

Art 15

The state shall not discriminate against **any citizen** on grounds only of

- (i) religion
- (ii) Race
- (iii) Caste
- (iv) Sex
- (v) place of birth or any of them.

Prohibition of discrimination in the places of –
access to shop, public restaurant , hotels
and place of public entertainment or
use of wells , tanks, bathing ghats, roads
and places of public resort.

Exception:

Art 15(3) the state shall make provisions Special provisions made for women and children(Protective discrimination) –

Eg: Free education for children, Dowry Prohibition Act etc

Art 15 (4) the state shall make provisions Special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled castes and Scheduled Tribe. (inserted by 1st Amendment Act,1951) – enabling provision

Art 15 (5) the state shall make provisions for the admission to educational institutions including private educational institution. (inserted by 93rd Amendment Acct, 2005)

- Art 15 (6) the state shall make provisions for the advancement of any economical weaker section of citizens and shall make provisions with regard to their admission in educational institutions other than minority institution.(maximum 10%) (103rd Amendment,2019)

Art 16

- **Article 16 (1)** – Equality of opportunity for all citizens in matters of public employment.
- **Article 16(2)** – no discrimination based on religion, race, caste, sex, descent, place of birth, residence or any of them.
- **Article 16(3)** – Parliament can make any special laws.

- Exceptions:
 - Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.
 - State can provide reservation for post of govt jobs in favour of backward class of citizens who are not adequately represented in the state services.
 - State can provide reservation for post of govt jobs in favour of Scheduled Caste and Scheduled Tribe.

- The State shall make provisions for reservation of appointments in favour of any economically weaker section of citizens other than those mentioned above subject to maximum of 10% of the post. (**added by 103rd Amendment Act, 2019**)

- Two questions:
 1. Who is socially and educationally backward classes?
 2. What is the limit of reservation?

Judicial decisions

- **Balaji vs State of Mysore (AIR 1960 Mys 338)** - Caste alone cannot be the sole test to ascertain the backwardness.
- **Preeti Sagar Srivastava vs State of Madhya Pradesh (AIR 1999 SC 2894)** - With 4:1 the court held that , **merit alone can be the criterion for selecting students** to the courses especially in medical and engineering.

- **Periakaruppan vs State of Tamilnadu** (AIR 1971 SC 2303)

Held, that **classification of backward classes on the basis of castes is accepted** but the government should not proceed on the basis that once it is backward it will be backward classes forever. **The it would defeat the very purpose of reservation.**

- **Reservation : (Mandal Commission Case)**
- **Indra Sawhney vs Union of India (AIR 1993 SC 477)**

9 judges in the ratio of 6: 3 –

Held, Carry forward rule as valid but permitted only in exceptional situations.

- The maximum percentage of reservation can be 50% only.
- Creamy layer (**members of a backward class who are highly advanced socially as well as economically and educationally**) was introduced in the category of Backward Classes but subjected to restriction.
- 10% reservation for economical weaker class was struck down.
- No reservation for promotion.

- **Mukesh Kumar vs The State Of Uttarakhand (7 February, 2020)**
- The present judgment made a settled law that the state government cannot be directed to provide reservations for appointment in public posts, and is not bound to make reservations for SCs and STs in matters of promotions.
- Thus, an individual cannot claim reservation, as his fundamental right. And, **it is the discretion of the state government to decide whether reservations are required in appointments and promotions.**

Art 17

- **ABOLITION OF UNTOUCHABILITY :**

- ii. Firstly, it announces that 'untouchability' is abolished and its practice in any form is forbidden
- ii. Secondly, it declares that the enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law

Legislations:

1. Untouchability (Offences) Act
2. 'Protection of Civil Rights Act, 1955

- Following actions are offences:
 1. Preventing any person from entering any place of public worship
 2. Denying access to any shop, restaurant, public entertainment etc
 3. Insulting any person belonging to SC and ST
 4. Refusing to admit persons in hospitals, educational institutions etc

Article 18

- Abolition of Titles
 - No citizen of India shall accept any title from any foreign State
 - No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State

- Titles such as Maharaja, Dewan, Bahadur etc are prohibited under Art 18
- Whereas, it permits awards such as Bharat Ratna, Padma Bhushan, Padma Vibhushan, Padma Sri etc

Art 19

- It has six freedoms whereas originally it had seven freedoms.
- **All citizens** shall have the right ----
- **Article 19(1) (a)** – to freedom of speech and expression
- **Article 19(1) (b)** –to assemble peaceably and without arms;
- **Article 19(1) (c)** - to form associations or unions;
- **Article 19(1) (d)** - to move freely throughout the territory of India;

- **Article 19 (1) (e)** - to reside and settle in any part of the territory of India;
- **Article 19 (1) (f)** - omitted by 44th Amendment act. (it was right to acquire, hold and dispose of property).
- **Article 19 (1) (g)** - to practice any profession, or to carry on any occupation, trade or business.

- Freedom of speech and expression is not absolute.
- It is subjected to restrictions.
- Article 19 (1) (a) – Article 19 (2)
- Article 19(1) (b) – Article 19 (3)
- Article 19(1) (c) – Article 19 (4)
- Article 19 (1) (d) ,(e) – Article 19(5)
- Article 19 (1) (g) – Article 19 (6)

- Expression is a matter of liberty and right. The liberty of thought and right to know are the sources of expression.
- Freedom of expression is more essential in a democratic setup of State where people are the Sovereign rulers
- Effective participation of the people in the Government

- Full fledged development of Personality
- Democratic Value
- To ensure Pluralism
- Freedom of Expression is among the foremost of human rights. It is the communication and practical application of individual freedom of thought.
- Highest of all liberty in India
- **Article 19 has three implied Rights:**
 - (i) Right to Silence
 - (ii) Right to receive information/ Right to know
 - (iii) Freedom of press

- ***Right to Silence***
- *Bijoe Emmanuel v. State of Kerala 1986 3 SC 615*
- Right to Information Act, 2005
- Non- disclosure of information under RTI Act is permitted according to Sec 8, 9 and 11.
- Restrictions – third party information cannot be disclosed.

Freedom of press: (Implied right)

- - Media has same rights like an individual to write, publish, circulate or broadcast.
 - Why India does not have Freedom of Press expressly as it is present in US constitution?
- Dr.B.R.Ambedkar ,Chairman of Constituent Assembly
- “The press is merely another way of stating an individual or a citizen. The press has no special rights which are to be given or which are not to be exercised by the citizen in his individual capacity.”
- “One did directly what the other did indirectly”.

Freedom of Speech and Expression

- **Article 19 (1) (a) and Article 19 (2)**
- **Freedom of Speech and Expression – Article 19(1)(a) is not absolute.**
- It has the **restrictions under Article 19(2)**

The 8 restrictions were:

1. Security of the state
2. Friendly relations with foreign states
3. Public Order
4. Decency or morality
5. Contempt of Court
6. Defamation
7. Incitement to offence
8. Sovereignty and integrity of India – inserted by 16th Amendment Act, 1963.

Article 19 (b) – (g)

- **Article 19(b)** – not absolute subjected to restriction under **Article 19(3)**.
- **Right to assemble peaceably and without arms** – Conduct public meetings, demonstrations and take out processions.
- **Restrictions -**
 - 1. Sovereignty and integrity of India (16th Amendment, 1963)
 - 2. Public order
 - 3. Reasonable restriction – Sec 144 of CrPC – Magistrate can restrain, Sec 141 IPC, Unlawful Activities (prevention) Act, 1967.

- **Article 19(1)(c)** – freedom to form association or unions or co-operative societies.
- **Restriction: Article 19(4)**
 - 1.Public Order
 - 2. Morality
 - 3. Sovereignty and integrity

- **Article 19(1) (d) and (e)** – Freedom of movement, to reside and settle in any part pf India.
- **Restriction: Article 19 (5)**
 - 1. In the interest of general public
 - 2. Protection of interest of ST

- **Article 19(1) (g)** – Freedom to practise any profession, to carry on any occupation, trade or business.
- **Restrictions: Article 19 (6)**
- 1. interest of general public
- 2. reasonable restriction - state can make laws relating to
 - Professional or technical qualification necessary for practising any profession.**

Eg: Street Hawkers , lotteries , Ban on pan masala or gutkha, Liquor Ban, Gambling.

Bombay hawkers Union vs Bombay Municipal Corporation(AIR 1985 SC 1206)

Case laws

- Kedarnath vs State of Bihar – Sec 124 A of IPC
- Shreya Singal vs Union of India – Sec 66 A of IT Act
- Anuradha Bhasin vs Union of India (2020) – Ban on use of internet.

- **Issues Raised**

Issue 1:

Whether the freedom of speech and expression and freedom to practise any profession, or to carry on any occupation, trade or business over the Internet is a part of the fundamental rights under Part III of the Constitution?

Issue 2:

Whether the freedom of the press was violated due to the restrictions?

- **Held:**
- Right to freedom of speech and expression under Article 19(1)(a), and the right to carry on any trade or business under 19(1)(g), using the medium of internet is constitutionally protected”.
- The freedom of press was not restricted as the circulation was permitted.
- Foundation of Media Professional vs Union Territory of Jammu and Kashmir (2020) – **relaxation in use of internet during covid**

Article 20

- 20(1) – Protection against Ex post facto laws
- 20(2) – Protection against Double Jeopardy
- 20(3) – Protection against self – incrimination

Ex post facto laws: (Article 20(1))

No person shall be **convicted of any offence** except for the violation of law in force **at the time of commission of the act** , nor be subjected to a penalty greater than that which might have been under the law in force.

- **Kedarnath vs State of West Bengal(AIR 1953 SC 404)**
 - committed an offence in 1947 – fine and imprisonment was imposed.
 - amended in 1949 – enhanced the punishment(fine amount).
 - **Held, enhancement does not apply to the this case.**
- **Rathanlal vs State of Punjab(AIR 1965 SC 444)**
 - Boy was convicted for trespass and outraging the modesty of a girl of 7 years.

- convicted for 6 months rigorous imprisonment and fine.

- later, Probation of Offenders Act, 1958 was passed.

- it provided that person below 21 years should not ordinarily be sentenced to imprisonment

- **Held, the rule of beneficial interpretation is applied and court reduced the punishment.**

Article 20(2) - Double Jeopardy

- **“Nemo debet vis vexari”** means “ No man should be put twice in peril for the same offence”
- **Maqbool Hussain vs State of Bombay**
 - Gold brought by appellant will be confiscated by customs officers under Sea Customs Act.
 - **later** , he will be charged under FERA(Foreign Exchange Regulation Act).
 - the appellant invoked Art 20(2) and approached the court.
 - **Held, Customs authority is not judicial in nature, so Art 20 (2) does not apply .**

Venkataraman v. Union of India

- the appellant was dismissed from service based on the inquiry under Public Service Enquiry Act, 1960.
- later, he was charged under IPC and Prevention of Corruption Act.
- he challenged before the court and said it is violative of Art 20 (2).
- **Held, disciplinary action and prosecution under Prevention of Corruption Act is different so, Art 20(2) does not apply.**

Article 20(3) - Protection against self - incrimination

- Article 20(3) provides that no person shall be compelled to be a witness against himself.
- It does not apply for - confession statement voluntarily given in the court.
- The protection under this Article is applicable only if it is under compulsion to give evidence.
- **State of Bombay vs. Kathi Kalu oghad, AIR 1961 SC 1808**
- The Court held that it is on the prosecution to find out whether the accused gave the information voluntarily or compulsorily. The Court made it clear that Section 27 of the Evidence Act is not violative of Article 20(3).

Nandhini Satpathi vs PL Dani

- This case is one of the **most popularly cited cases when it comes to self-incrimination and right to be silent.**
- Nandini Satpathy – former Chief Minister of Orissa – against whom a case had been registered under the Prevention of Corruption Act, was asked to appear before the Deputy Superintendent of Police [Vigilance] for questioning.
- The police wanted to interrogate her by giving her a string of questions in writing. She refused to answer the questionnaire, on the grounds that it was a violation of her fundamental right against self-incrimination. She was booked under sec 179 of IPC.

- **Issue:**

Whether Nandini Satpathy had a right to silence and whether people can refuse to answer questions during investigation that would point towards their guilt?

Held:

The Supreme Court **affirmed that the accused has a right to silence** during interrogation if the answer exposes her/him into admitting guilt in either the case under investigation or in any other offence.

- An accused person **cannot be coerced or influenced** into giving a statement pointing to her/his guilt.
- An essential element of a **fair trial** is that the accused cannot be forced to give evidence against her/himself.
- Forcing suspects to sign statements admitting their guilt violates the constitutional guarantee against self incrimination

Is the following ways legally valid?

- Shock Treatments?
- Narco –Analysis Test?
- Brain Mapping?
- Lie detector Test?

Narco-analysis, brain mapping and lie detector tests against the will of the accused would be violative of Article 20 (3) of the Constitution.

In India, the Narco-analysis test is done by a team comprising of an **anesthesiologist, a psychiatrist, a clinical/ forensic psychologist, an audio-videographer**, and supporting nursing staff.

- **In India, Narco-analysis was**
- First used in 2002 in the Godhra carnage case.
- Famous Arun Bhatt kidnapping case in Gujarat
- Telgi stamp paper scam
- Nithari village (Noida) serial killings.

- **Selvi v. State of Karnataka**
- Held the use of Narco-analysis, brain-mapping and polygraph tests on accused, suspects and witnesses without their consent as unconstitutional and violation of the 'right to privacy'.
- **The judges said:**
- *“The compulsory administration of the impugned techniques violates the right against self-incrimination. **The test results cannot be admitted in evidence if they have been obtained through the use of compulsion.** Article 20 (3) of the Constitution protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory.*