any particular religion (Art. 27)

Article 27 of the Constitution prevents a person from being compelled to pay any taxes which are meant for the payment of the costs incurred for the promotion or maintenance of any religion or religious denomination.

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

Prohibition of religious instruction in the State-aided Institutions (Art. 28)

Article 28 prohibits:

Providing religious instructions in any educational institutions that are maintained wholly out of the state funds.

The above shall not apply to those educational institutions administered by the states but established under endowment or trust requiring religious instruction to be imparted in such institution.

Any person attending state recognized or state-funded educational institution is not required to take part in religious instruction or attend any workshop conducted in such an institution or premises of such educational institution.

3.4 Prohibition of Traffic in Human beings and forced labour:

The Indian laws prohibit slavery and any act which harms the dignity and freedom of a person. Yet there are people who still view themselves as superior to others. As a result, many people are forced to do work against their will at cheap rates and millions of women and children become victims of human trafficking. In 2016, there were 18.3 million people in modern slavery in India according to the Global Slavery Index. The 2018 Global slavery survey report stated that there has been a further addition of forced sexual exploitation and child labour in the country.

The Right against exploitation enshrined in Article 23 and 24 of the Indian Constitution guarantees human dignity and protect people from any such exploitation. Thus, upholding the principles of human dignity and liberty upon which the Indian Constitution is based.

Prohibition of Traffic in Human Beings and Forced Labour

Clause 1 of Article 23 prohibits the trafficking of human beings, begar any similar form of forced labour. It also states that any contravention of this provision is punishable by the law. It explicitly prohibits:

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

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

Other forms of forced labour: This includes other forms of forced labour in which the person works for a wage less than the minimum wage. This includes bonded labour wherein a person is forced to work to pay off his debt for inadequate remuneration, prison labour wherein prisoners sent in for rigorous imprisonment are forced to work without even minimum remuneration etc.

Hence, Article 23 has a very wide scope by ensuring that a person is not forced to do anything involuntarily. For instance, It forbids a land-owner to force a landless, poor labourer to render free services. It also forbids forcing a woman or child into prostitution.

Peoples Union for Democratic Rights v. Union of India, AIR 1982 SC1943.

In the case of People's Union for Democratic Rights v. Union of India, the petitioner was an organisation formed for the protection of democratic rights. It undertook efforts to investigate the conditions under which the workmen employed in various Asiad projects were working. This investigation found out that various labour laws were being violated and consequently public interest litigation was initiated. In the case issues like labourers not given the minimum remuneration as mentioned in the minimum wages act, 1948 and unequal income distribution among men and women were highlighted.

The Supreme Court interpreted the scope of article 23 in the case. The Court held that the word force within this article has a very wide meaning. It includes physical force, legal force and other economic factors which force a person to provide labour at a wage less than the minimum wage. Hence, if a person is forced to provide labour for less than the minimum wage, just because of poverty, want, destitution or hunger, it would be accounted for as forced labour.

The Court also clarified the meaning of "all similar forms of forced labour" as mentioned in article 23 of the Constitution of India. It said that not only begar, but all forms of forced labour are prohibited. This means that it would not matter if a person is given remuneration or not as long as he is forced to supply labour against his will.

Sanjit Roy v. State of Rajasthan, AIR 1983 SC 328.

In the case of Sanjit Roy v. State of Rajasthan, the state employed a large number of workers for the construction of a road to provide them relief from drought and scarcity conditions prevailing in their area. Their employment fell under the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964. The people employed for the work were paid less than the minimum wage, which was allowed in the Exemption Act.

The Court held that the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 is Constitutionally invalid as to the exclusion of the minimum wages act. This means that minimum wage must be paid to all the people employed by the state for any famine relief work, regardless of whether the person is affected by drought or scarcity or not. This is essential so that the state does not take advantage of the helpless condition of the people affected by famine, drought etc and upholds that they must be paid fairly for the work into which they put in effort and sweat, and which provides benefits to the state.

Deena v. Union of India, AIR 1983 SC 1155.

In the case of Deena @ Deena Dayal Etc. v Union of India And Others, it was held that if a prisoner is forced to do labour without giving him any remuneration, it is deemed to be forced labour and is violative of Article 23 of the Indian Constitution. This is because the prisoners are entitled to receive reasonable wages for the labour they did.

Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

The petitioner, Bandhua Mukti Morcha is an organisation waging a battle against the horrendous system of bonded labour. In the case of Bandhua Mukti Morcha v. Union of India, the organisation sent a letter to Justice Bhagwati and the Court treated it as a Public Interest Litigation. The letter contained its observations based on a survey it conducted of some stone quarries in the Faridabad district where it was found that these contained a large number of workers working in "inhuman and intolerable conditions", and many of them were forced labourers.

The Court laid down guidelines for determination of bonded labourers and also provided that it is the duty of the state government to identify, release and rehabilitate the bonded labourers. It was held that any person who is employed as a bonded labour is deprived of his liberty. Such a person becomes a slave and his freedom in the matter of employment is completely taken away and forced labour is thrust upon him. It was also held that whenever it is shown that a worker is engaged in forced labour, the Court would presume he is doing so in consideration of some economic consideration and is, therefore, a bonded labour. This presumption can only be rebutted against by the employer and the state government if satisfactory evidence is provided for the same.

Compulsory service for public purposes

Article 23, clause 2 of the Constitution states that this article does not prevent the state to impose compulsory services for public purposes. It also states that while doing this, the state must not make any discrimination on grounds of religion, race, caste, class or any of them.

Hence, though article 23 disallow any form of forced labour, it permits the state to engage in conscription (impose compulsory services upon people for public purposes). However, while imposing services upon people for state services the state must take care to not discriminate on grounds of religion, race, caste or class.

Dulal Samanta v. D.M., Howrah, AIR 1958 Cal. 365

In the case of Dulal Samanta v. D.M., Howrah, the petitioner was served with a notice appointing him as a special police officer for a period of three months. He complained that this violated his fundamental right as it results in "forced labour"

The Court disregarded his appeal and held that conscription for services of police cannot be considered as either:

(i) beggar; or

(ii) traffic in human beings; or

(iii) any similar form of forced labour.

Hence, the notice given for the appointment of a person as a special police officer is not in prohibition to Article 23.

Prohibition of employment of children in factories, etc

Child labour is an inhumane practice which takes away the opportunity of having a normal childhood from the children. It hampers their growth and mental well being of children. It also disables them from having normal fun-filled childhood.

Article 39 of the Constitution states that it is the duty of the state to ensure that the tender age of children is not abused and that they are not forced by economic necessity to enter into fields of work where they are forced to provide labour which is unsuitable to their age and strength

Article 24 states that any child under the age of fourteen years can not be employed as a worker in any factory or be engaged in any other hazardous employment.

Hence it prohibits the employment of children under the age of 14 years in dangerous or unhealthy conditions which could harm their mental and physical strength.

M.C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699

In the case of M.C. Mehta v. State of Tamil Nadu, Shri MC Mehta undertook to invoke Article 32, enabling the Court to look into the violation of fundamental rights of children guaranteed to them under Article 24. Sivakasi was considered as a big offender who was employing many child labourers. It was engaged in the manufacturing process of matches and fireworks. This, the Court observed, qualified as a hazardous industry. Thus employing children under the age of 14 years in this industry is prohibited.

The Court reaffirmed that children below the age of fourteen must not be employed in any hazardous industry and it must be seen that all children are given education till the age of 14 years. The Court also considered Article 39(e) which says that the tender age of children must not be abused and they must be given opportunities to develop in a healthy manner. In light of this, the Court held that the employer Sivakasi must pay a compensation of Rs. 20000 for employing children in contravention to Child Labour (Prohibition and Regulation) Act, 1986.

3.5 Prohibition of Employment of Children in Factories Act:

Article 24 Of The Indian Constitution

The Right against Exploitation is provided under the Fundamental Rights of the Indian Constitution, and its second and final Article is titled "Against Exploitation." The Children are granted a significant right by this Article. According to this article, no child under the age of 14 may be given a job in a factory, mine, or any other hazardous employment.

The state is required by Article 39 of the Directive Principles of State Policy to ensure that children are not mistreated while still young and that people are not coerced into careers that are too physically demanding for them.

Constitutional Provisions

According to Article 24 of the Constitution, no child under the age of 14 should be employed in hazardous industries or activities. This includes work in mines, railways, construction, or other dangerous jobs. It mentions the provisions of:

Children under the age of 14 may not work in hazardous or unhealthy environments that could weaken their mental and physical health of children, according to Article 24.

However, the constitution does not forbid hiring young people for non-hazardous occupations. The Constitution does not define the term "hazardous," and the Parliament determines what constitutes "hazardous employment." With the passage of the Child Labour (Prohibition and Regulation) Amendment Act, the 83 hazardous jobs for children were reduced to just three: mining, explosives, and jobs covered by the Factory Act.

In 2006, the government outlawed hiring minors as domestic servants or employees in establishments like hotels, dhabas, restaurants, shops, businesses, industries, resorts, spas, tea shops, and so forth.

It issued a warning that those engaging with employment for children would be subject to legal action and punishment.

Constituent Assembly Debates

One strong opinion was voiced in the debates pertaining to the state of women. A member of the constituent assembly pushed for the inclusion of a clause like this to prevent women from working "at night, in mines, or in industries harmful to their health."

Important Supreme Court Judgements

People's Union For Democratic Rights V. Union Of India

The petitioner in this case discovered that children under the age of fourteen had been hired for a number of Asiad projects. The construction industry was not listed as a hazardous industry under the 1938 Employment of Children Act. This helped the challenger contend that such employment was not illegal. The Supreme Court ruled that construction work is a dangerous occupation and instructed the state government to update the schedule and add the construction sector to the list of dangerous industries.

M.C. Mehta V. State Of Tamil Nadu

In this instance, Shri MC Mehta invoked Article 32 because Article 24 had been broken by the Sivakasi fireworks industry's use of children under the age of 14 despite the law's prohibition against it. The court reaffirmed that working with fireworks is dangerous and that anyone under the age of 14 should not be hired. The Court further ruled that Sivakasi, the employer, must pay a fine of Rs. 20,000 for breaking the 1986 Child Labor (Prohibition and Regulation) Act.

Important Legislations

The Factories Act, 1948

For the first time, a minimum employment age of 14 was established, and child labor was outlawed. This law was changed in 1954 to ban hiring young people under the age of 17 for nighttime work.

The Mines Act, 1952

It outlaws the employment of children under the age of 18 in mines. Measures for the health, safety, and welfare of workers in coal, metalliferous, and oil mines are covered by the Mines Act of 1952. The Act outlines the owner's duties for overseeing mine health and safety as well as mining operations.

The Child Labour (Prohibition and Regulation) Act, 1986

This amendment outlined the places and circumstances in which minor children may work as well as the situations in which they may not. Children were considered to be anyone under the age of 14. This law forbade children from performing 57 procedures and 13 occupations.

Child Labour (Prohibition & Regulation) Amendment Act, 2016

It is against the law for anyone under the age of 18 to work in dangerous processes or activities. This Act gives kids the ability to work as artists and in a variety of domestic jobs. As a result of this amendment to the Act, the Government of India will impose more severe penalties on employers who violate it. Any employer who hires a child or adolescent in violation of the Act will also be held accountable. The Act enables the government to forbid the hiring of young people who work in hazardous conditions.

Child Labour (Prohibition And Regulation) Amendment Rules, 2017

It outlined working hours and conditions, protecting young artists and clarifying issues concerning child labor in family businesses. For creative workers or artists who have been granted permission to work under the Act, working hours and working conditions are protected. Alist of specific responsibilities and tasks for law enforcement officials to ensure the Act is applied correctly and is being followed.

3.6 Right to Education (Article 21A) :

The essence of every country lies in education, and without it, the country fails to survive. As a result, the cornerstone of the country is education. It is crucial for the overall growth and effective operation of a democracy. Education helps people become more skilled and more likeable, and as they grow, so does the country. It aims to achieve a wide range of goals ranging from employment to that of human resource development, general improvement, and bringing about much-needed social environment change. It provides residents of a nation with personal freedom and empowerment, thereby contributing to the development of an independent individual. It is regarded as the societal cornerstone that supports political stability, social progress, and economic prosperity. After food, clothing, and shelter a person's fourth essential necessity is education. It is the foundation upon which society is built. Social justice and equality are made possible only by means of education. Article 21A of the Indian Constitution, which was inserted into the Constitution by means of the Constitution (Eighty-sixth Amendment) Act, 2002, mandates every state to provide free and compulsory education to all children in the age group of six to fourteen years, thereby declaring education as a fundamental right guaranteed under Part III of the Constitution. This amendment is a major milestone in the country's aim to achieve 'Education for All'. The government stated this step as 'The dawn of the second revolution in the chapter of citizens rights'. This article explores this provision with respect to society, the judiciary, and other provisions of the Constitution in general.

Right to Education and its underlying history

Without some knowledge of the historical causes of the denial of the right and the constitutional response thereto, it is impossible to comprehend the significance of the Right to Education in India. When India gained independence from the British in 1947, the Constitution's framers had to deal with the reality of the population that was predominantly illiterate and profoundly impoverished.

As originally enacted, Article 45 of the Constitution, a Directive Principle of State Policy, obliged the State to make every effort to provide free and compulsory education to every child until they complete the age of fourteen years, within ten years from the commencement of the Constitution. The Constitution stipulates that even while the Directive Principles of State Policy are not "enforceable in the court of law," the State is nonetheless required to use them when enacting legislation since "the principles therein put out are nonetheless important in the governing of the country." Additionally, Article 45 was the only Directive Principle with a deadline for completion, which shows how highly the Constitution's founders valued this principle.

There can be little debate about the abject failure of the endeavour to provide universal access to education in the initial decades following independence. The overall literacy rate was a modest 65 percent as of 2001. In terms of primary education, from 2003–2004 to 2004–2005, more than 10% of students enrolled in Grades I–V, left school before completing the program. For the first time ever, according to census data, the number of illiterate Indians fell from 329 million in 1991 to 304 million in 2001.

It shouldn't come as a surprise that, like any other democracy, the democratic arms of the Indian government engaged in self-reflection and self-correction as a result of the failure of sheer scale mentioned above. The amount that the Central Government allocates for education has been rising over time, albeit slowly and erratically. For the first time in 1955–1956, spending on education exceeded 1 percent of the Gross Domestic Product (GDP), and it remained in this range until 1979. The constitutional amendment that granted the Central Government concurrent legislative authority to intervene in the area of education was a very significant milestone in 1976. Although it hasn't yet been accomplished, the government has set a self-imposed goal of spending 6% of the GDP on education.

It is obvious that in the past few years, there has been significant progress made toward the realisation of universal primary education. This is frequently credited to the Sarva Shiksha Abhiyan [National Campaign for Education for All], a national umbrella program launched in 2000 with the goal of achieving universal primary education. According to government figures, the overall number of children who are not enrolled in school has decreased from 42 million at the beginning of the tenth five-year plan (1997-2002) to 13 million in 2005.

A 2 percent cess on all significant central taxes, with the proceeds going particularly towards elementary education, is a practical step made toward resource mobilisation. It was decided to amend the Constitutional provisions to include the Right to Education as a fundamental right. In addition to this, education was slowly gaining momentum in terms of budgetary allocations and program execution.

Ultimately, Article 21A, a fundamental right that is subject to judicial review, was added as a result of the Constitution (Eighty-sixth Amendment) Act of 2002. One of the aspects of this amendment, which is the exclusion of early childhood care and education (for children younger than six years old) from the scope of the justifiable right, attracted a substantial amount of criticism. It is crucial to recognise that there was no mistake on the side of Parliament in this. The fact that the right to primary education is now an absolute right while the state still has some latitude in terms of its obligation to provide early childhood care and education, shows that the Parliament's intention was to move the goalposts in terms of enforceability.

It is crucial to keep in mind that the financial commitment the State needed to make in order to universalize primary education no longer seems wholly implausible. For instance, a government-appointed expert committee first calculated that it would cost 0.78 percent of GDP annually to implement universal primary education in the years prior to the inclusion of Article 21A. However, the government revised the expected yearly cost to 0.44 percent of the GDP at the time the constitutional amendment was proposed.

This financial demand appears doable given the government's self-imposed aim to raise spending to 6% of GDP and the context of gradually increasing budgetary allocations for education. The protracted delay in implementing the fundamental right is especially concerning in light of these historical occurrences. Significant issues with constitutional law and democratic accountability with regard to the new fundamental right have been raised as well.

Article 21A of the Indian Constitution

Human progress depends on education. Any nation's future is dependent on the quality of its educational system. Even while the members of the Constituent Assembly understood the value of universal education, they were unable to guarantee it as a fundamental right because of a lack of funding, despite the fact that it was listed in the Directive Principles of State Policy. The Indian judicial system attempted to include the right to education as a component of the Right to Life in the 1993 case of Unni Krishnan v. State of Andhra Pradesh. Through a constitutional amendment that was passed in 2002, the Indian Parliament also gave its future inhabitants the right to an education.

On several occasions, both the judiciary and the Parliament had the chance to clearly explain the nature of this newly created fundamental right, particularly in light of the possibility that it might conflict with the fundamental right of minorities that already exists to create and run educational institutions of their choosing. There were a few crucial questions that needed to be addressed. Whether the Supreme Court's decision in the afore-mentioned case to include the Right to Education in the purview of Article 21 and the insertion of this new right alongside the Right to Life has given the former any precedence over other related rights, remains an unanswered question.

Right to Education under the Indian Constitution

The Indian Constitution has several provisions and schedules that protect children's interests in education. There are various articles and guiding concepts in the Indian Constitution that protect and mandate the provision of education for its citizens. The Sergeant Commission, the last British education commission, predicted that universal education would be available in 40 years, or by 1985. The 42nd Amendment of 1976 to the Indian Constitution, made education a concurrent issue in order to expand basic education facilities, especially in underdeveloped areas thereby making education accessible to every individual by means of delivering it freely and mandatorily with priority for primary education.

Initially left out of the Constitution's list of fundamental rights, the Right to Education was added as a Directive Principle under Article 45, which mandated the State to make efforts to offer all children free and compulsory education until the age of 14. This was done within the first ten years of the Constitution's coming into effect. Article 45's directive covers all levels of education up to and including the age of 14 and is not just limited to elementary school.

As a result, this age group of children should have had free access to education. The Supreme Court implied the 'Right to Education' during this time from other constitutional provisions such as Articles 21, 24, 30(1), 39(e), and 39(f), in its decision-making concerning issues over the Right to Education. The Court has time and again highlighted that the state can fulfil its moral commitment under Article 45 to "provide for free and compulsory education for children" through government-run and aided schools, and that Article 45 does not mandate that this obligation be fulfilled at the expense of minority populations.

On August 4, 2009, the Indian Parliament passed the Right to Education Act, 2009, popularly known as the RTE Act, 2009. Article 21A of the Indian Constitution explains the necessity of free and mandatory education for children aged 6 to 14 in India. With the implementation of this Act on April 1, 2010, India joined the list of 135 nations that have made education a fundamental right for all children. It establishes basic standards for primary schools, outlaws the operation of unrecognised institutions, and opposes admissions fees and kid interviews during admission to government-aided schools.

Through routine surveys, the Right to Education Act keeps an eye on every neighbourhood and identifies children who should have access to education but have not been provided with it. In India, there have long been significant educational issues at the national level as well as in the states. The

RTE of 2009 outlines the tasks and obligations of the Central Government, each state, and all local governments in order to fulfil any gaps in the nation's educational system.

List of constitutional provisions promoting education as a right

Article 21A: The new Article 21A, which was inserted into the Indian Constitution by means of the 86th Constitutional Amendment, states that "the state shall provide free and compulsory education to all children between the ages of 6 and 14 through a law that it may determine." In 2009, the Right to Education Act was passed in light of Article 21A.

Article 15: Discrimination based on grounds of religion, ethnicity, caste, sex, or place of birth is forbidden by Article 15 of the Indian Constitution. Article 15(3), however, says that nothing in this clause prevents the state from adopting any specific measures for women and children.

Article 38: Any social order that promotes the welfare of the people is secured by Article 38 of the Indian Constitution.

Article 45: Article 45 of the Indian Constitution endeavours to provide free and compulsory education to all children up to the age of 14 years.

Article 29(2): Article 29(2) of the Indian Constitution provides that no citizen shall be denied entrance to any state-maintained educational institution or be denied financial help from state funds on the basis of their religion, race, caste, language, or any combination of these.

Article 30: Minority linguistic and religious groups are protected by Article 30 of the Indian Constitution. They have the right to create and run any institution they want.

Shree H.N.Shukla Group Of Colleges

(Affiliate to Saurashtra University & BCI)

86th Constitutional Amendment Act, 2002

The 86th Amendment Act of 2002 adds three specific provisions to the Constitution to make it easier to understand that children between the ages of 6 and 14 have a fundamental right to free and compulsory education. This amendment was made with the intention of protecting citizens' rights to education and recognising India's educational challenges.

Every child has the right to a full-time elementary education of adequate and equitable quality in a formal school that complies with certain fundamental norms and standards, thanks to the addition of Article 21A in Part III of the Indian Constitution.

The language of Article 45 went through modification to Article 45 as it was replaced with the statement that the "State shall work to ensure early childhood care and free and mandatory education for all children up to the age of six".

The addition of a new clause to Article 51 A makes it explicitly mandatory for parents or guardians to provide opportunities for their children between the ages of 6 and 14 to receive an education [Article 51A (k)].

Reasons behind the enactment of the Right To Education Act, 2009

The reasons behind the enactment of the Right to Education Act, 2009 have been provided hereunder:

1950: Article 45 of the Indian Constitution lists it as one of the Directive Principles of State Polices.

1968: Dr. Kothari was put in charge of the First National Commission for Education, which submitted its reports concerning education as a right.

1976: The Constitution was amended to make education a concurrent issue that falls under both Central and state jurisdiction (42nd Amendment of the Indian Constitution).

1986: The Common School System (CSS) was supported by the National Policy on Education (NPE), which was developed but not put into practice.

1993: The Right to Education was recognised as a fundamental right that followed the Right to Life under Article 21 of the Indian Constitution, according to the Supreme Court's decision in the case of Mohini Jain v. State of Karnataka (1992) and Unni Krishnan v. State of Andhra Pradesh (1993).

2002: Article 21A was added to the Constitution as part of the 86th Amendment, which also altered Article 45 and added a new basic responsibility under Article 51A(k).

2005: The Central Advisory Board of Education (CABE) Committee report, which was formed to design the Right to Education Bill, had been submitted.

2009: The Right of Children to Free and Compulsory Education Act, 2009 came into the picture.

The conflict between Article 21A and Article 30(1) of the Indian Constitution

Articles 21A and 30(1) are both essentially about the Right to Education, although they take different approaches to that right. Every child has the right to the former as an individual whereas minorities only have the latter as a collective right. It is important to determine where the two pieces are complementary to one another, where they are competing with one another or contradicting one another, and to what extent.

In cases like Re Kerala Education Bill (1958), Saint Xavier College v. State of Gujarat (1974), Saint Stephen's College v. University of Delhi (1991), T.M.A. Pai Foundation v. State of Karnataka (2002), and Islamic Academy of Education v. State of Karnataka (2003), the Supreme Court has discussed the nature of the right guaranteed by Article 30(1) on numerous occasions.

In Pramati Educational and Cultural Trust v. Union of India (2014), the constitutional bench of the Supreme Court focused only on the issue of whether aided or unaided minority educational institutions are required to provide 'free and compulsory education' to 'all,' i.e., free education to 25% of the students in the nation. However, every time the issue was only related to the extent to which various government regulations may penetrate into the right to 'administer' minority educational institutions. However, the right to 'create' minority educational institutions was not addressed. How minority groups can create educational institutions has never received the amount of attention it deserves.

Every child in India, regardless of caste, class, creed, or religion, has the right to a primary education under Article 21A of the Indian Constitution. Each child has a right that cannot be waived since the idea of waiver does not often apply to fundamental rights. However, because minor children between the ages of 6 and 14 are the focus of Article 21A, the State has an even stronger obligation to uphold children's Right to an Education. The type of education guaranteed by Article 21A is elementary-level fundamental education and is the most significant feature of the Act of 2009 as well. It is not intended to be a religious or specialised education of any type.

The Supreme Court stipulated in Re Kerala Education Bill (1958) that Article 30(1) states and means that linguistic and religious minorities should be allowed to open educational institutions of their choice. The disciplines that can be taught in these educational facilities are not constrained in any way. Due to the fact that minorities will typically want to raise their children effectively, qualify them for higher education, and send them into the world with the intellectual skills necessary to enter the public sector, the educational institutions of their choice will inevitably include secular general educational institutions as well. In other words, the Article leaves it up to the minorities to choose educational

institutions that will serve both ends, namely, the preservation of their religion, language, or culture, as well as the end of providing their children with a complete high-quality general education.

The next thing to keep in mind is that the Article explicitly grants two rights to all minorities, regardless of whether they are based on language or religion, namely, the right to create and the right to run educational institutions of their choice. It is abundantly obvious that the Constitution contains no specific limitations, but the legal interpretation of the document has not yet produced a binding ruling requiring minorities to establish institutions that might fulfil both objectives.

The Supreme Court made (2002) the assumption that most minorities would want their children to have both religion and modern education in order to raise respectable citizens. However, their comments fell out of line with reputable advice. This is the reason why the Supreme Court's directions have not been put into practice at the local level.

It is clear that up until recently, Madrassahs were regarded as educational institutions in Maharashtra by the Maharashtra government's order designating "Madrassahs not teaching conventional courses'' as non-schools. Many other states, including West Bengal, Bihar, and Uttar Pradesh, are experiencing a similar predicament. Article 21A's goal of ensuring that children receive basic education is violated by the state's recognition of such educational facilities as schools. Every child has the right to get a fundamental education for at least 12 years to provide the groundwork for their personality and intelligence.

Numerous Islamic sects in India are operating these Madrassahs, which offer both secular education and religious instruction to students from all backgrounds. However, certain Islamic religious groups in India claim that Madrassahs are closed to students from other groups because they are only intended to produce Islamic religious experts. These organisations receive financial assistance from the state as a result of their position as minority-run educational institutions. Article 29(2) of the Indian Constitution states that no citizen of India may be denied entrance to educational institutions managed by the state or that receive funding from the state, and such minority schools, therefore, are obviously operating in contravention of this provision.

The Supreme Court ruled in Pramati Educational and Cultural Trust v. Union of India in 2014 that the Right to Education Act of 2009 cannot force minority educational institutions to admit students from other communities in order to uphold the state's goal of providing 'free' and 'compelled' education to 'all.' The Court, however, reaffirmed that the state can use regulatory measures to affect all educational institutions, including aided and unaided minority educational institutions. In Pramati's case, the

Supreme Court upheld its earlier rulings stating that institutions providing aided or unaided minority education can be subject to regulatory measures required to designate such an institution as an "educational institution".

The Supreme Court's views, which are summarised above, make it quite evident that the rights granted to religious minorities by Article 30(1) of the Indian Constitution are not unqualified. The fundamental and guiding ideals of our Constitution, such as equality and secularism, govern this right. Therefore, such regulatory measures are constitutionally permissible if they are implemented in schools that are associated with all religions in order to check the quality of religious instruction that is to be offered to the pupils. In this approach, it is possible to harmoniously interpret both the individual rights of children and the collective rights of the minority population, which may be advantageous for the entire nation. Thus, institutions of all religions that only offer religious instruction to children younger than 14 years of age, should be outlawed outright since they are violating Article 21A's guarantee that children have the right to basic education.

The Indian judiciary and Article 21A of the Indian Constitution

The most important investment in human growth is education, which is also a tool for creating an equitable and just society and for fostering economic prosperity. The government has also established a number of national institutions for the promotion and defence of the citizens' Right to Education. The dynamic process of education begins at birth. The foundation of socioeconomic progress and the mirror of society is education.

The foundational component of a successful democratic society and governance is education. It supplies the nation with a new vision and direction in order to eradicate the ills of society. Both a fundamental and human right, education encourages respect for basic freedoms alongside peace. Education is the primary factor in the development of human resources since it improves the skills, effectiveness, productivity, and general standard of living of those who get it. In light of this, universalising elementary education makes it necessary for the state to provide free and required education to all children aged 6 to14.

The right to higher education is not specifically mentioned in the Indian Constitution. However, the Supreme Court of India has addressed the issue in a number of Public Interest Litigation cases that have arisen in recent years. Unni Krishnan J. P. v. State of Andhra Pradesh (1993) and Mohini Jain v. State of Karnataka (1992) are two of the most significant rulings concerning the right to education, that find its discussion hereunder. Despite the fact that Article 21A is still relatively new, there is already some limited court commentary on its scope and significance.

It is welcome to not search for a detailed analysis of the below-mentioned case, but instead a summarised version of the ratio of the case for understanding the application of Article 21A.

Mohini Jain v. State of Karnataka (1992)

In this instance, Miss Mohini Jain, a native of Meerut, applied for admission to the MBBS program at a private medical college in the state of Karnataka in the session commencing in 1991. The college administration required her to submit Rs. 60000 as the first year's tuition fee as well as a bank guarantee for an amount equivalent to the charge for the following year. The management declined to admit Miss Jain to the medical college after hearing from her father that the requested sum was beyond his financial capabilities. The administration allegedly wanted an additional fee of Rs 450000/-, according to Miss Jain, who testified in Court, but the management had denied such a claim.

The Supreme Court ruled in this case that even though the Right to Education as such has not been protected by the Constitution as a fundamental right, it is obvious from the Preamble and the Directive Principles of the Constitution that the state was intended to provide education for its citizens. Additionally, they ruled that private educational institutions' collection of capitation fees violated the Right to Education that is implied by the Rights to life, human dignity, and equal protection under the law.

Unni Krishnan, J.P & Ors v. State of Andhra Pradesh (1993)

The case challenged the constitutionality of state regulations governing capitation fees levied by some private professional educational institutes.

Through petitions made by private educational institutions to contest state laws, the case is given substance. The states of Tamil Nadu, Karnataka, Andhra Pradesh, and Maharashtra created this state legislation to control the capitation fee amounts. The laws stated that any additional fees received by management employees would be regarded as capitation fees. The Supreme Court has observed that it would be the responsibility of the state to offer the facilities and opportunities required by Article 39(e) and (f) of the Constitution and to avoid the exploitation of their infancy owing to destitution and squalor.

According to the Supreme Court, when read in connection with the Directive Principles particularly focusing on education, the fundamental Right to Life (Article 21) implies the right to a minimum level of education as well. The Court ruled that the scope of the right must be understood in light of the Directive Principles of State Policy, including Article 45, which mandates that the State must make every effort to provide free and mandatory education for all children under the age of 14.

The Court determined that Article 21 does not establish a fundamental Right to Education leading to a professional degree. However, it was decided that the 44 years after the Constitution's enactment had effectively changed the non-enforceable right of children under 14 into a legal obligation, with respect to education. After turning fourteen, their Right to Education is restricted by the state's economic capacity and level of development (as per Article 41).

3.7 Cultural and Educational Rights : Article 29 and 30:

Who is a minority

Article 30 of the Constitution talks about two types of minority communities – Linguistic and Religious. But while it defines the categories of minority communities, there is no official definition of the word by the government.

One can derive certain pointers from the various articles in our Constitution and reports from the government. Article 29(1) safeguards the rights of minority communities and states that anyone with "a distinct language, script or culture of its own" has the right to conserve it.

From the language of the text, we may understand that communities with distinct languages, scripts or cultures fall under minority communities. But in later cases such as Bal Patil v. Union of India and the Islamic Academy of Education v. State of Karnataka, we see that courts rely on other factors such as economic welfare to decide whether a community is a minority or not.

An analysis of Article 29 of the Indian Constitution

The basic rights of an Indian citizen are guaranteed by the Fundamental Rights enshrined in the Constitution of India. Basically, there are six fundamental rights entailed in the Constitution of India. Article 29 along with Article 30 of the Constitution of India talks about the cultural and educational rights that are given to an Indian citizen. The main aim of Article 29 of the Constitution of India is to protect the culture of the minority groups of India. India is a very diverse country which is both a strength and a weakness for it. The complex nature of India hence gives rise to the use of Article 29 of the Constitution. The Constitution acts as a guarantor of these rights to the minority groups of India. This helps in preserving all the marginalised groups of India. The people are also motivated to protect, propagate and preserve their culture.

Article 29 was promulgated in the year 1975 on 26th April. Chapter 3 titled 'Fundamental Rights' contains Article 29 and comes under the Department of Personnel and Administrative Reforms.

The right is given only to those who are citizens of India and reside within the territory of India. Since India has a huge diversity of cultures and traditions, Article 29 of the Constitution of India gives the right to every citizen to maintain their culture and its related avenues.

In India, Hindus exist in the majority but they are in the minority in some states. If we take India as a whole, then the Christians, Muslims, etc. are the minorities, but in the states in which Hindus are a minority, it is lesser. So, whenever a minority has a fear of losing its cultural identity, it is backed by Article 29 of the Constitution of India.

Article 29(1) of the Indian Constitution aims at protecting the rights of a group. This is an absolute right for the groups in minority with respect to their cultural background. This provision cannot be subject to reasonable restrictions for the general public's interests.

Article 29(2) of the Indian Constitution aims at protecting the rights of an individual. The Article has provisions that guarantee the rights of an individual citizen (not related to the community to which the citizen belongs). Hence, Article 29 as a whole guarantees the protection of both religious and linguistic minorities.

As per the Constitution of India, there are only two types of minorities that are Religious and Linguistic. The Constitution in this Article has not mentioned the minorities as per caste, representation, etc. The Supreme Court said that the scope of the Article is not restricted to minorities only. The language used in the Article 'section of citizens' means that it includes both minorities as well as the majorities.

In the case of Ravneet Kaur v. Christian Medical College (1997), the Court observed that the state was promoting discrimination in the institutes that were aided. The Court held that even the private schools and colleges which received government aid, cannot discriminate on the basis of religion, caste or race of the students.

In the case of DP Joshi v. State of Madhya Bharat (1955), the Court noticed that there still exists one kind of discrimination that doesn't come across people and that is the 'place of residence. The state universities use the criteria of residence qualification for the admissions of students. In another case, Ashoka Kumar Thakur v. Union of India (2008), The Supreme Court ruled that it would be preferable not to offer reservations based on residence or institutional preference when it comes to admissions to postgraduate courses.

Case laws

S.P. Mittal v. Union of India, AIR 1983 SC 1

Facts

In this case, Sri Aurobindo was not only an excellent academist and administrator but he was also engaged in political work. Later on, he gave it all up for a life of meditation and moved to Pondicherry, Tamil Nadu. It was there where he met Madam M. Alfassa, who would, later on, be known as Mother, who became his disciple. Later on, his disciples and the Mother established The Sri Aurobindo Society to propagate and practice the ideals and beliefs of Sri Aurobindo.

Through this society, the founding president, the Mother, set up a township called Auroville which was meant for people to come and engage in various pursuits. Later on, The United Nations Education, Scientific, and Cultural Organization (UNESCO) took it upon themselves to fund provisions to help with the development of Auroville.

When the mother passed away, many problems such as mismanagement of the project and misuse of the funds cropped up which made it impossible for the townships functioning and growth. Thus, keeping in mind the international character of Auroville due to the agreement with UNESCO, the government of Tamil Nadu took management in their own hands and filed a presidential ordinance which later on became The Auroville (Emergency Provisions) Act, 1980.

State of Bombay v. Bombay Educational Society (1954)

Facts of the case

In the case of State of Bombay v. Bombay Educational Society, it was found that the Bombay government passed an order that aimed at banning the admission of students whose mother tongue was not English. The English medium schools that received government aid were mandated to do so.

Issues involved in the case

The order denied the admissions solely on the basis of the mother tongue language of the students. The order targeted the Anglo-Indians and directed them to admit only those students whose mother tongue is English. They were warned that if they admitted other students who don't speak English and don't fall under the category as prescribed by the government, then the aid provided by the government will be forfeited.

Judgment of the Court

The Court said that minority institutions have the right to give admissions to the students of their choice even if they receive government aid. The Government aid provided to institutes does not give the right to the government to violate the rights of minorities.

Rights of minorities

Certain rights are laid down to safeguard the right of minority communities. Article 29 ensures that anyone residing in India has the right to preserve a distinct language, script or culture and no State educational institute or any institute receiving aid from the state shall discriminate against anyone based on race, caste, creed, etc. Article 30 ensures the right of minority communities in educational institutions and prohibits discrimination against them.

With regard to the reservation and special provisions for minority communities, many have brought up the argument that such provisions are 'cushioning'. But in the case of The Ahmedabad St. Xaviers College vs State Of Gujarat & Anr, Khanna J. stated that such provisions are necessary so that "none might have the feeling that any section of the population consisted of first-class citizens and the other of second class citizens". He also stated that a majority of the Fundamental Rights of the Constitution protect majority rights as it protects minority rights.

In the TMA Pai case, the judge considered the opinion of the Permanent Court of International Justice in the case of Minority Schools in Albania, advisory opinion was that there is a need for provisions that help minority groups preserve the uniqueness of their distinct culture and script and minority religions to uphold the uniqueness of their culture. Khana J. stated that "the object of protection is to enable minority communities to preserve the characteristics which distinguish themselves from the minority".

In the Kerala Education Bill case, with regards to institutions handled by minority communities, Hidayatullah C.J stated that while Article 30 (1) might be general protection over distinct languages and scripts, it is also right to establish educational questions of choice. Thus this Act is not diminished if the institution's primary function is not protecting minority culture, its also for institutions that are established and managed by minority communities and they accept other students as well.

The distinction between Article 29(2) and Article 15(1)

Article 29 (2) and Article 15 (1) are very similar due to the fact they both prevent discrimination on the basis of caste, race sex, etc and are sometimes seen as mutually exclusive. However, there is a big difference. While Article 15 provides a broader ambit against discrimination on the basis of caste, race sex, etc, Article 29 provides specific restitution for those who have faced discrimination from state-run educational institutions at the time of entry or admission.

Right of Minorities to establish and manage Educational Institutions

Under Article 30, the Constitution provides provisions for minority communities to establish and manage educational institutions and protect themselves from discrimination of granting aid by the government. Article 29 (1) gives any citizen the right to conserve a distinct language, script or culture of its own. While Article 29(2) also protects them, it is more for every citizen and is not specially tailored for minority groups.

One of the biggest debates in judicial history has been whether minority communities have the right to have autonomy while managing these institutions. Such questions gave birth to the famous T.M.A. Pai Foundation v. State of Karnataka case which had a massive 11 Judge Bench. In present times, the common consensus is that governments are allowed to regulate such institutes so long as such regulation is in pursuit of ensuring academic excellence and it does not harm the character of the minority institute.

The Constitutional (44th Amendment) Act, 1978

The Constitutional (44th Amendment) Act removed the right to property as a Fundamental Right under Article 19. However, it ensured that "the removal of property from the list of Fundamental rights would not affect the right of minority communities to establish and administer educational institutions of their choice".

Relationship between Articles 29(1) and 30(1)

Article 29(1) states protect the rights of members of communities who have distinct language, culture, and script.

Article 30(1) protects minority rights with regard to establishing and managing educational institutions.

Thus both Acts facilitate minority rights to establish and manage their own educational institutions. The only difference is that 29(1) makes an attempt to define who minority communities are. Due to the articles being almost identical, many might believe that when seeking protection, you can only seek protection under one. But in St. Xaviers College v. the State of Gujarat, it was stated that Article 29(1) and 30(1) were not mutually exclusive.

Power of Government to regulate minority-run Educational Institutions

St. Xaviers College v. the State of Gujarat, AIR 1974 SC 1389

Facts

In this case, St. Xaviers College, a religious denomination affiliated under the Gujarat University Act, 1949, provided education to not only Christians but students of other religions and creeds. They had challenged sections 35-A, 40, 41, 51-A and 52-A of the Gujarat University Act, 1972 which dealt with the appointment of teachers and students of minority communities. They stated that the Act encroached on the autonomy of the universities.

The contention of the Parties

Article 29 (1) of the Constitution safeguards a citizen's right to preserve his or her own language, script or culture, and Article 30 (1) states that minority communities have the right to establish and manage their own institutions.

Article 30(2) also states that the government should not discriminate against any institution under minority management.

Under Article 32, they had a right to not only establish and administer institutes of their choice but they also had the right to affiliation(to operate independently, but also has a formal collaborative agreement with the state).

The opposition stated that Article 29 and 30 were mutually exclusive and protection under these Acts can not be brought up at the same time. They also stated that affiliation was not a Fundamental Right and that a minority institution must abide by the provision if they wished to be affiliated. Another argument was unless the law was an absolute violation of minority rights under Article 30(1), then there was no reason for the Act to be struck down. They pleaded that the court wait until statutes and ordinances are issued in pursuit of the disputed sections.

Issue Raised

Are Article 29 and 30 mutually exclusive?

Is affiliation a Fundamental Right?

Does section 35-A, 40, 41, 51-A, and 52-A of the Act tamper with the institutes Fundamental Right?

Decision

It was held that

Article 29 and 30 were not mutually exclusive.

While affiliation is not a Fundamental Right, it is necessary for the meaningful management and establishment of such institutes

Section 35-A, 40, 41, 51-A and 52-A of the Act would not apply to minority institutions as they tamper with their Fundamental Right to establish and manage educational institutions of their choice.

Ray C.J. and Palekar, J. stated that it would be wrong to limit their rights to only institutes that administer language, script, and culture. This would make the Act redundant. It is also wrong to believe that Article 29 and 30 are mutually exclusive because while Article 29 is for all citizens, Article 30 was placed to safeguard the rights of minority communities. Thus Article 30 must be treated as an extension of Article 29.

Jaganmohan Reddy, J. stated that while affiliation is not a Fundamental Right, the state cannot use it as a tool to force an institution to abide by certain rules. The institution has the right to "establish their institutions, lay down their own syllabi, provide instructions in the subjects of their choice, conduct examinations and award degrees or diplomas, seek recognition to their degrees and diplomas and ask for aid where aid is given to other educational institutions". The state can only discriminate on the basis of the excellence of the institution.

With regard to the various disputed sections of the Act, the general consensus of the bench was that minority-managed institutions had the right to function without government intrusion of such nature.

Right of recognition or affiliation, not a Fundamental Right

When the right of minority communities to establish and manage educational institutions is a Fundamental Right, it makes you wonder if affiliation or recognition is a Fundamental Right as well? At the end of the day, in order for an institution to achieve sufficient excellence, it is imperative that they have some sort of recognition or affiliation from the state.

This exact query was brought up in Sidhraj Bhai v. State of Gujarat. While the court recognized the importance of affiliation, they denied that it was a Fundamental Right. In later on cases like T.M.A. Pai Foundation v. State of Karnataka and P.A. Inamdar v. State of Maharashtra, it was held that the government is allowed to set up rules and regulations that institutes must follow in order to get affiliation. These regulations must be in pursuit of educational excellence.

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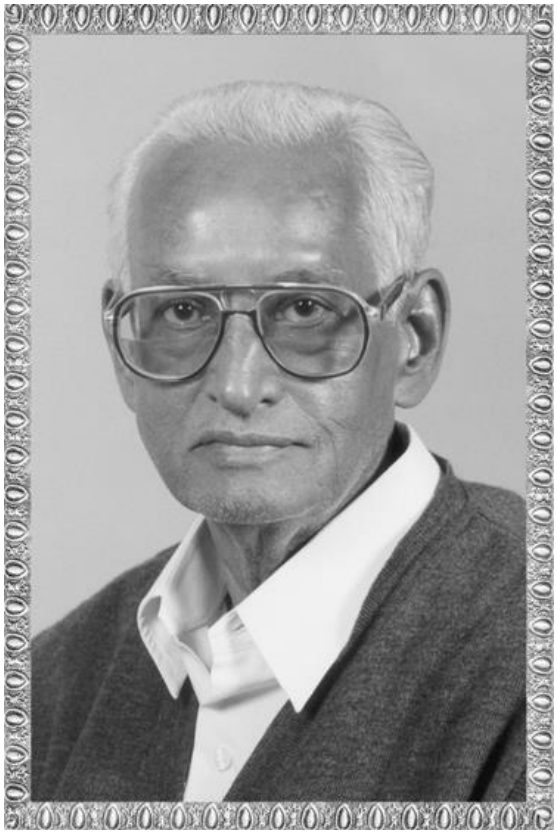

Lt. Shree Chimanbhai Shukla

Shree H.N.Shukla College
2, Vaishali Nagar,
Nr. Amrapali Railway under bridge,
Raiya Road, Rajkot.
Ph. (0281)2440478

Shree H.N.Shukla College
3, Vaishali Nagar,
Nr. Amrapali Railway under bridge,
Raiya Road, Rajkot.
Ph. (0281)2471645

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UNIT -4- DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES OF THE STATE:

SR.NO.	TOPIC NAME
4.1	DIRECTIVE PRINCIPLE: NATURE, IDEALS , DIXTINCTION FROM FUNDAMENTAL RIGHTS AND INTER-RELATIONSHIP WITH FUNDAMENTAL RIGHTS
4.2	NON-ENFORCEABILITY OF DIRECTIVE PRINCIPLES BEFORE THE COURT
4.3	CLASSIFICATION OF DIRECTIVE PRINCIPLES , UNIFORM CIVIL CODE
4.4	READING DIRECTIVE PRINCIPLES INTO FUNDAMENTAL RIGHTS
4.5	FUNDAMENTAL DUTIES

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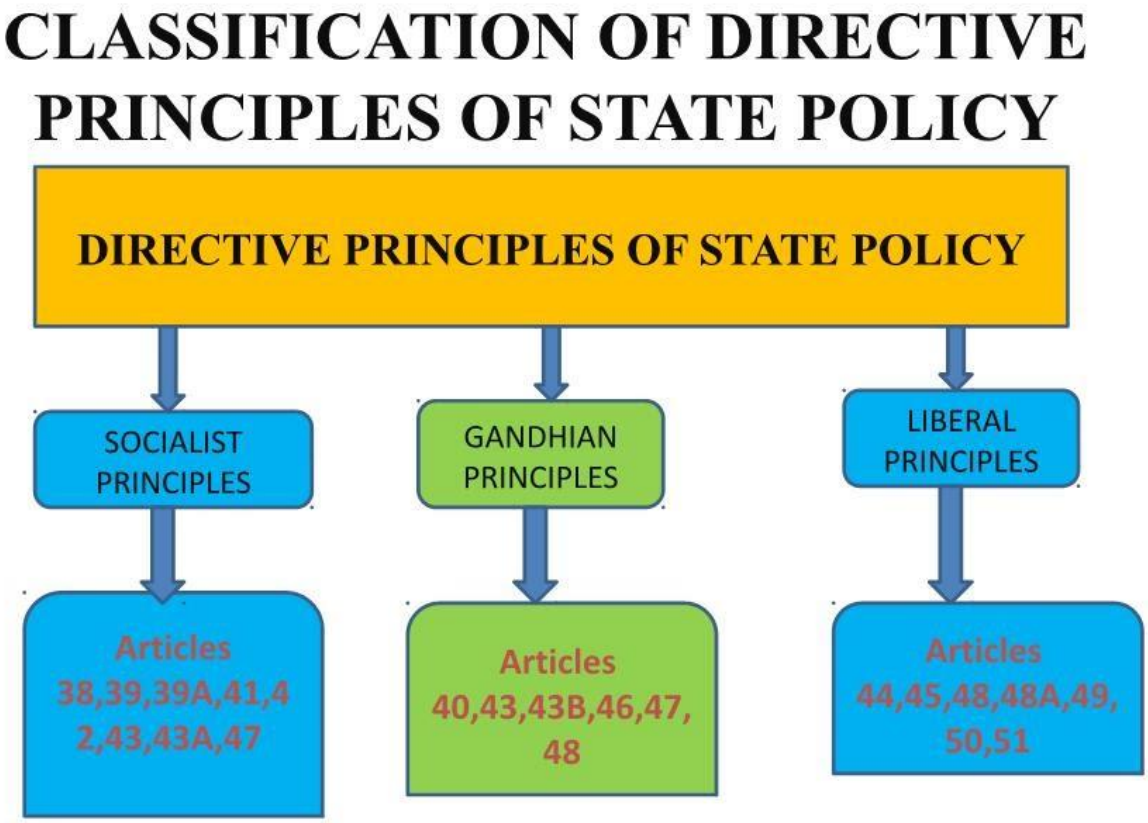
4.1 Directive Principle : Nature, Ideals, Distinction from Fundamental Right and Inter-relationship with Fundamental rights :



The Directive Principles of State Policy (DPSP) has been taken from the Irish constitution and enumerated in Part IV of the Indian Constitution.

The concept behind the DPSP is to create a 'Welfare State'. In other words, the motive behind the inclusion of DPSP is not establishing political democracy rather, it's about establishing social and economic democracy in the state. These are some basic principles or instructions or guidelines for the government while formulating laws/policies of the country and in executing them.

Part IV of the Indian Constitution

Part 4 of the Indian Constitution consists of all the DPSP (Directive Principles of State Policy).

It covers the Articles from 36 to 51.

Article 36 of Part IV defines the term "State" as the one, who has to keep in mind all the DPSP before formulating any policy or law for the country. The definition of "State" in the part IV will be the same as that of Part III, unless the context otherwise requires a change in it. In Article 37 the nature of DPSP has been defined. DPSPs are non-justiciable.

Article 38 to 51 contains all the different DPSP's.

History

The source of the concept of DPSP is the Spanish Constitution from which it came in the Irish Constitution. The makers of the Indian Constitution were very much influenced by the Irish nationalist movement and borrowed this concept of DPSP from the Irish Constitution in 1937.

The Government of India Act also had some instructions related to this concept which became an important source of DPSP at that time.

The Directive Principles of the Constitution of India have been greatly influenced by the Directive Principles of Social Policy.

The Indians who were fighting for the independence of India from the British rule were greatly influenced by the movements and independence struggles of Ireland at that time, to free themselves from the British rule and move towards the development of their constitution.

DPSP become an inspiration for independent India's government to tackle social, economic and various other challenges across a diverse nation like India.

DPSP and fundamental rights have a common origin. The Nehru Report of 1928 contained the Swaraj Constitution of India which contained some of the fundamental rights and some other rights such as the right to education which were not enforceable at that time.

Sapru Report of 1945 divided fundamental rights into justifiable and non-justifiable rights.

Justifiable rights, the one which was enforceable in a court of law and included in Part III of the Constitution. On the other hand, Non-justifiable rights were listed as directive principles, which are just there to guide the state to work on the lines for making India a welfare state. They were included in part IV of the Constitution of India as Directive Principles of State Policy.

The Constituent Assembly was given the task of making a constitution for India. The assembly composed of elected representatives and Dr. Rajendra Prasad was elected as its President.

Both the Fundamental Rights and the DPSP were enlisted in all the drafts of the constitution (I, II and III) prepared by the Drafting Committee whose chairman was Dr. B.R. Ambedkar.

Sources

The DPSP of the Indian Constitution was inspired by the Irish Constitution which took these details from Spain.

Some Instruments of Instructions, which also became the immediate source of DPSP, have been taken from the Government of India Act, 1935.

Another source was the Sapru Report, 1945 which gave us both Fundamental Rights (justiciable) and DPSP(s) (non-justiciable).

Nature of Directive Principles of State Policy :

DPSP are not enforceable in a court of law.

They were made non-justifiable considering that the State may not have enough resources to implement all of them or it may even come up with some better and progressive laws.

It consists of all the ideals which the State should follow and keep in mind while formulating policies and enacting laws for the country.

The DPSPs are like a collection of instructions and directions, which were issued under the Government of India Act, 1935, to the Governors of the colonies of India.

It constitutes a very comprehensive economic, social and political guidelines or principles and tips for a modern democratic State that aimed towards inculcating the ideals of justice, liberty, equality and fraternity as given in the preamble. The Preamble consists of all the objectives that needs to be achieved through the Constitution.

Adding DPSP was all about creating a “welfare state” which works for the individuals of the country which was absent during the colonial era.

Difference between fundamental rights and directive principles

1. Part in the Constitution in which they are mentioned

Fundamental Rights are mentioned in Part III of the Constitution while Directive Principles of State Policy are mentioned in Part IV of the Constitution. Articles 12-35 refer to Fundamental Rights while Article 36-51 refers to Directive Principles of State Policy.

2. Nature

Fundamental Rights in its essence are negative in nature simply because they prohibit the State from taking any action which may violate the Fundamental Rights of the citizen. They are referred to as 'negative' because a claim made by an individual imposes a negative duty on all other people. For example: If the Right to Privacy is claimed by an individual, then it imposes a whole set of negative duties on all other individuals to not breach it.

Unlike Fundamental Rights, Directive Principles of State Policy are positive in nature as it requires the State to do certain things as opposed to restricting State. For example, under DPSPs, State has been suggested to enact a Uniform Civil Code throughout the country. This is positive in a sense as it allows the State to take certain actions.

3. Democracy type

Fundamental Rights ensure political democracy as they prevent the establishment of a despotic or an authoritarian government in the country and ensure that the liberties of people are protected from any invasion by the State.

Directive Principles of State Policy help in maintaining social and economic democracy as it ensures that the State shall maintain social order by promoting economic, social and political justice throughout the country.

4. Adaption Source

The Fundamental Rights of India have been adapted from the Constitution of the United States of America.

Directive Principles of State Policy have been highly inspired by the Irish Constitution. The independence of Ireland from the clutch of Britain highly motivated people to look up to the Irish Constitution for inspiration.

5. Consequences of violation

If the Fundamental Rights of an individual are violated then it is considered to be a punishable offence because Fundamental Rights are enforceable by law. Upon violation, legal proceedings can be initiated and punishment can be given as per provisions mentioned under the Indian laws.

Since Directive Principles of State Policy are not enforceable by law and are mere guidelines, their violation is not an offence and cannot be awarded punishment for their violation.

6. Touchstone for laws

If a law is passed by the Parliament, such that it tends to violate certain aspects of Fundamental Rights, High Courts and Supreme Court in such cases can declare these kinds of laws or amendments as unconstitutional.

Any law or amendment made or initiated by the Parliament that does not adhere to the guidelines mentioned in DPSPs, in such cases High Courts and Supreme Court do not hold power to declare these laws as unconstitutional.

7. Individualistic or collective

Fundamental Rights are individualistic in nature as they are instrumental in preserving the rights and welfare of citizens in an individualistic manner. For example; if the Right to Freedom of Speech of an individual is curbed; Constitution ensures that such right is made available to the aggrieved person.

Directive Principles of State Policy are more collective in nature because DPSP focuses on promoting the welfare of the entire society or community of the country in a collective manner. For example, under DPSP; State has been suggested to employ village panchayats as a self-governing authority to look after the welfare of people in toto.

8. Suspension

Fundamental Rights can be suspended only in case of Emergency under Article 359 of the Constitution by the President. However, Fundamental Rights which are mentioned in Articles 20 and 21 cannot be suspended even during an emergency.

Directive Principles of State Policy can never be suspended, even during an emergency.

The constitution of India is considered as the longest written constitution of any sovereign nation in the world. At its birth, it had 395 articles in 22 parts and 8 Schedules and it currently has a Preamble, 25 Parts with 12 schedules, 5 appendices, 101 amendment and 448 articles. January 26 is celebrated as the Republic Day every year. The importance of the Constitution was given effect after 67 years and later on, it was amended 101 times also.

What are Fundamental Rights and DPSP?

Fundamental rights and DPSP as cherished in the Constitution of India together comprises the human rights of an individual. The Constitution expresses fundamental rights as an idea which appeared in India in 1928 itself. The Motilal Committee Report of 1928 clearly shows inalienable rights derived from the Bill of Rights enshrined in the American Constitution to be given to the individual. These rights were preserved in Part III of the Indian Constitution. of India.

Fundamental rights are also known as Inherent rights because they are inherent to every person by birth. These are the rights which provide an individual with some basic rights for the purpose of survival. No discrimination is made on the basis of religion, caste, race etc. and if any person feels so that his fundamental rights are being infringed then he can surely approach to court for the violation of his rights.

There are six fundamental right mentioned under the Constitution of India

Right to equality

Right to freedom

Right to freedom of religion

Right against exploitation

Cultural and educational rights

Rights to constitutional remedies

Right to Equality

Freedom Law is supreme in nature and everyone is equal before the law and equal treatment should be given to everyone. No discrimination should be done on the basis of race, caste, creed or gender. An equal amount of opportunity should be given to every individual in the field of employment. Abolition of untouchability and titles.

Right to Freedom

Every individual has the right to freedom to form an association, peacefully assemble, to travel or move freely reside and settle at any location and to go or opt for any profession throughout the territory of India. Right to education, life, liberty and dignity also fall under this right, protection in respect of arrest and detention and conviction of an offence.

Right against Exploitation

Prohibition of Child labour and Human trafficking and forced labour is a result of this right.

Right to Freedom of religion

This right provides us with the freedom to follow any religion without any question mark and freedom to attend any religious ceremony at a religious institution or education centre and pay tax for the promotion of religion. Nobody can force any individual who is not interested in paying any kind of tax for religious purposes.

Cultural and educational Right

It provides protection to different languages and varieties of culture present in India. It also protects the rights and culture of minorities. Establishing educational institutions and primary education to every child below the age of 14 years comes under this head.

Rights to seek Constitutional remedies

An individual has the right to move in any court of law if they feel fundamental rights are being violated. Our constitution consists of 5 writs. Here writs mean the “Order of court”. If only fundamental rights are violated then the individual can directly approach to Supreme Court of India.

4.2 Non-Enforceability of Directive Principles before the court:

DPSP were not made enforceable by the Constituent Assembly which was formed to draft the Indian Constitution. But the non-enforceability of the Principles does not mean that they are of no importance.

There are some arguments which are in favor of its enforceability and some are against the making of DPSP enforceable. Those who favor the enforcement of the Principles argue that enforceability of DPSPs will keep a check on the Government and would unite India. For instance, Article 44 of the Indian Constitution talks about the Uniform Civil Code which aims for uniform provisions of civil law for all the citizens of the country irrespective of their caste, creed, religion or beliefs.

People who are against the enforcement of the DPSPs are of the view that these principles need not be separately enforced as there are already many laws which indirectly implements the provisions mentioned in DPSP. For instance, Article 40 of the Constitution which deals with Panchayati Raj system was introduced through a constitutional amendment, and it is very evident that there are numerous panchayats exist in the country today.

Another argument against DPSP is that it imposes morals and values on the citizens of the country. It should not be clubbed with the law as it is really important to grasp that law and morals area unit various things. If we impose one on the opposite that will generally impede the expansion and development of the society.

There are some important judicial pronouncements which tried to give an answer to this question, they are as follows:

Kerala Education Bill

The court said that if a conflict arises between Fundamental Right and DPSPs, the harmony between the two should not be disturbed, but if, even after applying the doctrines of interpretation the conflict doesn't resolves then the former should be upheld and given more importance over the other i.e. DPSP.

Madras vs Champakan

If any law is in contravention to the provisions mentioned under Part III of the Indian Constitution, it would be held void but this is not applicable in case of DPSPs. This shows that Fundamental rights are on a higher pedestal than DPSPs as far as this case is concerned.

Venkataraman v. State of Madras

The Court gave more importance to the Fundamental rights over DPSPs.

I. C. Golaknath & Ors vs State Of Punjab & Anr.

The Court held that the Parliament cannot curtail the Fundamental rights in making any law or policy for the country. It also mentioned that if a law has been made to give effect to Article 39 (b) and Article 39 (c) of Part IV of the Constitution and in doing so if Article 14, Article 19 or Article 31 gets violated, then it cannot be declared as void merely on the ground of such contravention.

Keshavnanda Bharati vs the State of Kerala

The Apex Court placed DPSPs on a higher position than Fundamental Rights.

After that, in the case of Minerva Mills vs Union of India , the Court while deciding the case held that the harmony between the two should be maintained because neither of the two has any precedence over each other. Both are complementary to each other and they should be balanced anyhow for the proper functioning of the State.

Unnikrishnan vs State of Andhra Pradesh

The Court was of the view that Fundamental Rights and Directive Principles are not exclusive but complementary to each other. The Court said that the Fundamental Rights are the ways through which the goals given in Part IV can be achieved.

4.3 Classification of Directive Principles, Uniform Civil Code:

Article 36

Article 36 contains the definition of State.

Unless the context otherwise requires, the definition of "the State" is the same as it is given in Part III which covers Fundamental Rights.

The definition given in Article 12 shall apply in this part as well which says that the State includes:

The Government of India

The Parliament of India

The Government of each of the States

The Legislature of each of the States

All the authorities whether local or any other which are the part of Indian territory or under the control of the government.

Article 37

Article 37 mentions the two important characteristics of DPSP, and they are:

It is not enforceable in any court of Law.

And they are very basic and essential for the governance of the country.

The provisions mentioned in this part shall not be enforceable in any court and the principles laid down in this part are fundamental for the governance of the country. The State must make laws according to it because the ultimate aim of the State is the welfare of its citizens.

Socialist principles

These principles follow the ideology of "Socialism" and lay down the framework of India.

Its ultimate aim is to provide social and economic justice to all its citizens so that the state can fulfil the criteria required for a welfare state.

The articles in DPSP which follows the socialist principles are – Article 38, Article 39, Article 39 A, Article 41, Article 42, Article 43, Article 43 A and Article 47.

Article 38

Article 38 talks about Social, Political and Economic Justice.

It directs that the State should secure a social order which provides social, political and economic justice to all its citizens.

Article 38(2) says that state shall reduce the inequalities faced by the people on the grounds like income, status, facilities, opportunities, etc.

Article 39

Article 39 mentions all the Principles of policy which must be followed by the State.

The State shall make its policies towards securing the following objectives—

All the men, women and citizens should have the right to an adequate means of livelihood

The ownership and control of the people over any material resources under the community should be distributed as it is for the common good of the public;

The functioning of the economic system should be such that the concentration of wealth and the means of production don't result in a loss common to all or which causes detriment to the citizens;

There shall be no gender discrimination, both men and women should get equal pay for equal work.

The health and strength possessed by any worker, men and women, and the tender age of children should not be abused and the citizens should not be forced to enter and indulge into any occupation or profession which is not suitable for their age or strength, not even out of any financial necessity or economic backwardness

Children must be given enough opportunities and facilities so that they develop in a healthy manner and in such conditions where their freedom and dignity, including the fact that their childhood and youth remain protected, against any form of exploitation and against any sort of moral and material abandonment.

Article 39A

Article 39A talks about Free Legal aid.

It says that the State shall promote justice with the aim of administering Justice on the basis of equal opportunity, and shall provide free legal aid through any suitable legislation or schemes which State may think fit ,or, in any other way, so that it could ensure that the opportunities for securing justice are not denied to any citizen because of economic backwardness or any other kind of disabilities.

Article 41

Article 41 talks about Welfare Government.

It says that state shall make some effective provisions for securing the right to work, etc. and in cases of unemployment, old age, disablement or any other cases acting in its economic capacity & development it shall provide public assistance. This article is employed as a tenet for numerous social sector schemes like social assistance program, right to food security, old-age pension scheme, MGNREGA, etc.

Article 42

Article 42 talks about Securing just and humane work and maternity relief.

It says that state shall create some provisions so that the citizens get easy, just and humane conditions for working. It shall also provide maternity relief for the women.

Article 43

Article 43 talks about Fair wages and a decent standard of life.

It says that the state can endeavor to secure by appropriate legislation or economic organization to all the workers employed in agricultural, industrial or otherwise, work, a living wage, conditions of work, ensuring a decent standard of life and enjoyment of leisure and social-cultural opportunities and promote cottage industries on an individual or cooperative basis in rural and remote areas of the country.

Article 47

Article 47 talks about Nutrition, Standard of living and public health.

It says that the State shall look into the matter of raising the level of nutrition and the standard of living of its people and it is the duty of the State to keep a check on the improvement of public health. The State shall also endeavor to prohibit the consumption of intoxicating drinks and drugs which are injurious for health, except for medicinal purposes. There are many social development programmes such as National Health Mission, Mid Day Meal Scheme, etc. which target the marginalized sections of the society i.e. women, children, weaker sections etc. are inspired by this DPSP.

Article 40

Article 40 deals with the Organization of Panchayats.

It says that the state shall organize Panchayat system and should grant them such powers which would be necessary for the functioning as units of the self-government system.

The 73rd and 74th amendments of the constitution which are related to Panchayati Raj and Municipal Corporations respectively, later ended up as the constitutionally backed framework for the principle mentioned in Part IV.

Article 43

Article 43 talks about Fair wages and a decent standard of life.

It says that the state can endeavor to secure, by appropriate legislation or economic organization, to all the workers employed in agricultural, industrial or otherwise, work, a living wage, conditions of work, a decent standard of life and enjoyment of leisure & social-cultural opportunities and promote cottage industries on an individual or cooperative basis in rural and remote areas of the country.

Article 43B

Article 43B deals with the promotion of cooperatives.

It was inserted by the 97th amendment act in 2011. It says that state shall endeavor to promote the management of the co-operative societies to help the people who are engaged in the same.

Article 46

Article 46 deals with the Protection of SCs, STs, weaker sections from exploitation.

The State shall promote with special care including the educational and economic interests of the weaker sections of the society i.e. the SCs and the STs and shall make provisions to protect them from all forms of exploitation which includes social injustice.

Article 47

Article 47 talks about Nutrition, Standard of living and public health.

It says that the State shall look into the matter of raising the level of nutrition and the standard of living of its people and it is the duty of the State to keep a check on the improvement of public health. The State shall endeavor to prohibit the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes.

There are many social development programmes such as National Health Mission, Mid Day Meal Scheme, etc. which target the marginalized sections of the society i.e women, children, weaker sections etc. are inspired by this DPSP.

Article 48

Article 48 talks about Scientific agriculture and animal husbandry.

It says that the State shall endeavor to organize agriculture and animal husbandry using modern methods and scientific techniques which make people more advanced and helps in earning their livelihood easily and State shall take some progressive steps for preserving and improving the existing breeds and prohibiting the slaughter of cows and other cattle.

Article 44

Article 44 talks about the Uniform Civil Code.

There should be a provision for the citizens to secure a Uniform Civil Code throughout the territory of India in order to simplify things and reduce ambiguity in the laws which makes it more complex than it actually is.

Article 45

Article 45 contains the Provision for free and compulsory education for the children in the country.

The State shall make laws to provide free and compulsory education for the children until they are 14 years old within a period of 10 years from the date of commencement of this provision in the Constitution.

This provision was incorporated by the virtue of the 86th Amendment, 2002 in the Constitution of India.Article 48

Article 48 talks about Organisation of agriculture and animal husbandry.

The State shall endeavour to organise agriculture and animal husbandry using modern and scientific technology which is prevalent in the present times and also take steps for preserving and improving the existing breeds and prohibiting the slaughter of cows and other cattle in the country for the development of agricultural related practices.

Article 48A

Article 48A talks about the Environment and Wildlife Protection.

The State shall endeavour to protect and improve the environment and surroundings. And to safeguard the forests and wildlife of the country to make the environment sustainable.

Article 49

Article 49 talks about Protection of monuments and places and objects of national importance.

It shall be the duty of the State to protect every monument or place or any object of historic or artistic interest which has some national importance, from any form of disfigurement, destruction, etc.

Article 50

Article 50 talks about Separation of Judiciary from the Executive.

There should be a line between the judiciary and the executive body of the Government in the public services of the State as it makes it easier if both do not interfere in each other's work and function independently.

Article 51

Article 51 talks about Promotion of international peace and security.

The State shall endeavour to —

Promote international peace and security;

maintain friendly and honourable relations between nations;

foster respect for international law and treaty obligations in the dealings of one person with another for maintaining harmony between the nations and

encourage settlement of international disputes by the method of arbitration.

42nd Amendment

Four Directive Principles which were added by the 42nd amendment are as follows:

Article 39 – To secure opportunities for healthy development of children.

Article 39A – It says that the State shall promote justice with the aim of administering it on the basis of equal opportunity, and shall provide free legal aid through any suitable legislation or the schemes which State may think fit or in any other way so that State can ensure that opportunities for securing justice are not denied to any citizen because of any economic or other disabilities.

Article 43A – The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations.

Article 48A – The State shall endeavour to protect and improve the environment and surroundings and to safeguard the forests and wildlife of the country to make its environment liveable.

44th Amendment

The 44th Amendment Act of 1978 added Article 38(2) in the DPSP.

Article 38(2) says that the state shall work to minimize the inequalities in income, and endeavour to eliminate inequalities in status, opportunities etc. not only amongst individuals but also amongst all the groups of people residing in different areas or engaged in different fields.

86th Amendment

The 86th Amendment changed the subject of Article 45 in the DPSP and brought it within the ambit of the fundamental rights mentioned in Part III as Article 21-A has been made for the children between the age group of 6-14 years of age. The same article was previously a directive principle which says that the State should take care of the children who are below 6 years of age.

97th Amendment

The 97th Amendment act of 2011 inserted Article 43-B in the list of DPSP. It says that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of the co-operative societies.

Uniform Civil Code :

The Uniform Civil Code is mentioned in Article 44 of the Indian Constitution, which is part of the Directive Principles of State Policy.

These principles are not legally enforceable but are meant to guide the state in making policies.

It has been supported by some as a way to promote national integration and gender justice, but opposed by others as a threat to religious freedom and diversity.

The only state in India that has a UCC is Goa, which retained its common family law known as the Goa Civil Code after it was liberated from Portuguese rule in 1961.

The rest of India follows different personal laws based on their religious or community identity.

Personal Laws in India:

Currently, not only Muslims but also Hindus, Jains, Buddhists, Sikhs, Parsis, and Jews are governed by their own personal laws.

Personal laws are determined based on religious identity.

The reformed Hindu Personal Law still incorporates certain traditional practices.

Differences arise when Hindus and Muslims marry under the Special Marriage Act, where Hindus continue to be governed by Hindu Personal Law, but Muslims are not.

What are the Challenges in Implementing UCC?

Diverse Personal Laws and Customary Practices:

India is a country of diverse religions, cultures and traditions.

Each community has its own set of personal laws and customs that govern their civil matters.

These laws and practices vary widely across regions, sects and groups.

To find a common ground and uniformity among such diversity is very difficult and complex.

Moreover, many personal laws are not codified or documented, but are based on oral or written sources that are often ambiguous or contradictory.

Resistance from Religious and Minority Groups:

Many religious and minority group's view UCC as an infringement on their religious freedom and cultural autonomy.

They fear that UCC would impose a majoritarian or homogenous law that would disregard their identity and diversity.

They also argue that UCC would violate their constitutional rights under Article 25, which guarantees the freedom of conscience and free profession, practice and propagation of religion.

Lack of Political Will and Consensus:

There is a lack of political will and consensus among the government, the legislature, the judiciary and the civil society to initiate and implement UCC.

There are also apprehensions that UCC could provoke communal tensions and conflicts in the society.

Practical Difficulties and Complexities:

UCC would require a massive exercise of drafting, codifying, harmonising and rationalising the various personal laws and practices in India.

It would require a wide consultation and participation of various stakeholders, including religious leaders, legal experts, women's organisations, etc.

It would also require a robust mechanism of enforcement and awareness to ensure compliance and acceptance of UCC by the people.

What are the Benefits of UCC?

National Integration and Secularism:

UCC would promote national integration and secularism by creating a common identity and sense of belonging among all citizens.

It would also reduce the communal and sectarian conflicts that arise due to different personal laws.

It would uphold the constitutional values of equality, fraternity and dignity for all.

Gender Justice and Equality:

UCC would ensure gender justice and equality by removing the discrimination and oppression faced by women under various personal laws.

It would grant equal rights and status to women in matters of marriage, divorce, inheritance, adoption, maintenance, etc.

It would also empower women to challenge the patriarchal and regressive practices that violate their fundamental rights.

Simplification and Rationalisation of the Legal System:

UCC would simplify and rationalise the legal system by removing the complexities and contradictions of multiple personal laws.

It would harmonise the civil and criminal laws by removing the anomalies and loopholes that arise due to different personal laws.

It would make the law more accessible and understandable for the common people.

Modernisation and Reform of Outdated and Regressive Practices:

UCC would modernise and reform the outdated and regressive practices that are prevalent in some personal laws.

It would eliminate the practices that are against the human rights and values enshrined in the Constitution of India, such as triple talaq, polygamy, child marriage, etc.

It would also accommodate the changing social realities and aspirations of the people.

What are the Important Cases Related to UCC?

Shah Bano Begum v. Mohammad Ahmed Khan (1985):

The Supreme Court upheld the right of a Muslim woman to claim maintenance from her husband under Section 125 of the Criminal Procedure Code, even after the expiry of the Iddat period.

It also observed that a UCC would help in removing contradictions based on ideologies.

Sarla Mudgal v. Union of India (1995):

The Supreme Court held that a Hindu husband cannot convert to Islam and marry another woman without dissolving his first marriage.

It also stated that a UCC would prevent such fraudulent conversions and bigamous marriages.

Shayara Bano v. Union of India (2017):

The Supreme Court declared the practice of triple talaq as unconstitutional and violative of the dignity and equality of Muslim women.

It also recommended that the Parliament should enact a law to regulate Muslim marriages and divorces.

What Should be the Way Forward?

Unity and Uniformity:

The recommended UCC should reflect India's multiculturalism and preserve its diversity.

Unity is more important than uniformity.

The Indian Constitution allows for both integrationist and restricted multicultural approaches to accommodate cultural differences.

Discussion and Deliberations with Stakeholders:

Also, involving a broad range of stakeholders, including religious leaders, legal experts, and community representatives, in the process of developing and implementing the UCC.

This could help to ensure that the UCC takes into account the diverse perspectives and needs of different groups, and that it is seen as fair and legitimate by all citizens.

Striking a Balance:

The Law Commission should aim to eliminate only those practices that do not meet the constitutional standards.

Cultural practices must align with substantive equality and gender justice goals.

The Commission should avoid contributing to reactive culturalism among different communities.

The Muslim clergy should lead the reform process of Muslim Personal Law by identifying discriminatory and oppressive issues and considering progressive views.

Constitutional Perspective:

The Indian Constitution upholds the right to cultural autonomy and aims for cultural accommodation.

Article 29(1) protects the distinctive culture of all citizens.

Muslims need to question whether practices like polygamy and arbitrary unilateral divorce align with their cultural values.

The focus should be on achieving a just code that promotes equality and justice.

4.4 Reading Directive Principles into Fundamental rights :

The Fundamental Rights are enshrined in Part III of the Constitution starting from Article 12 to Article 35 and it is believed that the framers of the Constitution in this regard have rightly derived their inspiration from the Constitution of the United States i.e. Bill of Rights. The rights thereby enshrined in Part III of the Constitution encompasses in itself an elongated and comprehensive list of Justiciable Fundamental Rights that can be enforced by the ordinary courts of the country. These Fundamental Rights contained in Part III of our Constitution are much more extensive and elaborative than any other country of the world even more elaborative from where it has been borrowed (USA).

On the other hand of this article, we will explore that the Directive Principles of State Policy or the (herein referred to as DPSP) are encompassed in Part IV of the Constitution of India from Article 35-51. It is evident at this very stage, that the makers of the Constitution of India in respect to Part IV have derived and borrowed the idea and the concept of having the Directive Principles from Section 45 of the Irish Constitution of 1937 which in turn have copied it from the Spanish Constitution. These Directive Principles of the State Policy or "Novel Features" as termed by Dr. B.R. Ambedkar symbolizes and directs the state (As defined in Article 12 of the Constitution) with ideals and recommendations that should be kept in mind while framing policies and enacting laws. But unlike the former stands unjustifiable in nature.

Fundamental Rights (Part – III)

As discussed earlier in this article, These Justiciable Rights are enshrined in Part III of the Constitution of India (Article 12 to Article 35) and are called and named "Fundamental" because of two significant reasons:

Firstly, these rights are guaranteed and protected by the Constitution of the Country which is the fundamental law of the land.

Secondly, they become fundamental in the sense that they are most essential for the all-round material, intellectual, moral, and spiritual development of an Individual.

Initially and Originally there were about seven fundamental rights but after the abolition of Zamindari Act 1950, there number reduced to about six which are as follows:

Right to equality (Article 14-18) :

which entails in itself that everyone stands equal before the law and equal treatment should be given to everyone thereby implying a complete prohibition of discrimination founded on the grounds of race, caste, creed, or gender.

Right to Freedom (Article 19-22):

Each individual has the right to freedom to form an association, to peacefully assemble, to practice any profession, and carry on any trade, occupation, or business. Contains one of the most significant right i.e. Right to Life and Liberty (Article 21). protection and rights to an accused in respect to arrest and detention for conviction of any offense under the penal code of the country.

Right against Exploitation (Article 23 and 24):

This Article entails in themselves important and rights such as the prohibition of Child Labor or Forced Labor and Human trafficking.

Right to Freedom of Religion (Article 25- Article 28):

This specific right in the Constitution is of utmost importance in a country like India where there is a huge diversity of religion, this right provides the citizens with the freedom to follow and practice any religion and most importantly grants freedom of conscience to an Individual. The rights under this head also specifically provide a clause concerning paying taxes for religious purposes.

Cultural and Educational Rights (Article 29 and Article 30):

These rights entailed in Part III provides protection to different languages and varieties of culture present in India and additionally protects the rights and culture of minorities, right to minorities to establish and administer educational Institution, etc.

Right to seek Constitutional remedies:

Article 32 as described by Dr. Ambedkar the heart and soul of the Indian constitution, these remedies are available to any individual whose fundamental right gest violated, and these rights enshrined in the Constitution empowers the Supreme Court of India to issue 5 types of writs.

However, the right to property was deleted from the aforementioned list of Fundamental Rights by the 44th Amendment Act, 1978, and thereby this amendment made the Right to property as a Non-Fundamental Constitutional Right under Article 300-A in Part XII of the Constitution.

Directive Principles of State Policy (Part – IV)

The Directive Principle of State Policy or DPSP as enumerated in Part IV of the Constitution as discussed formerly in this article are the constitutional directives or recommendations to the State as far as the cases of Legislative, administrative and executive matters to keep in mind the ideals therein mentioned while formulating and enacting laws. The significance of these directives becomes evident from the fact that these Directive Principles at numerous instances help the court of law though having non-justiciable in nature, to determine the constitutional validity of a law. These Directives are often classified into three broad categories:

Socialistic Principles – For e.g. Article 38, to promote the welfare of the people by securing a social order permeated by justice – social, economic and political and thereby to minimize any types of inequalities be it income, status and opportunities.

Gandhian Principles – These principles characterize the programme for reconstruction as enunciated by the father of the Nation – Mahatma Gandhi during the national movement and struggle. For e.g. – Article 40 to organize village panchayats and endow them with necessary powers and authority to enable them function as units of self – government.

Liberal–Intellectual Principles– These DPSPs entail in themselves some characteristics of the ideology of liberalism. For e.g. – Article 50 which further imposes an obligation upon the state to separate judiciary from the executive in the public services of the State.

The classification of the Directive Principles as above stated in this article is not expressly present or made by the Constitution but however on the basis of its content the same has been classified into the three broad categories.

These Directive Principles despite having been criticized by eminent economists like K.T. Shah as " a cheque on bank, payable only when resources of the bank permit so" for having no legal sanction and being illogically arranged, and even by former Finance minister T.T. Krishnamachari (1956-1958) as " a veritable dustbin of sentiments" these Directive Principles in the contemporary times cannot be construed as irrelevant accompaniment. As stated by Justice Chagla, the former Chief Justice of India these principles if implemented well and fully carried out, can make our country indeed heaven on earth. The Directive Principles are auxiliary and can even be considered as subsidiary to the fundamental rights as they are aimed and intended to fill in the vacuum present in Part III by providing economic and social rights. They simplify and provide a kind of stability and permanency in domestic and foreign strategies of the government or despite the changes that occur from the disposition.

DPSPs provide the citizens of the country a quantitative scale to measure the performance of the government and provide them with effective feedback on where it lacks.

Conflict between Directive Principles and Fundamental Rights

It becomes pertinent to note at this point even though, both the Directive Principles of State Policy and the Fundamental Rights appear as constitutionally distinct but when we trace back their historical origin, we find that both had originated from a common origin. There was no distinction between positive and negative obligations of the state but it was the constituent assembly that separated them. We find both the above mentioned Fundamental Right and Directive Principle as intimate and interlacing part of the Indian Constitution.

The conflict between the DPSPs and Fundamental Rights seems not to be a novice situation. The character though may be similar but points of conflicts even today in the contemporary times rests at the following points:

Justiciability of the Fundamental Rights and the Non- Justiciable character of the DPSP.

Moral Obligation and duty casted upon the state to implement the Directive Principles as per Article 37 has also raised a serious point of contravention since the inception of the Constitution and Part III and Part IV.

In numerous early cases, the Supreme Court ruled out that the Directive Principles could not supersede a Fundamental Right present in Part III of the Constitution. However, the position of the same became clear when the Supreme Court took a view in the case of State of Madras V. Srimathi Champakam Dorairajan. In this case, the Supreme Court ruled that since Fundamental Rights are enforceable and Directive Principles are not, so the Fundamental Rights would prevail over the later and have to run as subsidiary to the Fundamental Rights.

However, the situation subsequently changed in 1967 by the Supreme Court itself in the case of I.C. Golaknath V. State of Punjab whereby the Supreme Court held that the Fundamental Rights present in Part III of the Constitution are sacrosanct and thereby cannot be amended for implementation of the Directive Principles of State Policy.

Relationship between Fundamental Rights and Directive Principles of State Policy.

The Relationship between Part III and Part IV is the one that is not a novice one and was discussed by the Constitutional Advisor Sir B.N. Rau who advocated the idea that the right of an individual on the basis of their nature can be divided into:

Justiciable Rights

Non-justiciable Rights

The list of Justiciable Rights was engulfed in Part–III while the non-justiciable one became the member of Part–IV of the Constitution. At times and again these Directive Principles are used by the Judiciary to determine the constitutional validity of any legislation when they are found to be in conflict with the Fundamental Rights or Part–III of the Constitution.

The first case we are going to discuss in this light is of Sajjan Singh V. State of Rajasthan of 1964 where the Obiter Dicta laid down by Justice Madhukar becomes apposite, even the fundamental rights enshrined in Part III were taken as unalterable, the much-needed dynamism may be according to him achieved by a proper interpretation of the Fundamental Rights in light of the Directive Principles. Further, he observed that the Part IV is fundamental in the governance of the country and the provision relating to Part III must be interpreted harmoniously with these principles". As discussed above in the case of Champakam Dorairajan (Supra) it was held by the Supreme Court that the Fundamental Rights would be reduced to a "Mere rope of sand" if they were to be override or superseded by the Directive Principles of State Policy.

Also, as we discussed earlier in this article while deliberating on the case of I.C. Golaknath (Supra), Hon'ble Justice Subba Rao of the Apex Court accentuated that the Fundamental Rights and the Directive Principles of State Policy together form an integrated scheme which is elastic enough to respond to the changing needs of the society. On a similar note in Bijoya Cotton Mills V. State of West Bengal, the supreme court has two folded view regarding the same:

In a case of conflict between the rights of an Individual and a law that particularly aims at the implementation of socio-economic policies in furtherance of the Directive Principles, the weight would be accorded to the latter.

Every Act or Legislation enacted in fulfilment of the Directive Principles should be construed as the one professing in the public interest or as a reasonable restriction to Part III of the Constitution.

Doctrine of Harmonious Construction and relevant case laws

The doctrine of Harmonious construction as a new technique of interpretation was inducted and innovated by the Supreme Court in the case of Quareshi Mohd. v. State of Bihar where the court stated that the Constitution has to be construed harmoniously, the Directive Principles must be implemented in such a way that it does not take away or encroach upon the fundamental rights of citizens. The courts should adopt the principles of harmonious construction and attempt to give effect to both Part III and Part IV of the Constitution.

In Re: Kerala Education Bill case of 1958, Chief Justice S.R. Das held while affirming the primacy of fundamental rights over the directive principles "nevertheless, in determining the scope and ambit of Fundamental Rights relied upon by or on behalf of any person or body, the court may not entirely ignore the DPSPs laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give to both as far as possible".

The Supreme Court then began to proclaim that there exists no conflict between the Fundamental Rights and Directive Principles both stand supplementary and complementary to each other. The above stand was taken by the Apex Court in the case of Chandra Bhavan Boarding & Lodging V. State of Mysore. Since then, the Supreme Court of India in the plethora of cases started to reiterate the point that the judicial attitude towards both DPSPs and Fundamental Rights is co-equal.

In 1973, in the landmark case of Kesavananda Bharti V. State of Kerela – Justice K.S. Hedge duly observed that the Fundamental Rights and Directive Principles constitute the "Conscience of the Constitution." While Justice Shelat and Grover observed that both these Parts (III and IV) have to be balanced and harmonized.

At various instances and in catena of cases the courts have utilized the above-mentioned Doctrine of Harmonious Constructions while pronouncing judgments relating to Part III and Part IV of the Constitution. On a similar note, the Hon'ble Supreme Court in the case of State of Kerala V. N.M. Thomas held that both the Directive Principles and the Fundamental Rights should be construed in

harmony with each other and every effort should be made by respective courts to resolve any apparent inconsistency that exists between them.

Justice Chandrachud in the landmark case of Minerva Mills V. Union of India observed "Fundamental Rights are not an end in themselves but are means to an end", the aforesaid end is specified in the directive principles. In the (Paras 56 and 57) of the same judgment, it was also duly held that "harmony and balance between the fundamental rights and directive principles is an essential feature of the basic structure of the Constitution".

From the above one can pellucidly infer that the Fundamental Rights enshrined in Part III can be considered to be the means to achieve several goals that are thereby enshrined in Part IV and even at various instances the Fundamental Rights is interpreted in light of non-justiciable Directive Principles of State Policy.

The same becomes pertinent when we look in the case of Bandhu Mukti Morcha case where the bench headed by Justice P.N. Bhagwati in page 163 of the same Judgment has expressly mentioned: "The Right to live human dignity, free from exploitation enshrined under Article 21 derives its life and breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 ".

The inextricable and entangles relation between the Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) that was even recognized by the Legislature in the 86th Constitutional Amendment Act of 2002, where Right to Education earlier and originally the element of Part IV of the Constitution was raised to the Fundamental Right enshrined under Article 21A of Part III of the Constitution.

"These Directive Principles of State Policy are fundamental in the governance of the country they must be therefore regarded as equally fundamental to understanding and interpretation of the meaning and content of fundamental rights" – The aforesaid view was taken by the Supreme Court in the case of Olga Tellis.

Recently, in the case of Charu Khurana V. Union of India of 2015, the Supreme Court of India again highlighted the importance of their existence (Part III and Part IV) by observing that "Fundamental Rights and the Directive Principles are the two wheels of the chariot establishing the egalitarian social order.

4.5 Fundamental Duties :

As an Indian citizen, certain rights and duties are provided to us. The duty of every citizen is to abide by the laws and perform his/her legal obligations. A person should always be aware of his/her fundamental duties. 11 fundamental duties are laid down by the Indian Constitution.

Origin and scope of fundamental duties

Origin

On the recommendations of the Swaran Singh Committee, the fundamental duties were added by the 42nd Amendment, 1976 in our Indian Constitution. The fundamental duties were originally 10 in numbers but in 2002, the 86th Amendment increased its number to 11. The 11th duty made it compulsory for each and every parent and guardian to provide the educational opportunities to their child who is more than 6 years but less than 14 years of age. These duties are borrowed from the Constitution of Japan.

Scope

Neither there is a direct provision in the Constitution for the enforcement of these duties nor there is hardly any legal sanction in order to prevent violation of these duties. These duties are obligatory in nature. The following facts provide for the importance of fundamental duties:

A person should respect the fundamental rights and duties equally because in any case, if the court comes to know that a person who wants his/her rights to be enforced is careless about his/her duties then the court will not be lenient in his/her case.

Any ambiguous statute can be interpreted with the help of fundamental duties.

The court can consider the law reasonable if it gives effect to any of the fundamental duties. In this way, the court can save such law from being declared as unconstitutional.

Fundamental duties taken from

The fundamental duties are taken from the USSR (Russia) constitution. The addition of fundamental duties in our constitution have brought our constitution aligned with the Article 29(1) of the Universal Declaration of Human Rights and with various provisions of the modern constitution of other countries.

11 Fundamental duties

Only one Article that is Article -51A is there in Part-IV-A of the Indian Constitution that deals with fundamental duties. It was added to the Constitution by the 42nd Amendment Act, 1976. For the first time, a code of 11 fundamental duties was provided to the citizens of India. Article 51-A states that it is the duty of every citizen of India:

To respect the Constitution, it's ideals and institutions, the National Flag and National Anthem–Ideals like liberty, justice, equality, fraternity and institution like executive, the legislature, and the judiciary must be respected by all the citizens of the country. No person should undergo any such practice which violates the spirit of the Constitution and should maintain its dignity. If any person shows disrespect to the National Anthem or to the National Flag then it will be a failure as a citizen of a sovereign nation.

The noble ideas that inspire the national struggle to gain independence, one should cherish them– Every citizen must admire and appreciate the noble ideas that inspired the struggle of independence. These ideas focus on making a just society, a united nation with freedom, equality, non-violence, brotherhood, and world peace. A citizen must remain committed to these ideas.

One should protect and uphold the sovereignty, unity and integrity of India– This is one of the basic duties that every citizen of India should perform. A united nation is not possible if the unity of the country is jeopardized. Sovereignty lies with the people. Article 19(2) of the Indian Constitution put reasonable restrictions on the freedom of speech and expression in order to safeguard the interest and integrity of India.

One should respect the country and render national service when called upon–Every citizen should defend the country against the enemies. All the citizens apart from those who belong to the army, navy etc should be ready to take up arms in order to protect themselves and the nation whenever the need arises.

One should promote harmony as well as the spirit of common brotherhood amongst the citizens of India, transcending religious, linguistic, regional or sectional diversities and to renounce practices that are derogatory to the dignity of the women– Presence of one flag and single citizenship not only reflects the spirit of brotherhood but also directs the citizen to leave behind all the differences and focus on collective activity in all spheres.

One should value and preserve the heritage of our composite culture– India's culture is one of the richest heritages of the earth. So, it is compulsory for every citizen to protect the heritage and pass it on to future generations.

One should protect and improve the natural environment including forests, lakes, rivers, wildlife and a citizen should have compassion for living creatures– Under Article 48A this duty is provided as a constitutional provision also. The natural environment is very important and valuable for each and every country. So each and every citizen should make efforts in order to protect it.

One should not only develop the scientific temperament and humanism but also the spirit of inquiry and reform– For his/her own development it is necessary for a person to learn from the experiences of others and develop in this fast-changing environment. So one should always try to have a scientific temperament in order to adjust with these changes.

One should always safeguard public property and abjure– Due to unnecessary cases of violence that occurs in a country which preach for non-violence, a lot of harm has already been done to the public property. So, it is the duty of every citizen to protect the public property.

One should always strive towards excellence in all spheres of life and also for the collective activity so that the nation continues with its endeavour and achievements– In order to ensure that our country rises to a higher level of achievement, it is the basic duty of every citizen to do the work that is given to him/her with excellence. This will definitely lead the country towards the highest possible level of excellence.

One should always provide the opportunity of education to his child or ward between the age of six to fourteen years– Free and compulsory education must be provided to the children who belong to 6 to 14 years of age and this has to be ensured by the parents or guardian of such child. This was provided by the 86th Constitutional Amendment Act, 2002.

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