



## FUNDAMENTAL RIGHTS

# What are rights?

- Rights are **claims** of a person over other fellow beings, over the society and over the government.
- All of us want to live happily, without fear and without being subjected to degraded treatment. For this we expect others to behave in such a way that does not harm us or hurt us.
- Equally, our actions should not also harm or hurt others. So a right is possible when you make a claim that is equally possible for others.
- Thus, a right comes with an obligation to respect other rights.
- Rights acquire meaning only in society. Every society makes certain rules to regulate our conduct. They tell us what is right and what is wrong. What is recognised by the society as rightful becomes the basis of rights. That is why the notion of rights changes from time to time and society to society.
- Two hundred years ago anyone who said that women should have right to vote would have sounded strange. Today not granting them vote in Saudi Arabia appears strange.
- When the socially recognised claims are written into law they acquire real force. When law recognises some claims they become enforceable.
- When fellow citizens or the government do not respect these rights we call it violation or infringement of our rights. In such circumstances citizens can approach courts to protect their rights.
- **Rights are reasonable claims of persons recognised by society and sanctioned by law.**

# Why do we need rights in a democracy?

- Necessary for the very maintenance of democracy.
- Protection of Minorities from the oppression of the majority.
- Protection from other citizens: Things may go wrong when some citizens may wish to take away the rights of others.
- Protection from the government: Sometimes elected governments may not protect or even attack their citizens' rights. Some rights are hierarchically positioned over the government to deter a government from violating the basic rights of citizens.

# Right to equality



Right to Equality

Article 14

Article 15

Article 16

Article 17

Article 18

# Right to equality

## Article 14 in Constitution of India

### 14. Equality before law

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

12. 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.

# Article 14

- **Equality before Law**
- The concept of '**Equality before Law**' is of **British origin**, which connotes-
  - the absence of any special privileges in favor of any person,
  - the equal subjection of all persons to the ordinary law of the land,
  - no person is above the law.
- **Equal Protection of Laws**
- The concept of '**Equal Protection of Laws**' has been taken from the **American Constitution**. It connotes-
  - equality of treatment under equal circumstances, both in the privileges conferred and liabilities imposed by the laws,
  - the similar application of the same laws to all persons who are similarly situated,
  - the like should be treated alike without any discrimination.
  - No universal application
- A simple comparison of the concepts of '**Equality before Law**' and '**Equal Protection of Laws**' tells that **the former is a negative concept**, while **the latter is a positive concept**. However, they both align in their common aim to establish equality of legal status, opportunity, and justice.



**Equality Before Law**



**Equal Protection of Laws**



Feature	Equality Before Law	Equal Protection of Law
<b>Nature</b>	Negative (No special privileges)	Positive (Fair and reasonable classification)
<b>Concept</b>	Formal equality	Substantive equality
<b>Focus</b>	Treats everyone equally under the law	Allows reasonable classification to ensure fairness
<b>Application</b>	No person is above the law	The state can make special provisions for disadvantaged groups
<b>Purpose</b>	Prevents discrimination and special privileges	Ensures justice by treating equals equally and unequals unequally
<b>Derived From</b>	Dicey's Rule of Law	American concept of equal protection (14th Amendment, U.S. Constitution)
<b>Example</b>	A government official and an ordinary citizen are equally accountable under criminal law	Reservation for Scheduled Castes (SCs) and Scheduled Tribes (STs) in education and jobs



# Equality before law - Rule of Law

- The concept of '**Rule of Law**', as propounded by the **British jurist A V Dicey**, has the following 3 elements:
  - Absence of arbitrary power i.e. no man can be punished except for a breach of law.
  - Equality before law i.e. equal subjection of all citizens to the laws of the land.
  - The primacy of the rights of the individual i.e. constitution is the result of the rights of the individual as defined and enforced by the courts of law, rather than the constitution being the source of the individual rights.
- The following three points are to be noted w.r.t. the concept of 'Rule of Law':
  - The concept of '**Equality before Law**' is an element of the concept of 'Rule of Law'.
  - In the case of the Indian system, only the 1st and 2nd elements of the 'Rule of Law' are applicable, and not the 3rd one. This is because, in India, the constitution is the source of the individual rights.
  - The Supreme Court has ruled that the '**Rule of Law**' as embodied in **Article 14** is a '**basic feature**' of the constitution, and hence cannot be destroyed by a constitutional amendment.

# Equal protection of law – Old test

Public Welfare – Classification is essential

Test: State of Bombay vs. F.N. Balsara

1. Intelligible differentia
2. Rational nexus

**Positive concept** - like should be treated like, unlike should not be treated like, discrimination allowed but it should not be arbitrary and should be reasonable.

**Class Legislation** is not allowed

Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons

**Reasonable classification** is allowed if based on **Intelligible Differentia** (Intelligent reason for classification)

Whether the discrimination is reasonable, is upon judiciary to decide, the requirements are that it should have relation with the rationale to be achieved and the rational to be achieved should be just

# New test - E.P. Royappa vs. State of Tamil Nadu & Another

- New Approach – Equality as a Dynamic Concept:
- Article 14 is not just about formal classification but also about fairness, justice, and non-arbitrariness.
- A law or action can still be struck down if it is unfair, excessive, or unreasonable, even if it follows reasonable classification.
- ♦ Example from Royappa Case:
- E.P. Royappa was a senior IAS officer who was arbitrarily transferred from his post by the Tamil Nadu government.
- He challenged the transfer, claiming it was politically motivated and unfair.
- The Supreme Court held that Article 14 is violated if an action is arbitrary, unfair, or lacking justification, even if no classification issue exists.
- The Court ruled that arbitrariness is the very antithesis of equality, and any arbitrary state action is unconstitutional.
- ♦ Impact of the New Doctrine:
- The focus shifted from classification to fairness.
- Even laws that pass the classification test can be invalidated if they are arbitrary.
- Expanded the scope of Article 14 to ensure justice in administrative actions as well.

# Evolution in Article 14

- **Old Doctrine (Balsara Case)** → Focused on classification and differential treatment, ensuring that laws were logically structured.
- **New Doctrine (Royappa Case)** → Shifted focus to preventing arbitrariness in laws and administrative actions, ensuring real justice.
- **Current Legal Position:** Both reasonable classification and absence of arbitrariness are now required for a law to be valid under Article 14.
- The new doctrine expanded Article 14 beyond legislation to include executive actions, making justice, fairness, and non-arbitrariness the core principles of equality in India.

Feature	Old Doctrine (Balsara Case)	New Doctrine (Royappa Case)
Test Used	Reasonable Classification Test	Arbitrariness Test
Focus	Whether a law reasonably classifies people or objects	Whether a law or action is fair and just
Conditions for Validity	1. Intelligible differentia 2. Rational nexus with objective	Absence of arbitrariness, unfairness, or injustice
Problem Addressed	Prevents unreasonable classification	Prevents arbitrary and unfair state action
Limitations	Allowed laws that unfairly benefited some groups	Ensured justice and fairness beyond classification
Example	Bombay Prohibition Act – alcohol ban was upheld based on classification	Arbitrary transfer of an officer struck down as unfair

# Exceptions to Article 14

- The rule of equality before the law has certain exceptions. These exceptions are mentioned below:
- As ruled by the Supreme Court, while **Article 14** forbids class legislation, it permits the reasonable classification of persons, objects, and transactions by law. However, the classification should not be arbitrary, artificial, or evasive.
- As per **Article 361**, the President of India and the Governor of States enjoy certain immunities.
- As per **Article 361-A**, no person shall be liable for any proceedings in any court for publication of a true report of any proceedings of Parliament or State Legislature.
- **Article 105** provides that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given in Parliament or any committee thereof. **Article 194** makes a similar provision for members of the State Legislature.
- **Article 31-C** provides that laws made by the state for implementing DPSPs contained in **Article 39 (b) and (c)** cannot be challenged on the grounds of being violative of **Article 14**.
- Immunity to foreign sovereigns, ambassadors, and diplomats from criminal and civil proceedings.
- UNO and its agencies also enjoy diplomatic immunity from certain proceedings.



# Case laws - Article 14

## **Air India v. Nargesh Meerza (1981)**

Court held that terminating the services of an air hostess on the grounds of pregnancy amounted to discrimination

## **D.S. Nakara v. Union of India (1983)**

Classification was made between the pensioners who retired before a specific date and those who retired after that date. Such classification was held irrational

## **Mithu v. State of Punjab (1983)**

Section 303 provided for mandatory death penalty for anyone who commits murder and is on life imprisonment, which the court declared arbitrary and not based on any rational principle

## **National legal services authority v. Union of India (2014)**

Article 14 does not restrict the word 'person' to males and females only, hijras/transgender's are also included in the definition of 'person'.

## **Navtej Singh Johar vs union of India (2018)**

LGBT individuals were legally allowed to engage in consensual intercourse. Section 377 of IPC was held to be violative of right to equality for same sex couples.

## **Indian young lawyers' association v. State of Kerala (2018)**

Supreme court declared unconstitutional the Sabarimala temple's custom of prohibiting women in their 'menstruating years' from entering the temple premises.

# Article 15 – Prohibition of discrimination on certain grounds

Article 15 of the Constitution of India, 1949 states that:

1. “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-
  - (a) access to shops, public restaurants, hotels and places of public entertainment; or
  - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
3. Nothing in this article shall prevent the State from making any special provision for women and children.
4. Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
5. Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.”

# Article 15 – Prohibition of discrimination on certain grounds

- Two things are to be noted w.r.t. these provisions:
  - The first provision prohibits **discrimination only by the state**, while the second provision prohibits **discrimination both by the state and private individuals**.
  - The crucial term here is ‘only’, which connotes that discrimination on grounds other than those mentioned in the provisions is not prohibited.

# Exceptions to Article 15

- There are certain exceptions to this general rule of non-discrimination as mentioned below:
  - The state is authorized to enact special provisions for the benefit of women and children, such as reserving seats in local bodies or providing free education for children.
  - The state is empowered to enact special measures for the advancement of socially and educationally backward classes, as well as scheduled castes and scheduled tribes such as seat reservations or fee concessions in public educational institutions.
  - The state has the authority to enact special measures for the advancement of socially and educationally backward classes, scheduled castes, or scheduled tribes in matters of admission to educational institutions, including private ones, whether aided or unaided by the state, excluding minority educational institutions.
  - The state is empowered to enact special measures for the advancement of economically weaker sections of society.

# Article 16 – Equality of opportunity in Public employment

- **Equality of opportunity in matters of public employment**
- [\(1\)](#) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State,
- [\(2\)](#) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- [\(3\)](#) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
- [\(4\)](#) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- [\(4A\)](#) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which in the opinion of State are not adequately represented in the services under the State.
- [\(4B\)](#) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent, reservation on total number of vacancies of that year.

# Article 16 – Equality of opportunity in Public employment

- Dr. B.R. Ambedkar called it as compensatory benefits to make unequal equal and to create welfare state.
- He said equality means to remove disabilities and introduced new opportunities.
- This Article applies to only citizens and job opportunities in state-controlled sector.
- Scope
- 7 Grounds
- Residence
- State – BC – Adequate representation
- 4(A) – Promotion
- 4(B)- Unfilled vacancy



# Article 16 – Equality of opportunity in Public employment

- This provision **provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State.**
- The citizens cannot be discriminated against or be ineligible for any employment or office under the State **only on the grounds of religion, race, caste, sex, descent, place of birth, or residence.**
- There exist **four exceptions** to the overarching principle of equal opportunity in public employment. These exceptions are as follows:
  - Parliament may prescribe residence as a condition for certain employment positions under the State, Union Territory, Local Authority, or other authority.
  - The State can provide for the reservation of appointments or posts in favor of the backward classes that are inadequately represented in the state services.
  - A law can provide that certain religious institutions or denominations may require officeholders to belong to a particular religion or denomination.
  - The state can reserve up to 10% of appointments for economically weaker sections, in addition to existing reservations, based on criteria such as family income or other indicators of economic disadvantage.
    - A. This reservation has been added by the 103rd Amendment Act of 2019.

# Article 16 – Important cases

- Balaji Vs. State of Mysore – A.16(4) applies when 1. Backward (Economically and socially backward) 2. No adequate representation
- Devdasan vs. Union of India – carry forward case. In 1961 due to carry forward total reserved seats were 29 out of 45, means 64% were reserved seats due to carry forward. Ceiling limit was set to 50%
- Indra Sawhney Vs. Union of India – In 1979, PM Moraraji Desai set a commission headed by BP Mandal to assess how many SEBC exists in India. Report was submitted in 1980. According to which 3743 castes were SEBC and 27% Reservation should be given to them. In 1990 PM VP Singh implemented this reservation.

- The issue came before the SC. 9 judges gave judgement holding:
  - 27% - SEBC
  - It will apply only on employment/ not on promotion
  - Ceiling was set to 50% but in exceptionally case it can be relaxed.
- However, Parliament was not satisfied with this judgement and brought following amendments:
- 77th Amendment – 16(4A) – it will be applicable to promotion as well
- 81st Amendment – 16(4B) – ended ceiling limit

# Article 17 – Abolition of untouchability

- This **provision has abolished ‘untouchability’** and forbids its practice in any form.
- Any act enforcing disability based on untouchability shall be deemed as an offense punishable by law.
- Untouchability refers to **social disabilities** imposed on certain classes of persons because of their birth in certain castes. Hence, it does not cover the social boycott of a few individuals or their exclusions from religious services, etc.
- However, **the term ‘untouchability’ has not been defined in the Constitution or the Protection of Civil Rights Act of 1955 (the act enacted to enforce this provision).**

# Article 18 – Abolition of titles

- Article 18 of the Indian Constitution **deals with the abolition of titles and distinctions.** It consists of four provisions:
  - It prohibits the state from granting any title, except for military or academic distinctions, to any individual, whether a citizen or a foreigner.
  - It prohibits Indian citizens from accepting titles from any foreign state.
  - A foreigner holding any office of profit or trust under the state cannot accept titles from any foreign state without the President's consent.
  - Neither citizens nor foreigners holding any office of profit or trust under the State are allowed to accept any gift, salary, or position from or under any foreign state without the President's consent.
- Two things are to be noted w.r.t. these provisions:
  - Hereditary titles of nobility e.g. Maharaja, Deewan, etc which were conferred by colonial states are banned by this Article.
  - National Awards e.g. Bharat Ratna, Padma Vibhushan, Padma Bhushan, and Padma Sri are not banned by this Article. However, they should not be used as suffixes or prefixes to the names of awardees. Otherwise, they should forfeit the awards.

# Significance of the Right to equality

- The right to equality holds immense significance as it serves as the foundation for a just and inclusive society. Its importance lies in several key aspects:
- **Fairness and Justice** – It ensures that all individuals are treated equally under the law, irrespective of their background, race, religion, caste, gender, or economic status. This fosters a sense of fairness and justice in society.
- **Non-Discrimination** – This right prohibits discrimination in all spheres of life, including employment, education, housing, and public services. It creates a level playing field for everyone, regardless of their differences.
- **Inclusivity** – This right promotes inclusivity by recognizing the dignity and worth of every individual. It encourages respect for diversity and the participation of all members of society in civic and political life.
- **Social Cohesion** – This right helps in building social cohesion by reducing social tensions and disparities. When individuals feel that they are treated fairly and have equal opportunities, it fosters a sense of belonging and unity within society.
- **Human Rights** – This is a fundamental human right enshrined in various international and national legal instruments. Protecting this right is essential for upholding the broader framework of human rights and dignity.
- In conclusion, equality lies at the heart of the Indian Constitution, serving as the cornerstone of justice, fairness, and social cohesion. This principle of equality ensures that all individuals are treated fairly before the law, without any unreasonable discrimination. By upholding this fundamental right, India strives to build a society where every citizen has equal opportunities and rights, fostering inclusivity and empowering each individual to contribute to the nation's progress and prosperity.



# Right to Freedom (Article 19 to 22)

- Article 19 : All citizens shall have the right
  - a) To freedom of speech and expression;
  - b) To assemble peaceably and without arms;
  - c) To form associations or unions;
  - d) To move freely throughout the territory of India;
  - e) To reside and settle in any part of the territory of India; and
  - f) omitted
  - g) To practice any profession, or to carry on any occupation, trade or business
- Article 20
- Article 21
- Article 21A
- Article 22

# Article 19(1)(a)

**Freedom of speech and expression:** The State guarantees freedom of speech and expression to every person of India. However, the State can impose restrictions on the freedom of speech and expression in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court.

# Scope of Article 19(1)(a)

## 1. Freedom of Press

1. **Freedom of the press:** Freedom of the press is perhaps the most important freedom under the right to free speech and expression, and is also being recognised as the “fourth pillar of the Indian Constitution”. Freedom of the press does not find an explicit mention in the Constitution. However, in the case of [Brij Bhushan and anr. vs. The State of Delhi \(1950\)](#) 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:

1. There can be no pre-censorship in the press;
2. No-pre stoppage of publication in newspapers of articles or matters of public importance;
3. Freedom of circulation;
4. 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).

# Freedom of Press

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 foundation 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.

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.*” Thereby, this landmark judgement so delivered highlights the urgent need to prioritise the prevention imposed unjustifiably on the press, as non prevention would lead to hamper its effective working.

# Scope of Article 19(1)(a)

## 2. Right to know and obtain information – Right to Information Act, 2005 was enacted

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 the right to gather information regarding every act, or any modification so far done by the authorities within their role to serve the general public.

However, section 8(1)(a) imposes reasonable restrictions:

Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, [\(a\)](#) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;



# Scope of Article 19(1)(a)

## 3. Right to know the antecedents of the candidates of the election

Furthermore, in the recent case of [Lourembam Sanjit Singh vs Thounaojam Shyamkumar & 3 Others, \(2022\)](#), the concern was raised against the non-disclosure of past history of criminal record of the respondent which resulted in his disqualification from the election. It was therefore held that, where right to vote is an important part of a voter's fundamental right, it is equally important for the voters to know their candidates antecedents which also includes criminal history.

4. **Right to reply:** The Right to reply is the concept which provides medium to individual to acknowledge misrepresentation or defamation or any infringement of their privacy through the same media where original content was published or presented. This is one of the important rights as it helps media houses in reporting fairness, transparency, accuracy and also provides individuals and legal entities, opportunity in addressing any allegations or criticism made against such individuals.

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).



# Scope of Article 19(1)(a)

5. **Right to silence:** Right to speak includes the right not to 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.
6. **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.

# Scope of Article 19(1)(a)

**7. Sedition Laws:** The concept of this law refers to the action or use of language that incites the violent behaviour against the government or governmental authority which can lead to disruption of peace in the society. In India this law has got its mention in **Indian Penal Code under section 124A** as per which *"Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine"*.

- In an unprecedented ruling in the case of S.G. Vombatkere vs Union of India, the Supreme Court of India has temporarily suspended the enforcement of the controversial Section 124-A3 of the Indian Penal Code, 1860 (referred to as "IPC" hereinafter). Addressing a series of petitions challenging the constitutionality of Section 124-A IPC, which pertains to the offence of sedition, the Supreme Court has opted to put on hold all ongoing trials, appeals, and proceedings related to charges under Section 124-A IPC.
- Furthermore, the Supreme Court in S.G. Vombatkere v. Union of India has imposed a moratorium on the initiation of new First Information Reports (referred to as "FIR") by the police. Failure to adhere to this restriction may result in aggrieved parties seeking appropriate relief through the proper jurisdictional courts. These directives issued by the Supreme Court will remain in effect until further orders are issued.

# Article 19(1)(b) – Right to assemble

- The State guarantees every person the freedom to assemble peacefully without arms. However, as above, reasonable restrictions can be imposed in the interests of the sovereignty and integrity of the country and public order.
- This includes right to hold public meetings, hunger strike, and the right to take out processions.

In the *Kameshwar Prasad v. State of Bihar (1962)*, government employees were prohibited from participating in any kinds of public demonstrations. It was rightly upheld by the Hon'ble Supreme Court of India that the government employees do not lose their fundamental right to assemble, and any prohibition on the same will amount to violation of Article 19(1)(b).



# Article 19(1)(b) – Right to assemble

In *Ramlila Maidan Incident (2012)*, the importance of the right to assemble peacefully was emphasised by the Hon'ble Supreme Court. In this case, people assembled peacefully to protest but were dragged by the police force leading to death of several individuals, it was thereby ruled that the use of force was arbitrary and was in violation of the fundamental rights including the right to assemble peacefully of the individual (protestors) .

In another landmark judgement of, *Anuradha Bhasin v. Union of India (2020)*, the Hon'ble Supreme Court dealt with the issue of internet shutdown, wherein the petitioner the Executive Editor of Kashmir Times, raised the concern on restrictions so imposed on internet and communication services, the was imposed during the times of abrogation of Article 370 in Jammu and Kashmir i.e. in August 2019. It was argued that such restriction was in violation of fundamental right to practise any profession and freedom of speech and expression. It was thereby observed that the internet is an important tool for the practising one's fundamental right and putting restrictions on the same is not permissible in law.

This judgement was therefore important as it lays the guidelines, that the balance must be maintained between the exercise of fundamental right and public order, emphasising more on the fact that the restrictions so imposed must be necessary and proportionate to achieve the lawful aim. Therefore, the restrictions imposed must be reasonable and not excessive.

# Article 19(1)(c) – Right to form associations/ union/ cooperative

Again, the State can impose restrictions in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court. This freedom gives workers the right to form trade union, which is thus a fundamental right.

1. The Police Forces (Restriction of Rights) Act, 1966 prohibits police personnel from forming trade unions.
2. The Constitution also allows the Parliament to pass a law restricting the right to form political associations to members of the armed forces, intelligence bureaus, persons employed with telecommunication system.

T.K. Rangarajan v. State of Tamil Nadu: Right to form association does not carry the right to strike.

# Article 19(1)(d) & (e) – Freedom of movement and residence

**Freedom to move freely:** A citizen of India can move freely throughout the territory of India. But this right can also be restricted on the grounds of security, public order or for protecting the interests of the [Scheduled Tribes](#).

**Freedom of residence:** Citizens of India have the right to reside in any part of the country. Although restrictions can be imposed on the grounds of security, public order or for protecting the interests of the Scheduled Tribes.

In *Kharak Singh Vs. State of U.P.*, it was held that right to travel allows individuals to travel wherever they want and through any medium.

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 High 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 Hon'ble Orissa High 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.



# Article 19(1)(g) – Freedom of profession, occupation, trade or business

All citizens have the right to carry on any trade or profession/occupation, provided the trade or occupation is not illegal or immoral. Also, the law does not prevent the State from making laws related to technical or professional qualifications required for practising the occupation or trade.

1. 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).
2. 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.
3. There is no right to carry on any dangerous activity or any antisocial or criminal activity.
4. No one can claim a right to carry on business with the government.
5. 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).



# Article 19(1)(g) – Freedom of profession, occupation, trade or business

The Hon'ble Supreme Court in *Vishaka v. State of Rajasthan (1997)* has observed that the sexual harassment of working women in workplaces also 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 on the following grounds:

1. By imposing reasonable restrictions in the interest of the general public, or
2. 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*”.

# **Article 20 – Protection in respect of conviction for offences**

- Retrospective: No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
- Double jeopardy: No person shall be prosecuted and punished for the same offence more than once.
- Self incrimination: No person accused of any offence shall be compelled to be a witness against himself.

- *These safeguards provided under Article 20 are essential components of a fair and just legal system.*
- *They uphold the principles of fairness, protection against self-incrimination, and the prevention of arbitrary or excessive punishment.*
- *It's important to note that these protections are applicable in criminal proceedings and serve as a shield against certain violations of individual rights. However, reasonable restrictions and limitations can be imposed in the interests of public order, security of the State, or the proper administration of justice.*

- **Article 20(1): Ex-post-facto law**
- Every law has two natures
- Prospective: A law is prospective in nature if legislation is made in the purview of future acts.
- Retrospective: A retrospective law governs the past acts of the convicts. It grants a prior transaction different legal consequences than those that applied to it at the time it occurred or transpired.
- Ex Post Facto laws are passed after a crime has been committed, making what was previously legal now criminal.

- A law passed after an act has been committed indicates that an act that was lawful before the legislation's enactment may now be considered unlawful. However, Article 20 (1) will protect the act's interests and prevent the perpetrator from being held accountable for the law's violations.
  - Any individual is shielded from a punishment more than that which was imposed for their act at the time they committed it under the second clause of Article 20 (1).
  - Due to an ex post facto law, no one shall be exposed to a harsher penalty than what he would have already faced for the previous act at that specific time.
  - Article 20 (1) only prohibits the convictions or sentences and not the trial.

- **State of Rajasthan v. Mohan Lal**
- The Narcotics, [Drugs](#) and Psychotropic Substances Act was relevant in this case. It was argued that Article 20 simply forbids punishment or conviction under an ex post facto statute, not the trial or prosecution itself. Additionally, a trial conducted using a different procedure than that which was in place at the time the act was committed is not subject to the same restrictions and cannot be declared unconstitutional.

# Article 20(2): Double jeopardy

- **Ingredients of Double Jeopardy**

1. The person should be already accused of an offense
2. The prosecution for that offense must be going on
3. The result of that prosecution must be punishment

- In the case *Venkataraman v. Union of India*, the Supreme Court stated that this clause only addresses judicial penalties and established the rule that no one should be tried again for the same offence.



# Article 20(2): Important case

- **State of Bombay v. Maqbool Hussain**
- The Apex Court rendered a historic ruling in this case. The accused was in possession of some *lex loci* gold at the time. The customs officials seized his gold. When he was later charged with the crime and appeared in court, the issue of whether this amounted to double jeopardy was raised. The Court ruled that the Customs Authority's proceedings are not comparable to those of any court or tribunal. It was decided that the departmental proceedings are distinct from those of the judicial court and autonomous.

# Article 20(3)

- **Satish Chandra vs. M.P. Sharma**
- In this instance, it was decided that the term "Witness" covers both oral and written testimony, as used in this Article. Authorities are free to search any location and confiscate any document. Any information that the accused provides voluntarily is acceptable.
- **Maneck vs. Narayanlal**
- In this instance, it was decided that a formal accusation against the person was required to assert the rule against self-incrimination. This rule cannot be applied based only on general investigations and inquiries.
- A former Chief Minister was summoned to the Vigilance Police Station for an examination on a complaint brought against her under the Prevention of Corruption Act, 1947, in Nandini Satpathy v. P.L. Dani, the appellant. She received a lengthy list of written questions throughout the investigation, which she refused to respond to and asserted her right to protection under Article 20. (3). The right against self-incrimination is available to both the witness and the accused in the same manner, and it is applicable at every stage where information is provided, according to the [Supreme Court](#), which held that Article 20(3)'s goal is to protect the accused from unwarranted police harassment. When the information is first used in a police inquiry, Article 20(3) privilege is in effect.
- **Conclusion**
- Article 20 aims to shield citizens from the Authorities' pointless activities. It safeguards against the legislative, executive, and judicial activities since [Parliament](#) is prohibited from passing laws whose effective dates are in the past, and the Executive is prohibited from needlessly harassing any person or accused. The judiciary is not allowed to charge multiple people with the same offence. The accused is given this protection regardless of whether they are Indian or international.

- **Protection from pressure**

- If a police officer threatens or uses force to pressure an accused person into giving evidence against themselves, the accused has the right to remain silent.

- **No punishment for refusing to speak**

- Accused criminals can choose to speak to law enforcement authorities, but they cannot be punished for refusing to do so.

# Article 21 (Right to life)

## Article 21. Protection of life and personal liberty

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

*The right to life encompasses various aspects, including*

- *the right to live with dignity,*
- *the right to livelihood,*
- *the right to a healthy environment.*

*Personal liberty includes*

- *the freedom to move freely,*
- *the freedom to choose one's place of residence,*
- *the freedom to engage in any lawful occupation or profession.*

- In the landmark judgment [Maneka Gandhi v. Union of India](#) (1978), Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere animal existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

In [Olga Tellis v. Bombay Municipal Corporation](#) (1985), the court recognized the right to livelihood as an integral part of the right to life under Article 21. It held that the eviction of pavement dwellers without providing alternative arrangements would violate their right to life and personal liberty.

In the landmark judgment, [Vishaka v. State of Rajasthan](#) (1997), the supreme court addressed the issue of sexual harassment at the workplace. The court held that the right to a safe and secure working environment is a fundamental right flowing from Article 21. It laid down guidelines to prevent and redress sexual harassment at workplaces until appropriate legislation was enacted.

In, [National Legal Services Authority v. Union of India and Ors](#) (2014), The National Legal Services Authority filed a PIL to protect the interests of transgendered persons. The court held that the Gender of a person is to be decided by the person themselves after looking into the Right to Life Article. So all the rights which are given to normal people must be given to transgendered people like Public toilets, medical care for transgendered persons and the provisions of reservations under Article 15 and 16 must be extended to them as they classify as a minority section.

- In the case, [Animal Welfare Board v. A. Nagaraja \(2014\)](#), rights which are given to animals were up for contention (especially bulls used in Jallikattu festival). In this case, the Animal Welfare Board of India (AWBI) brought the attention of the court towards the cruelty and inhuman behavior which is faced by the animals which are used in the Jallikattu festival.

The court held that they have a duty under the doctrine of 'parens patriae' to take care of the rights of animals. Article 51A (g) of the Constitution also gives the principle of compassion towards living beings and animals. So under this case, the Supreme Court ruled that Jallikattu is constitutionally void.

In another landmark judgment, [K.S. Puttaswamy v. Union of India \(2017\)](#) (privacy judgment) the Supreme Court recognized the right to privacy as a fundamental right protected under Article 21. The court held that privacy is an essential aspect of personal liberty and dignity and is intrinsic to the entire constitutional scheme.

In [Common Cause v. Union of India \(2018\)](#), the court legalized passive euthanasia and recognized the right to die with dignity as a fundamental right under Article 21. The court held that individuals have the right to refuse medical treatment or life support and can make an advance directive specifying their wishes in case of terminal illness.

- *Article 21 also prohibits arbitrary or unlawful detention.*
- *It ensures that no person can be detained without proper legal justification or without following the due process of law.*
- *It safeguards against arbitrary arrests and protects individuals from being unlawfully deprived of their freedom.*
- *It also encompasses the right to a fair trial.*
- *It guarantees that every person accused of an offense shall have the right to a fair and impartial trial, including the right to legal representation, the right to be heard, and the right to present evidence in their defense.*



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

- Right to privacy
- Right to go abroad
- Right to shelter
- Right against solitary confinement
- Right to social justice and economic empowerment
- Right against handcuffing
- Right against custodial death
- Right against delayed execution
- Doctors' assistance
- Right against public hanging
- Protection of cultural heritage
- Right to pollution-free water and air
- Right of every child to a full development
- Right to health and medical aid
- Right to education
- Protection of under-trials

# ARTICLE 22 - PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES

Article 22 of the Indian Constitution provides certain safeguards regarding arrests and detentions. It aims to protect the rights and liberties of individuals who are arrested or detained by the authorities.

**Protection against Arrest and Detention** - Article 22 safeguards individuals against arbitrary arrest and detention. It ensures that no person can be arrested or detained without being informed of the grounds for such arrest or detention.

**Right to be Presented before Magistrate** - Article 22 guarantees that an arrested person must be produced before the nearest magistrate within 24 hours of their arrest. This provision aims to prevent unlawful and prolonged detention without proper judicial oversight.

**Right to Consult a Legal Practitioner** - Article 22 grants the right to an arrested person to consult and be defended by a legal practitioner of their choice. This right helps ensure that individuals have proper legal representation during the process of arrest and detention.

**Communication of Grounds for Arrest** - An arrested person must be informed of the grounds for their arrest and detention. They have the right to know the reasons behind their arrest, enabling them to effectively exercise their legal rights.

**Preventive Detention** - Article 22 also addresses the issue of preventive detention, which allows the authorities to detain individuals for preventive reasons, such as the maintenance of public order or national security. It imposes certain additional safeguards, such as the requirement for the grounds of detention to be communicated and the provision for a review by an advisory board. It's important to note that Article 22 provides certain exceptions during times of emergency, such as during a proclamation of Emergency by the President of India. In such circumstances, certain restrictions on the rights and safeguards under Article 22 may be imposed.

# Right Against Exploitation (Article 23 & 24)

- This right plays a crucial role in ensuring human dignity, freedom, and social justice.
- **23. Prohibition of traffic in human beings and forced labour**
- [\(1\)](#) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- [\(2\)](#) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

# Traffic in Human Beings

- The expression '**Traffic in Human Beings**' includes the following activities:
  - selling and buying of men, women, and children as commodities,
  - immoral trafficking in women and children, including prostitution,
  - the practice of devadasis,
  - the practice of slavery, etc.
- To punish these Acts, the Parliament has enacted the **Immoral Traffic (Prevention) Act of 1956**.

# Forced Labour

- **Forced Labour:** The term '**forced labor**' means compelling a person to work against his/her will by using physical force, legal force, or compulsion of economic circumstances such as working for less than minimum wages. Some examples of Forced Labour include **Begar, Bonded Labour, etc.**
- **Begar:** The term '**begar**' refers to a peculiar form of forced labor that was prevalent in India during the time of the **Zamindari System**. Under it, the local zamindars used to force their tenants to render services **without any payment or remuneration**.
- The following laws enacted by the Parliament prevent and punish various forms of forced labor:
  - **Bonded Labour System (Abolition) Act, 1976,**
  - **Minimum Wages Act, 1948,**
  - **Contract Labour Act, 1970,**
  - **Equal Remuneration Act, 1976.**
- In, [Sanjit Roy v. The State of Rajasthan, AIR 1983](#), court held that payment of wages which is lower than the minimum wage to a person who is working in famine relief work is against the provisions of Article 23. The State cannot take advantage of the situation of the person who is engaged in famine relief work.

In, [Deena v. Union of India, AIR 1983](#), the court held that the labor which is taken from prisoners without paying them proper remuneration of their work is against the provisions of Article 23. They are entitled to reasonable wages according to their work.

- **Exception:** An exception to this provision is that the state can impose compulsory service for public purposes **such as military service, social service, etc**, for which it is not bound to pay. However, in imposing such service, the state cannot discriminate based **only on grounds of religion, race, caste, or class**.
- **Purpose:** The purpose of this exception is to acknowledge circumstances where individuals may be required to contribute to community service or duties of a public nature.
- For more explanation, study <https://blog.ipleaders.in/article-23-of-the-indian-constitution/>



# Prohibition of Employment of Children in Factories, etc. (Article 24)

- This provision prohibits the **employment of children under the age of 14** in factories, mines, or other such hazardous activities. However, it does not forbid their employment in harmless or non-hazardous activities.
- The Parliament has enacted the following laws to implement this provision:
  - **Child Labour (Prohibition and Regulation) Act, 1986** and its further amendments.
  - **Employment of Children Act, 1938**
  - **Factories Act, 1948**
  - **Mines Act, 1952**
  - **Merchant Shipping Act, 1958**
  - **Plantation Labour Act, 1951**
  - **Motor Transport Workers Act, 1951**
  - **Apprentices Act, 1961**
  - **Bidi and Cigar Workers Act, 1966**
- Some other initiatives taken by the government in this direction include:
  - The creation of a **Child Labor Rehabilitation Welfare Fund** in which the offending employer deposits a specified amount of fine for each child employed by him.
  - **National Commission** and **State Commissions for the Protection of Child Rights** have been established.
  - **Children's Courts** have been established for speedy trial of offenses against children.

# Right to Freedom of Religion (Articles 25 – 28)

- **25. Freedom of conscience and free profession, practice and propagation of religion**
- [\(1\)](#) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
- [\(2\)](#) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—[\(a\)](#) regulating or restricting any economic, financial, political or other secular activity which maybe associated with religious practice; [\(b\)](#) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
- Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
- Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

- In the case of [Vaishno Devi Shrine, Board v. State of Jammu and Kashmir, AIR 1997](#), In this case, the validity of Jammu and Kashmir Mata Vaishno Devi Shrine Act, 1988 was challenged. This act was made for better management and governance of the temple. This act was challenged based on a violation of the Fundamental right of Religion of the petitioner. It abolished the hereditary post of the priests and gave the power to the state to make the appointment of priests. The Supreme Court held that the service of a priest is a secular activity and it can be regulated by the state under clause 2 of Article 25.

In the case, [Sardar Syedna Taher Saifuddin Saheb v. State of Bombay \(1962\)](#), the Supreme Court addressed the issue of religious freedom and held that the freedom to manage religious affairs includes the right to determine the essential practices of a religious denomination. The court emphasized that the state should not interfere in matters of religious faith unless such practices are considered immoral or contrary to public order.

In the case, [Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshminidra Thirtha Swamiar of Sri Shirur Mutt \(1954\)](#), Supreme Court dealt with the power of the state to intervene in the administration of religious institutions. The Supreme Court held that while the state can regulate and supervise the administration of religious institutions, it should not interfere with the essential religious practices and customs of a denomination unless they are deemed to be socially harmful or against public order.

In the case of [Acharya Jadishwaranand Avadhuta v. Commissioner of Police, Calcutta, 1984](#) (Anand Marga Case), the Supreme Court held that the Tandava dance which is followed by the community of Anand Marga is not an essential part of the religion. So an order can be passed for the prohibition of Tandava dance in public and it will not violate Article 25 and 26 of the Indian Constitution.

In the case of [Moulana Mufti Sayeed Mohd. Norrur Rehman Barkariq v. State of West Bengal, AIR 1999](#), the High Court said that the restriction imposed by the state on the use of Microphones and loudspeakers at the time of Azaan is not against the Article 25 and 26 of the Indian Constitution.

In the case, [Shyam Narayan Chouksey v. Union of India](#), the Supreme Court dealt with the question of showing respect to the national anthem. The Supreme Court held that every citizen or persons are bound to show respect to the National Anthem of India, whenever played or sung on specific occasions the only exemption is granted to disabled people. It further held that playing of the national anthem in cinema halls is not mandatory but optional and directory.

In the case, [Shayara Bano v. Union of India](#) (Triple Talaq case), a 5 judges bench of the Supreme Court discussed 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.

- For more clarification - <https://blog.ipleaders.in/right-to-freedom-of-religion/>

# Article 26 (Freedom to manage religious affairs)

- This Article provides that every religious denomination has the following rights, subject to morality, health, and public order.
- The right to form and maintain institutions for religious and charitable intents.
- The right to manage its own affairs in the matter of religion.
- The right to acquire the immovable and movable property.
- The right to administer such property according to the law.

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

- No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.
- *Article 27 ensures that individuals are not forced to contribute through taxes towards the promotion or maintenance of any specific religion or religious denomination. It upholds the principle of religious neutrality and prevents the use of public funds for the advancement of a particular religious belief or institution. The aim of Article 27 is to maintain a secular state where the government remains impartial towards all religions and does not favor or promote any specific religion using public funds. It ensures that taxpayers' money is not utilized to endorse or support any particular religious agenda, thus preserving the religious freedom and equality of citizens.*

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

- This article permits educational institutions that are maintained by religious groups to disseminate religious instruction.
- This provides that no religious instruction shall be provided in State-run educational institutions.
- Educational institutions administered by the State but that were established under any endowment or trust which requires that religious instruction shall be imparted in such institutions are exempt from the above clause (that no religious instruction shall be provided).
- Any person who attends any educational institution recognized by the State or receiving State aid shall not be required to participate in any religious instruction that may be imparted in such institution, or also attend any religious worship in such institutions unless he/she has given consent for the same. In the case of minors, the guardians should have given consent for the same.



# Cultural and Education Rights (Articles 29 to 30)

- **Article 29 – Protection of Interests of Minorities**
- This article is intended to protect the interests of minority groups.
- **Article 29(1):** This provides any section of the citizens residing in India having a distinct culture, language, or script, the right to conserve their culture, language and script.
- **Article 29(2):** The State shall not deny admission into educational institutes maintained by it or those that receive aid from it to any person based only on race, religion, caste, language, or any of them.



# What is minority?

- Linguistic minority
- Religious minority
- Kerala Education Bill case
- Held “It is easy to say that a minority community means a community which is numerically less than 50 per cent., but then the question is not fully answered, for part of the question has yet to be answered, namely, 50 per cent. of what ? Is it 50 per cent. of the entire population of India or 50 per cent. of the population of a State forming a part of the Union?”
- The State of Kerala, therefore, contends that in order to constitute a minority which may claim the fundamental rights guaranteed to minorities by [Art. 29\(1\)](#) and [30\(1\)](#) persons must numerically be a minority in the particular region in which the educational institution in question is or is intended to be situate. Minority should be stated dependent.
- National Commission for Minorities Act, 1992 – In 1993, Muslims, Christians, Sikhs, Parsi and buddhist are declared as minority.
- In 1994 – Jains were notified as minority

# Implication of Article 29

- DAV College Jullander Vs. UOI – In this case, Guru Nanak Dev University was promoting Punjabi language in their Institute in studies and researches. The question arose in this case whether a Punjabi University promoting Punjabi language in Punjab is violating Article 29? The SC held it is not a violation and every state institute has the right to protect their regional language. But affiliated colleges or institutes cannot be forced to make regional language compulsory.
- State of Madras Vs. Champakam – In this case, Madras govt. declared that in medical and engineering colleges, seats would be allocated proportionally on a community basis – Non Brahmin Hindus, backward Hindus, Harijan Hindus, Anglo Indians, Christians and Muslims. One Brahmin candidate challenged this order in SC. The SC declared this order violative of Art. 29(2).

# Article 30 – Right of Minorities to Establish and Administer Educational Institutions

- This right is given to minorities to form and govern their own educational institutions. Article 30 is also called the “Charter of Education Rights”.
- Article 30(1): All religious and linguistic minorities have the right to establish and administer educational institutions of their choice.
- Article 30(2): The State shall not, when granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

# Case law on Article 30

- Aziz Basha Vs. UOI - 1967 (Aligarh Muslim University Case) – There was a claim by a Muslim community that since the University was established by a Muslim so only Muslim Community should have right to administer. A five-judge bench had held that Aligarh Muslim University (AMU) did not qualify to be a minority institution as it was neither established nor administered by the Muslim community. It had held that an institution must meet both requirements—"established" and "administered"—to qualify as a "minority institution" under [Article 30\(1\)](#) of the Constitution.
- However recently seven bench judges of SC overruled the judgement holding that it was incorrect when it held that an institution cannot have a minority character when it is derived from a legal statute. They also laid down express parameters to test whether an institution, including a University, could be recognised as a minority institution.

# Summary

- Jallikattu (Bull Taming) case –
- Jallikattu is a famous sport in TN played during Pongal festival involving bull where participants have to control the huge bull by its hump. This culture is considered important to promote bull breeding in India.
- Controversy arose between cruelty to animal Vs. protection u/A 29(1).
- SC banned this festival in 2014.
- In 2015, the state of TN filed Review petition, however it was rejected.
- However, under the Government of BJP and due to political pressure, Bull taming game was allowed subject to certain conditions.
- Again it was challenged by Animal activist, but this time SC (2018) allowed it subject to certain conditions under Article 29(1).



# Right to Constitutional Remedies (Article 32 )

## Remedies for enforcement of rights conferred by this Part

- [\(1\)](#)The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- [\(2\)](#)The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- [\(3\)](#)Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)
- [\(4\)](#)The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.
- Article 32 of the Indian Constitution is a fundamental right that guarantees the right to constitutional remedies. It is considered one of the most crucial provisions in the Constitution as it empowers individuals to seek protection and enforcement of their fundamental rights directly from the Supreme Court of India.

Article 32 grants every individual the right to move the Supreme Court for the enforcement of their fundamental rights. This means that if someone believes their fundamental rights have been violated, they can approach the Supreme Court directly for relief. It also ensures that not only do individuals have the right to move the Supreme Court, but the Court also has the power to issue appropriate orders, directions, or writs for the enforcement of fundamental rights.

# Explanation of Article 32

- It is a cardinal principle of law, which is based on Latin Maxim that means *ubi jus, ebi remedium* i.e. "Where there is a right, there is a remedy".
- This article is called as heart and soul of the Constitution.
- This right cannot be suspended.
- However, President of India has limited powers u/A 359 to suspend A. 32 under National Emergency.
- This power u/A is not exclusive to SC. Under Article 226, the same power is given to High Courts but that is a Constitutional right.

# Difference between Article 32 & 226

Article 32	Article 226
Given to SC	Given to all HCs
It's a fundamental right	It's a constitutional right
Can be exercise to enforce fundamental rights ONLY.	Can be exercise to enforce fundamental rights or for any other purpose.
It is narrow	It is wider

# Types of Writs (Command to do something or refrain to do something)

- The Supreme Court can issue five types of writs under Article 32:

1. Habeas Corpus: (To produce the body) To ensure the release of a person who has been unlawfully detained. If any person is wrongfully detained by authority or individual, his/ her family, friends or even stranger can file this writ for his/ her release.

Sunil Batra Vs. Delhi Administration- where a prisoner filed a letter to SC highlighting inhuman behaviour of jail authorities happening against his fellow prisoner. The SC took that letter as Habeas Corpus case and directed the authority to produce that prisoner.

2. Mandamus: (To command) To direct a person, corporation or inferior court or public official or authority to perform a duty they are legally bound to perform or refrain from doing something which is not authorized to do so. This writ is also known as Writ of justice.

3. Prohibition: To prevent a lower court or tribunal from exceeding its jurisdiction.
4. Certiorari: To quash an order passed by a lower court, tribunal, or authority.
5. Quo Warranto: (By what authority) To inquire into the legality of a person's claim to a public office.