RV College of Engineering®, Bengaluru – 59

(Autonomous Institution affiliated to VTU, Belagavi)

Department of Industrial Engineering and Management

18HS71 - Constitution of India and Professional Ethics

Unit – I

Indian Constitution - Salient features of Indian Constitution, Preamble to the Constitution of India; Provisions Relating to Citizenship in India - at the Commencement of the Constitution and Later with latest amendments, Modes of Acquisition and Termination of Citizenship of India. Scope & Extent of Fundamental Rights - Articles 14-32 with case studies; Right to Information Act, 2005 with Case studies. **10 Hrs**

Introduction

The Constitution of India is a very dynamic creation of our lawmakers. The Constitution of India as we all know is a supreme law of the country and every citizen of our country has to abide by the constitution.

Salient features of India Constitution

- The Lengthiest Constitution of the World

The Indian Constitution is one of the lengthiest constitutions in the world and it is also very detailed. There are 12 schedules and 448 articles in our Constitution. The Indian Constitution has incorporated various articles by taking inspiration from the various constitutions around the world. As we all know, India is a very diverse country and it was necessary to draft a long Constitution incorporating various provisions in order to accommodate various differences. The parent document for drafting the Indian Constitution was the Government of India Act 1935, and that document itself was very lengthy.

- Establishment of a Sovereign, Socialist, Secular, Democratic Republic

The Preamble of our Constitution provides India to be a Sovereign, Socialist, Secular, Democratic and Republic Country. There are also various other terms in the Preamble which ensure equality and protect people. The various other terms are Justice, Liberty, Equality, and Fraternity.

- Parliamentary form of Government

The Bicameral Legislature system is followed in our country. The Unicameral legislature system is followed in countries like Norway. The law making procedure is easy in the unicameral legislature but the bicameral legislature is effective as there would be a lot of discussions and deliberations before making legislation. A parliamentary system of government means that the executive branch of government has the **direct or indirect support of the parliament**. ... The head of government is the prime minister, who has the real power. The head of state may be an elected president or, in the case of a constitutional monarchy, hereditary.

Parliamentary v. Presidential System

The Presidential form of Government is followed in countries like the United States of America. The President is the head of the State in the Presidential System of Government. The Parliamentary system is preferred over the Presidential system as it ensures the equal

distribution of power and also power is not within the hands of a single person. The drafters of our constitution did not prefer the presidential system as the executive and legislatures would become independent of each other. The makers felt that this would be an issue afterwards.

- A unique blend of rigidity and flexibility

The Indian Constitution is neither rigid nor flexible, this is also one of the reasons for its length. The famous example of the rigid constitution is the Constitution of the U.S., and it is known as a rigid constitution as the amendment process is very difficult. The Indian Constitution is not very difficult to amend, as the Constitution of The U.S.A. It has gone through 103 amendments so far but there are certain steps to be satisfied before bringing in the amendment. Thus the Indian Constitution is a unique blend of rigidity and flexibility.

- Fundamental Rights

Fundamental rights in India are the rights guaranteed under Part III (Articles 12-35) of the Constitution of India. There are six fundamental rights (Article 12 - 35) recognised by the Indian constitution : the right to equality (Articles 14-18), the right to freedom (Articles 19-22), the right against exploitation (Articles 23-24), the right to freedom of religion (Articles 25-28), cultural and educational rights (Articles 29-30) and the right to constitutional remedies (Article 32 and 226).

Fundamental rights for Indians have also been aimed at overturning the inequalities of pre-independence social practices. Specifically, they have also been used to abolish untouchability and thus prohibit discrimination on the grounds of religion, race, caste, gender or place of birth. They also forbid trafficking of human beings and forced labour (a crime). They also protect cultural and educational rights of religious establishments. Right to property was changed from fundamental right to legal right.

- **Directive Principles of State Policy**

Part IV of the Indian Constitution deals with the Directive Principles of State Policy. Directive Principles of State Policy **aim to create social and economic conditions under which the citizens can lead a good life**. They also aim to establish social and economic democracy through a welfare state. It is the duty of every State to apply these principles while making any new legislation. The Directive Principles of State Policy is similar to the 'Instrument of Instructions' that is in the Government of India Act 1935. They are basically instructions to the legislature and executive that has to be followed while framing new legislation by the State. There are various directive principles like. The State shall promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

- **A Federation with a strong centralising tendency**

The famous salient feature of our Indian Constitution is that it is a federation with a strong centralising tendency. The constitution of India is neither federal nor unitary. The reasons for calling the Indian Government unitary is that,

- The division of powers is not equal. The centre has more powers than the state that is evident from the fact that the Union list contains more matters than the State list.
- The federations like the U.S.A have rights to frame their own constitution, which is not possible in India as the entire country follows the Single constitution.

- During the time of emergency, the states come under the control of the Centre.
- There is a single system of Courts which enforces both the Central and State laws.
- There is no equal representation of States in the houses of Parliament which is not the same in federations like the U.S.A.

The Indian Constitution is considered as federal for various reasons like:

- There is a written Constitution which is an essential feature of every country following the federal system.
- The supremacy of the constitution is always protected.

Thus the Indian Constitution can be described as quasi-federal or a federation with a strong centralizing tendency.

- **Adult suffrage**

The concept of Adult suffrage allows every citizen of our country who is above eighteen years has the right to vote in the elections. Any adult who is eligible to vote should not be discriminated on any basis like gender, caste and religion. This provision was added in the sixty-first amendment which is also known as the Constitution Act, 1988. The accepted age for voting was twenty-one before this amendment afterwards it was changed to 18 years of age. Article 326 of the Indian Constitution guarantees this right. There are also certain disqualifications provided under Article like:

- Non-residence;
- Unsound mind;
- Criminals who are indulged in the corrupt and illegal practice.

The persons with these disqualifications are not accepted as a registered voter and they are not allowed to cast votes in the election.

- **An Independent Judiciary**

The Judiciary ensures the proper functioning of the constitution and the enforcement of various provisions of the Constitution. The Constitution makers ensured that Judiciary has to be independent so that it will not be biased. The Supreme court is considered as the watchdog of democracy. There are various provisions in the Article which ensures the independence of the judiciary,

- The appointment of Judges is independent and there is no involvement of any executive authorities;
- The tenure of Judges is secured;
- The removal of judges from the tenure must be also based on the constitutional provisions.

- **A Secular State**

The term Secular State means that there is no separate religion for the State and every religion is respected equally in the State. The Preamble of the Indian Constitution itself states that India has to be a secular state. The Fundamental rights provide the citizens' freedom to follow their own religion and religious practices and no one can be forced to follow any religion. The proposal of developing a uniform civil code is also provided in the directive principles of State policy in order to resolve the differences between various religions, though it is not implemented still. Article 26 also provides the right to manage their own religion in order to prevent any intrusion.

- **Single Citizenship**

There is no separate citizenship for the States and the Centre like in various federal countries like the U.S.A. There is single citizenship provided to our citizens. Part 2 of the Indian Constitution, i.e. Article 5 to Article 11 of the Indian Constitution deals with citizenship. The Citizenship Act, 1955 which was amended recently in 2019 also deals with citizenship. Single citizenship allows the persons to enjoy equal rights in various aspects across the country. According to Article 5, it is clearly mentioned that the persons will be considered as citizens of the territory of India, which ensures that there would be only single citizenship.

- **Fundamental Duties**

Article 51A of the Indian Constitution provides various fundamental duties. There are no specific provisions to enforce fundamental duties in the Courts like the fundamental rights but it is also necessary to follow the fundamental duties. The fundamental duties are equally important as the fundamental rights. There are various duties provided to a citizen like:

- To respect the Constitution and its ideals and to abide by the provisions of the Constitution.
- To cherish and follow the noble ideals which inspired our national struggle for freedom.
- To value the rich heritage of our country.
- To defend our country when there is a necessity and to render national service when called upon.
- To protect the environment and carry out measures to improve them.
- To safeguard the public property.
- To promote harmony and the spirit of a common brotherhood etc.,

- **Judicial Review**

The concept of judicial review is an essential feature of the Constitution which helps the constitution to work properly. The judiciary is considered to be the guardian of the constitution, thus it is the duty of the judiciary to check the actions that are violative of various articles in the Constitution. The actions of various organs of the government like executive and legislature can be questioned by the judiciary using the judicial review. The judicial review is an important check and balances in the separation of powers. The court that is authorized with the power of judicial review can invalidate any act that is violative of the various basic features of the Constitution. Article 32 and Article 136 of the Indian Constitution are the articles related to the Judicial review in the Supreme Court. Article 226 and Article 227 are related to the judicial review in the High Court. The scope of judicial review is limited to three grounds:

- Unreasonableness and irrationality;
- Illegality;
- Procedural impropriety.

It is also a settled principle that there should be no judicial review in policy matters, that the policy decision taken by the State or its authorities is beyond the scope of judicial review unless the decision is found to be arbitrary, unreasonable or it is in contravention of the statutory provisions or if it violates the rights of individuals guaranteed under the statute. The policy decision cannot be in contravention of the statutory provisions because if the Legislature in its knowledge provides for a particular right, the authority making a decision regarding the policy cannot nullify the same. The same principle was also stated in the case of *Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation*. In

this case, it was said that the court will not interfere in the matter of administrative action or changes.

Preamble to the Constitution of India

A preamble is an introductory statement in a document that explains the document's philosophy and objectives. In a Constitution, it presents the intention of its framers, the history behind its creation, and the core values and principles of the nation. The Preamble to Constitution of India is guidelines to guide people of the nation, to present the principles of the Constitution, to indicate the source from which the document derives its authority, and meaning. It reflects the hopes and aspirations of the people. The preamble can be referred to as the preface which highlights the entire Constitution. It was adopted on 26 November 1949 by the Constituent Assembly and came into effect on 26 January 1950, celebrated as the Republic day in India. Preamble was made in 1947 but adopted in 1949.

The Preamble reads:

- WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
- JUSTICE, social, economic and political;
- LIBERTY of thought, expression, belief, faith and worship;
- EQUALITY of status and of opportunity;
- and to promote among them all
- FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
- IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Provisions Relating to Citizenship in India- at the Commencement of the Constitution and Later with latest amendments, Modes of Acquisition and Termination of Citizenship of India.

Constitutional Provisions

Citizenship is listed in the **Union List** under the Constitution and thus is under the **exclusive jurisdiction of Parliament.** The **Constitution does not define the term 'citizen'** but details of various categories of persons who are entitled to citizenship are given in **Part 2 (Articles 5 to 11).**

Article 5: It provided for citizenship on commencement of the Constitution

- All those domiciled and born in India were given citizenship.
- Even those who were domiciled but not born in India, but either of whose parents was born in India, were considered citizens.
- Anyone who had been an ordinary resident for more than five years, too, was entitled to apply for citizenship.

Article 6: It provided rights of citizenship of certain persons who have migrated to India from Pakistan.

- Since Independence was preceded by Partition and migration, Article 6 laid down that anyone who migrated to India **before July 19, 1949,** would automatically become an Indian citizen if either of his parents or grandparents was born in India.
- But those who entered India after this date needed to register themselves.

Article 7: Provided Rights of citizenship of **certain migrants to Pakistan.**

- Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net.
- The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon.

- **Article 8:** Provided Rights of citizenship of certain **persons of Indian origin residing outside India.**
  - Any Person of Indian Origin residing outside India who, or either of whose parents or grandparents, was born in India could register himself or herself as an Indian citizen with Indian Diplomatic Mission.

- **Article 9:** Provided that if any person **voluntarily acquired the citizenship of a foreign State** will no longer be a citizen of India

- **Article10:** It says that every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, **subject to the provisions of any law that may be made by Parliament,** continue to be such citizen.

- **Article 11:** It empowers **Parliament** to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it.

Acts and Amendments

- The Citizenship Act, 1955 provides for the **acquisition and determination** of Indian citizenship.

Acquisition and Determination of Indian Citizenship

- There are **four ways** in which Indian citizenship can be acquired: **birth, descent, registration and naturalisation.** The provisions are listed under the **Citizenship Act, 1955.**
- **By Birth:**
  - Every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.
  - Every person born in India between 01.07.1987 and 02.12.2004 is a citizen of India given either of his/her parents is a citizen of the country at the time of his/her birth.
  - Every person born in India on or after 3.12.2004 is a citizen of the country given both his/her parents are Indians or at least one parent is a citizen and the other is not an illegal migrant at the time of birth.

- **By Registration:** Citizenship can also be acquired by registration. Some of the mandatory rules are:

- A person of **Indian origin** who has **been a resident of India for 7 years** before applying for registration.
- A person of Indian origin who is a resident of any country outside undivided India.
- A person **who is married to an Indian citizen** and is ordinarily **resident for 7 years** before applying for registration.
- **Minor children** of persons who are **citizens of India.**

- **By Descent:**
  - A person born outside India on or after January 26, 1950 is a citizen of India by descent if **his/her father was a citizen of India by birth.**
  - A person born outside India on or after December 10, 1992, but before December 3, 2004 if either of his/her parent was a citizen of India by birth.
  - If a person born outside India or or after December 3, 2004 has to acquire citizenship, his/her parents have to declare that the minor does not hold a passport of another country and his/her birth is registered at an Indian consulate within one year of birth.

- **By Naturalisation:**
  - A person can acquire citizenship by naturalisation if **he/she is ordinarily resident of India for 12 years** (throughout 12 months preceding the date of application and 11 years in the aggregate) and fulfils all **qualifications in the third schedule** of the Citizenship Act.
- The Act does **not provide for dual citizenship or dual nationality.** It only allows citizenship for a person listed under the provisions above ie: by birth, descent, registration or naturalisation.
- The act has been **amended four times — in 1986, 2003, 2005, and 2015.**
- Through these amendments Parliament has narrowed down the wider and universal principles of citizenship based on the fact of birth.
- Moreover, the **Foreigners Act** places a heavy burden on the individual to prove that he/she is not a foreigner.
- **1986 amendment:** Unlike the constitutional provision and the original Citizenship Act that gave citizenship on the **principle of jus soli** to everyone born in India, the 1986 amendment to **Section 3** was less inclusive.
  - The amendment has added the condition that those who were born in India on or after January 26, 1950 but before July 1, 1987, shall be Indian citizen.
  - Those born after July 1, 1987 and before December 4, 2003, in addition to one's own birth in India, can get citizenship only if either of his parents was an Indian citizen at the time of birth.
- **2003 amendment:** The amendment made the above condition more stringent, keeping in view **infiltration from Bangladesh.**
  - Now the law requires that for those born on or after December 4, 2004, in addition to the fact of their own birth, both parents should be Indian citizens or one parent must be Indian citizen and other **should not be an illegal migrant.**
- With these restrictive amendments, India has almost moved towards the **narrow principle of jus sanguinis or blood relationship.**
- This lays down that an **illegal migrant cannot claim citizenship by naturalisation or registration** even if he has been a resident of India for seven years.
- **Citizenship (Amendment) Bill 2019**: The amendment proposes to **permit members of six communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians** from Pakistan, Bangladesh and Afghanistan — to continue to live in India if they entered India before December 14, 2014.

- It also reduces the requirement for citizenship from **11 years to just 6 years.**
- Two notifications also exempted these migrants from the Passport Act and Foreigners Act.
- A large number of organisations in Assam protested against this Bill as it may grant citizenship to **Bangladeshi Hindu illegal migrants.**
- The justification given for the bill is that Hindus and Buddhists are minorities in Bangladesh, and fled to India to avoid religious persecution, but Muslims are a majority in Bangladesh and so the same cannot be said about them.

Article 14 – Right to Equality

- **Introduction**

Every human being is born equally and therefore the makers of the Indian Constitution had also made provision for equality of the people. Article 14 is one of the most important Articles of the Indian constitution and it is also regarded as part of the golden triangle of the Constitution along with Article 19 and 21. In India, this right is very important because there has been a widespread socio-economic difference which has been in existence from a long time. People have been discriminated on the basis of their gender or the religion they follow, therefore Article 14 was included in the Constitution to remove such inequalities and bring all the people under the equal protection of the law.

Article 14 is the embodiment of equality which has been provided in the Preamble. Another important point about this Article is that it not only imposes a duty on the State to abstain from discriminating people but it also puts a positive duty to take such action by which the inequalities can be bridged between the people.

According to Article 14, the State cannot deny equality before law and equal protection of law to any person within India. The expression 'equality before law' is a negative concept and the State has a duty to abstain from doing any act which is discriminatory in nature. Under it, there is an absence of any special privilege to any particular group of people and regardless of the rank of a person, he is subject to the same provisions of law. Thus, no person is above the law of the land/lex loci and all have to abide by it.

The term 'equal protection of law' is based on the 14th Amendment of the US Constitution. It directs that equal protection of the law should be provided to all the people of India for the enjoyment of their rights without any privileges or favouritism towards any person. This is a positive concept because it implies a duty on the State to take actions for ensuring this right to all the citizens.

Equality before Law

Under equality before the law, the principle of like should be treated alike is followed. It means that the right to sue and be sued for the same cause of action should be the same for the people who are equals i.e. the people who are in similar circumstances and such right should be available to them without any discrimination on the basis of religion, sex, caste or any other such factor.

An exception to Equality before Law

- Under Articles 105 and 194, the Members of the Parliament and the State Legislatures respectively are not held liable for anything which they say within the House.

- Under Article 359 when there is a proclamation of Emergency, the operation of Fundamental Rights including Article 14 can be suspended and if any violation of this right is done during such proclamation, it cannot be challenged in the Courts after the proclamation ends.
- Under Article 361 the President and the Governors are not liable to any court for any act which is done by them in exercising their power and duties of the office.

Equal Protection of Laws
It imposes a duty on the State to take all the necessary steps to ensure that the guarantee of equal treatment of people is followed. Like people being treated alike is followed under this rule and another important point under this rule is that unlike should not be treated alike. Thus, even if people who are under different position and circumstances are governed by the same rule then it will also have a negative effect on the rule of equality.

Article 14 and Reasonable Classification
Article 14 has provided the provision for equality of all people before the law but every person is not the same and therefore it is not practically possible to have a universal application of equality. Thus, the laws cannot be of a general character and some classification is permitted under Article 14.

Thus, the legislature has been allowed to identify and classify different people in groups because it has been accepted that treating the unequal in the same manner is likely to cause more problems instead of preventing them. So for the society to progress, classification is important.

This classification cannot be done arbitrarily because in such case, there will be no justification, so even though Article 14 allows for classification such classification should not confer special privileges to any group arbitrarily and such a classification has to be done on a rational basis. For e.g. the Legislature cannot pass a law which favours a particular caste of people without any rational basis for it and if such a law is passed, it is bound to be held unconstitutional by the Judiciary.

Such arbitrary classification by the legislature is known as class legislation ad it is forbidden by the Constitution but it allows for reasonable classification in which the legislation is passed on a rational basis for the purpose of achieving some specific objectives.
In the case of Air India v. Nargesh Meerza, the regulation of the Indian Airlines provided that an Air Hostess had to retire from their services on attaining the age of 35 or if they married within 4 years of their service or on their first pregnancy whichever occurred earlier. The court held that terminating the services of an air hostess on the grounds of pregnancy amounted to discrimination as it was an unreasonable ground for termination. The regulations provided that after 4 years of service the air hostess could marry therefore the grounds of pregnancy was not reasonable. Thus, it was held that this regulation flagrantly violated Article 14 and such termination would not be valid.

Article 15: Prohibition of discrimination:
Article 15(1): Article 15(1) prohibits the state from discriminating any citizen on the basis of these following 5 categories:

- Religion – No person can be discriminated on the basis of religion in order to access any public place etc…
- Race – Any person's origin shouldn't be a basis of discrimination.

- Caste – Mainly discrimination on the basis of caste is prohibited. This prevents the crimes committed against lower caste.
- Sex – Gender of any particular individual can't be a basis in order to discriminate.
- Place of Birth – Any person place of birth can't be taken into consideration and discriminate them.
- Any of the above.

In the case **"DP Joshi v/s Sate of Madhya Bharat"**, there was a medical college which was established in Indore and it was under the control of Madhya Pradesh Government. The govt, had made a rule which stated that all the Domicile students residing in Madhya Bharat wouldn't be required to pay any "capitation fees", but all the non-domicile students had to pay a nominal fees of Rs. 1300-1500 as capitation fees. This rule was challenged by filing a writ in Supreme Court under Article 32 claiming that it had violated the Fundamental rights guaranteed under Art 14 and Art 15(1). The court had passed a judgement stating that, this rule doesn't violate article 15(1) since "Place of birth" and Place of Residence" are two distinct terms. The term "Place of Residence" is mentioned under Article 16(2) which would be discussed further.

Article 15(2): Article 15(2) lays down that no individual shall be subjected to any disability, restriction, or any other form of discrimination with regard to:
In access of shops, parks, restaurants, hotels or any other public place. Each and every individual have the right to use wells, tanks, bathing Ghats, roads, visit public resorts and any other place which are maintained by government authority for general public.
Article 15(2) applies to every individual which includes private actions while Article 15(1) alludes to all the obligations done by the State only.

Article 15(2) was invoked in the case **"Nainsukhdas v/s State of Uttar Pradesh".** In this case the, the state had set up different electoral boards, for different religions. The Supreme Court had declared such differentiation on electoral boards based on religion as unconstitutional as per Art 15(2). The court had laid down the judgement that, the state shall not discriminate any individual. Article 15(3), 15(4), 15(5) and 15(6) discusses about the provisions made by the government to empower certain classes in the society.

Article 15(3): Nothing in this section can stop the state from making any special laws for women and children. Under this article, the state has been empowered to make special provisions for Women and Children. Under this article, the court had upheld the validity of legislation or executive orders discriminating in favour of women.
This Article states that, even though the state wouldn't discriminate anyone on the basis mentioned in Art 15(1), yet they have the whole authority to make special provisions in order to protect the interests of Women and Children. The main question which had been raised under this Article is whether section 497 of IPC contradicts the provisions stated in Art 14 and Art 15(3)?

Article 15(4): This article was added by the first amendment of Constitution. This article was added by the constituent assembly itself who have drafted our Indian Constitution. This article permits the state to make special provisions for the advancement of:

- Socially and Educationally backward classes of citizens
- Schedule class
- Schedule tribes

In another case **"MR Balaji v/s State of Mysore"**, the Mysore state have reserved seats for all the communities except for Brahmin community. Mysore state have treated all the communities as "socially and educationally" backward class except for Brahmin community. 68% of the seats were reserved in engineering and medical colleges.The state also divided the reserved seats for More backward and Backward classes along with SC and ST. The petitioners had filed a case under article 32 in supreme court which stated that, 68% of reservation had no reasonable cause and it is a clear violation of Article 15(4).

The SC passed a judgement stating that reservation under article 15(4) was solely based on "Caste". Also it stated that article 15(4) neither have reservation based on "Backward" and "More backward classes", nor this article don't provide any classification based on the same above terms mentioned. Verdict given by the court stated that, classifying communities into backward and more backward classes and then reserving the seats isn't valid and it acts as volition for Art 15(4).

To conclude article 15(4) empowers the state to make provisions which provides reservation for the individuals who fall under the category of both "Socially and Educationally Backward class", "Scheduled casts" and "Scheduled Tribes".

Article 15(5): Under this article, the state is empowered to make provisions which helps in uplift-met of socially and educationally backward classes or Scheduled castes and Scheduled tribes. Under this article the state is empowered to make provisions which includes educational institutes whether aided or not aided by the State, irrespective of the minority educational institutes which are referred in art 30(1).

Mandal Case: In this the concept of **"Creamy layer"** was adopted. The concept of Creamy Layer was laid down in the case **"Indira Sawheny v/s Union of India"**. The Supreme Court had given the verdict that 27% of Government jobs would be reserved for OBCs'. Also it was stated in this case, that the reservation would be provided only for the "initial stages of appointments" and not for further promotion process. In total the reservation shall not exceed 50%. (since already 22.5% is reserved for SCs' and STs'.) After this Indira Sawheny case, many of the state governments and other governing bodies have upvooted for Mandal Report and deemed it to be valid. This case was invoked under Art 16(4).

Article 15(6): This article which empowers the state to make special provisions for the advancement of "economically weaker sections" of the society, which would even include the reservations in educational institutes. This article was added as 103rd amendment in 2019. This article further states that 10% of the reservation has to be provided for EWS. This 10% of reservations is independent of ceilings upon the already existing reservations.

Right to equality of Opportunity in Public Employment: Article 16

Article 16 of the Indian Constitution guarantees equal opportunity to all citizens in matters related to employment in the public sector.
Article 16(1) states that there shall be equal opportunity for the citizens in the matter of employment or appointment to any office under the State. The provision of equality is only applicable to the employment or offices which are held by the State. The State is still free to lay down the requisite qualifications for the recruitment of employees for the Government services. The Government can also pick and choose applicants for the purpose of

employment as long as the applicants have been given an equal opportunity to apply for the Government service.

Article 16(2) lays down the grounds on which the citizens should not be discriminated against for the purpose of employment or appointment to any office under the State. The prohibited grounds of discrimination under Article 16(2) are religion, race, caste, sex, descent, birthplace, residence, or any of them. The words 'any employment or office under the state' mentioned in clause 2 of Article 16 implies that the said provision refers only to public employment and to the employment in the private sector.

Article 16(1) and (2) lay down provisions for equal opportunity of employment in the public sector. However, it is stated in clause 3 of Article 16 that nothing in this article shall prevent Parliament from making any law which prescribes to the citizens who are appointed to any office under the State in regard to any requirements as to residence within that State or Union territory prior to employment or appointment to any office under the State.

Article 16(4) of the Indian constitution provides for the reservation of services under the State in favor of the backward class of citizens. The State shall decide whether a particular class of citizens is backward or not. Therefore, the State shall lay down acceptable criteria in order to ascertain whether a particular class of citizens is a backward class or not.

According to Article 16(2) of the Constitution, there shall not be any discrimination between the citizens on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them in respect of employment or office under the State. The words 'any employment or office under the State' makes it clear that the said Article applies only to public employment.
In the case of Indira Sawhney & Ors. v. Union of India, the Supreme Court held that there shall be a separate reservation for citizens belonging to other backward classes in central government jobs. The Court ordered the exclusion of citizens belonging to the creamy layer of other backward classes and economically poor citizens of forwarding castes for the purpose of reservation in central government jobs. The Court also stated that the upper limit of the reservations shall be not more than 50%.

Disabled Candidates

The Indian Constitution provides for equal rights and opportunities to the disabled citizens. The disability should be 40% or more and must be certified by a medical practitioner. The disability also includes blindness, visual impairment, hearing impairment, locomotor disabilities, etc. The Constitution aims to put the disabled citizens in an equal position with other citizens. In order to achieve this aim, the Constitution has made provisions under Article 15(1) and (2) for reservation of disabled citizens under Government services and institutions which are run by the Government.

National Commission for Backward Classes

In the case of Indra Sawhney vs Union of India, the Court directed the Government to create a body for inclusion and exclusion of the citizens from the lists of castes that are notified to be backward for the purpose of job reservation. Subsequently, the Parliament passed the National Commission for Backward Classes Act in 1993 and constituted the National Commission for Backward Classes.

The 102nd Constitutional Amendment, 2018 provides a Constitutional status to the National Commission for Backward Classes (NCBC). The Commission has the authority to examine complaints and welfare measures of the citizens who belong to backward classes socially and educationally. The Commission works for the citizens who belong to Backward classes and monitors all the matters related to it in order to safeguard the backward classes of citizens. NCBC also performs such other functions which are important for the protection, welfare and development and advancement of the socially and educationally backward classes.

Abolition of Untouchability: Article 17

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

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

Asiad Project Workers Case

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

i. The provisions of the Equal Remuneration Act, 1976 were violated. The female workers were being paid less than male workers and the amount of wage was being misappropriated by the Jamadars. The workers who belonged to lower castes were treated as untouchables and were forced to work without wages. It resulted in a violation of Article 17 and 23 of the Constitution.
ii. There was a violation of labor law as well as Article 24 of the Constitution as children below the age of 14 years were employed in the project.
iii. There was a violation of the Right to life under Article 21 of the workers as they were denied of proper living conditions and medical facilities.

Abolition of Titles: Article 18

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

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

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

Fundamental Freedoms Under Article 19 Of The Constitution Of India

Article 19 (1) 1 of the Constitution, guarantees certain fundamental rights, subject to the power of the State to impose restrictions on the exercise of those rights. The Article was thus intended to protect these rights against State action other than in the legitimate exercise of its power to regulate private rights in the public interest.

Freedom of Speech and Expression

Expression is a matter of liberty and right. The liberty of thought and right to know are the sources of expression. Free Speech is live wire of the democracy. Freedom of expression is integral to the expansion and fulfillment of individual personality. Freedom of expression is more essential in a democratic setup of State where people are the Sovereign rulers. Iver Jennings said, without freedom of speech, the appeal to reason which is the basis of democracy cannot be made. Milton in his Aeropagitica says that without this freedom there can be no health in the moral and intellectual life of either the individual or the nation. According to Justice Krishna Iyer, "This freedom is essential because the censorial power lies in the people over and against the Government and not in the Government over and against the people." The freedom of speech and expression is required to fulfill the following objectives: a} To discover truth b} Non self-fulfillment c) Democratic value d} To ensure pluralism.

The people of India gave to themselves, the Constitution of India, with a view of make it Sovereign, Democratic, Socialistic, Secular and Republic. In our democratic society, pride to place has been provided to freedom of speech and expression, which is the mother of all liberties. One of the main objectives of the Indian Constitution as envisages in the Preamble, is to secure LIBERTY OF THOUGHT AND EXPRESSION to all the citizens. Freedom of Expression is among the foremost of human rights. It is the communication and practical application of individual freedom of thought. Irrespective of the system of administration, various constitutions make a mention of the freedom of expression.

Emmanuel v. State of Kerala

In July 1985, three children were expelled from their school after they refused to sing the national anthem of India "Jana Gana Mana." While they silently stood during the morning assembly of the school, they objected to singing the anthem because it was allegedly against their religious faith of Jehovah's Witnesses.

Upon expulsion, their father filed a writ petition in the High Court of Kerala State, contending that the expulsion was in violation of the rights to freedom of expression

and freedom of religion, respectively protected under Articles 19 and 25 of the Indian Constitution. The court dismissed the case, finding that "no words or thoughts" in the national anthem was capable of offending religious convictions. Pursuant to Article 136 of the Constitution, the father later filed a special leave petition in the Supreme Court of India.

The Supreme Court of India found that the expulsion of school children for not singing the national anthem constituted a violation of their right to freedom of expression. Three school children were expelled from school after refusing to sing the Indian national anthem since it was against their religious faith as Jehovah's Witnesses. Their representative argued that the expulsion was an infringement of their fundamental rights to freedom expression under Article 19 and freedom of religion under Article 25 of the Constitution of India. The Court reasoned that a limitation on the right to freedom of expression must be based on a law with statutory force. Yet, there were no provisions of the law that obligated individuals to sing the national anthem and the State of Kerala's Department of Education lacked statutory force to require school children to participate.

In Bennett Coleman & co. v. Union of India, the Supreme Court held that newspaper should be left free to determine their pages and their circulation. This case arouse out of a constitutional challenge to the validity of the Newspaper (Price & Page) Act, 1956 which empowered the Government to regulate the allocation of space for advertisement matter. The court held that the curtailment of advertisements would fall foul of Article 19(1)(a), since it would have a direct impact on the circulation of newspapers. The court held that any restriction leading to a loss of advertising revenue would affect circulation and thereby impinge on the freedom of speech.

In **Indian Express Newspapers v. Union of India**, a challenge to the imposition of customs duty on import of newsprint was allowed and the impugned levy struck down. The Supreme Court held that the expression freedom of the press though not expressly used in Article 19 was comprehended within Article 19(1)(a) and meant freedom from interference from authority which would have the effect of interference with the content & the circulation of newspapers. In Secretary, Ministry of Information and Broadcasting v. Cricket Association, Bengal, the Supreme Court held that broadcasting is a means of communication and a medium of speech and expression within the framework of Article 19(1)(a). This case involved the rights of a cricket association to grant telecast rights to an agency of its choice. It was held that the right to entertain and to be entertained, in this case, through the broadcasting media are an integral part of the freedom under Article 19(l)(a). Article 19 (1)a) of the Indian Constitution guarantees to all its citizens including media "the right to freedom of speech and expression". Clause (2) of Article 19, at the same time provides: "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 interest of:-

a) Sovereignty and Integrity of India.
b) The Security of the State.
c) Friendly relations with foreign states.
d) Public order.
e) Decency or Morality.
f) Contempt of Court.
g) Defamation.
h) Incitement to an offence.

Freedom to Assemble

The freedom to assemble is of special interest within the realm of constitutional law, since it is enabled and restricted by an intersection of the constitutional text and the criminal procedure code. While the constitution provides for it as a right, the procedural provisions radically restrict this freedom, by empowering the state to regulate its expression and peremptorily curtail it exercise. This rather contradictory approach is a reflection of a colonial legacy and the unquestioning adoption of most of the provisions of the 1872 Code of Criminal Procedure by the contemporary Indian State. It is logical that the colonial state maintained a legal framework that enabled a quick breakup of any sort of organising, meeting, association or assembly that could threaten it. It is unfortunate that the modern India continues this legacy, both in the context of assembly and association rights.

In Kameshwar Prasad v State of Bihar, a rule that prohibited any form of demonstrations by government employees was examined. The court reasons that a government servant, did not lose her fundamental rights, and that the rule by prohibiting both orderly or disorderly demonstrations violates Article 19 (1) (b) . The Court did not take issue with the notion that governmental employees as a class could have their rights or freedoms burdened. The apex court explains that "by accepting the contention that the freedoms guaranteed by Part Ill and in particular those in Article 19 (1) (a) apply to the servants of Government we should not be taken to imply that in relation to this class of citizens the responsibility arising from the official position would not by itself impose some limitations on the exercise of their rights as citizens". Restrictions on the freedom of assembly Article 19 (3) of the Constitution provides that nothing in the right to assemble peaceably shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of that right. The restrictions pertaining to sovereignty and integrity were added after the adoption of the Constitution.

Freedom of Association

Article 19(1)(c) of the Constitution of India guarantees to all its citizens the right "to form associations and unions or cooperative societies" Under clause (4) of Article 19, the state may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right to form associations or unions or cooperative societies has a very wide and varied scope including all sorts of associations viz., political parties, clubs, societies, companies, organizations, entrepreneurships, trade unions etc. The right to form trade unions should not lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike as a part of collective bargaining or otherwise. The right to strike or to declare a lock-out may be controlled or restricted by various industrial legislations such as Industrial Dispute Act or Trade Unions Act. Right to form association does not carry the right to recognition Right to form association does not carry the right to strike Right to form association does not carry the right to inform rival union Freedom of association and government employees.

In O.K Ghosh v. E.X.Joseph, the respondent, a government servant was the secretary of the civil accounts association. The appellant was the accountant general of Maharashtra. A memo was served on the respondent intimating him that it was proposed to hold an enquiry against him for having deliberately contravened the provisions of Rule 4-A of the Central Civil Services (Conduct) Rules 1955 in so far as he participated actively in various demonstrations organized in connection with the strike of the central government employees and had taken

active part in the preparations made for the strike. The respondent filed a writ petition in the High Court of Bombay with a prayer that a writ of certiorari be issued to quash the charge sheet issued against him. He also prayed for a writ of prohibition against the appellant prohibiting him from proceeding further with the departmental proceedings against him. The respondent Joseph also contended that Rules 4-A and 4-B were invalid as they contravened the fundamental right guaranteed to him under 19(1)(a)(b)(c) and (g). The High Court held that Rule 4-A was wholly valid but Rule 4-B was invalid. Rule 4-A provided that no government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service. Rule B provided that no government servant shall join or continue to be a member of any service association which the government did not recognize or in respect of which the recognition had been refused or withdrawn by it. As both parties were not satisfied with the judgment given in the High court they preferred appeal to the Supreme Court. The Supreme Court held that Rule 4-A in so far as it prohibited the demonstration of employees was violative of fundamental rights guaranteed by Article 19(1) (a) and (b), that the High Court was wrong in conclusion. The Supreme Court further held that participation in demonstration organized for a strike and taking active part in preparations for it cannot mean participation in the strike. The respondent could not be said to have taken part in the strike and the proceedings against him under Rule 4-A were invalid. The Supreme Court also held that Rule 4-B imposed restrictions on the undoubted right of the government servants under Article 19 which were neither reasonable in the interest of public order under Article 19(4) in granting or withdrawing recognition, the government might be actuated by considerations other than those of efficiency or discipline amongst the services or public order. The restrictions imposed by Rule 4-B infringed Article 19(1)(c) and must be held to be invalid. Restrictions on the Freedom of Association the right of association like other individual freedom is not unrestricted. Clause (4) of Article 19 empowers the State to impose reasonable restrictions on the right of freedom of association and union in the interest of "public order" or "morality" or "sovereignty or integrity" of India. It saves existing laws in so far as they are not inconsistent with fundamental right of association.

Freedom to Move Freely Throughout the Territory of India

Article 19(1) (d) guarantees to all citizens of India the right "to move freely throughout the territory of India." This right is however, subject to reasonable restrictions mentioned in clause (5) of Article 19, i.e. in the interest of general public or for the protection of the interest of any Scheduled Tribe. Article 19(1) (d) of the Constitution guarantees to its citizens a right to go wherever they like in Indian Territory without any kind of restriction whatsoever. They can move not merely from one State to another but from one place another within the same State. This freedom cannot be curtailed by any law except within the limits prescribed under Article 19(5). What the Constitution lays stress upon is that the entire territory is one unit so far the citizens are concerned. Thus the object was to make Indian citizens national minded and not to be petty and parochial. Grounds of Restrictions - The· State may under clause (5) of Article 19 impose reasonable restriction on the freedom of movement on two grounds

a) In the interests of general public
b) For the protection of the interest of Scheduled Tribes.

Freedom to Reside and Settle in any Part of the Territory of India

According to Article 19(1)(e) every citizen of India has the right "to reside and settle in any part of the territory of India." However, under clause (5) of Article 19 reasonable restriction may be imposed on this right by law in the interest of the general public or for the protection

of the interest of any Scheduled Tribe. The object of the clause is to remove internal barriers within India or any of its parts. The words "the territory of India' as used in this Article indicate freedom to reside anywhere and in any part of the State of India. · It is to be noted that the right to reside and right to move freely throughout the country are complementary and often go together. Therefore most of the cases considered under Article 19(1)(d) are relevant to Article 19(l)(e) also. This right is subject to reasonable restrictions imposed by law in the interest of general public or for the protection of the interests of any Scheduled Tribes. Thus where a prostitute, under the Suppression of Immoral Traffic in Women and Girls Act, 1956, was ordered to remove herself from the limits of a busy city or the restriction was placed on her movement and residence, it was held to be a reasonable restriction.

Freedom to Practise Any Profession, or to Carry on Any Occupation, Trade or Business

Article 19 (1) (g) of Constitution of India provides Right to practice any profession or to carry on any occupation, trade or business to all citizens subject to Art.19 (6) which enumerates the nature of restriction that can be imposed by the state upon the above right of the citizens. Sub clause (g) of Article 19 (1) confers a general and vast right available to all persons to do any particular type of business of their choice. But this does not confer the right to do anything consider illegal in eyes of law or to hold a particular job or to occupy a particular post of the choice of any particular person. Further Art 19(1) (g) does not mean that Conditions be created by the state or any statutory body to make any trade lucrative or to procure customers to the business/businessman. Moreover a citizen whose occupation of a place is unlawful cannot claim fundamental right to carry on business in such place since the fundamental rights cannot be availed in the justification of an unlawful act or in preventing a statutory authority from lawfully discharging its statutory functions. Keeping in view of controlled and planned economy the Supreme Court in a series of cases upheld the socially controlled legislation in the light of directive principles and the activities of the private enterprises have been restricted to a great extent. However under Article 19(6), the state is not prevented from making a law imposing reasonable restrictions on the exercise of the fundamental right in the interest of the general public. A law relating to professional or technical qualifications is necessary for practicing a profession. A law laying down professional qualification will be protected under Article 19(6). Under article 19(6)(ii) nothing contained in Sub-clause(g) of Clause (1) of Article 19 shall affect carrying on by the State any trade, business, industry or service, whether to the exclusion, complete or partial of citizens or otherwise if it is not in the interest of general public. Article 19 (6) (ii) will have no application if the State is not carrying on any trade.

Article 20 - Protection in Respect of Conviction for Offences

In totality, Article 20 is considered to be one of the most vital provisions of the Indian Constitution, which cannot be set aside, even during times of Emergency.

***'EX POST FACTO'* LAW: Article 20(1) of The Indian Constitution**

It would be imperative to take into consideration the first clause of the mentioned provision, which bars the retrospective applicability of criminal laws, in circumstances where a new offence has been committed. Such laws, that brings into light a new offence cannot be applied in retrospection, with the purpose of penalizing an individual for an offence that had been committed in the past, as it would culminate to being violative of Article 21 of the Indian Constitution (depriving the person of the right to life and liberty) and would also be

against the very principle of justice, reasonableness, equity, good conscience alongside being perceived as a form of arbitrary legislation.

At this juncture, it would be pertinent to take into cognizance the role of various cases in interpreting the same. The landmark judgement of ***Kedar Nath v. State of West Bengal*** witnessed the Hon'ble Supreme Court stating that any act which is declared as a criminal offence or provides penalty with respect to the same by the legislature, will be regarded to be prospective in nature, wherein the same cannot be implemented in a retrospective manner, as has been covered under Article 20(1) of the Indian Constitution.

An exception pertaining to the said provision has however been brought into cognizance through the case of ***Rattan Lal v. State of Punjab,*** in which the Hon'ble Supreme Court was seen to have permitted the retrospective implementation of Criminal Laws, which was related to the reduction of punishment in the said Act.

The Doctrine of Double Jeopardy: Article 20(2)

Whilst the literal meaning of the concept identified as jeopardy, is regarded to be a trouble or a peril, but in Criminal Law, the same implies "punishment." However, with regard to discussing the doctrine of "double jeopardy" the mentioned concept traces its evolution to American Jurisprudence which states that no individuals shall be punished and prosecuted for the same act/ offence more than once. In order to bring forth the applicability of this provision, it is imperative that the accused proves that he has been prosecuted and penalized earlier for the very same act in a quasi-judicial or judicial proceeding. If it comes to notice that the accused had been formerly prosecuted and acquitted under the same offence, the applicability of Article 20(2) of the Indian Constitution will however not apply.

It would be pertinent to bring into light the case of ***Venkataraman v. Union of India,*** wherein the Hon'ble Supreme Court clarified on the notion that the aforementioned provision is only applicable to judicial punishments, wherein it must be ensured that the no person is prosecuted more than once for the same offence by the judicial authorities. Furthermore, there is also the presence of the case of ***Maqbool Hussain v. State of Bombay,*** which is a landmark judgement, that observed a situation where the individual accused was caught possessing a particular amount of gold, which was against the aspect of lex loci during that time, post which the said item was revoked by the customs authority. With the passage of time, there was in all eventuality, the confrontation of the question of whether the same amounts to the doctrine of double jeopardy.

'SELF-INCRIMINATION': ARTICLE 20(3) OF THE INDIAN CONSTITUTION

This particular provision introspects and prohibits an accused from giving any evidence or information against oneself. This protection is available at all stages and is seen to protect and bar the compulsion of the accused, both physically and mentally. It must however be noted that this protection is only with regard to the protection of personal knowledge.

In the case of ***M.P. Sharma v. Satish Chandra,*** it was observed that irrespective of the concerned individual being an accused or a mere suspect, the protection that has been covered under the ambit of Article 20(3) of the Indian Constitution will by all means, be brought into effect. In the mentioned case, it has however been stated that if the said individual voluntarily decides to discloses information, Article 20(3) will however not apply. This provision does not give protection to witnesses under Article 20(3) of the Indian

Constitution, wherein the said category of persons get protection under Section 132 of the Indian Evidence Act, 1872.

Article 21 –Protection of Life & Personal Liberty

Article 21 reads: *"No person shall be deprived of his life or personal liberty except according to a procedure established by law."*

Article 21 is at the heart of the Constitution. It is the most organic and progressive provision in our living Constitution. Article 21 can only be claimed when a person is deprived of his 'life or 'personal liberty' by the 'State' as defined in Article 12. Thus, violation of the right by private individuals is not within the preview of Article 21.The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary since none of the other rights would have any value or utility without it. There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense. This Section will examine the right to life as interpreted and applied by the Supreme Court of India.

'Life' in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider, including, including the right to live with human dignity, Right to livelihood, Right to health, Right to pollution-free air, etc.

Right To Live with Human Dignity

In **Maneka Gandhi v. Union of India,** the Supreme Court gave a new dimension to Art. 21. The Court held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Another broad formulation of life to dignity is found in **Bandhua Mukti Morcha v. Union of India.** Characterising Art. 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed:

"It is the fundamental right of everyone in this country… to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

Following the above-stated cases, the Supreme Court in **Peoples Union for Democratic Rights v. Union of India[vi],** held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violative of Article 21 of the Constitution.

Bhagwati J. held that rights and benefits conferred on workmen employed by a contractor under various labour laws are intended to ensure basic human dignity to workers. He held that the non-implementation by the private contractors engaged for constructing a building for holding Asian Games in Delhi, and non-enforcement of these laws by the State

Authorities of the provisions of these laws was held to be violative of the fundamental right of workers to live with human dignity contained in Art. 21.

Right against Sexual Harassment at Workplace

Sexual harassment of women has been held by the Supreme Court to be violative of the most cherished of the fundamental rights, namely, the Right to Life contained in Art. 21.
In **Vishakha v. State of Rajasthan,** the Supreme Court declared sexual harassment at the workplace to violate the right to equality, life and liberty. Therefore, a violation of Articles 14, 15 and 21 of the Constitution.

In this case, in the absence of a relevant law against sexual harassment, the Supreme Court laid down the following guidelines to ensure gender parity in the workplace:
This meant that all employers or persons in charge of the workplace, whether in the public or private sector, should take appropriate steps to prevent sexual harassment.

1. Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated inappropriate ways.
2. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
3. As regards private employers steps should be taken to include the prohibitions above in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
4. Appropriate work conditions should be provided for work, leisure, health, and hygiene to ensure that there is no hostile environment towards women at workplaces. No employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
5. Where such conduct amounts to specific offences under IPC or under any other law, the employer shall initiate appropriate action by making a complaint with the appropriate authority.
6. The victims of Sexual harassment should have the option to seek the transfer of the perpetrator or their own transfer.

Is Right to Work a Fundamental Right under Article 21?

In **Sodan Singh v. New Delhi Municipal Committee,** the five-judge bench of the Supreme Court distinguished the concept of life and liberty within Art.21 from the right to carry on any trade or business, a fundamental right conferred by Art. 19(1)(g). Regarding the same, the Court held that the right to carry on trade or business is not included in the concept of life and personal liberty. **Thus, Article 21 is not attracted in the case of trade and business.**

The petitioners in the case were hawkers doing business off the paved roads in Delhi. They had claimed against the Municipal authorities who did not allow former to carry out their business. The hawkers claimed that the refusal to do so violated their Right under Article 21 of the Constitution.

The Court opined that the petitioners had a fundamental right under Article 19(1) (g) to carry on trade or business of their choice. However, they had no right to do so in a particular place. Hence, they couldn't be permitted to carry on their trade on every road in the city. If the road is not wide enough to conveniently accommodate the traffic on it, no hawking may be permitted at all or permitted once a week.

The Court also held that footpaths, streets or roads are public property intended to several general public and are not meant for private use. However, the Court said that the affected persons could apply for relocation and the concerned authorities were to consider the representation and pass orders thereon. Therefore, the two rights were too remote to be connected.

The Court distinguished the ruling in **Olga Tellis v. Bombay Municipal Corporation[.** In the case the Court held:
"in that case, the petitioners were very poor persons who had made pavements their homes existing in the midst of filth and squalor and that they had to stay on the pavements so that they could get odd jobs in the city. It was not the case of a business of selling articles after investing some capital."

Right to Social Security and Protection of Family

Right to life covers within its ambit the right to social security and protection of the family. K. Ramaswamy J., in **Calcutta Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose,** held that right to social and economic justice is a fundamental right under Art. 21. The learned judge explained:

"right to life and dignity of a person and status without means were cosmetic rights. Socio-economic rights were, therefore, basic aspirations for meaning the right to life and that Right to Social Security and Protection of Family were an integral part of the right to life."

In **NHRC v. State of Arunachal Pradesh (Chakmas Case),** the SC said that the state is bound to protect the life and liberty of every human being, be he a citizen or otherwise. Further, it cannot permit anybody or a group of persons to threaten another person or group of persons. No state government worth the name can tolerate such threats from one group of persons to another group of persons. Therefore, the state is duty-bound to protect the threatened group from such assaults. If it fails to do so, it will fail to perform its constitutional as well as statutory obligations.

Right to Health and Medical Care
In **State of Punjab v. M.S. Chawla,** it was held that the right to life guaranteed under Article 21 includes within its 'ambit the right to health and medical care'.

No Right To Die
While Article 21 confers on a person the right to live a dignified life, does it also confers a right to a person to end their life? If so, then what is the fate of Section 309 Indian Penal Code (1860), which punishes a person convicted of attempting to commit suicide? There has been a difference of opinion on the justification of this provision to continue on the statute book.

The Rathinam ruling came to be reviewed by a full bench of the Court in **Gian Kaur v. State of Punjab[lvi].** The question before the Court was: if the principal offence of attempting to commit suicide is void as unconstitutional vis-à-vis Article 21, then how abetment can thereof be punishable under Section 306 IPC?

It was argued that 'the right to die' had been included in Article 21 (Rathinam ruling) and Sec. 309 declared unconstitutional. Thus, any person abetting the commission of suicide by another is merely assisting in enforcing his fundamental Right under Article 21.

The Court overruled the decision of the Division Bench in the above-stated case and has put an end to the controversy and ruled that Art.21 is a provision guaranteeing the protection of life and personal liberty and by no stretch of imagination can extinction of life' be read to be included in the protection of life. The Court observed further:
"……'Right to life' is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life"

However, in this regard, in 2020, the Supreme Court had sought a response from the central government. The Court had asked the center to explain its stance on the conflict between Section 309 and the Mental Healthcare Act, promulgated in 2017 (MHCA). As opposed to Section 309, which criminalises attempts to suicide, the MHCA proscribes prosecution of the person attempting it. Given that the Section is colonial legislation, many have vocalised to do away with the same altogether. Additionally, in 2018, in a 134-page-long judgment, Justice DY Chandrachud said it was 'inhuman' to punish someone who was already distressed.

Euthanasia And Right To Life
Euthanasia is the termination of the life of a person who is terminally ill or in a permanent vegetative state. In **Gian Kaur v. State of Punjab,** the Supreme Court has distinguished between Euthanasia and an attempt to commit suicide.

The Court held that death due to termination of natural life is certain and imminent, and the process of natural death has commenced. Therefore, these are not cases of extinguishing life but only of accelerating the conclusion of the process of natural death that has already started. The Court further held that this might fall within the ambit of the right to live with human dignity up to the end of natural life. This may include the right of a dying man to also die with dignity when his life is ebbing out. However, this cannot be equated with the right to die an unnatural death curtailing the natural span of life.

Sentence of Death –Rarest of Rare Cases
The law commission of India has dealt with the issue of abolition or retention of capital punishment, collecting as much available material as possible and assessing the views expressed by western scholars. The commission recommended the retention of capital punishment in the present state of the country.

In **Jagmohan v. State of UP [lviii],** the Supreme Court had held that the death penalty was not violative of Articles 14, 19 and 21. It was said that the judge was to make the choice between the death penalty and imprisonment for life based on circumstances, facts, and nature of crime brought on record during trial. Therefore, the choice of awarding death sentence was done in accordance with the procedure established by law as required under article 21

Right to get Pollution Free Water and Air
Right to Clean Environment
The "Right to Life" under Article 21 means a life of dignity to live in a proper environment free from the dangers of diseases and infection. Maintenance of health, preservation of the

sanitation and environment have been held to fall within the purview of Article 21 as it adversely affects the life of the citizens and it amounts to slow poisoning and reducing the life of the citizens because of the hazards created if not checked.

The following are some of the well-known cases on the environment under Article 21:

In **M.C. Mehta v. Union of India (1988,** the Supreme Court ordered the closure of tanneries polluting the water.

In **M.C. Mehta v. Union of India (1997)** the Supreme Court issued several guidelines and directions for the protection of the Taj Mahal, an ancient monument, from environmental degradation.

In **Vellore Citizens Welfare Forum v. Union of India[lxiv],** the Court took cognisance of the environmental problems being caused by tanneries that were polluting the water resources, rivers, canals, underground water, and agricultural land. As a result, the Court issued several directions to deal with the problem.

In **Murli S. Deora v. Union of India[lxvii],** the persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of the act of sTherefore, rights. Right to Life under Article 21 is affected as a non-smoker may become a victim of someone smoking in a public place.

Right Against Noise Pollution

In Re: Noise Pollution the case was regarding noise pollution caused by obnoxious noise levels due to the bursting of crackers during Diwali. The Apex Court suggested to desist from bursting and making use of such noise-making crackers and observed that:

"Article 21 of the Constitution guarantees the life and personal liberty to all persons. It guarantees the right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living. The human life has its charm and there is no reason why life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort, and quiet within his house has a right to prevent the noise as pollutant reaching him."

Right to Know

Holding that the right to life has reached new dimensions and urgency the Supreme Court in **RP Ltd. v. Proprietors Indian Express Newspapers, Bombay Pvt. Ltd.,** observed that if democracy had to function effectively, people must have the right to know and to obtain the conduct of affairs of the state.

Right To Privacy And Article 21

Although not explicitly mentioned in the Constitution, the right to privacy was considered a 'penumbral right' under the Constitution, i.e. a right declared by the Supreme Court as integral to the fundamental right to life and liberty. After the KS Puttuswamy judgment, the right to privacy has been read and understood by the Court in various landmark judgments.

The Supreme Court has culled the right to privacy from Article 21 and other provisions of the Constitution, read with the Directive Principles of State Policy.

Tapping of Telephone

Emanating from the right to privacy is the question of tapping of the telephone.

In **RM Malkani v. State of Maharashtra,** the Supreme Court held that Courts would protect the telephonic conversation of an innocent citizen against wrongful or high handed' interference by tapping the conversation. However, the protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants.

Telephone tapping is permissible in India under **Section 5(2) of the Telegraph Act, 1885**. The Section lays down the circumstances and grounds when an order for tapping a telephone may be passed, but no procedure for making the order is laid down therein.

The Supreme Court in **PUCL v. Union of India** held that in the absence of just and fair procedure for regulating the exercise of power under Section 5(2) of the Act, it is not possible to safeguard the fundamental rights of citizens under Section 19 and 21. Accordingly, the Court issued procedural safeguards to be observed before restoring to telephone tapping under Section 5(2) of the Act.

Disclosure of Dreadful Diseases
In **Mr X v. Hospital Z,** the question before the Supreme Court was whether the disclosure by the doctor that his patient, who was to get married had tested HIV positive, would be violative of the patient's right to privacy. The Supreme Court ruled that the right to privacy was not absolute and might be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.

The Court explained that the right to life of a lady with whom the patient was to marry would positively include the right to be told that a person with whom she was proposed to be married was the victim of a deadly disease, which was sexually communicable.
Since the right to life included the right to a healthy life to enjoy all the facilities of the human body in prime condition, it was held that the doctors had not violated the right to privacy.

Right to Travel Abroad
In **Maneka Gandhi v. Union of India, the** validity of Sec. 10(3)(c) of the passport Act 1967, which empowered the government to impound the passport of a person, in the interest of the general public, was challenged before the seven-judge Bench of the Supreme Court.It was contended that, right to travel abroad being a part of the right to "personal liberty" the impugned Section didn't prescribe any procedure to deprive her of her liberty and hence it was violative of Art. 21.

Right Against Illegal Detention
In **Joginder Kumar v. State of Uttar Pradesh**, the petitioner was detained by the police officers and his whereabouts were not told to his family members for a period of five days. Taking serious note of the police high headedness and illegal detention of a free citizen, the Supreme Court laid down the guidelines governing arrest of a person during the investigation:

- An arrested person being held in custody is entitled if he so requests to have a friend, relative or other person told as far as is practicable that he has been arrested and where he is being detained.
- The police officer shall inform the arrested person when he is brought to the police station of this right. An entry shall be required to be made in the diary as to who was informed of the arrest.

In the case of **DK. Basu v. State of West Bengal**, the Supreme Court laid down detailed guidelines to be followed by the central and state investigating agencies in all cases of arrest and detention. Furthermore, the Court ordered that the guidelines be followed till legal provisions are made on that behalf as preventive measures. It also held that any form of

torture or cruel, inhuman or degrading treatment, whether it occurs during interrogation or otherwise, falls within the ambit of Article 21.

Article 21 And Prisoner's Rights

The protection of Article 21 is available even to convicts in jail. The convicts are not deprived of all the fundamental rights they otherwise possess by mere reason of their conviction. Following the conviction of a convict is put into jail he may be deprived of fundamental freedoms like the right to move freely throughout the territory of India. But a convict is entitled to the precious right guaranteed under Article 21, and he shall not be deprived of his life and personal liberty except by a procedure established by law.

In **Maneka Gandhi v. Union of India**, the Supreme Court gave a new dimension to Article 21. The Court has interpreted Article 21 to have the widest possible amplitude. On being convicted of a crime and deprived of their liberty following the procedure established by law. Article 21 has laid down a new constitutional and prison jurisprudence.

Right to Free Legal Aid & Right to Appeal

In **M.H. Hoskot v. State of Maharashtra** an accused person, where the charge is of an offence punishable with imprisonment, is entitled to be offered legal aid if he is too poor to afford counsel. In addition, counsel for the accused must be given sufficient time and facility for preparing his defence. Breach of these safeguards of a fair trial would invalidate the trial and conviction.

Right to Speedy Trial

In **Hussainara Khatoon v. Home Secretary, State of Bihar**, the Supreme Court observed that an alarming number of men, women and children were kept in prisons for years awaiting trial in courts of law. The Court noted the situation and observed that it was carrying a shame on the judicial system that permitted incarceration of men and women for such long periods without trials. The Court held that detention of undertrial prisoners in jail for a period more than what they would have been sentenced to if convicted was illegal. And the same violated Article 21. The Court ordered to release of undertrial prisoners who had been in jail for a longer period than the punishment meted out in case of conviction.

Right to Fair Trial

The free and fair trial has been said to be the sine qua non of Article 21. The Supreme Court in **Zahira Habibullah Sheikh v. State of Gujarat** said that the right to free and fair trial to the accused and the victims, their family members, and relatives and society at large.

Right Against Handcuffing

Handcuffing has been considered prima facie inhuman and therefore unreasonable, over-harsh and at first flush, arbitrary. It has been held to be unwarranted and violative of Article 21.

Right Against Solitary Confinement

It has been held that a convict is not wholly denuded of his fundamental rights, and his conviction does not reduce him into a non – person whose rights are subjected to the whims of the prison administration. Therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguard.

In **Sunil Batra v. Delhi Administration** the petitioner was sentenced to death by the Delhi session court and his appeal against the decision was pending before the high Court. He was

detained in Tihar Jail during the pendency of the appeal. He complained that since the date of conviction by the session court, he was kept in solitary confinement.

It was contended that Section 30 of the Prisoners Act does not authorise jail authorities to send him to solitary confinement, which by itself was a substantive punishment under Sections 73 and 74 of the Indian Penal Code, 1860 and could be imposed by a court of law. Therefore, it could not be left to the whim and caprice of the prison authorities. The Supreme Court accepted the petitioner's argument and held that the imposition of solitary confinement on the petitioner was violative of Article 21.

Right Against Custodial Violence

The incidents of brutal police behaviour towards persons detained on suspicion of having committed crimes are routine. There has been a lot of public outcry from time to time against custodial deaths.

The Supreme Court has taken a very positive stand against the atrocities, intimidation, harassment and use of third-degree methods to extort confessions. The Court has classified these as being against human dignity. The rights under Article 21 secure life with human dignity and the same are available against torture.

Death by hanging is Not Violative of Article 21

In **Deena v. Union of India,** the constitutional validity of the death sentence by hanging was challenged as being "barbarous, inhuman, and degrading" and therefore violative of Article 21.The Court, in this case, referred to the Report of the UK Royal Commission, 1949, the opinion of the Director-General of Health Services of India, the 35th Report of the Law Commission and the opinion of the Prison Advisers and Forensic Medicine Experts. Finally, it held that death by hanging was the best and least painful method of carrying out the death penalty. Thus, not violative of Article 21.

Right Against Delayed Execution

In **T.V. Vatheeswaram v. State of Tamil Nadu,** the Supreme Court held that the delay in execution of a death sentence exceeding 2 years would be sufficient ground to invoke protection under Article 21 and the death sentence be commuted to life imprisonment. The cause of the delay is immaterial. The accused himself may be the cause of the delay.

In **Sher Singh v. State of Punjab,** the Supreme Court said that prolonged wait for the execution of a death sentence is an unjust, unfair and unreasonable procedure, and the only way to undo that is through Article 21.

But the Court held that this could not be taken as the rule of law and applied to each case, and each case should be decided upon its own facts.

Procedure Established By Law and Article 21

The expression 'procedure established by law' has been the subject of interpretation in a catena of cases. A survey of these cases reveals that courts in judicial interpretation have enlarged the scope of the expression.

The Supreme Court took the view that 'procedure established by law' in Article 21 means procedure prescribed by law as enacted by the state and rejected to equate it with the American 'due process of law'.

But, in **Maneka Gandhi v Union of India,** the Supreme Court observed that the procedure prescribed by law for depriving a person of his life and personal liberty must be 'right, just and fair' and not 'arbitrary, fanciful and oppressive'.
It also held that otherwise, it would be no procedure, and the requirement of Article 21 would not be satisfied. Thus, the 'procedure established by law' has acquired the same significance in India as the 'due process of law' clause in America.

In one of the landmark decisions in the case of **Murli S. Deora v. Union of India**, the Supreme Court of India observed that the fundamental right guaranteed under Article 21 of the Constitution of India provides that none shall be deprived of his life without due process of law. The Court observed that smoking in public places is an indirect deprivation of life of non-smokers without any process of law. **Considering the adverse effect of smoking on smokers and passive smokers, the Supreme Court directed the prohibition of smoking in public places.**

It issued directions to the Union of India, State Governments and the Union Territories to take adequate steps to ensure the prohibition of smoking in public places such as auditoriums, hospital buildings, health institutions etc.
In this manner, the Supreme Court gave a liberal interpretation to Article 21 of the Constitution and expanded its horizon to include the rights of non-smokers.

Further, when there is an inordinate delay in the investigation – it affects the right of the accused, as he is kept in tenterhooks and suspense about the outcome of the case. If the investigating authority pursues the investigation as per the provisions of the Code, there can be no cause of action. But, if the case is kept alive without any progress in any investigation, then the provisions of Article 21 are attracted. The right is against actual proceedings in Court and against police investigation.

The Supreme Court has widened the scope of 'procedure established by law' and held that merely a procedure had been established by law, a person cannot be deprived of his life and liberty unless the procedure is just, fair and reasonable.
Hence, it is well established that to deprive a person of his life and personal liberty must be done under a 'procedure, established by law'. Such an exception must be made in a just, fair and reasonable manner and must not be arbitrary, fanciful or oppressive. Therefore, for the procedure to be valid, it must comply with the principles of natural justice.

Safeguards against arbitrary arrest and detention: Article 22
Article 22 constituted within the right to freedom is one of the parts of the fundamental rights guaranteed under the constitution. This article is covered in two major parts, protection and rights granted in case of arbitrary arrest also known as punitive detention, and safeguards against preventive detention. The main difference is that whether a person is charged with a crime or not. In case of detention, the person is not accused of any crime but is restricted on a reasonable suspicion while in case of arrest the person is charged for a crime.

Article 22: not a complete Code
In the A K Gopalan v. State of Madras case of 1950, the Supreme Court, taking a narrow view of Article 21 and 22, refused to consider if the procedure established by law suffered from any deficiencies. It was of the belief that each article of the constitution was independent of each other. When the petitioner challenged the validity of his detention on the grounds that it was violating his rights under Article 19 and 21, the Supreme Court

disregarded all the contentions considering that the detention could be justified merely on the ground that it was carried out according to the 'procedure established by law'. The Supreme Court, in this case, followed a restrictive interpretation of the expression 'personal liberty' and the term 'law', rejecting all principles of natural justice.

In Maneka Gandhi v. Union Of India, the court widened the scope of the expression 'personal liberty' considerably and interpreted it in its widest amplitude. The court observed that Article 21 does not exclude Article 19 hence any law depriving a person of personal liberty would have to stand the test of Article 21 and Article 19 simultaneously.

Article 22: not a complete Code
Therefore it can be said that Article 22 in itself is an incomplete code which means that the legality of the article is limited to be tested only against it and is not completely in accord with the fundamental rights of the constitution.

Rights of arrested persons under ordinary laws
The case of DK Basu v. State of West Bengal is one of the landmark authorities which enumerate guidelines and requirements for arrests and detentions provided by the Supreme Court. There are 11 guidelines which are an addition to constitutional and statutory safeguards and do not contradict any of them. The memorandum focuses on maintaining proper and authenticated records from the side of the authority known as 'inspection memo'. It also throws a repetitive glance upon all the other rights guaranteed to a person in custody and mentions all authorities who are bound to adhere to those. The decisions emanating from this case also led to the incorporation of Section 50A of CrPC which imposes a legal obligation on the Police to give information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be nominated by the arrested person for the purpose of giving such information.

a) Right to be informed of the grounds of arrest

Section 50 of CrPC states that it is the duty of every police officer or any other person authorized to arrest any person without a warrant, to let the person being arrested know the grounds of arrest immediately. Non-compliance with this provision renders the arrest illegal.
Article 22(1) states that any person who is arrested, cannot be detained in custody without being informed of the grounds of any such arrest as soon as possible. Both these laws clearly portray that no arrest can be made because it is lawful for the police to do so. Every arrest requires reason and justification, apart and distinct from the power to arrest. In view of this, it was held in the case of Joginder Kumar v. State of U.P. that a detained person should know the cause of his detention and is entitled to let any third person know the location of his detention.

b) Right to be defended by a lawyer of his own choice

Article 22(1) also states that any person who is arrested has the right to consult at all times and be defended by a lawyer of his own choice. This right is expanded right from the moment of the person's arrest.
There are a few rights which are not explicitly mentioned but are interpreted by the Supreme Court in certain cases. In the case of Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar, the courts observed that a large number of people were arrested awaiting their trial in a court of law. The arrests were made irrespective of the charge and its graveness. The accused were under arrest, deprived of their freedom even before the commencement of their trial and the charge actually being proved which stands unreasonable. The Supreme Court showing

concern over the matter interpreted that speedy trial is a constitutional right although it is nowhere explicitly mentioned. It was held that an investigation should be held as soon as possible and in no case is the state permitted to deny speedy trial on any grounds. It was also stated that in cases of arrest for trivial charges the trial must be completed within six months. It was also declared that the right to free legal aid is a fundamental right which was later expressly mentioned through amendments. It was also observed that the Supreme Court had powers to enact a DPSP into a fundamental right.

Further, the court also holds a constitutional obligation to provide free legal aid to every indigent person under trial. Although this right is not mentioned under the purview of Article 22, it still witnesses a direct mention under Article 39(A) and is implicit in Article 21 of our constitution.

c) Right to be produced before a Magistrate

Article 22(2) ensures the right of the accused to be produced before a magistrate. When a person is arrested, the person or police officer making the arrest should bring the arrested person before a magistrate or judicial officer without any unnecessary delay. This is also supported by Section 56 of the CrPC.

The right available to the accused at the first stage of production before the Magistrate is not stated directly in Article 22. It is rooted in Section 167 of the CrPC and states that no magistrate can authorize the detention of the accused in police custody unless the accused is produced in person before the magistrate. This right protects the accused from being detained on wrong or irrelevant grounds.

d) No detention beyond 24 hours except by order of the Magistrate

Article 22(2) also states that no person who is arrested should be detained for more than 24 hours without being produced before a magistrate or judicial authority and getting the detention authorized. The mentioned 24 hours exclude the time of travel from the place of arrest to the magistrate's court. This provision helps to keep a check on the investigation of the police regarding the matter at hand. It protects the accused from being trapped into wrongful detention.

In the case of State of Punjab v. Ajaib Singh, this right was infringed and thus the victim was provided compensation as constitutional remedy. It was held that cases of arrest without warrant require greater protection and production of the accused within 24 hours ensures the legality of the arrest, not complying with which would deem the arrest unlawful.

Exceptions

Clause 3 of the Article 22 clearly states that none of the rights mentioned in clause 1 and 2 of the Article would be applicable for a person who is deemed to be an enemy alien and anybody who is arrested or detained under the law providing for preventive detention.

The presence of this clause in the article has frequently questioned its constitutional validity as it takes away all the rights from a person detained under preventive detention. The cases of Maneka Gandhi v. Union Of India and A.K. Roy v. Union Of India have played major roles in giving perspective to this article. In the case of Maneka Gandhi, the scope of Article 21 was increased largely by adding the term 'due process' into the article. Now, upon delving into the history of preventive detention, it is known that Article 22 was inserted upon the removal of the phrase 'due process' from Article 21. Hence this shift greatly affected the context of Article 22 and posed direct questions on the rights and restrictions provided by the

article. While in the case of A.K.Roy v. Union Of India, the court acknowledged that preventive detention laws were not only subject to Article 22 but were also open to scrutiny under Articles 14, 21 and 19. It was also observed that while Article 22 clause 3 was exclusion to clauses 1 and 2 but the right to counsel under Article 21 was still valid but since Article 22 was part of the original constitution and Article 21 was expanded and amended in Maneka Gandhi's case, the former would prevail over the latter hence leaving the detenus scraped of their right to access legal assistance.

Preventive Detention Laws

A person can be put in jail/custody for two reasons. One is that he has committed a crime. Another is that he has the potential to commit a crime in the future. The custody arising out of the latter is preventive detention and in this, a person is deemed likely to commit a crime. Thus Preventive Detention is done before the crime has been committed.

Preventive detention also known as 'necessary evil' of the constitution as it can be steered in various directions and can be put to use in various scenarios, not all being just and reasonable. It is the most contentious part of the fundamental rights. The provision only mentions the rights people could exercise when they are detained but speaks nothing about any specific grounds or necessary provisions of detention. It thus gives enormous power to the authorities to twist the tool of preventive detention however and whenever they please. This has proved to be a way in which the freedom of the masses has been immensely curbed and continues to be so.

History of preventive detention

India's provisional parliament enacted the Preventive Detention Act in 1950. It empowered the government to detain without charge in the name of public safety and security. After facing constant criticism of violating fundamental rights and suppressing dissent, the Act lapsed in 1969 which gave way to the Maintenance of Internal Security Act (MISA). This Act was basically a change of name and constituted the same provisions. MISA was allowed to retire in 1978 following the misuse of preventive detention in the infamous emergency scenarios. After which the National Security Act was enacted, which remains in force till date. There were various other acts which focused at anti terrorism at its impact which are discussed briefly below.

Necessity of such provision

The aim of the constitution framers to bring such provision into existence was to prevent people from disrupting the peace and stability of the society. People were detained to prevent them from undermining the sanctity of the constitution, endangering the security of the state, disturbing relations of India with foreign powers or hindering maintenance of public order.
India follows preventive detention even in times of peace, when there is no threat posed to the national security of the state, which is one of the main reasons of imposing and implementing provisions of preventive detention. While, no other civilized nation has this proposition during peacetime.

The Preventive Detention Acts

There have been a few acts in history which have been framed by law in order to fill in the gaps and provide provisions of detention.
Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA)
This law was anti-terrorism law which gave wide power to the authorities for dealing with national terrorism and socially disruptive activities. This Act provided that a person can be

detained up to 1 year without formal charges or trial. A detainee can be in custody up to 60 days without being produced in front of a magistrate but instead maybe produced to executive magistrate who is not answerable to high court. This Act allowed the authorities to withhold the identities of witnesses and secret trials. The police were given enhanced powers for detention of suspects and the Act shifted the burden of proof on the accused which led to abuse of this Act and adverse effect on the democracy of the country. This Act is now repealed.

National Security Act, 1980

The purpose of this Act was to provide for preventive detention laws and matters connected therewith. The authorities, through this Act, obtain the power to detain any person who poses a threat to the security of the nation in any prejudicial manner. They can also detain any foreigner and regulate their presence in the country. Under this Act an individual can be detained without a charge for up to 12 months if the authorities are satisfied that the person is a threat to national security. The detenu can neither impose compulsion for knowing the grounds of detention nor can get a lawyer during the trial. The NSA has repeatedly come under criticism for the way it is used by the police. The Act differs from normal detention as it abrogates all rights available to the detenu in normal circumstances.

Prevention of Terrorism Act (POTA), 2002

This Act aimed at strengthening anti-terrorism laws in India. This Act replaced TADA. It defined what activities could constitute a terrorist act and who a terrorist was. In order to ensure no violation of human rights and misuse of power, certain safeguards were also installed within the Act. The provisions were all similar to the ones provided in TADA. Right after the enactment of this Act it was alleged that this law was grossly abused, hence repealing it after two short years.

Constitutional safeguards against Preventive Detention Laws

Article 22 further deals with certain rights which are provided in case of preventive detention.

a) **Review by Advisory Board:** Clause 4 of the article states that no law framed for preventive detention gives authority to detain any person for more than 3 months unless; an advisory board reports a sufficient cause for such detention. The people on the advisory board should be equally qualified as that of a judge of the high court. The report needs to be submitted before the expiration of said 3 months.

b) **Communication of grounds of detention to detenu:** Clause 5 of the article states that any authority while detaining any person under law providing for preventive detention shall communicate the grounds of detention to the person as soon as possible. The ground of detention should have a rational connection with the object which the detenu is prevented from attaining. The communication should provide all the material facts related to the ground and should not be a mere statement of facts.

   No obligation of authority: The detaining authority is under no obligation to provide the grounds of detention to detenu prior to his arrest, but is advised to do so at the earliest thereby providing an opportunity of representation to the detenu as well. A person already in custody can be detained when there are reasonable and sufficient causes to do so. The focal problem being that in cases of preventive detention there is no way to check whether the cause of detention is just and reasonable until it is presented to the advisory board which is applicable after the stretch of 3 months.

c) **Detenue's Right of representation:** Clause 5 of the article also states that the grounds of the detention should be communicated as soon as possible in order to enable the right of representation to the person. The authority providing the detention order shall afford to the person the earliest opportunity of making a representation against the order.

Conservation of Foreign Exchange, Prevention of Smuggling Activities Act (COFEPOSA), 1974 and Article 22(5)

This Act was brought into force in 1974 and it gave wide powers to the executive to detain individuals on apprehension of their involvement in smuggling activities. The section 3 of this Act is shared with clause 5 of Article 22 which states that the ground of detention should be communicated to the detenu within minimum five or a maximum of fifteen days. In no case should it be delayed beyond fifteen days. It must be completely furnished to the detenu, including all the facts and should not be only bare recital of the grounds. Any lapse within this provision would render the detention order void. This Act still stands valid.

No time limit prescribed for disposal of representation: The article does not provide any information about the method of dealing or disposing the representation made by the detenue. It just extends to providing the right of representation. There is no further description or time limit assigned for the end result of representation made, which can be inferred as a means to keep lingering the issue at hand and aid in wrongful detention of the person.

Exception under Article 22(6)

Clause 6 of the article is similar in nature to clause 3 as it stands an exception to clause 5 and states that the detaining authority is not mandatorily required to disclose any such facts which it considers to be against the public interest to disclose. This clause does not mention any other specifications or details within the topic and hence is regarded as the utmost arbitrary and regressive. It has no solid basis or reasoning to resonate with 'against the public interest' phrase and can be arbitrary to any extent.

Article 23 and 24 –Right Against Exploitation

Article 23 and 24 provides fundamental right against exploitation. The exploitation of lower castes by upper caste, practices like Sati Pratha, Devadasi system, forced prostitution, human trafficking, employing children in hazardous industries are some of the very common incidences of exploitation in India.Through Article 23 and 24, the constitution of India expressly mentions its commitment to save humans being from the scourge of exploitation.

Article 23: Prohibition of Trafficking of Human Being and Forced Labour

Article 23(1) prohibits 3 aspects of exploitation-

1. Trafficking 2. Begar 3. Forced Labour and mandates that any contravention of such prohibition shall be an offence.

The parliament has power under Article 35 to make a law prescribing punishment for all those acts which are prohibited under part III of the constitution. In pursuance of such power, parliament has enacted several laws prohibiting forced labour, begar and trafficking. Laws passed by the Parliament in pursuance of Article 23:

A. Suppression of Immoral Traffic in Women and Girls Act, 1956
B. Bonded Labour System (Abolition) Act, 1976

Human Trafficking
It means the sale and purchase of human beings mostly for sexual slavery, forced prostitution, or forced labour. Slavery is not expressly mentioned under Article 23 but it is included within the meaning of 'traffic in human beings.'

Begar - It means forcing a person to work for no remuneration. A person is compelled to work against his will.

Other Forms of Forced Labour
It is considered forced labour if the less-than-minimum wage is paid. This article also makes 'bonded labour' unconstitutional. Bonded labour is when a person is forced to offer services out of a loan/debt that cannot be repaid.
The Calcutta High Court in Dulal Samanta vs Dist. Magistrate interpreting the expression - other similar forms of forced labour held that the expression is to be interpreted ejusdem generis and it has to be something like either traffic in human beings or begar.

Exception
Ban against traffic in a human being is absolute but ban against forced labour is subject to one exception as mentioned in Article 23(2)

Article 23(2)
The state can impose compulsory services for a public purpose like national defence, removal of illiteracy or the smooth running of public utility service like water, electricity, postage, rail, and air services.
In making any such provision compulsory for public purposes, the state cannot discriminate on the grounds of religion, race, caste or class or any of them. Sex is not a prohibited ground of discrimination which indicates that women could be exempted from compulsory public service. Term class is used in pure economic sense.
However, no such law at the central level is made in India so far in its history. For a brief period in Nagaland, there was a law that said that in case of impeding blood able-bodied person can be called to join the army.

Important Judgments on Rights Against Exploitation (Article 23)

1. **People's Union for Democratic Rights v. Union of India AIR 1983 SC 1473 [v]**

The **Supreme Court** interpreted the scope of Article 23. The petitioner scrutinized the working conditions of various people employed in Asiad projects. It was discovered that the labourers were subject to great exploitation, they were not given minimum wages, subjected to an inhumane working environment. **PIL was filed.**J. PN Bhagwati observed that the scope of Article 23 is vast and unlimited. It is not merely 'begar' which is prohibited but this Article strikes at forced labour in whichever form it may exist. Every form of forced labour is prohibited.
No person shall be forced to provide labour or services against his will even if it is mentioned under a contract of service.The word 'force' has a very wide meaning under Article 23. It not only includes physical or legal force but also recognizes economic circumstances which compel a person to work against his will on less than minimum wage.

Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802
Bandhua Mukti Morcha is an organization that works against the prevalent system of bonded labours in India.This case is special in the sense that the court for the first time accepted and

treated a letter written to J.Bhagwati as a petition for PIL. The letter described the ordeal of a large number of workers in the Faridabad district of UP who were working in **inhuman and intolerable conditions.**The court laid down guidelines for the determination of bonded labourers and pointed out that it was the duty of the state government to identify, release, and rehabilitate the bonded labourers.

Article 24- Prohibition of Employment of Children in Factories, Etc

Article 24 must be read with A. 39(e) and A. 39(f) of DPSP which provides for the protection of health and strength of children and that the tender age of children should not be abused. Article 24 prohibits employment of children below 14 years of age in any factory, mine or any other hazardous employment.

The Supreme Court in **Peoples Union for Democratic Rights v. Union of India (AIR 1982 SC 1473) [viii]** held that building construction work was such hazardous employment where children below the age of fourteen years should not be employed. The court also pointed out the horizontal nature of Article 24. Prohibition of Article 24 could be enforced against everyone, whether State or private individual.

In **MC Mehta Vs State of Tamil Nadu [ix]** – MC Mehta brought before the court the plight of children engaged in Sivakasi cracker factories. In this case, the Supreme Court directed setting up of Child Labour Rehabilitation Welfare Fund and asked the employer to pay Rs. 20,000 as compensation to each child.

Article 25-28 Right to Religion

Religion is a matter of belief or faith. The constitution of India recognizes the fact, how important religion is in the life of people of India and hence, provides for the right to freedom of religion under Articles 25 to Article 28. The Constitution of India envisages a secular model and provides that every person has the right and freedom to choose and practice his or her religion.

Constitutional Provisions relating to Right of Religion

- Article 25: Freedom of conscience and free profession, practice and propagation of religion.
- Article 26: Freedom to manage religious affairs.
- Article 27: Freedom as to payment of taxes for promotion of any particular religion.
- Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Freedom of Religion in India (Art. 25)

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

- Are equally entitled to freedom of conscience, and
- Have the right to freely profess, practice and propagate religion.

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

- Regulation or restriction of any economic, financial, political, or any secular activity associated with religious practice.
- Providing social welfare and reform.
- Opening of Hindu religious institutions of public character for all the classes and sections of the Hindus.

The National Anthem Case

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

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

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

In another case of the Supreme Court, *Shyam Narayan Chouksey v. Union of India* It was averred in the petition filed before the Supreme Court that every person must show respect to the national anthem. The Supreme Court held that every citizen or persons are bound to show respect to the National Anthem of India, whenever played or sung on specific occasions the only exemption is granted to disabled people. It further held that playing of the national anthem in cinema halls is not mandatory but optional and directory. Article 51A also recognizes the duty of every citizen to show respect to our national anthem. It states that every citizen of India is duty-bound to respect its ideals, institutions, National flag, National anthem, etc.

Appointment of Non-Brahmins as Pujari:

N. Aditya v. Travancore Devaswom Board - The issue, in this case, was whether the appointment of a non-Malayala Brahmin as 'Santhikaran' (Priest or Pujari) of the Kongorpilly Neerikode Siva Temple at Kerala is violative of the provisions of the constitution.

The court held as long as a person is well versed, properly qualified and trained to perform the puja in an appropriate manner for the worship of the deity, such a person can be appointed as 'Santhikaran' despite his caste. In the present case, it was also observed that the temple is not a denomination where there is a specific form of worship is required.

Acquisition of place of worship by State

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

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

Shifting of property connected with religion

In the case of *Gulam Abbas v. State of UP*, there was a dispute between the Shias and Sunnis regarding the performing of the religious rites by the Shias on a certain plot of land of mohalla Doshipura in Varanasi. In order to avoid clashes between these communities and to find a permanent solution to this problem, the Supreme Court appointed a 7 member committee with Divisional Commission as the Chairman and 3 members of the Shia sect and 3 members of the Sunni sect. The committee made a recommendation of shifting of the graves of Shias to separate the places of worship of the Shia and Sunni sect. The Sunni sect challenged these recommendations as violative of their fundamental right of freedom of religion under Article 25 and 26. The Court rejected these contentions.

The Supreme Court held that the fundamental right guaranteed under Article 25 and 26 is not absolute and is subject to public order and if the court is of the opinion that shifting of graves is in the interest of the public then the consent of the parties is irrelevant even though the Muslim personal law is against shifting of graves.

Noise pollution in the name of religion

The Supreme Court in *Church of God (Full Gospel) v. K.K.R. Majestic Colony Welfare Association* held that nowhere in any religion, it is mentioned that prayers should be performed through the beating of drums or through voice amplifiers which disturbs the peace and tranquility of others. If there is any such practice, it should be done without adversely affecting the rights of others as well as that of not being disturbed in their activities.

In the case of *Maulana Mufti v.State of West Bengal* restrictions were placed on the use of microphones before 7 am. It was held by the Calcutta High Court that Azan is an integral and necessary part of the religion but certainly not the use of microphones. It violates the basic human and fundamental right of the citizens to sleep and leisure.

Restrictions on Freedom of Religion

The Supreme Court in *In re, Noise Pollution case,* has given certain directions to be followed to control noise pollution in the name of religion:

- **Firecrackers:** A complete ban on sound-emitting firecrackers from 10 pm to 6 am.
- **Loudspeakers:** Restriction on the beating of drums, tom-tom, blowing of trumpets, or any use of any sound amplifier between 10 pm to 6 am except in public emergencies.
- **Generally:** A provision shall be made by the State to confiscate and seize loudspeakers and such other sound amplifiers or equipment that create noise beyond the limit prescribed.

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

- Establishing and maintaining institutions for religious and charitable purposes;
- Managing its affair with regard to religion;
- Owing and acquiring property (movable and immovable);
- Administering the property in accordance with the law.

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

Right to establish and maintain-institutions for religious and charitable purposes: Azeez Basha v. Union of India
In this case, certain amendments were made in the year 1951 and 1965 to the Aligarh Muslim University Act, 1920. These amendments were challenged by the petitioner on the ground that:

1. They infringe on the fundamental right under Article 30 to establish and administer educational institutions.
2. Rights of the Muslim minority under Article 25, 26, 29 were violated.

It was held by the Supreme Court that prior to 1920 there was nothing that could prevent Muslim minorities from establishing universities. The Aligarh Muslim University was established under the legislation (Aligarh Muslim University Act,1920) and therefore cannot claim that the university was established by the Muslim Community as it was brought into existence by the central legislation and not by the Muslim minority.

Right to manage its own affairs in the 'Matters of Religion'
Matter of religion includes religious practices, rituals, observances, ceremonies, mode and manner of worship, etc., regarded as the essential and integral part of the religion. For instance, in *Acharaj Singh v. State of Bihar* it was held that, if *Bhog* offered to the deity is a well-established practice of that religious institution; such a practice should be regarded as a part of that religion.

Prevention of excommunication - Ex-communication means the exclusion or expulsion of a person from a community or group of which he or she was a member.

Taking over management of secular activities of the temple:
Bira Kishore Dev v. State of Orissa, AIR 1964 SC 1501
In this case, The validity of the Shri Jagannath Temple Act, 1954 was challenged on the ground that the Act is discriminatory in nature and violates Article 26 (d) of the Constitution. It was contended by the petitioner (Raja of Puri) that the temple was his private property and he had the sole right over management as well as superintendence of the temple. The Act took away the sole management of the temple from the appellant and vested it with the Committee. Dismissing the appeal the Supreme Court held that there was no violation of the

fundamental right of freedom of religion of the petitioner and the Act only dealt with the secular management of the institution.

Right to administer property owned by the denomination
Article 26 (d) says that a religious denomination has the right to administer its own property but it should be in accordance with Law. In *Durgah Committee Ajmer v. Syed Hussain Ali* the Supreme Court observed that if the religious denomination never had the right to administer property or if it has lost its right then such right cannot be created under Article 26 and therefore cannot be invoked.

The Supreme Court in the case of *State of Rajasthan v. Sajjanlal Panjawat* observed that even though the state has the power to administer or regulate the properties of a trust, but it cannot by law take away the right to administer such property and vest it in such other authority that does not even comprise the denomination. This would certainly amount to a violation of Article 26(d) of the Constitution.

Limitation of the Right

The right to religion under Article 26 is subject to certain limitations and not absolute and unfettered. If any religious practice is in contravention to any public order, morality or health then such religious practice cannot claim the protection of the state.

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

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

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

- Providing religious instructions in any educational institutions that are maintained wholly out of the state funds.
- The above shall not apply to those educational institutions administered by the states but established under endowment or trust requiring religious instruction to be imparted in such institution.
- Any person attending state recognized or state-funded educational institution is not required to take part in religious instruction or attend any workshop conducted in such an institution or premises of such educational institution.

Teaching of Guru-Nanak: D.A.V. College v. State of Punjab, (1971) 2 SCC 368
In this case, Section 4 of the Guru Nanak University (Amritsar) Act, 1969 which provided that the state shall make provisions for the study of life and teachings of Guru Nanak Devji was questioned as being violative of Article 28 of the Constitution. The question that arose was that the Guru Nanak University is wholly maintained out of state funds and Section 4

infringes Article 28. The court rejecting this held that Section 4 provides for the academic study of the life and teachings of Guru Nanak and this cannot be considered as religious instruction.

Articles 29 and 30

The cultural and educational rights are intended to protect the interest of minorities. The Constitution does not define the term "minority". According to the Encyclopaedia Britannica "minorities" means groups held together by ties of common descent, language or religious faith and feeling different in this respect from the majority of inhabitants of a given political entity. Article 29 applies only to citizens while Article 30 applies to both citizens and non-citizens.
The object behind Articles 29 and 30 is the recognition and preservation of the different type of people, with diverse languages and different beliefs which constitutes the essence of secularism in India.

Right to Conserve language, script or culture: Article 29
Article 29 (1) provides that, "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." Therefore, Article 29(1) the guarantees the right to conserve one's own language, script or culture.

To claim this right the following conditions must be satisfied:
The right can be claimed by any section of citizens. The right thus belongs to citizens and not to others. That section of citizens must be residing in the territory of India or any part thereof. That section of citizens must have a distinct language, script or culture of its own.

When article 29 (2) does not apply
Article 29(2) prohibits denial of admission into educational institutions maintained or aided by the State on the ground only of religion, race, caste or language or any of them. It is, therefore, not attracted in cases where the admission is denied on the ground other than those specified therein. For example, where seats in the educational institutions are reserved by the State Government on the basis of residence or domicile or sex or on the basis of the need of the inhabitants of that State, there would be no violation of Article 29(2).

Right to Minorities to establish and administer educational institutions: Article 30
Article 30 gives protection to religious and linguistic minorities. Article 30(1) provides that all minorities shall have the right to establish and administer educational institutions of their choice. The word "establish" indicates the right to bring into existence, while the right to "administer" means the right to effectively manage and conduct the affairs of Institution.

Article 30(1A) provides that in case of any property of an educational institution established and administered by a minority being acquired by the State, the State shall ensure that the amount fixed for such acquired property should be such as would not restrict or abrogate the rights of that minority. This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities.

Difference between Article 30(1) and Article 29(1)
The rights guaranteed by Article 30(1) are available only to religious or linguistic minorities, whereas the rights guaranteed by Article 29(1) are available to any section of Indian citizens including the majority.
Article 30(1) does not refer to citizenship as a precondition for entitlement of the rights guaranteed by it, while article 29(1) guarantees the rights only to the Indians.

TMA Pai Foundation case
This judgement was overruled in **TMA Pai Foundation case**.. In this case, an eleven judge Constitution Bench of the Supreme Court held that the right to establish and administer educational institutions is guaranteed to all citizens and to minorities specifically under Article 30. The rights of minorities under Article 30 cover professional institutions.
Minority communities have a right to establish and administer aided educational institutions whereas institutions which receive State aid could be subjected to government rules and regulations. In respect of unaided institutions, the only regulation a State Government University could make was regarding the qualifications and minimum conditions of eligibility of teachers and principal in the interest of academic standards.

The State could not make any laws regarding admissions fees in such institutions. A minority institution would not cease to be one the moment it was granted aid. An unaided institution would be entitled to have the right of admission of students belonging to that specific minority group. At the same time, it would be required to admit a reasonable extent of non-minority students so that their rights under **Article 31A** were not substantially impaired, and further citizens' rights under **Article 29** were also not affected.

Minority institutions may have their own procedure and method of admission; however, the procedure has to be fair and transparent. Selection in professional and higher education colleges should be based on merit. In case of aided professional institutions, the State may prescribe that only those persons may be admitted who have passed the common entrance test. Therefore, by holding this the Supreme Court said that the rigid percentage of reservation as prescribed in St. Stephen's case cannot be stipulated.

In TMA Pai Case, the Court empowered the States to fix quotas for minority students, taking into account the type of institution, population, and educational needs of the minorities. The Court reiterated that the constitutional rights conferred on minorities to establish and administer educational institutions of their choice is not absolute or above other laws.

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

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

courts first as the main purpose of Writ Jurisdiction under Article 32 is the enforcement of Fundamental Rights.

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

1. **Habeas Corpus**

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

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

The first Habeas Corpus case of India was that in Kerala where it was filed by the victims' father as the victim P. Rajan who was a college student was arrested by the Kerala police and being unable to bear the torture he died in police custody. So, his father Mr T.V. Eachara Warrier filed a writ of Habeas Corpus and it was proved that he died in police custody. Then, in the case of ***ADM Jabalpur v. Shivakant Shukla*** [1] which is also known as the Habeas Corpus case, it was held that the writ of Habeas Corpus cannot be suspended even during the emergency (Article 359).

2. Quo Warranto

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

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

1. When the public office is in question and it is of a substantive nature. A petition against a private corporation cannot be filed.
2. The office is created by the State or the Constitution.
3. The claim should be asserted on the office by the public servant i.e. respondent.

3. Mandamus

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

The person applying for mandamus must be sure that he has the legal right to compel the opponent to do or refrain from doing something.

- Conditions for issue of Mandamus
  1. There must rest a legal right of the applicant for the performance of the legal duty.
  2. The nature of the duty must be public.
  3. On the date of the petition, the right which is sought to be enforced must be subsisting.
  4. The writ of Mandamus is not issued for anticipatory injury.

4. Certiorari

Writ of Certiorari means to be certified. It is issued when there is a wrongful exercise of the jurisdiction and the decision of the case is based on it. The writ can be moved to higher courts like the High Court or the Supreme Court by the affected parties.
There are several grounds for the issue of Writ of Certiorari. Certiorari is not issued against purely administrative or ministerial orders and that it can only be issued against judicial or quasi-judicial orders.

When is a writ of Certiorari issued?
It is issued to quasi-judicial or subordinate courts if they act in the following ways:

1. Either without any jurisdiction or in excess.
2. In violation of the principles of Natural Justice.
3. In opposition to the procedure established by law.
4. If there is an error in judgement on the face of it.

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

5. Prohibition

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

Amendments to Article 32
'Anti-freedom' clauses were included in Article 32 by the 42nd Amendment. Such an amendment was made during the time of emergency when it was passed to reduce 'both directly and indirectly' the jurisdiction of the Supreme Court and the High Courts to review

the application of fundamental rights. Then 43rd amendment of the Indian Constitution was passed which repealed Article 32A immediately after the emergency was revoked. Following the amendment, the Supreme Court again gained the power to quash the state laws. Also, the High Courts got the power to question the constitutional validity of central laws.

Limitations to Article 32

There are certain circumstances during which the citizens do not get the privileges which they ought to under Article 32. Therefore, the situations when the fundamental rights may be denied to the citizens but the constitutional remedies will not be available i.e. Article 32 will not be applicable are:

- Under Article 33, the Parliament is empowered to make changes in the application of Fundamental Rights to armed forces and the police are empowered with the duty to ensure proper discharge of their duties.
- During the operation of Martial law in any area, any person may be indemnified by the Parliament, if such person is in service of the state or central government for the acts of maintenance or restoration of law and order under Article 34.
- Under Article 352 of the Constitution when an emergency is proclaimed, the guaranteed Fundamental Rights of the citizens remains suspended. Also, Fundamental Rights guaranteed under Article 19 is restricted by the Parliament under Article 358 during the pendency of an emergency.
- Article 359 confers the power to the President to suspend Article 32 of the Constitution. The order is to be submitted to the Parliament and the Parliament may disapprove President's order.

The Right to Information Act, 2005: a Brief Overview

Introduction

Freedom of speech and expression guaranteed by the Constitution of India, like the right to equality, life and liberty, have been liberally construed by the Supreme Court of India from inception. The right of freedom of speech and expression embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would aid in the citizen's understanding of the working of his Government and its various organs in a democracy. The importance which the framers of our Constitution attached to this freedom is evident from the fact that restrictions could be placed on that right could be placed by law only on the limited grounds specified in Article 19(2).

The belief that access to information is a human right is reflected in Article 19 of the Universal Declaration of Human Rights proclaimed in December 1948: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers." The right of citizens' access to information is an important means of achieving an accountable, transparent and participatory Government.

Object of the Act

Pursuant to the 77th report of the Parliamentary Standing committee headed by Sri Pranab Mukherjee, the Right to Information Act, 2005 ("the Act") was enacted. The Act came into force on 12th October 2005. The preamble of the Act declares that the Act provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

Right to Information

The Act defines "right to information" as the right to access information accessible under the Act which is held or under the control of a public authority [Sec. 2 (j)]. Section 3 of the Act provides that subject to the provisions of the Act, all citizens shall have the right to information. The question that then arises is against whom is this right enforceable? The right to information conferred on citizens by the Act is enforceable against public authorities. '"Public authority" is defined in Sec.2 (h) of the Act.

"2 (h) "public authority" means any authority or body or institution of self Government established or constituted:

a) by or under the Constitution;
b) by any other law made by the Parliament;
c) by any other law made by the State legislature;
d) by notification issued or order made by the appropriate Government, and includes any –
   i. Body owned, controlled or substantially financed;
   ii. Non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government." Since the provisions of the Act are applicable only to public authorities as defined in Sec. 2(h), the Act imposes certain obligations (Sec. 4) on public authorities cataloging, indexation and computerization of records within a reasonable time. Public authorities are mandated by the Act to periodically publish information regarding its organization, employees, rules, regulations, remuneration received by its employees, budgetary allocations, proposed expenditures etc. The Act provides for suomotu provision of information to the public through various media.

Public Information Officers (PIO)

The Act provides for constitution of an executive wing to enforce the right to information conferred on citizens by the Act. Every public authority is required to appoint public information officers ("PIO") for providing information to persons requesting information under the Act (Sec. 5). A PIO shall receive and dispose of applications seeking information in accordance with and within the time frame prescribed in Secs. 6 & 7 of the Act.

Exemption from Disclosure of Information

Sec. 8 of the Act sets out certain information that is exempt from disclosure. When a request is made to a public authority seeking information that falls within any of the following categories, Sec. 8 exempts a public authority from the obligation of disclosure:

a) Information that would affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation within foreign state or lead to incitement of an offence;
b) Information expressly forbidden by any court of law or disclosure of which may constitute contempt of court;
c) Information, the disclosure of which would cause breach of privilege of Parliament or state legislature;
d) Information including trade secrets or intellectual property, the disclosure of which would harm the competitive position of third parties;
e) Information available to a person in his fiduciary relationship;
f) Information received in confidence from a foreign Government;
g) Information that would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence to a law enforcement agency;

h) Information that would impede the process of investigation;
i) Information which relates to personal information the disclosure of which has no relationship to any activity or interest, or which would cause unwarranted invasion of privacy of the individual;
j) Where disclosure of information would involve an infringement of copyright subsisting in a person other than the State.
   - A Public authority, notwithstanding the exemptions listed above, may disclose any information listed above, if public interest in disclosure outweighs the harm to the protected interest.
   - A public authority can deny access to information only if the information falls within any of the categories stated in Sec.8.
   - The Act does not restrict the manner in which an applicant can use information supplied by a public authority under the Act.
   - Third Party Information:
   - Where the information that is sought to be accessed from a public authority relates to or has been supplied by a third party, the PIO is required under Sec. 11 of the Act of the Act to notify such third and invite its submission. The submission of the third party shall be kept
   - in view by the public authority while deciding on the disclosure of information. Where such disclosure relates to commercial secrets of a third party, a public authority can decline access to such information.

Central and State Information Commissions

Constitution: The Act envisages the constitution of Central and State Information Commissions (Sec. 12 & Sec. 15). The Central Information Commission shall be headed by a Chief Information Commissioner assisted by such number of Central Information Commissioners, who shall be appointed by the President of India. Similarly, the State Information Commission shall be headed by a State Chief Information Commissioner assisted by such number of State Information Commissioners, who shall be appointed by the Governor.

Powers of the Commission (SEC. 18):

The Act casts a duty on the Information Commission to receive and inquire into complaints from any person:

- Who has been unable to submit a request for information to a public authority because a PIO has not been appointed;
- Who has been refused access to information;
- Who has received no response to his application seeking information, within the time frame specified by the Act;
- Who considers the fee charged by the public authority to divulge information, unreasonable;
- Who believes that he has been given incomplete, misleading or false information under the Act;
- In respect of any matter relating to access to records under the Act. While an Information Commission is inquiring into any matter, it shall have the same powers as are vested in a civil court while trying a suit in the following matters:
- Summoning and enforcing the attendance of persons and compelling them to give evidence and/or produce documents;
- Requiring discovery and inspection of documents;

- Reception of evidence on affidavits;
- Requisitioning any public record or copies thereof from any court or office;
- Issuing witness summons.

During the inquiry of any complaint under the Act, the Commission shall be entitled to examine any record which is under the control of the public authority, and the public authority shall not be entitled to withhold any such record on any ground/s.

Appeals (SEC. 19)
A two-tier appeal mechanism is provided under the Act for persons who do not receive information from a PIO or who are aggrieved by a decision of the PIO.

First Appeal: A first appeal shall lie to an officer who is senior in rank to the PIO in the concerned public authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision of the PIO.
Second Appeal: An order passed by the first appellate authority is appealable under the Act. The second appeal shall lie to the Central or the State Information Commission, as the case may be. The second appeal shall lie within 90 days from the date of decision of the first Appellate Authority.

Burden of proof: Sec. 19 (5) provides that in any appeal proceedings, the onus to prove that a denial of a request for information was justified shall be on the PIO who denied the request.

In its decision, the Information Commission is empowered to require the public authority to secure compliance of the provisions of the Act by:
- Providing access to information requested
- Appointing a PIO
- Publishing certain categories of information
- Making changes to its practices relating to maintenance, management and destruction of records
- Enhancing the provision of training of its officials on the right to Information
- Directing the public authority to pay compensation to the complainant
- Impose penalties
- Reject the application

Penalties
The Act empowers (Sec. 20) an Information Commission to impose a penalty of Rs.250/- per day (not exceeding Rs.25,000/-) in the following cases, till an application requesting information is received or till such information is accepted:
- Not accepting an application seeking information;
- Delaying disclosure of information without reasonable cause;
- Malafide denial of information;
- Knowingly giving incomplete, in correct or misleading information;
- Destroying information that has been requested;
- Obstructing furnishing of an information in any manner.

In addition to the imposition of penalty or errant PIOs, the Information commission is also empowered to recommend disciplinary action against the erring PIO. However, no such punishment/penalty shall be imposed without giving the PIO an opportunity of being heard.