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Fundamental Duties

Comprehensive Course on Polity for UPSC CSE - GS

Dr Sidharth Arora • Lesson 10 • June 2, 2024

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Art. 23-24.

Secularism.

PDF. 2 Telegram.

POLITY LECTURE

FUNDAMENTAL RIGHTS

DR SIDHARTH ARORA
SIDLIVE

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✓ Next 2 days = Special Class

DOUBT SESSION

Criminal law (Parole) — Special Class.

Gogo = "4 p.m"

Speech

TO MAKE THE MOST OF THESE SERIES-FOLLOW THESE STEPS!

IMPORTANT

PLEASE WATCH PREVIOUS CLASS VIDEOS AT LEAST 3 TIMES EACH- ESPECIALLY IF JOINING IN THE MIDDLE OF THE COURSE. MAKE SURE ALL THE PREVIOUS SESSIONS ARE THOROUGHLY REVISED BEFORE YOU COME TO THE CLASS.

READ NCERT BOOKS- CLASS 6-12.CONTINUE READING LAXMIKANTH

READ NEWSPAPERS- THE HINDU OR INDIAN EXPRESS EVERYDAY

THERE WILL BE REGULAR DOUBT SESSIONS TO ADDRESS YOUR QUERIES.

MAINTAIN DECORUM AND DISCIPLINE IN THE CLASS. ANY DISTURBING/FOUL/PERSONAL OR POLITICAL COMMENTS WILL NOT BE TOLERATED. YOU MAY BE BLOCKED FOR THIS ACTION.

MAKE RUNNING NOTES OF THE CLASS. NO PDF SHALL BE SHARED UNLESS DEEMED REALLY NECESSARY BY THE EDUCATOR

BEING LATE FOR THE CLASS WILL ADVERSELY AFFECT YOUR UNDERSTANDING OF THE SUBJECT. MAINTAIN PUNCTUALITY.

THE MEDIUM OF TEACHING IS BILINGUAL.EVERY POSSIBLE ATTEMPT WILL BE MADE TO EXPLAIN A TOPIC.PLEASE DON'T INSIST ON ANY PARTICULAR LANGUAGE FOR TEACHING.

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ZERO TOLERANCE

DON'TS

- SPAMMING
- POLITICAL AND PERSONAL COMMENTS
- LAZY ASPIRANTS WHO COME TO THE SESSION WITHOUT REVISING AND DISTURB THE CLASS

YOU MAY BE BLOCKED FOR THIS ACTION AT YOUR OWN RESPONSIBLITY

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@UPSC_CSE_DR_SIDH
ARTH_SIDLIVE

WARNING

PLEASE DO NOT LOOK AT THE COMMENTS WHICH ARE MADE ONLY FOR THE PURPOSE OF 'SHOWBAAZI' OR 'GYAANBAAZI'.YOU WILL BE DISTRACTED/LEARN WRONG THINGS OR OUTRIGHT FAIL!

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WARNING

IMPORTANT

ATTENTION

THERE WILL BE NO COMPROMISE ON DISCIPLINE IN THE CLASS

MAKE NO PERSONAL-SPAM COMMENT/NO POLITICAL COMMENT/NO COMMENT OF 'PARTIAL KNOWLEDGE WHICH CAN DESTROY SOMEONE

YOU WILL BE BLOCKED AT YOUR OWN RESPONSIBILITY

ASK YOUR DOUBTS ONLY IN THE DOUBT CLASS

WHEN LEARNERS ASK- WHAT TO READ FOR POLITY GOVERNANCE AND I.R. ?

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DIVISION OF TOPICS IN THE PLUS COURSES OF DR.SIDHARTH ARORA SIDLIVE

THIS WILL HELP YOU TO PLAN YOUR PREPARATIONS FOR UPSC CSE 2022

POLITY	GOVERNANCE
HISTORICAL UNDERPINNINGS	SALIENT FEATURES/SOURCES OF CONSTITUTION
UNION AND ITS TERRITORY	FEDERALISM AND COMMISSIONS
PREAMBLE	CONSTITUTIONAL BODIES
CITIZENSHIP	NON CONSTITUTIONAL BODIES
FUNDAMENTAL RIGHTS	RESERVATION POLICY AND PROVISIONS
DPSP	TRIBUNALS
FUNDAMENTAL DUTIES	ASPECTS OF JUDICIAL SYSTEM-DELAY/ ACTIVISM ETC.
UNION LEGISLATURE AND EXECUTIVE	MISCELLANEOUS GROUPS
STATE LEGISLATURE AND EXECUTIVE	ADMINISTRATION
UNION AND STATE JUDICIARY	WELFARE SCHEMES
LOCAL GOVERNMENT	
EMERGENCY PROVISIONS	
ELECTIONS	

USE SPECIAL CODE SIDLIVE AND JOIN MY CLASSES NOW

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FUNDAMENTAL RIGHTS

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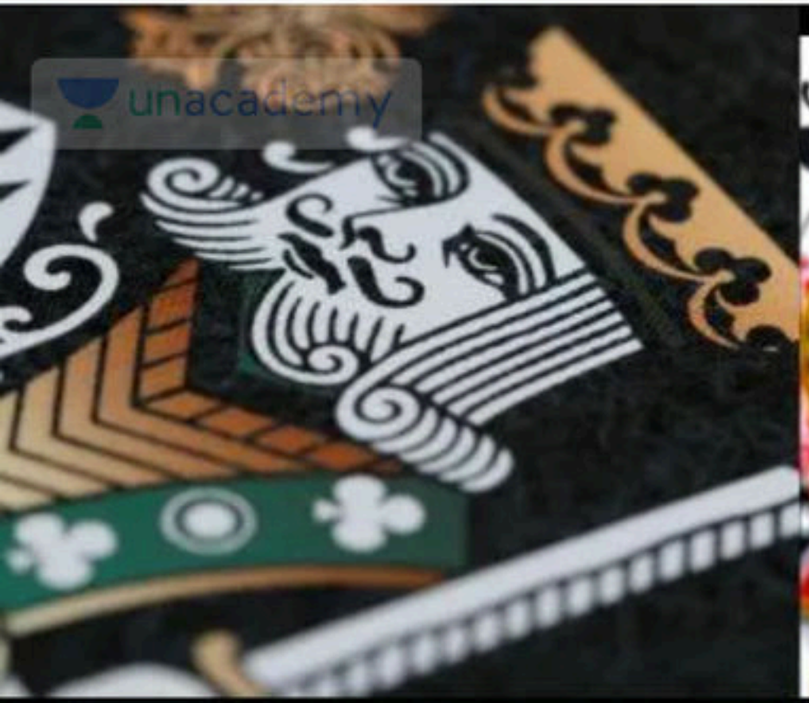
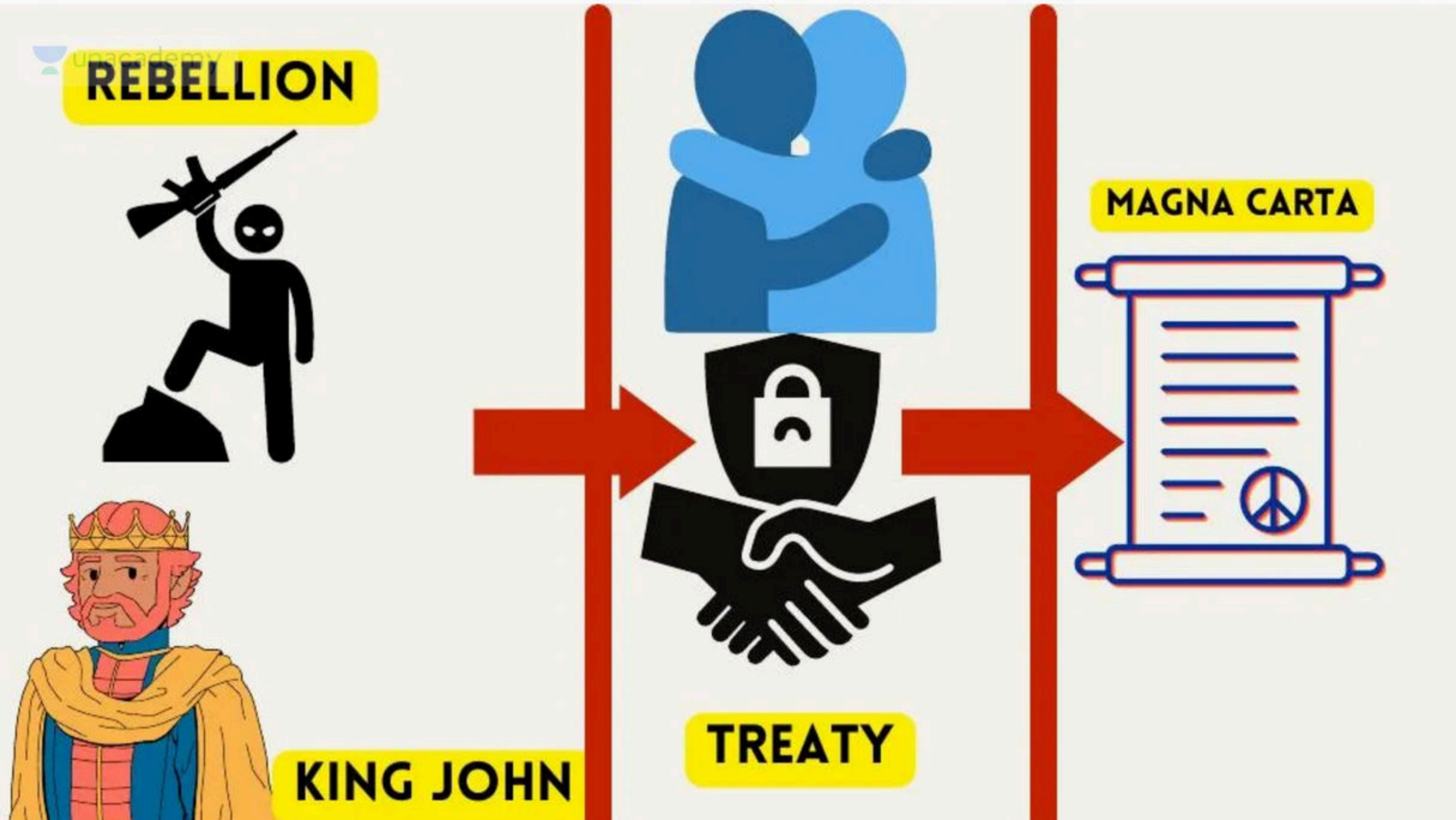


CITIZEN -ALWAYS ABUSED


REBELLION
MAGNA CARTA
TREATY
KING JOHN

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MAGNA CARTA

MAGNA CARTA

1215

- SOME RIGHTS WERE GIVEN IN BIG-BANG
- CONDITIONAL RIGHTS

MAGNA CARTA ESTABLISHES PRINCIPLE THAT EVERYONE IS EQUAL BEFORE THE LAW, EVEN THE KING , AND GUARANTEES THE RIGHTS OF INDIVIDUAL..

THE MAGNA CARTA IS A DOCUMENT THAT WAS SIGNED BY KING JOHN OF ENGLAND IN 1215. IT IS CONSIDERED TO BE ONE OF THE MOST IMPORTANT DOCUMENTS IN THE HISTORY OF THE WORLD, AS IT ESTABLISHED THE PRINCIPLE THAT THE KING WAS NOT ABOVE THE LAW. THE MAGNA CARTA GUARANTEED CERTAIN RIGHTS TO THE PEOPLE, SUCH AS THE RIGHT TO A FAIR TRIAL, THE RIGHT TO PROPERTY, AND THE RIGHT TO BE FREE FROM ARBITRARY IMPRISONMENT.

THE MAGNA CARTA HAS HAD A PROFOUND IMPACT ON THE DEVELOPMENT OF DEMOCRACY AND THE RULE OF LAW. IT HAS BEEN CITED AS AN INSPIRATION FOR MANY OTHER DOCUMENTS THAT PROTECT HUMAN RIGHTS, SUCH AS THE UNITED STATES CONSTITUTION AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS. THE MAGNA CARTA IS A REMINDER THAT EVEN THE MOST POWERFUL PEOPLE ARE SUBJECT TO THE LAW, AND THAT EVERYONE HAS CERTAIN FUNDAMENTAL RIGHTS THAT MUST BE RESPECTED.

HERE ARE SOME OF THE SPECIFIC PROVISIONS OF THE MAGNA CARTA THAT HAVE HAD A LASTING IMPACT ON THE WORLD:

- THE RIGHT TO A FAIR TRIAL: THE MAGNA CARTA GUARANTEED THAT NO ONE COULD BE IMPRISONED OR PUNISHED WITHOUT A FAIR TRIAL. THIS PRINCIPLE IS NOW ENSHRINED IN THE LAW OF MANY COUNTRIES, AND IT IS ONE OF THE MOST IMPORTANT SAFEGUARDS AGAINST TYRANNY.
- THE RIGHT TO PROPERTY: THE MAGNA CARTA GUARANTEED THAT NO ONE COULD BE DEPRIVED OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW. THIS PRINCIPLE IS NOW CONSIDERED TO BE A FUNDAMENTAL HUMAN RIGHT, AND IT I PROTECTED BY THE LAW IN MANY COUNTRIES.
- THE RIGHT TO BE FREE FROM ARBITRARY IMPRISONMENT: THE MAGNA CARTA GUARANTEED THAT NO ONE COULD BE IMPRISONED WITHOUT A REASON. THIS PRINCIPLE IS NOW CONSIDERED TO BE A FUNDAMENTAL HUMAN RIGHT, AND IT IS PROTECTED BY THE LAW IN MANY COUNTRIES.

THE MAGNA CARTA LIBERTATUM ("GREAT CHARTER") IS A DOCUMENT GUARANTEEING ENGLISH POLITICAL LIBERTIES THAT WAS DRAFTED AT RUNNYMEDE, WINDSOR- A MEADOW BY THE RIVER THAMES, AND SIGNED BY KING JOHN ON JUNE 15, 1215, UNDER PRESSURE FROM HIS REBELLIOUS BARONS.

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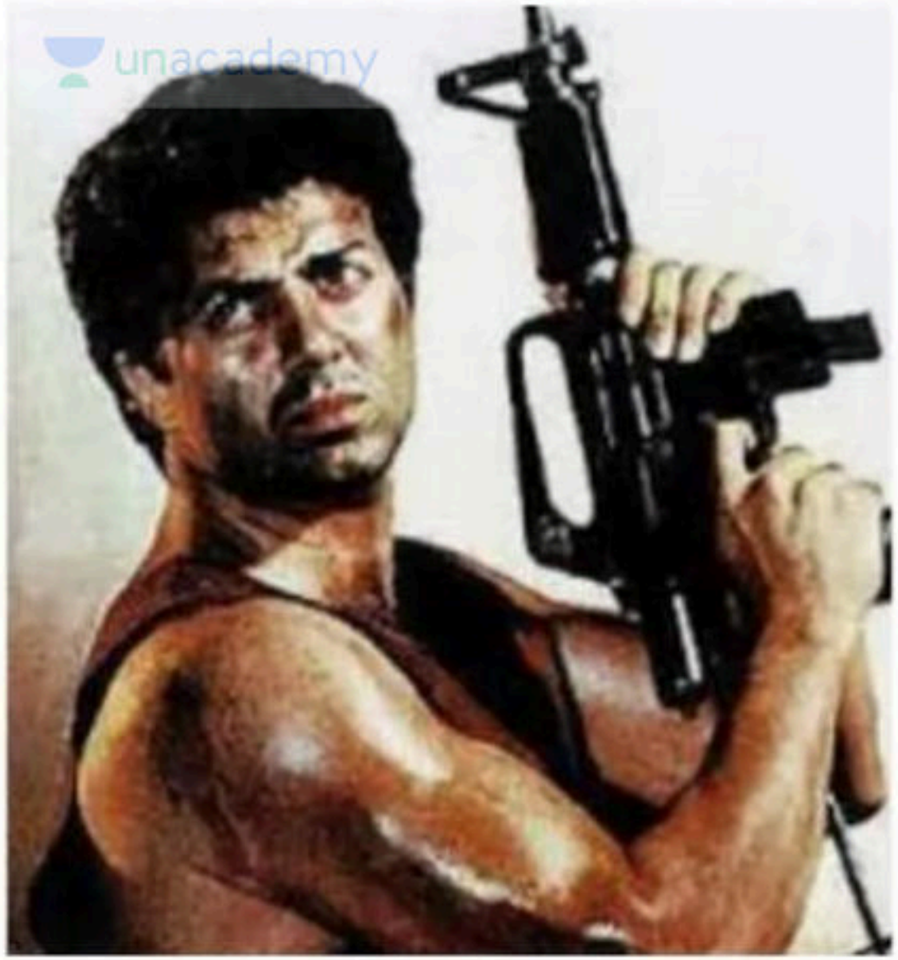
WHY DO WE NEED RIGHTS?

Why?

Why?



WARNING

DON'T TRY THIS

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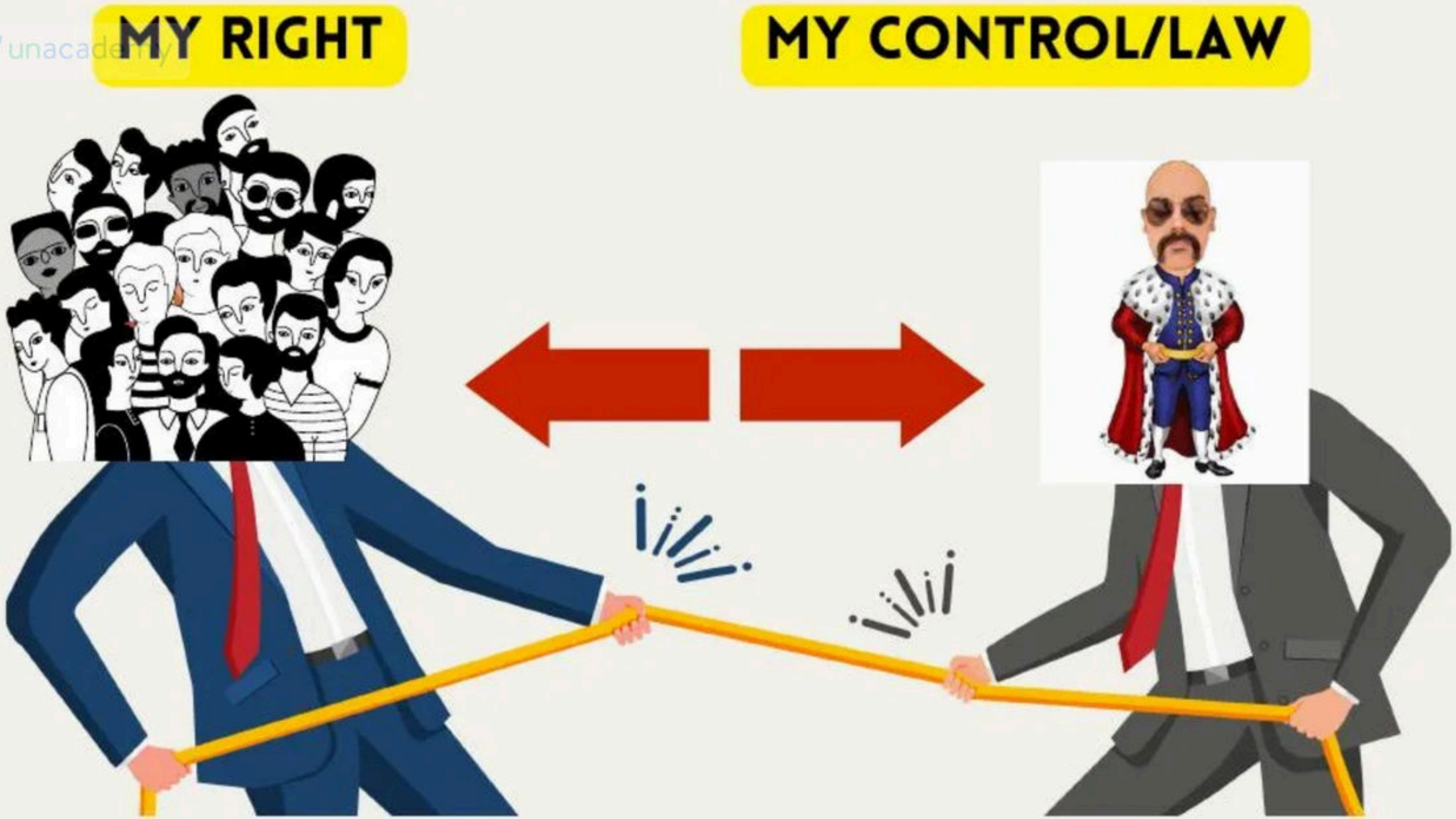
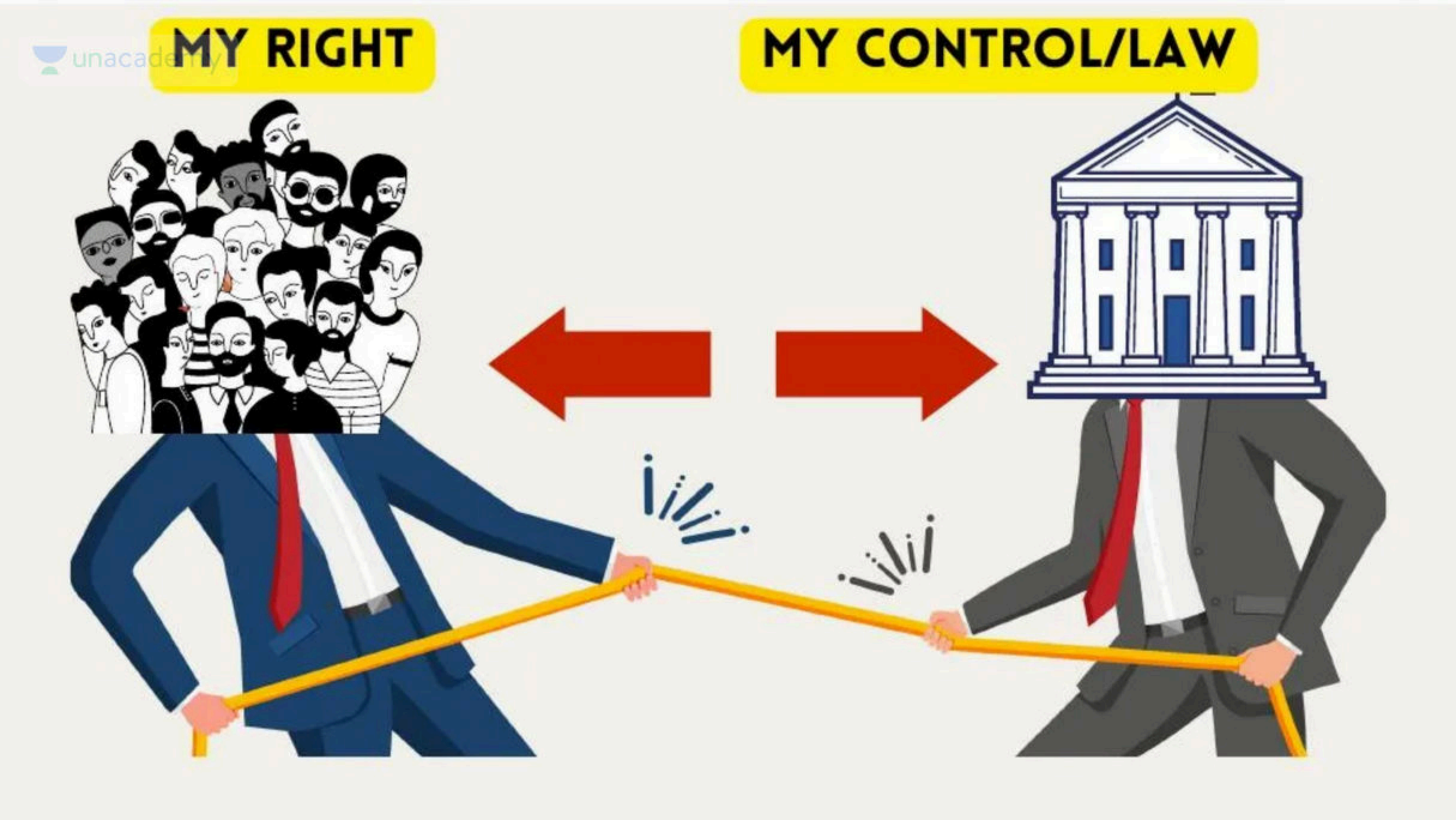
STATE IS VERY STRONG
THIS IS THE TRUTH


MY RIGHT
MY CONTROL/LAW


MY RIGHT
MY CONTROL/LAW

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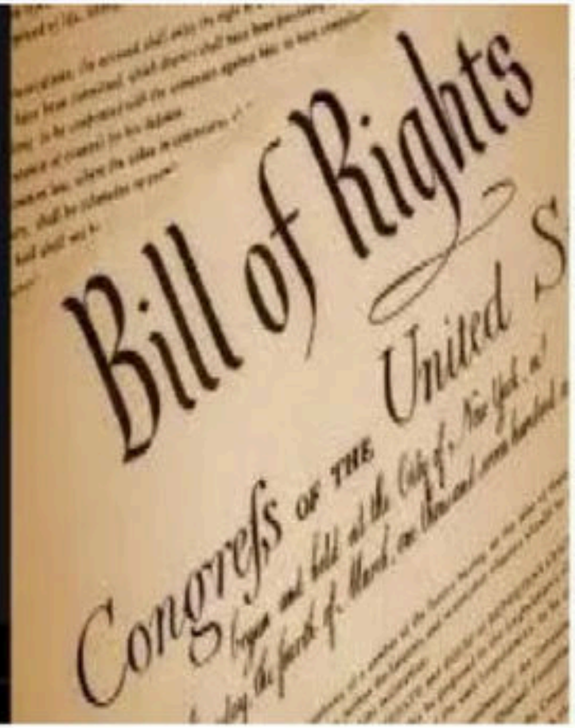
Why?

WHY ARE THESE RIGHTS CALLED 'FUNDAMENTAL'?

- GUARANTEE OF THE FUNDAMENTAL LAW(CONSTITUTION)
- JUSTICIABLE
- BASIC TO HUMAN EXISTENCE AGAINST THE STATE

FUNDAMENTAL RIGHTS



In the summer of 1787, delegates from the 13 states convened in Philadelphia and drafted a remarkable blueprint for self-government – the Constitution of the United States. The first draft set up a system of checks and balances that included a strong executive branch, a representative legislature and a federal judiciary.

The Constitution was remarkable, but deeply flawed. For one thing, it did not include a specific declaration - or bill - of individual rights. It specified what the government could do but did not say what it could not do. For another, it did

The American Bill of Rights, inspired by Jefferson and drafted by James Madison, was adopted, and in 1791 the Constitution's first ten amendments became the law of the land.

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FUNDAMENTAL RIGHTS FIRST TIME IN THE CONSTITUTION OF USA

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FUNDAMENTAL RIGHTS OF INDIA

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PART 3 OF THE CONSTITUTION

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The drafting of the Fundamental Rights was influenced by the adoption of the Universal Declaration of Human Rights by the U.N. General Assembly and the activities of the United Nations Human Rights Commission, as well as decisions of the U.S. Supreme Court in interpreting the Bill of Rights in the American Constitution.

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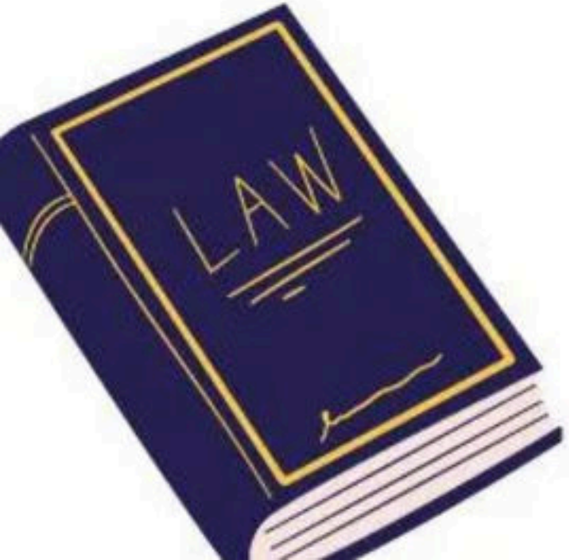
ARTICLE 12-ARTICLE 35

PART 3 OF THE CONSTITUTION



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ARTICLE 12

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ARTICLE 12

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

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ARTICLE 12 OF THE INDIAN CONSTITUTION DEFINES THE TERM "STATE". IT INCLUDES THE FOLLOWING:

- THE GOVERNMENT AND PARLIAMENT OF INDIA
- THE GOVERNMENT AND LEGISLATURE OF EACH STATE
- ALL LOCAL AND OTHER AUTHORITIES WITHIN THE TERRITORY OF INDIA OR UNDER THE CONTROL OF THE GOVERNMENT OF INDIA

THE INTERPRETATION OF THE TERM "OTHER AUTHORITIES" THE SUPREME COURT HAS HELD THAT THIS TERM INCLUDES BODIES THAT ARE CREATED BY THE GOVERNMENT AND THAT HAVE SOME DEGREE OF POWER TO ACT INDEPENDENTLY. HOWEVER, THE COURT HAS ALSO HELD THAT THE TERM DOES NOT INCLUDE BODIES THAT ARE PURELY PRIVATE IN NATURE.

What are 'Local Authorities'?

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."

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IS 'JUDICIARY' - A PART OF 'STATE'-ARTICLE 12?

Supreme Court of India

Naresh Shridhar Mirajkar And Ors vs State Of Maharashtra And Anr on 3 March, 1966

Equivalent citations: 1967 AIR, 1 1966 SCR (3) 744

Author: P Gajendragadkar

Bench: Gajendragadkar, P.B. (Cj), Sarkar, A.K. & Wanchoo, K.N., Hidayatullah, M. & Shah, J.C., Mudholkar, J.R. & Sikri, S.M., Bachawat, R.S. & Ramaswami, V.

..... " HELD THAT WHEN A COURT IS ACTING IN ITS JUDICIAL CAPACITY, IT CANNOT BE REGARDED AS A STATE. HOWEVER, ITS ADMINISTRATIVE ACTION IS AMENABLE TO THE WRIT JURISDICTION."

"THE JUDICIAL FORUM WILL THEN LOSE ITS IMPARTIALITY BECAUSE PETITIONERS, LIKE IN THE PRESENT CASE, WILL MAKE A DEMAND THAT COURT ITSELF SHOULD ACT AS THE STATE AND DELIVER ALL RELIEFS IN A DISPUTE WHERE THE EXECUTIVE OR THE LEGISLATURE IS NOT AT ALL INVOLVED AS A PARTY.

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ARTICLE 13

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13. LAWS INCONSISTENT WITH OR IN DEROGATION OF THE FUNDAMENTAL RIGHTS

(1) ALL LAWS IN FORCE IN THE TERRITORY OF INDIA IMMEDIATELY BEFORE THE COMMENCEMENT OF THIS CONSTITUTION, IN SO FAR AS THEY ARE INCONSISTENT WITH THE PROVISIONS OF THIS PART, SHALL, TO THE EXTENT OF SUCH INCONSISTENCY, BE VOID

(2) THE STATE SHALL NOT MAKE ANY LAW WHICH TAKES AWAY OR ABRIDGES THE RIGHTS CONFERRED BY THIS PART AND ANY LAW MADE IN CONTRAVENTION OF THIS CLAUSE SHALL, TO THE EXTENT OF THE CONTRAVENTION, BE VOID

(3) IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES 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

4) NOTHING IN THIS ARTICLE SHALL APPLY TO ANY AMENDMENT OF THIS CONSTITUTION MADE UNDE ARTICLE 368 RIGHT OF EQUALITY

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(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

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JUDICIAL REVIEW IS NOT EXPLICITLY MENTIONED IN THE U.S. CONSTITUTION, BUT IT WAS ESTABLISHED IN THE LANDMARK CASE OF MARBURY V. MADISON (1803).
IN THAT CASE, THE SUPREME COURT HELD THAT IT HAD THE POWER TO STRIKE DOWN LAWS THAT IT FOUND TO BE UNCONSTITUTIONAL.

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JUDICIAL REVIEW

JUDICIAL REVIEW IS THE POWER OF THE COURTS TO INVALIDATE LAWS, REGULATIONS, AND OTHER GOVERNMENT ACTIONS THAT THEY FIND TO BE UNCONSTITUTIONAL. IT IS ONE OF THE MOST IMPORTANT POWERS OF THE JUDICIARY, AND IT HELPS TO ENSURE THAT THE GOVERNMENT DOES NOT EXCEED ITS AUTHORITY.

- IT HELPS TO ENSURE THAT THE GOVERNMENT DOES NOT EXCEED ITS AUTHORITY.
- IT PROTECTS THE RIGHTS OF THE PEOPLE FROM GOVERNMENT OVERREACH.
- IT HELPS TO ENSURE THAT THE GOVERNMENT IS ACCOUNTABLE TO THE PEOPLE.

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JUDICIAL REVIEW

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.

In other words, it provides for the **Doctrine of Judicial Review.**

This power has been conferred on the Supreme Court (Article 32) and the High courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

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IN THE NEWS

A judicial pushback to a draconian legal regime

The Delhi court ruling is a way forward in finding a balance between civil rights and the imperatives of anti-terror laws

GAUTAM BHATIA

On December 1, while considering the case of an undertrial who has been charged under Sections of the Unlawful Activities (Prevention) Act (UAPA), among other laws, the Supreme Court observed that the period of deprivation of personal liberty pending trial or appeal cannot be unduly long. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution, the court said. In this piece dated June 18, 2021, Gautam Bhatia argues how Section 43(D)(5) of the UAPA is particularly perverse as it binds the court to examine only the prosecution's side of the case, which has not been challenged by the cross-examination, and requires that bail be denied as long as the prosecution's case be prima facie true. As a result, individuals are deprived of their constitutional right to liberty for years on end. Edited excerpts:

The judgment of the Delhi High Court granting bail to activists Devangana Kalita, Natasha Narwal, and Asif Iqbal Tanha — they have been in jail for over a year (without trial) for their alleged role in the 2020 Delhi riots — is significant for many reasons. Most importantly, it brings to a close many months of jail time for three people who are yet to be proven guilty of any crime, something that should be anathema to any civilised justice system. What is also significant, however, is that the judgment represents an important judicial pushback to the authoritarian legal regime under the Unlawful Activities (Prevention) Act (UAPA).

The root of the issue

Ostensibly designed to check and address terrorism, the UAPA is perhaps one of the most abused laws in India today. The root of the problem lies in Section 43(D)(5) of this Act, which prevents the release of any accused person on bail if, on a perusal of the case diary, or the report made under Section 173 of the Code Of Criminal Procedure, the court is of the opinion that "there are reasonable grounds for believing that the accusation against such person is *prima facie* true".

Broadly speaking, India follows the adversarial system of criminal justice, where two sides to a dispute attempt to persuade the court that their version of events is true. At the heart of the adversarial system of justice is the testing of evidence through cross-examination. The best way for a judge to unearth the truth — or the closest approximation of it — is to consider which side's evidence is left standing, and appears more persuasive, after the rigours of cross-examination.

Production of evidence, and cross-examination, involves witnesses, recoveries of incriminating objects, tests of handwriting or voice samples, and many other elements. It constitutes the bulk of a criminal trial. In India, with our overburdened courts and creaking justice system, criminal trials take years. In high-profile cases such as the Delhi riots case, where the record is bulky, and the witnesses number in their hundreds, trials can take many years — even a decade or more.

Importance of bail

For this reason, bail becomes of utmost importance. If an individual is not able to secure bail from the courts, they will languish as under-trials in prison, for the duration of the case, no matter how many years it takes (there are cases of people being found innocent in terrorism cases after even 25 years in prison). Bail, thus, becomes the only safeguard and guarantee of the constitutional right to liberty.

In ordinary circumstances, when considering the question of bail, a court is meant to take into account a range of factors. These include whether the accused is a flight risk, whether he or she might tamper with the evidence or attempt to influence witnesses, and the gravity of the offence. But it is here that Section 43(D)(5) of the UAPA plays such a damaging role. As we have just seen, under the classical vision of criminal justice, truth can only be determined after the evidence of both the prosecution and the defence has been subjected to the rigours of cross-examination. However, as lawyers and scholars such as Abhinav Sekhri and Anjana Prakash have also pointed out, Section 43(D)(5) short-circuits that core assumption. For the grant of bail, it only looks at the plausibility of one side's evidence — that is, the Prosecution's.

It binds the court to look at only the case diary or the police report, which has not been challenged by cross-examination, and requires that bail be denied as long as the unchallenged prosecution case appears to be *prima facie* true. The perversity of Section 43(D)(5), thus, is that it forces the court to make an effective determination of guilt or innocence based on one side's unchallenged story, and on that basis to deprive individuals of their freedom for years on end.

The effect of Section 43(D)(5), as one can see, is that once the police elect to charge sheet an individual under the UAPA, it becomes extremely difficult for bail to be granted. Even outlandish or trumped-up cases can sound convincing until people have a chance to interrogate and challenge them.

Finer points of the judgment

It is here that the Delhi High Court's judgment becomes important. The Bench of Justices Siddharth Mridul and Anup Jairam Bhambani correctly note that even though Section 43(D)(5) departs from many basic principles of criminal justice, there are other fundamental principles that remain of cardinal significance. These include, for example, that the initial burden of demonstrating guilt must always lie upon the prosecution; and also, that criminal offences must be specific in their terms to avoid bringing the innocent within their net. On this basis, the court's judgment notes that as the UAPA is meant to deal with terrorist offences, its application must be limited to acts that can reasonably fall within a plausible understanding of "terrorism". "Terrorism" is a term of art, and not a word that can be thrown around loosely. Thus, to attract the provisions of the UAPA, the charge sheet must reveal factual, individualised, and particular allegations linking the accused to a terrorist act.

The judgment then finds that even if the police's claims are taken to be true, no such allegations exist. At the highest, the accusations against the activists involve calls for protests and *chakka jams* (road blockages).

There is no act, overt or covert, attributed to the activists that could constitute a terrorist offence. And, importantly, inferences or hypotheticals drawn by the police do not count at the stage of granting bail. Coupled with the significance of the right to protest and to dissent under our constitutional scheme, the judgment therefore holds that even *prima facie*, a case under the UAPA has not been made out, and therefore, there is no question of the application of Section 43(D)(5).

The Delhi High Court's judgment indicates a pathway forward in the quest for finding a balance between citizens' civil rights and the imperatives of anti-terrorism legislation such as the UAPA.

A position under which citizens can be jailed for years on end just on the basis of police reports and case diaries, with courts precluded from granting them bail, is completely inconsistent with democracy, and redolent of authoritarian or tyrannical states. However, the court's analysis shows how even within — and consistent with — the terms of the UAPA, there is an important role for a conscientious judiciary to play. By scrutinising the police case on its own terms, and according a strict interpretation to draconian legislation such as the UAPA, courts can ensure that civil rights are not left entirely at the mercy of the state.

Gautam Bhatia is a Delhi-based lawyer

CLASSIFICATION

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RIGHTS OF EQUALITY- 14-18

RIGHTS OF FREEDOM- 19

RIGHTS OF PROTECTION- 20-22

RIGHTS AGAINST EXPLOITATION-23-24

RIGHTS OF RELIGIOUS FREEDOM-25-28

CULTURAL AND EDUCATIONAL RIGHTS -29-30

COMPULSORY ACQUISITION OF PROPERTY- 31

RIGHT TO CONSTITUTIONAL REMEDIES- 32

EXCEPTIONS- 33/34/35

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ARTICLE 14

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ENGLISH COMMON LAW

EQUALITY BEFORE THE LAW: THIS MEANS THAT ALL PERSONS ARE EQUAL BEFORE THE LAW . NO PERSON CAN BE DISCRIMINATED AGAINST ON THE BASIS OF RACE, CASTE, SEX, RELIGION, OR ANY OTHER GROUND.

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DR.JENNINGS

"LAW MUST BE ENFORCED AND ADMINISTERED EQUALLY AMONG THOSE WHO ARE EQUALS. THE RIGHT TO SUE AND TO BE SUED FOR THE SAME ACTION MUST BE THE SAME FOR ALL SUBJECTS OF THE AGE OF MAJORITY AND MATURITY WITHOUT ANY DISTINCTION ON THE GROUNDS OF RACE, RELIGION, CASTE, SOCIAL STATUS, WEALTH, INFLUENCE, ETC."

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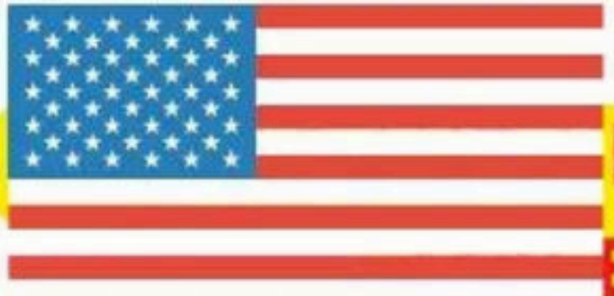
EQUAL PROTECTION OF THE LAWS: THIS MEANS THAT ALL PERSONS IN SIMILAR CIRCUMSTANCES SHALL BE GIVEN THE SAME RIGHTS AND LIABILITIES.

IT ESSENTIALLY MEANS THAT EQUALS ARE TO BE TREATED EQUALLY AND THERE MUST BE NO DISCRIMINATION AMONGST THEM.



NEQUALS CANNOT BE PUT IN THE SAME FOOTING WITHOUT DISCRIMINATION.

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STOP DISCRIMINATION

NO CLASS LEGISLATION

THIS MEANS THAT THE STATE CANNOT MAKE LAWS THAT DISCRIMINATE AGAINST ANY PARTICULAR GROUP OF PERSONS. LAWS MUST BE MADE FOR THE BENEFIT OF ALL PERSONS, AND THEY MUST NOT DISCRIMINATE AGAINST ANY PARTICULAR GROUP.

REASONABLE CLASSIFICATION

THE CLASSIFICATION MUST NOT BE ARBITRARY. THERE MUST BE SOME RATIONAL OR SUBSTANTIAL REASONING BEHIND THE DISTINCTION DRAWN BETWEEN THE PEOPLE WHO FALL INTO THE CLASS AND THE PEOPLE WHO DO NOT.

THERE MUST BE SOME RATIONAL OBJECT BEHIND THE CLASSIFICATION THAT THE LEGISLATION SEEKS TO ACHIEVE. THE CLASSIFICATION CAN BE ON THE BASIS OF VARIOUS FACTORS LIKE GEOGRAPHY, AGE, OR OCCUPATION. IT IS ONLY REQUIRED FOR THE OBJECT OF THE LEGISLATION TO MATCH WITH THE CLASSIFICATION.

IN OTHER WORDS, A LAW THAT CLASSIFIES PEOPLE INTO DIFFERENT GROUPS IS ONLY VALID IF THE CLASSIFICATION IS BASED ON A REASONABLE AND RATIONAL DISTINCTION, AND IF THE LAW HAS A LEGITIMATE PURPOSE THAT IS RATIONALLY RELATED TO THE CLASSIFICATION.

WHY AM I NOT ALLOWED VOTING-HAW!!! DISCRIMINATION

A LAW THAT REQUIRES ALL PEOPLE OVER THE AGE OF 18 TO VOTE IS VALID BECAUSE IT IS BASED ON A REASONABLE AND RATIONAL DISTINCTION (AGE) AND IT HAS A LEGITIMATE PURPOSE

EXAMPLE

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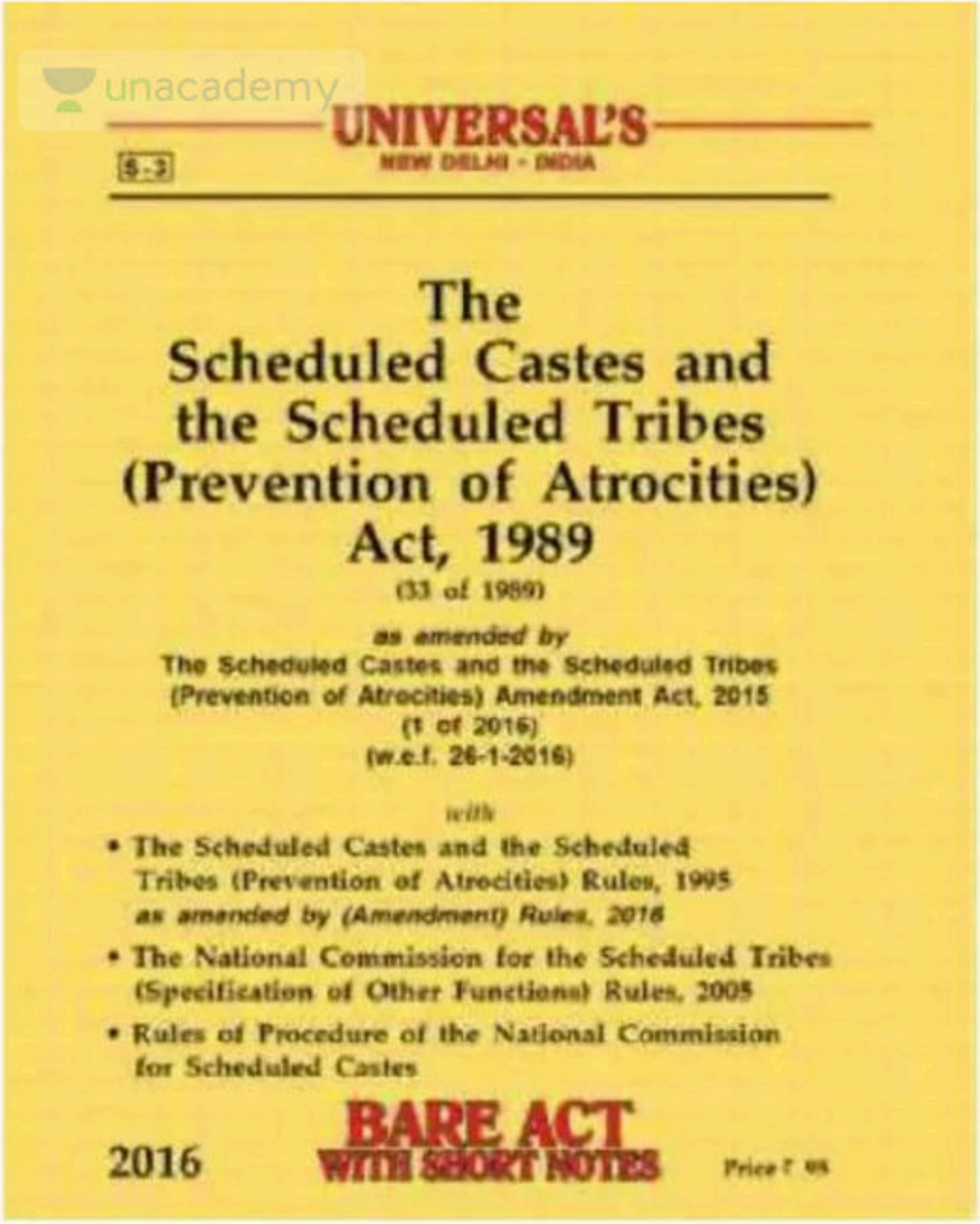


UNIVERSAL'S
NEW DELHI - INDIA

S-3

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

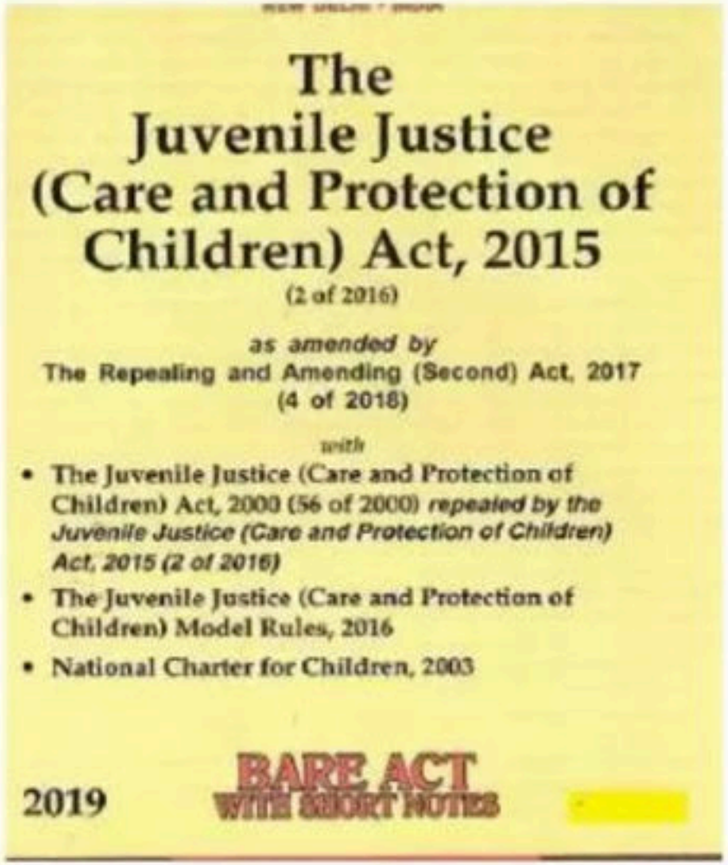
(33 of 1989)

as amended by
The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015
(1 of 2016)
(w.e.f. 26-1-2016)

with

- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 *as amended by (Amendment) Rules, 2016*
- The National Commission for the Scheduled Tribes (Specification of Other Functions) Rules, 2005
- Rules of Procedure of the National Commission for Scheduled Castes

2016 BARE ACT WITH SHORT NOTES Price ₹ 95



The Juvenile Justice (Care and Protection of Children) Act, 2015

(2 of 2016)

as amended by
The Repealing and Amending (Second) Act, 2017
(4 of 2018)

with

- The Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) *repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)*
- The Juvenile Justice (Care and Protection of Children) Model Rules, 2016
- National Charter for Children, 2003

2019 BARE ACT WITH SHORT NOTES

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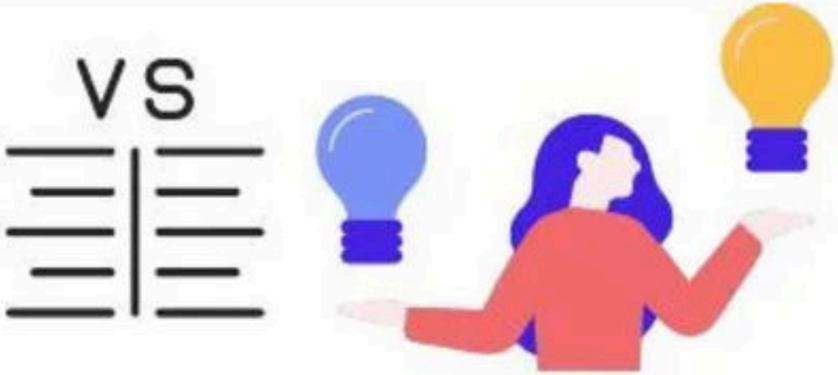

EQUALITY BEFORE THE LAW IS A NEGATIVE CONCEPT, WHILE EQUAL PROTECTION OF LAWS IS A POSITIVE CONCEPT.

EQUALITY BEFORE THE LAW FOCUSES ON THE INDIVIDUAL, WHILE EQUAL PROTECTION OF LAWS FOCUSES ON THE GROUP.

EQUALITY BEFORE THE LAW ENSURES THAT EVERYONE IS TREATED EQUALLY UNDER THE LAW, WHILE EQUAL PROTECTION OF LAWS ENSURES THAT THE LAW IS NOT USED TO DISCRIMINATE AGAINST ANY PARTICULAR GROUP OF PEOPLE.

EQUALITY BEFORE THE LAW IS A MORE GENERAL CONCEPT, WHILE EQUAL PROTECTION OF LAWS IS A MORE SPECIFIC CONCEPT.

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EXCEPTION

THE PRESIDENT AND GOVERNORS -ARTICLE 361-ARE NOT ANSWERABLE TO ANY COURT FOR THE EXERCISE OF THEIR DUTIES OR POWERS.

THEY ARE IMMUNE FROM HAVING ANY CRIMINAL PROCEEDINGS INSTITUTED AGAINST THEM.

NO COURT CAN ISSUE A PROCESS FOR THEIR ARREST OR IMPRISONMENT DURING THEIR TERM.

NO CIVIL PROCEEDINGS IN WHICH RELIEF IS CLAIMED CAN BE INITIATED AGAINST THEM DURING THEIR TERM WITHOUT GIVING A PRIOR NOTICE OF 2 MONTHS.

361. PROTECTION OF PRESIDENT AND GOVERNORS AND RAJPRAMUKHS

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(1) THE PRESIDENT, OR THE GOVERNOR OR RAJPRAMUKH OF A STATE, SHALL NOT BE ANSWERABLE TO ANY COURT FOR THE EXERCISE AND PERFORMANCE OF THE POWERS AND DUTIES OF HIS OFFICE OR FOR ANY ACT DONE OR PURPORTING TO BE DONE BY HIM IN THE EXERCISE AND PERFORMANCE OF THOSE POWERS AND DUTIES:

PROVIDED THAT THE CONDUCT OF THE PRESIDENT MAY BE BROUGHT UNDER REVIEW BY ANY COURT, TRIBUNAL OR BODY APPOINTED OR DESIGNATED BY EITHER HOUSE OF PARLIAMENT FOR THE INVESTIGATION OF A CHARGE UNDER ARTICLE 61: PROVIDED FURTHER THAT NOTHING IN THIS CLAUSE SHALL BE CONSTRUED AS RESTRICTING THE RIGHT OF ANY PERSON TO BRING APPROPRIATE PROCEEDINGS AGAINST THE GOVERNOR OF INDIA OR THE GOVERNMENT OF A STATE

(2) NO CRIMINAL PROCEEDINGS WHATSOEVER SHALL BE INSTITUTED OR CONTINUED AGAINST THE PRESIDENT, OR THE GOVERNOR OF A STATE, IN ANY COURT DURING HIS TERM OF OFFICE

(3) NO PROCESS FOR THE ARREST OR IMPRISONMENT OF THE PRESIDENT, OR THE GOVERNOR OF A STATE, SHALL ISSUE FROM ANY COURT DURING HIS TERM OF OFFICE

(4) ANY CIVIL PROCEEDINGS IN WHICH RELIEF IS CLAIMED AGAINST THE PRESIDENT, OR THE GOVERNOR OF A STATE SHALL BE INSTITUTED DURING HIS TERM OF OFFICE IN ANY COURT IN RESPECT OF ANY ACT DONE OR PURPORTING TO BE DONE BY HIM IN HIS PERSONAL CAPACITY, WHETHER BEFORE OR AFTER HE ENTERED UPON HIS OFFICE AS PRESIDENT, OR AS GOVERNOR OF SUCH STATE, UNTIL THE EXPIRATION OF TWO MONTHS NEXT AFTER NOTICE IN WRITING HAS BEEN DELIVERED TO THE PRESIDENT OR GOVERNOR, AS THE CASE MAY BE, OR LEFT AT HIS OFFICE STATING THE NATURE OF THE PROCEEDINGS, THE CAUSE OF ACTION THEREFOR, THE NAME, DESCRIPTION AND PLACE OF RESIDENCE OF THE PARTY BY WHOM SUCH PROCEEDINGS ARE TO BE INSTITUTED AND THE RELIEF WHICH HE CLAIMS

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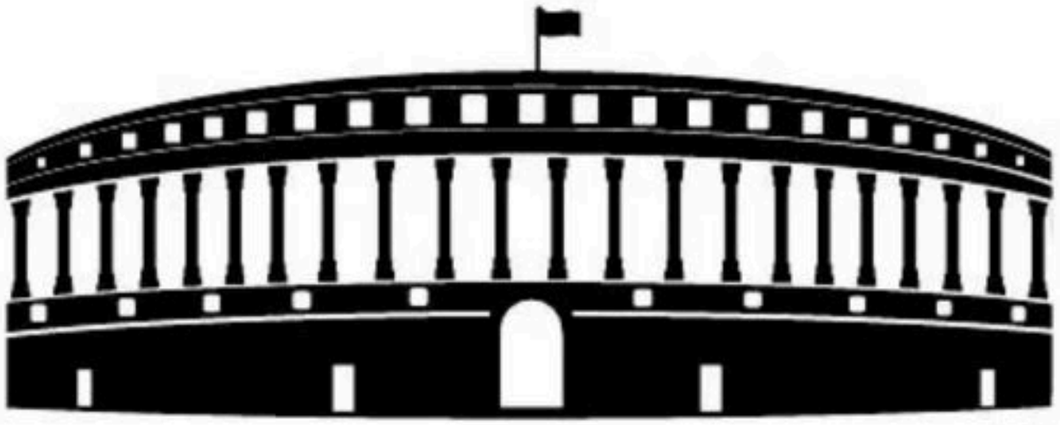
EXCEPTION



MEMBERS OF PARLIAMENT AND STATE LEGISLATURES ARE NOT OBLIGED TO APPEAR BEFORE THE COURT IN ANY CASE OF CRIMINAL OR CIVIL WHILE THE SESSION IS ONGOING.

THEY ARE NOT ANSWERABLE TO ANY COURT FOR THE SPEECHES, OPINIONS OR VOTES GIVEN IN THE HOUSE.

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EXCEPTION

DIPLOMATIC IMMUNITY

FOREIGN SOVEREIGNS, DIPLOMATS, AND AMBASSADORS CANNOT HAVE ANY CIVIL OR CRIMINAL PROCEEDINGS INSTITUTED AGAINST THEM.

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EXCEPTION

MILITARY COURTS FOR ARMED FORCES

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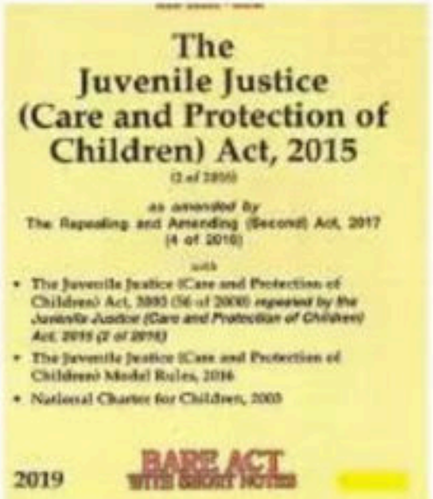
EXCEPTION

SPECIAL

JUVENILE COURTS/SPECIAL COURTS


The
Juvenile Justice
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(2 of 2016)

as amended by
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with

- The Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)
- The Juvenile Justice (Care and Protection of Children) Model Rules, 2016
- National Charter for Children, 2005

2019 BARE ACT WITH SHORT NOTES

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ARTICLE 15

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15. PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH

(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 PALACES 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

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ONLY

RELIGION, RACE, CASTE, SEX, PLACE OF BIRTH OR ANY OF THEM

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(3) NOTHING IN THIS ARTICLE SHALL PREVENT THE STATE FROM MAKING ANY SPECIAL PROVISION FOR WOMEN AND CHILDREN

THIS MEANS THAT THE STATE CAN MAKE LAWS OR TAKE EXECUTIVE ACTIONS THAT BENEFIT WOMEN AND CHILDREN, EVEN IF THESE LAWS OR ACTIONS DISCRIMINATE AGAINST MEN OR ADULTS.

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SOCIALLY & EDUCATIONALLY BACKWARD CLASSES

(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

THIS MEANS THAT ALLOWS THE STATE TO MAKE SPECIAL PROVISIONS FOR SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES. THIS MEANS THAT THE STATE CAN MAKE LAWS OR TAKE EXECUTIVE ACTIONS THAT BENEFIT SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES, EVEN IF THESE LAWS OR ACTIONS DISCRIMINATE AGAINST OTHER CLASSES.

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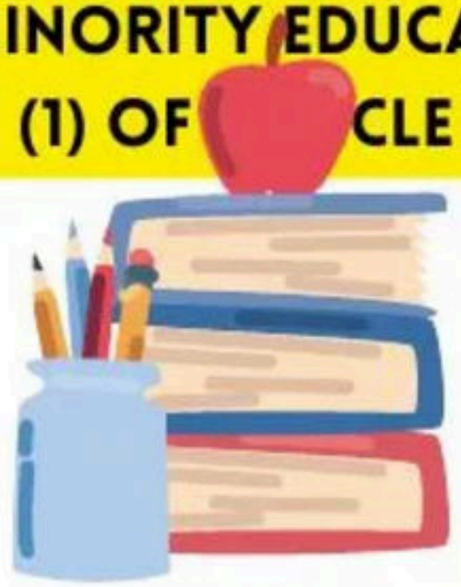
ADMISSION TO EDUCATIONAL INSTITUTIONS

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.



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E.W.S.

6) NOTHING IN THIS ARTICLE OR SUB-CLAUSE (G) OF CLAUSE (1) OF ARTICLE 19 OR CLAUSE (2) OF ARTICLE 29 SHALL PREVENT THE STATE FROM MAKING,–

(A) ANY SPECIAL PROVISION FOR THE ADVANCEMENT OF ANY ECONOMICALLY WEAKER SECTIONS OF CITIZENS OTHER THAN THE CLASSES MENTIONED IN CLAUSES (4) AND (5); AND

(B) ANY SPECIAL PROVISION FOR THE ADVANCEMENT OF ANY ECONOMICALLY WEAKER SECTIONS OF CITIZENS OTHER THAN THE CLASSES MENTIONED IN CLAUSES (4) AND (5) IN SO FAR AS SUCH SPECIAL PROVISIONS RELATE TO THEIR ADMISSION TO EDUCATIONAL INSTITUTIONS INCLUDING PRIVATE EDUCATIONAL INSTITUTIONS, WHETHER AIDED OR UNAIDED BY THE STATE, OTHER THAN THE MINORITY EDUCATIONAL INSTITUTIONS REFERRED TO IN CLAUSE (1) OF ARTICLE 30, WHICH IN THE CASE OF RESERVATION WOULD BE IN ADDITION TO THE EXISTING RESERVATIONS AND SUBJECT TO A MAXIMUM OF TEN PER CENT. OF THE TOTAL SEATS IN EACH CATEGORY.

EXPLANATION.– FOR THE PURPOSES OF THIS ARTICLE AND ARTICLE 16, "ECONOMICALLY WEAKER SECTIONS" SHALL BE SUCH AS MAY BE NOTIFIED BY THE STATE FROM TIME TO TIME, ON THE BASIS OF FAMILY INCOME AND OTHER INDICATORS OF ECONOMIC DISADVANTAGE.

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15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(*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.

[2][(*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.] 1 CAA 1951

[1][(*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.] 93 CAA 2005

[2][(6) Nothing in this article or sub-clause *(g)* of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and 103 CAA 2019

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

IN THE NEWS

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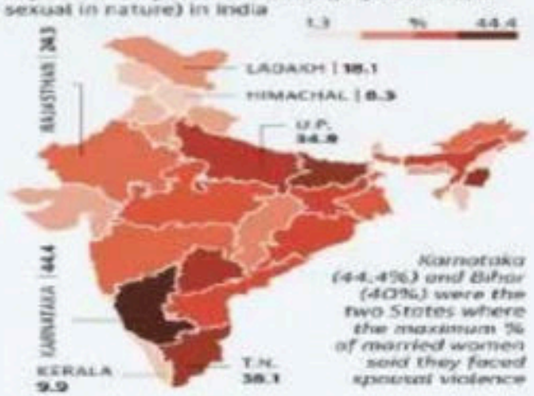
Silent victims of violence

Nearly 30% women in India who were married at some point in their life experienced spousal violence (physical and/or sexual in nature), according to the National Family Health Survey-5 (2019-21). While the overall share of women who experienced spousal violence has marginally reduced from NFHS-4 (2015-16), it has increased significantly in several major States including Karnataka and Maharashtra. However, the majority of such incidents are unreported. Phase 1 data of the survey show that in States such as Andhra Pradesh and Gujarat, over 70% of women who experienced such violence neither sought help nor told anyone about the incident. What is further worrying is that the number of complaints received by the National Commission of Women (NCW) against domestic violence in 2021 is the highest in the last 12 years. By **Sumant Sen**

1. STATE-WISE OCCURRENCE | The map shows the share of married women (%) who experienced spousal violence (physical and/or sexual in nature) in India



Karnataka (44.4%) and Bihar (40%) were the two States where the maximum % of married women said they faced spousal violence

29.3%
The share of women who were married and experienced spousal violence in the country according to NFHS-5

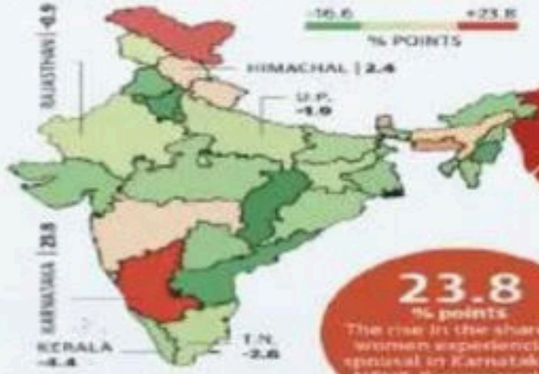
1.9
% points
The fall in the share of women experiencing spousal in India in NFHS-5 compared to NFHS-4

6,229
The number of domestic violence complaints received by the NCW in 2021 so far

3. BURIED IN SILENCE | In the States/ UTs depicted in the chart, more than half the women aged 18-49 who experienced physical and/or sexual violence never sought help and never told anyone about it (shown in the chart)

The chart depicts the major States for which full State reports were released in phase 1 of NFHS-5. The complete reports for phase 2 States are yet to be released

2. CHANGE FROM NFHS-4 | The map shows the change in the share of married women (% points) who experienced spousal violence in NFHS-5 from NFHS-4. In eight of the 35 States/UTs, spousal violence increased between the two survey periods



Karnataka and Maharashtra registered

23.8
% points
The rise in the share of women experiencing spousal in Karnataka in NFHS-5 compared to NFHS-4

SOURCE: NFHS-5, NCW

4. 12-YEAR HIGH | As on December 7, the NCW had received 6,229 complaints against domestic violence faced by women for 2021. This figure is the highest for a year since 2010. The number of such complaints fell after 2014 but started rising again after 2018

The year 2014 had recorded 5,990 complaints of domestic violence, the

Central Government Act

Article 15 in The Constitution Of India 1949

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

(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 palaces 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

IN THE NEWS

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Supreme Court of India

National Legal Ser.Auth vs Union Of India & Ors on 15 April, 2014

Author: A Sikri

Bench: K.S. Radhakrishnan, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.400 OF 2012

National Legal Services Authority … Petitioner

Versus

Union of India and others … Respondents

WITH
WRIT PETITION (CIVIL) NO.604 OF 2013

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The Philosophy Underlying the Protection Of Women, Scheduled Castes and Scheduled Tribes

'**Defensive separation**' is one of the essential strategies through which Constitutional objectives like social and financial equity can be secured to the Women, Scheduled Castes and Scheduled Tribes.

Defensive separation implies inclination given to the weaker areas of the general public including the Women, Scheduled Castes and Scheduled Tribes. As India is having a vast diversity regarding race, religion, castes economic status and groups with various levels of social, educational and economic status, which made it troublesome for the State to embrace uniform arrangement to all segments of the general public.

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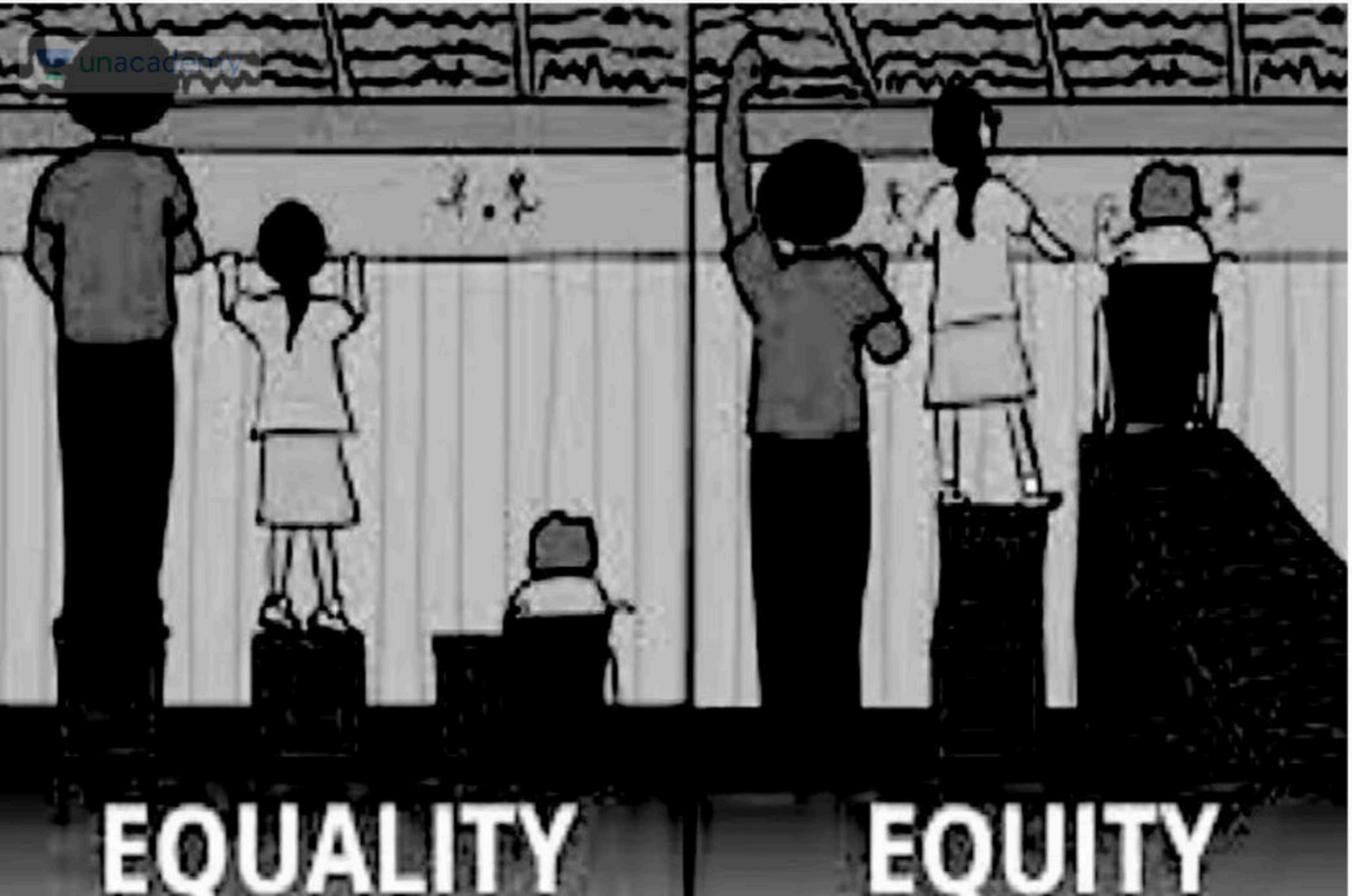
NOT AN EXCEPTION

IT MAY SEEM LIKE ARTICLES 15(4) AND 15(5) VIOLATE RIGHT TO EQUALITY, BUT IS NOT SO, AS PROTECTIVE DISCRIMINATION IS ALSO A FACET OF EQUALITY.

EQUALITY IS ONE OF THE BASIC FEATURES OF THE CONSTITUTION OF INDIA

ANY TREATMENT OF EQUALS UNEQUALLY AND UNEQUAL EQUALLY WOULD VIOLATE THE BASIC STRUCTURE OF THE CONSTITUTION


EQUALITY
EQUITY

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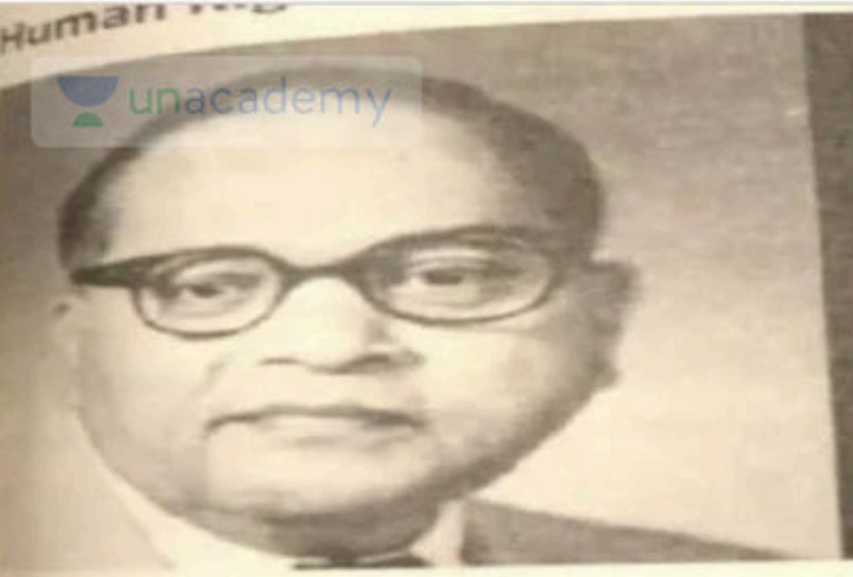


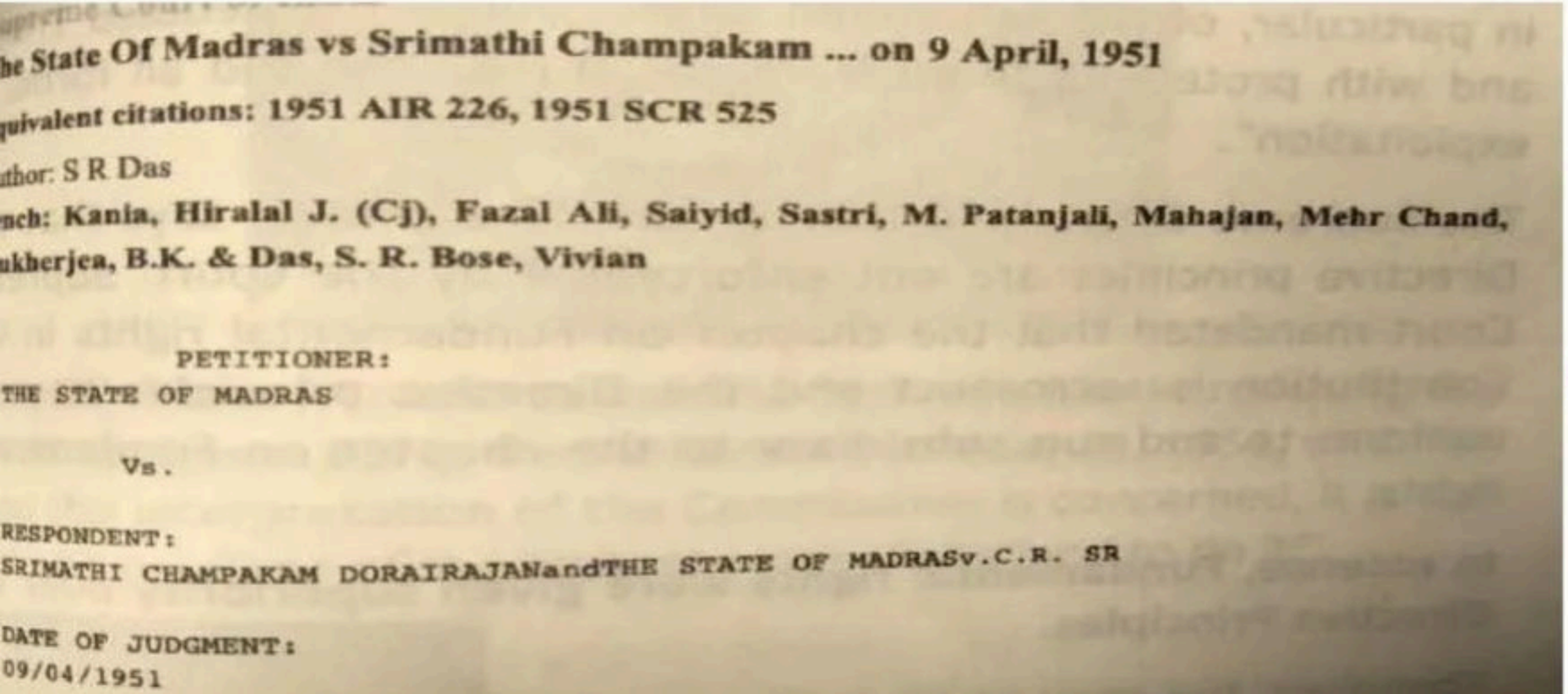
What are we having this liberty for? We are having this liberty in order to reform our social system, which is full of inequality, discrimination and other things, which conflict with our fundamental rights.

— B. R. Ambedkar —

Figure 12- Wise words of Dr. Ambedkar-"Let no one, however, say that I have borrowed by philosophy from the French Revolution. I have not. My philosophy has roots in religion and not in political science."

CHAMPAKAM DORAIRAJAN VS. UNION OF INDIA 1951

PART 3 AND PART 4 CONFLICT?



he State Of Madras vs Srimathi Champakam ... on 9 April, 1951

quivalent citations: 1951 AIR 226, 1951 SCR 525

uthor: S R Das

nch: Kania, Hiralal J. (Cj), Fazal Ali, Saiyid, Sastri, M. Patanjali, Mahajan, Mehr Chand, ukherjea, B.K. & Das, S. R. Bose, Vivian

PETITIONER:
THE STATE OF MADRAS

Vs.

RESPONDENT:
SRIMATHI CHAMPAKAM DORAIRAJANandTHE STATE OF MADRASv.C.R. SR

DATE OF JUDGMENT:
09/04/1951

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ARTICLE 16

EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT

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ARTICLE 16

. 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 EGARD 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.

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ONLY

ONLY OF RELIGION, RACE, CASTE, SEX, DESCENT, PLACE OF BIRTH, RESIDENCE OR ANY OF THEM

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ARTICLE 16

. 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.

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ARTICLE 16

5. NOTHING IN THIS ARTICLE SHALL AFFECT THE OPERATION OF ANY LAW WHICH PROVIDES THAT THE INCUMBENT OF AN OFFICE IN CONNECTION WITH THE AFFAIRS OF ANY RELIGIOUS OR DENOMINATIONAL INSTITUTION OR ANY MEMBER OF THE GOVERNING BODY THEREOF SHALL BE A PERSON PROFESSING A PARTICULAR RELIGION OR BELONGING TO A PARTICULAR DENOMINATION.

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ARTICLE 16

(6) NOTHING IN THIS ARTICLE SHALL PREVENT THE STATE FROM MAKING ANY PROVISION FOR THE RESERVATION OF APPOINTMENTS OR POSTS IN FAVOU OF ANY ECONOMICALLY WEAKER SECTIONS OF CITIZENS OTHER THAN THE CLASSES MENTIONED IN CLAUSE (4), IN ADDITION TO THE EXISTING RESERVATION AND SUBJECT TO A MAXIMUM OF TEN PER CENT. OF THE POST IN EACH CATEGORY.

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DON'T FORGET

REMEMBER!

THE 117TH CONSTITUTION AMENDMENT BILL WAS PASSED TO CLARIFY THAT ALL SCS/STS ARE DEEMED TO BE BACKWARD.

- THE BILL SEEKS TO SUBSTITUTE ARTICLE 16(4A) OF THE CONSTITUTION OF INDIA.
- THE BILL PROVIDES THAT ALL THE SCHEDULED CASTES AND SCHEDULED TRIBES NOTIFIED IN THE CONSTITUTIONAL SHALL BE DEEMED TO BE BACKWARD.
- ARTICLE 335 OF THE CONSTITUTION STATES THAT THE CLAIMS OF THE SCHEDULED CASTES AND SCHEDULED TRIBES HAVE TO BE BALANCED WITH MAINTAINING EFFICIENCY IN ADMINISTRATION. THE BILL STATES THAT PROVISION OF THE AMENDMENT SHALL OVERRIDE THE PROVISION OF ARTICLE 335.

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

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(*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 [3][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. 85 CAA 2001

[4][(*4A*) Nothing in this article shall prevent the State from making any provision for reservation [5][in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.] 77 CAA 1995

[6][(*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.] 81 CAA 2000

(*5*) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination. 103 CAA 2019

77 CAA 1995

[1][(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]

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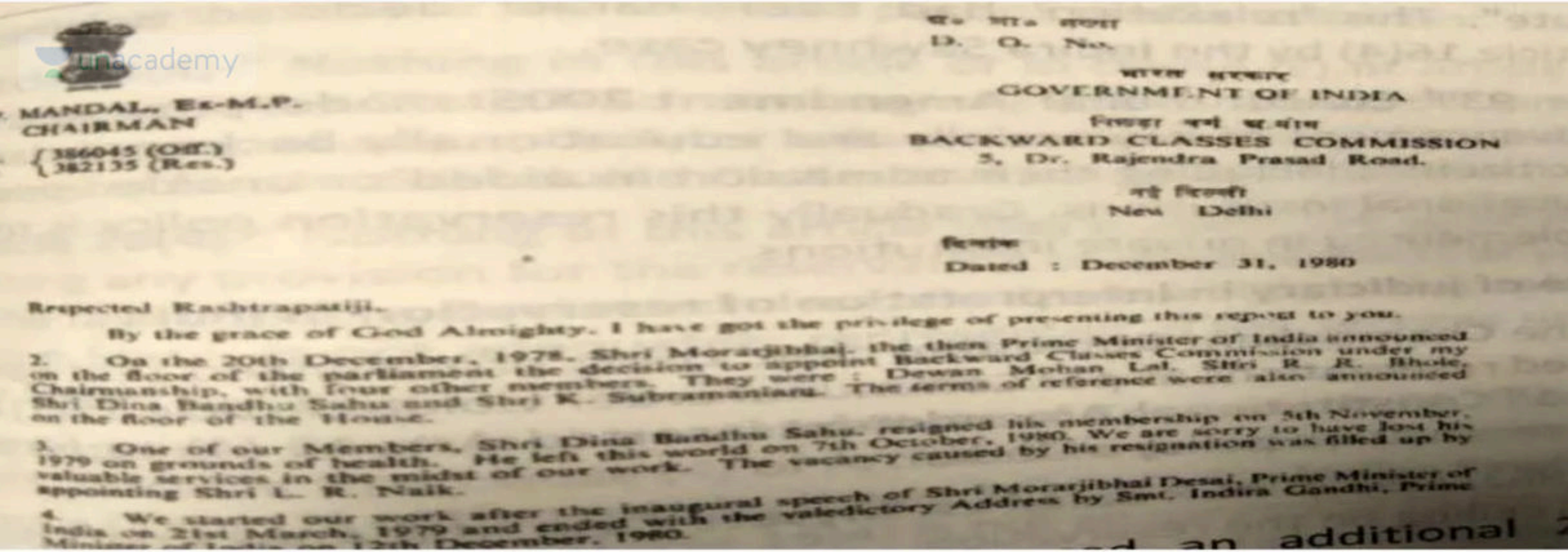
PROTECTIVE DISCRIMINATION

ARTICLE 16(4) ALSO EMPOWERS THE STATE TO MAKE LAWS FOR PROTECTION OF SC AND ST.

ARTICLES 15(4) AND 16(4) TAKE INTO ACCOUNT THE DE FACTO INEQUALITIES WHICH EXIST IN THE SOCIETY.

TO BRING ABOUT THE REAL EQUALITY, PREFERENCE GIVEN TO THE SOCIALLY AND ECONOMICALLY DISADVANTAGED GROUPS HENCE THIS IS JUSTIFIED.

THIS IS THE PROTECTIVE DISCRIMINATION WHICH IS A FACET OF EQUALITY.



MANDAL, Ex-M.P.
CHAIRMAN
{356045 (Off.)
{382135 (Res.)

D. O. No.

भारत सरकार
GOVERNMENT OF INDIA

पिछड़ा वर्ग आयोग
BACKWARD CLASSES COMMISSION
5, Dr. Rajendra Prasad Road,

नई दिल्ली
New Delhi

दिनांक
Dated : December 31, 1980

Respected Rashtrapatiji,

By the grace of God Almighty, I have got the privilege of presenting this report to you.

2. On the 20th December, 1978, Shri Morarjibhai, the then Prime Minister of India announced on the floor of the parliament the decision to appoint Backward Classes Commission under my Chairmanship, with four other members. They were : Dewan Mohan Lal, Shri R. R. Bhole, Shri Dina Bandhu Sahu and Shri K. Subramaniam. The terms of reference were also announced on the floor of the House.

3. One of our Members, Shri Dina Bandhu Sahu, resigned his membership on 5th November, 1979 on grounds of health. He left this world on 7th October, 1980. We are sorry to have lost his valuable services in the midst of our work. The vacancy caused by his resignation was filled up by appointing Shri L. R. Naik.

4. We started our work after the inaugural speech of Shri Morarjibhai Desai, Prime Minister of India on 21st March, 1979 and ended with the valedictory Address by Smt. Indira Gandhi, Prime Minister of India on 12th December, 1980.

additional

RESERVATION POLICY EMERGES FROM 15(4) 16(4)

Reservation in public employment

Jarnail Singh judgment authored by Justice Rohinton Nariman indicates a critical turn in the jurisprudence of reservation

ABHILASH M.R.

The jurisprudence of reservation relies on the symbiotic coexistence of constitutionally guaranteed equality of opportunity in public employment under Article 16 (1) of the Constitution of India and classifications thereunder various clauses of the same article, especially Article 16(4) and Article 16 (4 A), which are in the nature of facilitating provisions, vesting a discretion on the government to consider providing reservations for the socially and educationally backward sections of the society and to provide reservation in promotion to Scheduled Castes and Scheduled Tribes, respectively.

Reservation not a fundamental Right

It is a settled law, time and again reiterated by the Supreme Court, that there is no fundamental right to reservation or promotion under Article 16(4) or Article 16(4 A) of the Constitution, rather they are enabling provisions for providing reservation, if the circumstances so warrant (*Mukesh Kumar and Another vs State of Uttarakhand & Ors. 2020*).

However, these pronouncements no way understate the constitutional directive under Article 46 that mandates that the state shall promote with special care the educational and economic interests of the weaker sections of the people and in particular Scheduled Castes and Scheduled Tribes. In fact, sensitivity of the welfare state towards the weaker sections over decades resulted in the gradual expansion of canopy of reservation in the form of increasing classifications under Article 16, a set of actions that created a wave of litigation by which resulted in the ever-evolving jurisprudence of affirmative action in public employment.

The Mandal storm and Indra Sawhney

Reservation in employment which was otherwise confined to Scheduled Castes and Scheduled Tribes got extended to Other Backward Classes as well on the basis of the recommendations of the Second Backward Class Commission as constituted, headed by B.P. Mandal.

The recommendation of Mandal Commission (1980) to provide 27% reservation to Other Backward Classes in central services and public sector undertakings, over and above the existing 22.5% reservation for Scheduled Castes and Scheduled Tribes, was sought to be implemented by the V.P. Singh Government in 1990 and the same was assailed in the Supreme Court resulting in the historic Indra Sawhney Judgment (1992).

In the judgment, a nine-judge bench presided by Chief Justice M.H. Kania upheld the constitutionality of the 27% reservation but put a ceiling of 50% unless exceptional circumstances warranting the breach, so that the constitutionally guaranteed right to equality under Article 14 would remain secured.

The Court dwelled on the interrelationship between Articles 16(1) and 16(4) and declared that Article 16(4) is not an exception to article 16(1), rather an illustration of classification implicit in article 16(1).

While Article 16(1) is a fundamental right, Article 16(4) is an enabling provision. Further, the Court directed the exclusion of creamy layer by way of horizontal division of every other backward class into creamy layer and non-creamy layer.

The Constitution (Seventy-seventh Amendment) Act, 1995

In Indra Sawhney Case, the Supreme Court had held that Article 16(4) of the Constitution of India does not authorise reservation in the matter of promotions. However, the judgment was not to affect the promotions already made and hence only prospective in operation, it was ruled.

By the Constitution (Seventy-seventh Amendment) Act, 1995, which, Article 16(4-A), was inserted to provide that "nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State".

Later, two more amendments were brought, one to ensure consequential seniority and another to secure carry forward of unfilled vacancies of a year, the former by way of addition to Article 16(4 A) and the latter by way of adding Article 16(4 B).

The Constitution Bench Judgment in M. Nagaraj (2006)

A five-judge bench of Supreme Court declared the 1995 amendment as not vocative of basic structure of the Constitution but laid down ceratin conditions which included the collection of "quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment". . The bench held that the creamy layer among Scheduled castes and tribes is to be excluded from reservation.

Jarnail Singh vs Lachhmi Narain Gupta (2018)

In the aforementioned case, a constitution bench of Supreme Court was called on to examine wisdom of the 2006 judgment in the light of the constitutionally recognised socio-economic backwardness of the Scheduled Castes and Scheduled Tribes which may not require any further substantiation. It was also contended that the requirement to identify creamy lawyer among Scheduled Castes and Scheduled tribes fell foul of Indra Sawhney decision. The constitution bench invalidated the requirement to collect quantifiable data in relation to Scheduled Castes and Scheduled Tribes but upheld the principle of applicability of creamy lawyer in relation to Scheduled Castes and Scheduled Tribes. Jarnail Singh judgment authored by Justice Rohinton Nariman indicates a critical turn in the jurisprudence of reservation.

The Constitution (103rd Amendment) Act, 2019

The 10% reservation for Economically Weaker Sections (EWS), other Scheduled Castes, Scheduled Tribes and backward classes for government jobs and admission in educational institutions is currently under challenge before the Supreme Court which has referred the same to a constitution bench. The adjudication awaited in this regard may also turn to be a critical milestone in the jurisprudence of reservation as traditional understanding of backwardness is broadened to specifically include economic backwardness without

social backwardness as is traditionally seen.

Dr. Jaishri Laxmanrao Patil vs Chief Minister (2021)

Despite the Indra Sawhney ruling, there have been attempts on the part of many States to breach the rule by way of expanding the reservation coverage and the Maharashtra Socially and Educationally Backward Classes Act 2018, (Maratha reservation law) came under challenge before the Supreme Court which referred the same to a bench of five judges and one question was whether the 1992 judgment needs a relook.

Interestingly, the Supreme Court not only affirmed the Indra Sawhney decision, but also struck down Section 4(1)(a) and Section 4(1)(b) of the Act which provided 12% reservation for Marathas in educational institutions and 13% reservation in public employment respectively, citing the breach of ceiling. "The 2018 Act as amended in 2019 granting reservation for Maratha community does not make out any exceptional circumstance to exceed the ceiling limit of 50% reservation.", declared the apex Court. This judgment is likely to rein in the propensity on the part of some State governments to blatantly disregard the stipulated ceiling on electoral grounds rather than any exceptional circumstances as conceived by the constitution bench. It is pertinent to note that several States such as Maharashtra, Karnataka, and Andhra Pradesh had made submissions before the Supreme Court against any upper limit on reservation.

Abhilash M.R. is an advocate practising in the Supreme Court of India.

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ARTICLE 17

ABOLITION OF UNTOUCHABILITY

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ARTICLE 17-ABOLITION OF UNTOUCHABILITY

UNTOUCHABILITY IS ABOLISHED AND ITS PRACTICE IN ANY FORM IS FORBIDDEN THE ENFORCEMENT OF ANY DISABILITY ARISING OUT OF UNTOUCHABILITY SHALL BE AN OFFENCE PUNISHABLE IN ACCORDANCE WITH LAW

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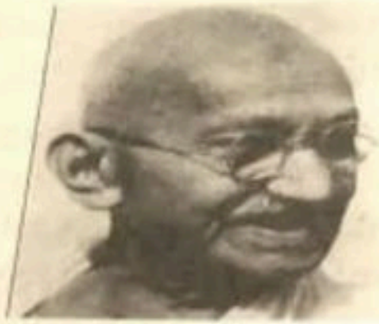
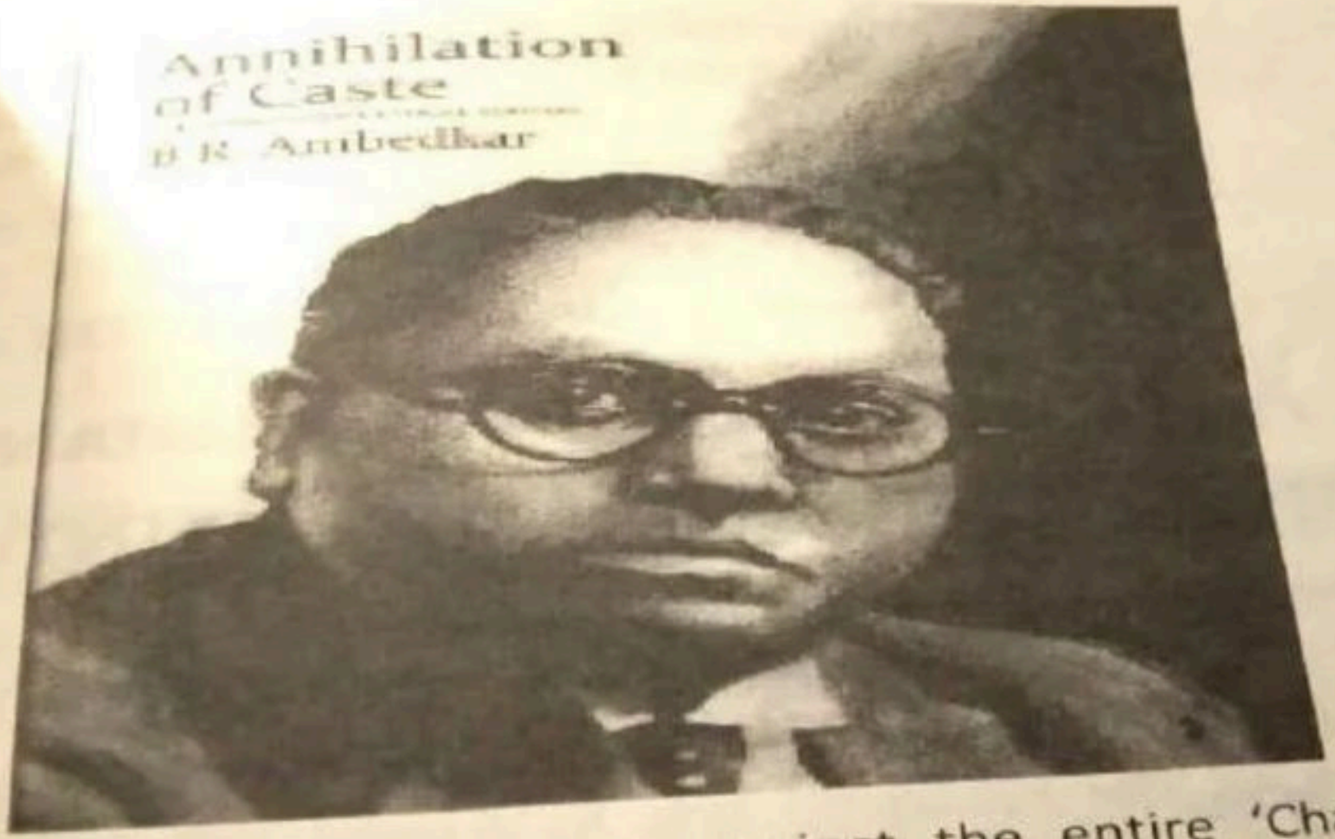


My fight against untouchability is a fight against the impure in humanity.

— Mahatma Gandhi —

Figure 29-Mahtama Gandhi referred to 'untouchables' by the wo
'Harijan' -a term first used by the great Saint Narasinha Mehta



the entire 'Chaturvarna'

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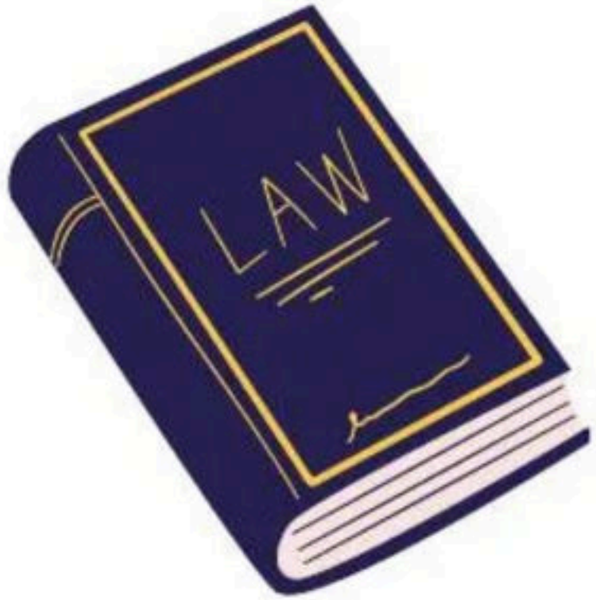
PUNISHABLE OFFENCE

PROTECTION OF CIVIL RIGHTS ACT 1955

'Untouchability' is a practice which is abolished and its practice in any form is forbidden.

The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law.

Section 3 in The Protection of Civil Rights Act,1955:
Punishment for enforcing religious disabilities.
Whoever on the ground of "untouchability" prevents any person- (a) from entering any place of public worship which is open to other persons professing the same religion or any section therefore, as such person; or (b) from worshipping or offering prayers or performing any religious service in any place or public worship, or bathing in, or using the waters of, any sacred tank, well, spring or water-course, river or lake or bathing at any ghat of such tank, water- course in the same manner and to the same extent is permissible to other persons professing or any section there of, as such the same religion, or any section there of, as such person; shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.



The normal provisions of the existing laws like, the Protection of Civil rights Act 1955 and Indian Penal Code have been found

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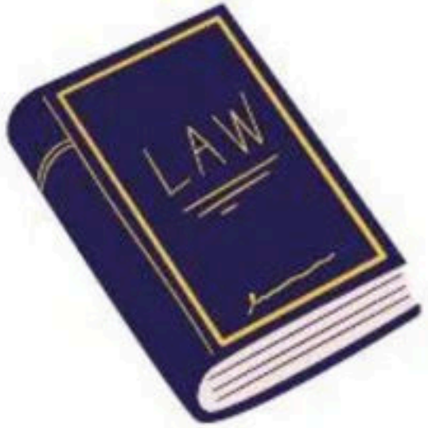
THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

ACT NO. 33 OF 1989

[11*th September*, 1989.]



An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for [1][Special Courts and the Exclusive Special Courts] for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fortieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(2) It extends to the whole of India except the State of Jammu & Kashmir.

(*3*) It shall come into force on such date[2] as the Central Government may, by notification in the

PUNISHABLE OFFENCE

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INDIVIDUAL BOYCOTT NOT COVERED

WHAT IS 'UNTOUCHABILITY'?

- SOCIAL DISABILITIES
- BASED ON BIRTH

WIDE RANGE

PREVENTING ANY PERSON FROM ENTERING WORSHIP PLACES
INSULTING ON THE BASIS OF UNTOUCHABILITY
JUSTIFYING OR PROMOTING UNTOUCHABILITY

IN THE NEWS

Jurisprudence of inverted commas

Upendra Baxi

SEPTEMBER 03, 2018 00:15 IST
UPDATED: OCTOBER 13, 2018 07:39 IST

SHARE ARTICLE PRINT A | A | A

The Constitution-makers used inverted commas compendiously to refer to 'permanent' and 'temporary' states of untouchability. The latter is incurred by a pious Hindu in many situations — for example, a full bath cures going to a funeral or touching a corpse, a proper puja and a dip in the Ganga cures going overseas or a contact with a foreigner. Menstruation cycles render a woman impure for three days. The Constitution forbids all states of "untouchability" and imposes a total prohibition on practising it.

It is a time-honoured principle of statutory interpretation and constitutional construction that when 'a text is clear, it is compelling'. No scope arises here for preferring any further approach to interpretation because even freedom of religion is subject to "other provisions of this Part", and Article 17 is clearly such a provision.

NO EXCEPTIONS

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ARTICLE 18

ABOLITION OF TITLES

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ARTICLE 18

NO TITLE, NOT BEING A MILITARY OR ACADEMIC DISTINCTION, SHALL BE CONFERRED BY THE STATE

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

NO PERSON HOLDING ANY OFFICE OF PROFIT OR TRUST UNDER THE STATE SHALL, WITHOUT THE CONSENT OF THE PRESIDENT, ACCEPT ANY PRESENT, EMOLUMENT, OR OFFICE OF ANY KIND FROM OR UNDER ANY FOREIGN STATE

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of award and decorations to "recognize excellence in the performance of the duties".

NATIONAL AWARDS ARE ALLOWED

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ACADEMIC TITLES ARE ALLOWED

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MILITARY TITLES ARE ALLOWED

GALLANTRY AWARDS ARE ALLOWED

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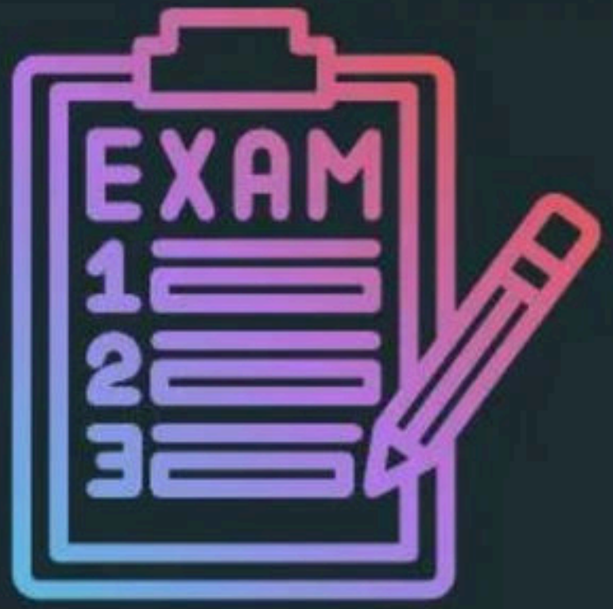
MAINS

Analyze the distinguishing features of the notion of Right to Equality in the Constitutions of the USA and India. (250 words) [संयुक्त राज्य अमेरिका और भारत संविदानों में, समता के अधिकार की धारणा की विशिष्ट विशेषताओं का विश्लेषण कीजिए।]	2021



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ARTICLE 19

FREEDOMS

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19. Protection of certain rights regarding freedom of speech, etc.—(*1*) All citizens shall have the right—

(*a*) to freedom of speech and expression;

97 CAA 2011

(*b*) to assemble peaceably and without arms;

(*c*) to form associations or unions [2][or co-operative societies];

(*d*) to move freely throughout the territory of India;

(*e*) to reside and settle in any part of the territory of India; [3][and]

[4]* RIGHT TO PROPERTY-REPEALED 44 CAA 1978 *

(*g*) to practise any profession, or to carry on any occupation, trade or business.

19. PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH ETC

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(1) ALL CITIZENS SHALL HAVE THE RIGHT

(A) TO FREEDOM OF SPEECH AND EXPRESSION;

REASONABLE RESTRICTIONS 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

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ARTICLE 19(1)(A) OF INDIAN CONSTITUTION SAYS THAT ALL CITIZENS HAVE THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION.

FREEDOM OF SPEECH AND EXPRESSION MEANS THE RIGHT TO EXPRESS ONE'S VIEWS OPINIONS AND BELIEFS FREELY BY WORDS OF MOUTH, WRITING, PRINTING, PICTURES OR ANY OTHER MEANS.

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Central Government Act

Article 19(2) in The Constitution Of India 1949

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

of the press. Justice Patanjali Sastri, speaking for the Supreme Court, said in *Romesh Thappar's* case[3] that:

> [T]here can be no doubt that the freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation publication would be of little value.

Freedom of Speech and Expression is indispensable in a democracy.

In **Romesh Thapper vs. State of Madras,**[5] the court had observed that "Freedom of Speech & of Press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government is possible."

In **Sakal Papers Ltd. & Ors. Vs. Union of India,**[6], the Court held that "Freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved."

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DOES ARTICLE 19 COVER SOCIAL MEDIA TOO?

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OLD STORY

Two Mumbai girls arrested for Facebook post against Bal Thackeray get bail

Two girls were arrested over their Facebook post questioning the shutdown in the city for Shiv Sena patriarch Bal Thackeray's funeral with the comment also leading to an attack on the clinic of an uncle of one of them by Sena activists.

BREAKING NEWS

Supreme Court of India

Shreya Singhal vs U.O.I on 24 March, 2015

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Bench: J. Chelameswar, Rohinton Fali Nariman

[pic]REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO.167 OF 2012

SHREYA SINGHAL ... PETITIONER

VERSUS

UNION OF INDIA ... RESPONDENT

WITH

A law student- Shreya Singhal, who believed the law violated the right to free speech provided for by India's constitution filed a Public Interest Litigation in the Supreme Court, calling for the repeal of Section 66A of the IT Act. According to the P.I.L the language of the statute was vague, and had therefore been misused to censor innocent speech.

1. This batch of writ petitions filed under Article 32 of the Constitution of India raises very important and far-reaching questions relatable primarily to the fundamental right of free speech and expression guaranteed by Article 19(1)(a) of the Constitution of India. The immediate cause for concern in these petitions is Section 66A of the Information Technology Act of 2000. This Section was not in the Act as originally enacted, but came into force by virtue of an Amendment Act of 2009 with effect from 27.10.2009. Since all the arguments raised by several counsel for the petitioners deal with the unconstitutionality of this Section it is set out hereinbelow:

'66-A. Punishment for sending offensive messages th
who sends, by means of a computer resource or a comr

[1] **Section 66-A.** Punishment for sending offensive messages through communication service, etc.-Any person who sends, by means of a computer resource or a communication device,-

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation.- For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message."

Whether words such as **grossly offensive or has menacing character** or **annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will**, or **causing annoyance or inconvenience** used in the aforementioned sections are too vague to be constitutional?

Freedom of Speech and Expression is **not absolute.** Certain restrictions as provided in Article 19(2) [4] need to be imposed in the name of Security of state, Friendly relations with foreign countries, Public Order, Decency, Contempt of Court, Morality, Defamation. However, **these restrictions need not to be arbitrary in nature**. There must be a rational nexus between the imposition of restriction and objective sought to be achieved. The restriction must be for the purpose mentioned in **Article 19(2)** , which is **Not** satisfied by **Section 66A of I.T Act.**

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The Supreme Court agreed with the arguments of petitioner and held that Section 66 A has a '**chilling effect**' on Freedom of Speech and Expression and the words used therein do not form the basis for imposing Reasonable Restriction on freedom. [Doctrine of Chilling Effect]

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DOCTRINE OF CHILLING EFFECT

DOCTRINE OF CHILLING EFFECT

THE CHILLING EFFECT IS A LEGAL DOCTRINE THAT REFERS TO THE INHIBITION OR DISCOURAGEMENT OF THE LEGITIMATE EXERCISE OF NATURAL AND LEGAL RIGHTS BY THE THREAT OF LEGAL SANCTION. A CHILLING EFFECT MAY BE CAUSED BY LEGAL ACTIONS SUCH AS THE PASSING OF A LAW, THE DECISION OF A COURT, OR THE THREAT OF A LAWSUIT; ANY LEGAL ACTION THAT WOULD CAUSE PEOPLE TO HESITATE TO EXERCISE A LEGITIMATE RIGHT (FREEDOM OF SPEECH OR OTHERWISE) FOR FEAR OF LEGAL REPERCUSSIONS.

THE CHILLING EFFECT IS OFTEN USED IN THE CONTEXT OF FREEDOM OF SPEECH, BUT IT CAN ALSO APPLY TO OTHER RIGHTS, SUCH AS THE RIGHT TO ASSOCIATION, THE RIGHT TO PRIVACY, AND THE RIGHT TO DUE PROCESS. THE CHILLING EFFECT CAN BE A SERIOUS PROBLEM, BECAUSE IT CAN PREVENT PEOPLE FROM EXERCISING THEIR RIGHTS EVEN WHEN THEY ARE NOT ACTUALLY BREAKING THE LAW. THERE ARE A NUMBER OF WAYS TO COMBAT THE CHILLING EFFECT. ONE WAY IS TO CHALLENGE LAWS THAT ARE OVERLY BROAD OR VAGUE. ANOTHER WAY IS TO EDUCATE PEOPLE ABOUT THEIR RIGHTS AND TO ENCOURAGE THEM TO EXERCISE THOSE RIGHTS EVEN IF THEY ARE AFRAID OF LEGAL REPERCUSSIONS. FINALLY, IT IS IMPORTANT TO HOLD GOVERNMENTS ACCOUNTABLE FOR THEIR ACTIONS AND TO ENSURE THAT THEY DO NOT VIOLATE THE RIGHTS OF THEIR CITIZENS.

- A LAW THAT MAKES IT ILLEGAL TO CRITICIZE THE GOVERNMENT MAY DISCOURAGE PEOPLE FROM SPEAKING OUT AGAINST GOVERNMENT POLICIES.

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DOCTRINE OF SEVERABILITY

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SEVER-TO CUT

THE DOCTRINE OF SEVERABILITY IS A LEGAL DOCTRINE THAT ALLOWS A COURT TO STRIKE DOWN AN INVALID PROVISION OF A STATUTE WHILE LEAVING THE REST OF THE STATUTE INTACT. THE DOCTRINE IS BASED ON THE PRINCIPLE THAT A STATUTE SHOULD NOT BE INVALIDATED IF IT CAN BE SAVED BY STRIKING DOWN THE INVALID PROVISION.

THE DOCTRINE OF SEVERABILITY IS APPLIED WHEN A COURT FINDS THAT A PROVISION OF A STATUTE IS UNCONSTITUTIONAL. THE COURT WILL FIRST DETERMINE WHETHER THE INVALID PROVISION IS SEVERABLE FROM THE REST OF THE STATUTE. IF THE INVALID PROVISION IS SEVERABLE, THE COURT WILL STRIKE DOWN THE INVALID PROVISION AND LEAVE THE REST OF THE STATUTE INTACT. IF THE INVALID PROVISION IS NOT SEVERABLE, THE COURT WILL INVALIDATE THE ENTIRE STATUTE.

THE DOCTRINE OF SEVERABILITY IS A DISCRETIONARY DOCTRINE. THE COURT IS NOT REQUIRED TO APPLY THE DOCTRINE AND MAY INVALIDATE THE ENTIRE STATUTE IF IT BELIEVES THAT DOING SO IS THE BEST WAY TO UPHOLD THE CONSTITUTION.

THERE ARE A NUMBER OF FACTORS THAT THE COURT WILL CONSIDER WHEN DETERMINING WHETHER A PROVISION OF A STATUTE IS SEVERABLE. THESE FACTORS INCLUDE THE FOLLOWING:

- THE SEVERABILITY CLAUSE: SOME STATUTES CONTAIN A SEVERABILITY CLAUSE, WHICH EXPLICITLY STATES THAT IF ANY PROVISION OF THE STATUTE IS FOUND TO BE INVALID, THE REST OF THE STATUTE SHALL REMAIN IN EFFECT. IF A STATUTE CONTAINS A SEVERABILITY CLAUSE, THE COURT WILL GENERALLY UPHOLD THE CLAUSE AND STRIKE DOWN THE INVALID PROVISION.
- THE INTERDEPENDENCE OF THE PROVISIONS: IF THE INVALID PROVISION IS SO INTERTWINED WITH THE REST OF THE STATUTE THAT IT CANNOT BE SEVERED WITHOUT DESTROYING THE PURPOSE OF THE STATUTE, THE COURT WILL GENERALLY INVALIDATE THE ENTIRE STATUTE.

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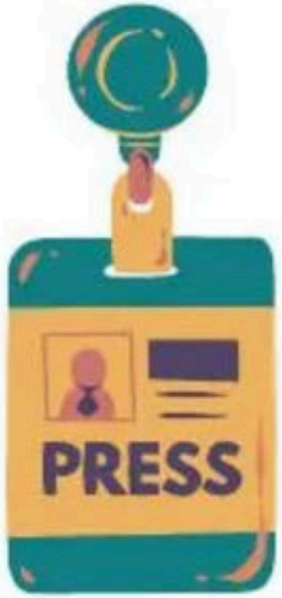

FREEDOM OF PRESS

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FREEDOM OF SPEECH AND EXPRESSION

IMPLIED FREEDOM OF PRESS

reedom of Press

Although Article 19 does not have the **express** provision for reedom of press as in the USA, the fundamental right of the reedom of press' is **implicit** in the right the freedom of speech and xpression.

The First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

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OLD STORY

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NEWSPRINT POLICY 1972-73

Supreme Court of India

Bennett Coleman & Co. & Ors vs Union Of India & Ors on 30 October, 1972

Equivalent citations: 1973 AIR 106, 1973 SCR (2) 757

Author: S Sikri

Bench: Sikri, S.M. (Cj), Ray, A.N., Reddy, P. Jaganmohan, Mathew, Kuttyil Kurien, Beg, M. Hameedullah

PETITIONER:
BENNETT COLEMAN & CO. & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT30/10/1972

The petitioners were media conglomerates involved in the publication of newspapers. They challenged the restrictions on the import of newsprint under Import Control Order 1955 and on the manner in which this is used by newspapers under the Newsprint Order 1962. Further, the Newsprint Policy of 1972-73 placed further restrictions based on four features: first, no new newspapers may be started by establishments owning more than two newspapers if at least one of which is a daily; second, the total number of pages may not exceed ten; third, the increase in number of pages may not be more than 20% for newspapers that are under ten pages; and, finally, no-interchangeability of newsprint may permitted between different newspapers of the same establishment or between different editions of the same paper. Therefore, the petitioners were not allowed to make adjustments in circulation, etc., under these newsprint policies even within the quota limit. This was challenged for violation of Article 19(1)(a) of the Indian Constitution.

The Supreme Court of India accepted petitioners' challenges that certain restrictions and regulations on newspapers affected the right to freedom of speech and expression. The petitioners challenged the restrictions on the import of newsprint under Import Order 1955; the regulation of sale, acquisition, and use of newsprint under Newsprint Order 1962; and the direct regulation of size and circulation of newspapers under the Newsprint Policy of 1972-73. The Court found that because the freedom of the press involved both qualitative and quantitative dimensions, the Newsprint Policy was unconstitutional as its quantitative restrictions were not justified by a shortage of newsprint; the Newsprint Order and Import Control Order were not struck down.

On merits, the Court noted that freedom of the press was an essential element of Article 19(1)(a) and the absence of an express mention of such freedoms as a special category was irrelevant. Free press was to be regarded as an essential element of freedom of expression in general. The Court also observed that shortage of newsprint could be tackled by fixing the quotas. However, direct interference in terms of page limits and other such regulation was not justified. The page limit meant that the newspapers would either lose economic viability due to reduction in advertisements or be forced to reduce news content. This would limit freedom of expression because, in the first case, circulation would drop due to increased costs, and, in the second, there were quantitative restrictions on content.

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JUDGMENTS IN DETAIL

. The court cited *Express Newspapers (Private) Ltd. & Anr. v. The Union of India & Ors.*[1] and *Sakal Papers Ltd. & Ors. v. The Union of India[2]* as reference and said that in these cases, the court observed that all the petitioners in those cases like shareholders, editors, deputy editors and readers etc., were all Indian citizens. Now the question that arises is whether in cases where one of the shareholders is not an Indian or is a correspondent of a foreign press in India or a head of its bureau in India, what stand the court will take is an important question. What is indeed unfathomable is the restriction of common ownership unit from starting a new newspaper periodical or a new edition or remark X which is also violative of article 19(1)(a).

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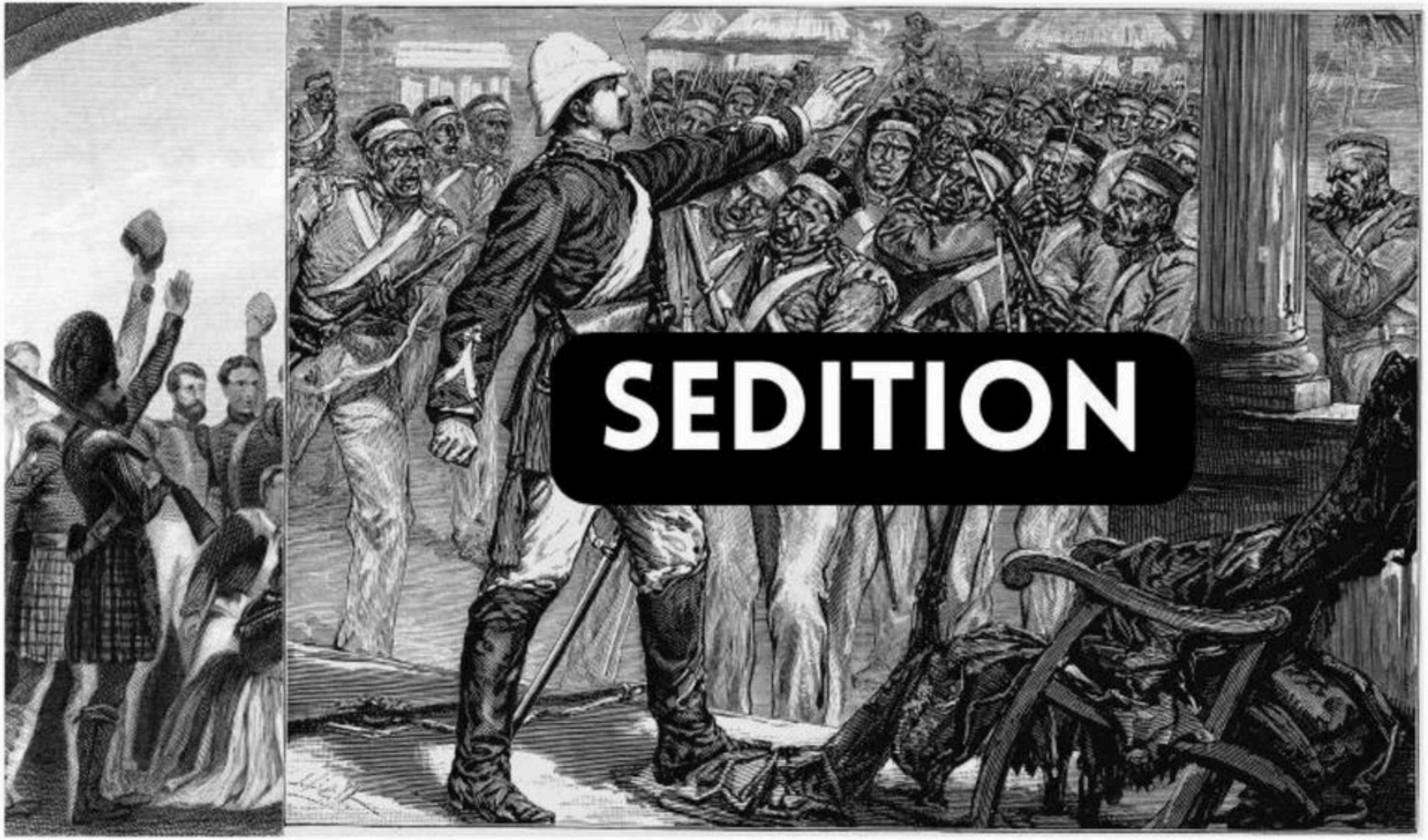

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Explained: When were Tilak and Gandhi tried under the sedition law?

The sedition law which is enshrined in Section 124A of the Indian Penal Code (IPS) was introduced by the British government in 1870 to tackle dissent against colonial rule.

By: Explained Desk | New Delhi |
Updated: July 17, 2021 8:51:18 am

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The Indian Penal Code

(45 of 1860)

as amended by

The Jammu and Kashmir Reorganisation Act, 2019
(34 of 2019) (w.e.f. 31-10-2019)

and

- Classification of Offences
- Subject Index

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Section 124A in The Indian Penal Code

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[101] [124A. Sedition.—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, [102] [***] the Government established by law in [103] [India], [***] shall be punished with [104] [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. Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity. Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

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BREAKING NEWS

Sedition law colonial, is it still needed... concerned over misuse: Supreme Court

The apex court said it will examine the validity of the sedition law and sought the Centre's response over it.

Home / Opinion / Columns / Distinction between free speech, sedition is being lost sight of by establishment

Distinction between free speech, sedition is being lost sight of by establishment

Madan B Lokur writes: It is time for the establishment to realise that the people of this country mean well, and in any democracy, there are bound to be different points of view.

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124-A IS CONSTITUTIONAL

Supreme Court of India

Kedar Nath Singh vs State Of Bihar on 20 January, 1962

Equivalent citations: 1962 AIR 955, 1962 SCR Supl. (2) 769

Author: B P Sinha

Bench: Sinha, Bhuvneshwar P.(Cj), Das, S.K., Sarkar, A.K., Ayyangar, N. Rajagopala, Mudholkar, J.R.

PETITIONER:
KEDAR NATH SINGH

Vs.

RESPONDENT:
STATE OF BIHAR

Kedar Nath Vs State of Bihar (1962): The **constitutionality of sedition** was challenged. The Supreme Court **upheld the law** on the basis that this power was required by the state to protect itself.

- However, it had **added a vital caveat that "a person could be prosecuted for sedition only if his acts caused incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace".**

In **Balwant Singh v. State of Punjab (1995):** Supreme Court had clarified that **merely shouting slogans does not amount to sedition.**

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BREAKING NEWS

On Sedition Law, Centre's Big Shift In Court After PM's Instructions

The Supreme Court had asked the government last year why it was not repealing the sedition law used by the British to silence people like Mahatma Gandhi.

All India | Reported by Akhilesh Sharma, Sukirti Dwivedi, Edited by Divyanshu Dutta Roy | Updated: May 09, 2022 5:50 pm IST

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BREAKING NEWS

In a new affidavit filed in the Supreme Court, the centre said, "In the spirit of Azadi ka Amrit Mahotsav (75 years of Independence) and the vision of PM Narendra Modi, the Government of India has decided to re-examine and reconsider the provisions of Section 124A, Sedition law."

Asserting that PM Modi was "cognizant of various views on sedition" and "in favour of defending civil liberties", the government urged the Supreme Court to wait for the review by a "competent forum" and urged it to "not invest time" on petitions filed by the Editors' Guild of India, Trinamool MP Mahua Moitra and others.

It added that PM Modi was keen on shedding "colonial baggage" and more than 1,500 outdated laws and over 25,000 compliance burdens had been scrapped since he took office.

Concerned by the widespread misuse of the sedition law, the top court in July last year had asked the union government why it was not repealing the provision used by the British to silence the likes of Independence icon Mahatma Gandhi.

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REFORMS

- In its **39th Report (1968)**, the Law Commission had rejected the idea of repealing the section.
- In its **42nd Report (1971)**, the panel wanted the scope of the section to be expanded to cover the Constitution, the legislature, and the judiciary, in addition to the government established by law.
- In 2018, the Law Commission of India **published a consultation paper recommending that it is time to re-think or repeal the Section 124A of the Indian Penal Code** that deals with sedition.
- In the recent consultation paper on the sedition, the **Law Commission has suggested invoking 124A to only criminalize acts** committed with the intention to disrupt public order or to overthrow the Government with violence and illegal means.

Solicitor General Tushar Mehta on Tuesday, May 10, told the Supreme Court that the Centre was in the process of reconsidering the sedition law. Mehta's submission came during a hearing on the Constitutional validity of the sedition law.

Mehta was replying to a question by a CJI NV Ramana-led three-judge bench. "How much time would the Centre take to reconsider the sedition law," the bench asked.

The SG replied: "It is difficult to predict a time frame. But the process has started. You must see the tenor of the affidavit. It's not just coming from the department. There is application of mind."

Will you hold sedition law till review done: SC asks Centre, wants reply by tomorrow

Solicitor General Tushar Mehta has submitted in the Supreme Court that the central government has started the process to reconsider the sedition law in India.

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Is the freedom of speech absolute?

Understanding the constitutional and legal definitions as well as restrictions of free speech

ABHILASH M. R

In the wake of the war cry targeting minorities at a religious congregation in Haridwar, it's high time India recognised hate speech as the vilest affront and the greatest dishonour to the freedom of speech as conceived and cherished by the Indian Constitution. Hate Speech as defined by the 267th report of the Law Commission of India is "an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like". Any attempt to casually pass off such demagogic claptrap under the political tapestry of free speech in an election-bound State (Uttarakhand) amounts to the denial of all that the Constitution of India represents.

The debates on limits to Free Speech

As the Constituent Assembly deliberated on Article 13 of the draft Constitution, which would later become Article 19 in the enacted Constitution, intense apprehensions were expressed on the proposed proviso to Article 13 listing restrictions to the freedom of speech and expression. These restrictions finally became Article 19(2). The exceptions under the same clause fell under four broad categories: "libel , slander, defamation", "contempt of court", "offends against decency or morality" and "undermines the security of or tends to overthrow the state." The proposed restrictions were resisted on the ground that these sought to rein in free speech and are not seen in the American Constitution, which had tremendously inspired members of the Constituent Assembly. Dr. Ambedkar sought to douse the fire of concern by declaring, "It is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution."

The First Amendment

As the original text of Article 19(2) did not contain the term 'public order', the pre-publication ban on newspapers/weeklies in Delhi and Madras under the state laws were invalidated by the Supreme Court on the ground that the amplitude of the restriction under Article 19(2) did not cover "public order". This prompted Parliament to amend Article 19(2) by way of The Constitution(First Amendment) Act, 1951, to include 'public order' among other additional grounds, but with a general rider that such a law shall impose (only) "reasonable restrictions".

Jawaharlal Nehru, the protagonist of the proposal, defended the First Amendment. In his address to Parliament, he said, "It has become a matter of the deepest distress to me to see from day to day some of these news-sheets which are full of vulgarity and indecency and falsehood, day after day, not injuring me or this House much, but poisoning the minds of the younger generation, degrading their mental integrity and moral standards. It is not for me a political problem but a moral problem. How are we to save our younger generation from this progressive degradation and the progressive poisoning of the mind and spirit?" The laws enacted under the 'public order' restriction included Section 153A , Section 153B, Section 295A and Section 502(2) of the Indian Penal code. However, the mesh of law was perforated by weak as well as selective enforcement.

The Supreme Concern

In *Pravasi Bhalai Sangathan vs Union of India & Ors.(2014)* the Supreme Court said: "Hate speech is an effort to marginalise individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimise group members in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech, therefore, rises beyond causing distress to individual group members. It can have a societal impact. Hate speech lays the groundwork for later, broad attacks on [the] vulnerable that can range from discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide. Hate speech also impacts a protected group's ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy."

On the proliferation of hate speech, the Supreme Court pointed out that "the root of the problem is not the absence of laws but rather a lack of their effective execution. Therefore, the executive as well as civil society has to perform its role in enforcing the already existing legal regime. Effective regulation of "hate speeches" at all levels is required as the authors of such speeches can be booked under the existing penal law and all the law enforcing agencies must ensure that the existing law is not rendered a dead letter."

Further, the Supreme Court requested the Law Commission of India to examine the issue. The 267th report of the Law Commission was of the clear opinion that new provisions in IPC were required to address the issue.

It suggested the insertion of new Sections 153C (prohibiting incitement to hatred) and section 505A (causing fear, alarm, or provocation of violence in certain cases) to curb the menace of hate speech.

Despite a draft Bill being annexed to the report, none has been presented to Parliament so far.

Neither has the law been strengthened, nor the existing law strongly enforced. This sums up the citizens' predicament

Abhilash M.R is lawyer practising in the Supreme Court.

No to hate: Various activists shout slogans during a protest against hate speech in New Delhi, on December 27, 2021. • AP

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How is it treated in Indian law?

Sections 153A and 505 of the Indian Penal Code are generally taken to be the main penal provisions that deal with inflammatory speeches and expressions that seek to punish 'hate speech'.

Under Section 153A, 'promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony', is an offence punishable with three years' imprisonment. It attracts a five-year term if committed in a place of worship, or an assembly engaged in religious worship or religious ceremonies.

Section 505 of IPC makes it an offence to making "statements conducing to public mischief". The statement, publication, report or rumour that is penalised under Section 505(1) should be one that promotes mutiny by the armed forces, or causes such fear or alarm that people are induced to commit an offence against the state or public tranquillity; or is intended to incite or incites any class or community to commit an offence against another class or community. This attracts a jail term of up to three years. Under 505(2), it is an offence to make statements creating or promoting enmity, hatred or ill-will between classes. Under subsection (3), the same offence will attract up to a five-year jail term if it takes place in a place of worship, or in any assembly engaged in religious worship or religious ceremonies.

> The Law Commission has proposed that separate offences be added to the IPC to criminalise hate speech instead of being subsumed in existing sections. It has proposed the addition of two new sections

What has the Law Commission proposed?

The Law Commission has proposed that separate offences be added to the IPC to criminalise hate speech quite specifically instead of being subsumed in the existing sections concerning inflammatory acts and speeches. It has proposed that two new sections, Section 153C and Section 505A, be added.

Its draft says Section 153C should make it an offence if anyone (a) uses gravely threatening words, spoken or written or signs or visible representations, with the intention to cause fear or alarm; or (b) advocates hatred that causes incitement to violence, on grounds of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe. It proposes a two-year jail term for this and/or a fine of ₹5,000 or both.

Its draft for Section 505A proposes to criminalise words, or display of writing or signs that are gravely threatening or derogatory, within the hearing or sight of a person, causing fear or alarm or, with intent to provoke the use of unlawful violence against that person or another". It proposes a prison term of up to one year and/or a fine up to ₹5,000 or both.

Similar proposals to add sections to the IPC to punish acts and statements that promote racial discrimination or amount to hate speech have been made by the M.P. Bezbaruah Committee and the T.K. Viswanathan Committee. At present, the Committee for Reforms in Criminal Laws, which is considering more comprehensive changes to criminal law, is examining the issue of having specific provisions to tackle hate speech.

What is 'hate speech'?

There is no specific legal definition of 'hate speech'. Provisions in law criminalise speeches, writings, actions, signs and representations that foment violence and spread disharmony between communities and groups and these are understood to refer to 'hate speech'.

The Law Commission of India, in its 267th Report, says: "Hate speech generally is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like ... Thus, hate speech is any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence."

In general, hate speech is considered a limitation on free speech that seeks to prevent or bar speech that exposes a person or a group or section of society to hate, violence, ridicule or indignity.

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MAINS

What do you understand by the concept "freedom of speech and expression"? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss.	2014
Discuss Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution.	2013

19. PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH ETC

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(1) ALL CITIZENS SHALL HAVE THE RIGHT

(B) TO ASSEMBLE PEACEABLY AND WITHOUT ARMS;

REASONABLE RESTRICTIONS IN THE INTERESTS OF THE SOVEREIGNTY AND INTEGRITY OF INDIA OR PUBLIC ORDER,

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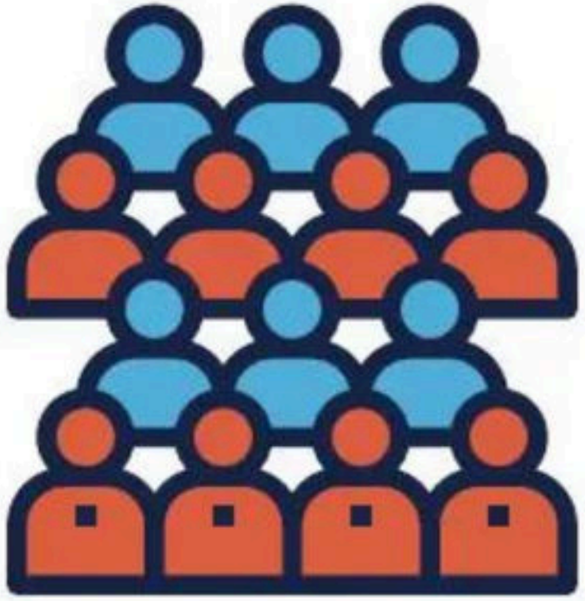
FREEDOM OF ASSEMBLY

- MARCHES/PROCESSIONS/RALLIES
- RIGHT TO STRIKE? NO
- PEACEABLE!
- SECTION 144 CR.P.C.



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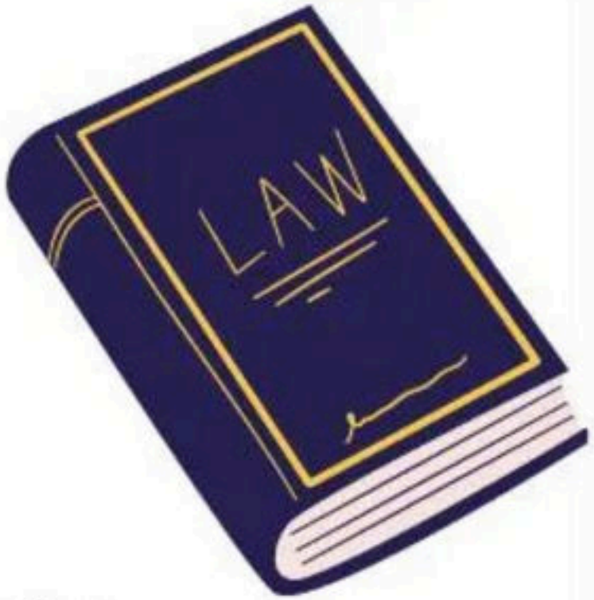
WHAT IS THE LAW?



Central Government Act

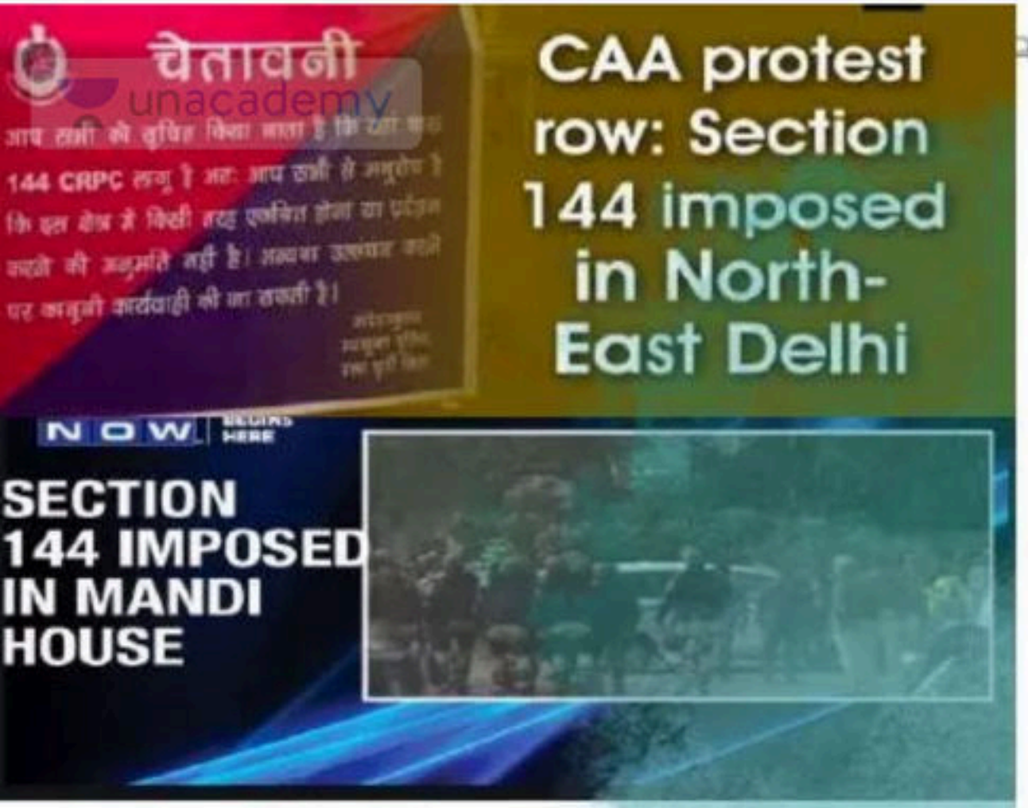
Section 144 in The Code Of Criminal Procedure, 1973

144. Power to issue order in urgent cases of nuisance of apprehended danger.

(1) In cases where, in the opinion of a District Magistrate, a Sub- divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, of an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.



CP / XI (6) /144 / (12)/ 2023

THE COMMISSIONER OF POLICE, GREATER MUMBAI

ORDER

(UNDER SECTION 144 OF CRIMINAL PROCEDURE CODE, 1973)

1. WHEREAS, it is likely that terrorist / anti-national elements might make use of drones, remote controlled micro-light aircrafts, para-gliders in their attacks and thereby target VVIPs, endangering the life of public at large, destroy public property and cause disturbance to law and order in the Brihanmumbai Police Commissionerate area;

2. WHEREAS it has become necessary that certain restrictions should be put on the activities of such elements across the Brihanmumbai Police Commissionerate to prevent probable sabotages through such drones, remote controlled micro-light aircrafts, para-gliders, for which some preventive and proactive measures needed be taken to prevent the same;

3. THEREFORE, I, **Vishal Thakur, Dy. Commissioner of Police (Operations), Brihanmumbai** and Executive Magistrate, vide powers conferred upon me under section 144 of the Criminal Procedure Code, 1973 (Act II of 1974), do hereby order that no flying activities of drone, remote controlled micro-light aircrafts, para-gliders, Para Motors, Hand gliders, Hot air balloons, etc. shall be allowed in the jurisdiction of Brihanmumbai Police Commissionerate for the period of next 30 Days, i.e. **from 20/12/2023 to 18/01/2024** except for aerial surveillance by Mumbai Police or by specific permission in writing by Dy. Commissioner of Police (Operations), Brihanmumbai.

4. This order shall remain in force with effect **00.01 hrs. of 20/12/2023 till 24.00 hrs. of 18/01/2024** unless withdrawn earlier.

5. Any person contravening this order shall be punishable under Section 188 of the Indian Penal Code, 1860.

6. As the notice cannot be served individually to all concerned, the order is hereby passed ex-parte. It shall be published for the information of public, through press and by affixing copies on the Notice Boards of the police stations, Divisional ACsP, Zonal DCsP, Municipal Ward offices, and by affixing copies at Tahsil and Ward offices.

Given under my hand and seal on the 13th day of the December, 2023.

Office of the Commissioner of Police, Brihanmumbai.

13.12.23

(Vishal Thakur)
Dy. Commissioner of Police (Operations), and Executive Magistrate Greater Mumbai.

'Peaceful Protest One's Constitutional Right' : Former CJI UU Lalit Raises Concerns About Rampant Use Of Section 144 CrPC In Delhi

Awstika Das
27 Mar 2023 10:34 AM

'Conferring drastic powers upon the executive through Section 144 unacceptable'

Former CJI U.U. Lalit says current state of affairs requires 'urgent steps'; he was speaking at launch of a report which states that prohibitory orders were issued 6,100 times in national capital in 2021

March 27, 2023 02:01 am | Updated 08:29 am IST – New Delhi

MEHUL MALPANI

COMMENTS SHARE READ LATER

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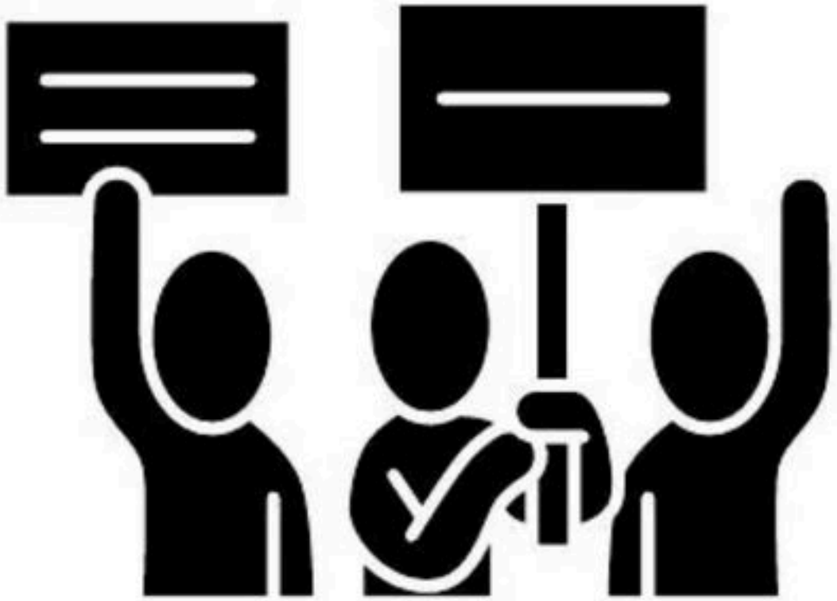


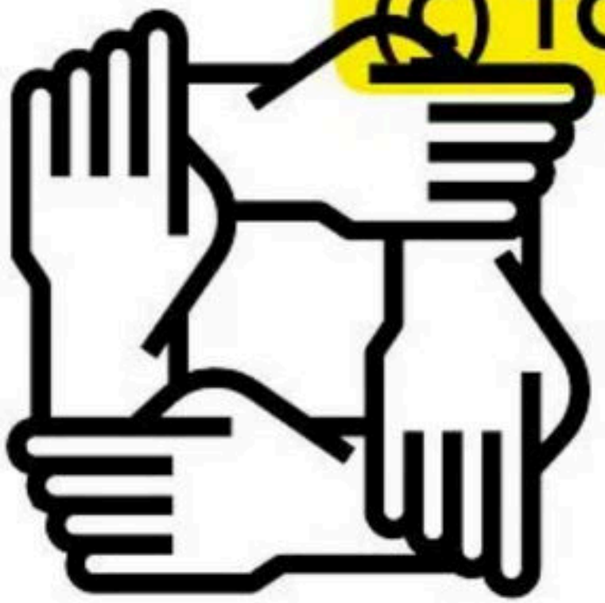
DOES NOT COVER-RIGHT TO STRIKE

DON'T FORGET

19. PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH ETC

(1) ALL CITIZENS SHALL HAVE THE RIGHT

(C) TO FORM ASSOCIATIONS OR UNIONS;



REASONABLE RESTRICTIONS IN THE INTERESTS OF THE SOVEREIGNTY AND INTEGRITY OF INDIA OR PUBLIC ORDER OR MORALITY,

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FREEDOM OF ASSOCIATION

- GROUPS/ASSOCIATIONS/POLITICAL PARTIES
- COOPERATIVE SOCIETIES-97 CAA 2011
- UNLAWFUL ACTIVITIES PREVENTION ACT
- BANNED ORGANISATIONS

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THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

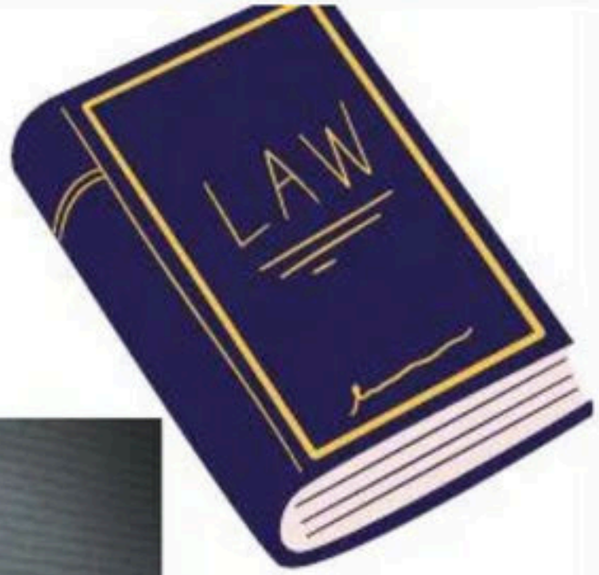
SECTIONS

1. Short title, extent and application.
2. Definitions.

CHAPTER II

UNLAWFUL ASSOCIATIONS

3. Declaration of an association as unlawful.
4. Reference to Tribunal.
5. Tribunal.
6. Period of operation and cancellation of notification.
7. Power to prohibit the use of funds of an unlawful association.



19. PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH ETC

(D) TO ' (1) ALL CITIZENS SHALL HAVE THE RIGHT ORY OF INDIA;

REASONABLE RESTRICTIONS IN THE INTERESTS OF THE GENERAL PUBLIC
OR FOR THE PROTECTION OF THE INTERESTS OF ANY SCHEDULED TRIBE

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FREEDOM OF MOVEMENT

- WITHIN INDIA-OUTSIDE INDIA-IS 21
- NO EXPRESS OR IMPLICIT BAR
- CURFEW!

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REASONABLE-HENCE ALLOWED

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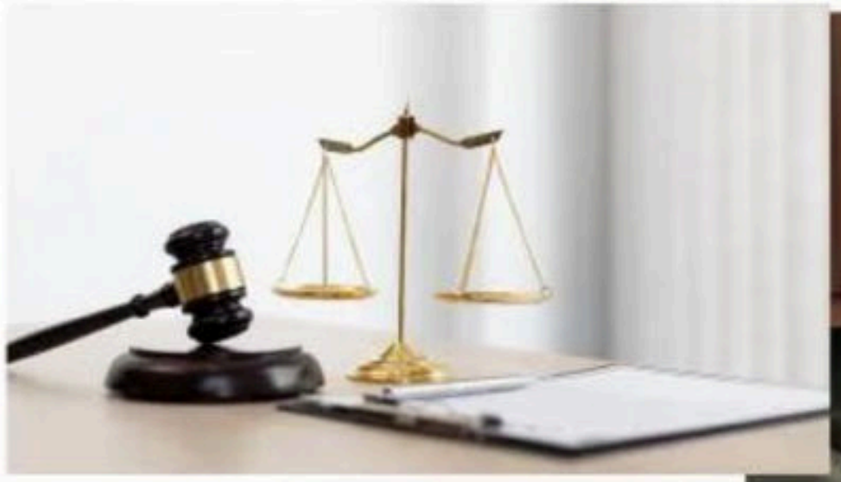
REASONABLE-HENCE ALLOWED

Making FASTag Mandatory Won't Breach Right To Freedom Of Movement: Centre

The Centre made the submission in an affidavit filed in the High Court last week in response to a public interest litigation challenging its decision to make FASTag, the electronic toll collection chip, mandatory for all vehicles at toll plazas on national highways.

India News | Press Trust of India | Updated: April 14, 2021 3:20 pm IST



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(1) ALL CITIZENS SHALL HAVE THE RIGHT

(E) TO RESIDE AND SETTLE IN ANY PART OF THE TERRITORY OF INDIA;

REASONABLE RESTRICTION IN THE INTERESTS OF THE GENERAL PUBLIC OR FOR THE PROTECTION OF THE INTERESTS OF ANY SCHEDULED TRIBE

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OLD STORY

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ARTICLE 35-A

ARTICLE 35A IS AGAINST THE "VERY SPIRIT OF ONENESS OF INDIA" AS IT CREATES A "CLASS WITHIN A CLASS OF INDIAN CITIZENS"?

J&K LEGISLATURE TO DEFINE STATE'S "PERMANENT RESIDENTS" AND THEIR SPECIAL RIGHTS AND PRIVILEGES.

ONLY PERMANENT RESIDENTS CAN ACQUIRE IMMOVABLE PROPERTY, GOVT. JOBS, SCHOLARSHIPS.

HISTORY

Image credit: LSTV

Article 370, Jammu and Kashmir: Home Minister Amit Shah moves resolution in Lok Sabha.

05 AUG 2019

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(1) ALL CITIZENS SHALL HAVE THE RIGHT

(G) TO PRACTISE ANY PROFESSION, OR TO CARRY ON ANY OCCUPATION, TRADE OR BUSINESS

REASONABLE RESTRICTIONS IN THE INTERESTS OF THE GENERAL PUBLIC(I) THE PROFESSIONAL OR TECHNICAL QUALIFICATIONS NECESSARY FOR PRACTISING ANY PROFESSION OR CARRYING ON ANY OCCUPATION, TRADE OR BUSINESS, OR

(II) THE CARRYING ON BY THE STATE, OR BY A CORPORATION OWNED OR CONTROLLED BY THE STATE, OF ANY TRADE, BUSINESS, INDUSTRY OR SERVICE, WHETHER TO THE EXCLUSION, COMPLETE OR PARTIAL, OF CITIZENS OR OTHERWISE

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OLD STORY

Supreme Court of India
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Bhikaji Narain Dhakras And Others vs The State Of Madhya Pradesh And ... on 29 September, 1955

Equivalent citations: 1955 AIR 781, 1955 SCR (2) 5

Author: S R Das

Bench: Das, Sudhi Ranjan, Bhagwati, Natwarlal Jaffer, Aiyar, N. Chandrasekhara

PETITIONER:
BHIKAJI NARAIN DHAKRAS AND OTHERS

Vs.

RESPONDENT:
THE STATE OF MADHYA PRADESH AND ANOTHER

DATE OF JUDGMENT:
29/09/1955

ACT:
Fundamental Rights, Infrigement of -- Law void for inconsistency--'Void', Meaning of-Removal of inconsistency by amendment of the Constitution, if revivifies the law-Constitution of India as amended by the constitution (First Amendment) Act, 1951 and the Constitution (Fourth Amendment) Act, 1955, Arts. 13, 19(6), 31(2)-C.P. & Berar Motor Vehicles (Amendment) Act, 1947 (Act III of 1948).

HEADNOTE:
The petitioners who carried on their business as stage carriage operators of Madhya Pradesh for a considerable number of years challenged the constitutional validity of the C.P. & Berar Motor Vehicles (Amendment) Act, 1947 (Act III of 1948) which amended the Motor Vehicles Act, 1939 (Central Act IV of 1939) and conferred extensive powers on the Provincial Government including the power to create a monopoly of the motor transport business in its favour to the exclusion of all motor transport operators. In exercise of the powers conferred by new s. 43(1)(iv) a notification was issued on the 4th of February, 1955, declaring the intention of the Government to take up certain routes. The case of the petitioners was that the passing of the Constitution and the grant of fundamental rights rendered the Act void under Art. 13(1) being inconsistent with the provisions of Arts. 19(1)(g) and 31(2) and reliance was

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AIR 1955 SUPREME COURT 781 ::1956 SCJ 48

Supreme Court Of India

HON'BLE JUDGE(S): S. R. DAS, N. H. BHAGWATI, T. L. VENKATARAMA AYYAR, S. JAFER IMAM, N. CHANDRASEKHARA AIYAR , JJJ

(A) Constitution of India , Art.13, Art.19(1)(g), Art.19(6), Art.31(2)— C. P. and Berar Motor Vehicles (Amendment) Act - Constitutional validity. C.P. and Berar Motor Vehicles (Amendment) Act (3 of 1948) , — The impugned Act was an existing law at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed to the citizens of India by Art. 19 (1)(g) restrictions which could not be justified as reasonable under cl. (6) as it then stood and consequently under Art. 13(1) that existing law became void "to the extent of such inconsistency, that is to say, to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens. The law continued in force, even after the commencement of the Constitution with respect to persons who were not citizens and could not claim the fundamental right. Nevertheless, after 18-6-1951 when cl. (6) was amended by the Constitution (First Amendment) Act,1951 the impugned Act ceased to be inconsistent with the fundamental rights guaranteed by Art. 19(1)(g) read with the amended clause (6) of that Article, because that clause, as it now stands, permits the creation by law State monopoly in respect, inter alia, of motor transport business and it became operative again even as against the citizens.(Para 8 ....

THE CONSTITUTION (FIRST AMENDMENT) ACT, 1951

THE CONSTITUTION (FIRST AMENDMENT) ACT, 1951

Statement of Objects and Reasons appended to the Constitution (First Amendment) Bill, 1951 which was enacted as the Constitution (First Amendment) Act, 1951

STATEMENT OF OBJECTS AND REASONS

During the last fifteen months of the working of the Constitution, certain difficulties have been brought to light by judicial decisions and pronouncements specially in regard to the chapter on fundamental rights. The citizen's right to freedom of speech and expression guaranteed by article 19(1)(a) has been held by some courts to be so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence. In other countries with written constitutions, freedom of speech and of the press is not regarded as debarring the State from punishing or preventing abuse of this freedom. The citizen's right to practise any profession or to carry on any occupation, trade or business conferred by article 19(1)(g) is subject to reasonable restrictions which the laws of the State may impose "in the interests of general public". While the words cited are comprehensive enough to cover any scheme of nationalisation which the State may undertake, it is desirable to place the matter beyond doubt by a clarificatory addition to article 19(6). Another article in regard to which unanticipated difficulties have arisen is article 31. The validity of agrarian reform measures passed by the State Legislatures in the last three years has, in spite of the provisions of clauses (4) and (6) of article 31, formed the subject-matter of dilatory litigation, as a result of which the implementation of these
important measures, affecting large numbers of people, has been held up.

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DOCTRINE OF ECLIPSE

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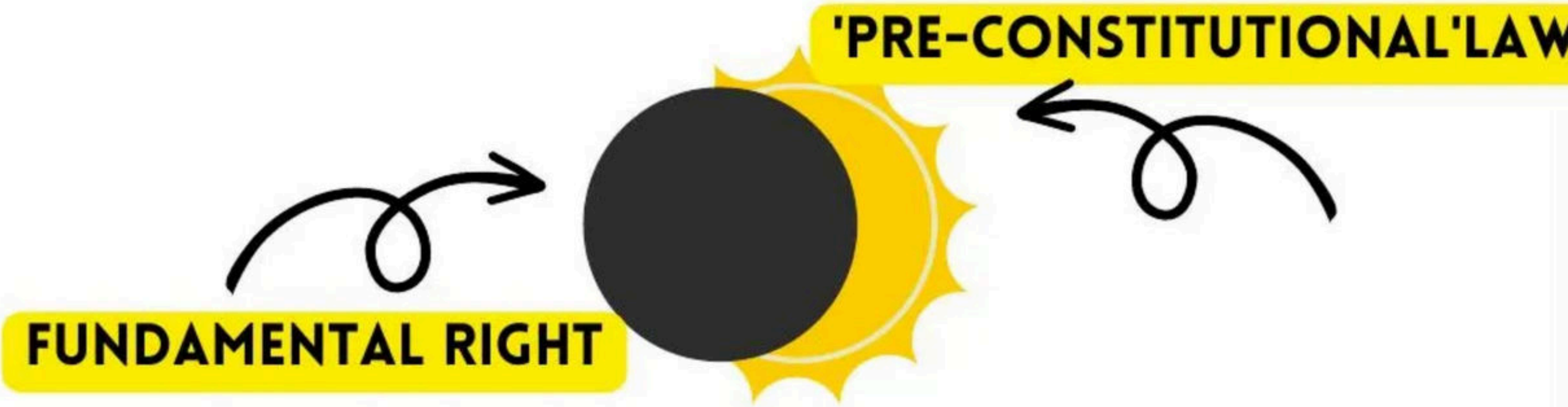

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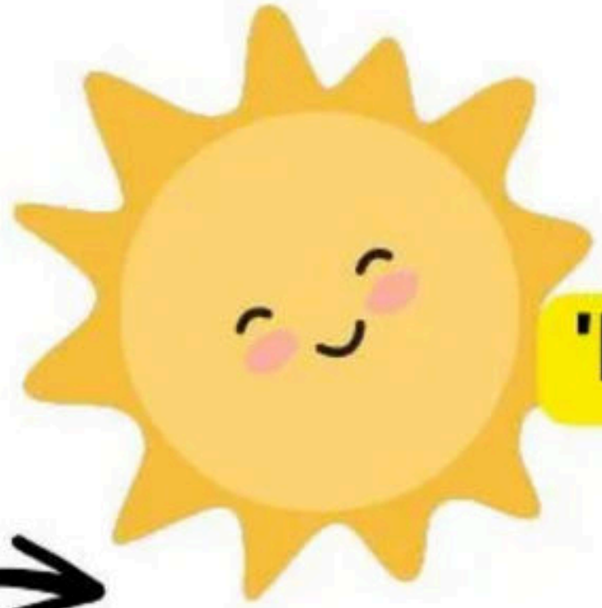

'PRE-CONSTITUTIONAL'LAW

AFTER AMENDING FUNDAMENTAL RIGHT- THE SHADOW IS REMOVED

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THE DOCTRINE OF ECLIPSE IS A LEGAL DOCTRINE THAT STATES THAT A LAW THAT IS INCONSISTENT WITH A FUNDAMENTAL RIGHT IS NOT INVALID. IT IS NOT TOTALLY DEAD BUT OVERSHADOWED BY THE FUNDAMENTAL RIGHT. THE INCONSISTENCY (CONFLICT) CAN BE REMOVED BY CONSTITUTIONAL AMENDMENT. THE AMENDMENT TO THE RELEVANT FUNDAMENTAL RIGHT WILL REMOVE THE ECLIPSE AND THE ENTIRE LAW BECOMES VALID. THE DOCTRINE OF ECLIPSE IS BASED ON THE PRINCIPLE THAT FUNDAMENTAL RIGHTS ARE PROSPECTIVE IN NATURE. THIS MEANS THAT FUNDAMENTAL RIGHTS ONLY APPLY TO LAWS THAT ARE PASSED AFTER THE FUNDAMENTAL RIGHTS COME INTO FORCE. PRE-CONSTITUTIONAL LAWS ARE NOT SUBJECT TO FUNDAMENTAL RIGHTS SCRUTINY.

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20-21-21A-22-CRIMINAL LAW IN SEPARATE PART

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ARTICLE-23 PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR

(1) TRAFFIC IN HUMAN BEINGS AND BEGAR AND OTHER SIMILAR FORMS OF FORCED LABOUR ARE PROHIBITED AND ANY CONTRAVENTION OF THIS PROVISION SHALL BE AN OFFENCE PUNISHABLE IN ACCORDANCE WITH LAW

(2) NOTHING IN THIS ARTICLE SHALL PREVENT THE STATE FROM IMPOSING COMPULSORY SERVICE FOR PUBLIC 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

Article 23 explicitly prohibits the following practices amongst others:

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Begar: This is a form of forced labour which means involuntary work without any remuneration. In other words, it can be said that a person is compelled to work against his will without being paid for it.

Bonded Labour: Article 23 prohibits bonded labour as it is a form of forced labour as per this Article. This is a practice under which a person is forced to work to pay off his debt.

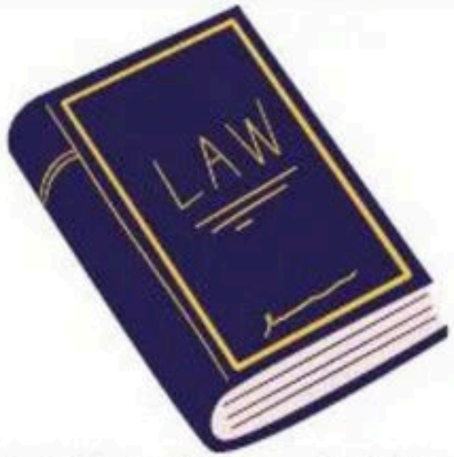
Human trafficking: It means selling and buying of a human being like goods and includes immoral trafficking of women and children.

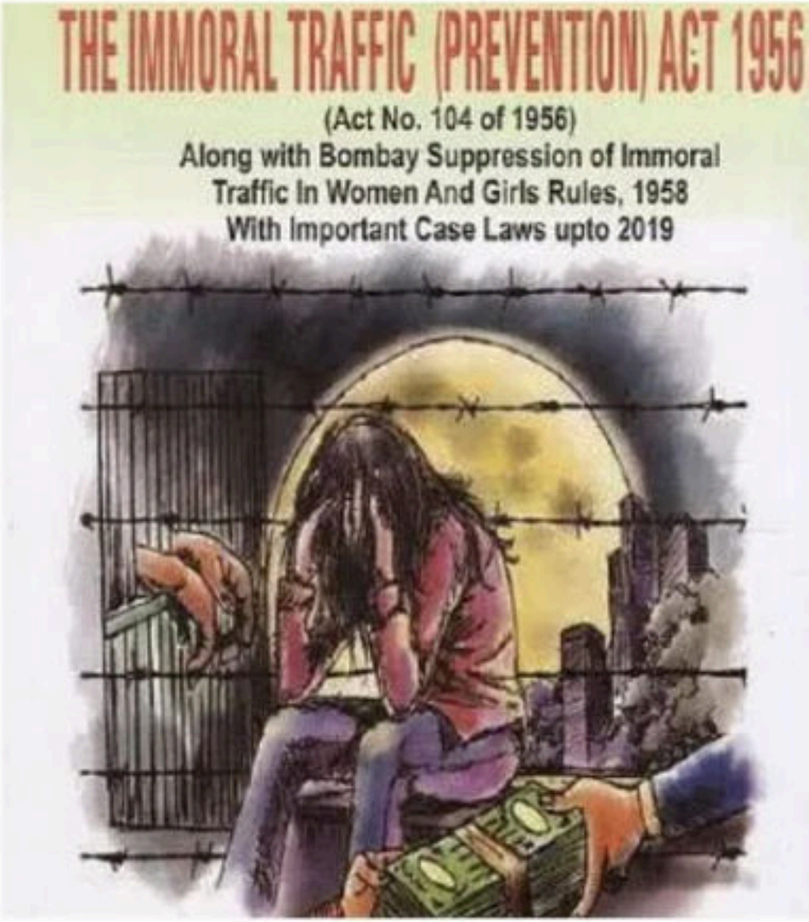
Although, slavery is not expressly mentioned under Article 23, it is included within the meaning of 'traffic in human beings'. In pursuance of ARTICLE 23, Parliament has passed the **Immoral Trafficking (Prevention) Act, 1956** for punishing human trafficking.

BONDED LABOUR
HUMAN TRAFFICKING
BEGAR
FORCED LABOUR
DEVADASI SYSTEM
FORCED PROSTITUTION
TRAFFIC OF HUMAN BEINGS- BUY SELL

Central Government Act
unacademy

The Immoral Traffic (Prevention) Act, 1956





The Immoral Traffic (Prevention) Act, 1956

1. Short title, extent and commencement.—

(1) This Act may be called [1] [the Immoral Traffic (Prevention)] Act, 1956.—(1) This Act may be called 3[the Immoral Traffic (Prevention)] Act, 1956."

(2) It extends to the whole of India.

(3) This section shall come into force at once; and the remaining provisions of this Act shall come into force on such date [2] as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "brothel" includes any house, room, [3] [conveyance] or place or any portion of any house, room, [3] [conveyance] or place, which is used for purposes [4] [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes;

[5] [(aa) "child" means a person who has not completed the age of sixteen years;] [3] [[[6] (b)] "corrective institution" means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which [7] [persons], who are in need of

THE MINIMUM WAGES ACT, 1948

ACT NO. 11 OF 1948 1*

[15th March, 1948.]

An Act to provide for fixing minimum rates of wages in certain employments.

WHEREAS it is expedient to provide for fixing minimum rates of wages in certain employments;

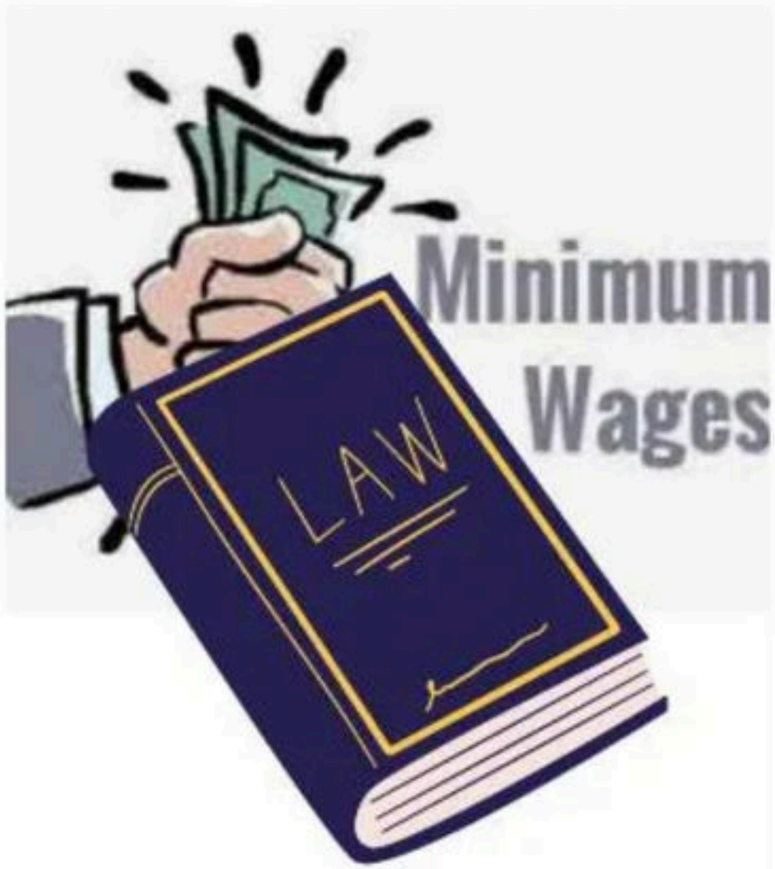
It is hereby enacted as follows:--

1.

Short title and extent.

1. Short title and extent.-(1) This Act may be called the Minimum Wages Act, 1948.

(2) It extends to the whole of India 2***.



OBJECTIVE

- To provide minimum wages to the workers working in organized sector
- To stop exploitation of the workers
- To empower the government to take steps for fixing minimum wages and to revising it in a timely manner

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CAN THE STATE MAKE 'MILITARY' SERVICE COMPULSORY AS PER ARTICLE 23?

SHOULD EVERY INDIAN BE MADE TO JOIN COMPULSORY MILITARY SERVICE

CAN WE MAKE MILITARY SERVICE COMPULSORY FOR INDIANS?

Published on August 8, 2018

Dr.Sidharth Arora Follow
Advocate Supreme Court of I...

YES-WE CAN

The idea

The Indian Parliamentary Committee on Defence's recommended in early 2018, to introduce five years of compulsory military service to such aspirants who plan to join Central and State Government Gazetted services directly. The reason attributed was to make-up for the shortage of personnel in the armed forces.

Taking a leaf from this suggestion, we can extend it for a larger canvas :

"Compulsory Skilling program for Indian youth, through compulsory defence service."

- create a program to have all Grade-12 pass-outs in India or those aged 18, whichever is earlier, to compulsory enrol into a 2-year Compulsory Defence Services.
- These 2-year programs can have part-skills and part-diploma program built into it; those who want to continue further in the defence forces, can complete the diploma into a degree program or even PG. This would add to motivated and educated defence forces; those who leave after 2 years compulsory program, would benefit from the value-system and the discipline of the defence forces and their skilling program in that training would come handy for their employment or further education or self-employment utilising their skills.
- The 2-year program can have skills based training that would help those who leave the service to become self-employed. This would need increased grants for defence forces from Ministry of skilling, to skill the youth, through the disciplined defence forces ecosystem.
- Those who continue their stint with defence services (after the compulsory service) can be helped by integrating this idea into the tertiary education policy.

Conscription in Israel

Conscription exists in Israel for all Israeli citizens over the age of 18, although non-Druze Arab citizens of Israel are exempt; other exceptions are made on religious, physical or

A FEW COUNTRIES HAVE MADE 'MILITARY' SERVICE COMPULSORY. <u>CONSCRIPTION SYSTEM</u>

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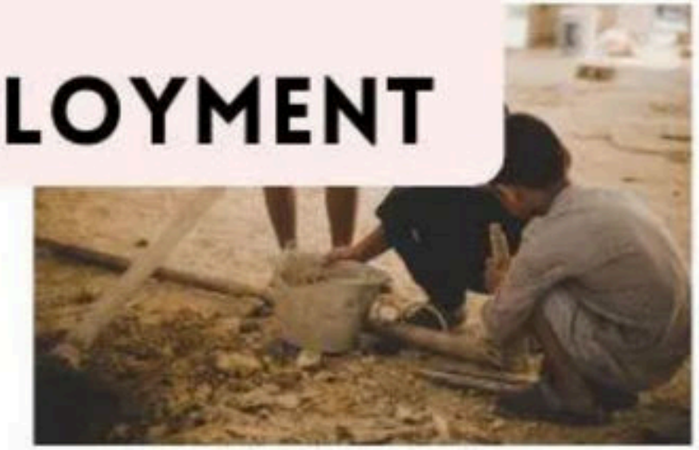
ARTICLE-24 PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES, ETC

NO CHILD BELOW THE AGE OF FOURTEEN YEARS

SHALL BE EMPLOYED TO WORK IN ANY FACTORY OR

MINE OR ENGAGED IN ANY OTHER HAZARDOUS

EMPLOYMENT



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THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

(ACT NO. 61 OF 1986)

[23rd December, 1986.]

An Act to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.

Be it enacted by Parliament in the Thirty-Seventh Year of the Republic of India as follows: --

PART I

PRELIMINARY

1. Short title, extent and commencement. — (1) This Act may be called the Child Labour (Prohibition and Regulation) Act, 1986.

(2) It extends to the whole of India.

(3) The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and for different classes of establishments.

SUBSTITUTION OF NEW SECTION FOR SECTION 3: (1) No child shall be employed or permitted to work in any occupation or process. (2) Nothing in sub-section (1) shall apply where the child,— (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations; (b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed: Provided that no such work under this clause shall effect the school education of the child. Explanation.—For the purposes of this section, the expression, (a) "family" in relation to a child, means his mother, father, brother, sister and father's sister and brother and mother's sister and brother; (b) "family enterprise" means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons; (c) "artist" means a

The Child Labour (Prohibition and Regulation) Amendment Act, 2016

FAMILY-OWNED BUSINESS AS WELL AS A-V ENTERTAINMENT INDUSTRY-'AFTER SCHOOL HOURS'

Supreme Court of India

M.C. Mehta vs State Of Tamil Nadu And Others on 10 December, 1996

Author: Hansaria

Bench: Kuldip Singh, B.L. Hansaria, S.B. Majmudar

PETITIONER:

M.C. MEHTA

Vs.

RESPONDENT:

STATE OF TAMIL NADU AND OTHERS

DATE OF JUDGMENT: 10/12/1996

BENCH:

KULDIP SINGH, B.L. HANSARIA, S.B. MAJMUDAR

Supreme Court of India
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Gaurav Jain vs Union Of India & Ors on 9 July, 1997

Bench: K. Ramaswamy

PETITIONER:

GAURAV JAIN

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 09/07/1997

BENCH:

K. RAMASWAMY

ed again; readjusted by economic empowerment, social justice and self-
lity of status, dignity of person in truth and reality and social integration
nagna carta. An article "A Red light trap: Society gives no chance to
a Today' dated July 11, 1988 is founded as source material and has done
he sensitivity of Gaurav to seek improvement of the plight of the
d their progeny. Though Gaurav had asked for establishing separate
e children of the fallen women, this Court after hearing all the State
itories which were then represented through their respective standing
er 15, 1989 in Gaurav Jain vs. Union of India & Ors. [1990 Supp. SCC
en of prostitutes by locating separate schools and providing separate
nterest of the children and the society at large. This Court directed that
m their mothers and be allowed to mingle with others and become a part
he suggestion from the Bar and rejecting the limited prayer of the
ered that "Children of prostitutes should, however, not be permitted to
irable surroundings of prostitute homes". This was felt particularly so in
e body and mind are likely to be abused with growing age for being
of their mothers. While this Court did not accept the plea for separate

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IS 'SLAVERY' ABOLISHED?

The 13th Amendment to the Constitution of the United States

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

'SLAVERY'ABOLISHED EXPRESSLY

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A.23-24 'SLAVERY' ABOLISHED -IMPLIED

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RELIGIOUS RIGHTS

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A·25 A·26 A·27 A28

RIGHTS OF RELIGIOUS FREEDOM.

own brand

⇒ L. T - E - B - F. W

S. D. S

Watchful Anchisal

⇒

Principles Non-Interference

× Anti-Reli × State religion

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A. 25

Freedom of CONSCIENCE

↳ Divinity

Idols
Mantra
e⁻ p⁺ n⁰

Ma
Guru

Babaji
Rima
CEO

X Atheist

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CONSCIENCE.

"manifested."

PROFESS

PRACTISE

PROPAGATE

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ARTICLE 25

(FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE, AND PROPAGATION OF RELIGION)

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SECULARISM

- OWN DEFINITION

LIBERTY OF THOUGHT,

EXPRESSION

BELIEF

FAITH

WORSHIP

Central Government Act
unacademy

Article 25 in The Constitution Of India 1949

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

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

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

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

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

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Art. 25 CONST.

P. + P + ? = one religion.

No of R is art. "PR."

Reasonable Grounds of Restric 26

1. → PUBLIC ORDER. ___

2. → MORALITY ___

3. → HEALTH ___

4. → Any other article in Part 3 of the Const (F.R.)

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25

Conscience
P-I-P

Indic.

R.G.R. — PO

M.

H

Any article

26.

I To manage Roy Al

Group — R.D.

— PO

— M

— H

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ARTICLE 25(1)

SUBJECT TO PUBLIC ORDER, MORALITY AND HEALTH AND TO THE OTHER PROVISIONS OF THIS PART,

ALL PERSONS ARE EQUALLY ENTITLED TO FREEDOM OF CONSCIE AND THE RIGHT FREELY TO PROFESS, PRACTISE AND PROPAGATE RE

A·25(2).

l_1

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A25(1) : Consc. : $\frac{P}{RGR} + \frac{P}{PO} = \frac{P}{M} + \frac{P}{LC}$ Anyone

A25(2) : State + H.PW : PP : "throughout"

A25 : SDAC

M :

= Individual.

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ARTICLE 25(2)

STATE CAN

REGULATING OR RESTRICTING ANY ECONOMIC, FINANCIAL, POLITICAL OR OTHER SECULAR ACTIVITY WHICH MAY BE ASSOCIATED WITH RELIGIOUS PRACTICE;

(B) PROVIDING FOR SOCIAL WELFARE AND REFORM OR THE THROWING OPEN OF HINDU RELIGIOUS INSTITUTIONS OF A PUBLIC CHARACTER TO ALL CLASSES AND SECTIONS OF HINDUS

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" STATE x religion

State => can declare [Hindu Place of Worship]

as a "Public Place" : x can throw open this for all 'classes to Hindus'

A.15

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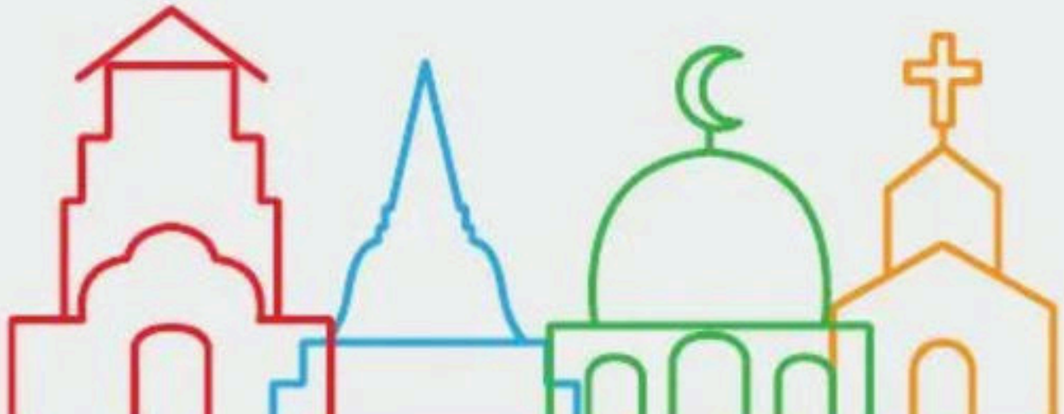
ARTICLE 26

Group

(FREEDOM TO MANAGE RELIGIOUS AFFAIRS)



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Freedom to manage Religious Affairs

Group.

R. D.

↳ "S.C."

"SH. MUTT"

= 1954.

= "D. of Essential"

= Ess. Relig. Pract.

Reasonable Grounds Rest

→ P. O.

→ Morality

→ Health.

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संप्रदाय

RELIGIOUS DENOMINATION

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Central Government Act

Article 26 in The Constitution Of India 1949

26. Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law

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claim.

Rely. Dep

Islam. 2 R.D

Sikh. = Arya Samaj

Certain Criterion] =>

1. Group. ✓
2. Relig. Group ✓
3. UNIQUE Identity ✓
4. " ESSENTIAL RELIGIOUS PRACTICES

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G. RG

EIRP

Un.

R.D.

Will Decide. => ✓ "R.D"

decides ← R.D

↳ or not

G.R.P =

A Secular Org ← S.C.

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↳ भारतीय

भारतीय - में

Ess. R.P.

"धर्म"

X धर्म

↳ Spiritual Journey

R.D.

↳ disable incomplete

Religious Practice.

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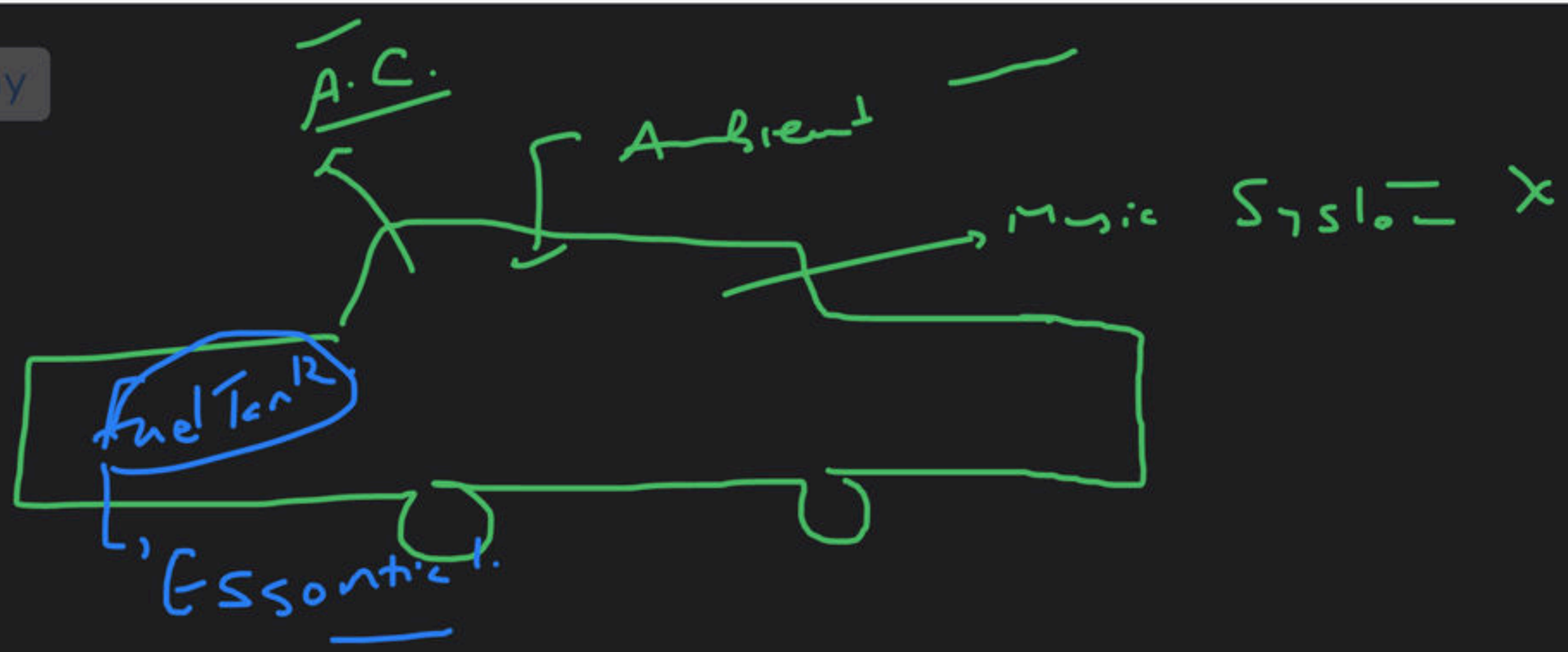

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WHAT? RELIGIOUS DENOMINATION

"The ingredients which must be present for a set of individuals to be regarded as a religious denomination are a common faith, a common organisation and a distinctive name brought together under the rubric of religion. A common thread which runs through them is the requirement of a religious identity, which is fundamental to the character of a religious denomination. There must be a common set of religious tenets. Religion is what binds a religious denomination. Caste, community and social status do not bring into being a religious denomination. There is necessity of an identity of doctrines, creeds and tenets in a "religious denomination"."

Dr. D.Y. Chandrachad, J.

in Indian Young Lawyers Association Vs. State of Kerala & Ors., Writ Petition (C) No. 373 of 2006.

Ayodhya case: Understanding the 'essentiality doctrine' and its implications

By refusing review, the court has refused to consider the question of whether the freedom of religion protects only practices of particular significance, and not all religious practices. The question of comparative significance of religious practices also remains untouched.

Supreme Court of India

The Commissioner, Hindu ... vs Sri Lakshmindra Thirtha Swamiar ... on 16 April, 1954

Equivalent citations: 1954 AIR 282, 1954 SCR 1005

Author: B Mukherjea

Bench: Mahajan, Mehar Chand (Cj), Mukherjea, B.K., Das, Sudhi Ranjan, Bose, Vivian, Hasan, Ghulam & Bhagwati, N.H. & Aiyyar, T.L. Venkatarama

to determine.

R.P. Essential?

S.C.

DOCTRINE OF ESSENTIALITY

PETITIONER:
THE COMMISSIONER, HINDU RELIGIOUS ENDOWMENTS, MADRAS

Vs.

RESPONDENT:
SRI LAKSHMINDRA THIRTHA SWAMIAR OF SRI SHIRUR MUTT.

SHIRUR MUTT.

DATE OF JUDGMENT:
16/04/1954

BENCH:
MUKHERJEA, B.K.
BENCH:
MUKHERJEA, B.K.
HASAN, GHULAM
BHAGWATI, NATWARLAL H.
AIYYAR, T.L. VENKATARAMA
MAHAJAN, MEHAR CHAND (CJ)
DAS, SUDHI RANJAN
BOSE, VIVIAN

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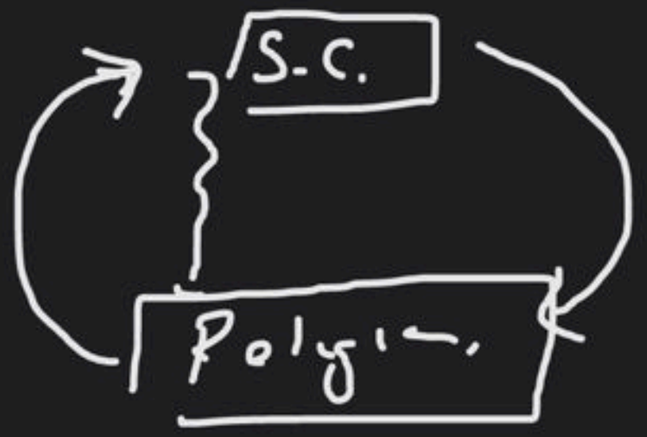
A seven-judge Bench of the Supreme Court invented the doctrine of "essentiality" in the Shirur Mutt case in 1954. The court held that the term "religion" will cover all rituals and practices "integral" to a religion, and took upon itself the responsibility of determining the essential and non-essential practices of a religion. The essentiality/integrality doctrine has tended to lead the court into an area that is beyond its competence, and given judges the power to decide purely religious questions.


S.C.
Polyn.

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× 25 (1)

× 25 (2) ?

↳ Kerala

× "Public"

↓

A.15 ×.

? discriminat

26. ✓

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Quintessential.

"Does L.A. followers qualify to be a R.D.?"

Yes (26)
: x2s

A RELIGIOUS DENOMINATION REFERS TO A SUBGROUP OR BRANCH WITHIN A BROADER RELIGIOUS TRADITION OR FAITH. IT REPRESENTS A DISTINCT ORGANIZATION OR COMMUNITY WITH SHARED BELIEFS, PRACTICES, RITUALS, AND GOVERNANCE STRUCTURES WITHIN A SPECIFIC RELIGIOUS FRAMEWORK.

RELIGIOUS DENOMINATIONS OFTEN EMERGE DUE TO DIFFERENCES IN INTERPRETATION, THEOLOGY, WORSHIP STYLE, OR ORGANIZATIONAL STRUCTURE WITHIN A PARTICULAR RELIGIOUS TRADITION. THESE DIFFERENCES MAY RESULT IN THE FORMATION OF SEPARATE GROUPS OR ORGANIZATIONS THAT IDENTIFY THEMSELVES AS A DISTINCT DENOMINATION WHILE STILL BELONGING TO THE LARGER RELIGIOUS TRADITION.

DENOMINATIONS CAN VARY IN THEIR SIZE, GEOGRAPHICAL DISTRIBUTION, DOCTRINAL EMPHASIS, WORSHIP PRACTICES, AND LEADERSHIP STRUCTURES. SOME EXAMPLES OF RELIGIOUS DENOMINATIONS INCLUDE CHRISTIANITY WITH ITS NUMEROUS DENOMINATIONS SUCH AS ROMAN CATHOLICISM, PROTESTANTISM, AND ORTHODOX CHRISTIANITY, ISLAM WITH DIFFERENT BRANCHES LIKE SUNNI AND SHIA, BUDDHISM WITH VARIOUS SCHOOLS LIKE THERAVADA AND MAHAYANA, AND HINDUISM WITH ITS DIVERSE SECTS AND SAMPRADAYAS.

EACH RELIGIOUS DENOMINATION MAY HAVE ITS OWN UNIQUE BELIEFS, RITUALS, CUSTOMS, AND ORGANIZATIONAL STRUCTURES, WHILE STILL SHARING A COMMON FOUNDATION WITH THE BROADER RELIGIOUS TRADITION FROM WHICH IT ORIGINATED. DENOMINATIONS OFTEN PROVIDE A SENSE OF IDENTITY AND COMMUNITY FOR THEIR MEMBERS AND CAN HAVE VARYING LEVELS OF AUTONOMY AND AUTHORITY IN GOVERNING THEIR INTERNAL AFFAIRS.

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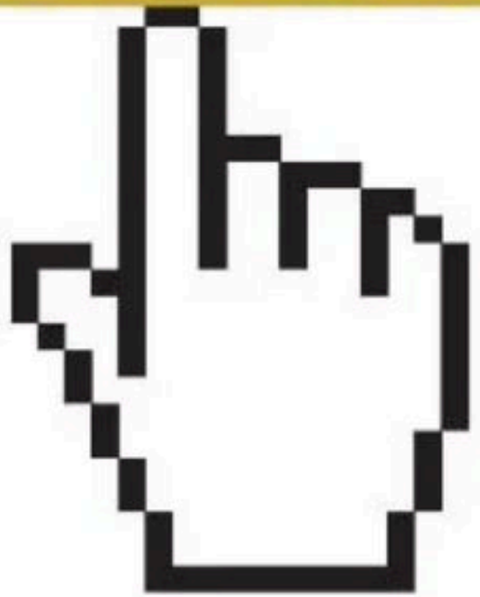
ARTICLE 26

- FREEDOM OF MANAGEMENT OF RELIGIOUS AFFAIRS
- COLLECTIVE RIGHT
- PUBLIC ORDER MORALITY AND HEALTH



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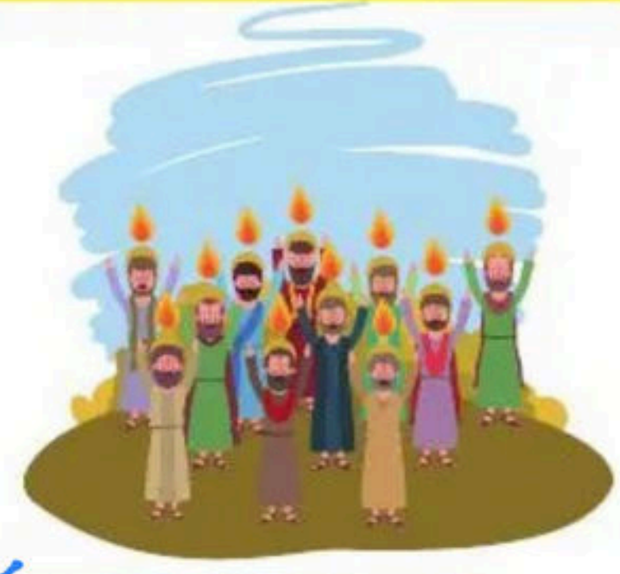
RIGHT TO ESTABLISH AND MAINTAIN INSTITUTIONS FOR RELIGIOUS AND CHARITABLE PURPOSE.

RIGHT TO MANAGE ITS OWN RELIGIOUS AFFAIRS.



RIGHT TO OWN AND ACQUIRE MOVABLE AND IMMOVABLE PROPERTY ALONG WITH THE RIGHT TO ADMINISTER IT.

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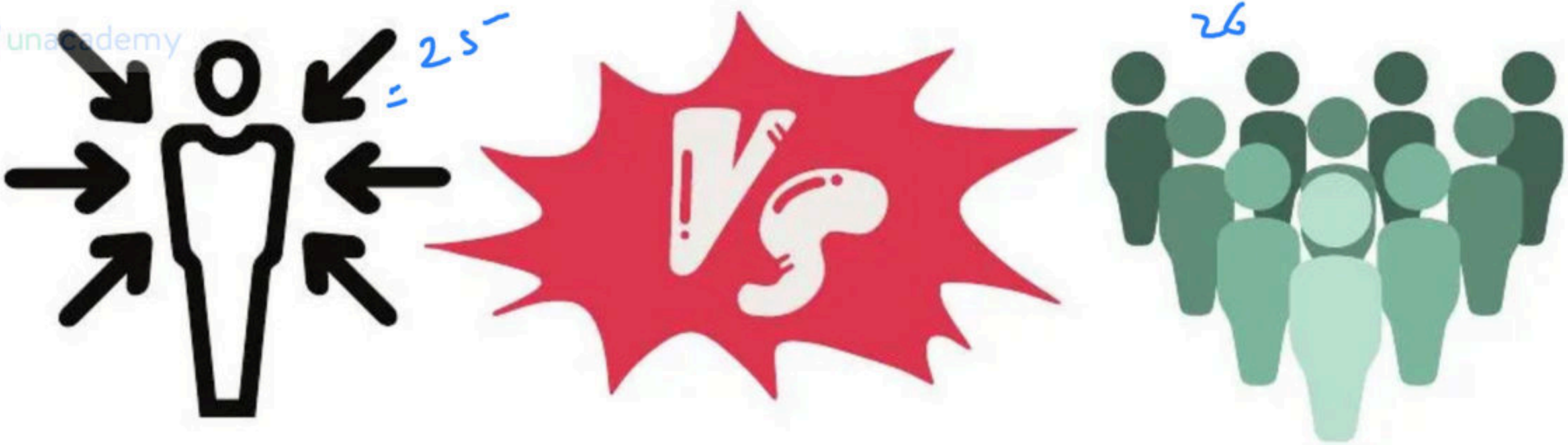

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SUBJECT TO PUBLIC ORDER, MORALITY AND HEALTH AND TO THE OTHER PROVISIONS OF THIS PART,

ALL PERSONS ARE EQUALLY ENTITLED TO FREEDOM OF CONSCIE AND THE RIGHT FREELY TO PROFESS, PRACTISE AND PROPAGATE REL

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ARTICLE 27

NO PERSON SHALL BE COMPELLED TO PAY ANY TAX OR FEE FOR THE PROMOTION OR MAINTENANCE OF ANY PARTICULAR RELIGION OR RELIGIOUS DENOMINATION

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1. A.S.

Expected : "$\frac{x}{\text{दर्ज}}$"

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2-3 : Notes = clye.

unacademy

A. 28 1-d 4 -

$2d\sqrt{r+1}$

A26 Cu-r 3. =

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Mughals.

→ Jaziya.

↳ "Religion" = "Practice" ≠ Support.

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Central Government Act

Article 27 in The Constitution Of India 1949

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 religions denomination

State. Supports all religion equally
non-relig

unacademy

1.

v. Imp. → Gratuity → allowed $\frac{1}{2}$

↳ Insurance facility

Taxes allowed. etc.

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Slide

↳ "Arrangements"

High Subsidy

p·L7

PRAFULL GORADIA V. UNION OF INDIA .

"Substantial part" = 25% allowed

Order

1. Heard the learned counsel for the parties.

2. This writ petition under **Article 32 of the Constitution** had been initially filed challenging the constitutional validity of the Haj Committee Act, 1959, but thereafter by an amendment application the Haj Committee Act of 2002 which replaced the 1959 Act, has been challenged. The ground for challenge is that the said Act is violative of **Articles 14, 15 and 27** of the Constitution.

3. The grievance of the petitioner is that he is a Hindu but he has to pay direct and indirect taxes, part of whose proceeds go for the purpose of the Haj pilgrimage, which is only done by Muslims. For the Haj, the Indian Government inter alia grants a subsidy in the airfare of the pilgrims.

4. Particular emphasis has been given by the petitioner to **Article 27 of the Constitution** which states:

> "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

8. In our opinion Article 27 would be violated if a substantial part of the entire income tax collected in India, or a substantial part of the entire central excise or the customs duties or sales tax, or a substantial part of any other tax collected in India, were to be utilised for promotion or maintenance of any particular religion or religious denomination. In other words, suppose 25% of the entire income tax collected in India was utilised for promoting or maintaining any particular religion or religious denomination, that, in our opinion, would be violative of **Article 27 of the Constitution.**

9. However, the petitioner has not made any averment in his writ petition that a substantial part of any tax collected in India is utilised for the purpose of Haj. All that has been said in Paras 5(i) and (ii) of the writ petition is:

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The Controversy of *Haj*-Subsidy

Prafull Goradia, a former Rajya Sabha MP from the BJP petitioner, filed a Writ petition challenging the **'Haj policy'** was in violation of Article 27. In this case, the court observed that the object of Article 27 is to maintain secularism and the said Article would be violated if the **substantial part** of the entire income tax collected in India, or a **substantial part** of the entire central excise or the customs duties or sales tax, or a **substantial part** of any other tax collected in India were to be utilized for promotion or maintenance of any particular religion or religious denomination. However, if only a relatively small part of any tax collected is utilised for providing some conveniences or facilities or concessions to any religious denomination, that would not be violative of Article 27 of the Constitution. In other words, suppose 25 per cent of the entire income tax collected in India was utilized for promoting or maintaining any particular religion or religious denomination, that, in our opinion, would be violative of Article 27 of the Constitution."

In the case of **Union Of India vs. Rafique Shaikh Bhikan 2012**, the Supreme Court asked the government to phase out the Haj subsidy in a matter of 10 years. Justice Alam observed that "we also take note of the fact that the grant of the subsidy has been found to be constitutionally valid by this court. We are not oblivious of the fact that in many other purely religious events there are direct and indirect deployment of state funds and state resources. Nevertheless, we are of the view that Haj subsidy is something that is best done away with."

Following this order, the Narendra Modi government has withdrawn Haj Subsidy from 2018.

STATE SUPPORTS ALL RELIGIONS

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The Minister for Minority Affairs said that the Indian Government, in coordination-cooperation with Saudi Arabian Government, India Consulate and various concerned agencies in Saudi Arabia, is working to ensure safety and better facilities, medical facilities for the pilgrim during Haj 2020. He further said that in 2020, a total of 2 lakh Indian Muslims will perform Haj that too without any subsidy and about lakh 23,000 Indians Muslims will go through Haj Committee of India and remaining through Haj Group Organisers. This year more the 2100 Muslim women will go to Haj without "Mehram" (male companion), he added.

Ministry of Minority Affairs

Government fulfilled the dream of "Ease of Doing Haj" for Indian Muslims: Shri Mukhtar Abbas Naqvi

Addresses trainers programme for Haj 2020 at Haj House in Mumbai

Posted On: 17 FEB 2020 2:44PM by PIB Delhi

The Union Minister for Minority Affairs, Shri Mukhtar Abbas Naqvi has said that 100 per cent digital/online Haj process in India has fulfilled the dream of "Ease of Doing Haj" for the Indian Muslims. He was addressing a training of trainers programme for Haj 2020 at Haj House, in Mumbai today.

Shri Naqvi said that the unprecedented reforms taken by the Modi Government has ensured that while on one hand, the entire Haj process has been made digital and transparent on the other hand Haj has become affordable. He further said that making the entire Haj process 100 per cent digital/online has removed middlemen ensuring Haj pilgrimage become affordable in comparison to last several decades. Even after removal of Haj subsidy, no additional financial burden has been put on the pilgrims, he added.

The Minister for Minority Affairs said that India has become the first country in the entire world which has made the entire Haj 2020 process 100 per cent digital. Online application, E-Visa, Haj mobile app, "E-MASIHA" health facility, "E-luggage pre-tagging" providing all information in India itself regarding accommodation/transportation in Makkah-Madinah have been provided to Indian Muslims going for Haj. He further said that for the first time facilities have been provided for digital pre-tagging of baggages of pilgrims. This will ensure the Indian pilgrims will get information in India itself about building along with the room allotted to the pilgrims and transportation like details of bus to be taken by the pilgrims after reaching to the airport in Saudi Arabia, he added.

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A 27 violent

$\sigma^2 \| \zeta_1$ support (irrelevant)

$\boxed{\text{support}}$

Expected

State

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ARTICLE 28

FREEDOM AS TO ATTENDANCE AT RELIGIOUS INSTRUCTION OR RELIGIOUS WORSHIP IN CERTAIN EDUCATIONAL INSTITUTIONS.

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C.
O
I

" STATE "

Govt. institution

Govt. assistance aid

In particular religion

All Govt

3 yr — 18 yr.

School

13 – 21

College

Higher education College

Religious Instructions

In Red religion

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Central Government Act

Article 28 in The Constitution Of India 1949

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

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

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto Cultural and Educational Rights

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4 - Educational Institutions

1. State Owned (सरकारी) — NO R.I allowed
2. State Recognised = } Shared } : R.I allowed but ~~NOT mandatory~~ (choice)
3. State funded !
4. Religious Institutions (धार्मिक) — $\boxed{\text{R.I allowed.}}$ → mandatory to follow

Current Kaksha Mode.

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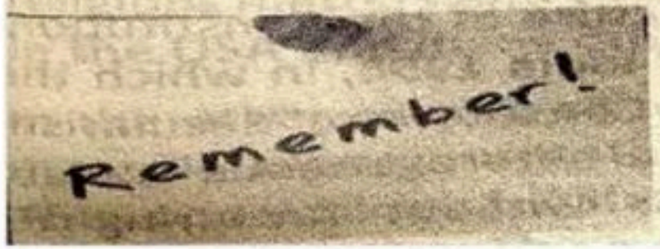
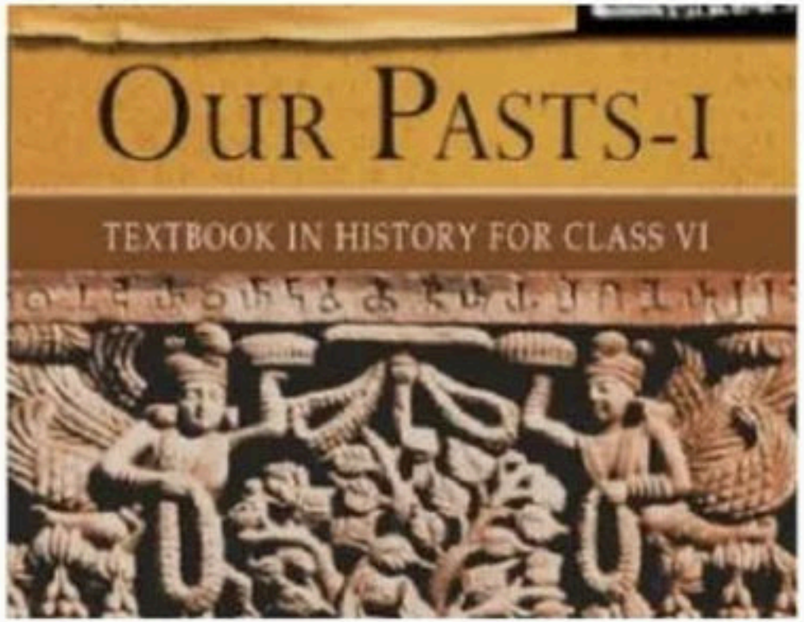
Let us understand what is 'Religious Instruction'?

Secularism is accepted as part of the Basic Structure Doctrine of the Constitution.

Clause (1) of Article 28 prohibits imparting of 'religious instructions' in educational institutions fully maintained out of State funds. However, it does not prohibit the introduction of the study of religions in the State educational institutions including those wholly or partly aided by the States. **As a matter of fact, the study of religions has been considered necessary for the unity and integrity of India.**

In the case of **Aruna Roy vs. Union of India 2002**, the Supreme Court observed that - "A distinction, thus, has been made between imparting 'religious instructions' that is teaching of rituals, observances, customs and traditions and other non-essential observances or modes of worship in religions and teaching of philosophies of religions with more emphasis on study of essential moral and spiritual thoughts contained in various religions. There is a very thin dividing line between imparting of 'religious instructions' and 'study' of religions."





Ministry of Education
Government of India

ABOUT US | MINISTERS | DEPARTMENTS | DOCUMENTS & REPORTS | STATISTICS | INSTITUTIONS | MULTIMEDIA | DASHBOARD

Constitutional Provision

Home » Constitutional Provision » Constitutional Provision

Article 28	**Freedom as to attendance at religious instruction or religious worship in certain educational institutions.**
	1. No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
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REMEMBER

HC flays exclusive religious instruction in schools

SPECIAL CORRESPONDENT

KOCHI, JANUARY 25, 2020 01:04 IST
UPDATED: JANUARY 25, 2020 01:04 IST

SHARE ARTICLE 0 PRINT A | A | A

'Rights of minorities do not allow them to dilute secular nature of education'

A school that requires recognition from the State government under the Right to Education (RTE) Act does not have the right to impart religious instruction of one religion in preference to other religions as it is discharging a public function, the Kerala High Court said on Friday.

Justice A. Mohammed Mustaque gave the ruling on a petition filed by the Hidaya Educational and Charitable Trust, Thiruvananthapuram, challenging the government's decision to close down the school allegedly for promoting exclusive religious instruction.

Exclusivism or preference of one religion over others by the State or public functionaries or private bodies, while discharging public functions, strikes at the very root of the fundamental values of the Constitution, especially secularism. It negates neutrality, promotes discrimination, and denies equal treatment. Private schools that are required to have recognition from the State

THE SABARIMALA TEMPLE, LOCATED IN THE STATE OF KERALA, INDIA, IS DEDICATED TO LORD AYYAPPA, A HINDU DEITY BELIEVED TO BE CELIBATE AND A MANIFESTATION OF LORD VISHNU. THE TEMPLE HOLDS A SIGNIFICANT PLACE OF WORSHIP FOR MILLIONS OF DEVOTEES, PARTICULARLY THOSE FOLLOWING THE AYYAPPA CULT.

SABARIMALA CASE

Background of Sabarimala case.

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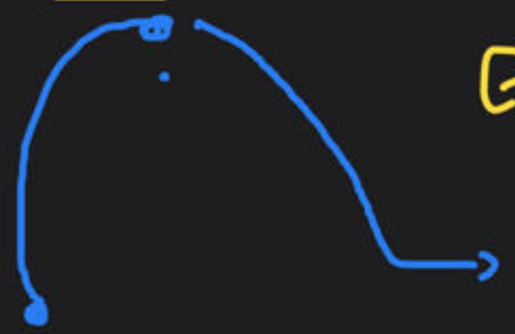
Indian Young Lawyers Association vs. State of Kerala.

Lord Ayappa is the resident deity of Sabarimala Temple. (Kerala)

PURANAS:- "Naishtika Brhmachari"

Eternal Celibate



"♀ in Repro" & Desire

! considered!

Lord Ayappa Followers

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R. e l i g i o u s .

Practices.

Repro

"Rules" : Law

Kerala State =

Kerala Hindu Places of Worship Rule

S.3

♀ (10 - 50 yrs)

x Darshan

1. A.21 = "choice"
2. A.14 = Law of /♀
3. A25 = Worship

" A.17 "

" Mens" : Untouchable!

Challenged

:- I. Y. L. A.

25(2)(2) Kerala = law

↳ A.15 = NO. R-R-C-S-TOB

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Hindu = Idol, मूर्ति = "Living"

"In the eyes of law"

प्राण प्रतिष्ठा = Infusion of life.

"JURISTIC PERSON"

Tax payer

"Rights"

"choice"

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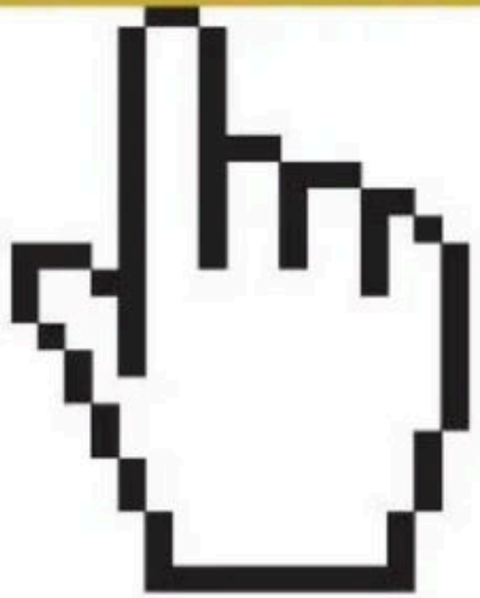
ARTICLE 26

- FREEDOM OF MANAGEMENT OF RELIGIOUS AFFAIRS
- COLLECTIVE RIGHT
- PUBLIC ORDER MORALITY AND HEALTH



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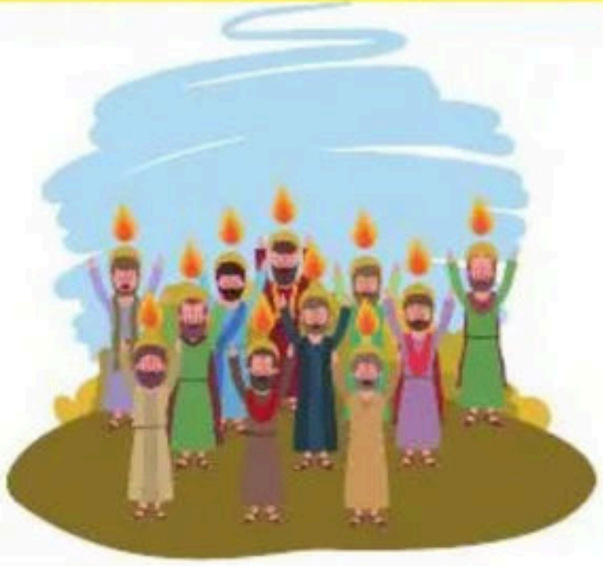
RIGHT TO ESTABLISH AND MAINTAIN INSTITUTIONS FOR RELIGIOUS AND CHARITABLE PURPOSE.

RIGHT TO MANAGE ITS OWN RELIGIOUS AFFAIRS.



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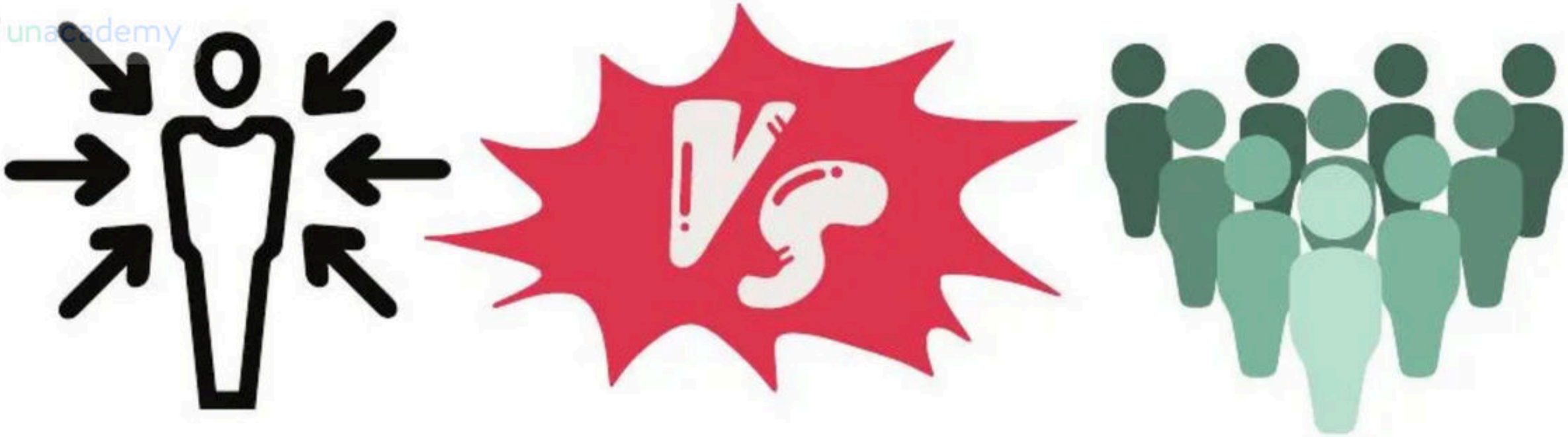

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CONSTITUTIONAL PROVISIONS

- ARTICLE 15. PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH

  SHALL NOT DISCRIMINATE AGAINST ANY CITIZEN ON GROUNDS ONLY OF

  RELIGION, RACE, CASTE, SEX, PLACE OF BIRTH OR ANY OF THEM

Remember

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CONSTITUTIONAL PROVISIONS

- ARTICLE 17. ABOLITION OF UNTOUCHABILITY
- UNTOUCHABILITY IS ABOLISHED AND ITS PRACTICE IN ANY FORM IS FORBIDDEN THE ENFORCEMENT OF ANY DISABILITY ARISING OUT OF UNTOUCHABILITY SHALL BE AN OFFENCE PUNISHABLE IN ACCORDANCE WITH LAW

Remember

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CONSTITUTIONAL PROVISIONS

- 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

Remember

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5 JUDGE CONSTITUTIONAL BENCH

Supreme Court of India

Indian Young Lawyers Association vs The State Of Kerala on 28 September, 2018

Author: . .....

1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 373 OF 2006

Indian Young Lawyers Association ...
Petitioner(s)
& Ors.

VERSUS

The State of Kerala & Ors. ...
Respondent(s)

Parties Involved

Petitioner : Indian Young Lawyers Association; Dr Laxmi Shastiri; Prerna Kumari; Alka Sharma; Sudha Pal

Respondent : State of Kerala; Travancore Devaswom Board; Chief Tanthri of Sabarimala Temple; District Magistrate of Pathanamthitta; Nair Service Society; Akhil Bhartiya Ayyappa Seva Sangham; Ayyappa Seva Samithi; Ayyappa Pooja Samithi; Dharma Sanstha Seva Samajam; Akhil Bharatiya Malayalee Sangh; Sabarimala Ayyappa Seva Samajam; Kerala Kshetra Samarak Shana Samithi;Pandalam Kottaram Nirvahaka Sangham; Sabrimala Custom Protection Forum

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I.G.L.A.

↳ F.R. vio

Respondent.

{2, 6}

L.A. followers
= Group
= Relig. Cro
= Identity

Claim: "Exclusion of a group"
Repro. age
is cn (E&R.P)

[R. Denom.

allowed

U/A 26

P.O.
Morality
Health

X " fR "

The Sabarimala Temple, devoted to Lord Ayyappa is an ancient temple of great spiritual significance. The temple is situated over the Western Ghats known as Sannidhanam in Kerala.

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The followers of Lord Ayyappa believe that Lord Ayyappa's powers derive from his ascetism, in particular from his being celibate.
The Sabarimala Temple depicts Lord Ayyappa as a "*Naishtika Brahmacharya*": An Eternal Celibate.

Celibacy is practised by the devotees and pilgrims before and during the pilgrimage. Those who believe in Lord Ayyappa and offer prayer are expected to follow a strict 'Vratham' or vow over a period of 41 days.

THE BELIEF REGARDING THE BAN ON WOMEN OF MENSTRUATING AGE- PURANAS ONLY MENTION'MENSTRUATING AGE' ("10 TO 50 YEARS"-THIS CAME FROM THE LAW-NOT FROM THE PURANAS) FROM ENTERING THE TEMPLE STEMS FROM THE NOTION THAT THE PRESENCE OF WOMEN OF REPRODUCTIVE AGE MAY DISRUPT THE CELIBACY AND PURITY OF LORD AYYAPPA.

- Whether prohibition on women based on biological factors violates Fundamental Rights under Article 14 (Right to equality), Article 15, (prohibition of discrimination), Article 17(prohibition of untouchability)
- Whether the practice of not including women constitutes an "essential religious practice" under Article 25 and can a religious institution claim that it comes under the umbrella of right to manage its own affairs in the matters of religion?
- Whether Sabarimala - Lord Ayyappa Temple has a denominational character?
- Whether Rule 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules permits 'religious denomination' to ban entry of women between the ages of 10 to 50 years?

QUESTIONS BEFORE THE COURT

3. *Places of public worship to be open to all sections and classes of Hindus.*—Notwithstanding anything to the contrary contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law or any decree or order of court, every place of public worship which is open to Hindus generally or to any section or class thereof, shall be open to all sections and classes of Hindus; and no Hindu of whatsoever section or class shall, in any manner, be prevented, obstructed or discouraged from entering such place of public worship, or from worshipping or offering prayers thereat, or performing any religious service therein, in the like manner and to the like extent as any other Hindu of whatsoever section or class may so enter, worship, pray or perform:

Provided that in the case of a place of public worship which is a temple founded for the benefit of any religious denomination or section thereof, the provisions of this section shall be subject to the right of that religious denomination or section, as the case may be, to manage its own affairs in matters of religion.

4. *Power to make regulations for the maintenance of order and decorum and the due performance of rites and ceremonies in places of public worship.*—

THE RULE 3(B) OF THE KERALA HINDU PLACES OF PUBLIC WORSHIP (AUTHORIZATION OF ENTRY RULES, 1965 (RULES 1965) WHICH STATES THAT "WOMEN AT SUCH TIME DURING WHICH THEY ARE NOT BY CUSTOM AND USAGE ALLOWED TO ENTER A PLACE OF WORSHIP" WAS THE BASIS OF THE PRACTICE OF EXCLUDING WOMEN OF THE AGE GROUP OF 10 THROUGH TO 50 YEARS TO ENTER THE TEMPLE.

THE KERALA HINDU PLACES OF PUBLIC WORSHIP
(AUTHORISATION OF ENTRY) ACT, 1965
(President's Act 7 of 1965)

CONTENTS

Preamble.
Sections
1. Short title, extent and commencement.
2. Definitions.
3. Places of public worship to be open to all sections of Hindus.
4. Power to make regulations for the maintenance o decorum and the due performance of rites and ce places of public worship.
5. Penalty.
6. Abetment of offences.
7. Enhanced penalty on subsequent conviction.
8. Limitation of jurisdiction of civil courts.
9. Offences under the Act to be cognisable and compoundable.
10. Saving.
11. Repeal.

THE LAW IN QUESTION

Lord

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The petitioner asserted that the complete exclusion of women between the age group between 10 to 50 from entry to the Sabarimala temple premises, and consequently, from worshipping in the temple, which was based upon a biological factor is violative of the fundamental rights contained in Articles 14,15,17 and 25 of the Constitution of India.

The Petitioners claimed that exclusion of women to worship in the temple **does not** form an essential part of Hindu religion.

Sabarimala Temple is managed by Travancore Devaswom Board which receives public funds, hence it **cannot** be deemed as separate religious domination.

The Petitioners also argued that it was believed and there is evidence of women being allowed at the Temple during the time of Travancore King, so it **cannot be deemed** as a customary practise running since time immemorial.

The Petitioners claimed that considering women 'impure' because they menstruate is discrimination against them on the basis of their sex and is similar to practicing of **untouchability**.

The Petitioners, thus claimed that the Rule 3 laid down by the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, is **violative** of Fundamental Rights under Article 25-the freedom to practice one's religion.

CHALLENGE /PETITION

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ARGUMENTS BY THE RESPONDENT

The Respondents argued that Lord Ayyappa in the temple is a celibate and should be treated as a person in the eyes of law. As a person, Lord Ayyappa's rights should be protected. It was argued that the entry of women of the age 10-50 years of age, which is their menstruating age, is in contrast with the celibate nature of the Lord Ayyappa.

It was also argued that the exclusion of the menstruating age group of women is the very crux of their belief and forms an essential part of this religion. It was also claimed that the followers of Lord Ayyappa form a Religious denomination within the meaning of Article 26 and thereby Article 15(2) does not apply to them.

COUNTER-ARGUMENT

A 4:1 majority held that the temple's practice of excluding women is unconstitutional. It held that the practice violated the fundamental right to freedom of religion - Article 25(1) - of female worshippers.

The court struck down Rule 3(b) of the Kerala Hindu Places of Public Worship Act as **unconstitutional** .

The devotees of Lord Ayyappa do not satisfy the judicially enunciated requirements to constitute a religious denomination under Article 26 of the Constitution.[1]

P.U M.H

5 12. => 25 = 4 : 1. x 26.

A claim for the exclusion of women from religious worship, even if it be founded in religious text, is subordinate to the constitutional values of liberty, dignity and equality. **Exclusionary practices are contrary to constitutional morality.**[2]

In any event, the practice of excluding women from the temple at Sabarimala is **not** an essential religious practice. The Court must decline to grant constitutional legitimacy to practices which derogate from the dignity of women and to their entitlement to an equal citizenship

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CONSTITUTIONAL MORALITY

Subcaimcla Judg

Cons.
Touchstone

Ritual
Practice, etc

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CONSTITUTIONAL MORALITY IS THE IDEA THAT THE PRINCIPLES AND VALUES ENSHRINED IN A NATION'S CONSTITUTION SHOULD GUIDE AND INFORM THE BEHAVIOUR OF ITS CITIZENS AND INSTITUTIONS. THIS CONCEPT IS BASED ON THE BELIEF THAT A CONSTITUTION SERVES AS A MORAL COMPASS FOR A SOCIETY, SETTING OUT THE FUNDAMENTAL VALUES AND PRINCIPLES THAT SHOULD GOVERN THE ACTIONS OF INDIVIDUALS AND INSTITUTIONS. CONSTITUTIONAL MORALITY IS OFTEN INVOKED IN DISCUSSIONS OF THE RULE OF LAW AND THE ROLE OF THE CONSTITUTION IN PROMOTING JUSTICE, EQUALITY, AND HUMAN RIGHTS. IT IS ALSO CLOSELY LINKED TO THE IDEA OF A SOCIAL CONTRACT, IN WHICH CITIZENS AGREE TO ABIDE BY THE RULES AND VALUES SET FORTH IN THE CONSTITUTION IN EXCHANGE FOR THE PROTECTION AND BENEFITS PROVIDED BY THE STATE.

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Lex Rex.

CONSTITUTION

Agree किया

We the People ~ solemnly resolved

Justice Indu Malhotra delivered a **dissenting opinion.**

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She held that 'constitutional morality' in a secular polity, such as India, requires a '*harmonisation*' of various competing claims to fundamental rights: "The **Court must respect a religious denomination's right to manage their internal affairs, regardless of whether their practices are rational or logical."**

She also held that the **Sabarimala Temple satisfies the requirements for being considered a separate religious denomination and** that the Sabarimala Temple **is protected under Article 26(b)** to manage its internal affairs and is not subject to the social reform mandate under Article 25(2)(b), which applies only to Hindu denominations.

Justice Indu Malhotra dismissed the argument that the Sabarimala custom violates Article 17 of the Constitution- Prohibition of Untouchability.

She stated that, in the context of the Article and the Constitution in general, untouchability refers to caste and does not extend to discrimination on the basis of gender.

4:1 MAJORITY

Greek & Grote

/Principles with

[J-G-L - fret

CONSTITUTIONAL MORALITY

Babasaheb

↳ ई issue. ही

Indiv - Groups - family

Society

✗ ✓ ✓ ✗ ✓ ✗

True.

favour.

false.

Ag. $\neg^+$

Sol. Is Stable Set Marriages still exist

S^2 $\overline{\text{exist}}$

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The issue once again brings in the picture the issue of religion and equality. How can religion, customs, law and belief be balanced within the parameters of Constitutional morality.

Thus it is necessary for a Fundamental Right to work within the dimension of Constitutional Morality.

The Supreme Court has tried its best to keep a balance between the three (religion, equality and constitutional morality) and has delivered which has widened the interpretation of Articles in a way that conforms with equality and constitutional morality which are the basic tenets of our democracy.

Referred to the law.

CONSTITUTIONAL MORALITY

WAY FORWARD

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1. Should S.C have interfered in the matters of Religion

2. On what grounds decide this matter!

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Why was Article 26?

In India

What is higher

Lex Rex.

Constitution

Relyion

Pre-dates

Society

Social document

in a legal language.

जाति ही Relyion को Legal

Equal

C

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Constitution = Religion (recognise)

Sikh

Individual

Group

insulate
x insulate

धार्मिक संस्था
Pol x law
Leg x law

Manage and religion

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State Rules × 26 वर्ष

Gate!

दोहे रोज

दोहे Rules!

प्रतियोगी

8 PM.

16 PM.

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K K K. → vote :

– EQUAL –

X faith!

Political Democracy

means

to the end.

Cut.

Social Democracy

$ ↓ ↓ ↓ ↓ ↓

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MAINS

'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of 'Constitutional Morality' with the help of relevant judicial decisions. (150 words) ['संवैधानिक नैतिकता' की जड़ संविधान में ही निहित है	2021

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5 min.

CULTURAL AND EDUCATIONAL RIGHTS

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PcLi

Mun

India

Hindu

Inclusive Society

Minorities

A25 A30

"Ideal" = to calm the nerves

Relig / Lang

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L1 50%

L1 Jan

Give - U1

delay

Prelims.
May - June

flip to a coin.

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Writing

× Nobody cla:

= Rest of it is hol.

Sun.

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Every one decides their own glory

GLORY = Result

= चुन

(=) घटी न हो

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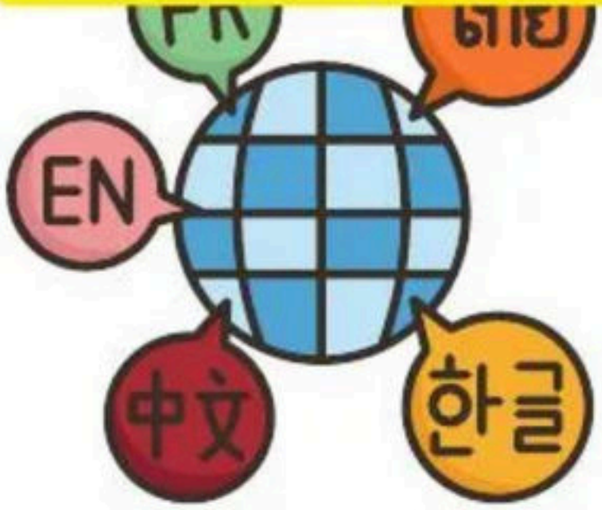
ARTICLE 29

PROTECTION OF INTERESTS OF MINORITIES.-

(1) ANY SECTION OF THE CITIZENS RESIDING IN THE TERRITORY OF INDIA OR ANY PART THEREOF HAVING A DISTINCT LANGUAGE, SCRIPT OR CULTURE OF ITS OWN SHALL HAVE THE RIGHT TO CONSERVE THE SAME.

(2) NO CITIZEN SHALL BE DENIED ADMISSION INTO ANY EDUCATIONAL INSTITUTION MAINTAINED BY THE STATE OR RECEIVING AID OUT OF STATE FUNDS ON GROUNDS ONLY OF RELIGION, RACE, CASTE, LANGUAGE OR ANY OF THEM.



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Punjab.

Nagaland

Chin

Hindi speech — Sub dom.

Hindi

Hindi.

Hindi

Sikkim

Ga.

Ka

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Protection of Interest of Minorities

Any Section of Citizens

- Residing in India
- or a Part of India

Define?

having a Distinct
- Language
- Script
- Culture

have the right to Conserve the sa...

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RELIGIOUS AND LINGUISTIC MINORITIES

on the basis

on the basis of language

ARTICLE 30

RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS – (1)ALL MINORITIES, WHETHER BASED ON RELIGION OR LANGUAGE, SHALL HAVE THE RIGHT TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS OF THEIR CHOICE.

(LA) IN MAKING ANY LAW PROVIDING FOR THE COMPULSORY ACQUISITION OF ANY PROPERTY OF AN EDUCATIONAL INSTITUTION ESTABLISHED AND ADMINISTERED BY A MINORITY REFERRED TO IN CLAUSE (1), THE STATE SHALL ENSURE THAT THE AMOUNT FIXED BY OR DETERMINED UNDER SUCH LAW FOR THE ACQUISITION OF

SUCH PROPERTY IS SUCH AS WOULD NOT RESTRICT OR ABROGATE THE RIGHT GUARANTEED UNDER THAT CLAUSE. (2) THE STATE SHALL NOT, IN GRANTING AID TO EDUCATIONAL INSTITUTIONS DISCRIMINATE AGAINST ANY EDUCATIONAL INSTITUTION ON THE GROUND THAT IT IS UNDER THE MANAGEMENT OF A MINORITY, WHETHER BASED ON RELIGION OR LANGUAGE.

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Manipal Group of Education

· T. M. A. Pai foundation.

(Capitation fee (Donation))

Karnataka Govt → × allow "Public" Policy

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$\boxed{x} = b-1-e$

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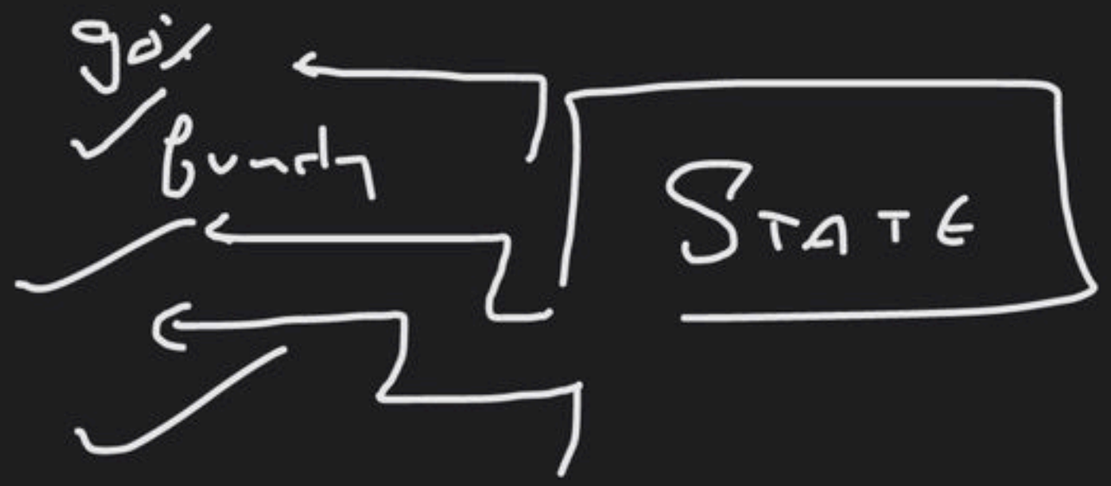

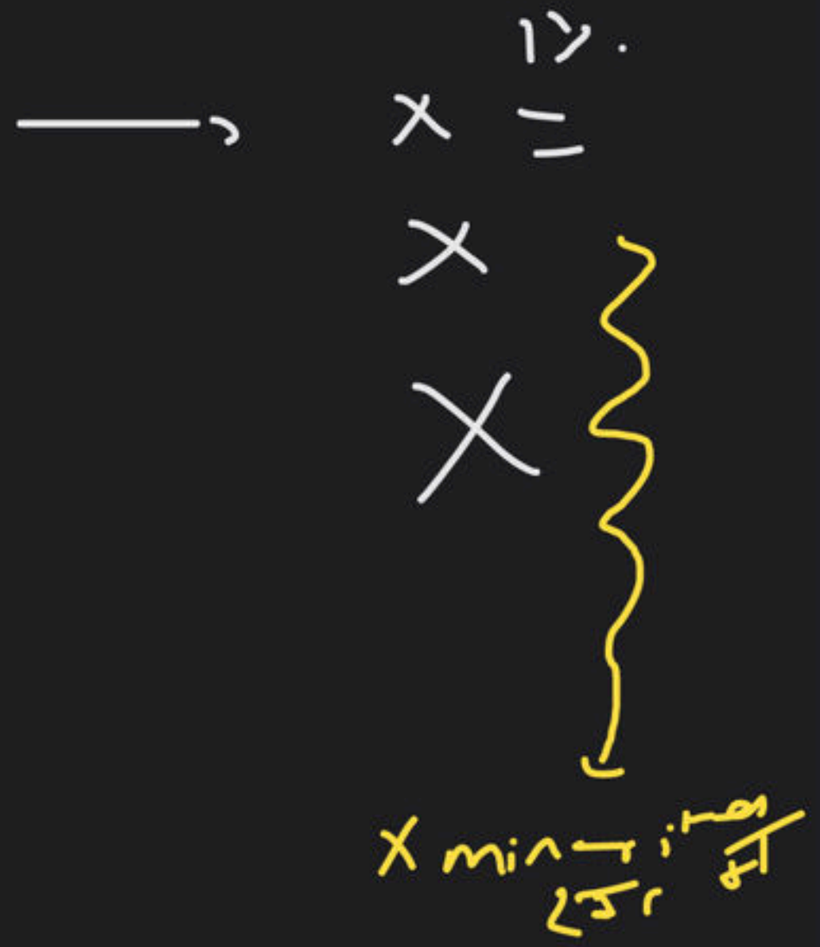

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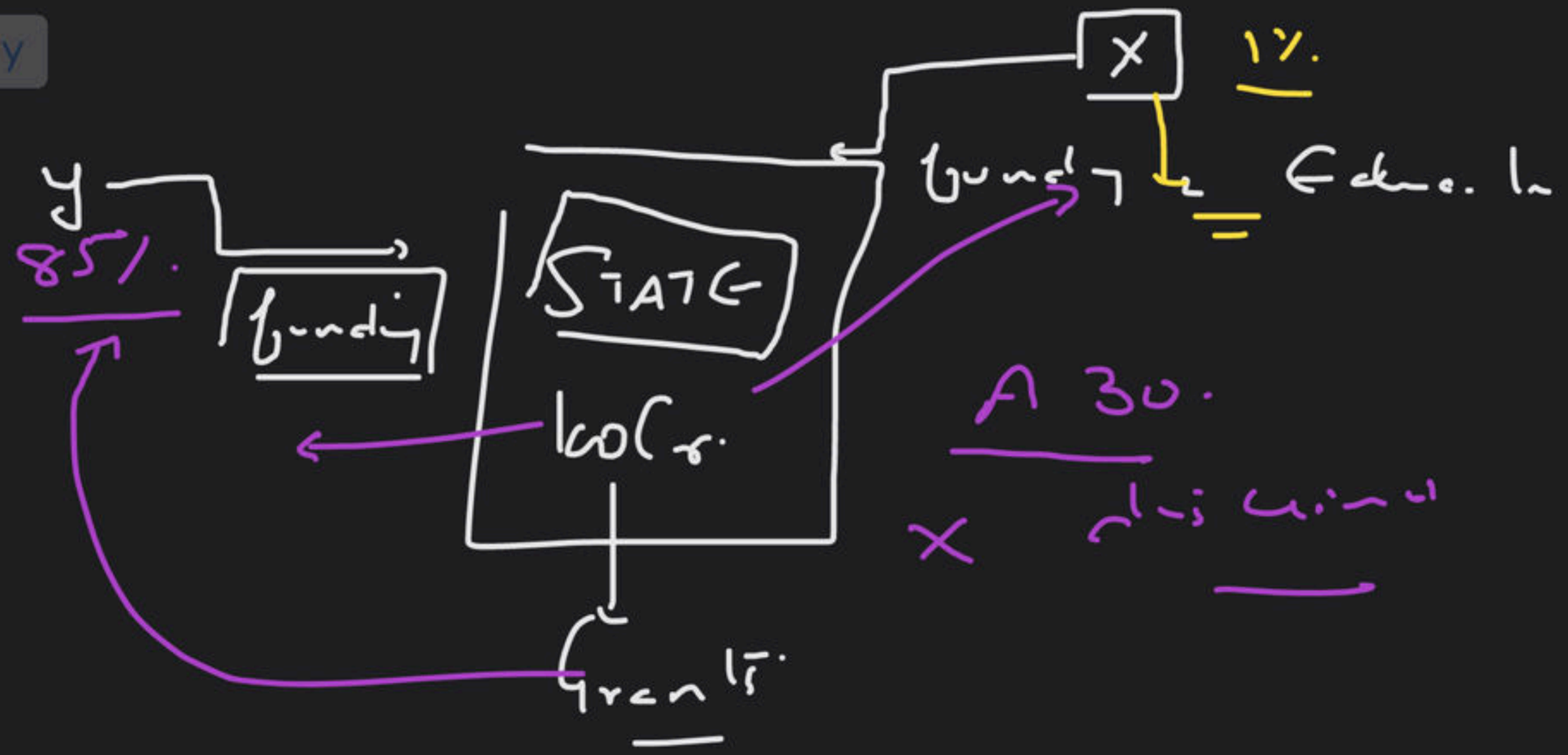

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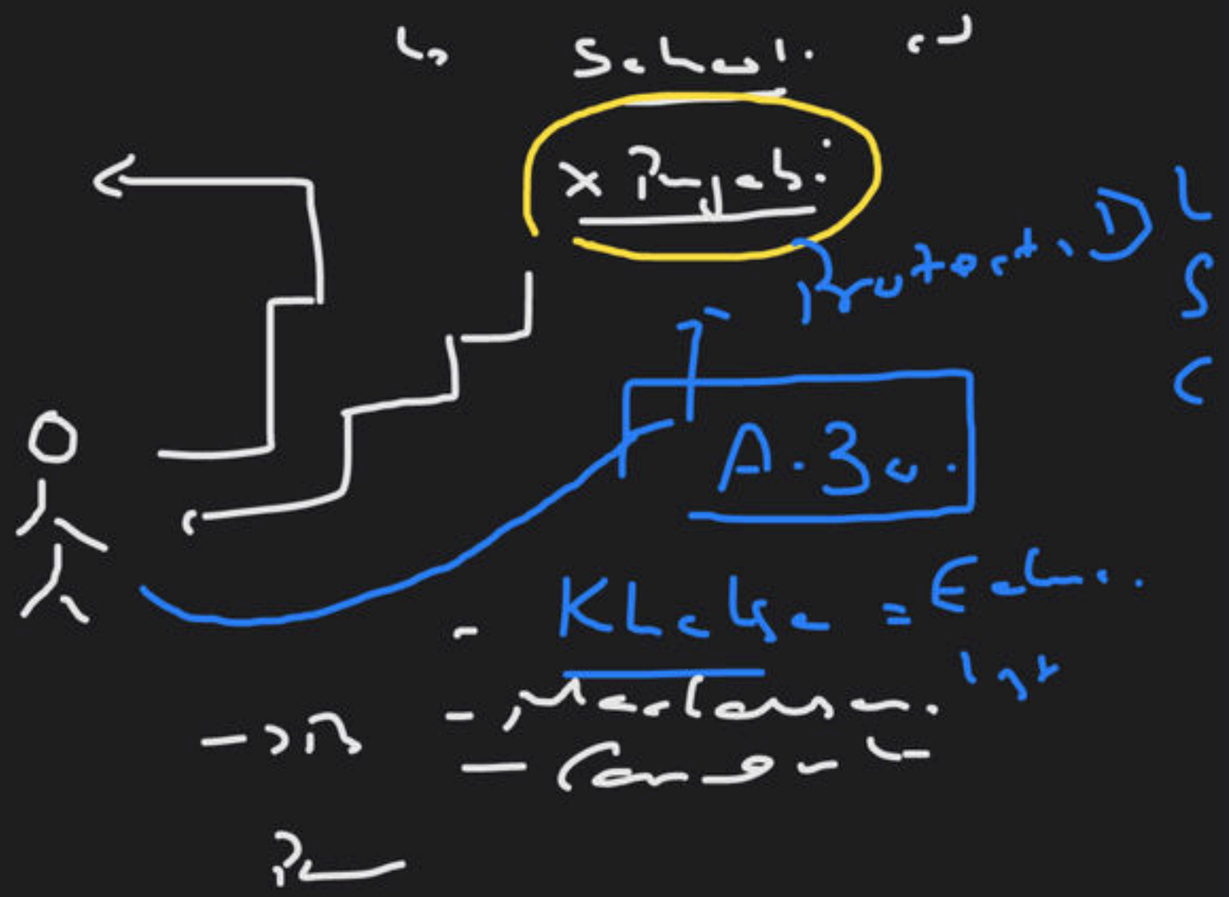
Physics : D L.S.C.

"R." "L" mirror

A2S. : Protect



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TMA PAI CASE REAFFIRMED THE CONSTITUTIONAL RIGHTS OF SUCH INSTITUTIONS AND ESTABLISHED IMPORTANT PRINCIPLES, INCLUDING:

1. AUTONOMY OF PRIVATE EDUCATIONAL INSTITUTIONS: THE COURT RECOGNIZED THAT PRIVATE UNAIDED INSTITUTIONS HAVE A RIGHT TO AUTONOMY IN MATTERS OF ADMISSION, FEES, AND MANAGEMENT, INCLUDING THE RIGHT TO DETERMINE THEIR OWN ADMISSION POLICIES AND FEE STRUCTURES.
2. MINORITY RIGHTS AND RESERVATIONS: THE JUDGMENT EMPHASIZED THE PROTECTION OF THE RIGHTS OF RELIGIOUS AND LINGUISTIC MINORITY COMMUNITIES IN ESTABLISHING AND ADMINISTERING EDUCATIONAL INSTITUTIONS. IT AFFIRMED THAT MINORITY INSTITUTIONS HAVE THE FREEDOM TO PRESERVE THEIR UNIQUE CHARACTER AND ETHOS, AND THEY CAN ADMIT STUDENTS BELONGING TO THEIR RESPECTIVE MINORITY COMMUNITIES.
3. GOVERNMENT REGULATION AND TRANSPARENCY: WHILE UPHOLDING THE AUTONOMY OF PRIVATE EDUCATIONAL INSTITUTIONS, THE COURT ALSO STRESSED THE IMPORTANCE OF REASONABLE GOVERNMENT REGULATIONS TO ENSURE TRANSPARENCY, AND MERIT-BASED ADMISSIONS, AND PREVENT COMMERCIALIZATION OF EDUCATION. IT LAID DOWN GUIDELINES FOR THE GOVERNMENT'S ROLE IN REGULATING INSTITUTIONS WHILE RESPECTING THEIR AUTONOMY.

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REMEMBER

THE TERM "MINORITY" IS NOT USED IN ARTICLE 29'S BODY. THIS WAS THE INTENTION OF THE DRAFTING COMMITTEE OF THE CONSTITUENT ASSEMBLY. THE ADVISORY COMMITTEE PROPOSED TO INCLUDE THE TERM 'MINORITY' IN THE BODY OF THE PROVISION, BUT THE DRAFTING COMMITTEE HAD IT CHANGED TO "SECTIONS OF CITIZENS" TO ENABLE A WIDER INTERPRETATION.

UNDEFINED

Supreme Court of India
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T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors on 31 October, 2002

Author: Kirpal

Bench: Quadri, S.S.M. (J), Pal, Ruma (J), Variava, S.N. (J), Balakrishnan, K.G. (J) Reddi, P.V (J), Bhan, Ashok (J) Pasayat, Arijit (J)

CASE NO.:
Writ Petition (civil) 317 of 1993

PETITIONER:
T.M.A.Pai Foundation & Ors.

RESPONDENT:
State of Karnataka & Ors.

DATE OF JUDGMENT: 31/10/2002

BENCH:
B.N.KIRPAL CJI & G.B.PATTANAIK & V.N.KHARE & S.RAJENDRA BABU & S.S.M.QUADRI

THE TERM "MINORITIES" HAVE BEEN LEFT UNDEFINED. THE MOTILAL NEHRU REPORT (1928) SHOWED A PROMINENT DESIRE TO AFFORD PROTECTION TO MINORITIES BUT DID NOT DEFINE THE EXPRESSION. THE SAPRU REPORT (1945) ALSO PROPOSED, INTER ALIA, A MINORITIES COMMISSION BUT DID NOT DEFINE 'MINORITY.' THE U.N. SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES HAS DEFINED 'MINORITY' (BY AN INCLUSIVE DEFINITION), AS UNDER:

THE TERM 'MINORITY' INCLUDES ONLY THOSE NON-DOCUMENT GROUPS IN A POPULATION WHICH POSSESS AND WISH TO PRESERVE STABLE ETHNIC, RELIGIOUS OR LINGUISTIC TRADITIONS OR CHARACTERISTICS MARKEDLY DIFFERENT FROM THOSE OF THE REST OF THE POPULATION;

SUCH MINORITIES SHOULD PROPERLY INCLUDE A NUMBER OF PEOPLE SUFFICIENT BY THEMSELVES TO PRESERVE SUCH TRADITIONS OR CHARACTERISTICS AND SUCH MINORITIES MUST BE LOYAL TO THE STATE OF WHICH THEY ARE NATIONALS.

REMEMBER **UNDEFINED**

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UNDEFINED

ARTICLE 27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS DOES NOT DEFINE THE EXPRESSION BUT GIVES THE FOLLOWING RIGHT TO THEM: "IN THOSE STATES IN WHICH ETHNIC, RELIGIOUS OR LINGUISTIC MINORITIES EXIST, PERSONS BELONGING TO SUCH MINORITIES SHALL NOT BE DENIED THE RIGHT IN COMMUNITY WITH THE OTHER MEMBERS OF THE GROUP, TO ENJOY THEIR OWN CULTURE, TO PROFESS AND PRACTICE THEIR OWN RELIGION OR TO USE THEIR OWN LANGUAGE."

REMEMBER

= 75- 80%

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A.29.

Protect.

Distinct Language
Script
Culture

करोड़ो ~~करो~~

↳ A.30 में

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S.C.

What is a minority?

R.

L.

(Sub dominant population)

अल्पसंख्यक

- In 2017, Ashwini Upadhyay moved the top court for minority status for Hindus and sought quashing of the central notification issued under Section 2(c) of the NCM Act. He also challenged the NCMEI Act.

- He said Jains were also added to the list in 2014, but not Hindus, despite being a minority in some states and UTs. But he was sent to the National Commission for Minorities that said only the Centre can take such a call.

- Upadhyay filed the current petition before the Supreme Court in 2020, citing the 2011 Census to say Hindus are a minority in 10 Union Territories (UTs)/states: Ladakh, Lakshadweep, Mizoram, Nagaland, Meghalaya, J&K, Arunachal Pradesh, Manipur and Punjab.

- He also cited the Supreme Court's 11-judge TMA Pai Foundation case ruling of 2002 that rejected the contention that since Hindus were a majority in India, they could not be a religious minority in Punjab.

- It said religious and linguistic minorities have to be considered state-wise to establish and administer educational institutions, as per the constitution's Article 30 that deals with the rights of minorities.

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WHO Defines a Minority ?

S. 2(c) of National Comm. of Minorities - Defines a minority

वो ' ' ' ' (central Govt := Minority

....THE ISSUE OF IDENTIFICATION OF RELIGIOUS AND LINGUISTIC MINORITIES CANNOT BE STRAIGHT-JACKETED AND "RELIGIOUS AND LINGUISTIC MINORITIES ARE SPREAD ALL OVER THE COUNTRY AND ARE NOT RELATED OR RESTRICTED TO ANY SINGLE STATE/UT OF INDIA INDIA IS A COUNTRY WITH VERY UNIQUE CHARACTERISTICS. A RELIGIOUS GROUP THAT IS IN THE MAJORITY IN ONE STATE MAY BE IN THE MINORITY IN ANOTHER STATE.

.....DIRECTION FROM THE CENTRE TO LAY DOWN GUIDELINES FOR THE IDENTIFICATION OF MINORITIES AT THE STATE LEVEL, SAYING THE HINDUS ARE IN THE MINORITY IN 10 STATES AND ARE NOT ABLE TO AVAIL THE BENEFITS OF SCHEMES MEANT FOR MINORITIES.

..... ALSO CHALLENGED THE VALIDITY OF SECTION 2 OF THE NATIONAL COMMISSION FOR MINORITY EDUCATION INSTITUTIONS ACT 2004 FOR GIVING UNBRIDLED POWER TO THE CENTRE AND BEING MANIFESTLY ARBITRARY, IRRATIONAL, AND OFFENDING.

"DIRECT AND DECLARE THAT FOLLOWERS OF JUDAISM, BAHAISM AND HINDUISM, WHO ARE MINORITIES IN LADDAKH, MIZORAM, LAKSHADWEEP, KASHMIR, NAGALAND, MEGHALAYA, ARUNACHAL PRADESH, PUNJAB AND MANIPUR, CAN ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS OF THEIR CHOICE IN THE SPIRIT OF THE TMA PAI RULING."

WHO IS MINORITY?

M S C B J P.

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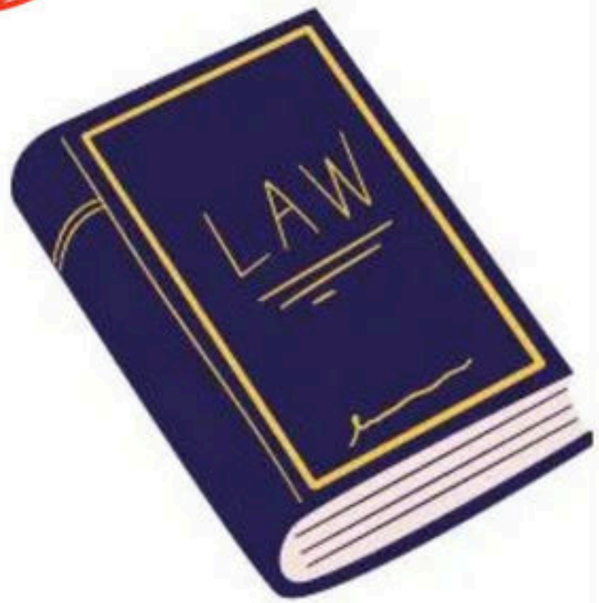
Irrespective of which way the current case goes, a crucial question is: who exactly is a minority? According to the Union minority affairs ministry, there are six minority communities in India. Muslims, Sikhs, Christians, Buddhists, Jains and Zoroastrians (Parsis) have been notified as minority communities under Section 2 (c) of the National Commission for Minorities Act, 1992. Almost every fifth person in India belongs to a minority community. No wonder, the word minority dominates India's social, political and electoral landscapes.

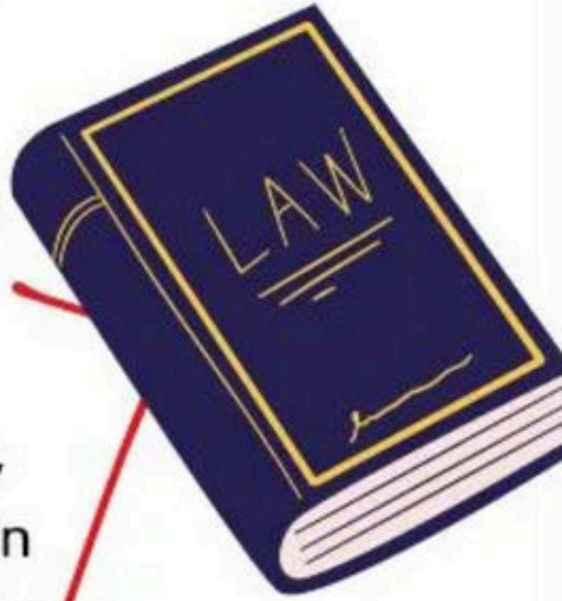


Muslims are the biggest minority group in India, accounting for 142 persons in every 1,000. Parsis are just six in 1,000 Indians. At over 14 per cent of India's population, Muslims are a little less in number than the seventh-most populous country (Nigeria). Among the Muslim majority countries, only Indonesia and Pakistan have more citizens than Muslims in India.

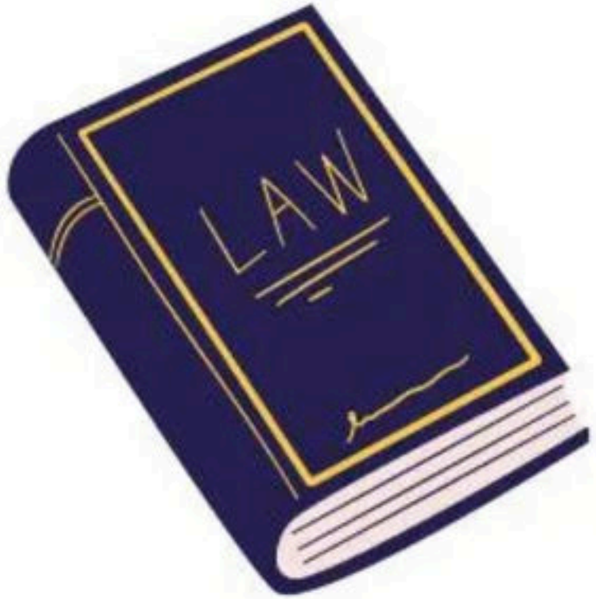
On the other hand, all the Parsis can be accommodated in India's smallest city Kapurthala, having only about 99,000 people, according to Census-2011. So, who decides who is treated as a minority citizen in India?

WHO DECIDES STATUS?

Primarily, the central government. It is done under the National Commission for Minorities Act, 1992. Only those belonging to the communities notified under Section 2(c) of the 1992 law are regarded as minority citizens. Constitutional provisions indicate that a minority community in India is principally linguistic or cultural.



The Karnataka government has notified Urdu, Telugu, Tamil, Malayalam, Marathi, Tulu, Lamani (Lambadi), Hindi, Konkani and Gujarati as minority languages within the state. States generally don't have their separate lists of minority communities. But there are exceptions. Maharashtra is an example.



NEW DELHI: The Centre has told the Supreme Court that states can consider granting Hindus the 'minority' status if the community is not in a majority within their jurisdictions. So for instance, if Hindus are in minority in a state like Mizoram, they should be able to establish and administer educational institutions of their choice in keeping with the rights guaranteed to minorities by the Constitution, as per the Centre.

DIFFICULT ISSUE !

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HINDU. (100)

Hindu | Buddh | Jain | Sikh

M | M | M

(Minority)

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ARTICLE 31. COMPULSORY ACQUISITION OF PROPERTY.

NO PERSON SHALL BE DEPRIVED OF HIS PROPERTY SAVE BY AUTHORITY OF LAW.

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31. [*Compulsory acquisition of property.*] *Rep. by the Constitution (Forty-fourth Amendment) Act*, 1978, s. 6 (*w.e.f.* 20-6-1979).

[3][CHAPTER IV.—RIGHT TO PROPERTY

Persons not to be deprived of property save by authority of law.

300A. No person shall be deprived of his property save by authority of law.]

Const R
Legal R

---

[1]The words "or the Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

[2]The words "nor the Rajpramukh" omitted by s. 29 and Sch., *ibid.*

[3]Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 34 (w.e.f. 20-6-1979).

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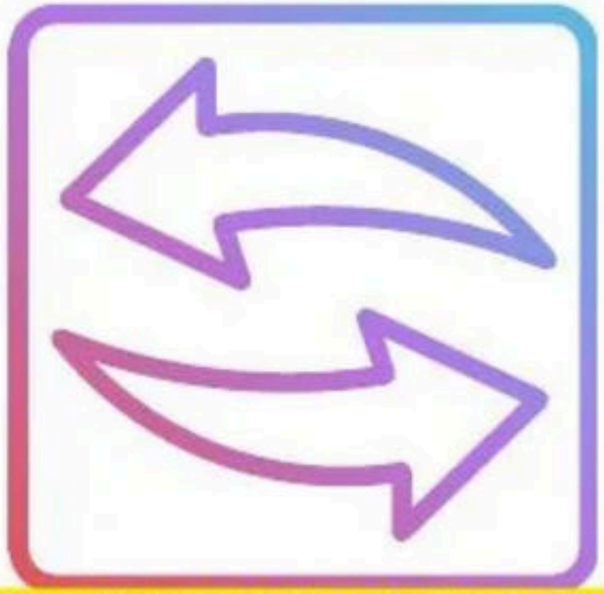

THE RIGHT TO PROPERTY WAS REMOVED FROM PART 3 BY THE 44TH CONSTITUTION AMENDMENT) ACT 1978. NOW. IT IS A LEGAL RIGHT OR A CONSTITUTIONAL RIGHT. ARTICLE 300A IN CHAPTER IV IN PART XII OF THE INDIAN CONSTITUTION

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F.R. are under the guarantee of the C.O.I

guarantee किसको Enforce करती

गारंटी है?

→ guarantor

Custodian of the C.O.I

S.C. / H.C.

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S.C.

Custodian.
Guarantee
Enforcer of F.R.

जो State भी Exists
F.R. को violate — S.C. H.C.
करे

$\frac{1}{\text{करने}}$ नहीं दिया

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32. REMEDIES FOR ENFORCEMENT OF RIGHTS CONFERRED BY THIS PART

RIGHT TO CONSTITUTIONAL REMEDIES

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(1) THE RIGHT TO MOVE THE SUPREME COURT BY APPROPRIATE PROCEEDINGS FOR THE ENFORCEMENT OF THE RIGHTS CONFERRED BY THIS PART IS GUARANTEED

(2) THE SUPREME COURT SHALL HAVE POWER TO ISSUE DIRECTIONS OR ORDERS OR WRITS, INCLUDING WRITS IN THE NATURE OF HABEAS CORPUS, MANDAMUS, PROHIBITION, QUO WARRANTO AND CERTIORARI, WHICHEVER MAY BE APPROPRIATE, FOR THE ENFORCEMENT OF ANY OF THE RIGHTS CONFERRED BY THIS PART

(3) WITHOUT PREJUDICE TO THE POWERS CONFERRED ON THE SUPREME COURT BY CLAUSE (1) AND (2), PARLIAMENT MAY BY LAW EMPOWER ANY OTHER COURT TO EXERCISE WITHIN THE LOCAL LIMITS OF ITS JURISDICTION ALL OR ANY OF THE POWERS EXERCISABLE BY THE SUPREME COURT UNDER CLAUSE (2)

(4) THE RIGHT GUARANTEED BY THIS ARTICLE SHALL NOT BE SUSPENDED EXCEPT AS OTHERWISE PROVIDED FOR BY THIS CONSTITUTION

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1. HABEAS CORPUS
2. MANDAMUS
3. CERTIORARI
4. QUO WARRANTO
5. PROHIBITION

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H - Habeas Corpus

Q - Q.W

C - Certiorari

P - Prohibition

M - Mandamus

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A32

Heart x Solid

the Cont

P.3

Backbone of the

"SR" x substance

unacademy

Right to Protect Rights

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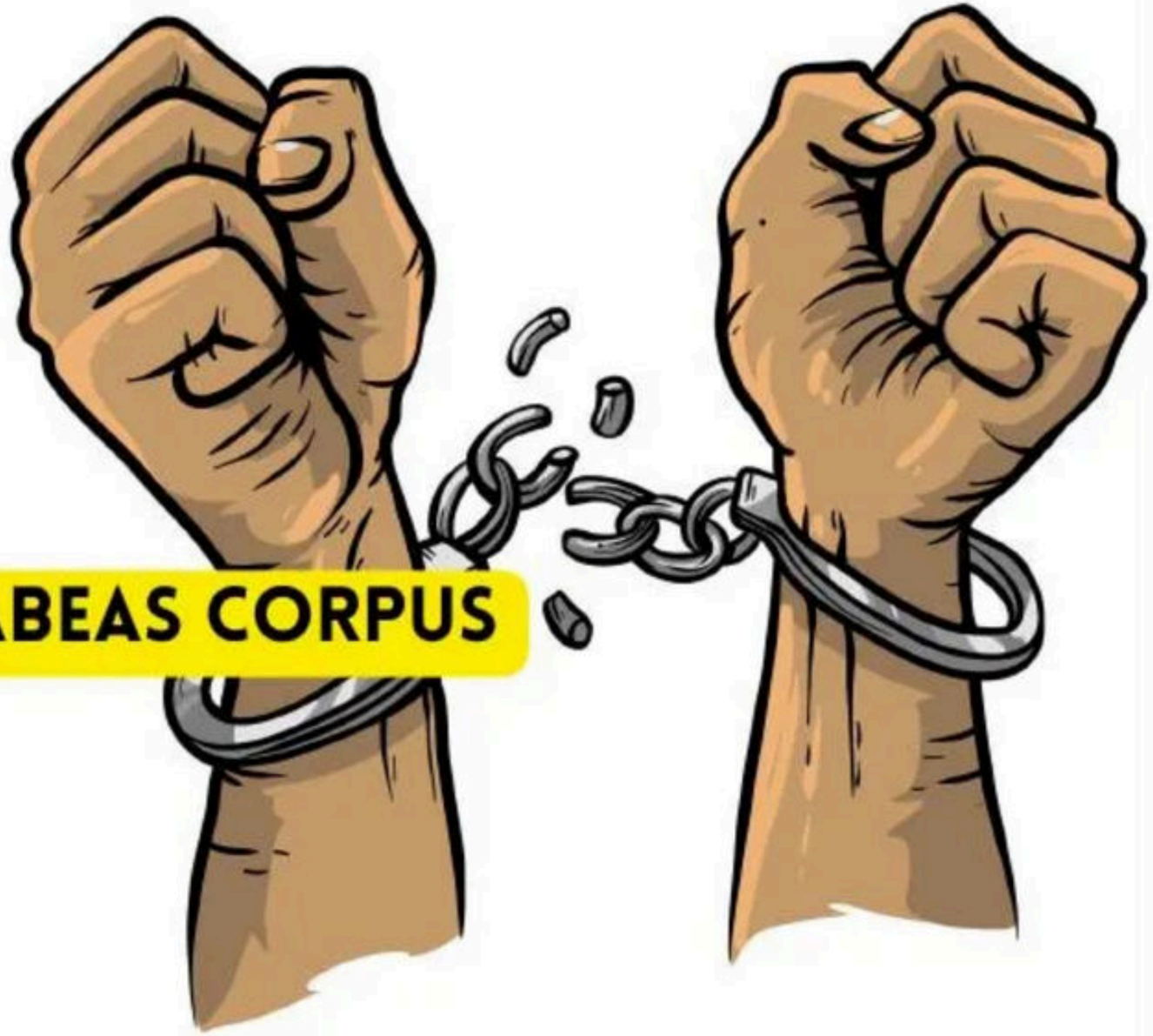
WRIT OF HABEAS CORPUS



THE WRIT OF HABEAS CORPUS IS A LEGAL REMEDY THAT PROTECTS AN INDIVIDUAL'S FUNDAMENTAL RIGHT TO PERSONAL LIBERTY AND SAFEGUARDS AGAINST UNLAWFUL DETENTION OR IMPRISONMENT. HABEAS CORPUS, WHICH MEANS "YOU SHALL HAVE THE BODY" IN LATIN, IS A LEGAL ORDER ISSUED BY A COURT DEMANDING THAT A PERSON OR AUTHORITY DETAINING ANOTHER PERSON PRODUCE THE DETAINED INDIVIDUAL BEFORE THE COURT. THE PURPOSE OF THIS WRIT IS TO DETERMINE WHETHER THE DETENTION IS LAWFUL AND TO SECURE THE RELEASE OF THE PERSON IF THEIR DETENTION IS FOUND TO BE ILLEGAL. THE WRIT OF HABEAS CORPUS SERVES AS A CHECK ON ARBITRARY OR UNLAWFUL DEPRIVATION OF LIBERTY BY ENSURING THAT A DETAINED PERSON IS NOT UNLAWFULLY IMPRISONED, DETAINED WITHOUT PROPER LEGAL AUTHORITY, OR HELD IN VIOLATION OF THEIR RIGHTS. IT ACTS AS A SAFEGUARD AGAINST ARBITRARY STATE POWER AND PROTECTS INDIVIDUALS FROM BEING SUBJECTED TO INDEFINITE DETENTION OR SECRET IMPRISONMENT.

WHEN A WRIT OF HABEAS CORPUS IS FILED, THE COURT REVIEWS THE LEGALITY OF THE DETENTION AND EXAMINES THE REASONS AND JUSTIFICATIONS PROVIDED BY THE DETAINING AUTHORITY. THE COURT MAY INQUIRE INTO THE GROUNDS FOR DETENTION, THE LEGALITY OF THE ARREST OR CONFINEMENT, AND COMPLIANCE WITH LEGAL PROCEDURES. IF THE COURT FINDS THAT THE DETENTION IS UNLAWFUL OR LACKS PROPER JUSTIFICATION, IT CAN ORDER THE RELEASE OF THE DETAINED PERSON OR TAKE OTHER APPROPRIATE ACTIONS TO REMEDY THE VIOLATION OF THEIR RIGHTS.

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WRIT OF MANDAMUS

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THE WRIT OF MANDAMUS IS A LEGAL REMEDY THAT IS USED TO COMPEL A GOVERNMENT OFFICIAL, PUBLIC AUTHORITY, OR LOWER COURT TO PERFORM A SPECIFIC DUTY OR TAKE A PARTICULAR ACTION THAT THEY ARE OBLIGATED TO PERFORM BUT HAVE FAILED OR REFUSED TO DO SO. THE TERM "MANDAMUS" IS LATIN FOR "WE COMMAND."

THE WRIT OF MANDAMUS IS TYPICALLY ISSUED BY A HIGHER COURT, SUCH AS A SUPERIOR COURT OR A COURT WITH SUPERVISORY JURISDICTION, TO DIRECT AN INFERIOR COURT OR A PUBLIC OFFICIAL TO FULFILL THEIR LEGAL DUTY. IT IS AN EXTRAORDINARY REMEDY AIMED AT ENSURING THAT THOSE IN POSITIONS OF POWER OR AUTHORITY ACT IN ACCORDANCE WITH THE LAW AND PERFORM THEIR DUTIES IN A TIMELY AND PROPER MANNER.

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DON'T FORGET!

TO OBTAIN A WRIT OF MANDAMUS, THE PARTY SEEKING RELIEF MUST DEMONSTRATE THE FOLLOWING ELEMENTS:

1. THE EXISTENCE OF A CLEAR LEGAL RIGHT: THE PETITIONER MUST ESTABLISH THAT THEY HAVE A CLEAR LEGAL RIGHT TO THE PERFORMANCE OF THE DUTY SOUGHT TO BE COMPELLED. THIS CAN BE BASED ON A STATUTORY PROVISION, CONSTITUTIONAL RIGHT, OR ESTABLISHED LEGAL PRINCIPLES.
2. THE EXISTENCE OF A CORRESPONDING DUTY: THE PETITIONER MUST SHOW THAT THE RESPONDENT HAS A LEGAL DUTY TO PERFORM THE SPECIFIC ACT OR DUTY IN QUESTION.
3. FAILURE OR REFUSAL TO PERFORM THE DUTY: THE PETITIONER MUST DEMONSTRATE THAT THE RESPONDENT HAS FAILED OR REFUSED TO FULFILL THEIR DUTY DESPITE BEING OBLIGATED TO DO SO.
4. LACK OF ALTERNATIVE REMEDIES: THE PETITIONER MUST ESTABLISH THAT THERE IS NO OTHER ADEQUATE LEGAL REMEDY AVAILABLE TO ADDRESS THE ISSUE OR THAT PURSUING ALTERNATIVE REMEDIES WOULD BE FUTILE OR INEFFECTIVE.

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WRIT OF PROHIBITION

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THE WRIT OF PROHIBITION IS A LEGAL REMEDY THAT IS USED TO PREVENT A LOWER COURT OR TRIBUNAL FROM EXCEEDING ITS JURISDICTION OR ACTING OUTSIDE THE SCOPE OF ITS AUTHORITY. IT IS AN EXTRAORDINARY WRIT ISSUED BY A HIGHER COURT TO PROHIBIT AN INFERIOR COURT OR TRIBUNAL FROM CONTINUING WITH A PARTICULAR PROCEEDING OR EXERCISING JURISDICTION OVER A PARTICULAR MATTER.

THE PURPOSE OF THE WRIT OF PROHIBITION IS TO RESTRAIN OR PREVENT THE LOWER COURT OR TRIBUNAL FROM ACTING UNLAWFULLY OR BEYOND ITS LEGAL AUTHORITY. IT SERVES AS A MEANS TO CORRECT ERRORS, PREVENT INJUSTICE, AND MAINTAIN THE PROPER BALANCE OF POWER BETWEEN DIFFERENT LEVELS OF COURTS OR TRIBUNALS.

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TO OBTAIN A WRIT OF PROHIBITION, THE PARTY SEEKING RELIEF MUST DEMONSTRATE THE FOLLOWING ELEMENTS:

1. LACK OF JURISDICTION OR EXCESS OF JURISDICTION: THE PETITIONER MUST SHOW THAT THE LOWER COURT OR TRIBUNAL LACKS THE JURISDICTION TO HEAR THE CASE OR THAT IT HAS EXCEEDED ITS JURISDICTION BY ACTING OUTSIDE THE SCOPE OF ITS AUTHORITY.
2. ONGOING OR IMMINENT PROCEEDINGS: THE PETITIONER MUST ESTABLISH THAT THERE ARE ONGOING OR IMMINENT PROCEEDINGS IN THE LOWER COURT OR TRIBUNAL THAT REQUIRE IMMEDIATE INTERVENTION TO PREVENT FURTHER UNLAWFUL ACTIONS OR POTENTIAL HARM.
3. LACK OF ALTERNATIVE REMEDIES: THE PETITIONER MUST DEMONSTRATE THAT THERE ARE NO OTHER ADEQUATE LEGAL REMEDIES AVAILABLE TO ADDRESS THE CONSTITUTIONAL ISSUE OR THAT PURSUING ALTERNATIVE REMEDIES WOULD BE FUTILE OR INEFFECTIVE.

DON'T FORGET!

Checklist
WRIT OF CERTIORARI

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THE WRIT OF CERTIORARI IS A LEGAL REMEDY USED TO REVIEW AND OVERTURN THE DECISIONS OF LOWER COURTS, TRIBUNALS, OR ADMINISTRATIVE BODIES. IT IS AN ORDER ISSUED BY A HIGHER COURT, TYPICALLY AN APPELLATE COURT, DIRECTING A LOWER COURT TO SEND UP THE RECORD OF A CASE FOR REVIEW.

THE PRIMARY PURPOSE OF THE WRIT OF CERTIORARI IS TO DETERMINE WHETHER THE LOWER COURT HAS ACTED WITHIN ITS JURISDICTION, FOLLOWED THE CORRECT LEGAL PROCEDURES, AND APPLIED THE LAW CORRECTLY. IT ALLOWS THE HIGHER COURT TO EXERCISE ITS SUPERVISORY AND APPELLATE POWERS TO ENSURE UNIFORMITY IN THE APPLICATION OF THE LAW AND CORRECT ERRORS MADE BY LOWER COURTS.

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TO OBTAIN A WRIT OF CERTIORARI, THE PARTY SEEKING RELIEF MUST TYPICALLY DEMONSTRATE THE FOLLOWING ELEMENTS:

1. EXISTENCE OF AN ERROR OF LAW: THE PETITIONER MUST SHOW THAT THE LOWER COURT OR TRIBUNAL HAS COMMITTED AN ERROR OF LAW, SUCH AS MISINTERPRETING OR MISAPPLYING A LEGAL PRINCIPLE OR STATUTE.
2. IMPORTANCE OR SIGNIFICANCE OF THE ISSUE: THE PETITIONER MUST ESTABLISH THAT THE ISSUE OR ERROR RAISED HAS SIGNIFICANT LEGAL OR PUBLIC IMPORTANCE, AND ITS RESOLUTION WILL HAVE IMPLICATIONS BEYOND THE SPECIFIC CASE.
3. EXHAUSTION OF OTHER REMEDIES: IN SOME JURISDICTIONS, THE PETITIONER MAY NEED TO DEMONSTRATE THAT THEY HAVE EXHAUSTED ALL AVAILABLE REMEDIES WITHIN THE LOWER COURT SYSTEM BEFORE SEEKING THE WRIT OF CERTIORARI.

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WRIT OF QUO-WARRANTO

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THE WRIT OF QUO WARRANTO IS A LEGAL REMEDY USED TO CHALLENGE THE RIGHT OR AUTHORITY OF A PERSON OR ENTITY TO HOLD A PUBLIC OFFICE, POSITION, OR FRANCHISE. QUO WARRANTO, WHICH MEANS "BY WHAT AUTHORITY" IN LATIN, IS A LEGAL PROCEEDING INITIATED TO INQUIRE INTO THE LEGITIMACY OF SOMEONE'S CLAIM TO A SPECIFIC OFFICE OR POSITION.

THE PURPOSE OF THE WRIT OF QUO WARRANTO IS TO DETERMINE WHETHER THE PERSON OR ENTITY HOLDING A PARTICULAR PUBLIC OFFICE OR AUTHORITY HAS THE LEGAL RIGHT OR AUTHORITY TO DO SO. IT IS A MEANS TO PREVENT THE USURPATION OR ABUSE OF PUBLIC POSITIONS AND TO ENSURE THAT THOSE WHO HOLD SUCH POSITIONS DO SO LEGITIMATELY AND WITHIN THE BOUNDS OF THE LAW.

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TO OBTAIN A WRIT OF QUO WARRANTO, THE PARTY SEEKING RELIEF MUST TYPICALLY DEMONSTRATE THE FOLLOWING ELEMENTS:

1. LACK OF LEGAL ENTITLEMENT: THE PETITIONER MUST SHOW THAT THE PERSON OR ENTITY IN QUESTION LACKS THE LEGAL RIGHT OR AUTHORITY TO HOLD THE OFFICE, POSITION, OR FRANCHISE BEING CHALLENGED.
2. SUBSTANTIAL PUBLIC INTEREST: THE PETITIONER MUST ESTABLISH THAT THERE IS A SIGNIFICANT PUBLIC INTEREST INVOLVED IN CHALLENGING THE INDIVIDUAL'S CLAIM TO THE OFFICE OR POSITION. THIS IS TO ENSURE THAT THE WRIT IS NOT USED FOR TRIVIAL OR PERSONAL DISPUTES BUT FOR MATTERS OF PUBLIC IMPORTANCE.
3. TIMELINESS: THE PETITIONER MUST INITIATE THE PROCEEDINGS IN A TIMELY MANNER, TYPICALLY WITHIN A SPECIFIED PERIOD AFTER THE ALLEGED USURPATION OR WRONGFUL ASSUMPTION OF THE OFFICE OR POSITION.

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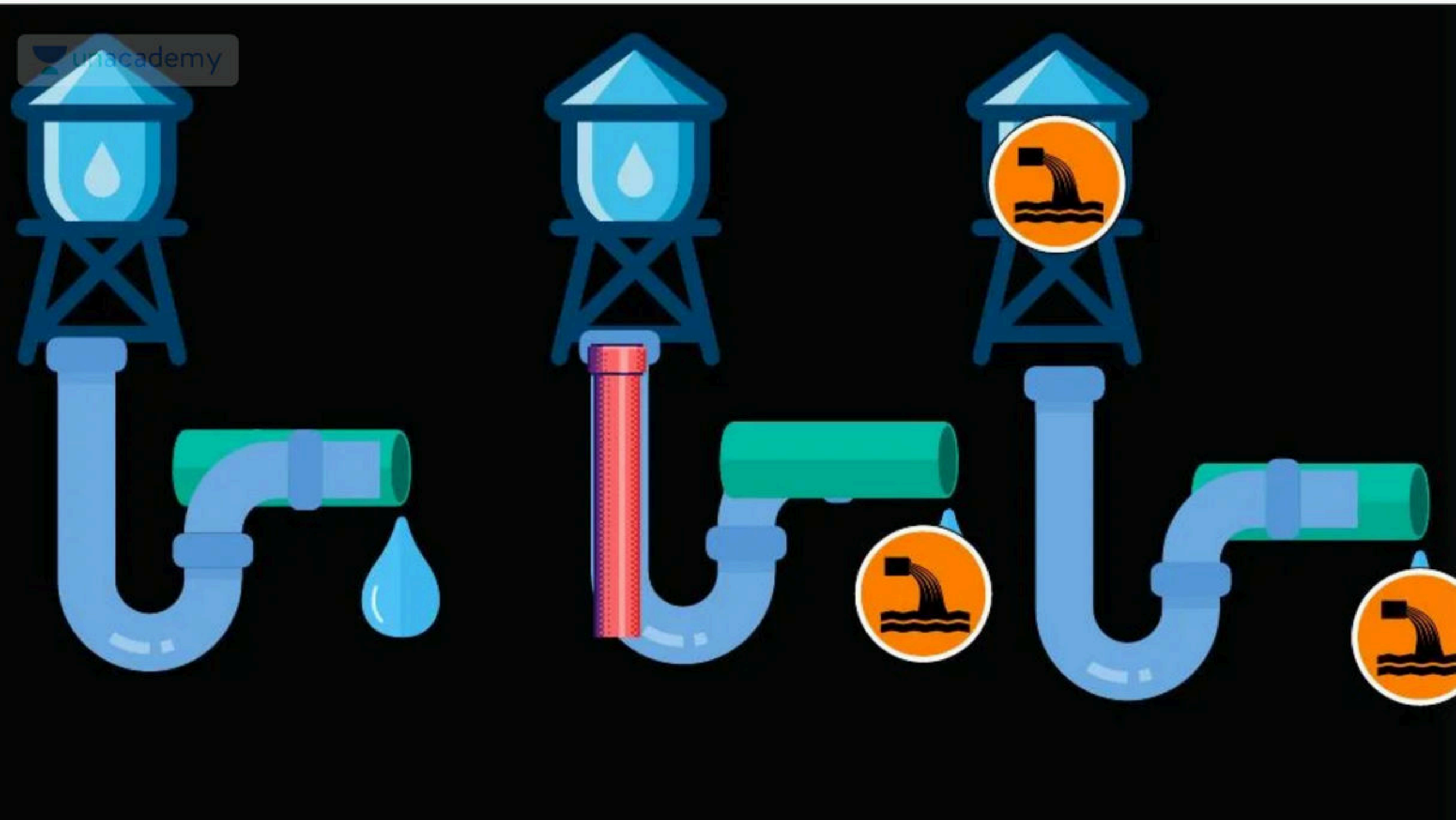
SCOPE OF JUDICIAL REVIEW



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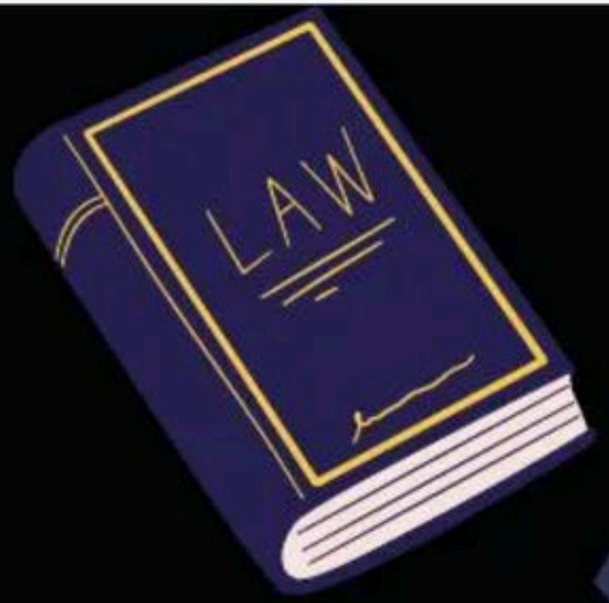

IS THE LAW FAIR?

DUE PROCESS OF LAW

IS THE PROCEDURE FOLLOWED ?

PROCEDURE ESTABLISHED BY LAW

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PROCEDURE ESTABLISHED BY LAW IS A TERM USED IN THE INDIAN CONSTITUTION TO REFER TO THE PROCESS THAT MUST BE FOLLOWED IN ORDER TO DEPRIVE A PERSON OF THEIR LIFE OR PERSONAL LIBERTY. THIS PROCESS MUST BE ESTABLISHED BY LAW, MEANING THAT IT MUST BE SET OUT IN A STATUTE OR OTHER FORM OF LEGISLATION.

DUE PROCESS OF LAW IS A BROADER CONCEPT THAT REFERS TO THE FUNDAMENTAL FAIRNESS OF THE LAW. THIS MEANS THAT THE LAW MUST BE FAIR AND JUST, AND IT MUST NOT VIOLATE ANY PRINCIPLES OF NATURAL JUSTICE ALSO.

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- PROCEDURE ESTABLISHED BY LAW IS A NARROWER CONCEPT THAN DUE PROCESS OF LAW. PROCEDURE ESTABLISHED BY LAW ONLY APPLIES TO THE PROCESS OF DEPRIVING A PERSON OF THEIR LIFE OR PERSONAL LIBERTY, WHILE DUE PROCESS OF LAW APPLIES TO ALL LAWS THAT AFFECT THE INDIVIDUAL.
- PROCEDURE ESTABLISHED BY LAW FOCUSES ON THE PROCESS OF THE LAW, WHILE DUE PROCESS OF LAW FOCUSES ON THE FAIRNESS OF THE LAW.
- PROCEDURE ESTABLISHED BY LAW IS AN IMPORTANT PROCEDURAL REQUIREMENT, WHILE DUE PROCESS OF LAW IS A FUNDAMENTAL RIGHT.

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OLD STORY BY POLITY DADI

Supreme Court of India
Indiankanoon.org

A.K. Gopalan vs The State Of Madras.Union Of ... on 19 May, 1950

Equivalent citations: 1950 AIR 27, 1950 SCR 88

Author: H J Kania

Bench: Kania, Hiralal J. (Cj)

PETITIONER:
A.K. GOPALAN

Vs.

RESPONDENT:
THE STATE OF MADRAS.UNION OF INDIA: INTERVENER.

DATE OF JUDGMENT:
19/05/1950

BENCH:
KANIA, HIRALAL J. (CJ)
BENCH:
KANIA, HIRALAL J. (CJ)
FAZAL ALI, SAIYID
SASTRI, M. PATANJALI
MAHAJAN, MEHR CHAND
DAS, SUDHI RANJAN
MUKHERJEA, B.K.

Acts of Parliament assented to by the President

GOVERNMENT OF INDIA

MINISTRY OF LAW

New Delhi, the 26th February, 1950

The following Act of Parliament received the assent of the President on the 25th February, 1950 and is hereby published for general information:—

THE PREVENTIVE DETENTION ACT, 1950

NO. IV of 1950

An Act to provide for preventive detention in certain cases and matters connected therewith.

Be it enacted by Parliament as follows: —

1. Short title, extent and duration.—This Act may be called the Preventive Detention Act, 1950.

(2) It extends to the whole of India:

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to preventive detention for reasons connected with defence, foreign affairs or the security of India.

(3) It shall cease to have effect on the 1st day of April, 1951, save as respects things done or omitted to be done before that date.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "State Government" means, in relation to a Part C State, the

A.K. Gopalan was a Communist Leader who had been under detention since December 1947. He had been sentenced to imprisonment but the convictions were set aside. While he was in detention under one of the other orders of the Madras State Government, he was served with an order under Section 3(1) of the Preventive Detention Act, 1950[1] and subsequently detained.

[redacted]

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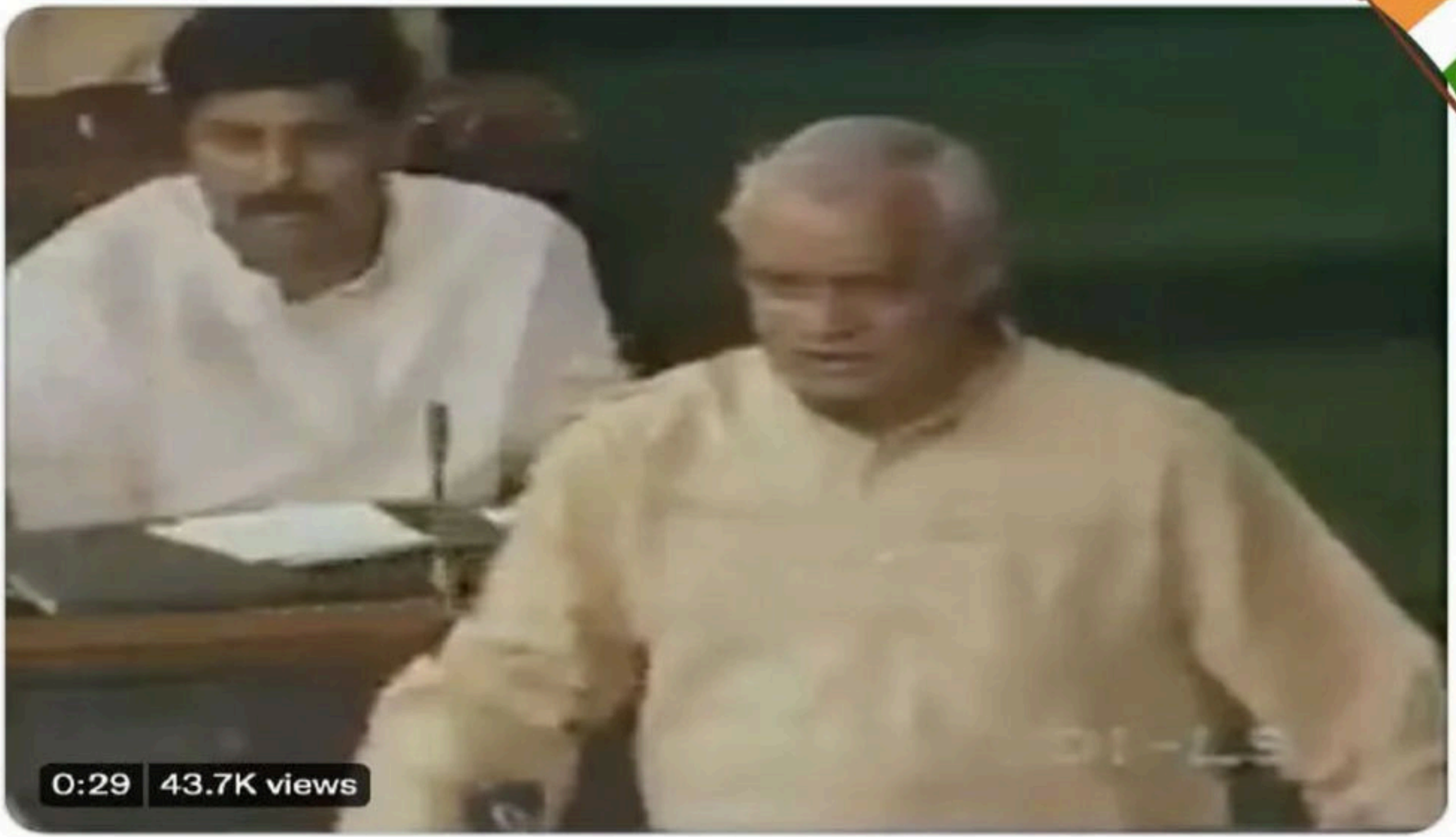

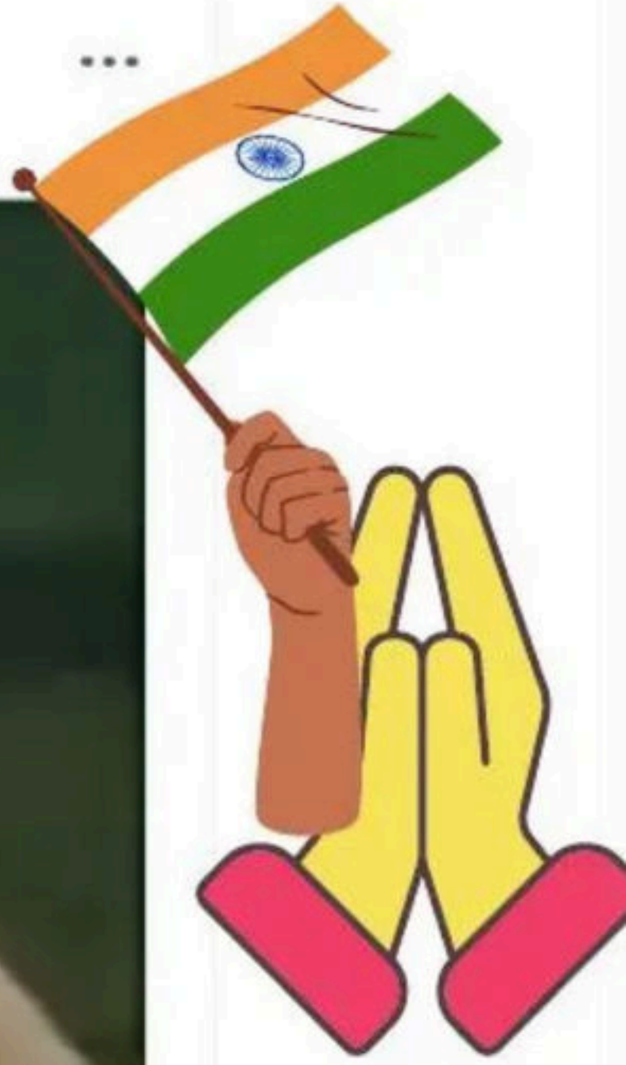

Pressing need for law in India to streamline grant of bails, says SC

EXPRESS NEWS SERVICE
NEW DELHI, JULY 11

HIGHLIGHTING LACUNAE in application of rules for grant of bail, the Supreme Court on Monday said "there is a pressing need" for a bail law in the country to "streamline the grant of bails".

Referring to bail laws in countries such as the UK, a bench of Justices S K Kaul and M M Sundresh said in a judgment, "We believe there is a pressing need for a similar enactment in our country. We do not wish to say anything beyond the observation made, except to call on the Government of India to consider the introduction of an Act specifically meant for granting of bail as done in various other countries like the United Kingdom."

The bench noted, "Our belief is also for the reason that the Code as it exists today is a continuation of the pre-Independence one with its modifications. We hope and trust that the Government would look into the suggestion made in right earnest."

Underlining that bail is the rule and jail an exception, the bench also asked "courts to come down heavily on" police "officers effecting arrest without due compliance of Section 41 and Section 41A (CrPC)" dealing with arrest of persons, as directed by the top court in its 2014 judgment in Arnesh Kumar vs State of Bihar and Another case.

In its order on Monday, the SC said jails in India are "flooded with undertrial prisoners", the majority of whom "may not even be required to be arrested despite registration of a cognisable offense, being charged with offenses punishable for seven years or less".

Supreme Court of India

Maneka Gandhi vs Union Of India on 25 January, 1978

Equivalent citations: 1978 AIR 597, 1978 SCR (2) 621

Author: M H Beg

Bench: Beg, M. Hameedullah (Cj), Chandrachud, Y.V., Bhagwati, P.N., Krishnaiyer, V.R. & Untwalia, N.L., Fazalali, S.M. & Kailasam, P.S.

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                PETITIONER:
MANEKA GANDHI

          Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT25/01/1978

BENCH:
BEG, M. HAMEEDULLAH (CJ)
BENCH:
BEG, M. HAMEEDULLAH (CJ)
CHANDRACHUD, Y.V.
BHAGWATI, P.N.
KRISHNAIYER, V.R.
UNTWALIA, N.L.
FAZALALI, SYED MURTAZA
KAILASAM, P.S.
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IN THE CASE OF MANEKA GANDHI V. UNION OF INDIA, THE SUPREME COURT HELD THAT THE PROCEDURE ESTABLISHED BY LAW MUST BE FAIR, JUST, AND REASONABLE. THIS MEANS THAT THE LAW MUST NOT BE ARBITRARY OR CAPRICIOUS, AND IT MUST NOT VIOLATE ANY OF THE INDIVIDUAL'S FUNDAMENTAL RIGHTS.

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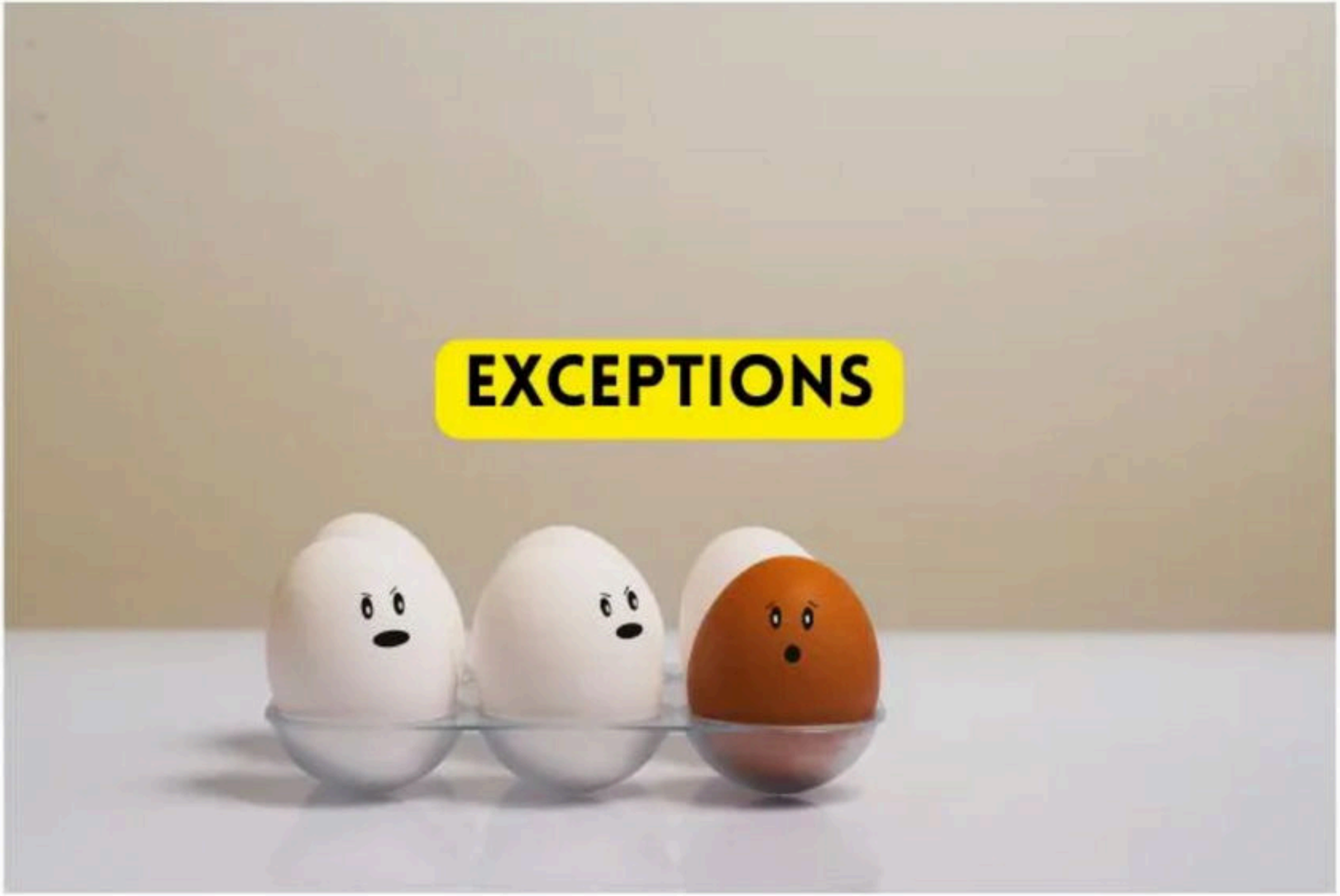

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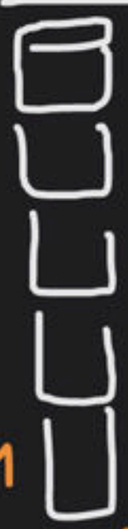
Back.

Back side is very wrong!



Bulb

×33 ×34 ×35

after the back (32)

They are not protected by 32

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ARTICLE 33

33. PARLIAMENT MAY, BY LAW, DETERMINE TO WHAT EXTENT ANY OF THE RIGHTS CONFERRED BY THIS PART SHALL, IN THEIR APPLICATION TO,–

(A) THE MEMBERS OF THE ARMED FORCES; OR

(B) THE MEMBERS OF THE FORCES CHARGED WITH THE MAINTENANCE OF PUBLIC ORDER; OR

(C) PERSONS EMPLOYED IN ANY BUREAU OR OTHER ORGANISATION ESTABLISHED BY THE STATE FOR PURPOSES OF INTELLIGENCE OR COUNTER INTELLIGENCE; OR

(D) PERSON EMPLOYED IN, OR IN CONNECTION WITH, THE TELECOMMUNICATION SYSTEMS SET UP FOR THE PURPOSES OF ANY FORCE, BUREAU OR ORGANISATION REFERRED TO IN CLAUSES (A) TO (C),

BE RESTRICTED OR ABROGATED SO AS TO ENSURE THE PROPER DISCHARGE OF THEIR DUTIES AND THE MAINTENANCE OF DISCIPLINE AMONG THEM.

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Army Navy Air

Police

CBI RAW NIA

Restrictions on FR.

National / Secret

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Job
Army
RAW
CBI

: t/i Voluntarily receive accept.

Parl. By Law can restrict

X violation
X abridgment
X curtailment

A.B. :

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this Act and the rules and regulations made thereunder.

21. Power to modify certain fundamental rights in their application to persons subject to this Act. Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act-

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations

(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes

(c) to communicate with the press or to publish or cause to be published any book, letter or other document.

22. Retirement, release or discharge. Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.

by Act 19 of 1955, s. 2 and Sch., for" The Commander- in- Chief".

No. A.32 2

The Army Act, 1950

ACT NO. 46 OF 1950 [20th May, 1950.]

An Act to consolidate and amend the law relating to the government of the regular Army.

BE it enacted by Parliament as follows:-

CHAP

PRELIMINARY

CHAPTER I

PRELIMINARY

1. Short title and commencement.
(1) This Act may be called the Army Act, 1950 .
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Persons subject to this Act.
(1) The following persons shall be subject to this Act wherever they may be, namely:-
(a) officers, junior commissioned officers and warrant officers of the regular Army;
(b) persons enrolled under this Act;
(c) persons belonging to the Indian Reserve Forces;
(d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;
(e) officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications, as may be made in the application of this Act to such persons under sub-section (4) of

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A. 32.

ARTICLE 34

NOTWITHSTANDING ANYTHING IN THE FOREGOING PROVISIONS OF THIS PART, PARLIAMENT MAY BY LAW INDEMNIFY ANY PERSON IN THE SERVICE OF THE UNION OR OF A STATE OR ANY OTHER PERSON IN RESPECT OF ANY ACT DONE BY HIM IN CONNECTION WITH THE MAINTENANCE OR RESTORATION OF ORDER IN ANY AREA WITHIN THE TERRITORY OF INDIA WHERE MARTIAL LAW WAS IN FORCE OR VALIDATE ANY SENTENCE PASSED, PUNISHMENT INFLICTED, FORFEITURE ORDERED OR OTHER ACT DONE UNDER MARTIAL LAW IN SUCH AREA.

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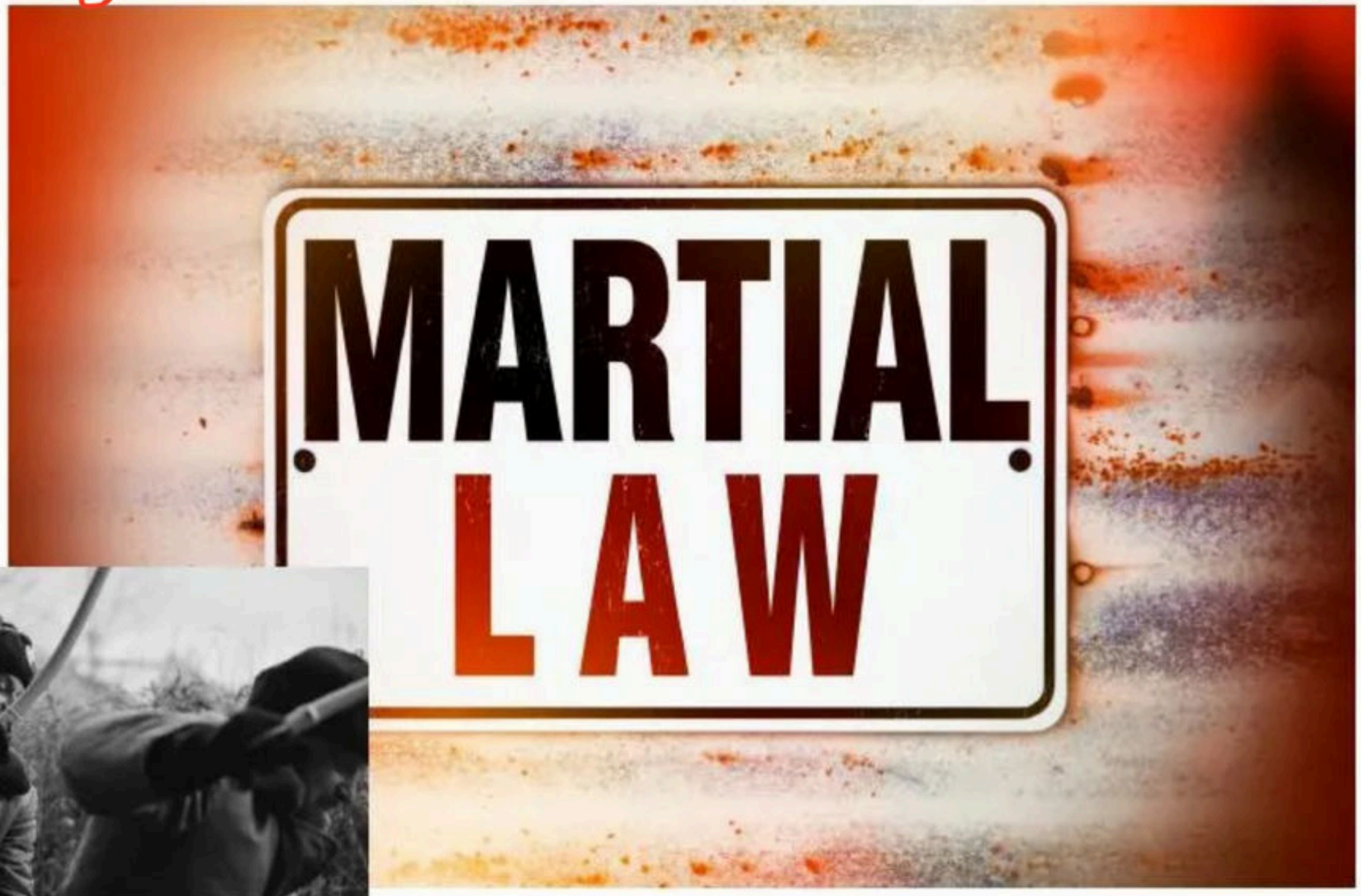
Such a grave threat to security of India (part of India) then Civilian administration is used rather Military by admin.



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Head of state

- D.M -

Civilian

India

K

Not

Not

K

Post-1947

Indian - Martial

Police I.P.S.

Law & order

Military

Threat to law & order

Martial law

Any "f.R" can be ~~sig~~ X

Any action of any officer of Union / State

Park. by law indemnity.

[illegible]

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INDEMNIFY

2 legal agrc

Amit —Indemnity bond→ Rahul

I will indemnify Rahul

Amit is answerable

भाई (R) को संभाल
X answer

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indemnity

Overview | Usage examples | Similar and opposite words | Pror

Indemnity is a type of insurance compensation paid for damage or loss. When the term is used in the legal sense, it also may refer to an exemption from liability for damage. Indemnity is a contractual agreement between two parties in which one party agrees to pay for potential losses or damage caused by another party.

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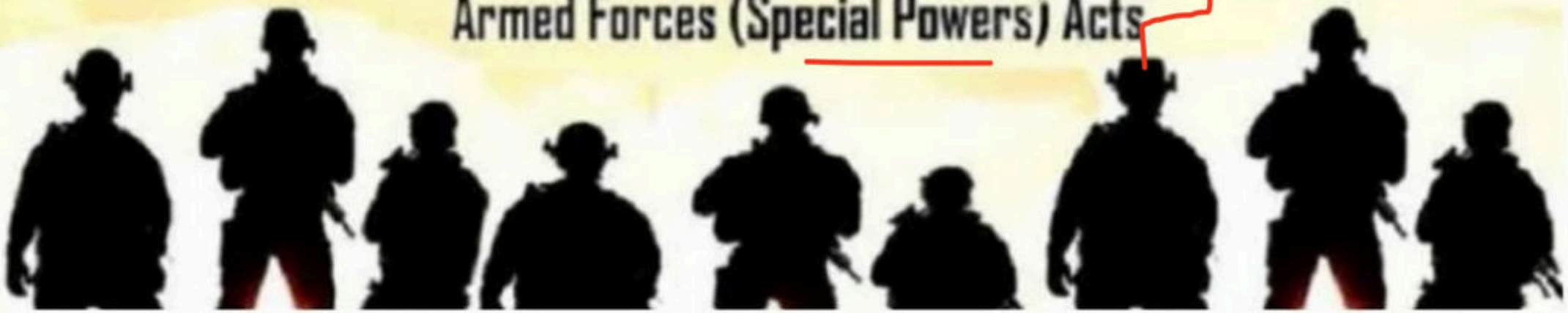
AFSPA

Armed Forces (Special Powers) Acts



IS AFSPA-AN EXAMPLE OF MARTIAL LAW????????

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INDEPENDENT INDIA HAS NEVER SEEN A MARTIAL LAW

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ARTICLE 35

NOTWITHSTANDING ANYTHING IN THIS CONSTITUTION,– (A) PARLIAMENT SHALL HAVE, AND THE LEGISLATURE OF A STATE SHALL NOT HAVE, POWER TO MAKE LAWS–

(I) WITH RESPECT TO ANY OF THE MATTERS WHICH UNDER CLAUSE (3) OF ARTICLE 16, CLAUSE (3) OF ARTICLE 32, ARTICLE 33 AND ARTICLE 34 MAY BE PROVIDED FOR BY LAW MADE BY PARLIAMENT; AND

(II) FOR PRESCRIBING PUNISHMENT FOR THOSE ACTS WHICH ARE DECLARED TO BE OFFENCES UNDER THIS PART

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A35

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