

### Part III Fundamental Rights

Part III of the Constitution deals with fundamental rights. It consists of Articles 12-35. Before discussing the articles, let us first understand the meaning and significance of fundamental rights. We will also discuss the importance of fundamental rights and how they are different from other constitutional and legal rights.

#### Meaning

‘Rights are the moral or legal entitlements of individuals to have or do something.’ This definition can be divided into two parts: The first part mentions the basis of rights, i.e. rights have either moral or legal basis. Certain rights are given to individuals because the morals of the society require that individuals should be entitled to such rights. For instance, elders are given respect in our society. In a way, respect is the right of the elders on the moral grounds of our society.

Other rights are given to individuals because they are mentioned in the law. These rights may also be backed by morals prevalent in the society or not. For instance, daughters have equal share in the property of parents. This is an example of a right given by law.

The second part of the definition mentions that rights involve two types of entitlements: One type of entitlements confer rights upon individuals to have something. For instance, the right to property confers the right upon individuals to own property in their name. The second type of entitlements confer rights upon individuals to do something. For instance, the right to freedom of religion confers the rights upon individuals to practice religion of their own choice.

If any person or organization violates the rights of an individual, the individual has remedy to seek enforcement of rights. He may approach the government or courts demanding that the violators are punished and his or her rights are enforced.

Fundamental rights are called so because they are the most important amongst all the rights conferred upon individuals. The term ‘Fundamental Rights’ is not defined in the Constitution. For our understanding, we can define fundamental rights as those rights which are ‘essential to lead a bare minimum quality of life’. In other words, fundamental rights are the basic and essential rights for a human being, without which he cannot lead a decent life.

Because fundamental rights hold a higher place amongst all the rights, they are usually guaranteed by the constitution of a country. Likewise, Part III of our Constitution mentions the various fundamental rights which are enjoyed by the individuals.

### Difference among Fundamental Rights, Constitutional Rights and Legal Rights

A right, as we have discussed, is an entitlement of an individual. Apart from fundamental rights, the other types of rights include constitutional rights and ordinary legal rights. Though all the rights are entitled to an individual, the fundamental rights are different from other rights in the following ways:

#### Difference between Fundamental Rights and other rights

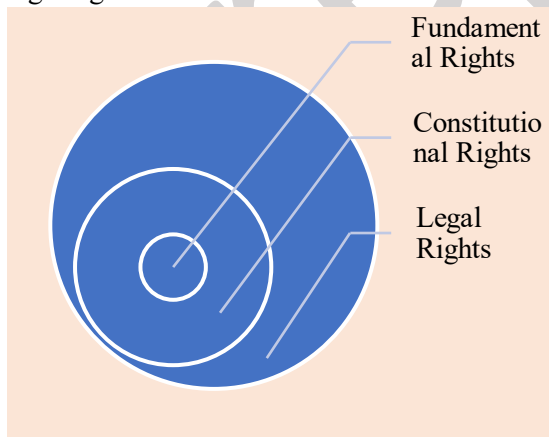
	Fundamental Rights	Constitutional Rights	Legal rights
<b>Mentioned</b>	Fundamental rights are provided under Part III of the Indian Constitution.	Constitutional rights are also provided in the Indian constitution in parts other than Part III.	Legal rights are rights provided by a law made by a legislature.
<b>Can they be taken away or amended?</b>	Fundamental rights are placed at a higher position than any other rights. They cannot be amended easily by the Parliament. Parliament requires a special majority to amend the fundamental rights.  Moreover, the rights declared as part of the basic structure by the Supreme Court cannot be amended by the Parliament.	As these rights are provided in the constitution itself, they hold a higher position than ordinary legal rights, but a lower position than fundamental rights. They can also be amended by the Parliament only through special majority.	Since legal rights are mentioned in ordinary laws of the country, they can be amended by the Parliament through simple majority.
<b>Remedies</b>	An individual	In case of violation of a	In case of violation

	can directly approach the Supreme Court if his or her fundamental rights are violated.	Constitutional right, an aggrieved person is required to follow normal judicial procedure.	of a Legal right, an aggrieved person is required to follow normal judicial procedure.
<b>Examples</b>	Right to equality under Articles 14-18	Right to vote	Rights of women under laws such as Domestic Violence Act 2005

### Another view on relation among Fundamental Rights, Constitutional Rights and Legal Rights

There is another interpretation on the relation among Fundamental, Constitutional and Legal Rights. We have so far learnt that rights which are guaranteed by law are called legal rights, rights which are guaranteed by the constitution itself are called Constitutional rights and rights which are specifically mentioned in Part pertaining to fundamental rights (such as Part III of the Indian Constitution) are called fundamental rights.

It is to be noted that the Constitution is also law. Thus, all constitutional rights are also legal rights. Similarly, fundamental rights are mentioned in the Constitution (Part III of the Constitution). Thus, fundamental rights are also constitutional rights. As all constitutional rights are also legal rights, thus fundamental rights are also legal rights.



### Source of Fundamental rights

The fundamental Rights were inspired from the Bill of Rights included in the American constitution. Even before the freedom of our country, leaders of our

national movement continuously demanded for the inclusion of fundamental rights in the constitutional laws adopted by the British. Moreover, in almost all the political documents drafted by them, Indians demanded inclusion of fundamental rights in the constitution. The famous among these documents were the Commonwealth of India Bill (1925), the Motilal Nehru report (1928) and the Karachi resolution of the Congress (1931). However, Britishers did not adopt the fundamental rights in any of the constitutional laws passed by them.

When it became clear to Indians that the power to govern India would be transferred soon to them, then the preparation for including fundamental rights into the independent India's constitution also began. The major efforts for including fundamental rights in post-independence constitution were as follows:

### The Sapru Committee Report, 1945

The Sapru Committee was called so after the name of its chairman, Tej Bahadur Sapru, an eminent lawyer. The Committee consisted of thirty members. The Committee was assigned the task of giving basic guidelines for making the Constitution for Independent India. The report of the Committee was published in 1945.

The Sapru Committee made two important suggestions about rights. Firstly, it made distinction between justiciable rights and non-justiciable rights. In other words, the committee suggested that the rights of the people should be divided into two groups: Justiciable rights and non-Justiciable rights. Justiciable rights are those rights which can be claimed in the courts. In other words, these rights are enforceable by the Courts. Non-Justiciable rights are those rights which cannot be claimed in the Courts. In other words, these rights cannot be enforced by the Courts.

Secondly, the Sapru Committee recognized the distinct need to protect the rights of the minorities. Thus, it suggested that the rights of the minorities must be protected.

### The Sub-Committee on Fundamental Rights

In the Making of Constitution, we discussed that the Constituent Assembly formed various committees to give suggestions on various provisions of the constitution. Among these committees, one committee was formed to give suggestions on Fundamental Rights, minority Rights and Tribal and Excluded Areas. This committee was headed by Sardar Vallabhbhai Patel. This Committee was further divided into sub-committees. One such sub-committee was on Fundamental Rights. The Fundamental Rights sub-committee (also called Rights sub-committee) was headed by J.B. Kripalani.

The recommendations of the Rights sub-committee were in sync with the recommendations of the Sapru Committee. The Rights sub-committee has recommended that all the rights granted by the constitution cannot be included in the list of fundamental rights under Part III of the Constitution. One such example is the right to vote in the elections on the basis of universal adult suffrage. This right has been inserted under Article 326 under Part XV of the Constitution.

The Rights sub-committee also suggested that rights should be classified mainly into justifiable and non-justifiable rights. The justifiable rights should be included under Fundamental rights in Part III and non-justifiable rights should be included under Directive Principles of State Policy in Part IV.

### Features of Fundamental Rights

Fundamental rights have certain unique characteristics. These characteristics or features express the nature of the fundamental rights. These characteristics are listed below:

**1. Rights of individuals:** Fundamental Rights are the rights of the individuals. Some of these rights are available to citizens only, while others are available to both citizens and foreigners.

**2. Long and Comprehensive list:** Our Constitution consists of a long and comprehensive list of fundamental rights. Infact, the list of fundamental rights incorporated into our constitution is longer than the Bill of Rights in the US constitution.

**3. Limit the powers of the State:** On one side, fundamental rights are enjoyed by individuals. On the other side, these rights restrict the powers of the State. In other words, these rights put limitations on the powers of the State.

Though most of the fundamental rights are applicable against the State, some of these rights also restrict the arbitrary actions of the individuals. These rights are applicable against both the individuals and the State. These rights include Right of entry to public places (Art. 15(2)), Right against untouchability (Art.17), and Right against exploitation (Art.23 and Art.24).

**4. Negative and Positive nature:** Most of the fundamental rights are negative in nature because they put restrictions on the powers of the State. Other fundamental rights are positive in nature because they confer privileges upon individuals.

**5. Justifiable:** Fundamental rights are enforceable by law. In other words, in case the fundamental rights are

violated, they are required to be restored. If the fundamental rights of a person are violated, the person can approach the courts for their enforcement. Hence, they are justifiable in nature.

**6. Guaranteed by the Supreme Court:** The highest court of the country has been mandated to enforce the fundamental rights. In case the fundamental right of an individual is violated, he can directly approach the Supreme Court. Also, the Constitution specifies that it is the duty of the Supreme Court to restore the fundamental right. Thus, the Supreme Court is duty bound to restore the violated fundamental right. It does not have the discretion of not restoring the fundamental right.

It is to be noted that, because the fundamental rights are the most important rights, only in case of violation of fundamental rights, a person can directly approach the Supreme Court. In case of violation of other constitutional and legal rights, a person has to follow the normal judicial procedure (or the person can approach the lower judiciary for enforcement of rights).

**7. Amendability:** Fundamental Rights are the most important rights amongst all the available rights to an individual. Thus, Parliament cannot easily amend or take away the fundamental rights. Parliament can amend the fundamental rights only through special majority. In other words, Parliament can amend the fundamental rights by means of a constitutional amendment.

Also, the Supreme Court has held some fundamental rights as part of the basic structure of the Constitution. These fundamental rights cannot be amended at all. In other words, Parliament cannot amend these fundamental rights even by special majority.

**8. Suspension:** Fundamental rights have been inserted in the constitution for implementation in continuity without any disruption or suspension during the normal times. However, under abnormal times, such as National emergency on account of war, external aggression or internal armed rebellion, fundamental rights can be suspended except the fundamental rights given under Article 20 and 21. In other words, Fundamental Rights can be suspended during national emergency except Art.20 and Art.21.

**9. Limited by exceptions:** Fundamental rights are not absolute in nature. Their scope is limited by various exceptions listed to the fundamental rights. If fundamental rights are given in absolute terms, then an individual's enjoyment of fundamental rights may hamper the interests of the overall society.

For instance, the fundamental right of freedom of speech and expression is subject to various exceptions such as Sovereignty and integrity of State, Security of state, Friendly relations with foreign states, etc.

**10. Need for Parliamentary law:** Some fundamental rights are applicable on their own while other fundamental rights require parliamentary law for their implementation. For instance, Article 21A guarantees the fundamental right of education to all children between 6 to 14 years of age. Parliament has passed the Right to Education Act 2009 to give effect to provisions of Art.21A.

**11. Promote Political democracy:** Fundamental rights promote political democracy in our country. They restrict the powers of the State and thus prevent the State from becoming authoritarian in nature. Fundamental rights also put limitations on powers of the executive and the legislature. They also grant freedoms and confer privileges upon people.

Infact, Fundamental rights are regarded as the Magna Carta of India. Magna Carta is a charter of rights and privileges which was adopted by English King in 1215.

#### Definition of State

We have just learned that Fundamental rights are the rights of the individuals and they restrain or limit the power of the State. However, the exact meaning of the term 'State' is not clear. Thus, it is important to define 'State'. The definition of State is provided under Article 12.

Article 12 defines the meaning of 'State' for the purpose of the articles of Part III. The same definition of State is also applicable to the Directive Principles of State Policy enshrined in Part IV of the Constitution.

In other words, whenever the word 'State' is used in the articles pertaining to the fundamental rights and directive principles of State Policy, it means the following:

**1. Government and Parliament of India:** This means the executive and legislative organs of the Union. In other words, the government cannot take any executive action or the Parliament cannot pass any law if it is against the fundamental rights.

**2. Government and Legislature of states:** Similarly, the executive and legislative organs of the States are also considered under the expression 'State'.

**3. Local authority:** Local authority refers to local bodies such as panchayats, gram sabha, zila parishad, municipal corporation, municipal committee and the like. It also includes development boards or other

authority which is legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund.

**4. Other authorities:** The expression 'other authorities' is not defined in the constitution. During the debates of the Constituent Assembly, Dr Ambedkar clarified that the expression 'other authorities' used in Article 12 refers to those authorities that have the power to make laws or have discretion vested in them.

Such discretion can be vested in a body created by a law made by the legislature. In other words, statutory bodies created by a law are considered other authorities. The definition is further expanded by the Courts to include bodies other than statutory bodies. A body that carries out functions of a State is considered as an agent or instrument of the State. Such agency or instrumentality of a State is also considered as 'State' under Article 12.

#### How to identify whether an institution is a part of State under Article 12?

The Supreme Court in its judgement of *Ajay Hasia vs Khalid Mujib* (1981) case laid down certain guidelines to identify whether a body is an instrumentality or an agency of State under Article 12. If a body/corporation satisfies the following conditions, it may be considered as a State under Article 12:

- If the entire share capital of a corporation is held by the Government.
- If a substantial part of the expenditure of a corporation is met by financial assistance from the Government.
- If the corporation has a monopoly status granted to it by the State.
- If the management and policies of the corporation are under the 'deep and pervasive' control of the State.
- If the functions of the corporation are closely related to the government functions.
- If the functions of a department of a government is transferred to a corporation.

In subsequent judgments, the Court clarified its stance on the definition of State. The Supreme Court held that the principles laid down in the *Ajay Hasia* case are not rigid.

Even if a corporation seems to meet one or more of the criteria, it cannot be considered a State without a deeper analysis. A corporation is considered a 'State' only when it is exercising its duties under the control of the government. The control of the government must be 'deep and pervasive'. A corporation is considered to be under deep and pervasive control of the government if it is under the financial, functional or administrative domination of the government.

Financial domination means that the government owns the corporation or the corporation is dependent on the



government for its expenses. Functional domination means that the nature of the activities to be carried out by the corporation are decided by the government. A corporation is said to be under the administrative domination of the government if the administrative activities (such as staff recruitment) of the corporation are under the control of the government.

Regulatory control is not considered a part of the domination of the government. Any corporation is required to follow the policies laid down by the government such as payment of taxes, registration in accordance with the laws etc. Moreover, such regulatory control is not considered as deep and pervasive.

For instance, consider the following scenario: A private corporation is required to follow the policies laid down by means of laws. However, the functions and administrative policies of the private corporation are decided by its management. Further, it meets its own expenses and is not dependent on the government for finances. In this case, the control exercised by the government is mere regulatory control; not deep and pervasive. Hence, a private corporation is not considered a part of the State.

#### **Whether the BCCI is a State?**

It was alleged that the Board of Cricket Control in India (BCCI) cancelled the telecast rights granted to Zee Tv, in an arbitrary fashion. The board cancelled the entire process to determine telecasting rights for all the matches played in between 2004 to 2008.

The Supreme Court in the case of *Zee Telefilms vs Union of India* (2005) dealt with the question whether the “Board of Control for Cricket in India” comes under the definition of State under Article 12. It was argued that since the BCCI performs certain public functions such as selecting the Indian cricket team to represent the country, it should be considered a State. However, the court held that the BCCI cannot be considered as State as:

1. BCCI is not created by a statute (means it is not a statutory body).
2. No part of the share capital of the Board is held by the Government (means no financial domination of the government).
3. Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board (means no financial domination of the government).
4. The Board does enjoy a monopoly status in the field of cricket but such status is neither State conferred nor State protected (means monopoly status is not granted by the State).

5. There is no existence of a deep and pervasive State control. The control is mere regulatory in nature. Moreover, the Court held that all the functions of the Board are not public functions nor are they closely related to governmental functions.

6. The Board is not in the nature of a government owned corporation. It is an autonomous body.

The Court held that the little control that the Government may be said to have on the Board is not pervasive in nature. It is purely regulatory control. Further, even though there is some element of public duty involved in the discharge of the Board's functions, that by itself would not suffice for bringing the Board within the ambit of "other authorities" for the purpose of Article 12. The Court held that the government did not confer any powers on BCCI to perform these public duties. The government chose to leave the activities of cricket to be controlled by private bodies. Hence, the Board is not acting as an authorised representative of the State and cannot be considered as discharging State functions.

#### **Is Judiciary a State?**

It depends upon the function exercised by the Judiciary whether it is considered a part of state or not. Judiciary is not considered as State under Article 12 when it is exercising its power to decide on cases. In other words, When the judiciary is exercising its judicial power, it is not a state. One cannot file a petition against a Court or Judge's judicial order on the grounds that it violates the fundamental rights.

On the other hand, when Judiciary is exercising its administrative functions, it is considered as a State. The Supreme Court held in the case of *Narash Shridhar Mirajkar vs State of Maharashtra* (1966) that when the judiciary is making rules or exercising any administrative functions (such as appointing staff and maintaining its infrastructure), then the Judiciary is State under Article 12. In such a case, one can approach the Courts even against the violation of fundamental rights by the judiciary itself.

#### **Why is it important to know whether an institution is State or not?**

Fundamental rights, as we have discussed earlier, are guaranteed by the Constitution of India. An individual can approach the Supreme Court directly under Article 32, if the fundamental rights are violated by the State. On the other hand, if the fundamental rights of an individual are violated by private individuals or non-state actors, he can approach the Supreme Court only for certain rights such as Articles 17 (Right against untouchability) or 21 (Right to life and liberty). In other words, the purview of State under Article 12 determines whether an individual can seek remedy under Article 32 or not.

For instance, in the Zee Telefilms case, the Court held that the remedy under Article 32 is not available against the BCCI because BCCI does come within the definition of State given under Article 12.

However, in such cases, the individual can approach the High Courts under Article 226, as writ petition under Article 226 is acceptable under much wider criteria than Article 32.

#### **Article 226**

Article 226 confers powers on the High Courts to issue writs for enforcement of fundamental rights as well as other rights (constitutional or legal). The Supreme Court held that High Courts can issue writs under Article 226 to any person or body performing public duty. The form of the body concerned is not very much relevant. In other words, it need not be an agency of the State. If a private corporation exercises any public functions and violates an individual's rights, the aggrieved individual can seek remedy under Article 226.

#### **Laws inconsistent with fundamental rights**

Article 13 confers higher status to the fundamental rights vis-a-vis the ordinary laws passed by the legislature. It clarifies that fundamental rights cannot be violated by the ordinary laws of the legislature. In other words, Article 13 ensures that fundamental rights are not violated by ordinary laws, whether passed before or after the commencement of the constitution. Let us look into the provisions of Article 13 in detail.

**Article 13(1)** protects the fundamental rights from pre-constitutional laws i.e. the laws which were already existing when the constitution came into force. It prescribes that any law, passed before the commencement of the constitution, which violates a fundamental right, is void (dead) to the extent of violation.

**Article 13(2)** protects the fundamental rights from post constitutional laws i.e. the laws made by the State after the constitution came into force. Firstly, Article 13 (2) clearly mandates that the State shall not make any law which takes away or abridges the fundamental rights. Secondly, in case the State makes any such law, which violates a fundamental right, then such a law is void to the extent of violation.

Article 13 (2) has been incorporated into the constitution to prevent any attempt by the State to reduce the scope of fundamental rights.

**Article 13 (3)** clarifies that the use of expression "law" in the article 13 should be understood in broadest sense to include any ordinance (temporary law made by

executive), order, bye-law, rule, regulation, notification, custom or usage that has the force of law.

**Article 13(4)** further clarifies that the expression 'law' in Article 13 does not include a constitutional amendment. In other words, a fundamental right can be taken away or abridged by the Parliament only by passing a constitutional amendment (not an ordinary law).

The Supreme Court has adopted the doctrine of basic structure in order to put the limits on the extent to which a constitutional amendment can take away or abridge the fundamental rights. As per this doctrine, a constitutional amendment cannot change the basic structure. The basic structure refers to the core or fundamental parts of the Constitution which are so important that if they are amended, the Constitution loses its essential character. Hence, in case taking away or abridgement of fundamental rights affects the basic structure, then such taking away or abridgement of fundamental right is not allowed by means of even a constitutional amendment.

#### **Doctrine of Eclipse**

The Supreme Court evolved the Doctrine of Eclipse under Art. 13 in the Bhikaji v. State of Madhya Pradesh (1955). According to the doctrine of eclipse, a law which violates fundamental rights is a dormant or sleeping law but not a dead law (void law). A dormant law is only unenforceable at present, but not void or dead law.

When the inconsistency between the fundamental right and the law is resolved, either by amendment in the fundamental right itself or by change in law, the law becomes active. In other words, when the inconsistency between the fundamental right and the law is resolved, the status of the law changes from dormant to enforceable.

#### **Implication of Doctrine of Eclipse**

On account of Doctrine of Eclipse, the laws which are in conflict with fundamental rights remain inactive. Once the conflict is resolved, the law becomes active. On the other hand, if Doctrine of Eclipse is not applied, then laws which are inconsistent with fundamental rights are dead and thus even if inconsistency between the law and fundamental right is resolved at a later stage, then also the law would continue to remain void.

#### **Reason for adoption of Doctrine of eclipse**

The Supreme Court has adopted the Doctrine of Eclipse on account of following two reasons:

1. The Supreme Court presumes that the State has good intention while making laws. In other words, the State does not deliberately make laws which are inconsistent with the fundamental rights.

2. Sometimes public interest requires a law which may be inconsistent with a fundamental right. In such a case, fundamental rights should be amended and the law should not be declared dead because a dead law cannot be implemented later on.

### **Doctrine of Severability**

Severability refers to a provision which states that even if some parts of a contract or a law are held to be illegal or unenforceable, the remaining part of the contract or law is still enforceable and valid. Doctrine of severability is used to declare a particular portion of the law as void, without declaring the whole law as void. The Supreme Court applied this doctrine in the case of *A.K. Gopalan vs the State of Madras (1950)* to declare a section of the Preventive Detention Act, 1950 as void while upholding the remaining part of the act as valid. The part that is separated and declared invalid is called the impugned part of the act.

Further, in the case of *RMDC vs Union of India (1957)*, the Supreme Court laid down a set of rules with reference to the use of Doctrine of severability:

- Before applying this doctrine, the Court has to consider the intention of the legislature behind making a law.
- If the intention of the legislature cannot be upheld by separating the impugned part from the whole act, then the impugned part cannot be separated. If the impugned part cannot be separated, then the whole act is considered as void.
- Even if the part can be separated, but it affects the implementation of law, then the whole act is considered void.

### **Doctrine of Severability and Article 13**

The Doctrine of Severability has a deep relation with Article 13. It is to be noted that in case only a provision of law is inconsistent with a fundamental right and the remaining part of the law is consistent with the fundamental right, then only that provision or part of law which is inconsistent with the fundamental right is considered invalid as per Article 13 (and not the complete law).

So far, we have discussed Articles 12 and 13 in Part III, which deals with the definition of 'State' and 'law' respectively. The fundamental rights are actually listed from Article 14. These rights are further classified into 6 categories.

### **Classification of Fundamental Rights (FRs):**

1. Right to Equality (Art. 14-18)
2. Right to Freedom (Art. 19-22)
3. Right Against Exploitation (Art. 23-24)
4. Right to Freedom of Religion (Art. 25-28)
5. Cultural and Educational rights of Minorities (Art. 29-30)

## **6. Right to Constitutional Remedies (Art. 32)**

It is to be noted that the original constitution consisted of 7 categories of rights. Right to property was conferred under Article 31. However, the right to property was deleted from the list of fundamental rights by the 44th amendment act, 1978. It was incorporated under Article 300A in Part XII of the constitution. Thus, at present, there are 6 categories of fundamental rights.

### **Right to Equality (Article 14 - 18)**

Articles 14 to 18 attempt to bring equality in the society. The provisions of these articles are discussed below.

#### **Article 14: Equality before law**

The text of the article is as follows:

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

#### **Explanation of this article**

Article 14 declares that everyone within the territory of India should be treated equally. It mandates that the State should not deny to any individual the following:

1. Equality before law
2. Equal protection of laws

Article 14 is applicable to all individuals, whether citizens or foreigners.

#### **Equality before law**

The concept of 'Equality before law' is of British origin. It refers to absence of privileges in application of laws to an individual. In other words, every individual is equal to any other individual when it comes to application of laws. Laws are applicable to everyone in a similar manner irrespective of position or status of an individual in the society.

Equality before law is a negative concept because it disregards the privileges or status held by an individual. It is equivalent to the second corollary of Dicey's Rule of Law.

#### **Rule of Law**

Rule of law is related to the concept of equality before law. 'Rule of Law' refers to the administration of the country in accordance with laws. It substitutes Rule of Kings or other influential individuals as was followed under monarchy. Rule of law is fundamental to democracy. In our democracy, representatives of people make laws and the administration of the country is undertaken in accordance with these laws.

According to A V Dicey, a British Jurist and constitutional theorist, Rule of law includes the following three principles:

**1. Supremacy of law:** It means that law is supreme and if someone violates a law, he or she can only be punished in accordance with the law. 'No man is punishable or can lawfully be made to suffer in body or goods except for a breach of law'. It also means that one cannot be arbitrarily punished. In other words, as long as someone does not violate a law, he or she cannot be punished.

**2. Equality before the law:** It means that no man is above law. All individuals are subjected to the same law. The law cannot discriminate against people on the basis of class, caste, race and the like.

**3. The predominance of legal spirit:** It means that laws are protected by the judiciary which is independent in nature and enforced by their judicial decisions. Such an act of judiciary ensures that the country is governed as per the laws and thus, upholds the predominance of legal spirit in the administration of the country.

However, there are few exceptions to the principle of equality before law guaranteed by Article 14. These exceptions are given under **Article 361** of the Constitution in respect of President and Governors:

1. The President or Governor is not answerable to the Court of Law in exercise of his or her executive powers. This exception is given because the President or Governor acts on the advice of the respective Council of Ministers.

2. No criminal proceedings can be undertaken against the President or Governor while they are in office. This is inspired from the maxim "rex non potest peccare", which means that the king can do no wrong. In the Indian context, it is applied to maintain the sanctity of the office and avoid undue pressure on the President or Governor while discharging their duties. However, it does not mean that the President or Governor is above law. Criminal proceedings are undertaken against the president or governor after their removal from office.

3. No civil proceedings can be initiated against the President or Governor without giving prior notice of two months. Civil proceedings against the President or Governor may generate pressure on them and hamper their functioning. Thus, a time period of two months is given for an adequate preparation to face civil proceedings.

Along with the above exceptions, foreign diplomats posted in India also enjoy immunity from Indian laws. According to international law, foreign diplomats are usually subjected to laws of their native nations and not to laws of the nation where they are posted. Similarly,

Indian diplomats enjoy immunity from laws of foreign nations.

Also, the United Nations Organisation, its agencies and their employees also enjoy diplomatic immunity i.e. the same kind of immunity as that enjoyed by foreign diplomats.

### Equal protection of laws

The concept of 'Equal protection of laws' is of American origin. Equal protection of laws refers to 'equal protection to every individual in equal circumstances'. Hence, Equal protection of laws means that 'equals should be treated alike'. In other words, persons in similar circumstances should be treated equally. It does not mean that unequals should be treated alike. In case of unequal circumstances, individuals can be given extra protection to compensate for adverse circumstances.

Extra protection to compensate for adverse circumstances is called 'positive discrimination' and forms the basis of reservation policy. For instance, weak socio-educational background is an adverse circumstance for an individual. As a weak socio-educational background is an adverse circumstance, an individual with such a background can be positively discriminated against and provided with reservation in admission to educational institutions, government jobs, etc.

### Positive and Negative Discrimination

Discrimination can be of two types: Positive Discrimination and Negative Discrimination. Article 14 permits Positive Discrimination and not Negative Discrimination.

Positive Discrimination by State (let's say on the basis of factor X against the individuals) is to give more favorable treatment to those with factor X than to those without X. For instance, reservation in government jobs to people with weak socio-educational background.

Negative Discrimination by State (let's say on the basis of factor X against the individuals) is to give less favorable treatment to those with factor X than to those without X. Negative discrimination is not permissible under Article 14.

It is to be noted that Unlike Equality before law which is a negative concept, Equal protection of laws is a positive concept because it is an affirmation on part of the state that every individual will receive protection from the state.



### Notion of Equality in India and the US

Though both the US and India have adopted the notion of Equality in their respective Constitution, there are significant differences among the two notions:

Criteria	US	India
Inclusion	Equal Protection of Laws	Equality before Law and Equal Protection of Laws
Nature	Positive approach to equality	Both Positive as well as negative approach
Mention	Mentioned in Bill of Rights	Mentioned in Preamble and Fundamental Rights
Finite/Infinite	Seeks to attain Equality in finite sense	Seeks to attain equality and 'Promote among them all' as well
Dimensions	Emphasis on Legal equality	Emphasis on not just legal but also socio-economic equality (Equality of Status and Opportunity)

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

Article 15 consists of 6 clauses. While the first two clauses prohibit discrimination, the remaining four clauses provide for the exceptions. In other words, the remaining 4 clauses mention the special circumstances when discrimination is permitted. Unlike Article 14, Article 15 is applicable only to citizens of India.

**Art. 15(1) and 15(2)** prohibit discrimination against Indian citizens. Article 15(1) prohibits State from discriminating against any citizen on grounds 'only of' religion, race, caste, sex, place of birth or any of them. The word 'Discrimination' means unfavourable treatment to an individual in comparison to others.

The State cannot discriminate against citizens only on the basis of these parameters. However, the State can discriminate against citizens on other parameters or when these parameters are additional grounds (and not sole grounds) of discrimination.

The word 'only of' suggests that the above-mentioned grounds cannot be the sole grounds of discrimination, but they can be additional grounds of discrimination.

For instance, during recruitment to the army, males are preferred because masculine physical structure is more suitable to serve on the borders. Thus, in this case, sex is additional ground of discrimination while primary ground of discrimination is difference in male and female physical structure. Therefore, recruitment to army favouring males does not violate Article 15.

Let us consider another example. Certain jobs may have different requirements for male and female candidates, considering the differences in physical structure. Here, the discrimination is not on the basis of sex, but on the basis of physical structure. For instance, minimum height and weight requirements to be eligible to apply for the post of SI (Sub Inspector of Police) vary for men and women.

The State can discriminate against citizens on any other parameter such as age, merit, educational qualification, work experience and so on. For instance, the State can prescribe the maximum age as eligibility criteria for a particular government job. Here, the State is discriminating against citizens on the basis of age. Such discrimination is not prohibited under Article 15 of the Constitution.

Art.15(2) prohibits State and individuals from discriminating against citizens on grounds 'only of' religion, race, caste, sex, place of birth or any of them and deny the citizens access to public places such as:

1. Public restaurants, hotels, places of entertainment, etc.
2. Public wells, tanks, roads, bathing ghats, etc.

### Comparison between Article 15(1) and 15(2)

There are two major differences between Article 15 (1) and 15 (2). Firstly, Article 15(1) puts restrictions only on the State. It mentions that the State cannot discriminate against citizens. On the other hand, Article 15(2) puts restrictions on both the State as well as private individuals.

Secondly, Article 15 (1) restricts the State from discriminating against citizens on the basis of prescribed parameters for any matter. Thus, Art. 15(1) prohibits discrimination by the State against citizens in all the matters. Such matters include public employment, promotion in job, admission to educational institutions, access to public services, access to public places and so on. On the other hand, Art. 15(2) specifically restricts the State as well as individuals from discriminating against citizens in order to deny them access to public places.

### Exceptions to Art.15 (1) and Art. 15(2)

The clauses 3 to 6 provide for certain exceptions to Articles 15(1) and 15(2).

## 1. Special provisions for women and children:

**Article 15(3)** empowers the State to make special provisions for the promotion of well-being of women and children. In other words, this clause allows positive discrimination against women and children. The special provisions for the promotion of well-being of women and children are specifically permitted under the Art. 15(3) because the position of women and children is more vulnerable than that of men.

Art.15(3) allows the establishment of special institutions and mechanisms exclusively for the protection and welfare of women and children. For instance, the Right to Education Act provides for free and compulsory education to children between 6-14 years.

**2. Special provisions for backward classes: Article 15(4)** was inserted in the constitution by the 1st constitutional amendment act. It empowers the State to make special provisions for the advancement of socially and educationally backward classes of citizens such as the following:

1. Scheduled Castes (SC)
2. Scheduled Tribes (ST)
3. Other Backward Castes (BC)

### Scheduled Castes, Other Backward Castes and Scheduled Tribes

**Scheduled Castes (SC):** Indian society was divided into a Caste system consisting of four major groups of castes- Brahmins (Priests), Kshatriyas (Warriors), Vaishyas (Businessmen) and Shudras (Servants). Apart from these caste groups, there were other castes which were not given place in the caste system.

Caste has been an important determining factor in life. Caste has determined profession, educational attainments and many other aspects of life of the people. Thus, it is an important indicator of social and educational standards of people.

The castes at the lowest order in the caste system and the castes which were not given place in the caste system suffered from social and educational backwardness. Most of these castes are covered in the list of Scheduled Castes. Literally, Scheduled Castes are called so because these castes are mentioned in a schedule issued by the President of India. Dr. B.R. Ambedkar has referred to Scheduled Castes as Dalit (meaning broken) in order to portray their condition. Mahatma Gandhi has referred to Scheduled Castes as Harijan, meaning "person of Hari/Vishnu" (or Man of God).

**Other Backward Castes (OBC) or Backward Castes (BC):** The social and educational standards of Backward Castes are better than those of Scheduled

Castes, but worse than those of the Upper Castes. In other words, they are also backward, but not as backward as Scheduled Castes.

There is a concept of creamy layer in the backward castes. The creamy layer among the backward castes is not eligible for positive discrimination (or reservation). The creamy layer is identified among backward castes on the basis of income and property criteria. In other words, those backward castes who have either property or income beyond a particular level fall within the creamy layer. It is to be noted that the concept of creamy layer is not applicable to Scheduled Castes.

**Scheduled Tribes (ST):** Tribes also suffer from social and educational backwardness. However, their backwardness is not on account of the caste system. ST are backward because they have lived in forests, away from society. Literally, Scheduled Tribes are called so because these tribes are mentioned in a schedule issued by the President of India. Scheduled tribes are also called Adivasi people. The word 'Adivasi' is made up of two words: 'Adi' means original or traditional; 'Vasi' means inhabitant. Like Scheduled Castes, the concept of creamy layer is not applicable to Scheduled Tribes.

**3. Reservation in private unaided educational institutions: Article 15(5)** was introduced by the 93rd Amendment Act in 2006. It allows the State to provide reservation in private unaided educational institutions. Private educational institutions are called so because they are owned and managed by private individuals or bodies, and not by government. Unaided educational institutions are those which are not receiving any aid from the State.

After the introduction of Art. 15(5), reservations can be provided not only in government educational institutions, but also in private educational institutions. Earlier, reservation was allowed for socially and educationally backward classes in government run educational institutions only. With the introduction of Article 15(5), reservation can be provided even in private unaided (not receiving aid from government) educational institutions.

However, this provision is not applicable to the minority educational institutions referred to in clause (1) of article 30. The State cannot provide for reservations to SCs, STs and BCs in the minority institutions.

**4. Special provisions for EWS:** Article 15(6) was inserted in the constitution by the 103rd constitutional amendment act (2019) to provide for the reservation of Economically Weaker Sections (EWS) of citizens. The reservation under Art. 15(6) is provided on the basis of

economic backwardness. On the other hand, the reservation under Art. 15(4) and 15(5) is provided on the basis of social and educational backwardness. Moreover, the reservation under Art. 15(6) on the basis of economic backwardness is applicable to citizens who are not eligible for reservation under Article 15(4) and 15(5). Thus, SC, ST and BC cannot claim reservation under the EWS category.

Art. 15(6)(a) empowers the State to make special provisions for the advancement of Economically Weaker Sections (EWS) of citizens.

Art. 15(6)(b) empowers the state to make special provisions for citizens belonging to the EWS category for their admission to educational institutions including private educational institutions, whether aided or unaided by the State. However, this provision is not applicable to minority educational institutions referred to in Art.30(1).

Unlike the earlier clauses, Article 15(6) specifically caps the reservation to EWS at 10% of the seats, in addition to the existing reservations.

It is to be noted that Art. 15(6)(a) is general in nature because it empowers the State to make special provisions for the advancement of EWS in any field. However, Art. 15(6)(b) is specific in nature because it empowers the State to make special provisions for EWS only for admission to educational institutions.

#### **Economically Weaker Sections (EWS)**

Economically Weaker Sections (EWS) or Economically Backward Classes (EBC) are identified in India among the upper castes or unreserved category on the basis of economic criteria such as income.

The explanation to Article 15 defines Economically Weaker Sections as follows: For the purposes of article 15 and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

Presently, to qualify under the EWS category, the annual family income (income of the whole family) should be less than ₹8 lakh. The reservation for EWS has been capped at 10% of the seats. This reservation is in addition to the existing reservations.

#### **Article 16: Equality of opportunity in matters of public employment**

Article 16 deals with equality of opportunity in matters of public employment. It protects the citizens from discrimination by the State in matters of public employment.

**Art.16(1)** guarantees to all the citizens equality of opportunity in public employment. In other words, the State shall provide equality of opportunity to all the sections of citizens in matters relating to public employment (or government job). It is to be noted that provisions of Article 16 are applicable to only citizens (and not all individuals) and to only public employment (and not private employment).

**Art.16(2)** prohibits the State from discriminating against any citizen in matters of public employment on grounds 'only of' religion, race, caste, sex, place of birth, descent, residence or any of them.

Apart from those mentioned in Art.15(1) and 15(2), Art.16(2) carries two additional grounds namely 'descent' and 'residence'. The use of the expression 'descent' denotes the intention of avoiding discrimination in appointment to an office under the State on the basis of one's inheritance. The use of residence implies a citizen is eligible for public employment irrespective of where he or she lives in India. Prohibition of discrimination on the basis of residence is meant to bestow the all-India character in public employment, as far as possible.

There is one more significant difference between Art. 15(1) and Art. 16(2). Art. 15(1) is general in nature because it prohibits discrimination against citizens in any matter. However, Art.16 is specific in nature because it prohibits discrimination against citizens in matter of public employment only.

#### **Exceptions to Art.16(1) and 16(2)**

Exceptions to Article 16(1) and 16(2) are provided in the clauses 3 to 6. These exceptions are not considered a violation of the fundamental right granted under Art.16(1) and 16(2).

**1. Reservation on the basis of residence:** According to Article 16(3), Parliament may provide, by law, residence as a condition for employment under the state. In other words, certain jobs can be reserved for citizens residing in a particular area. Generally, jobs that require knowledge of the locality and language of an area are reserved for people residing in that area. Further, in some cases residence within a state is made a ground for employment to address the poor social and economic conditions of a region i.e. when people of a particular region lack opportunity to engage in gainful employment.

**2. Reservations to BC, SC and ST:** Art.16(4) empowers the state to reserve seats in public employment in favour of backward classes of citizens which are not adequately represented in the services under the state. Thus, certain posts may be reserved for

members of Scheduled castes, Scheduled tribes and Backward classes to ensure they are properly represented in the services under the State.

Thus, reservation is given on fulfillment of two criteria:

- Social and Educational backwardness of a section of society
- Inadequate Representation in Public employment

The total number of seats that are reserved for backward classes of citizens cannot exceed 50%. The Supreme Court held in *Indira Sawhney vs Union of India* case (1999) that reservation cannot exceed 50% of total seats. However, this limit on reservation does not include the reservation for EWS.

Note: Reservation to backward classes is given on the basis of social and educational backwardness and not on economic criteria. Social and educational backwardness is used as the criteria to determine the backward classes of citizens. Economic criteria is used to identify the creamy layer, for whom reservations are not applicable. Citizens belonging to backward classes who have an income or property above the specified limits fall under creamy layer. Creamy layer is denied benefits of reservation. Creamy layer is identified among backward classes (BC) only and not among SC and ST.

### 3. Reservation in promotion to SC and ST:

Art.16(4A) was added by the 77th Amendment Act (1995). It empowers the State to reserve seats for Scheduled castes and Scheduled tribes in promotions as well. It is to be noted that Art.16(4A) is not applicable to Backward Castes (BC).

Reservation is given in promotion to ensure that SC and ST are represented in the upper level of administration. Representation in upper-level administration is important because it is responsible for making policies.

**4. Carry forward of reserved seats:** Art.16(4B) was added by the 81st Amendment Act (2000). It empowers the state to carry forward reserved seats (which have not been filled in previous years) even if reservation in a particular year exceeds 50 % of total seats.

### 5. Reservation on grounds of religion in certain cases:

Art.16(5) Religion can be considered as a ground for public employment while recruitment to religious institutions. For instance, the State can invite only Hindus for serving in a temple.

**6. Reservation to EWS:** Article 16(6) State may provide reservations for Economically Weaker Sections (EWS) among the citizens, in addition to the existing reservations. A maximum of 10% seats may be reserved for EWS.

## Reservation of Backward Castes and Economically Weaker Sections

The reservation for Scheduled Castes (15%) and Scheduled Tribes (7.5%) was provided since the introduction of the Indian constitution due to the efforts of Dr. B.R. Ambedkar. The reservation to Backward Castes was provided after four decades since the introduction of the constitution.

In 1979, the then prime minister Morarji Desai constituted the Second Backward Classes Commission under the chairmanship of B.P. Mandal, a member of parliament and hence the commission was popularly called the Mandal Commission. The Commission was formed with a mandate to "identify the socially or educationally backward classes" of India and suggest measures for their advancement.

The commission identified 3,743 castes as other backward castes (OBC) on the basis of social and educational backwardness. OBC constitute approximately 52% of India's population apart from SC and ST. The commission recommended 27% reservation to OBC in government jobs and educational institutions. The Morarji Desai government fell shortly after appointing the Mandal Commission. The report was submitted by the Commission in December, 1980.

The V.P. Singh government implemented the Mandal Commission report in 1990 and granted 27% reservation of OBC in addition to reservation for SC and ST. In 1991, the Narasimha Rao government brought two changes to the reservation scheme:

1. The Narasimha Rao government continued the reservation for OBC, but identified creamy layer among OBC on the basis of economic criteria. In other words, the Narasimha Rao government (1991) favoured the poorer sections among OBC for reservation.
2. The government also provided for 10% reservation to the economically backward section among the higher castes.

The Supreme Court in *Indra Sawhney & Others v. Union of India* {also known as the Mandal verdict (1992)} examined the various facets of reservation. The details of the Supreme Court judgement were as follows:

1. The SC upheld the 27% reservation given to OBC in jobs and educational institutions subject to the identification of creamy layer.

**Response of Successive governments-** Presently, 27% reservation is given to OBC. Moreover, economically well off OBCs are included in the creamy layer and are not given the benefit of reservation.



2. The SC rejected the 10% reservation to the economically backward section among the higher castes.

**Response of Successive governments-** This part of SC judgement has been reserved by passing the 103rd constitutional amendment in 2019 by the Narendra Modi government.

3. The SC declared that the total reservation should not exceed 50% of seats. The rule of 50% shall be applicable every year.

**Response of Successive governments-** After passage of the 103rd constitutional amendment act, the limit of 50% reservation has been exceeded. With the additional reservation of 10% for EWS, the total reservation has reached 60% of the seats.

4. The SC also declared that reservation should be confined to initial appointments only. There should be no reservation in promotions.

**Response of Successive governments-** To override this part of the judgement, the Parliament passed 77th Amendment Act, 1995. This amendment empowers the State to reserve seats for Scheduled castes and Scheduled tribes in promotions as well. However, OBC are not given reservation in promotions.

5. The carry forward of unfulfilled (backlog) vacancies was allowed. However, the total reserved seats including the backlog should not exceed 50% of total seats for each year.

**Response of Successive governments-** To override this part of the judgement, the Parliament passed 81st amendment act, 2000. This amendment empowers the State to carry forward the backlog even if reservation in a particular year exceeds 50%.

6. The SC directed that the permanent statutory backward castes commission should be established to oversee the interests of OBC including under-inclusion, over-inclusion or non-inclusion of any class of citizens in the list of OBCs.

**Response of Successive governments-** National Commission for Backward Classes (NCBC) was established in 1993 by the act of the Parliament. Later on, 102nd Constitutional amendment (2018) inserted Article 338B in the Constitution and granted constitutional status to NCBC.

### Article 17: Abolition of Untouchability

Article 17 abolishes untouchability in all its forms and the act of untouchability is punishable by law. There is no exception to Article 17. It is the only fundamental right without any exception. The practice of untouchability viewed individuals belonging to certain castes as untouchables. These individuals had to suffer disabilities such as prohibition from entry into temples,

refrain from using the common water source and the like. The practice of untouchability is against the ideals of equality and fraternity. Article 17 abolishes the inhumane practice of untouchability and envisages an equal society where there is no discrimination on the basis of caste.

The term 'Untouchability' has not been defined in the constitution. The Courts have explained the term Untouchability, as used in Art. 17, refers to the practice of Untouchability which is prevalent in some sections of society and which has developed in the past. Untouchability is practiced in multiple forms. Some forms are more prevalent than others. Moreover, the form of untouchability may vary from place to place as well. The following are some of the examples of Untouchability:

1. Segregation of drinking and eating vessels.
2. Restriction on fetching water from a common source.
3. Segregation of residential areas.
4. Ban on entry in temples, etc.

Article 17 declares that the practice of untouchability is punishable by law. However, the nature of punishments is not prescribed in the Constitution. Parliament is empowered to make laws to give effect to Article 17. Hence, Parliament has passed the Untouchability (Offences) Act, 1955. In 1976, the Untouchability (Offences) Act was replaced by Civil Rights Protection Act to enhance the scope of untouchability and prescribe more stringent punishment for practice of untouchability.

### Article 18: Abolition of titles

Article 18 abolishes the practice of conferring titles on individuals by the State. It also prohibits individuals from accepting titles from a foreign State. Hence, this article is applicable to both the State and the individuals. Titles improve the status of individuals to whom they have been conferred. However, they also bring inequality in society. Thus, Article 18 seeks to abolish titles in India.

During the British rule, the British government conferred titles on individuals loyal to them. Moreover, these titles were given not to recognise the achievement of individuals but to reward those who were helping the British crown. Naturally, the members of the Constituent Assembly were against such artificial divisions among the people. Titles such as Raja, Sir and Nawab were hence abolished in post-independent India.

Article 18 has three clauses as follows:

**1. State cannot confer titles:** Article 18(1) prohibits the State from conferring titles (except military or academic distinctions). However, the State can confer awards to recognize contribution in various fields.

According to Art. 18(1), State cannot confer titles to any individual, whether an Indian or a foreigner. However, the State is allowed to confer military and academic distinctions. The examples of military distinctions include General, Major, Brigadier, etc. The examples of academic distinctions include Doctor, Engineer, Chartered Accountant, etc. Also, the State is allowed to confer awards. Awards are given to recognise achievements or meritorious services.

**2. Indian citizens cannot accept any title from foreign State:** Article 18(2) prohibits Indian citizens from accepting any title from foreign State.

Art. 18(1) prohibits Indian State from conferring titles and Art. 18(2) restricts Indian citizens from accepting any title from foreign State.

**3. Foreign citizens in services of State need permission:** Article 18(3) prohibits foreign citizens who are in service of the State to accept any title from foreign country without the permission of the Government of India.

This provision has been specifically incorporated to maintain loyalty of foreign citizens who are in the services of the State towards their employer i.e. Indian State and prevent erosion of loyalty in favour of any foreign State.

#### **Bharat Ratna and Padma awards**

The Government of India instituted two civilian awards in 1954 through Presidential Order- Bharat Ratna & Padma Vibhushan in 1954. In the first year, Padma Vibhushan had three classes namely Pahela Varg, Dusra Varg and Tisra Varg. These were subsequently renamed in 1955 as Padma Vibhushan, Padma Bhushan and Padma Shri.

#### **Bharat Ratna**

Bharat Ratna is the highest civilian award of the country, even higher than the Padma awards. It is awarded in recognition of exceptional service/performance of the highest order in any field of human endeavour. The number of Bharat Ratna Awards is restricted to a maximum of three in a particular year.

The recommendations for Bharat Ratna are made by the Prime Minister to the President of India.

#### **Padma awards**

Padma awards are given in three categories, namely,

- Padma Vibhushan** for exceptional and distinguished service;

- Padma Bhushan** for distinguished service of a high order; and

- Padma Shri** for distinguished service.

#### **Salient Features of Padma Awards:**

1 Eligibility: The award seeks to recognize works of distinction and is given for distinguished and exceptional achievements/service in all fields of activities/disciplines

All persons without distinction of race, occupation, position or sex are eligible for these awards. However, Government servants including those working with PSUs, except doctors and scientists, are not eligible for these Awards.

2. Announcement: Padma Awards are announced every year on the occasion of Republic Day except for brief interruption(s) during the years 1978 and 1979 and 1993 to 1997.

3. Presentation: The awards are presented by the President of India usually in the month of March/April every year where the awardees are presented a Sanad (certificate) signed by the President and a medallion.

The recipients are also given a small replica of the medallion, which they can wear during any ceremonial/State functions etc., if the awardees so desire. The names of the awardees are published in the Gazette of India on the day of the presentation ceremony.

4. Usually given to Living Persons: The award is normally not conferred posthumously. However, in highly deserving cases, the Government could consider giving an award posthumously.

5. Time period for Higher category award: A higher category of Padma award can be conferred on a person only where a period of at least five years has elapsed since conferment of the earlier Padma award. However, in highly deserving cases, a relaxation can be made by the Awards Committee.

6. Maximum number of Awards: The total number of awards to be given in a year (excluding posthumous awards and to NRI/foreigners/OCIs) should not be more than 120.

7. Subject to Article 18: The award does not amount to a title and cannot be used as a suffix or prefix to the awardees' name.

8. Selection of Awardees: All nominations received for Padma Awards are placed before the Padma Awards Committee, which is constituted by the Prime Minister every year. The nomination process is open to the public. Even self-nomination can be made to the committee.

The Padma Awards Committee is headed by the Cabinet Secretary and includes Home Secretary, Secretary to the President and four to six eminent persons as members. The recommendations of the committee are submitted to the Prime Minister and the President of India for approval.

### Right to Freedom (Article 19-22)

Articles 19 to 22 declare the available freedoms to individuals in India. While the fundamental rights guaranteed under Articles 20 to 22 are available to citizens as well as non-citizens alike, the rights guaranteed under Article 19 are available only to citizens.

#### Article 19: Protection of certain freedoms

Article 19 is available to citizens only. Article 19(1) confers six freedoms upon citizens of India. In the original constitution, seven freedoms were included under Article 19(1). The 'right to acquire, hold and dispose of property' was deleted by the 44th Constitutional amendment act, 1978.

The six freedoms conferred by Article 19(1) are as follows:

1. Right to freedom of speech and expression - Article 19(1)(a)
2. Right to assemble peaceably and without arms - Article 19(1)(b)
3. Right to form associations or unions or co-operative societies - Article 19(1)(c)
4. Right to move freely throughout the territory of India - Article 19(1)(d)
5. Right to reside and settle in any part of the territory of India - Article 19(1)(e)
6. Right to practice any profession, or to carry on any occupation, trade or business - Article 19(1)(g)

The freedoms guaranteed under Article 19 are not absolute. There are restrictions on the freedoms, which are imposed by the State in the overall interest of the society. The restrictions, however, have to be reasonable and within the bounds of the constitution. Clauses 2 to 6 empower the State to impose reasonable restrictions on the freedoms guaranteed under Article 19.

#### Article 19(1)(a): Freedom of speech and expression

It is the right to express one's views openly and freely without any fear through oral means, written means, electronic media, broadcasting/press or any other means. In modern times, it covers blogs and websites too. Freedom of press, though not specifically mentioned in article 19(1)(a), flows from the right to freedom of speech and expression.

The Supreme Court held in *Romesh Thapar v. State of Madras* (1950) case that freedom of press is an essential part of the right to freedom of speech and expression. Thus, an individual has a right to publish and circulate his ideas, views and opinions with complete freedom. Even when a publication involves strong criticism of the government or its policies, the State cannot suppress the freedom of speech.

Freedom of Speech and expression is not an absolute right. Art. 19(2) lists the various grounds on which the freedom of speech and expression can be curtailed. These grounds are as follows:

**1. Sovereignty and integrity of State:** This restriction was added to the constitution by the 16th constitutional amendment act, 1963. Parliament may make a law to prevent any person from propagating ideas that are detrimental to the sovereignty and integrity of India. For instance, ideas propagating secession of any part of India or disintegration of the nation can be restricted.

**2. Security of state:** Factors which hamper the security of state include serious and aggravated forms of public disorder such as insurrection, rebellion, and waging war against the State. Freedom of speech can be curtailed if it has the potential to hamper the Security of State.

The Supreme Court has held that minor breaches of public order and tranquillity such as unlawful assembly, riots etc cannot be considered as endangering the security of the State.

**3. Friendly relations with foreign states:** This ground prohibits negative propaganda against foreign countries which hampers India's friendly relations with these countries.

**4. Public order:** Public order refers to maintenance of peace, safety and tranquillity in the society. Hence, unlawful assembly, riots etc are considered as disturbing the public order.

There is a difference between public order and security of the State. While serious forms of public disorder such as rebellion and overthrowing the State are considered as threats to the Security of the State; riots and unlawful assembly are considered as disturbance to the public order.

**5. Morality or decency:** The expression morality or decency has a wider context. The idea of what constitutes morality and decency may vary from person to person. If a matter has the potential to corrupt or exert undesirable influence on people, it may be regarded as indecent or immoral.

**6. Contempt of court:** Contempt of court includes disrespectful behaviour towards the Courts. Freedom of speech and expression can be restricted if it amounts to contempt of court.

**7. Defamation:** Defamation refers to the statements (oral or written) that injure or degrade a person's reputation. Freedom of speech cannot be exercised to damage the reputation of another person.

**8. Incitement to an offence:** Right to freedom of speech can be restricted if a person is encouraging another person to commit an offence. Offence refers to an act which is punishable by law. If freedom of speech seems to instigate people to break laws or commit offences, it can be restricted.

However, there has to be a clear connection that such speech may instigate violence immediately. The Supreme Court has held that 'advocacy' should be differentiated from 'incitement'. Advocacy refers to propagation of ideas in which a person has belief. Advocacy cannot be prohibited. Incitement can be prohibited only when it is clearly established that such incitement may lead to violence immediately.

#### **Article 19(1)(b): Freedom of assembly**

Article 19(1)(b) guarantees the right to assemble peacefully and without arms. Restrictions can be imposed on the right to assembly on the grounds of threat to sovereignty and integrity of India or public order.

For instance, if people assemble to take part of India's territory out of the control of the government, then such assembly is against the sovereignty of India and hence not permitted under the Constitution.

#### **Article 19(1)(c): Right to form association, union or co-operative society**

Article 19(1)(c) guarantees the right to form association, union or co-operative society. Such association or union can be formed for religious, political, social or cultural objectives. The right to form an association or union includes not just the right to start an association or union, but also the right to continue an association or union. Further, this right also includes the right to not form any association or union. Also, it is to be noted that the right to form association or union does not include the right to obtain recognition for association or union. Thus, right to obtain recognition for association or union is not a fundamental right.

Earlier Art. 19(1)(c) provided for the right to form association and union, Right to form co-operatives has been incorporated under Art.19(1)(c) by the 97th amendment act in the year 2011. The right to form association, union or co-operative society is subject to

Sovereignty and Integrity of India, morality or decency. For instance, if association is formed to promote women trade, then such association is formed to attain immoral purpose and hence not permissible under Article 19(1)(c).

#### **Article 19(1)(d): Right to freedom of movement**

Article 19(1)(d) guarantees the right to freedom of movement throughout the territory of India subject to interests of the Scheduled Tribes or the General Public. In other words, Indian citizens have freedom of movement throughout the territory of India. They can move freely both within a state and from one state to another. The right to freedom of movement promotes feelings of nationalism among the people of India.

However, Such freedom of movement may be restricted in the interest of Scheduled tribes. In other words, entry of outsiders may be restricted in certain tribal areas. The entry of outsiders is restricted in tribal areas to prevent exploitation of tribals and maintain distinctive identity and culture of tribals. For instance, the Sentinelese are an indigenous people who inhabit North Sentinel Island in the Bay of Bengal in the northeastern Indian Ocean. In 1956, the Government of India declared North Sentinel Island a tribal reserve and prohibited travel within 3 nautical miles (5.6 kilometres) of it.

Further, the State may also impose restrictions on the movement of people in the interests of the general public. For instance, restriction on movement was imposed to minimise the spread of Covid-19 pandemic.

#### **Article 19(1)(e): Right to freedom of residence and settlement**

Article 19(1)(e) guarantees the right to freedom of residence and settlement throughout the territory of India subject to interests of scheduled tribes or the general public. The right to freedom of residence and settlement further consists of two sub-parts: 1. the right of residence which means the right to stay temporarily at any place in India; 2. the right to settle which means to set up a permanent home or domicile at any place in India.

The provisions of Art. 19(1)(e) and Art. 19(1)(d) are complementary to each other. Art. 19(1)(d) guarantees the freedom of movement. On the other hand, Art. 19(1)(e) guarantees the freedom of residence and settlement. It is to be noted that freedoms mentioned under both Art. 19(1)(d) and 19(1)(e) are subject to the interests of scheduled tribes and the general public.

#### **Article 19(1)(f): Right to property (Repealed)**

Article 19(1)(f) guaranteed to every citizen the right to acquire, hold and dispose of property. The right under Article 19(1)(f) consists of the following three sub-rights:



**i) Right to acquire property:** The Right to acquire property includes the right to purchase property, the right to receive property by way of will or gift and so on.

**ii) Right to hold property:** The right to hold property refers to the right to own and possess property.

**iii) Right to dispose of property:** The Right to dispose of property includes the right to sell property, the right to transfer property by way or gift or will and so on.

The right to property was also subject to the interests of the general public or for the protection of any Scheduled Tribe.

The right to property under Article 19(1)(f) was deleted by the 44th Amendment Act.

#### **Article 19(1)(g): Freedom to practice profession, occupation, trade or business of one's choice**

Article 19(1)(g) guarantees the right to practice any profession, occupation, trade or business of one's choice. In other words, all citizens have the right to practice any profession, occupation, trade or business. Article 19(1)(g) is very wide in nature and it covers all the means of earning one's livelihood.

However, reasonable restrictions can be imposed on this right by the State in the following cases:

**1. Interest of General Public:** State may impose reasonable restrictions in the interest of the general public. For instance, the State may prohibit business such as dealing in narcotics as it is detrimental to the society.

**2. Technical or Educational Qualifications:** The state can prescribe necessary technical or educational qualifications for entering into a particular profession, occupation, etc. For instance, a person desirous of engaging in the medical profession must pass the necessary examination and get a suitable license as required by the law.

**3. State run business:** The State can carry any business or trade to the exclusion of private individuals. The State can carry such business or trade either directly or through a corporation owned or controlled by the State. Also, the State can carry any business or trade whether to partial or complete exclusion of private individuals. Complete exclusion amounts to State monopoly. For instance, atomic energy is under the control of the State and private companies are restricted from entering into the field.

#### **Freedoms and Reasonable restrictions**

<b>Freedoms under Article 19</b>	<b>Conditions under which reasonable restrictions can be imposed</b>
Freedom of speech and expression	1. Sovereignty and integrity of State 2. Security of state 3. Friendly relations with foreign states 4. Public order 5. Morality or decency 6. Contempt of court 7. Defamation 8. Incitement to an offence
Freedom of Assembly	1. Sovereignty and integrity of India 2. Public order
Freedom of Association	1. Sovereignty and integrity of India 2. Public order 3. Morality
Freedom of movement	1. Interests of the general public 2. Interests of Scheduled Tribes
Freedom of residence and settlement	1. Interests of the general public 2. Interests of Scheduled Tribes
Freedom of Profession, Occupation, Trade or Business	1. Interests of the general public 2. Professional or technical qualifications 3. State can carry business or trade to the exclusion of private individuals

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

Article 20 provides protection in respect of conviction for offences. It provides three protections to people charged with violating a law or committing an offence.

##### **Article 20(1): No Ex-post facto Criminal laws**

Article 20(1) declares the following:

1. A person cannot be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence.
2. A person cannot be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

In other words, A person cannot be held guilty for an act that was lawful when it was done and subsequently, the act has been declared as an offence under the law. Similarly, a person cannot be subjected to a greater penalty than what was mentioned in the law at the time of commission of the act.

Thus, Article 20(1) prohibits the State from making ex-post facto laws. Ex-post facto laws are those laws which are passed with the retrospective effect. Hence, the act was legal (or involved a lower penalty) at the time of its commission. However, subsequently the law was passed which declared that the act was an offence (or which prescribed the higher penalty for the act).

It is to be noted that Art. 20(1) prohibits only ex-post facto criminal laws (and not civil laws). In other words, Civil laws with retrospective effect can be passed. Thus, a Civil liability or tax can be imposed with retrospective effect. Violation of criminal laws often leads to imprisonment. On the other hand, violation of civil laws leads to fine and /or compensation.

#### **Article 20(2): No Double Jeopardy**

**Art.20(2)** declares that a person cannot be prosecuted and punished more than once for the same crime. In other words, there can be no double jeopardy. Double jeopardy is a legal term which means a person cannot be punished more than once for the same offence.

The protection guaranteed under Article 20(2) against double jeopardy is narrower than the similar protection granted in other countries such as the USA. In these countries, protection is guaranteed irrespective of the conviction or acquittal of the accused person. On the other hand, in India, double jeopardy is applicable only when the person is convicted. If the person is acquitted, he cannot claim the right guaranteed under Article 20(2). However, a person is guaranteed a legal right under section 300 of Code of Criminal Procedure (CrPC) that he cannot be tried for the same offence after acquittal. In other words, if a person is convicted, he can claim double jeopardy as a fundamental right. If he is acquitted, he can claim double jeopardy as a legal right.

Further, Article 20(2) prohibits only courts (judicial bodies) from prescribing more than one punishment for the same crime. A person in government employment can be subjected to departmental disciplinary proceedings and at the same time, be liable by the punishment by courts. In other words, the right under Article 20(2) is not available in disciplinary proceedings by department or by administrative authorities as these bodies are not judicial in nature.

#### **Article 20(3): No self-incriminating evidence**

Article 20(3) prohibits the state from forcing an individual to provide self-incriminating evidence. In other words, no person shall be compelled in any criminal case to be a witness against himself. A person can voluntarily disclose information to the State about the crime committed or the State can make an inquiry on its own.

An accused person under Article 20(3) can refuse to give testimonies or information against himself. However, he cannot refuse to cooperate with the investigating authorities to collect the evidence such as blood samples, fingerprints, DNA and the like.

#### **Polygraph or Lie Detector Test vs Narco Analysis Test**

Both Polygraph test and Narco Analysis test are used for investigation purposes. However, there are significant differences between the two.

##### **Polygraph or Lie Detector Test**

In this test, Physiological responses of an individual such as blood pressure, pulse rate, respiration, and skin conductivity are measured and recorded while a person is being investigated. The recording of such physiological responses generates multiple graphs and hence, the name Polygraph test.

Polygraph test is based on the assumption that when an individual lies, he or she experiences higher level of arousal, than the level of arousal experienced at the time of speaking truth. These different levels of arousals are reflected in different set of physiological responses and polygraph readings.

Polygraph Test is not of very intrusive nature and does not invade privacy to a large extent.

##### **Narco Analysis Test**

In this test, Sodium Pentothal, also known as 'truth serum' is injected in a person, inducing a hypnotic state of mind. This drug is used in higher doses as anaesthesia during the surgery. It is believed that when in the hypnotic state of mind, the guard of the person is down and the person may speak the truth.

Narco Analysis is very intrusive from of investigative measure and it may invade privacy of the accused.

##### **Supreme Court View**

The Supreme Court has held that narco analysis and polygraph tests cannot be carried on a person without his or her informed consent. Further, the testimony during Narco Analysis is not admissible in the Court as the person is under influence of drug. Also, Results of Polygraph cannot be accepted as concrete evidence against the accused. However, the information

gathered during such tests may aid the investigating authorities to gather admissible evidence.

### **Article 21: Right to life and liberty**

Article 21 guarantees to all individuals (citizens as well as foreigners) the right to life and personal liberty. Art. 21 is considered as the most fundamental among all the fundamental rights because it guarantees the right to life and personal liberty. It declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. In other words, only if law permits, then the life or liberty of a person can be taken. In no other circumstances (other than permission of law) can the life or liberty of a person can be taken.

For instance, According to Section 302 of the Indian Penal Code (IPC), whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine. Thus, if a person commits murder, then the liberty or life of a person can be taken in accordance with Section 302 of IPC.

### **Due process of law**

The Supreme Court however held that presence of a law does not justify depriving an individual of his right to life and personal liberty. It held in the *Maneka Gandhi vs Union of India* case (1978) that the 'procedure established by law' cannot be arbitrary, unfair or unreasonable. In other words, the Supreme Court has adopted 'due process of law' in place of 'procedure established by law'. Under 'procedure established by law', the Supreme Court can review whether the executive action is in accordance with law or not. Under 'due process of law', the Supreme Court can review not only executive action but also law passed by Parliament. Thus, under 'due process of law', the Supreme court can review whether the law is fair, reasonable and so on. In other words, 'procedure established by law' is available only against the arbitrary executive action; but 'due process of law' is available against both arbitrary executive and legislative action.

### **Right to dignified life**

Moreover, the expressions 'life' and 'personal liberty' are given a wider meaning by various interpretations of the Courts in India. For instance, life is not just viewed as mere living but it is viewed as living with dignity. Similarly, personal liberty does not mean only absence of physical restraints.

The Supreme Court has interpreted the right to life in broad terms as 'right to dignified life'. It doesn't mean mere survival or animal existence. Right to life has been liberally interpreted to indicate all aspects of life that make an individual's existence meaningful and complete.

Further, the Supreme Court declared that a right can be treated as a fundamental right even if it is not stated expressly in the constitution. Certain rights can be interpreted from the existing rights. These rights are known as implied rights.

The Supreme Court interpreted that a wide range of rights flow from Article 21. Some of the implied rights under Article 21 include the right to primary education, right to privacy, right to leisure, right against arbitrary dismissal from employment, right to wages, right to shelter, right to clean environment, right to travel abroad etc. While the right to travel within the country is a part of fundamental rights guaranteed under Article 19, the right to travel abroad is an implied fundamental right under Article 21.

### **Article 21A: Right to education**

Article 21A mandates the State to provide free and compulsory education to all children between 6 to 14 years of age. This provision makes only primary education a fundamental right. It does not talk about secondary or tertiary education.

Article 21A was introduced by the 86th constitutional amendment act, 2002. This amendment was adopted with the goal of 'Education for all' in the country. This amendment has also been described as 'the dawn of the second revolution' in the fundamental rights.

This amendment has been described as 'the dawn of the second revolution' because it was the first time that a provision in directive principles of state policy was brought to the fundamental rights. It is believed that in future steps will be taken to bring many other directives to the list of fundamental rights.

Thus, 86th amendment act not only added Article 21A in the list of fundamental rights, it also brought two other changes:

Firstly, the amendment brought change in the subject matter of Article 45. Before the 86th amendment, Article 45 used to read as 'The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years'. After the 86th amendment, Article 45 reads as 'The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years'.

The provision for education of children upto 6 years has been retained under directive principles. Education to children upto 6 years of age refers to pre-primary education (3 to 6 years of age). On the other hand, the

provision for education of children from 6 to 14 years of age has been put under fundamental rights.

The effect of this shift from directive principles to fundamental rights has been that the right of education for children from 6 to 14 years was earlier only directive in nature and thus, not justifiable in courts. Now, the right of education for children from 6 to 14 years has become enforceable and is justifiable in courts.

Secondly, the 86th amendment act, 2002 also inserted a new fundamental duty under Art. 51A (k) which prescribes that it shall be the duty of parents and guardians to provide opportunity of education to children and wards respectively.

Thus, in a nutshell, the 86th amendment act introduced the responsibility of the State to provide facilities for primary education and the responsibility of parents and guardians to provide opportunity of education to children and wards respectively.

To give effect to Article 21A, the Right to Education Act, 2009 has been passed by the Parliament. The Right to Education Act (RTE) was implemented in the year 2010. The RTE contains detailed provisions to ensure that every child has access to primary education of satisfactory quality and standards.

### **Article 22: Protection against arbitrary arrest and detention**

Article 22 provides protection to individuals against arbitrary arrest and detention. Thus, Article 22 also ensures liberty of individuals as it prohibits arbitrary arrest and detention.

The provisions of Article 22 can be divided into two parts. The first part, consisting of clauses 1 to 3, deals with the arrest and detention under ordinary law. The second part, consisting of clauses 4 to 7, deals with arrest and detention under preventive detention laws.

#### **Arrest and Detention under ordinary laws**

Let us first understand the provisions related to arrest and detention under ordinary law.

Article 22(1) provides the following rights to a person:

1. No person who is arrested shall be detained in custody without being informed of the grounds for arrest. In other words, an arrested person has the right to know the grounds of his arrest.
2. An arrested person has the right to consult a legal practitioner (lawyer) of his choice.
3. An arrested person has the right to defense and can be defended by his lawyer.

Article 22(2) provides that every arrested person shall be produced before the nearest magistrate within 24

hours of arrest, excluding the time taken to travel and intervening holidays. Further, if a person needs to be detained beyond the time period of 24 hours, the permission of a judicial magistrate is required.

### **Exceptions to Art.22(1) and Art.22(2)**

According to Article 22(3), the safeguards available under Art 22(1) and 22(2) do not apply to:

**1. A person arrested under preventive detention:** Preventive detention refers to detention of a person before the person has indulged in a crime. The purpose of preventive detention is to prevent the person from indulging in a crime.

#### **Preventive detention vs Punitive detention**

Punitive detention refers to the detention of a person after commitment of a crime. Punitive detention takes place after the trial and conviction in a court.

Preventive detention refers to the detention of a person before commitment of a crime. It is in the nature of precautionary measure, so as to prevent a person from committing an offence. As the person has not committed an offence, the detention is undertaken without trial and conviction of the person.

**2. An enemy alien:** Enemy alien is a citizen of a foreign state which is engaged in war with India. A person acting on behalf of a foreign state, engaged in war with India, against our national interests is also considered an enemy alien.

### **Arrest and detention under Preventive Detention laws**

As mentioned above, the second part of Article 22 from clauses 4 to 7 deals with arrest and detention under preventive detention laws. The safeguards available from arbitrary arrest and detention under normal laws are not available to a person who is subjected to arrest and detention under preventive detention laws. The details of the safeguards available to a person who is subjected to arrest and detention under preventive detention laws is as follows:

**1. Period of detention:** The detention of a person cannot exceed 3 months unless an Advisory board has reported that there is sufficient cause for extended detention. The Advisory board consists of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court.

**2. Communication of grounds of detention:** The authority making the detention under a preventive detention law should communicate the grounds of detention as soon as possible. However, the authority is not required to disclose the facts, if such disclosure is against the public interest.



**3. Opportunity to make representation:** The detenu (detained person) should be provided with the earliest opportunity to make a representation against the detention order.

**4. Powers to Parliament:** Article 22(7) confers powers on the parliament in context of preventive detention matters. It authorises the Parliament to prescribe:

(a) the circumstances and the cases in which a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board.

(b) the maximum period for which any person may be detained under any law providing for preventive detention.

(c) the procedure to be followed by an Advisory Board in an inquiry to identify whether the preventive detention of a person can extend beyond the period of three months.

By virtue of powers conferred under Art. 22(7), Parliament has enacted many preventive detention laws from time to time. For instance, The Unlawful Activities (Prevention) Act, 1967 is a preventive detention law to prevent acts of terrorism.

It is to be noted that Article 22 prescribes certain safeguards against arbitrary arrest and detention under both normal laws and preventive detention laws. However, it does not prescribe any safeguard for enemy aliens.

#### Police Custody vs Judicial Custody

Criteria	Police Custody	Judicial Custody
When	After arrest by Police but before hearing by Magistrate.	Usually, after hearing by Magistrate if the Magistrate does not grant bail. After hearing, the Magistrate may decide that the suspect be sent back to Police Custody.
Where	Custody of a suspect in police station lockup	Custody of a suspect in Jail
Interrogation	During this detention, the police officer in charge of	The court may allow the interrogation by Police if it

	the case, may interrogate the suspect.	opines the interrogation being necessary under the facts produced before the court.
Length	Till accused is presented before Magistrate (24 Hours)	The length of Judicial Custody is subject to grant of bail or till the final decision in the case by Court.

#### Parole and Furlough

The provision of parole (along with furlough) was introduced with a view to humanising the prison system. Both Parole and Furlough enable the imprisoned persons to go out of jails for few days and spend some time with their family and friends. Since Prisons is a State Subject under Seventh Schedule of the Constitution, Parole and Furlough rules are decided by respective State governments. For instance, State governments have their own Prisoner Release on Parole Rules.

Criteria	Parole	Furlough
Nature	Suspension of sentence- When the prisoner is out of jail on account of Parole, it is not counted as part of total imprisonment.	Remission of sentence - When the prisoner is out of jail on account of Furlough, it is counted as part of total imprisonment.
Conditional or Unconditional	Parole is granted on fulfillment of certain conditions such as medical problem, death in family, marriage, etc.	Furlough is unconditional in nature. Thus, it does not require fulfillment of any conditions. It is given to counter the ill-effects of prolonged time spent in prison.
Privilege or Right	Parole is considered a	Furlough is a matter of right,

	<p>Privilege. It is decided by State Executive. In case of emergency, Superintendent of a jail has powers to decide on Parole.</p> <p>Eventhough Parole is privilege; in case it is denied, a prisoner can go to the court against the order.</p>	<p>which is available to a prisoner periodically.</p> <p>It is mentioned under the Rules framed by State governments.</p>
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### Right against Exploitation (Article 23-24)

Right against exploitation are guaranteed under the constitution to prevent slavery and other such activities that oppress human beings in a society. These rights seek to ensure dignity and protect people from exploitation.

#### Article 23: Prohibits trafficking in human beings and forced labour

Article 23(1) prohibits trafficking in human beings, begar and other forms of forced labour. Any contravention of this provision is an offence and is punishable in accordance with law. Article 23 provides protection to all the individuals, both citizens and non-citizens. It protects individuals from both State as well as private persons.

Trafficking in human beings or Human trafficking refers to trade or sale and purchase of human beings including men, women and children. Such sale and purchase can be for slavery, forced labour or for immoral activities such as prostitution. To check human trafficking and prescribe stringent punishments for those involved in human trafficking, parliament has passed Immoral Traffic (Prevention) Act, 1956.

Begar refers to forced labour without any wages. Begar was practiced in pre-independence India. Local people were compelled to perform unpaid work for the government. Also, many times Zamindars used to force farm labourers to work without any payment on their fields.

In addition to begar, Article 23 also prohibits other forms of forced labour including bonded labour. The

term 'forced labour' implies that a person is required to work against his or her will. In other words, forced labour implies that the person is required to work under some compulsion (or force). The word 'force' or compulsion is interpreted in a broad sense. The compulsion to work as forced labour may be physical harm or threat to physically harm the body. The compulsion may also arise on account of misuse of powers by the State. It may even arise due to precarious economic circumstances of an individual. For instance, due to poor economic conditions, a person might be willing to work at less than minimum wages. Thus, working at less than minimum wages is also an example of forced labour.

Parliament has passed various laws to check the practice of forced labour in India. These laws include Minimum wages act, 1948 and Bonded Labour System (Abolition) Act, 1976.

#### Exceptions to Article 23

In usual circumstances, forced labour is prohibited. However, there is only one exception when even forced labour is permitted.

As per article 23(2), the State can compel individuals to provide compulsory services for public purposes. Further, State shall not make any discrimination on grounds only of religion, race, caste, class or any of them while compelling individuals for compulsory service. For instance: individuals can be compelled to provide compulsory military service (Conscription) during war or other exigencies.

The above-mentioned grounds do not include residence. While compelling for compulsory service, the State can discriminate on the basis of residence. For example, during floods in a particular area, the state can compel only the people of the flood affected area for compulsory service.

#### Article 24: Prohibits child labour

Article 24 prohibits the employment of children below 14 years of age in any factory or mine or any other hazardous employment. Thus, Article 24 does not put complete ban on child labour. It only prohibits child labour in hazardous industries. In other words, Article 24 does not prohibit child labour in non-hazardous industries.

To give effect to Article 24, the Parliament has enacted Child labour (Prohibition and Regulation) Act, 1986. This act provided protection to children upto the age of 14 years. The act was further amended in 2016 to include provisions for protection of adolescents (aged between 14 to 18 years). Thereafter, the act has been

renamed as Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

According to the act, engagement of children (aged less than 14 years) is prohibited in all occupations, linking the age of the prohibition of employment with the age for free and compulsory education under Right to Education Act, 2009. The following engagements are permitted provided they do not affect the school education of the child:

1. If the child works in the family business, which is not hazardous in nature
2. If the child work as an artist in entertainment industry Further, employment of adolescents (aged above 14 to 18 years) is prohibited in all the hazardous occupations.

Also, Commissions for Protection of Child Rights Act, 2005 was passed. This act provided for the establishment of a National Commission and State Commissions. These Commissions are responsible to oversee implementations of rights granted to children and suggest measures for the welfare of children.

### **Right to Freedom of Religion (Article 25-28)**

Freedom of religion ensures that individuals can choose and practise any religion of their choice. The right to freedom of religion also includes the right to choose no religion at all (atheist). State cannot force an individual to follow a particular religion. Hence, freedom of religion envisaged in Articles 25 to 28 represent the ideals of liberty of thought, belief, faith and worship declared in the Preamble. These articles also represent the secular nature of Indian State as mentioned in the preamble. It is to be noted that these articles are part of the constitution since the constitution came into force; the word 'secular' was explicitly added in the Preamble by the 42th constitutional amendment act, 1976.

**Article 25: Freedom of conscience, and profession, practice and propagation of religion**  
Article 25 (1) guarantees to all individuals' a two-fold freedom of religion:

#### **1. Freedom of conscience**

Freedom of conscience refers to the inner conviction or religious belief held by an individual. Since freedom of conscience is internal to a person, it is also called inner freedom of religion.

#### **2. Freedom to Practice, Profess and Propagate religion**

Freedom of practice religion means that individuals have the right to follow rituals and display signs and symbols of religion in daily life.

Freedom to profess religion means that a person can speak about one's religion, openly and freely in public.

Freedom to propagate religion means that a person can share his or her religious beliefs with others and persuade them to subscribe to these beliefs. However, forcible or coercive religious conversions are not allowed as it amounts to violating the religious freedoms of the forced individuals.

As freedom to Practice, Profess and Propagate religion have external manifestation, these freedoms constitute outer freedom of religion.

Like other fundamental rights, Article 25 is not an absolute right. This right is subject to public order, morality, health and other provisions of Part III. For instance, if propagation of one's religion leads to communal riots, then it is violation of public order and thus, such propagation of one's religion is not allowed under Article 25.

Further, certain exceptions to Article 25 are provided in clause 2 of Article 25 as follows:

1. The State can regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice.

For instance, this provision empowers the State to refrain candidates of political parties from using religion to polarise people during the election campaigns.

2. The State can also provide for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. In other words, the State can interfere if practices in the name of religion are against social welfare. For instance, untouchability is prohibited and one cannot restrict a particular caste or section of Hindus from visiting a temple. To give effect to this provision and promote social welfare, Parliament made laws such as the Untouchability (Offences) Act and Commission of Sati (Prevention) Act.

Article 25 also consists of two explanations. The first explanation clarifies that wearing and caring of kirpans is included in the profession of sikh religion and thus allowed.

The second explanation clarifies that the term 'Hindus' mentioned in Article 25 include Sikhs, Jains and Buddhists.

### **Article 26: Rights of religious denominations**

Article 26 guarantees certain freedoms to religious groups or denominations with respect to religious matters. It guarantees the following rights to every religious group or denomination:

1. Right to establish and maintain institutions for religious or charitable purposes

2. Right to manage their own religious affairs
3. Right to own and acquire movable or immovable property and
4. Right to manage such property in accordance with law

The rights guaranteed under Article 26 are not absolute and are subject to public order, morality and health.

A religious group or denomination has the following characteristics:

- It is a group of individuals who have a system of beliefs and they regard such beliefs as essential to their spiritual well being.
- Such a group has a common organisation.
- Such a group has a distinct name.

Unlike an individual, the right to own and acquire property by a religious group or denomination is a fundamental right. An individual's right to property was earlier part of fundamental rights under Articles 19 and 31. These articles were deleted by the 44th amendment act and the right to property was made constitutional right under Article 300A.

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

According to Article 27, no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

In other words, Article 27 prohibits the State from collecting taxes for promotion or maintenance of one particular religion. However, the state may use the taxes collected for the promotion or maintenance of all religions. This article reflects the Indian secularism i.e., Indian state is neutral towards all religions as Indian State cannot utilize the tax proceeds for promotion of any one particular religion. Infact, Indian State utilizes the tax proceeds for the promotion of all the religions.

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

Article 28 prohibits compulsory attendance at religious instruction or religious worship in educational institutions. Also, based on the nature of the educational institutions, religious instructions are allowed in some and prohibited in other educational institutions.

**1. Educational institutions wholly maintained by State:** Article 28(1) prohibits any educational institution wholly maintained by the state from providing religious instructions. 'Wholly maintained by State' means that all the expenditure of the educational institution is borne by the government. For instance,

government schools are wholly maintained by the State. In such institutions, religious instructions cannot be given.

#### **2. Educational institutions administered by the state but established under any endowment or trust:**

Article 28(2) is an exception to Article 28(1). Religious instruction can be given in an educational institution administered by the State if such institution is established by a trust or endowment which requires that religious instruction shall be imparted in such institution.

#### **3. Educational institutions aided or recognised by State:**

According to Article 28(3), religious instruction can be provided in any educational institution recognized by state or receiving aid from the state. However, attendance to such religious instruction or worship is voluntary. In other words, a person cannot be forced to attend religious instruction or worship in the institution without his consent. In case the person is a minor, then the consent of his/her parents is required.

'Aided by State' refers to educational institutions that receive funds from the government. Some part of the expenditure of the aided educational institutions is essentially met by the funds granted by the government.

'Recognised by State' refers to an educational institution registered under a Central or State board. Thus, the academic qualification certificate conferred by such an educational institution is recognized by the central or state board. If an educational institution is registered under a board, then it has to compulsorily follow the standard curriculum as prescribed by the board.

#### **Cultural and Educational Rights of Minorities (Article 29-30)**

The cultural and educational rights are guaranteed by the constitution to the minorities. The Constitution does not define the term 'minority', but recognizes mainly two types of minorities- religious and linguistic minorities. In other words, the rights under Article 29 and 30 are conferred to religious and linguistic minorities.

Moreover, the rights under Article 29 are available to only citizens whereas the rights under Article 30 are available to both citizens and non-citizens.

#### **Article 29: Protection of interests of minorities**

Article 29 deals with protection of the interests of minorities. It has two clauses.

#### **Right to conserve language, script or culture**

**Article 29(1)** declares that any section of citizens residing in India having a distinct language, script or



culture of its own shall have the right to conserve the same.

Art. 29(1) uses the phrase 'Section of citizens'. Thus, it grants the right to a group of citizens. Since it grants the right to 'Section of citizens' having distinct language, script or culture; it intends to grant the right to a minority because a minority has distinct (not popular) language, script or culture. Also, a linguistic or a religious minority can have a distinct language, script or culture. Thus, Art. 29(1) recognises the rights of both linguistic and religious minorities.

Further, the Supreme Court has extended the right conferred under Article 29(1) to majority as well. According to the Supreme Court, the phrase 'Section of citizens' can mean majority as well.

#### **No discrimination during admission to certain educational institutions**

**Article 29(2)** provides that no citizen can be denied admission to any educational institution maintained by the State or receiving aid from the state on grounds only of race, caste, religion, language or any of them.

It is to be noted that Art. 29(1) is applicable to a group of citizens. On the other hand, Art. 29(2) prohibits discrimination against individual citizens.

Art. 29(2) can also be compared with Art. 15(1). Similar to Article 15(1), Article 29(2) prohibits discrimination against citizens on certain grounds. However, there are major differences between the two articles. The differences are as follows:

Basis	Article 15(1)	Article 29(2)
Nature of discrimination	It prohibits discrimination on the grounds of religion, race, caste, sex or place of birth.	It prohibits denial of admission on the grounds of religion, race, caste or language to educational institutions maintained or aided by the State.
Restrictions	It extends against the State.	It extends against the State as well as private entities. For instance, Article 29(2) is applicable to educational institutions belonging to private entities but receiving

		grants-in-aid from the State.
Scope	It is general and wider in its scope. It protects all citizens against any kind of discrimination.	It is narrower in scope. It prohibits discrimination against only denial of admission to educational institutions aided or maintained by the State.
Language	It does not prohibit discrimination on the basis of language.	It prohibits discrimination on the basis of language.
Sex and Place of birth	It prohibits discrimination on grounds of sex and place of birth.	It does not prohibit discrimination on grounds of sex and place of birth

#### **Article 30: Rights of minorities of Educational Institutions**

**Article 30** also provides for the rights of minorities. Article 30 specifically recognises two types of minorities, religious and linguistic minorities. It consists of the following clauses:

##### **Article 30(1): Right of minorities to establish and administer educational institutions**

According to Article 30(1), all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Thus, two kinds of rights are guaranteed under Article 30(1):

1. Right to establish educational institutions, which means that a new institution that was not existing earlier can be created by a minority.
2. Right to administer educational institutions, which refers to the right to manage the affairs of the existing institutions.

Further, Art. 30(1) grants the right to minorities to establish and administer educational institutions 'of their choice'. The use of the phrase 'of their choice' implies that minorities have discretion related to establishment and administration of educational institutions. This discretionary power of minorities has been the subject of debate.

Minority educational institutions can be either  
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recognised by the State or unrecognised. Recognised educational institutions are subject to the regulations of a particular board with regard to educational curriculum, academic standards and so on. Thus, recognised educational institutions have less discretionary power as compared to the unrecognised educational institutions.

Further, the Supreme Court in the Secretary of Malankara Syrian Catholic College Case (2007) has clarified the extent of discretionary power enjoyed by minority educational institutions. The Court has held that the right to establish and administer educational institutions is not absolute, but relative in nature. The minority educational institution should not maladminister and such educational institutions can be subject to regulations.

Also, the Court has held that the right conferred on minorities under Art. 30(1) is only to ensure equality with the majority. Such institutions should not indulge in discrimination against majority community.

#### **Article 30 (1A): Right to property to minority educational institutions**

Article 30 (1A) guarantees Right to property as fundamental right to minority educational institutions. Minority educational institutions enjoy the right to property as a fundamental right. Before repealing Art.19(1)(f) and Art. 31, right to property as a fundamental right was available to every owner of property. When Art. 19(1)(f) and Art. 31 were repealed by the 44th amendment act (1978), Article 30 (1A) was added by the same amendment to protect the right to property of minority educational institutions.

The right to property implies that if the property of minority educational institutions is compulsorily acquired, the compensation amount fixed by the State shall be enough so as to not restrict or abrogate the right of minority to establish and administer educational institutions.

#### **Article 30(2): No discrimination against minority educational institutions**

Article 30(2) provides that the State shall not discriminate against any educational institution while granting aid on the ground that such educational institution belongs to any religious or linguistic minority.

Art. 30(2) can also be compared with Art. 29(2). Both Art. 29(2) and Art. 30(2) prohibit discrimination against citizens and minority educational institutions respectively. Let us compare the provisions of these clauses:

Basis	Article 29(2)	Article 30(2)
Nature of discrimination	It prohibits denial of admission to citizens.	It prohibits discrimination against minority educational institutions while granting aid.
Restrictions	Article 29(2) is applicable to educational institutions which are either maintained by State or receiving aid from State.	It is applicable to the State.
Grounds	It prohibits discrimination on grounds of race, caste, religion, language or any of them.	It prohibits discrimination against religious or linguistic minority educational institutions.
Applicability	The protection under Art. 29(2) is given to citizens belonging to any community-majority or minority	The protection under Art. 30(2) is given to minorities only.

#### **Article 31: Right to Property (Repealed)**

Article 31 dealt with the right to property. Article 31 provided that no person shall be deprived of his/her property except by authority of law. Thus, the State could acquire the property of an individual only if it was permitted by law.

Article 31 also provided for compensation to be paid to a person whose property has been acquired by the State for public purposes. Thus, in case the property of an individual was acquired in accordance with law, then the State shall provide suitable compensation to the person whose property has been acquired.

Alongwith Article 19(1)(f), the right to property under Article 31 was repealed by the 44th constitutional amendment act, 1978 and introduced via Article 300A under Part XII of the Constitution.

## Present Position of Right to Property

### Right to Property under Original Constitution

The original constitution provided for seven categories of fundamental rights including the right to property. The right to property was provided by Articles 19(1)(f) and 31. Article 19(1)(f) guaranteed the right to acquire, hold and dispose property; whereas Article 31 protected against deprivation of one's property. Article 31 provided that no person shall be deprived of his/her property except by authority of law. It is to be noted that Article 19(1)(f) was available to only citizens; whereas Article 31 was available to all individuals, whether citizens or non-citizens.

### Abolition of Right to property as fundamental right

The right to property under Articles 19(1)(f) and 31 favoured individual ownership of property. Such favour to individual ownership hampered land reforms and distribution of property to poor and weaker sections of society. Whenever the State implemented land reforms to enhance agricultural productivity and bring land to economically poorer sections, it had to face the litigations by individuals who claimed their right to property in the courts.

Gradually, the right to property was weakened by incorporating various exceptions such as Articles 31A, 31B and 31C. Finally, the Janta Party government repealed Articles 19(1)(f) and 31 by passing 44th Constitutional amendment act, 1978. Through the same amendment, the right to property was inserted under Article 300A in Part XII of the constitution. Article 300A provides that no person shall be deprived of his property except by authority of law. Thus, the right to property is no longer a fundamental right. It is only a Constitutional or a legal right.

### Implications

The following are the implications on the Right to property after 44th amendment act:

**1. Right to move Supreme Court:** If a fundamental right is violated, then an individual has the right to move to the Supreme Court. However, since the right to property is no longer a fundamental right, the right granted under Article 32 i.e. the right to move Supreme Court on violation of this right is not available. An individual whose right to property is violated, is required to follow the normal legal procedure to get his or her right restored.

**2. Compensation:** Earlier, Article 31 provided that in case the property of a person is acquired, then the

State shall provide compensation to the person. After the 44th amendment act, there is no guaranteed right to compensation in case of acquisition of private property by the State. However, the law under which the property is acquired, may provide for compulsory compensation on acquisition of property.

**3. Protection by Courts:** Earlier, the right to property was included in fundamental rights. Thus, it was granted greater protection by Courts. Now, the right to property is outside the fundamental rights. Thus, it is not granted the same level of importance and protection by the courts.

### Exceptions: Right to property as fundamental right

Though the Right to property as fundamental right has been abolished by 44th amendment act, there are two exceptions to it. In these two exceptions, there are provisions within the fundamental rights which provide for compulsory compensation in case of acquisition of property. The exceptions are:

**1. Acquisition of Minority education institution by State:** If State acquires minority education institution, then the State is required to compulsorily pay compensation {Article 30 (1A)}. This provision was added by 44th amendment act itself.

**2. Acquisition of land under personal cultivation and within the ceiling limits:** If the State acquires land held by a person under his personal cultivation and within the ceiling limits, then the State is required to compulsorily pay compensation {Second Provisio to Article 31A}. This provision was added by the 17th amendment act.

For individuals and bodies apart from these exceptions above, the right to property is no more a fundamental right. It is merely a legal right.

### Right to Constitutional Remedies (Article 32)

In case the fundamental rights of an individual are violated, Article 32 provides a mechanism which can be adopted by an individual for restoration of his or her fundamental rights. Therefore, the existence of Art. 32 guarantees the existence of other fundamental rights.

Hence, Article 32 is rightly called the right to constitutional remedies- 'Constitutional' because it is provided within the constitution and 'remedy' because it provides a mechanism to restore fundamental rights. Thus, the right to get the fundamental rights protected is also included within the fundamental rights.

B.R. Ambedkar, the father of Indian constitution, has regarded Art 32 as the most important article of the

constitution. He held the following views about Article 32 - 'an article without which the constitution would be a nullity. It is the soul of the constitution and the very heart of it'.

Let us understand why Dr. B.R. Ambedkar has said that Article 32 is the heart and soul of the constitution. The chief objective of any constitution is the welfare of the people. Part III of the Constitution on fundamental rights is dedicated towards the welfare of people and it is Article 32 which talks about the mechanism for enforcement of fundamental rights, in case of their violation. Thus, Dr. B.R. Ambedkar has rightly regarded that Article 32 is the heart and soul of the constitution.

Further, considering the importance of Article 32, the Supreme Court has held that Article 32 is part of the basic structure of the constitution. Hence it cannot be abridged or taken away even by means of a constitutional amendment.

Let us go through the provisions of Article 32 and understand them.

#### **Article 32(1): Right to move to the Supreme Court**

Article 32(1) provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed.

To understand Article 32(1), we can divide it into two parts. Firstly, Article 32(1) provides the right to move the Supreme Court and Secondly, the right to move the Supreme Court is guaranteed under the Constitution.

In case of violation of rights other than fundamental rights, an individual is required to follow normal judicial procedure and thus, approach the courts at the lower level. However, in case of violation of fundamental rights, an individual can approach the highest court of the land, i.e. Supreme Court.

Also, the right to move to the Supreme Court is guaranteed. 'Guaranteed' refers that if an individual moves the Supreme Court upon violation of fundamental rights, it is the duty of the Supreme Court to undertake judicial proceedings and enforce the fundamental rights.

Thus, the Constitution has given the role of guarantor of fundamental rights to the Supreme Court. We can also say that the objective of Article 32(1) is to provide a quick, effective and assured remedy for the enforcement of fundamental rights.

It is to be noted that though Article 32 (1) provides for a specific mechanism for restoration of fundamental rights, specifically the right to move the Supreme Court;

it does not bar an individual to adopt any other remedy. For instance, an individual can also approach the High Court or other judicial body for enforcement of fundamental rights.

#### **Article 32(2): Power to issue directions or orders or writs**

Article 32(2) empowers the Supreme Court to issue appropriate directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of Fundamental Rights.

Article 32(2) confers 'original' jurisdiction and 'wide' powers to the Supreme Court for the enforcement of fundamental rights. The jurisdiction of the Supreme Court to enforce fundamental rights is called 'original' because an aggrieved individual can directly approach the Supreme Court. Similarly, the powers of the Supreme Court to enforce fundamental rights are considered 'wide' because the Supreme Court can issue not just directions or orders but also writs for the enforcement of fundamental rights.

It is to be noted that the Supreme Court has original jurisdiction for enforcement of fundamental rights, but not the exclusive jurisdiction. Under Article 226 of the Constitution, the High Court also has original jurisdiction for enforcement of fundamental rights. Like the Supreme Court, the High Court can also issue directions or orders or writs for enforcement of fundamental rights.

#### **Article 32(3): Parliament can confer powers to other judicial bodies**

According to Article 32(3), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court.

As discussed, the powers of the Supreme Court for the enforcement of fundamental rights includes power to issue orders or directions or writs. The Parliament can confer all or any of these powers to any court for the enforcement of fundamental rights. Further, the court on whom the powers have been conferred can exercise those powers only in its local jurisdiction, and not at national level.

Further, powers conferred under Article 32(3) to any court does not affect the powers of the Supreme Court. Also, 'any other court' used in Article 32(3) does not include High Court because Article 226 has already conferred these powers to High Courts.

#### **Article 32(4): Right to move Supreme Court cannot be suspended**



Article 32(4) provides that the right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Thus, the right to move the Supreme Court can be suspended only in the circumstances provided in the Constitution. The Constitution provides that the President can suspend the right to move the Supreme Court upon violation of fundamental rights only during the national emergency.

## Orders, Directions and Writs

### Order

An order of the Court refers to the actual written order. An order may be a final judgement pronounced in a case, or it may be interim in nature, such as stay order till matter is finally decided.

### Direction

Directions refers to the things required to be done as per Court order. For instance, the Court may direct the Police to investigate an incident. In such an instance, the order of the court will contain directions for the police.

### Writ

Writ refers to a formal specialized form of written order issued by a government body. In modern usage, this body is generally a court. The Constitution of India grants the power to issue writs to the Supreme Court and the High Courts. The concept of writs is adopted from England. In the earliest form, a writ was simply a written order of the English monarch to a specified person to undertake a specified action. Later on, the courts in England began to issue writs.

Under Art. 32(2), Supreme Court can issue writs for the enforcement of the Fundamental Rights and under Art. 226, High Court can also issue writs for the enforcement of Fundamental Rights. Also, Parliament can empower any other court to issue writs. However, Parliament has not conferred power to issue writs to any other court. Thus, only the Supreme Court and High Courts have the power to issue writs.

Although both the Supreme Court and the High Courts have the power to issue the writs, there are significant differences in their writ jurisdiction.

### Difference between Writ jurisdiction of Supreme Court and High Court

Criteria	Supreme Court	High Court
1. Territorial Jurisdiction	There is a single	The High Courts have

	Supreme Court in the country, which has jurisdiction throughout the territory of India. Thus, the Supreme Court can issue writ to a government body or a private person throughout the territory of India. It can also issue writ to a body or person situated abroad for a matter which took place in India.	limited territorial jurisdiction. A High Court can issue writ against a government body or private person located within its territorial jurisdiction. It can also issue writ against a government body or person situated outside its jurisdiction if the matter for which the writ has been issued, took place within its jurisdiction.
1. Mandatory or Discretionary	The power of the Supreme Court under Article 32 to issue writs is part of the fundamental rights of individuals. Thus, it is mandatory on the Supreme Court to issue writs for the enforcement of Fundamental Rights.	Article 226 mentions the powers of the high courts to issue writs. As Article 226 is mentioned outside the rights of the individuals, it is not mandatory for the High Court to issue writs for the enforcement of fundamental rights.
3. Extent of Writ Jurisdiction	The Supreme Court can issue writs only for the enforcement of fundamental	The writ jurisdiction of High Courts is mentioned outside the fundamental rights. The

	rights because the writ jurisdiction of the Supreme Court is mentioned under fundamental rights. Hence, the writ jurisdiction of the supreme court is limited.	High Courts can issue writs for enforcement of fundamental as well as ordinary legal rights. Hence, writ jurisdiction of a high court is wider than that of a Supreme court.
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We have already discussed the general meaning of writs and the difference between the writ jurisdiction of the Supreme Court and High Courts. Now let us understand the meaning and use of each type of writ mentioned under Article 32 and 226 of the Constitution.

**1. Habeas Corpus:** The term Habeas Corpus is a latin term which literally means 'to have a body'. It is issued by the Court to a public authority or a private person who has detained an individual to produce the individual before it. Thereafter, the court examines whether the detention of the individual is legal or not. If the detention is in accordance with the law, then it is upheld by the Court. Otherwise, the detained individual is set free. Thus, Habeas Corpus is a tool to end illegal detention of individuals and ensure right to life and liberty. To conclude, It is issued to secure the freedom of an individual who has been illegally detained.

It is to be noted that a private person cannot detain an individual under any circumstances. The public authority such as the Police can detain individuals in accordance with the laws.

The petition before the court to issue Habeas Corpus can be filed by anyone on behalf of a detained individual i.e. the 'Principle of Locus Standi' does not apply to this writ. 'Principle of Locus Standi' refers that only the affected party can approach the courts for relief. The Principle of Locus Standi does not apply to this writ because it is not possible for a detained individual to file an petition in the court for issue of Habeas Corpus as he or she is already under detention.

**2. Mandamus:** Mandamus is a Latin word, which means "We Command". Mandamus is a direction from a superior court to a lower court or tribunal or any other public authority to perform an act, which falls within its duty. In other words, Mandamus is an order by a court

to any public authority which has failed or refused to discharge its duties. It is to be noted that Mandamus can also be issued to a Private body discharging public functions.

Such failure or refusal to discharge the duties may affect the fundamental rights of an individual. Thus, the issue of Mandamus by Court is also used to secure implementation of fundamental rights.

**3. Prohibition:** Writ of prohibition means to forbid or to stop and it is popularly known as 'Stay Order'. This Writ is issued when a lower court or a body tries to transgress the limits or powers vested in it. In other words, it is a Writ issued by a superior court to a lower court or a tribunal forbidding it to perform an act outside its jurisdiction. After the issue of this Writ, proceedings in the lower court or judiciary come to a stop.

While the Writ of mandamus orders activity or doing of a particular thing, the Writ of prohibition is essentially addressed to a subordinate court or tribunal to order inactivity or stop doing a particular thing. While Writ of Mandamus is available against any authority, whether judicial or not, the Writ of prohibition is available only against a judicial or a quasi-judicial authority. It is not available against administrative and legislative bodies. Unlike the Writ of Habeas Corpus, Prohibition is not available against private individuals as well.

**4. Certiorari:** Literally, Certiorari means to be certified. The Writ of Certiorari is issued by a higher court to an inferior court or tribunal to quash the order in case the inferior court or tribunal has passed the order outside its jurisdiction or there is error in the order.

In case the Writ of Certiorari is issued by a higher court, then the matter is either transferred to the higher court or some other superior court from the inferior court or tribunal for proper consideration of the matter.

While the prohibition is available at the earlier stage where the low court or tribunal is considering a particular matter, Certiorari is available at a later stage when the order has been passed by the lower court or tribunal. It can also be said that the Writ of prohibition is available during the pendency of proceedings before a subordinate court or tribunal but Writ of Certiorari is issued only after the order or decision has been announced.

Like Writ of Prohibition, the Writ of Certiorari is available against a judicial or a quasi-judicial body. It is not available against administrative and legislative bodies as well as private individuals. However, there is one exception to this rule. The Supreme Court has

clarified that in case an administrative body performs judicial functions, then the Writ of Certiorari and Prohibition can be issued against the administrative body as well (only when it is discharging judicial functions).

**5. Quo warranto:** In the literal sense, the term Quo warranto means 'By what authority or Warrant'. It is issued by a Court against a person holding public office without required qualification or who is disqualified to hold an office. Thus, it prevents illegal usurpation of public office. For example, a person of 62 years has been appointed to fill a public office whereas the retirement age is 60 years. Now, the appropriate Court has a right to issue a Writ of quo warranto against the person and declare the office vacant.

The Writ of Quo warranto cannot be issued against persons holding private office. Moreover, it can be issued only against those public offices which are created under either constitution or any other statute or executive order.

Like Habeas Corpus, the Principle of Locus Standi does not apply for petition to a Court to issue the Writ of Quo Warranto.

### Exceptions to Fundamental Rights

Fundamental Rights are not absolute in nature. An absolute fundamental right to an individual may go against the interest of the overall society. Thus, there are multiple exceptions or limitations to each fundamental right. These exceptions can further be divided into two types:

**1. Specific exceptions:** These exceptions are given in the constitution within the text of a Fundamental Right. These exceptions are called specific exceptions because they apply only to a particular fundamental right.

For instance, there are various exceptions to Article 19 as freedom of Speech and Expression is subject to Security of India, Friendly relations with foreign States and so on. These exceptions have already been covered during discussion on fundamental rights. Let us move onto General exceptions to the fundamental rights.

**2. General exceptions:** These exceptions are given in Part III of the Constitution, but not within the text of a fundamental right. These exceptions are given under Art.31A, Art.31B, Art.31C, Art.33 and Art.34 of Part III.

These are called general exceptions because they apply to more than one or even all the fundamental rights.

**Article 31A: Saving of laws providing for acquisition of estates, etc**

Article 31A was inserted by the 1st amendment act, 1951. Article 31A protects five categories of laws relating to agriculture, industry and commerce from being challenged and invalidated on the ground of their contravention of fundamental rights conferred under Article 14 (Equality before law and Equal Protection of Laws) and Article 19 (Six Freedoms). In other words, according to Art.31A, five categories of laws are valid even if they violate fundamental rights given under art. 14 and 19. These five categories of laws are:

**1. Acquisition of Estate by State:** The acquisition by the State of any estate or any rights in the estate. Estate includes any jagir, inam or similar grant, and any land held for agricultural purposes.

**2. Management of Property by State:** The taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

**3. Amalgamation of Corporations:** The amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

**4. Modification of rights of Directors and Shareholders in Corporations:** The extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders, or

**5. Modification of Mining leases:** The extinguishment or modification of any rights accruing by virtue of any agreement, lease or license for the purpose of searching for, or winning, any mineral or mineral oil.

### Proviso to Article 31A

There are two proviso to Article 31A. According to first proviso to Article 31A, if the legislature of a State passes a law in accordance with provisions of Article 31A, then such a law cannot be challenged and invalidated on the ground of contravention of fundamental rights conferred under Article 14 and Article 19 provided the law has been reserved for the consideration of the President and has received his assent.

The second proviso clarifies that law can even provide for acquisition of land held under personal cultivation and within the ceiling limit of a person. However, if any such law provides for acquisition of such land, then compensation on acquisition of land shall be provided and such compensation shall not be less than the market value of the land.

**Examples of contravention with Articles 14 and 19**

Let us understand how these five categories of laws as mentioned under Article 31A can contravene Fundamental rights given under Art 14 and 19. For instance, acquisition of any estate or management of a property by state may violate the right to property which was earlier a fundamental right under Art.19(1)(f). Moreover, acquisition of some estates while not acquiring others may violate the right to equality given under Art.14.

Let us take another example. For instance, Amalgamation of corporations, modification of rights of directors or extinguishment of mineral license violate the right to profession given under Art. 19(1)(g).

#### **Laws are required to take action in accordance with Art. 31A**

It is to be noted that Article 31A does not grant authority to the State to acquire private property. It merely provides that if the State makes a law to acquire or modify the property rights of an individual, it cannot be challenged on the grounds that it violates Articles 14 or 19. In other words, Article 31A takes away some limitations placed on the State, but does not guarantee rights to the State. The State can acquire or modify the property rights of an individual only in accordance with the laws. Also, these laws will remain in force even if they are in violation of Fundamental rights given under Article 14 and 19.

#### **Article 31B: Validation of certain Acts and Regulations**

Article 13 of the Part III provides that if any pre-constitutional or post-constitutional law violates fundamental rights, then such a law is void to the extent of the violation.

Article 31B is straight away an exception to Article 13. Article 31B provides that laws which are placed in the Ninth Schedule of the Constitution are valid even if they violate the fundamental rights. In other words, if a law is placed in the Ninth Schedule of the Constitution, it is applicable even if it is in violation of fundamental rights.

As mentioned, the Ninth Schedule contains a list of central and state laws which cannot be challenged in courts. Article 31B and the Ninth Schedule were added in the Constitution by the First Amendment Act, 1951. The first Amendment also added 13 laws to the Schedule. Presently (2021), there are 284 laws in the Ninth Schedule. These laws mainly pertain to land reforms in agriculture. The number of these laws is so high (284) because agriculture is a State subject. Thus, on each aspect of land reforms. such as Zamindari abolition, Tenancy, Land ceiling and so on, all the states have passed their own laws.

A controversial law which prescribes 69% reservation in Tamil Nadu is also placed under Ninth Schedule. 69% reservation is more than the 50% limit prescribed by the Supreme Court. Thus, this law may be challenged in the Courts that it is in violation of fundamental rights. In order to protect this law, the law has been placed under the Ninth Schedule. It is to be noted that 69% reservation has been applicable in Tamil Nadu since the Colonial times.

#### **Why is Article 31B given priority over fundamental rights?**

The laws placed under the Ninth schedule are for the benefit of the overall society. Sometimes, these laws may be in conflict with Fundamental Rights which are the rights of an individual.

For instance, Zamindari Abolition acts passed by various states are in the interest of the overall peasantry but are against the right to profession of zamindars. To elaborate, Zamindari abolition acts gave ownership of agricultural land from Zamindars to actual tillers and eliminated the position of zamindar who was an intermediary between peasant and administration.

#### **Scope of Judicial Review**

According to Article 31B, if a law is placed in the ninth schedule, it cannot be challenged in the Courts on the grounds that the law violates fundamental rights. In other words, Article 31B provides that the laws in the ninth schedule are beyond the scope of judicial review.

However, in the Kesavananda Bharati Case (1973), the Supreme Court did not agree that such a limitation be placed on judicial review. Further, the Court held in the I R Coelho case (2007) that only those laws placed in the ninth schedule before April 24, 1973 are not subject to judicial review. Laws placed in the ninth schedule after 24 April, 1973 are subject to judicial review. 24 April, 1973 is the date on which Kesavananda Bharati judgement was given. In this judgement, the SC held that Judicial review is part of the basic structure of the Constitution. Thus, the Judicial review cannot be curtailed by the State.

#### **Article 31C: Saving of laws giving effect to certain Directive Principles**

Art.31C was inserted by the 25th amendment act, 1971. It provided that a law giving effect to the Directive Principles specified under Art.39(b) and Art.39(c) cannot be declared void even if it violates the fundamental rights guaranteed under Article 14 (Equality before law or equal protection of laws) or 19 (Six freedoms). Thus, if a law has been passed to implement the Directive Principles specified under Art.39(b) and Art.39(c), then it can be declared void on the ground that it is in contravention of Art. 14 or 19. Art.39(b) requires the state to provide for equitable



distribution of material resources and Art.39(c) requires the state to prevent concentration of wealth.

Further, Article 31C provided that no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy. Thus, this provision of Article 31B restricted the scope of judicial review.

### Impact of Kesavananda Bharati Case Judgement

The Supreme Court in Kesavananda Bharati Case (1973) held that the provision within Article 31C restricting the scope of judicial review is constitutionally invalid because judicial review is part of the basic structure of the Constitution. Thus, after Kesavananda Bharati Case, it is acceptable that a law containing declaration that it is giving effect to directives under Art. 39(b) and 39(c) can be called into question in any court as to whether it does give effect to these directives or not.

It is to be noted that in the same case the Supreme Court upheld that a law giving effect to the Directive Principles specified under Art.39(b) and Art.39(c) cannot be declared void even if it violates the fundamental rights guaranteed under Article 14 or 19.

### Proviso to Article 31C

There is a proviso to Article 31C. According to the proviso to Article 31C, if the legislature of a State passes a law in accordance with provisions of Article 31C, then such a law cannot be challenge and invalidated on the ground of contravention of fundamental rights conferred under Article 14 and Article 19 provided the law has been reserved for the consideration of the President and has received his assent.

### Example of conflict between Directives under Article 39(b) and 39(c) and Fundamental rights under Art 14 and 19

For instance, the State can pass a law to undertake division of high profit earning businesses to prevent concentration of wealth in order to give effect to the directive mentioned under Art.39(c). Such division may violate the fundamental right to profession given under art. 19(1)(g), but is permissible on account of Art. 31 C.

### Impact of 42nd amendment and Minerva Mills Case

The 42nd Constitutional amendment was passed in 1976. Among other things, the amendment extended the scope of Article 31C by providing that a law to give effect to any of the Directive Principles {(not just 39(b) or 39(c)} cannot be declared void even if it violates the fundamental rights guaranteed under Article 14 or 19.

Thus, the 42nd amendment intended to give primary importance to all the directive principles over Fundamental rights under articles 14 and 19.

The Supreme Court in Minerva Mills Case (1980) declared this extension as unconstitutional and invalid. In this case, the SC held that the extension of scope of Article 31C disrupts the balance between fundamental rights and directive principles, and this balance is part of the basic structure of the Constitution.

Thus, the present position is that a law can be passed to give effect to directives mentioned under Article 39(b) and 39(c) even if it violates the fundamental rights mentioned under Article 14 or 19.

### Comparison among Articles 31A, 31B and 31C

There are some similarities among Articles 31A, 31B and 31C. These articles were not there in the original constitution. They have been introduced by way of constitutional amendment. Also, all these 3 articles pertain to the exception to the fundamental rights.

Now that we have understood these three articles in detail, let us list their comparison for a glance.

Criteria	Article 31A	Article 31B	Article 31C
1. Constitutional amendment	Article 31A was inserted by the 1st Constitutional amendment.	Article 31B was inserted by the 1st Constitutional amendment.	Article 31C was inserted by the 25th Constitutional amendment.
2. Protects	Article 31A protects five categories of laws relating to agriculture, industry and commerce	Article 31B protects the laws placed in the Ninth Schedule.	Article 31C protects the laws to give effect to directives specified in Articles 39(b) and 39(c).
3. Overrides	Article 31A protects five categories of laws even if they are in violation of Articles 14 and 19.	Article 31B protects laws placed in the Ninth Schedule from all the fundamental rights.	Articles 31C protects the laws to give effect to directives specified in Articles 39(b) and 39(c) even

			if they are in violation of Articles 14 and 19.
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### Article 33: Parliament can modify fundamental rights of security forces

According to Article 33, Parliament, by law, can determine to what extent any of the fundamental rights shall be applicable to

- (a) Armed and Paramilitary forces
- (b) Police forces
- (c) Intelligence agencies
- (d) Forces providing telecommunication services to above services

In other words, Parliament by law can restrict or abrogate any of the fundamental rights of the members of the above-mentioned services. It is to be noted that Article 33 confers power to make laws only on the Parliament and not on State legislatures.

In exercise of power conferred under Article 33, Parliament has enacted various laws. Some of these laws are Army Act (1950), Navy Act (1950), Air Force Act (1950), Police forces (Restriction of Rights) Act (1966) and so on. These acts restrict the grant of fundamental rights to the forces. For instance, these acts impose restrictions on freedom of speech, the right to form associations such as trade unions, the right to participate in strikes and demonstrations, and so on.

It is important to restrict the rights of these forces to maintain discipline among them and ensure maintenance of national security. For instance, if members of armed forces are allowed to form trade unions, then they may form trade unions and indulge in strikes. Such a scenario may create problems of national security for the nation. To avoid situations like this, fundamental rights are denied to security forces.

### Article 34: Restrictions on fundamental rights when martial law is in force

Art. 34 empowers parliament to do two things:

Firstly, Parliament may by law indemnify any person in the Central or State government service or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force.

The purpose of including this provision within Part III (dedicated to fundamental rights) is to acknowledge that even if any person in Central or State government or any other person violates the fundamental rights of people in order to maintain or restore order in area where

martial law is in force, the parliament can by law approve such violation of fundamental rights.

Secondly, the Parliament may by law validate any sentence passed, punishment inflicted, forfeiture ordered or other act done in any area where martial law is in force.

The purpose of including this provision within the fundamental rights is to acknowledge that maintenance or restoration of order during martial law may require passing of sentence, infliction of punishment, forfeiture or other acts which may violate the fundamental rights of people. However, Parliament may by law validate such acts of sentence, punishment, forfeiture and so on.

### Martial law

The provisions of Article 34 imply that the martial law can be in force in any area within the territory of India. However, the expression 'martial law' has not been defined in the constitution. Martial law literally means 'Military rule'. During martial law, the civil administration is run by the military authorities. The ordinary laws are suspended and, in their place, the emergency laws and rules are implemented.

Also, there is no specific procedure in the constitution which specifies as to when and how martial law can be implemented. Martial law is usually declared in extraordinary circumstances such as war, armed rebellion at large scale, large scale civil unrest of violent nature and so on.

During martial law, the military authorities are given great powers to bring the situation to normalcy and such powers may even violate the fundamental rights of the people. Thus, under martial rule, fundamental rights of people can be violated by military authorities.

For instance, in a military rule during armed rebellion, the freedom of speech, freedom of movement, freedom of association and so on of the people can be curtailed by military authorities to bring the situation under control.

Exception to Fundamental Rights		
Given under Article	What are the provisions	Which fundamental right can be violated
Art 31 A	Laws relating to acquisition of property, amalgamation of business, modification of rights,	Art 14 and 19

	termination of agreement, etc.	
Art 31 B	Laws given under Ninth Schedule	Any Fundamental Right
Art 31 C	Laws passed to give effect to directives under Art 39(b) and 39 (c)	Art 14 and 19
Art 33	Laws applicable to security forces	Any Fundamental Right
Art 34	Restriction of fundamental rights during martial rule	Any Fundamental Right

### Suspension of Fundamental Rights

Apart from various exceptions to the fundamental rights, these rights can also be suspended during an emergency. During the period of emergency, the State is empowered to suspend the Fundamental Rights. The term 'State' is used here in the same sense in which it has been used in Part III. It means that the power to suspend the operation of the Fundamental Rights is vested not only in Parliament but also in the Union Executive and even in subordinate authority.

The provisions relating to suspension of fundamental rights are not mentioned in Part III of the Constitution. As fundamental rights are suspended during the period of emergency, the suspension of fundamental rights is mentioned under Articles 358 and 359 of Part XVIII of the constitution dealing with emergency provisions. The detailed discussion on provisions of Article 358 and 359 is thus covered under Emergency Provisions in this book.

### Amendability of Fundamental Rights

The question of amendability of fundamental rights or whether the parliament can amend the fundamental rights has been the center of discussion for a long part of India's constitutional history. After a series of Constitutional Amendments and Supreme Court judgements, this question has been finally settled. Let us go through these Constitutional amendments and Supreme Court judgements to arrive at the final position on the amendability of fundamental rights.

#### 1st constitutional amendment, 1951

Among other provisions, the 1st amendment act, 1951 introduced restrictions in article 19(1)(g) (State can acquire any business partially or completely in the interest of the general public) and introduced Articles 31A and 31B. Consequently, the 1st amendment act reduced the scope of fundamental rights.

It was argued that the 1st constitutional amendment act is contrary to the provisions of Article 13. Article 13 provides that any law which violates the fundamental rights is void. It was further argued that Article 13 prohibits the legislature from passing any law, including a constitutional amendment that violates the fundamental rights.

The 1st amendment act was challenged in the Supreme Court in the Shankari Prasad case 1951.

#### Shankari Prasad Singh vs Union of India (1951)

The main question before the Supreme Court in this case was whether the expression 'law' used in Article 13 refers to only ordinary law or it includes all types of law including a constitutional amendment. As mentioned earlier, Article 13 provides that if a law violates a fundamental right, then it is void to the extent of violation. If the expression 'law' used in Article 13 is interpreted to mean only ordinary law, then constitutional amendment is outside the scope of Article 13. Hence, constitutional amendment can violate or take away the fundamental rights. On the other hand, if the expression 'law' used in Article 13 is interpreted to mean any type of law including a constitutional amendment, then constitutional amendment is within the scope of Article 13. Hence, even a constitutional amendment cannot violate the fundamental rights.

The Court in the Shankari Prasad case upheld the 1<sup>st</sup> constitutional amendment act. The Court held that the expression 'law' used in Article 13 is limited to ordinary laws made by the Parliament and not to constitutional amendments. Thus, according to the Supreme Court, the constitutional amendment is beyond the scope of Art. 13 and thus, through constitutional amendment, fundamental rights can be violated.

#### 17th constitutional amendment, 1964

Parliament passed the 17th constitutional Amendment Act in 1964. This amendment inserted certain laws passed by state legislatures under Ninth schedule. As laws under the Ninth schedule can be implemented even if they violate fundamental rights, the effect of this amendment was a reduction in scope of fundamental rights.

#### Sajjan Singh v. State of Rajasthan (1964)

In the case of Sajjan Singh, the validity of the 17th constitutional amendment act was challenged on the grounds that it violated the right to property. The Supreme Court reiterated its view that Parliament can amend the fundamental rights in accordance with the provisions of Article 368. This meant that 'law' in Article 13 did not include a constitutional amendment. The Court did not accept the argument that

“fundamental rights are “eternal, inviolate, and beyond the reach of Art. 368.”

It is to be noted that Art. 368 mentions the procedure to amend the constitution. Under Art. 368, the power to amend the constitution has been conferred on the parliament.

### **Golaknath vs State of Punjab (1967)**

In the judgment of the Golaknath case, the Supreme Court overturned its earlier position. The Court held that the Fundamental rights are given transcendental position in Indian constitution and hence, Parliament cannot abridge or take away any fundamental rights. It held that the expression ‘law’ in Article 13 includes constitutional amendment as well. In other words, a constitutional amendment can be declared as void if it violates fundamental rights. This meant that fundamental rights cannot be amended even by a constitutional amendment by the Parliament. The Court further held that in order to amend the fundamental rights, a constituent assembly must be created. The Parliament does not have the power to amend the fundamental rights.

### **24<sup>th</sup> constitutional amendment act, 1971**

The Parliament reversed the judgement in the Golaknath case by passing the 24th constitutional amendment act. Through this amendment, Parliament made changes in Articles 13 and 368.

The Parliament inserted clause 4 in Article 13 by the 24<sup>th</sup> constitutional amendment act 1971. Article 13(4) provided that the constitutional amendment should not be considered within the ambit of ‘law’ mentioned under Article 13. The 24th constitutional amendment meant that the Parliament can take away or abridge fundamental rights by a constitutional amendment, but not by an ordinary law.

The Parliament also introduced three changes in Article 368. Firstly, it amended article 368 to expressly provide that Parliament has power to amend any provision of the Constitution. Secondly, the amendment expressly made it obligatory for the President to give his assent, when a Constitution Amendment Bill is presented to him. Thirdly, the amendment added a clarification with respect to Article 13. The amendment provided that ‘Nothing in article 13 shall apply to any amendment made under this article.’ This clarification meant that the constitutional amendment passed under Article 368 cannot be brought into question on the ground that it is in violation of Article 13.

### **Kesavananda Bharati v. State of Kerala (1973)**

In this case, the Supreme Court overruled the judgement given in the Golaknath case and upheld the constitutional validity of 24th amendment act.

The Supreme Court bench consisting of 13 judges (highest number of judges to decide on a case so far) held that there is a distinction between ordinary law and a constitutional law (made by constitutional amendment). The expression ‘law’ in Article 13, hence, does not include constitutional amendment. In other words, Parliament can amend any part of the constitution including the fundamental rights by a constitutional amendment.

At the same time, the Supreme Court came up with the doctrine of basic structure of the constitution. This meant that the Parliament can amend any part of the constitution including Fundamental Rights subject to ‘Doctrine of Basic Structure’ of the Constitution.

The Supreme Court has neither defined basic structure nor given any exhaustive list as to what comprises the basic structure of constitution. However, Supreme Court, in its various judgments, has mentioned that following provisions are a part of the basic structure of constitution:

1. Sovereignty of India
2. Secularism
3. Democracy
4. Republic
5. Free and fair elections
6. Judicial Review
7. Balance between Fundamental rights and Directive Principles
8. Limited power of the Parliament to amend the Constitution

It is to be noted that this list is a compilation of a series of judgements passed by the Supreme Court. These judgements were passed by the Supreme Court after the Kesavananda Bharati case.

Also, the above list is inclusive and not exhaustive in nature. This means that in future more additions can be made into this list. Even the Supreme Court has held that there can be additions to the basic structure, but no deletions can be made.

### **42<sup>nd</sup> Amendment Act, 1976**

In response to the introduction of the doctrine of basic structure by the Supreme Court, the 42<sup>nd</sup> Amendment Act further amended Article 368 and added that there is no limitation on the power of Parliament to amend the constitution. Further, it was added that an amendment passed by Parliament under Art.368 cannot be questioned in any court even if such an amendment violates the fundamental rights.

To conclude, this amendment of Article 368 gave unlimited power to parliament to amend the constitution



and also eroded the scope of judicial review of such constitutional amendments.

### **Minerva Mills case (1980)**

In this case, the Supreme Court considered the changes introduced to Article 368 by passing the 42nd amendment act. The Supreme court invalidated these changes. The Supreme Court held that judicial review is a basic structure of the constitution. Thus, changes in Article 368 which excluded judicial review of amendments passed by the parliament are unconstitutional.

Further, the Supreme Court held that the constitution has conferred a limited power to amend the constitution on the Parliament. The Parliament cannot, under the exercise of that limited power, enlarge the same power to absolute power. Indeed a limited amendment power is a basic structure of the constitution and therefore, the limitations on that power can't be destroyed.

### **Waman Rao Case (1981)**

In this case, the Supreme Court examined the validity of the Articles 31A and 31B in the context of the basic structure of the Constitution. The Court held that the basic structure doctrine cannot have a retrospective effect. In other words, the amendments made prior to the introduction of the doctrine of basic structure by the Supreme Court are still considered valid. Hence the doctrine of basic structure would apply only to constitutional amendments enacted after 24<sup>th</sup> April 1973 i.e., the date of Judgment in Kesavananda Bharati Case.

### **S. R. Bommai v. Union of India (1994)**

Though S.R. Bommai case primarily dealt with the President's power to dismiss State government and dissolve State legislature as per Article 356, it also dealt with Secularism. In this verdict, the Supreme Court held that the Preamble and Articles 25 to 28 (ensuring religious freedom) ensure secularism and thus, are part of the basic structure of the constitution. The verdict explained – 'We don't know how the Constitution can be amended so as to remove secularism from the basic structure of the constitution. The Constitution does not provide such a course- that it does not provide for its own demise.'

### **I.R.Coelho case (2007)**

The judgment in I.R. Coelho vs State of Tamil Nadu reaffirms the doctrine of basic structure. It has gone further and held that if a constitutional amendment entails violation of any fundamental rights, then the same can be struck down irrespective of the fact that it is a part of Ninth Schedule, if inserted after 24th April 1973 i.e. date of Kesavananda Bharati case.

In other words, judicial review is applicable for laws inserted into the ninth schedule after 24th April 1973.

However, such review is not applicable to laws inserted before 24th April 1973. In other words, the acts included under the ninth schedule before the judgement of the Kesavananda Bharati case will remain valid and they cannot be challenged on the grounds of violation of the basic structure.

### **Laws to give effect to Provisions of Part III**

Art.35 confers the powers on the parliament to make laws to give effect to certain fundamental rights. Moreover, Article 35 clearly mentions that the legislatures of States shall not have such powers. The parliament has been given exclusive power to legislate to give effect to certain fundamental rights because the parliamentary laws are applicable throughout the territory of India and thus bring uniformity across India. On the other hand, the laws of the state legislatures are applicable only to the respective state and the laws passed by State legislatures may differ from each other.

The provisions of Article 35 are as follows:

1. The Parliament shall have, and the Legislature of a State shall not have, power to make laws with respect to the following matters:

- (a) Residence as a condition for employment under the state {Article 16(3)}
- (b) Conferring powers to Courts other than Supreme Court or High Courts to issue directions or orders or writs for enforcement of fundamental rights {Article 32(3)}
- (c) Restricting the application of fundamental rights to armed forces, intelligence forces, etc. {Article 33}
- (d) Indemnify any person in respect of any act done by him in connection with the maintenance or restoration of order in an area where martial law was in force; and validate any sentence passed, punishment inflicted, forfeiture ordered or other act done in an area where martial law is in force {Article 34}

2. The Parliament shall have, and the Legislature of a State shall not have, power to make laws for prescribing punishment for those acts which are declared to be offences under the fundamental rights. For instance, the Parliament is required to make laws for the following acts:

- (a) Untouchability (Article 17)
- (b) Trafficking in human beings, begar and other forms of forced labour (Article 23)
- (c) Child labour (Article 24)

Further, Article 35 makes it mandatory for the parliament to make laws for prescribing punishment for the acts, which are declared to be offences under the fundamental rights, soon after the commencement of this Constitution.

3. Article 35 further provides that any law in force at the commencement of the constitution in respect of matters mentioned in this article, shall continue to remain in force until it is altered or repealed or amended by Parliament.

### **Article 35A: Special rights and privileges of J&K's permanent residents**

Article 35A is unique in nature as it was introduced through a Presidential Order i.e., The Constitution (Application to Jammu and Kashmir) Order, 1954 – issued by the President of India under Article 370. Apart from introducing Article 35A, the order also extended the Indian citizenship to the residents of J&K. Article 35A is also unique in the sense that it does not appear in the main body of the Constitution i.e. Article 35 is immediately followed by Article 36. Rather, Article 35A appears in Appendix i of the Constitution.

Article 35A empowered the J&K legislature to define the state's permanent residents and their special rights and privileges. Conferring of additional rights and privileges on J&K's permanent residents meant denial of some rights, with respect to J&K, mentioned in Part III to other citizens. Thus, the provisions of Article 35A can be interpreted in two ways: Firstly, the additional rights and privileges to permanent residents of J&K. Secondly, the exception to the fundamental rights of other citizens of the country. Let us go through the provisions of Article 35A.

### **Provisions of Article 35A- Saving of laws with respect to permanent residents and their rights**

The law passed by the State legislature of J&K relating to permanent residents of J&K and their rights shall remain valid even if it is inconsistent with the fundamental rights conferred on the other citizens of India by Part III.

According to Article 35A, the law passed by the State legislature of J&K relating to permanent residents of J&K and their rights may consist of the following matters:

1. Definition of permanent residents of the State of Jammu and Kashmir; or
2. Conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions with respect to —
  - (i) employment under the State Government;
  - (ii) acquisition of immovable property in the State;
  - (iii) settlement in the State; or
  - (iv) right to scholarships and such other forms of aid as the State Government may provide.

The law on above matters by State legislature of J&K defining permanent residents of the State and their rights may violate the fundamental rights of other

citizens of the country. Even if such a law violates the the fundamental rights of other citizens, still the law is valid.

Let us take an example to understand how the law on above mentioned matters can violate the fundamental rights of other citizens. Article 19(1)(e) confers the right to freedom of residence and settlement throughout the country. However, the law passed by State legislature of J&K may restrict the right of settlement in J&K to permanent residents of the State only.

Let us take another example. Article 16 provides that there cannot be any discrimination on grounds of residence for public employment. However, the law passed by State legislature of J&K may restrict the right of public employment under the State government of J&K to permanent residents of the State only.

### **Present Status of Article 35A**

The Union government passed a Presidential Order on 5th August 2019 and revoked the Special Status granted to the State of Jammu and Kashmir under the Article 370. Revocation of Special Status meant also meant abolition of Article 35A.

Further, the Union Parliament passed legislation to reorganise the state into two union territories, one being Jammu and Kashmir, the other Ladakh.

### **Criticism of Fundamental Rights**

The fundamental rights are considered as bulwark of democracy in India, which ensure the rule of the people in real sense and put limitations on the powers of the State. However, the fundamental rights as enshrined in Part III of the constitution have been subjected to multiple criticisms on various grounds. These criticisms are listed below:

#### **1. Lack of Social and Economic Rights**

The list of fundamental rights given in Part III of the constitution consists of mainly political rights. The Social and Economic rights such as free and compulsory primary education are rarely included in Part III. Important Social and Economic rights such as Social security, Right to employment, Right to Medical assistance and so on are not covered within the list of fundamental rights. These rights are available to citizens of most of the developed nations.

#### **2. Random in nature**

The fundamental rights enumerated in Part III is in nature of random list of rights. These rights are not based on any consistent and coherent philosophy. For instance, these rights do not cover all the aspects necessary for an individual's growth.

Also, all the fundamental rights are enumerated in the

form of unorganised list irrespective of their importance. For instance, The right to life and liberty, mentioned under Article 21 has far more importance than abolition of titles, mentioned under Article 18.

### 3. Complex Legal language

The fundamental rights are for common men and women of the country. However, they are drafted in complex legal language. Consequently, it is difficult for common people of the country to comprehend their fundamental rights. The Constituent assembly of India consisted of large number of lawyers. It is even alleged that the Constitution was drafted by the lawyers and for the lawyers. Sir Ivor Jennings, the constitutional expert, has remarked that Indian Constitution is a 'Paradise for lawyers'.

### 4. Lack of clarity

The Part III of the Constitution is replete with many vague and ambiguous terms. These terms are not even defined within the Constitution, leaving their interpretation to the Legislatures and Courts. Some of these terms are 'reasonable restrictions', 'contempt of court', 'public order', 'general interest of the public' and so on.

The lack of clarity in these terms creates confusion in the application of fundamental rights and increases the arbitrary power of the State.

### 5. Large exceptions

The fundamental rights are subjected to numerous exceptions. Some of these exceptions are specific to a single fundamental right. These exceptions are mentioned within the fundamental right itself. The other exceptions, general exceptions, are applicable to multiple or even all the fundamental rights. These exceptions are mentioned in separate articles within the Part III itself.

The specific and general exceptions together significantly dilute the scope of fundamental rights. The critics have even demanded that the title of Part III should be changed to 'Fundamental Rights and Exceptions thereon'.

### 6. Suspension during national emergency

The enforcement of fundamental rights (except Article 20 and 21) is suspended upon proclamation of national emergency. During emergency times, the normal order of life is significantly disrupted and the people of the country are already at vulnerable position. Thus, denial of fundamental rights to people during the period of emergency adds vulnerability to people and brings their lives in jeopardy. The critics demand that fundamental rights should be available to the people not just during normal times but also during emergency times.

### 7. Dilution over the years

Throughout the post-independent history of India, there has been only a single instance when the Parliament has enhanced the scope fundamental rights, i.e. by passing the 86th amendment act which introduced the right to education under Article 21A. However, there has been atleast a dozen amendments through which the Parliament has reduced the scope of fundamental rights. Out of these amendments, the 44th amendment act repealed the right to property as fundamental right.

### 8. Frequent Violations

The grant of fundamental rights by constitution is not a sufficient condition for their adherence by administration and society. In a country like India, where there is illiteracy, poverty, rigid casteism; fundamental rights are subjected to frequent violations. For instance, Article 17 prohibits untouchability in all its forms. Still, untouchability is widely practiced in many parts of India.

### 9. Impractical remedy

Article 32 confers the right to move the Supreme Court upon violation of fundamental rights. However, the Supreme Court is already overburdened with cases and its seat is located in Delhi only. Moreover, the judicial process requires bearing of heavy cost involving hiring lawyer and frequent travel. The inaccessible nature of Supreme Court and the high cost of judicial process is a real hindrance in seeking remedy under Article 32 for the common man.

### 10. Martial law

The inclusion of provision for Martial Law under Article 34 is contrary to the spirit of fundamental rights. During Martial law, the administration is run by military authorities and the implementation of fundamental rights is at the whims of military authorities. Usually, Democracies do not include separate provision for Martial law in their constitution.

### 11. Preventive detention

Like Martial law, the provision for Preventive Detention is also completely against the spirit of fundamental rights. The provision for Preventive detention is included under Article 22 of the Constitution. It confers excessive powers to the State to detain individuals even on grounds of suspicion. In fact, there have been ample evidence when the Preventive Detention laws have been misused against innocent individuals. Though the provision of preventive detention is there in Indian Constitution, no other major democracy in the world has similar provision in its constitution.

### Part III Fundamental Rights - Articles at a glance

Article No.	Subject Matter
General Provisions	
12	Definition of State
13	Laws inconsistent with fundamental rights
Right to Equality	
14	Equality before law and Equal protection of laws
15	Prohibition of discrimination on grounds only of religion, race, caste, sex, place of birth or any of them
16	Equality of opportunity in matters of public employment
17	Abolition of Untouchability
18	Abolition of Titles
Right to Freedom	
19	Freedom of Speech and Expression, Assembly, Association or Union, Movement, Residence and Settlement, and Trade, Occupation and Profession.
20	Protection in respect of conviction for offences
21	Right to Life and Liberty
21A	Right to Free and Compulsory Education for Children between 6 to 14 years of age
22	Protection against arbitrary arrest and detention
Right against Exploitation	
23	Prohibition of traffic in human beings and forced labour
24	Prohibition of Child labour
Right to Freedom of Religion	
25	Freedom of conscience and free profession, practice, and propagation

	of religion
26	Freedom to Religious and Charitable institutions to manage religious affairs
27	Freedom as to payment of taxes for promotion of any particular religion
28	Freedom as to attendance at religious instruction or religious worship in certain educational institutions
Cultural and Educational Rights	
29	Protection of interests of minorities
30	Right of minorities to establish and administer educational institutions
Right to Property (Repealed)	
31	Deprivation of Property only if permitted by law (Repealed)
Saving of Certain Laws	
31A	Saving of Laws providing for acquisition of estates, etc.
31B	Validation of certain acts and regulations
31C	Saving of laws giving effect to certain directive principles
31D	Saving of laws in respect of anti-national activities (repealed)
Right to Constitutional Remedies	
32	Remedies for enforcement of rights conferred by this Part
32A	Constitutional Validity of State laws not to be considered in proceedings under Article 32 (repealed)
Exceptions to Fundamental Rights	
33	Power of Parliament to modify the rights conferred by this Part in their application to forces



34	Restriction on rights conferred by this Part while martial law is in force in any area
35	Legislation to give effect to the provisions of this Part
35A (Repealed)	Special rights and privileges of J&K's permanent residents

### Practice Questions I

1. In the Indian Constitution, the Right to Equality is granted by

- (a) Article 16 to Article 20
- (b) Article 15 to Article 19
- (c) Article 14 to Article 18
- (d) Article 13 to Article 17

2. Freedom of the Press in India

- (a) is specifically provided in Article 19(1)(a) of the Constitution
- (b) is implied in the wider freedom of expression guaranteed by Article 19(1)(a) of the Constitution
- (c) is guaranteed under the provisions of Article 361A of the Constitution.
- (d) emanates from the operation of the Rule of Law in the country

3. An American citizen staying in India cannot claim fundamental right to

- (a) Freedom of trade and profession
- (b) Equality before the law
- (c) Protection of life and personal liberty
- (d) Freedom of religion

4. The Constitution of India recognizes

- (a) only religious minorities
- (b) only linguistic minorities
- (c) religious and linguistic minorities
- (d) religious, linguistic, and ethnic minorities

5. Which one of the following rights was described by Dr B.R. Ambedkar as the heart and soul of the Constitution?

- (a) Right to freedom of religion
- (b) Right to property
- (c) Right to equality
- (d) Right to Constitutional remedies

6. With regard to fundamental rights as enshrined in the Indian Constitution, consider the following statements:

- 1. Right against discrimination on ground of religion, race, caste, sex, or place of birth.
- 2. Equality before law and equal protection of law.
- 3. Right to elementary education.
- 4. Freedom of speech and expression.
- 5. Freedom to manage religious affairs.

Which of the fundamental rights given are available to both citizens of India and foreigners?

- (a) 1, 2, and 5 only
- (b) 2, 3, and 5 only
- (c) 1, 2, 3, and 5 only
- (d) 1, 2, 4, and 5 only

7. Which of the above is/are classified under the Right to Freedom of Religion (Art. 25–28)?

- 1. Prohibition of discrimination on grounds of religion.
  - 2. Freedom of conscience and profession of religion.
  - 3. Protection of culture of minorities.
  - 4. Freedom to manage affairs of religious institution.
- Select the correct answer using the code given below:

- (a) 1 and 2 only
- (b) 1, 2, and 4 only
- (c) 2 and 4 only
- (d) 2, 3, and 4 only

8. Consider the following statements with regards to Article 20:

- 1. It prohibits the state from enacting any ex-post facto legislation.
- 2. The civil courts cannot compel an individual to be witness in any court proceedings.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

9. With reference to writs issued by the Supreme Court and High Courts in India, consider the following statements:

- 1. The writ of Habeas Corpus can be issued against public authorities only.
- 2. The writ of Mandamus cannot be issued against a private individual or body.
- 3. The writ of Prohibition can be issued only against judicial and quasi-judicial authorities.
- 4. The writ of Certiorari is available against legislative bodies and private individuals.

Which of the statements given above is/are correct?

- (a) 1 and 2 only
- (b) 1 and 4 only
- (c) 2 and 3 only
- (d) 3 and 4 only

10. Consider the following statements:

- 1. The Constitution (86th) Amendment Act 2002 inserted Article 21A in the constitution.
  - 2. Under Article 21A of the Constitution, free and compulsory education is a fundamental right of all the children between the ages of 6 to 14 years.
  - 3. Article 21A is applicable only to minority groups.
- Which of the statements given above is/are correct?

- (a) 1 and 2 only

- (b) 2 only
- (c) 2 and 3 only
- (d) 1, 2, and 3

11. With reference to Freedom of Speech and Expression, consider the following statements:

1. Freedom of expression includes the right to incite violence among public.
2. Right to Freedom of Expression is not an absolute right and is subject to limitations.
3. If any expression of opinion, published in a newspaper, undermines the dignity of a court, then the court is entitled to exercise the power under contempt provisions.

Which of the statements given above is/are correct?

- (a) 1 and 2 only
- (b) 2 only
- (c) 2 and 3 only
- (d) 1, 2, and 3

12. Which of the following statements regarding the development of fundamental rights over the years are incorrect?

1. Right to Property used to be a fundamental right before 44th Amendment Act.
2. The scope of Article 21 has been enlarged by Supreme Court.
3. Procedure established by law in place of due process of law leads to powerful judiciary.

Select the correct answer using the codes given here:

- (a) 1 only
- (b) 3 only
- (c) 1 and 2
- (d) 1 and 3

13. Which of the following statements is/are correct?

1. In India, the constitutional remedy under Article 32 is available only in case of fundamental rights, not in case of rights which follow from some other provisions in the Constitution.
2. Both the Supreme Court and High Courts can issue writs for purpose of enforcement of fundamental rights.

Select the correct answer using the codes given here:

- (a) Only 1
- (b) Only 2
- (c) Both 1 and 2
- (d) Neither 1 nor 2

14. Consider the following statements:

1. Article 301 pertains to the Right to Property.
2. Right to Property is a legal right but not a fundamental right.
3. Article 300A was inserted in the Constitution of India by the Congress Government at the Centre by the 44th Constitutional Amendment.

Which of the above statements are true?

- (a) 2 only
- (b) 2 and 3

- (c) 1 and 3
- (d) 1, 2, and 3

15. The fundamental rights included in the post-independence constitution have been inspired by which of the following documents:

1. The Bill of Rights in the American constitution
2. Motilal Nehru report
3. Karachi resolution of the Congress

Select the correct answer using the code given below:

- (a) 1 only
- (b) 2 and 3 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

16. Which of the following bodies fall within the definition of State for purpose of Part III of the Constitution?

1. High Court of Delhi
2. Municipal Corporation of Kolkata
3. Delhi Development Authority
4. HDFC Bank

Select the correct answer using the code given below:

- (a) 1 and 2 only
- (b) 2 and 3 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

17. According to Article 13 of the constitution, the word 'law' includes which of the following:

1. Ordinance
2. Rule
3. Notification
4. Constitutional amendment

Select the correct answer using the code given below:

- (a) 1 and 2 only
- (b) 2 and 3 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

18. Consider the following Statements:

1. Application of Doctrine of Eclipse suspends the implementation of a law, but does not bring an end to the law.
2. Application of Doctrine of Severability suspends the implementation of a whole law, even if a part of law is found to be unenforceable.

Which of the Statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

19. Consider the following statements on position of Reservation in India as per provisions of fundamental rights:

1. The creamy layer, based on economic criteria, among Backward Castes is not eligible for benefits of reservation.

2. The reservation to women is provided under the fundamental rights on the basis of their vulnerability in society.

3. The economically weaker Scheduled Castes and Scheduled Tribes can also claim reservation in EWS category.

Which of the Statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) 2 and 3
- (d) 1 and 2

20. The Right to property as enshrined in the original constitution provided for which of the following rights?

1. Right to acquire, hold and dispose of property

2. Compulsory acquisition of Property only if permitted by law

3. Mandatory compensation on Compulsory acquisition of property

Select the correct answer using the codes given below:

- (a) 2 only
- (b) 1 and 2 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

## Practice Questions II

1. The basic structure theory of the Constitution of India implies that

(a) certain features of the Constitution are so essential to it that they cannot be abrogated.

(b) fundamental rights cannot be abridged or taken away.

(c) the Constitution cannot be amended except in accordance with the procedure prescribed in Art. 368.

(d) the Preamble of the Constitution cannot be amended for it is not a part of the Constitution and at the same time represents its real spirit.

2. Examine the following statements connected with the 'basic structure' doctrine:

1. Fundamental rights have a transcendental status in the Constitution and they cannot be amended by the Parliament as they are part of the basic structure of the Constitution.

2. Acts of executive and laws passed by legislature are subject to judicial review.

3. Constitutional Amendment Acts are outside the purview of Article 13.

Which of the statement(s) given above is/are correct?

- (a) 1 only
- (b) 1 and 2
- (c) 2 and 3
- (d) 1, 2, and 3

3. Consider the following statements:

1. Financial Emergency

2. National Emergency

3. Martial Rule

Which of the above special circumstances has/have an effect on the Fundamental rights of the Indian citizens?

- (a) 1 only
- (b) 2 only
- (c) 2 and 3 only
- (d) 1, 2, and 3 only

4. With reference to the fundamental rights as enshrined in the Indian Constitution, which one of the following statements is/are incorrect?

1. All fundamental rights are available against the arbitrary action of the State only.

2. Some of them are legally enforceable while others are not.

3. The Parliament can curtail or repeal them, but only by a constitutional amendment.

Select the correct answer using the code given below:

- (a) 1 only
- (b) 2 only
- (c) 1 and 2 only
- (d) 1, 2, and 3

5. The Ninth Schedule to the Indian Constitution was added by

- (a) 1st Amendment
- (b) 8th Amendment
- (c) 9th Amendment
- (d) 42nd Amendment

6. Consider the following statements regarding the exceptions to fundamental rights:

1. Laws placed in Ninth Schedule of the Constitution can violate Fundamental rights.

2. Fundamental rights of armed forces can be restricted by Parliament by law.

3. Laws to give effect to directive principles under Articles 39(b) and (c) cannot be declared unconstitutional for violation of any fundamental right.

Which of the statement(s) given above is/are correct?

- (a) 1 and 2
- (b) 1 and 3
- (c) 2 Only
- (d) 3 Only

7. Consider the following statements regarding the fundamental rights:

1. Though Parliament can amend any other part of the constitution, Part III of the Constitution cannot be amended by Parliament.

2. All the fundamental rights are applicable only against the actions of the state and not those of private individuals.

3. All fundamental rights are negative in nature, i.e., they impose restrictions upon the actions.

Which of the statement(s) given above is/are correct?

- (a) 1 Only
- (b) 2 Only
- (c) 1 and 3
- (d) None

8. Which of the following statements is the effect of proclamation of National Emergency on fundamental rights?

- 1. Fundamental rights under Article 19 get automatically suspended under proclamation of National Emergency on internal grounds.
- 2. Any fundamental right except those under Articles 20 and 21 can be suspended by the President through his order.

Select the correct answer using the codes given below:

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

9. In which of the following cases was the “Doctrine of Basic Structure” used by the Supreme Court to strike down the provisions of Constitutional Amendment Acts?

- 1. Kesavananda Bharati vs State of Kerala
- 2. Minerva Mills vs Union of India
- 3. Supreme Court Advocates-on-Record-Association (SCARA) vs Union of India
- 4. Golaknath vs State of Punjab

Select the correct answer using the code given below:

- (a) 1 only
- (b) 1 and 2 only
- (c) 2 and 3 only
- (d) 1, 2, 3, and 4

10. Which one of the following comes under the jurisdiction of both the High Court and the Supreme Court?

- (a) Disputes between the Centre and the States
- (b) Disputes between the States inter-se
- (c) Protection of the fundamental rights
- (d) Disputes on inter-state rivers

11. As per Article 31A of the Constitution, certain types of laws are valid even if they violate the fundamental rights given under Articles 14 and 19 of the Constitution. These laws pertain to which of the following categories?

- 1. Acquisition of Estate
- 2. Taking over Management of Property
- 3. Extinguishment of mining leases
- 4. Amalgamation of Corporations

Select the correct answer using the code given below:

- (a) 1 and 2 only
- (b) 2 and 3 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

12. Consider the following Statements regarding Article 31B and the Ninth Schedule to the Constitution:

- 1. Article 31B was introduced by the 25th amendment act, 1971 in the Constitution.
- 2. The laws placed in the Ninth Schedule are valid even if they violate fundamental rights under Articles 14 and 19.
- 3. Only Parliament can make laws to be placed in the Ninth Schedule.

Which of the Statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) 3 only
- (d) None

13. Consider the following statements regarding exceptions given under Articles 31A, 31B and 31C:

- 1. According to Article 31A, laws pertaining to five categories are valid even if they violate all the fundamental rights.
- 2. According to Article 31B, laws placed in the Ninth Schedule are valid even if they violate all the fundamental rights.
- 3. According to Article 31C, laws to give effect to directives mentioned in Articles 39(b) and 39(c) are valid even if they violate all the fundamental rights.

Which of the Statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) 3 only
- (d) None

14. Article 34 pertaining to martial law empowers the Parliament to make laws on which of the following matters?

- 1. Identify person for act done to maintain order in area where martial law was in force
- 2. Validate sentence passed in area where martial law was in force
- 3. Identification and declaration of martial law in certain areas

Select the correct answer using the code given below:

- (a) 1 only
- (b) 1 and 2 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

15. After conceptualisation of Basic structure doctrine, the Supreme Court has mentioned the various aspects which constitute the basic structure of the Constitution. Which of the following aspects are included within the basic structure as per the Supreme Court?

- 1. Democracy
- 2. Rule of Law
- 3. Socialism
- 4. Balance between Part III and Part IV
- 5. Free and Fair elections



Select the correct answer using the code given below:

- (a) 1, 2 and 4 only
- (b) 2, 3, 4 and 5 only
- (c) 1, 2, 4 and 5 only
- (d) 1, 2, 3, 4 and 5

### Perfecting Past Prelims

1. Consider the following statements: **(2005)**

- 1. Article 301 pertains to the Right to Property.
- 2. Right to Property is a legal right but not a fundamental right.
- 3. Article 300A was inserted by a Constitutional Amendment.

Which of the statement given above is/are correct?

- (a) 2 only
- (b) 2 and 3
- (c) 1 and 3
- (d) 1, 2, and 3

2. Consider the following statements: **(2006)**

- 1. Free and compulsory education to the children of 6–14-year age group by the State by the 76th Amendment to the Constitution of India.
- 2. Sarva Shiksha Abhiyan seeks to provide computer education even in rural areas.
- 3. Education was included in the Concurrent List by the 42nd Amendment, 1976, to the Constitution of India.

Which of the statements given above are correct?

- (a) 1, 2, and 3
- (b) 1 and 2
- (c) 2 and 3
- (d) 1 and 3

3. Consider the following statements:

A Constitutional Government is one which **(2014)**

- 1. places effective restrictions on individual liberty in the interest of State Authority.
- 2. places effective restrictions on the Authority of the State in the interest of individual liberty.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

4. Which one of the following statements is correct? **(2017)**

- (a) Rights are claims of the State against the citizens.
- (b) Rights are privileges which are incorporated in the Constitution of a State.
- (c) Rights are claims of the citizens against the State.
- (d) Rights are privileges of a few citizens against the many.

5. Which of the following are envisaged by the Right against exploitation in the Constitution of India? **(2017)**

- 1. Prohibition of traffic in human beings and forced labour.
- 2. Abolition of untouchability.
- 3. Protection of the interests of minorities.
- 4. Prohibition of employment of children in factories and mines.

Select the correct answer using the code given below:

- (a) 1, 2, and 4 only
- (b) 2, 3, and 4 only
- (c) 1 and 4 only
- (d) 1, 2, 3, and 4

6. One of the implications of equality in society is the absence of **(2017)**

- (a) Privileges
- (b) Restraints
- (c) Competition
- (d) Ideology

7. Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty. Which of the following in the Constitution of India correctly and properly imply the above statement? **(2018)**

- (a) Article 14 and the provisions under the 42nd Amendment to the Constitution
- (b) Article 17 and the Directive Principles of State Policy in Part IV
- (c) Article 21 and the freedoms guaranteed in Part III
- (d) Article 24 and the provisions under the 44th Amendment of the Constitution

8. Consider the following statements: **(2018)**

- 1. The Parliament of India can place a particular law in the Ninth schedule of the Constitution of India.
- 2. The validity of a law placed in the Ninth schedule cannot be examined by any court and no judgement can be made on it.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

9. Which of the following are regarded as the main features of the “Rule of Law”? **(2018)**

- 1. Limitation of powers
- 2. Equality before law
- 3. People’s responsibility to the Government
- 4. Liberty and civil rights

Select the correct answer using the code given below:

- (a) 1 and 3 only
- (b) 2 and 4 only
- (c) 1, 2 and 4 only
- (d) 1, 2, 3 and 4

10. Which one of the following reflects the most appropriate relationship between law and liberty? **(2018)**

- (a) Is there are more laws, there is less liberty.
- (b) If there are no laws, there is no liberty.
- (c) If there is Liberty, laws have to be made by the people.
- (d) If laws are changed too often, liberty is in danger.

11. The Ninth Schedule was introduced in the Constitution of India during the prime ministership of **(2019)**

- (a) Jawaharlal Nehru
- (b) Lal Bahadur Shastri
- (c) Indira Gandhi
- (d) Morarji Desai

12. Consider the following statements: **(2020)**

1. The Constitution of India defines its 'Basic structure' in terms of federalism, secularism, fundamental rights and democracy
  2. The Constitution of India provides for 'judicial review' to safeguard the citizens' liberties and to preserve the ideals on which the Constitution is based
- Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

13. Which one of the following categories of Fundamental Rights incorporates protection against untouchability as a form of discrimination? **(2020)**

- (a) Right against Exploitation
- (b) Right to Freedom
- (c) Right to Constitutional Remedies
- (d) Right to Equality

14. What is the position of the Right to Property in India? **(2021)**

- (a) Legal right available to citizens only
- (b) Legal right available to any person
- (c) Fundamental Right available to citizens only
- (d) Neither fundamental Right nor legal right

15. Consider the following statements in respect of Bharat Ratna and Padma Awards: **(2021)**

1. Bharat Ratna and Padma Awards are titles under the Article 18(1) of the Constitution of India.
  2. Padma Awards, which were instituted in the year 1954, were suspended only once.
  3. The number of Bharat Ratna Awards is restricted to a maximum of five in a particular year.
- Which of the above statements are not correct?
- (a) 1 and 2 only
  - (b) 2 and 3 only
  - (c) 1 and 3 only
  - (d) 1, 2 and 3

16. With reference to India, consider the following statements: **(2021)**

1. Judicial custody means an accused is in the custody of the concerned magistrate and such accused is locked up in police station, not in jail.
2. During judicial custody, the police officer in charge of the case is not allowed to interrogate the suspect without the approval of the court.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

17. With reference to India, consider the following statements: **(2021)**

1. When a prisoner makes out a sufficient case, parole cannot be denied to such prisoner because it becomes a matter of his/her right.
2. State Governments have their own Prisoners Release on Parole Rules.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

18. A legislation which confers on the executive or administrative authority an unguided and uncontrolled discretionary power in the matter of the application of law violates which one of the following Articles of the Constitution of India? **(2021)**

- (a) Article 14
- (b) Article 28
- (c) Article 32
- (d) Article 44

19. 'Right to Privacy' is protected under which Article of the constitution of India? **(2021)**

- (a) Article 15
- (b) Article 19
- (c) Article 21
- (d) Article 29

20. With reference to the writs issued by the Courts in India, consider the following statements: **(2022)**

1. Mandamus will not lie against a private organization unless it is entrusted with a public duty.
  2. Mandamus will not lie against a Company even though it may be a Government Company.
  3. Any public minded person can be a petitioner to move the Court to obtain the writ of Quo Warranto.
- Which of the statements given above are correct?
- (a) 1 and 2 only
  - (b) 2 and 3 only
  - (c) 1 and 3 only
  - (d) 1, 2 and 3

21. In essence, what does 'Due Process of Law' mean? **(2023)**

- (a) The principle of natural justice
- (b) The procedure established by law
- (c) Fair application of law
- (d) Equality before law

22. In India, which one of the following Constitutional Amendments was widely believed to be enacted to overcome the judicial interpretations of the Fundamental Rights? (2023)

- (a) 1st Amendment
- (b) 42nd Amendment
- (c) 44th Amendment
- (d) 86th Amendment

23. Under which of the following Articles of the Constitution of India, has the Supreme Court of India placed the Right to Privacy? (2024)

- (a) Article 15
- (b) Article 16
- (c) Article 19
- (d) Article 21

24. A Writ of Prohibition is an order issued by the Supreme Court or High Courts to: (2024)

- (a) a government officer prohibiting him from taking a particular action.
- (b) the parliament/Legislative Assembly to pass a law on Prohibition.
- (c) the lower court prohibiting continuation of proceedings in a case
- (d) the Government prohibiting it from following an unconstitutional policy

### Answer Key

### Practice Questions I

1. (c)	2. (b)	3. (a)	4. (c)	5. (d)
6. (b)	7. (c)	8. (d)	9. (c)	10. (a)
11. (c)	12. (b)	13. (c)	14. (a)	15. (d)
16. (b)	17. (d)	18. (a)	19. (a)	20. (d)

### Practice Questions II

1. (a)	2. (c)	3. (c)	4. (c)	5. (a)
6. (a)	7. (d)	8. (b)	9. (b)	10. (c)
11. (d)	12. (d)	13. (b)	14. (b)	15. (c)

### Perfecting Past Prelims

1. (b)	2. (c)	3. (c)	4. (c)	5. (c)
6. (a)	7. (c)	8. (a)	9. (c)	10. (d)
11. (a)	12. (b)	13. (d)	14. (b)	15. (d)
16. (b)	17. (b)	18. (a)	19. (c)	20. (c)
21. (a)	22. (a)	23. (d)	24. (c)	

### Solutions

### Practice Questions I

1. (c) Right to Equality is give under Articles 14 to 18.

2. (b) Freedom of the Press in India is implied in the wider freedom of expression guaranteed by Article 19(1)(a) of the Constitution.

3. (a) Articles 15, 16, 19, 29, and 30 are applicable to Indian citizens only. Freedom of trade and profession is covered under Article 19. Thus, a foreigner in India cannot claim freedom of trade and profession.

4. (c) Article 26 recognizes religious minorities and Article 29 recognizes linguistic minorities.

5. (d) Article 32 is described by Dr. B.R. Ambedkar as the heart and soul of the Constitution. In case of violation of any fundamental right, Article 32 mentions the mechanism for its implementation.

6. (b) Articles 15, 16, 19, 29, and 30 are applicable only to Indian citizens. Thus, equality before law and equal protection of law (Art. 14), right to elementary education (Art. 21), and freedom to manage religious affairs (Art. 25 and 26) are applicable to both foreigners and citizens of India.

7. (c) Prohibition of discrimination on basis of religion—Article 15

Freedom of conscience and profession of religion—Article 25

Protection of culture of minorities—Articles 29 and 30

Freedom to manage affairs of religious institution—Article 26

8. (d) Statement 1 is incorrect because Article 20 prohibits the State from enacting only ex-post facto criminal legislation and not any legislation. State can pass ex-post facto civil laws.

Statement 2 is incorrect because Article 20 prohibits only self-incrimination. In other words, state cannot compel an individual to produce evidence against oneself in criminal matters. It does not mean that the civil courts cannot compel an individual to be witness in any court proceedings.

9. (c) Statement 1 is incorrect because the writ of Habeas Corpus can be issued against public authorities as well as against private individuals.

Statements 2 and 3 are correct.

Statement 4 is incorrect because the writ of Certiorari is available against judicial and quasi-judicial bodies.

Thus, Statements 1 and 4 are correct.

10. (a) Statements 1 and 2 are correct.

Statement 3 is incorrect because Article 21A is applicable to all the Indian citizens.

11. (c) Statement 1 is incorrect because freedom of speech and expression is subject to various limitations such as public order. Thus, freedom of speech and

expression does not include right to incite violence among people.

12. (b) Statements 1 and 2 are correct.

Statement 3 is incorrect. Due process of law in place of procedure established by law leads to powerful judiciary.

Thus, only statement 3 is incorrect.

13. (c) Both the statements are correct.

14. (a) Statement 1 is incorrect. Article 300A pertains to right to property.

Statement 2 is correct.

Statement 3 is incorrect. Article 300A was inserted in the Constitution by the Janta Party Government.

15. (d) The Fundamental Rights included in Indian Constitution have been inspired from the Bill of Rights in the American constitution, Motilal Nehru report and Karachi resolution of the Congress.

16. (b) Statement 1 is incorrect: Judiciary is not part of Definition of State as per Article 12. Thus, the High Court of Delhi does not fall under the definition of State for the purpose of Part III of the Constitution.

Statement 2 is correct: Local authority such as Municipal Corporation of Kolkata falls under definition of State as per Article 12.

Statement 3 is correct: Local authority as per Article 12 includes development boards or other authority which is legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund. Thus, Delhi Development Authority falls under definition of State as per Article 12.

Statement 4 is incorrect: HDFC Bank is a private entity. It does not fall under the definition of State as per Article 12.

17. (d) The word 'law' is used in the broadest sense in Article 13. It includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage that has the force of law.

However, a Constitutional amendment is outside the purview of the word 'law' used in Article 13.

18. (a) Statement 1 is correct: According to the doctrine of eclipse, a law which violates fundamental rights is a dormant or sleeping law but not a dead law (void law). A dormant law is only unenforceable at present, but not void or dead law.

Statement 2 is incorrect: Severability refers to a provision which states that even if some parts of a contract or a law are held to be illegal or unenforceable, the remaining part of the contract or law is still enforceable and valid.

19. (a) Statement 2 is incorrect: Article 15(3) empowers the State to make special provisions for the promotion of well-being of women and children. However, it does not provide for reservation to women.

Statement 3 is incorrect: The reservation under EWS category is applicable to citizens who are not eligible for reservation under SC, ST and BC.

20. (d) Right to acquire, hold and dispose of property were granted under Article 19(1)(f). Compulsory acquisition of Property only if permitted by law and Mandatory compensation on Compulsory acquisition of property were granted under Article 31.

## Practice Questions II

1 (a) The basic structure doctrine has been adopted by Supreme Court in Kesavananda Bharti Case. According to this doctrine, Parliament can amend any part of the constitution subject to its core features.

2. (c) Statement 1 is incorrect. Fundamental rights can be amended by the Parliament. However, they cannot be amended to such an extent that it amounts to violation of basic structure of Constitution.

3 (c) Statement 2 is correct: When National emergency is proclaimed, Article 19 is automatically suspended. Moreover, President, through separate proclamation, can suspend any fundamental right except Article 20 and 21.

Statement 3 is correct: As per article 34, Fundamental rights can be suspended under Martial Law or Military Rule.

Statement 1 is incorrect: Fundamental rights are not impacted under Financial emergency.

4. (c) Statement 1 is incorrect because some fundamental rights are available against arbitrary action of individuals as well such as Article 15(2) and Article 17.

Statement 2 is incorrect because all the fundamental rights are legally enforceable.

Statement 3 is correct.

Thus, only statements 1 and 2 are incorrect.

5(a) The Ninth Schedule contains a list of central and state laws which cannot be challenged in courts. It was added in the Constitution by the First Amendment Act, 1951.

6. (a) Statement 3 is incorrect because laws to give effect to directive principles under Article 39(b) and 39(c) cannot be declared unconstitutional for violation of fundamental rights under articles 14 and 19 (and not any fundamental right).



7. (d) Statement 1 is incorrect because Parliament can amend any part of the Constitution including Part III. Statement 2 is incorrect because some fundamental rights are available against arbitrary action of individuals as well, such as article 15(2).

Statement 3 is incorrect. Fundamental rights are considered negative in nature because they put restrictions on state and in some cases on private individuals.

However, some fundamental rights are positive in nature because they confer extra benefit or freedom on individuals such as freedom to practice religion, freedom of speech and expression and so on.

8. (b) Statement 1 is incorrect because fundamental rights under Article 19 are automatically suspended only when the proclamation of national emergency is on external grounds.

Statement 2 is correct.

9. (b) Supreme Court Advocates-on-Record Association (SCARA) vs Union of India is related to appointments in higher judiciary.

Doctrine of basic structure was not used by judiciary in Golaknath vs State of Punjab.

10(c) The protection of fundamental rights comes under the jurisdiction of both the High Court and the Supreme Court. The disputes between Centre and States and between States inter-se come only under the jurisdiction of the Supreme Court. The disputes on inter-state rivers are undertaken by ad-hoc tribunals.

11(d) As per Article 31 A, laws pertaining to all the above 4 categories are valid even if they violate the fundamental rights given under Articles 14 and 19 of the Constitution.

12. (d) Statement 1 is incorrect: Article 31B was introduced by the 1st amendment act, 1951 in the Constitution.

Statement 2 is incorrect: The laws placed in the Ninth Schedule are valid even if they violate all the fundamental rights (not just fundamental rights under Articles 14 and 19).

Statement 3 is incorrect: Both Parliament and State Legislatures can make laws to be placed in the Ninth Schedule.

13. (b) Statement 1 is incorrect: According to Article 31A, laws pertaining to five categories are valid even if they violate fundamental rights given under Articles 14 and 19 (not all the fundamental rights).

Statement 3 is incorrect: According to Article 31C, laws to give effect to directives mentioned in Articles 39(b) and 39(c) are valid even if they violate fundamental rights given under Articles 14 and 19 (not all the fundamental rights).

14. (b) Statement 3 is incorrect: Article 34 does not require Parliament to pass a law to identify and declare martial law in any area.

15. (c) Statement 3 is incorrect: So far, Socialism has not been declared by Supreme Court as part of basic structure doctrine.

### Perfecting Past Prelims

1. (b) Statement 1 is incorrect because Article 300A pertains to the Right to Property. Statements 2 and 3 are correct.

2. (c) Statement 1 is incorrect because free and compulsory education to children between 6–14 years of age was introduced by 86th Amendment (not 76th) to the Constitution.

Statement 2 is correct. Sarva Shiksha Abhiyan seeks to provide computer education even in rural areas.

Statement 3 is also correct. The 42nd Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is, (a) education, (b) forests, (c) weights and measures, (d) protection of wild animals and birds, and (e) administration of justice; constitution and organisation of all courts except the Supreme Court and the High Courts.

3. (c) Both the Statements 1 and 2 are correct.

There is a need to put effective restrictions on individual liberty because the arbitrary exercise of liberty by individuals may hamper the interest of overall society. State is given authority to check arbitrary actions of individuals and ensure protection of interest of overall society.

At the same time, there is a need to put effective restrictions on the authority of the state in the interest of individual liberty. If too many powers are vested in the State, then such powers may be used arbitrarily and against the interests of common people.

A constitutional government has both the above-mentioned characteristics. It places restrictions on the individual liberty as well as on the authority of the state.

4. (c) Option (a) and (d) are totally incorrect.

Option (b) is incorrect because all the rights need not be mentioned in the Constitution of a state. For example, rights may be granted through ordinary laws, executive orders, or may be implied.

5. (c) Right against exploitation is provided under articles 23 and 24 of the constitution. Article 23 provides for Prohibition of traffic in human beings and forced labour. 24 provides for Prohibition of employment of children in factories and mines.

6. (a) Art. 14 aims for equality in society. It states that the state shall not recognize any privilege in application of laws. Privileges are enjoyed by a few. When few people enjoy privileges in a society, there cannot be equality.

7. (c) Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty, which is further guaranteed under Article 21 of the Constitution.

8. (a) Statement 1 is correct: The Parliament of India can place a particular law in the Ninth schedule of the Constitution of India.

Statement 2 is incorrect: The validity of a law placed in the Ninth schedule can be examined by the courts. The Supreme Court has in multiple judgments mentioned about the authority of courts to review laws mentioned under ninth schedule.

9. (c) Statement 1 is correct: Rule of law directly implies that law is supreme. The law is the highest reference point in every situation. Thus, there are limitations on powers of each institution and individual because nothing is beyond law.

Statement 2 is correct: Rule of law is related to equality before law. It means that the laws of the land must apply to every individual equally, irrespective of the person's sex, religion, political inclination, status in society etc.

Statement 3 is incorrect: It cannot be implied from Rule of Law.

Statement 4 is correct: Laws and Rights are complementary to each other. Laws lead to the rights and freedoms of individuals.

10. (d) Option (a) is incorrect. It does not necessarily mean that laws curtail liberty. Infact, some of the laws are passed to provide liberty. For instance, the Indian Constitution provides liberty to its citizens through Article 21 and various freedoms including speech and expression, movement, assembly, profession etc through Article 19.

Option (b) is incorrect: It is true that laws can be passed to provide liberty. In fact, option (b) was a statement by Political Thinker John Locke. However, it cannot be said that if there are no laws, there is no liberty. This is wrong because it is an extreme statement.

Option (c) is also incorrect: It may happen that people pass laws to restrict their liberty, for instance caste system rules.

Option (d) is correct. If laws are changed too often, liberty is in danger because in such a case, laws can be amended to restrict liberty.

11. (a) The Ninth Schedule and Article 31B were introduced by 1st amendment act, 1951. This amendment was passed during tenure of Jawaharlal Nehru (26 January 1950 – 27 May 1964).

12. (b) Neither 1 nor 2

Statement 1 is incorrect: Basic structure theory is propounded by the Supreme Court in the Keshavananda Bharati case, not by Constitution.

Statement 2 is incorrect: Constitution of India provides for 'judicial review' to safeguard the citizens' liberties by inserting Article 32. However, the Constitution of India does not specify the ideals on which it is based. Consequently, it has not provided for Judicial review of these ideals.

It is the Supreme Court which has mentioned in various judgments what constitutes the ideals of the Constitution. Supreme Court even considers Judicial Review as one of the ideals of the Constitution.

13. (d) Right to Equality

Untouchability was abolished under Article 17. Articles 14-18 are part of Right to Equality.

14. (b) After the 44th constitutional amendment, the right to property is no longer a fundamental right and has been inserted into Article 300 A as a legal right available to any person, whether a citizen or a non-citizen.

15. (d) Statement 1 is incorrect: Article 18(1) of the Constitution prohibits the State from conferring titles. However, National awards such as Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri do not amount to titles within the meaning of Article 18(1) of the Constitution because these are not used as prefixes or suffixes to the name of the recipient.

Statement 2 is incorrect: The Padma awards were suspended twice, from July 1977 to January 1980 and from August 1992 to December 1995.

Statement 3 is incorrect: A maximum of three Bharat Ratna can be given in a particular year.

16. (b) Statement 1 is incorrect: Police Custody means that Police has the physical custody of the accused while Judicial Custody means that Magistrate has the physical custody of the accused. In former, the accused is lodged in police station lockup; while in latter, it is the jail.

Statement 2 is correct: During Judicial Custody, the police officer in charge of the case is not allowed to interrogate the suspect. However, the court may allow the interrogations to be conducted if it opines that the interrogation is necessary under the facts produced before the court.

17. (b) Statement 1 is incorrect: Parole is a privilege or a concession but not a right of any convicted prisoner. It may be denied to a prisoner even when he makes out a sufficient cause if the competent authority is satisfied that releasing the convict would not be in the interest of society.

Statement 2 is correct: 'Prisons' falls under the State list in the seventh schedule to the constitution. Also, the Prisons Act confers the rights upon States to make rules regarding the release of prisoners on parole.

18. (a) Article 14 provides for equality before law and the equal protection of laws to all the individuals. If a law confers an unguided and uncontrolled discretionary power in the matter of the application of law upon the executive, then the law would not be applicable in the same manner in the case of all the individuals. Thus, such a law would lead to violation of Article 14 of the constitution.

19. (c) Right to privacy has been interpreted by the Supreme Court under article 21 of the constitution.

20. (c) Statement 1 is correct: Mandamus is issued to a public authority. It can be issued to a private authority only if it is entrusted with the public functions.

Statement 2 is incorrect: A Government company falls under the purview of public authority. Thus, writ of Mandamus can be issued to a government company.

Statement 3 is also correct: The petition to obtain writ of Quo Warranto can be filed by any public minded person, as the principle of Locus Standi does not apply to this writ.

21.(a) The concept of natural justice though not provided in Indian Constitution but it is considered as necessary element for the administration of justice. Natural justice simply means a law of nature. In layman language natural justice means natural sense of what is right and wrong and in its technical sense it is synonymous with fairness.

The natural justice is applicable to not just application of law (procedure established by law), but also to law itself.

22.(a) Even though 42nd amendment act was also enacted to overcome Kesavananda Bharti Judgment, it was the 1st amendment act which was widely believed to be enacted to overcome the judicial interpretations of the Fundamental Rights.

Note: The question has been deleted by the UPSC.

23.(d) The right to privacy in India was recognized as a fundamental right by the Supreme Court of India in the landmark judgment of Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India and Ors in 2017. The Supreme Court ruled that the right to privacy is protected under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty.

24.(c) Statement 3 is correct: Writ of Prohibition is issued by a higher court to a lower court or tribunal to

prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. This writ can be issued only against judicial and quasi-judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

PrepMate IAS