

# TOP THE SEMESTER

by

ADV. MOHIT TANWR

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## STATUE STATION

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## CONSTITUTIONAL LAW II

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- b. Definition of 'State' for Enforcement of Fundamental Rights: Justifiability of Fundamental Rights, Doctrine of Eclipse, Severability, Waiver
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## UNIT III: RIGHT TO CONSTITUTIONAL REMEDIES

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## UNIT 1

### FUNDAMENTAL RIGHTS – I

#### 1.1 EVOLUTION OF CONCEPT OF FUNDAMENTAL RIGHTS

The concept of fundamental rights is a cornerstone of any democratic legal system. These rights are the basic and essential human rights that are indispensable for the overall development of an individual and the nation. The Indian Constitution, which came into force on January 26, 1950, enshrines a set of fundamental rights in Part III, which guarantees civil liberties to all its citizens.

This comprehensive material will discuss the evolution of the concept of fundamental rights in the Indian legal system, highlighting landmark judgments by the Supreme Court of India and illustrating relevant Articles of the Indian Constitution.

#### **1. Pre-Constitutional Era:**

The roots of fundamental rights can be traced back to ancient Indian texts, such as the Vedas, the Upanishads, and the Arthashastra, which emphasize the importance of individual rights and duties. During the British colonial rule, various acts and regulations, such as the Indian Penal Code (1860), the Indian Evidence Act (1872), and the Criminal Procedure Code

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(1898), laid the foundation for the protection of individual rights.

## 2. Influence of Other Constitutions:

The framers of the Indian Constitution studied various constitutions from around the world to develop a comprehensive and robust set of fundamental rights. They were particularly influenced by the Bill of Rights in the United States Constitution, the Universal Declaration of Human Rights, the Irish Constitution, and the British common law.

## 3. Constituent Assembly Debates:

The Constituent Assembly, which was responsible for drafting the Indian Constitution, deliberated extensively on the issue of fundamental rights. Several members emphasized the importance of including an exhaustive list of rights to ensure the protection of civil liberties and to create a framework for a just society. The Assembly eventually adopted the Draft Constitution with the inclusion of Part III, which enshrines the fundamental rights.

## 4. Classification of Fundamental Rights:

The Indian Constitution classifies fundamental rights into six broad categories:

- a. Right to Equality (Articles 14-18)
- b. Right to Freedom (Articles 19-22)
- c. Right Against Exploitation (Articles 23-24)

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- d. Right to Freedom of Religion (Articles 25-28)
- e. Cultural and Educational Rights (Articles 29-30)
- f. Right to Constitutional Remedies (Article 32)

## 5. Landmark Supreme Court Judgments:

Throughout the years, the Supreme Court of India has played a crucial role in interpreting and expanding the scope of fundamental rights, ensuring their protection and enforcement. Some landmark judgments include:

- a) **A.K. Gopalan v. State of Madras (1950):** This case dealt with preventive detention and the right to personal liberty. The Supreme Court held that the procedure established by law under Article 21 must be followed while depriving an individual of their personal liberty.
- b) **Maneka Gandhi v. Union of India (1978):** This case expanded the scope of Article 21, stating that the procedure established by law must be just, fair, and reasonable, and not arbitrary or fanciful.
- c) **Kesavananda Bharati v. State of Kerala (1973):** This case introduced the concept of the "Basic Structure Doctrine," which states that the Parliament cannot amend the basic structure of the Constitution, including the fundamental rights.
- d) **S.R. Bommai v. Union of India (1994):** This case reinforced the secular nature of the Indian Constitution and

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the importance of the fundamental right to freedom of religion.

- e) Navtej Singh Johar v. Union of India (2018): This case decriminalized homosexuality and upheld the right to privacy and dignity under Article 21 of the Constitution.

## 6. Amendments to Fundamental Rights:

The Constitution of India has undergone several amendments to incorporate changes and address emerging concerns related to fundamental rights. Some notable amendments include:

- a) First Amendment (1951): This amendment introduced restrictions on the right to freedom of speech and expression under Article 19(2), and the right to practice any profession, trade, or business under Article 19(6).
- b) Forty-second Amendment (1976): This amendment expanded the scope of the right to education under Article 21A, making it a fundamental right, and introduced the concept of "public interest" in Article 19.
- c) Ninety-third Amendment (2005): This amendment provided for the reservation of seats for socially and educationally backward classes, Scheduled Castes, and Scheduled Tribes in private educational institutions under Article 15(5).
- d) One Hundred and First Amendment (2016): This amendment introduced the Goods and Services Tax (GST) to the Indian taxation system and impacted the right to freedom of trade, commerce, and intercourse under Article 301.

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## DEFINITION OF 'STATE' FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS: JUSTIFIABILITY OF FUNDAMENTAL RIGHTS, DOCTRINE OF ECLIPSE, SEVERABILITY, WAIVER

### FUNDAMENTAL RIGHTS: DEFINITION OF STATE FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS

Fundamental rights in the Indian Constitution are enforceable against the State, as defined under Article 12. The concept of the State is essential to understand the scope and applicability of fundamental rights in India.

#### 1. Article 12 - Definition of State:

Article 12 of the Indian Constitution provides an inclusive definition of the State, which covers:

- The Government and Parliament of India
- The Government and the Legislature of each State
- All local or other authorities within the territory of India
- All local or other authorities under the control of the Government of India

#### 2. Judicial Interpretation of State:

The Supreme Court of India has played a pivotal role in interpreting the definition of the State under Article 12. Some landmark judgments that have shaped the understanding of the State include:

- University of Madras v. Shanta Bai (1954): In this case, the Supreme Court held that a university

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constituted under a statute is an authority within the meaning of Article 12.

- b) *Electricity Board, Rajasthan v. Mohan Lal (1967)*: The Supreme Court ruled that a statutory corporation established under an Act of the Parliament or the State Legislature is considered a State under Article 12.
- c) *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (1975)*: The Supreme Court held that public corporations, such as the Oil and Natural Gas Corporation (ONGC), the Life Insurance Corporation of India (LIC), and the Industrial Finance Corporation of India (IFCI), which perform public functions, are considered State under Article 12.
- d) *R.D. Shetty v. International Airport Authority of India (1979)*: This case laid down the principle of the "instrumentality and agency" test to determine whether an entity qualifies as a State under Article 12. The test examines the control exercised by the government, the performance of public functions, and the extent of financial assistance received.
- e) *Ajay Hasia v. Khalid Mujib (1981)*: The Supreme Court, in this case, further clarified the "instrumentality and agency" test and held that even private entities can be considered State under Article 12 if they are substantially financed and controlled by the government.

### 3. Private Bodies and Fundamental Rights:

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While the enforcement of fundamental rights is primarily directed against the State, certain judgments have expanded the scope of fundamental rights to include private entities. For example:

- a) *Vishaka v. State of Rajasthan (1997)*: The Supreme Court, in this case, recognized the fundamental right to equality in the workplace and laid down guidelines to prevent sexual harassment at the workplace. The Court held that these guidelines were applicable to both public and private sector organizations.
- b) *Consumer Education and Research Centre v. Union of India (1995)*: The Supreme Court, in this case, held that the right to health and safety at the workplace is a fundamental right under Article 21 of the Constitution. This right is applicable to workers in both the public and private sectors.

#### 4. Limitations of the Definition of State:

Despite the expansive interpretation of the State by the Supreme Court, there remain certain limitations. Private entities that do not meet the "instrumentality and agency" test or are not substantially financed and controlled by the government are not considered State under Article 12. Therefore, fundamental rights cannot be enforced against such entities. This limitation has led to debates on the need to expand the definition of the State to ensure better protection of fundamental rights.

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## JUSTICIABILITY OF FUNDAMENTAL RIGHTS, DOCTRINE OF ECLIPSE, SEVERABILITY & WAIVER

### Introduction:

The concepts of justiciability, the doctrine of eclipse, severability, and waiver play crucial roles in determining the scope and applicability of fundamental rights enshrined in the Indian Constitution.

### 1. Justiciability of Fundamental Rights:

Justiciability refers to the ability of a legal matter to be decided by the courts. Fundamental rights are justiciable, meaning that they can be enforced through the courts if violated. Article 32 of the Indian Constitution provides for the right to constitutional remedies, which empowers the Supreme Court to issue writs for the enforcement of fundamental rights. Similarly, Article 226 empowers the High Courts to issue writs for the enforcement of fundamental rights as well as other legal rights.

### 2. Doctrine of Eclipse:

The doctrine of eclipse is based on the idea that a pre-constitutional law inconsistent with the fundamental rights is not void ab initio (from the beginning) but becomes unenforceable only against the citizens. The law is said to be overshadowed by the fundamental rights and remains dormant until it is amended to remove the inconsistency, at which point it becomes enforceable again. This doctrine was propounded

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by the Supreme Court of India in the case of Bhikaji Narain Dhakras v. State of Madhya Pradesh (1955).

### 3. Doctrine of Severability:

The doctrine of severability, also known as the doctrine of separability, is applied when a law or statute is challenged as being unconstitutional. According to this doctrine, if a part of a statute is declared unconstitutional, that part can be severed from the rest of the statute, which remains valid and enforceable. The Supreme Court of India laid down the principles of severability in the case of A.K. Gopalan v. State of Madras (1950) and further elaborated on them in the case of R.M.D.C. v. Union of India (1957).

### 4. Doctrine of Waiver:

The doctrine of waiver is based on the principle that a person can voluntarily relinquish or give up their fundamental rights. However, the Supreme Court of India has consistently held that fundamental rights cannot be waived. In the case of Basheshar Nath v. Commissioner of Income Tax (1959), the Court held that the waiver of a fundamental right is against public policy and the constitutional scheme.

### Landmark Supreme Court Judgments:

Several Supreme Court judgments have shaped the understanding and application of these doctrines in the context of fundamental rights:

a. Bhikaji Narain Dhakras v. State of Madhya Pradesh (1955):  
In this case, the Supreme Court applied the doctrine of eclipse

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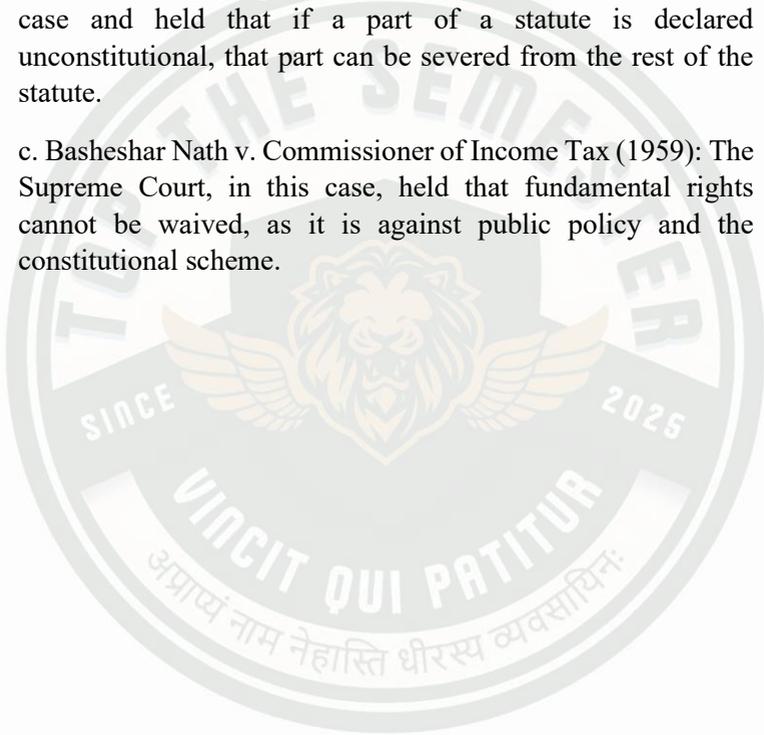
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and held that a pre-constitutional law inconsistent with fundamental rights is not void ab initio but becomes unenforceable only against the citizens.

b. A.K. Gopalan v. State of Madras (1950): The Supreme Court laid down the principles of the doctrine of severability in this case and held that if a part of a statute is declared unconstitutional, that part can be severed from the rest of the statute.

c. Bhasheshar Nath v. Commissioner of Income Tax (1959): The Supreme Court, in this case, held that fundamental rights cannot be waived, as it is against public policy and the constitutional scheme.



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## **RIGHT TO EQUALITY (ARTICLES 14-18): DOCTRINE OF REASONABLE CLASSIFICATION AND THE PRINCIPLE OF ABSENCE OF ARBITRARINESS, LEGITIMATE EXPECTATIONS, PRINCIPLE OF COMPENSATORY DISCRIMINATION**

### **RIGHT TO EQUALITY (ARTICLE 14 TO ARTICLE 18): DOCTRINE OF REASONABLE CLASSIFICATION & THE PRINCIPLE OF ABSENCE OF ARBITRARINESS**

The Right to Equality is enshrined in Articles 14 to 18 of the Indian Constitution, which guarantees equal treatment before the law and prohibits discrimination. The interpretation and application of the Right to Equality are guided by the Doctrine of Reasonable Classification and the Principle of Absence of Arbitrariness.

#### **1. Right to Equality - Articles 14 to 18:**

The Right to Equality comprises several provisions that aim to promote equal treatment and prevent discrimination:

- a) Article 14: Equality before the law and equal protection of the laws
- b) Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth
- c) Article 16: Equality of opportunity in matters of public employment

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d) Article 17: Abolition of untouchability e. Article 18: Abolition of titles, except military and academic distinctions

## 2. Doctrine of Reasonable Classification:

The Doctrine of Reasonable Classification is a judicial principle that allows the State to make classifications or distinctions between different groups of people or objects, provided that such classifications are reasonable and not arbitrary. The Supreme Court of India laid down the test for reasonable classification in the case of State of West Bengal v. Anwar Ali Sarkar (1952). According to this test, a classification is reasonable if:

- a) It is based on an intelligible differentia, i.e., a clear and identifiable distinction between the groups or objects being classified.
- b) The intelligible differentia has a rational nexus (connection) with the objective sought to be achieved by the classification.

## 3. Principle of Absence of Arbitrariness:

The Principle of Absence of Arbitrariness is another key concept that governs the interpretation and application of the Right to Equality. This principle requires that State actions or legislation should not be arbitrary, capricious, or irrational. In the case of E.P. Royappa v. State of Tamil Nadu (1974), the Supreme Court held that the test of Article 14 is not merely the doctrine of reasonable classification but also the principle of absence of arbitrariness.

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## Landmark Supreme Court Judgments:

Several Supreme Court judgments have shaped the understanding and application of the Right to Equality, the Doctrine of Reasonable Classification, and the Principle of Absence of Arbitrariness:

- a) *State of West Bengal v. Anwar Ali Sarkar* (1952): The Supreme Court laid down the test for reasonable classification in this case and held that a classification is reasonable if it is based on an intelligible differentia and has a rational nexus with the objective sought to be achieved.
- b) *E.P. Royappa v. State of Tamil Nadu* (1974): In this case, the Supreme Court expanded the scope of Article 14 by holding that the test of Article 14 is not merely the doctrine of reasonable classification but also the principle of absence of arbitrariness.
- c) *Maneka Gandhi v. Union of India* (1978): The Supreme Court, in this case, further emphasized the principle of absence of arbitrariness and held that the procedure established by law under Article 21 must be just, fair, and reasonable, and not arbitrary or fanciful.
- d) *Navtej Singh Johar v. Union of India* (2018): This case decriminalized homosexuality, holding that Section 377 of the Indian Penal Code was violative of the Right to Equality and the Principle of Absence of Arbitrariness under Article 14.

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## **RIGHT TO EQUALITY (ARTICLE 14 TO ARTICLE 18): DOCTRINE OF LEGITIMATE EXPECTATIONS; PRINCIPLE OF COMPENSATORY DISCRIMINATION**

Introduction:

The Right to Equality, enshrined in Articles 14 to 18 of the Indian Constitution, is further governed by principles like the Doctrine of Legitimate Expectations and the Principle of Compensatory Discrimination. These principles aim to ensure fairness and promote social justice while maintaining the balance between individual rights and the interests of the State.

### **1. Doctrine of Legitimate Expectations:**

The Doctrine of Legitimate Expectations is a principle of administrative law that has been adopted by Indian courts in the context of the Right to Equality. It seeks to ensure fairness and reasonableness in the decision-making process of public authorities. The doctrine protects the reasonable expectations of individuals who have been led to believe that they would be treated in a certain manner by the State or public authorities.

The Supreme Court of India recognized the Doctrine of Legitimate Expectations in the case of *Union of India v. Hindustan Development Corporation* (1993). However, it is essential to note that this doctrine is not an independent fundamental right but rather an extension of the principles of natural justice and fairness in administrative actions.

### **2. Principle of Compensatory Discrimination:**

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The Principle of Compensatory Discrimination is a constitutional mechanism aimed at addressing historical and social inequalities in India. It allows the State to make special provisions for the advancement of socially and educationally backward classes, Scheduled Castes (SCs), and Scheduled Tribes (STs). This principle is enshrined in various constitutional provisions, such as:

- a) Article 15(4): Empowers the State to make special provisions for the advancement of any socially and educationally backward classes, SCs, and STs.
- b) Article 16(4): Allows the State to make provisions for the reservation of appointments or posts in favor of any backward class that is not adequately represented in public services.
- c) Article 46: Directs the State to promote the educational and economic interests of SCs, STs, and other weaker sections of society.

## Landmark Supreme Court Judgments:

Several Supreme Court judgments have shaped the understanding and application of the Right to Equality, the Doctrine of Legitimate Expectations, and the Principle of Compensatory Discrimination:

- a) Union of India v. Hindustan Development Corporation (1993): In this case, the Supreme Court recognized the Doctrine of Legitimate Expectations and held that it

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ensures fairness and reasonableness in the decision-making process of public authorities.

- b) *M. Nagaraj v. Union of India (2006)*: The Supreme Court, in this case, upheld the constitutional validity of the 77th, 81st, 82nd, and 85th Amendments to the Indian Constitution, which provided for reservation in promotions for SCs and STs. The Court laid down certain conditions for implementing reservation in promotions, such as the requirement to demonstrate the inadequacy of representation, backwardness, and the need to ensure overall administrative efficiency.
- c) *Indra Sawhney v. Union of India (1992)*: In this landmark judgment, also known as the Mandal Commission case, the Supreme Court upheld the constitutional validity of providing 27% reservation for Other Backward Classes (OBCs) in government services. The Court also introduced the concept of the "creamy layer" to exclude the socially advanced members of OBCs from the benefits of reservation.

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## **FUNDAMENTAL FREEDOM (ARTICLE 19): FREEDOM OF SPEECH AND EXPRESSION, FREEDOM OF PRESS, JUDICIAL INTERPRETATION OF ARTICLE 19; REASONABLE RESTRICTIONS (ARTICLE 19 CLAUSE (2) TO (6))**

### **FUNDAMENTAL RIGHT TO FREEDOM (ARTICLE 19): FREEDOM OF SPEECH AND EXPRESSION; FREEDOM OF PRESS**

#### **1. Freedom of Speech and Expression - Article 19(1)(a):**

Article 19(1)(a) guarantees to all citizens the right to freedom of speech and expression. This right encompasses various forms of expression, such as oral, written, and symbolic speech, as well as artistic and creative expression. The Supreme Court of India has consistently held that the right to freedom of speech and expression is not absolute and is subject to reasonable restrictions mentioned in Article 19(2).

Article 19(2) allows the State to impose reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offense.

#### **2. Freedom of the Press:**

Freedom of the press, though not explicitly mentioned in the Indian Constitution, is implicitly protected under the right to freedom of speech and expression in Article 19(1)(a). The

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freedom of the press is crucial for the dissemination of information, ideas, and opinions, and it plays a vital role in maintaining transparency and accountability in a democratic society.

Like the right to freedom of speech and expression, the freedom of the press is also subject to reasonable restrictions under Article 19(2). The State can impose restrictions on the press for the same reasons as those applicable to the right to freedom of speech and expression.

## Landmark Supreme Court Judgments:

Several Supreme Court judgments have shaped the understanding and application of the right to freedom of speech and expression and freedom of the press:

- a) **Romesh Thappar v. State of Madras (1950):** The Supreme Court, in this case, struck down a ban on the entry and circulation of a journal in the State of Madras, holding that the restriction was not justified under Article 19(2). This case affirmed the importance of freedom of the press in India.
- b) **Maneka Gandhi v. Union of India (1978):** The Supreme Court, in this landmark judgment, expanded the scope of the right to freedom of speech and expression to include the right to receive and disseminate information.
- c) **S. Rangarajan v. P. Jagjivan Ram (1989):** The Court held that freedom of expression cannot be suppressed on account of threats of violence or intolerance, emphasizing

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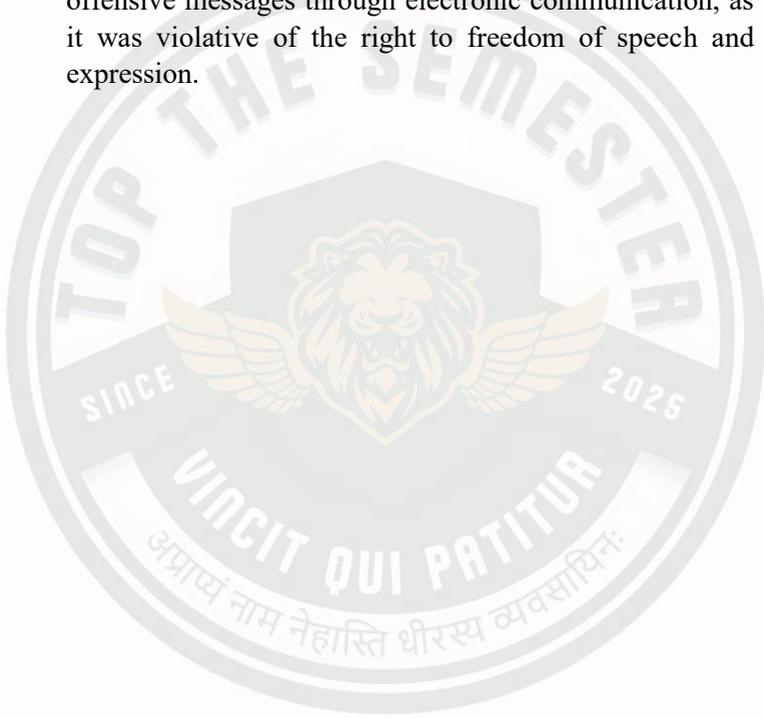
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that the State has a duty to protect free speech against threats.

- d) *Shreya Singhal v. Union of India* (2015): The Supreme Court struck down Section 66A of the Information Technology Act, 2000, which criminalized sending offensive messages through electronic communication, as it was violative of the right to freedom of speech and expression.



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## **FUNDAMENTAL RIGHT TO FREEDOM (ARTICLE 19): JUDICIAL INTERPRETATION OF ARTICLE 19; REASONABLE RESTRICTIONS ARTICLE 19 CLAUSE (2) TO CLAUSE (6)**

### **1. Judicial Interpretation of Article 19:**

The Supreme Court of India has played a significant role in interpreting and expanding the scope of the fundamental right to freedom guaranteed under Article 19. The Court has consistently upheld the importance of these freedoms in a democratic society, while also recognizing the need for reasonable restrictions to maintain public order and protect other competing interests.

### **2. Reasonable Restrictions - Article 19(2) to Article 19(6):**

The Constitution allows the State to impose reasonable restrictions on the exercise of the freedoms guaranteed under Article 19 to balance individual liberties with public interest and national security. The reasonable restrictions are provided in Article 19(2) to Article 19(6):

- a) Article 19(2) - Restrictions on freedom of speech and expression: The State can impose reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offense.
- b) Article 19(3) - Restrictions on the right to assemble peaceably and without arms: The State can impose

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reasonable restrictions in the interest of public order and the sovereignty and integrity of India.

- c) Article 19(4) - Restrictions on the right to form associations or unions: The State can impose reasonable restrictions in the interest of public order, morality, and the sovereignty and integrity of India.
- d) Article 19(5) - Restrictions on the right to move freely throughout the territory of India: The State can impose reasonable restrictions in the interest of the general public or for the protection of the interests of any Scheduled Tribe.
- e) Article 19(6) - Restrictions on the right to practice any profession, carry on any occupation, trade, or business: The State can impose reasonable restrictions in the interest of the general public or to regulate or control any profession, occupation, trade, or business.

## Landmark Supreme Court Judgments:

Several Supreme Court judgments have shaped the understanding and application of the right to freedom and the reasonable restrictions under Article 19:

- a) *Chintaman Rao v. State of Madhya Pradesh* (1950): The Supreme Court held that a restriction to be reasonable must have a direct and proximate nexus with the object sought to be achieved and should not be excessive or disproportionate.
- b) *Sakal Papers (P) Ltd. v. Union of India* (1962): The Court struck down a law regulating newspaper circulation,

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holding that the restrictions imposed were not reasonable and violated the freedom of the press.

- c) Kameshwar Prasad v. State of Bihar (1962): The Court struck down a rule prohibiting government employees from participating in demonstrations, as it constituted an unreasonable restriction on the freedom of assembly.
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## UNIT 2

### FUNDAMENTAL RIGHTS – II

#### **RIGHT TO LIFE & PERSONAL LIBERTY (ARTICLE 20 TO ARTICLE 22): SCOPE & CONTENT**

##### **1. Protection in Respect of Conviction for Offences - Article 20:**

Article 20 provides safeguards to individuals accused of crimes:

- a) Article 20(1): No person shall be convicted of any offense except for the violation of a law in force at the time of the commission of the act charged as an offense. This provision prohibits ex post facto laws (laws that retroactively criminalize conduct).
- b) Article 20(2): No person shall be prosecuted and punished for the same offense more than once. This provision embodies the protection against double jeopardy.
- c) Article 20(3): No person accused of any offense shall be compelled to be a witness against himself. This provision ensures protection against self-incrimination.

##### **2. Protection of Life and Personal Liberty - Article 21:**

Article 21 guarantees the fundamental right to life and personal liberty. It states, "No person shall be deprived of his life or personal liberty except according to the procedure established by law." The scope of this right has been significantly expanded

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through judicial interpretation. The Supreme Court has held that the term "life" under Article 21 does not merely refer to physical existence but also encompasses the right to live with human dignity and all aspects of life that make it meaningful, complete, and worth living.

Through its judgments, the Supreme Court has read various rights into Article 21, such as the right to privacy, the right to education, the right to a clean environment, the right to speedy trial, the right to livelihood, and the right to health care, among others.

### 3. Protection against Arrest and Detention - Article 22:

Article 22 provides protection against arrest and detention in certain cases:

- a) Article 22(1): Every person who is arrested must be informed of the grounds for arrest and has the right to consult and be defended by a legal practitioner of their choice.
- b) Article 22(2): Every arrested person must be produced before the nearest magistrate within 24 hours of arrest, excluding the time necessary for the journey, and no person shall be detained in custody beyond this period without the authority of a magistrate.
- c) Article 22(3) to Article 22(7): These provisions outline the exceptions to the rights provided under Article 22(1) and Article 22(2), allowing for preventive detention under

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specific circumstances and subject to certain procedural safeguards.

## Landmark Supreme Court Judgments:

Several Supreme Court judgments have shaped the understanding and application of the right to life and personal liberty under Articles 20 to 22:

- a) *Maneka Gandhi v. Union of India* (1978): The Supreme Court held that the procedure established by law under Article 21 must be fair, just, and reasonable, significantly expanding the scope of the right to life and personal liberty.
- b) *Olga Tellis v. Bombay Municipal Corporation* (1985): The Court recognized the right to livelihood as an integral part of the right to life under Article 21.
- c) *K.S. Puttaswamy v. Union of India* (2017): The Supreme Court declared the right to privacy as a fundamental right protected under Article 21.

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## RIGHT TO EDUCATION (ARTICLE 21A): RTE ACT, 2009

### 1. Article 21A - Right to Education:

Article 21A was inserted into the Constitution by the 86th Constitutional Amendment Act, 2002, and it states: "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." This provision reflects the State's commitment to ensuring that every child has access to education and the opportunity to develop their full potential.

### 2. RTE Act, 2009:

The RTE Act, 2009, operationalizes the right to education guaranteed under Article 21A. The Act aims to provide free and compulsory education to all children aged 6 to 14, regardless of their social or economic background. The key provisions of the RTE Act include:

- a) **Right to Free and Compulsory Education:** The Act mandates that every child between the ages of 6 and 14 has the right to free and compulsory education in a neighborhood school until the completion of elementary education.
- b) **No Child Left Behind:** The Act prohibits discrimination against any child based on caste, class, gender, religion, or disability, ensuring equal opportunities for all children to access education.

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- c) **Quality Education:** The Act prescribes minimum norms and standards for schools, including infrastructure, teacher qualifications, and pupil-teacher ratios, to ensure the provision of quality education.
- d) **No Detention Policy:** The Act stipulates that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education.
- e) **Prohibition of Capitation Fee and Screening:** The Act bans capitation fees and screening tests for admission into schools, ensuring that all children have an equal opportunity to access education.
- f) **Reservation for Economically Disadvantaged Groups:** The Act requires private unaided schools to reserve a minimum of 25% of their seats for children from economically weaker sections and disadvantaged groups in their locality.
- g) **Monitoring and Grievance Redressal:** The Act establishes School Management Committees, comprising parents, teachers, and local authorities, to monitor the functioning of schools and address grievances.

## **Landmark Supreme Court Judgments:**

The Supreme Court of India has played a crucial role in interpreting and expanding the scope of the right to education:

- a) **Mohini Jain v. State of Karnataka (1992):** The Supreme Court declared that the right to education is a fundamental right under Article 21, laying the foundation for the

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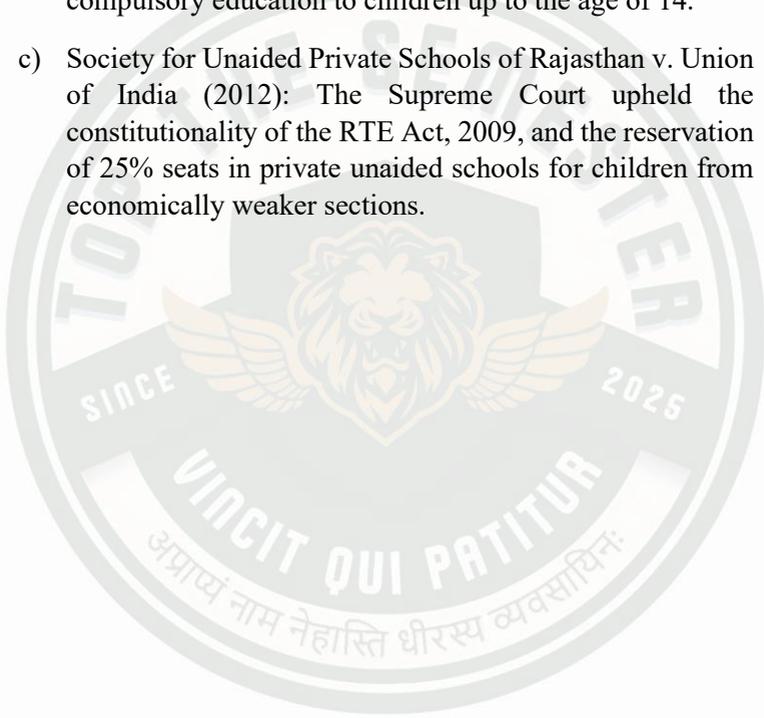
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subsequent constitutional amendment that introduced Article 21A.

- b) *Unni Krishnan v. State of Andhra Pradesh* (1993): The Court reaffirmed the right to education as a fundamental right and directed the government to provide free and compulsory education to children up to the age of 14.
- c) *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012): The Supreme Court upheld the constitutionality of the RTE Act, 2009, and the reservation of 25% seats in private unaided schools for children from economically weaker sections.



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## **RIGHT AGAINST EXPLOITATION (ARTICLES 23-24): FORCED LABOUR, CHILD EMPLOYMENT AND HUMAN TRAFFICKING**

### **RIGHT AGAINST EXPLOITATION (ARTICLE 23- ARTICLE 24): FORCED LABOUR, CHILD EMPLOYMENT & HUMAN TRAFFICKING**

#### **1. Prohibition of Traffic in Human Beings and Forced Labour - Article 23:**

Article 23 prohibits traffic in human beings, begar (forced labor without payment), and other forms of forced labor. The provision states:

- a) Article 23(1): "Traffic in human beings and begar and other similar forms of forced labor are prohibited, and any contravention of this provision shall be an offense punishable in accordance with law."
- b) Article 23(2): "Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

This article not only bans human trafficking and forced labor but also empowers the State to punish those who engage in such activities.

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## 2. Prohibition of Employment of Children in Factories, etc. - Article 24:

Article 24 specifically addresses child labor and prohibits the employment of children below the age of 14 years in any factory, mine, or other hazardous activities. The provision states, "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

### Legislative Measures:

To combat forced labor, child employment, and human trafficking, the Indian Parliament has enacted various laws, such as:

- a) The Bonded Labour System (Abolition) Act, 1976: This Act abolishes bonded labor and provides for the rehabilitation of freed bonded laborers.
- b) The Child Labour (Prohibition and Regulation) Act, 1986: This Act prohibits the employment of children below the age of 14 in certain occupations and regulates the working conditions of children in other occupations.
- c) The Immoral Traffic (Prevention) Act, 1956: This Act criminalizes trafficking in persons for the purpose of prostitution and prescribes penalties for those who engage in or facilitate such activities.
- d) The Prohibition of Child Marriage Act, 2006: This Act prohibits child marriages and prescribes penalties for those who promote, permit, or solemnize such marriages.

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- e) The Protection of Children from Sexual Offences Act, 2012: This Act protects children from offenses like sexual assault, sexual harassment, and pornography, and provides for the establishment of Special Courts for the trial of such offenses.
- f) The Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018 (pending): This Bill aims to prevent and combat trafficking in persons, protect and rehabilitate victims, and prosecute offenders.

## Landmark Supreme Court Judgments:

The Supreme Court of India has played a crucial role in interpreting and expanding the scope of the right against exploitation:

- a) People's Union for Democratic Rights v. Union of India (1982): The Court held that forced labor under Article 23 also includes labor provided at less than minimum wage, thus expanding the scope of the right against exploitation.
- b) M.C. Mehta v. State of Tamil Nadu (1996): The Court issued directions for the elimination of child labor, including the provision of alternative employment to the families of child laborers and the establishment of a Child Labour Rehabilitation-cum-Welfare Fund. This fund was created to provide financial assistance to the removed child laborers and ensure their access to education and healthcare.

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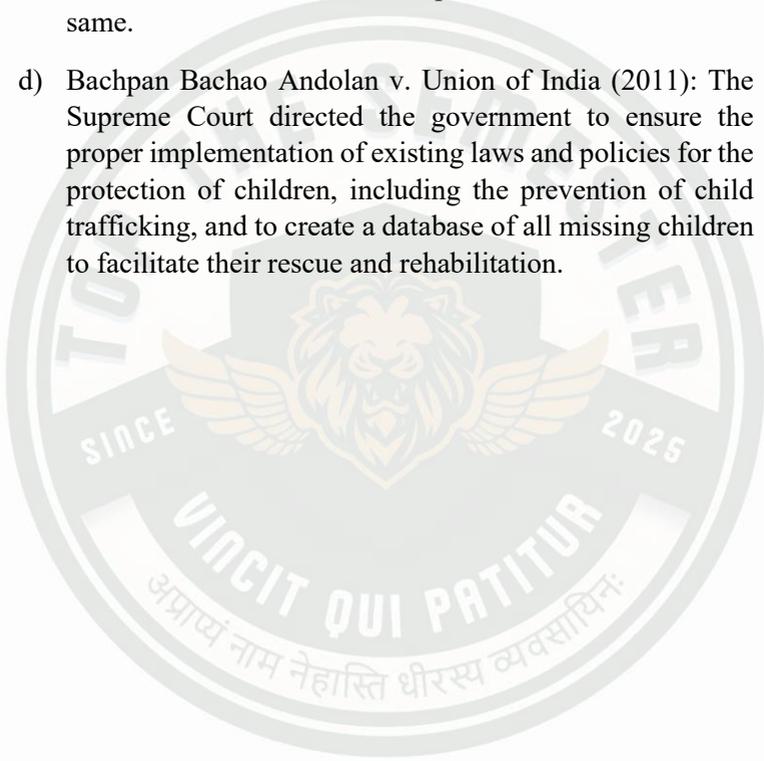
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- c) *Gaurav Jain v. Union of India (1997)*: The Supreme Court acknowledged the plight of children of sex workers and emphasized the need for their social integration and rehabilitation, directing the government to establish a committee to formulate a comprehensive scheme for the same.
- d) *Bachpan Bachao Andolan v. Union of India (2011)*: The Supreme Court directed the government to ensure the proper implementation of existing laws and policies for the protection of children, including the prevention of child trafficking, and to create a database of all missing children to facilitate their rescue and rehabilitation.



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## FREEDOM OF RELIGION (ARTICLES 26-28)

### 1. Freedom of Conscience and Free Profession, Practice, and Propagation of Religion - Article 25:

Article 25 guarantees the freedom of conscience and the right to freely profess, practice, and propagate religion. It states:

- a) Article 25(1): "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion."
- b) Article 25(2): This provision allows the State to regulate or restrict any economic, financial, political, or other secular activities associated with religious practice. It also permits the State to provide for social welfare and reform, including the opening of Hindu religious institutions to all sections of society.

### 2. Freedom to Manage Religious Affairs - Article 26:

Article 26 grants religious denominations the right to establish and maintain institutions for religious and charitable purposes, manage their affairs, and own, acquire, and administer property. It states:

- a) Article 26(a): Every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes.

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- b) Article 26(b): Every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion.
- c) Article 26(c): Every religious denomination or any section thereof shall have the right to own and acquire movable and immovable property.
- d) Article 26(d): Every religious denomination or any section thereof shall have the right to administer such property in accordance with law.

### 3. Freedom from Payment of Taxes for Promotion of any Particular Religion - Article 27:

Article 27 prohibits the State from compelling any person to pay taxes for the promotion or maintenance of any particular religion or religious denomination.

### 4. Freedom as to Attendance at Religious Instruction or Religious Worship in Educational Institutions - Article 28:

Article 28 deals with the relationship between religion and educational institutions. It states:

- a) Article 28(1): No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- b) Article 28(2): This provision allows for religious instruction in educational institutions administered by the

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State but established under any endowment or trust that requires such instruction.

- c) Article 28(3): No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction or attend any religious worship without their consent or, in the case of a minor, their guardian's consent.

## Landmark Supreme Court Judgments:

The Supreme Court of India has played a crucial role in interpreting and safeguarding the freedom of religion:

- a) S.R. Bommai v. Union of India (1994): The Court held that secularism is a basic feature of the Indian Constitution and emphasized that the State should ensure religious harmony and prevent any discrimination based on religion.
- b) The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954): The Court held that the term "religion" under Article 25 covers not only rituals and ceremonies but also acts and beliefs that are integral to the religion.
- c) St. Xavier's College Society v. State of Gujarat (1974): The Supreme Court held that Article 30(1) grants linguistic and religious minorities the right to establish and administer educational institutions of their choice. The Court also recognized the importance of striking a balance between the State's power to regulate educational standards and the rights of minorities to preserve their culture and traditions.

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## EDUCATIONAL RIGHTS OF MINORITIES (ARTICLES 29-30)

### 1. Prohibition of Religious Instruction in State-funded Institutions - Article 28:

As discussed in the previous topic, Article 28 prohibits religious instruction in educational institutions wholly maintained out of State funds. This provision is relevant in the context of minority educational rights as it ensures that the secular character of public education is maintained.

### 2. Protection of Interests of Minorities - Article 29:

Article 29 seeks to protect the interests of minority communities by granting them the following rights:

- a) Article 29(1): Any section of the citizens residing in India or any part thereof having a distinct language, script, or culture of its own shall have the right to conserve the same.
- b) Article 29(2): No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language, or any of them.

### 3. Right of Minorities to Establish and Administer Educational Institutions - Article 30:

Article 30 specifically addresses the educational rights of minorities and grants them the following rights:

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- a) Article 30(1): All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- b) Article 30(2): The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a religious or linguistic minority.

## Landmark Supreme Court Judgments:

The Supreme Court of India has played a crucial role in interpreting and safeguarding the educational rights of minorities:

- a) Kerala Education Bill Case (1958): The Court held that the term "minority" under Article 30 includes both religious and linguistic minorities and that their right to establish and administer educational institutions is not subject to restrictions imposed under Article 19.
- b) T.M.A. Pai Foundation v. State of Karnataka (2002): The Supreme Court held that the right to establish and administer educational institutions under Article 30(1) includes the right to admit students, set the medium of instruction, and appoint staff, subject to reasonable regulations by the State.
- c) P.A. Inamdar v. State of Maharashtra (2005): The Court held that the State cannot impose a reservation policy on unaided minority educational institutions, as it would violate their right to administer institutions under Article 30(1).

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## FUNDAMENTAL RIGHT TO FREEDOM (ARTICLE 19): JUDICIAL INTERPRETATION OF ARTICLE 19; REASONABLE RESTRICTIONS ARTICLE 19 CLAUSE (2) TO CLAUSE (6)

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The Supreme Court of India has played a significant role in interpreting and expanding the scope of the fundamental right to freedom guaranteed under Article 19. The Court has consistently upheld the importance of these freedoms in a democratic society, while also recognizing the need for reasonable restrictions to maintain public order and protect other competing interests.

### 2. Reasonable Restrictions - Article 19(2) to Article 19(6):

The Constitution allows the State to impose reasonable restrictions on the exercise of the freedoms guaranteed under Article 19 to balance individual liberties with public interest and national security. The reasonable restrictions are provided in Article 19(2) to Article 19(6):

- a) Article 19(2) - Restrictions on freedom of speech and expression: The State can impose reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offense.
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- d) Article 19(5) - Restrictions on the right to move freely throughout the territory of India: The State can impose reasonable restrictions in the interest of the general public or for the protection of the interests of any Scheduled Tribe.
- e) Article 19(6) - Restrictions on the right to practice any profession, carry on any occupation, trade, or business: The State can impose reasonable restrictions in the interest of the general public or to regulate or control any profession, occupation, trade, or business.

## Landmark Supreme Court Judgments:

Several Supreme Court judgments have shaped the understanding and application of the right to freedom and the reasonable restrictions under Article 19:

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## RIGHT TO LIFE & PERSONAL LIBERTY (ARTICLE 20 TO ARTICLE 22): SCOPE & CONTENT

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Article 20 provides safeguards to individuals accused of crimes:

- a) Article 20(1): No person shall be convicted of any offense except for the violation of a law in force at the time of the commission of the act charged as an offense. This provision prohibits ex post facto laws (laws that retroactively criminalize conduct).
- b) Article 20(2): No person shall be prosecuted and punished for the same offense more than once. This provision embodies the protection against double jeopardy.
- c) Article 20(3): No person accused of any offense shall be compelled to be a witness against himself. This provision ensures protection against self-incrimination.

### 3. Protection of Life and Personal Liberty - Article 21:

Article 21 guarantees the fundamental right to life and personal liberty. It states, "No person shall be deprived of his life or personal liberty except according to the procedure established by law." The scope of this right has been significantly expanded through judicial interpretation. The Supreme Court has held that the term "life" under Article 21 does not merely refer to physical existence but also encompasses the right to live with

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Through its judgments, the Supreme Court has read various rights into Article 21, such as the right to privacy, the right to education, the right to a clean environment, the right to speedy trial, the right to livelihood, and the right to health care, among others.

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Article 22 provides protection against arrest and detention in certain cases:

- a) Article 22(1): Every person who is arrested must be informed of the grounds for arrest and has the right to consult and be defended by a legal practitioner of their choice.
- b) Article 22(2): Every arrested person must be produced before the nearest magistrate within 24 hours of arrest, excluding the time necessary for the journey, and no person shall be detained in custody beyond this period without the authority of a magistrate.
- c) Article 22(3) to Article 22(7): These provisions outline the exceptions to the rights provided under Article 22(1) and Article 22(2), allowing for preventive detention under specific circumstances and subject to certain procedural safeguards.

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## Landmark Supreme Court Judgments:

Several Supreme Court judgments have shaped the understanding and application of the right to life and personal liberty under Articles 20 to 22:

- a) *Maneka Gandhi v. Union of India* (1978): The Supreme Court held that the procedure established by law under Article 21 must be fair, just, and reasonable, significantly expanding the scope of the right to life and personal liberty.
- b) *Olga Tellis v. Bombay Municipal Corporation* (1985): The Court recognized the right to livelihood as an integral part of the right to life under Article 21.
- c) *K.S. Puttaswamy v. Union of India* (2017): The Supreme Court declared the right to privacy as a fundamental right protected under Article 21.

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## RIGHT TO EDUCATION (ARTICLE 21A): RTE ACT, 2009

### 1. Article 21A - Right to Education:

Article 21A was inserted into the Constitution by the 86th Constitutional Amendment Act, 2002, and it states: "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." This provision reflects the State's commitment to ensuring that every child has access to education and the opportunity to develop their full potential.

### 2. RTE Act, 2009:

The RTE Act, 2009, operationalizes the right to education guaranteed under Article 21A. The Act aims to provide free and compulsory education to all children aged 6 to 14, regardless of their social or economic background. The key provisions of the RTE Act include:

- a) **Right to Free and Compulsory Education:** The Act mandates that every child between the ages of 6 and 14 has the right to free and compulsory education in a neighborhood school until the completion of elementary education.
- b) **No Child Left Behind:** The Act prohibits discrimination against any child based on caste, class, gender, religion, or disability, ensuring equal opportunities for all children to access education.

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- c) **Quality Education:** The Act prescribes minimum norms and standards for schools, including infrastructure, teacher qualifications, and pupil-teacher ratios, to ensure the provision of quality education.
- d) **No Detention Policy:** The Act stipulates that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education.
- e) **Prohibition of Capitation Fee and Screening:** The Act bans capitation fees and screening tests for admission into schools, ensuring that all children have an equal opportunity to access education.
- f) **Reservation for Economically Disadvantaged Groups:** The Act requires private unaided schools to reserve a minimum of 25% of their seats for children from economically weaker sections and disadvantaged groups in their locality.
- g) **Monitoring and Grievance Redressal:** The Act establishes School Management Committees, comprising parents, teachers, and local authorities, to monitor the functioning of schools and address grievances.

## **Landmark Supreme Court Judgments:**

The Supreme Court of India has played a crucial role in interpreting and expanding the scope of the right to education:

- a) **Mohini Jain v. State of Karnataka (1992):** The Supreme Court declared that the right to education is a fundamental right under Article 21, laying the foundation for the

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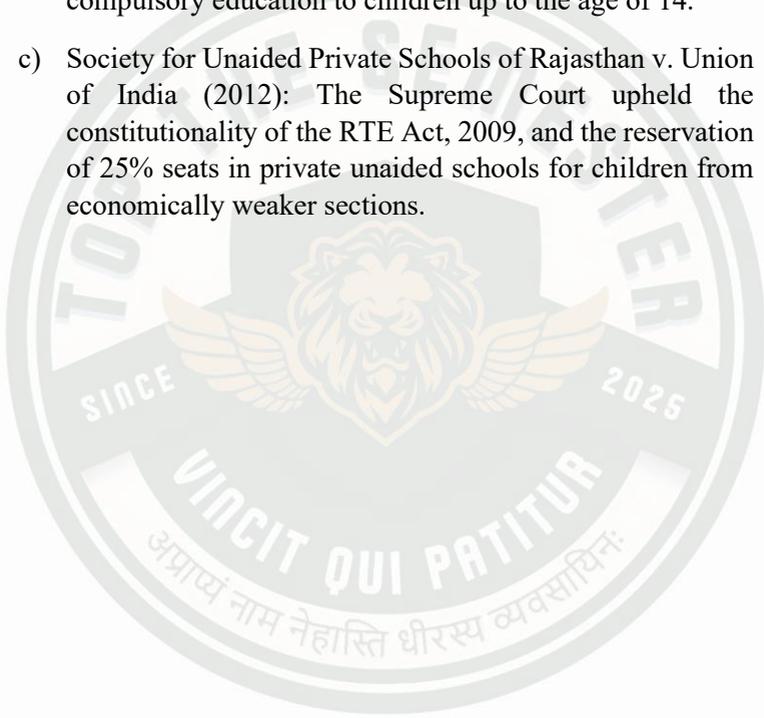
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subsequent constitutional amendment that introduced Article 21A.

- b) *Unni Krishnan v. State of Andhra Pradesh* (1993): The Court reaffirmed the right to education as a fundamental right and directed the government to provide free and compulsory education to children up to the age of 14.
- c) *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012): The Supreme Court upheld the constitutionality of the RTE Act, 2009, and the reservation of 25% seats in private unaided schools for children from economically weaker sections.



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## **RIGHT AGAINST EXPLOITATION (ARTICLES 23-24): FORCED LABOUR, CHILD EMPLOYMENT AND HUMAN TRAFFICKING**

### **RIGHT AGAINST EXPLOITATION (ARTICLE 23- ARTICLE 24): FORCED LABOUR, CHILD EMPLOYMENT & HUMAN TRAFFICKING**

#### **1. Prohibition of Traffic in Human Beings and Forced Labour - Article 23:**

Article 23 prohibits traffic in human beings, begar (forced labor without payment), and other forms of forced labor. The provision states:

- a) Article 23(1): "Traffic in human beings and begar and other similar forms of forced labor are prohibited, and any contravention of this provision shall be an offense punishable in accordance with law."
- b) Article 23(2): "Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

This article not only bans human trafficking and forced labor but also empowers the State to punish those who engage in such activities.

#### **2. Prohibition of Employment of Children in Factories, etc. - Article 24:**

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Article 24 specifically addresses child labor and prohibits the employment of children below the age of 14 years in any factory, mine, or other hazardous activities. The provision states, "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

## Legislative Measures:

To combat forced labor, child employment, and human trafficking, the Indian Parliament has enacted various laws, such as:

- a) The Bonded Labour System (Abolition) Act, 1976: This Act abolishes bonded labor and provides for the rehabilitation of freed bonded laborers.
- b) The Child Labour (Prohibition and Regulation) Act, 1986: This Act prohibits the employment of children below the age of 14 in certain occupations and regulates the working conditions of children in other occupations.
- c) The Immoral Traffic (Prevention) Act, 1956: This Act criminalizes trafficking in persons for the purpose of prostitution and prescribes penalties for those who engage in or facilitate such activities.
- d) The Prohibition of Child Marriage Act, 2006: This Act prohibits child marriages and prescribes penalties for those who promote, permit, or solemnize such marriages.
- e) The Protection of Children from Sexual Offences Act, 2012: This Act protects children from offenses like sexual

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assault, sexual harassment, and pornography, and provides for the establishment of Special Courts for the trial of such offenses.

- f) The Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018 (pending): This Bill aims to prevent and combat trafficking in persons, protect and rehabilitate victims, and prosecute offenders.

## Landmark Supreme Court Judgments:

The Supreme Court of India has played a crucial role in interpreting and expanding the scope of the right against exploitation:

- a) *People's Union for Democratic Rights v. Union of India* (1982): The Court held that forced labor under Article 23 also includes labor provided at less than minimum wage, thus expanding the scope of the right against exploitation.
- b) *M.C. Mehta v. State of Tamil Nadu* (1996): The Court issued directions for the elimination of child labor, including the provision of alternative employment to the families of child laborers and the establishment of a Child Labour Rehabilitation-cum-Welfare Fund. This fund was created to provide financial assistance to the removed child laborers and ensure their access to education and healthcare.
- c) *Gaurav Jain v. Union of India* (1997): The Supreme Court acknowledged the plight of children of sex workers and emphasized the need for their social integration and

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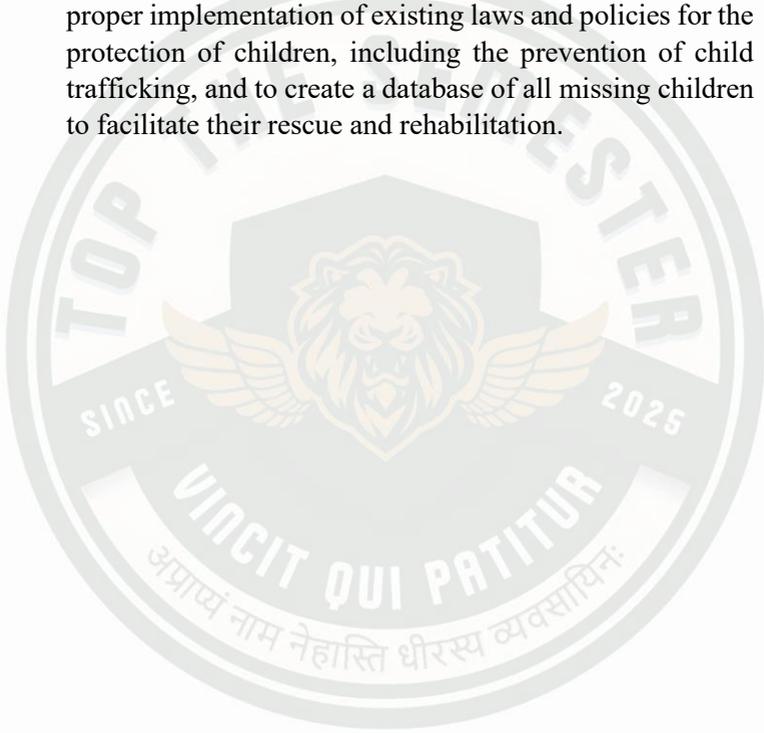
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rehabilitation, directing the government to establish a committee to formulate a comprehensive scheme for the same.

- d) *Bachpan Bachao Andolan v. Union of India* (2011): The Supreme Court directed the government to ensure the proper implementation of existing laws and policies for the protection of children, including the prevention of child trafficking, and to create a database of all missing children to facilitate their rescue and rehabilitation.



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## FREEDOM OF RELIGION (ARTICLES 26-28)

### 1. Freedom of Conscience and Free Profession, Practice, and Propagation of Religion - Article 25:

Article 25 guarantees the freedom of conscience and the right to freely profess, practice, and propagate religion. It states:

- a) Article 25(1): "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion."
- b) Article 25(2): This provision allows the State to regulate or restrict any economic, financial, political, or other secular activities associated with religious practice. It also permits the State to provide for social welfare and reform, including the opening of Hindu religious institutions to all sections of society.

### 2. Freedom to Manage Religious Affairs - Article 26:

Article 26 grants religious denominations the right to establish and maintain institutions for religious and charitable purposes, manage their affairs, and own, acquire, and administer property. It states:

- a) Article 26(a): Every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes.

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- b) Article 26(b): Every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion.
- c) Article 26(c): Every religious denomination or any section thereof shall have the right to own and acquire movable and immovable property.
- d) Article 26(d): Every religious denomination or any section thereof shall have the right to administer such property in accordance with law.

### 3. **Freedom from Payment of Taxes for Promotion of any Particular Religion - Article 27:**

Article 27 prohibits the State from compelling any person to pay taxes for the promotion or maintenance of any particular religion or religious denomination.

### 4. **Freedom as to Attendance at Religious Instruction or Religious Worship in Educational Institutions - Article 28:**

Article 28 deals with the relationship between religion and educational institutions. It states:

- a) Article 28(1): No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- b) Article 28(2): This provision allows for religious instruction in educational institutions administered by the

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State but established under any endowment or trust that requires such instruction.

- c) Article 28(3): No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction or attend any religious worship without their consent or, in the case of a minor, their guardian's consent.

## Landmark Supreme Court Judgments:

The Supreme Court of India has played a crucial role in interpreting and safeguarding the freedom of religion:

- a) S.R. Bommai v. Union of India (1994): The Court held that secularism is a basic feature of the Indian Constitution and emphasized that the State should ensure religious harmony and prevent any discrimination based on religion.
- b) The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954): The Court held that the term "religion" under Article 25 covers not only rituals and ceremonies but also acts and beliefs that are integral to the religion.
- c) St. Xavier's College Society v. State of Gujarat (1974): The Supreme Court held that Article 30(1) grants linguistic and religious minorities the right to establish and administer educational institutions of their choice. The Court also recognized the importance of striking a balance between the State's power to regulate educational standards and the rights of minorities to preserve their culture and traditions.

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## EDUCATIONAL RIGHTS OF MINORITIES (ARTICLES 29-30)

### 1. Prohibition of Religious Instruction in State-funded Institutions - Article 28:

As discussed in the previous topic, Article 28 prohibits religious instruction in educational institutions wholly maintained out of State funds. This provision is relevant in the context of minority educational rights as it ensures that the secular character of public education is maintained.

### 2. Protection of Interests of Minorities - Article 29:

Article 29 seeks to protect the interests of minority communities by granting them the following rights:

- a) Article 29(1): Any section of the citizens residing in India or any part thereof having a distinct language, script, or culture of its own shall have the right to conserve the same.
- b) Article 29(2): No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language, or any of them.

### 3. Right of Minorities to Establish and Administer Educational Institutions - Article 30:

Article 30 specifically addresses the educational rights of minorities and grants them the following rights:

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- a) Article 30(1): All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- b) Article 30(2): The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a religious or linguistic minority.

## Landmark Supreme Court Judgments:

The Supreme Court of India has played a crucial role in interpreting and safeguarding the educational rights of minorities:

- a) Kerala Education Bill Case (1958): The Court held that the term "minority" under Article 30 includes both religious and linguistic minorities and that their right to establish and administer educational institutions is not subject to restrictions imposed under Article 19.
- b) T.M.A. Pai Foundation v. State of Karnataka (2002): The Supreme Court held that the right to establish and administer educational institutions under Article 30(1) includes the right to admit students, set the medium of instruction, and appoint staff, subject to reasonable regulations by the State.
- c) P.A. Inamdar v. State of Maharashtra (2005): The Court held that the State cannot impose a reservation policy on unaided minority educational institutions, as it would

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violate their right to administer institutions under Article 30(1).



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## UNIT 3

### RIGHT TO CONSTITUTIONAL REMEDIES

#### **RIGHT TO CONSTITUTIONAL REMEDIES: ARTICLE 32 & ARTICLE 226**

##### **1. Right to Constitutional Remedies - Article 32:**

Article 32 is often referred to as the heart and soul of the Indian Constitution, as it provides an effective mechanism for the enforcement of fundamental rights. The article states:

- a) Article 32(1): The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part (Part III of the Constitution) is guaranteed.
- b) Article 32(2): The Supreme Court shall have the power to issue directions or orders, including writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, for the enforcement of any of the rights conferred by this Part.
- c) Article 32(3): Parliament may empower any other court to exercise the powers conferred on the Supreme Court by clause (2).
- d) Article 32(4): The right to move the Supreme Court for the enforcement of fundamental rights shall not be suspended except as provided for in the Constitution.

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## 2. Power of High Courts to Issue Certain Writs - Article 226:

Article 226 empowers the High Courts to issue directions, orders, or writs, including the same writs mentioned in Article 32(2), for the enforcement of fundamental rights and for any other purpose. The scope of Article 226 is wider than that of Article 32, as it covers not only the enforcement of fundamental rights but also any other legal rights.

### Landmark Supreme Court Judgments:

The Supreme Court of India has played a crucial role in interpreting and safeguarding the right to constitutional remedies:

- a) **Romesh Thappar v. State of Madras (1950):** The Supreme Court held that the right to approach the Court under Article 32 is itself a fundamental right, and any law that seeks to abridge or take away this right would be void.
- b) **A.K. Gopalan v. State of Madras (1950):** The Court asserted that it has the power to issue writs and directions to enforce fundamental rights under Article 32, emphasizing the importance of this right for the protection of individual liberties.
- c) **Bandhua Mukti Morcha v. Union of India (1984):** The Supreme Court expanded the scope of public interest litigation, allowing individuals or organizations to approach the Court on behalf of others whose fundamental

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rights have been violated, even if they themselves have not been directly affected.

- d) *Maneka Gandhi v. Union of India* (1978): The Court held that the right to approach the Court under Article 32 is an integral part of the right to life and personal liberty under Article 21, and any law that restricts this right must be reasonable, fair, and just.

## WRIT JURISDICTION, ITS GENESIS

### 1. Genesis of Writ Jurisdiction:

The concept of writs originated in the English common law system, where they were used as royal orders issued by the King's courts to lower courts, government officials, or individuals, commanding them to perform or refrain from performing certain acts. The five principal writs in English law are habeas corpus, mandamus, prohibition, certiorari, and quo warranto.

### 2. Incorporation of Writ Jurisdiction in the Indian Constitution:

The framers of the Indian Constitution recognized the importance of writs as an effective mechanism for enforcing fundamental rights and incorporated the concept of writ jurisdiction in Articles 32 and 226. These provisions empower the Supreme Court and High Courts, respectively, to issue writs for the enforcement of fundamental rights and other legal rights.

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## 3. Types of Writs under the Indian Constitution:

The Indian Constitution empowers the higher judiciary to issue the following writs:

- a) Habeas Corpus: A writ issued to produce a person who has been detained unlawfully before the court and to release them if the detention is found to be illegal.
- b) Mandamus: A writ issued to compel a public authority or government official to perform a duty that they are legally bound to perform.
- c) Prohibition: A writ issued to prevent an inferior court or tribunal from exceeding its jurisdiction or acting contrary to the principles of natural justice.
- d) Certiorari: A writ issued to quash the order of an inferior court or tribunal that has acted without jurisdiction, in excess of its jurisdiction, or in violation of the principles of natural justice.
- e) Quo Warranto: A writ issued to inquire into the legality of a person's claim to hold a public office and to remove them from the office if their claim is found to be invalid.

## 4. Landmark Supreme Court Judgments:

The Supreme Court of India has played a crucial role in interpreting and expanding the scope of writ jurisdiction:

- a) A.K. Gopalan v. State of Madras (1950): The Supreme Court asserted that it has the power to issue writs and directions to enforce fundamental rights under Article 32,

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emphasizing the importance of this right for the protection of individual liberties.

- b) *Bandhua Mukti Morcha v. Union of India* (1984): The Supreme Court expanded the scope of public interest litigation, allowing individuals or organizations to approach the Court on behalf of others whose fundamental rights have been violated, even if they themselves have not been directly affected.

## WRITS: HABEAS CORPUS, MANDAMUS, CERTIORARI, PROHIBITION AND QUO-WARRANTO

### 1. Habeas Corpus:

Habeas corpus is a Latin term that translates to "produce the body." It is a writ that requires a person who has been detained unlawfully to be brought before the court so that the legality of the detention can be examined. If the court finds the detention to be illegal, it can order the release of the detained person. Habeas corpus serves as a safeguard against arbitrary detention and ensures the protection of personal liberty.

**Landmark case:** *Kanu Sanyal v. District Magistrate* (1973) - The Supreme Court held that the primary purpose of the writ of habeas corpus is to ensure the swift judicial review of the legality of detention.

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## 2. Mandamus:

Mandamus is a Latin term that means "we command." It is a writ issued by a higher court to a lower court, tribunal, public authority, or government official, directing them to perform a specific duty they are legally obligated to perform. Mandamus ensures that public authorities and officials carry out their duties according to the law and can be used to enforce both statutory and non-statutory rights.

**Landmark case:** State of Bihar v. Rani Sonabati Kumari (1961) - The Supreme Court held that the writ of mandamus can be issued to compel the performance of a public duty when there is a clear legal right and a corresponding legal duty.

## 3. Certiorari:

Certiorari is a Latin term that means "to be informed." It is a writ issued by a higher court to quash the decision or order of a lower court, tribunal, or authority that has acted without jurisdiction, in excess of its jurisdiction, or in violation of the principles of natural justice. Certiorari serves as a means to ensure the proper functioning of lower courts and authorities and to prevent the abuse of power.

**Landmark case:** Surya Dev Rai v. Ram Chander Rai (2003) - The Supreme Court clarified that the writ of certiorari can be used to correct errors of jurisdiction or violations of the principles of natural justice, but not to correct mere errors of fact or law.

## 4. Prohibition:

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Prohibition is a writ issued by a higher court to an inferior court, tribunal, or authority, directing them not to proceed with a case because they lack jurisdiction or are acting in violation of the principles of natural justice. Prohibition is preventive in nature and is used to ensure that inferior courts and authorities do not overstep their jurisdiction.

**Landmark case:** Hari Vishnu Kamath v. Ahmad Ishaque (1955) - The Supreme Court held that the writ of prohibition can be issued when an inferior court or tribunal acts without jurisdiction or in excess of its jurisdiction.

## 5. Quo Warranto:

Quo warranto is a Latin term that means "by what authority." It is a writ issued by a court to inquire into the legality of a person's claim to hold a public office and to remove them from the office if their claim is found to be invalid. Quo warranto ensures that public offices are held by those who are legally entitled to them and prevents the usurpation of public positions.

**Landmark case:** University of Mysore v. Govinda Rao (1964) - The Supreme Court held that the writ of quo warranto can be issued when a person occupies a public office without legal authority and the office in question is of a public nature.

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## PUBLIC INTEREST LITIGATION

### 1. Evolution of Public Interest Litigation:

PIL emerged in the late 1970s and early 1980s as a result of the efforts of social activists, lawyers, and judges to ensure access to justice for the underprivileged and marginalized. The Indian judiciary, in particular the Supreme Court, played a significant role in liberalizing the rules of standing and procedure to accommodate PIL cases. This has facilitated the growth of PIL in India and has led to significant contributions in areas such as environmental protection, human rights, and social welfare.

### 2. Features of Public Interest Litigation:

- a) Relaxed Locus Standi: PIL allows individuals or organizations to approach the court on behalf of others, even if they themselves have not been directly affected. This relaxation of the traditional locus standi rules helps ensure that justice is accessible to all, irrespective of their social or economic status.
- b) Judicial Activism: PIL has been an important catalyst for judicial activism in India, as it encourages the courts to take a proactive role in addressing social issues and enforcing fundamental rights.
- c) Flexible Procedures: PIL cases often follow simplified and flexible procedures, which allow for a more informal and accessible approach to litigation, making it easier for the common man to seek justice.

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### 3. Landmark Supreme Court Judgments:

The Supreme Court of India has played a crucial role in shaping the development of PIL in India:

- a) *Hussainara Khatoon v. State of Bihar* (1979): This case marked the beginning of the PIL era in India, as the Supreme Court intervened to address the issue of undertrial prisoners languishing in jails for extended periods without trial.
- b) *Bandhua Mukti Morcha v. Union of India* (1984): The Supreme Court expanded the scope of PIL, allowing individuals or organizations to approach the Court on behalf of others whose fundamental rights have been violated, even if they themselves have not been directly affected.
- c) *M.C. Mehta v. Union of India* (1986): The Court used PIL to address environmental issues, ordering the closure of industries polluting the Taj Mahal and setting a precedent for future environmental PIL cases.

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## UNIT 4

### DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES

#### **1. Nature of Directive Principles of State Policy:**

- a) Non-justiciable: DPSPs are non-justiciable in nature, which means that they cannot be enforced by courts. However, this does not undermine their importance, as they serve as a crucial guiding force for policy-making in India.
- b) Fundamental in the governance of the country: Although not enforceable by the judiciary, DPSPs are considered fundamental in the governance of the country, and the state is expected to apply these principles while framing laws and policies.
- c) Aims and objectives: DPSPs aim to establish a welfare state by promoting social, economic, and political justice, as well as striving for a more equitable distribution of resources and opportunities.

#### **2. Justifiability of Directive Principles of State Policy:**

- a) Balancing fundamental rights and DPSPs: The Supreme Court of India has played a critical role in reconciling the non-justiciable nature of DPSPs with the justiciable fundamental rights enshrined in Part III of the Constitution. The Court has adopted a harmonious construction approach, interpreting fundamental rights and DPSPs in a manner that gives effect to both without undermining the importance of either.

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- b) **Judicial interpretation and recognition:** The Supreme Court has recognized the importance of DPSPs in several landmark judgments, emphasizing that they are essential for achieving the constitutional goal of social, economic, and political justice. In some cases, the Court has even used DPSPs to interpret fundamental rights and provide a more expansive understanding of these rights.

**Landmark case:** Minerva Mills Ltd. v. Union of India (1980)  
- The Supreme Court held that fundamental rights and DPSPs are complementary and together form the core of the Indian Constitution's commitment to social revolution.

**Influence on legislation and policies:** Despite their non-justiciable nature, DPSPs have significantly influenced the development of laws and policies in India. Various social welfare schemes and legislations, such as the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and the Right to Education Act (RTE), have been enacted to give effect to the principles outlined in Part IV of the Constitution.

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## DETAILED ANALYSIS OF DIRECTIVE PRINCIPLES (ARTICLES 37-51)

### 1. Article 37 - Application of the principles contained in this Part:

Article 37 declares that the DPSPs are not enforceable by any court, but they are fundamental in the governance of the country. It directs the state to apply these principles while framing laws and policies.

### 2. Article 38 - State to secure a social order for the promotion of the welfare of the people:

Article 38 mandates the state to strive towards establishing a social order that promotes the welfare of the people, ensuring social, economic, and political justice, and minimizing inequalities in income, status, and opportunities.

### 3. Article 39 - Certain principles of policy to be followed by the State:

Article 39 lists specific principles that the state must follow:

- a) Ensure that citizens, men and women equally, have the right to an adequate means of livelihood.
- b) Prevent the concentration of wealth and resources, and ensure an equitable distribution.
- c) Ensure equal pay for equal work for both men and women.

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- d) Protect the health and strength of workers, men and women, and ensure that children are not forced into work unsuited to their age or strength.
- e) Provide opportunities and facilities for the healthy development of children and protect them against exploitation.

#### 4. Article 39A - Equal justice and free legal aid:

Article 39A mandates the state to promote justice and provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen due to economic or other disabilities.

#### 5. Article 40 - Organization of village panchayats:

Article 40 directs the state to take steps to organize village panchayats (local self-governments) and provide them with the necessary powers and authority to function as self-governing units.

#### 6. Article 41 - Right to work, education, and public assistance:

Article 41 mandates the state to provide the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement, within the limits of its economic capacity and development.

#### 7. Article 42 - Provision for just and humane conditions of work and maternity relief:

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Article 42 directs the state to make provisions for securing just and humane conditions of work and maternity relief.

## **8. Article 43 - Living wage and decent working conditions:**

Article 43 mandates the state to secure a living wage and decent working conditions for workers, ensuring their participation in the management of industries.

## **9. Article 43A - Participation of workers in the management of industries:**

Article 43A directs the state to take steps to enable workers to participate in the management of industries.

## **10. Article 44 - Uniform civil code:**

Article 44 directs the state to work towards securing a uniform civil code for all citizens, ensuring a common set of laws governing personal matters, irrespective of religion.

## **11. Article 45 - Provision for early childhood care and education:**

Article 45 mandates the state to provide early childhood care and education for all children until they complete the age of six years.

## **12. Article 46 - Promotion of educational and economic interests of weaker sections:**

Article 46 directs the state to promote the educational and economic interests of the weaker sections of society,

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particularly Scheduled Castes and Scheduled Tribes, and protect them from social injustice and exploitation.

### **13. Article 47 - Duty of the state to raise the level of nutrition and the standard of living:**

Article 47 mandates the state to improve public health, raise the level of nutrition, and the standard of living of its people, as well as to endeavor to prohibit the consumption of intoxicating drinks and drugs that are injurious to health, except for medicinal purposes.

### **14. Article 48 - Organization of agriculture and animal husbandry:**

Article 48 directs the state to organize agriculture and animal husbandry on modern and scientific lines, and to take steps to protect and improve the breeds of cattle, prohibiting the slaughter of cows and calves and other milch and draught cattle.

### **15. Article 48A - Protection and improvement of the environment and safeguarding of forests and wildlife:**

Article 48A mandates the state to protect and improve the environment and safeguard forests and wildlife.

### **16. Article 49 - Protection of monuments and places and objects of national importance:**

Article 49 directs the state to protect monuments, places, and objects of artistic or historic interest that are of national importance.

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## 17. Article 50 - Separation of judiciary from the executive:

Article 50 mandates the state to take steps to separate the judiciary from the executive in the public services of the State.

## 18. Article 51 - Promotion of international peace and security:

Article 51 directs the state to promote international peace and security, maintain just and honorable relations between nations, foster respect for international law and treaty obligations, and encourage the settlement of international disputes by arbitration.

## FUNDAMENTAL DUTIES

### 1. Article 51A - Fundamental Duties:

Article 51A lists the Fundamental Duties of every citizen of India:

- a) To abide by the Constitution and respect its ideals and institutions, the National Flag, and the National Anthem.
- b) To cherish and follow the noble ideals that inspired the national struggle for freedom.
- c) To uphold and protect the sovereignty, unity, and integrity of India.
- d) To defend the country and render national service when called upon to do so.

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- e) To promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic, and regional or sectional diversities, and to renounce practices derogatory to the dignity of women.
- f) To value and preserve the rich heritage of our composite culture.
- g) To protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.
- h) To develop the scientific temper, humanism, and the spirit of inquiry and reform.
- i) To safeguard public property and to abjure violence.
- j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.
- k) To provide opportunities for education to his child or ward between the age of six and fourteen years (added by the 86th Amendment Act, 2002).

## 2. Nature of Fundamental Duties:

- a) Non-justiciable: Fundamental Duties are non-justiciable, which means they cannot be enforced by courts. However, this does not undermine their importance, as they serve as a crucial reminder of the citizens' moral obligations towards the nation.

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b) Moral obligations: Fundamental Duties are considered moral obligations that every citizen should follow to promote national unity, harmony, and the spirit of common brotherhood.

c) Not exhaustive: The list of Fundamental Duties in the Constitution is not exhaustive. The state or any other authority can prescribe other duties for citizens based on the prevailing circumstances and needs of the nation.

### 3. Significance of Fundamental Duties:

a) Awareness of constitutional values: Fundamental Duties serve as a constant reminder for citizens to be aware of and adhere to the constitutional values and principles that form the foundation of the nation.

b) Fostering national unity and harmony: By emphasizing the importance of national unity, integrity, and the spirit of common brotherhood, Fundamental Duties play a crucial role in fostering harmony among the diverse population of India.

c) Encouraging responsible citizenship: Fundamental Duties promote responsible citizenship by reminding citizens of their moral obligations towards the nation, its institutions, and fellow citizens.

d) Balancing rights with duties: Fundamental Duties serve as a counterbalance to the Fundamental Rights, emphasizing that citizens have not only rights but also duties towards the nation.

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## 4. Judicial Interpretation of Fundamental Duties:

The Supreme Court of India has reiterated the importance of Fundamental Duties in various judgments. For instance, in the M.C. Mehta Vs Union of India (1988) case, the Supreme Court held that Article 51A(g), which mandates citizens to protect and improve the natural environment, imposes a duty on every citizen to ensure that natural resources, including forests, lakes, rivers, and wildlife, are preserved.

In another landmark case, Mohan Kumar Singhania and Others Vs Union of India and Others (1992), the Supreme Court observed that Fundamental Duties act as a constant reminder for citizens to observe the cultural heritage of the country, promote harmony and brotherhood, and strive towards excellence in all spheres of life, ensuring that the nation rises to greater heights.

## 5. Role of Fundamental Duties in Legislation and Policy Making:

Fundamental Duties have also guided the formation of various laws and policies in India. For instance, the Environment Protection Act, 1986, was enacted to fulfil the obligation under Article 51A(g). Similarly, the National Education Policy recognizes the importance of fostering scientific temper among students, reflecting the mandate of Article 51A(h).

Moreover, the implementation of several social, economic, and political measures to uphold the dignity of women, ensure public safety, and promote social harmony reflect the principles articulated in the Fundamental Duties.

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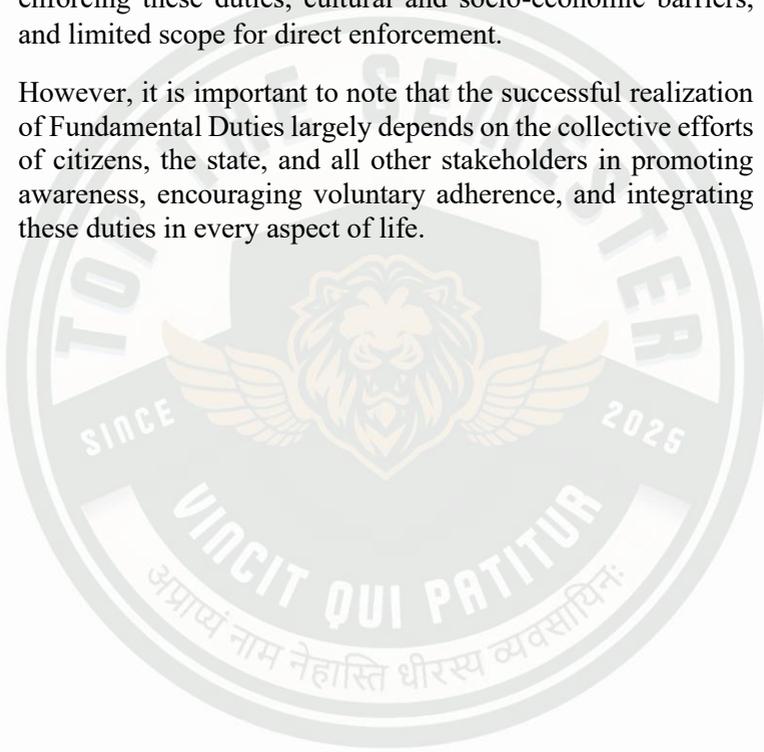
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## 6. Challenges in Implementing Fundamental Duties:

Despite their importance, the implementation of Fundamental Duties faces several challenges. These include lack of awareness among citizens, absence of explicit laws for enforcing these duties, cultural and socio-economic barriers, and limited scope for direct enforcement.

However, it is important to note that the successful realization of Fundamental Duties largely depends on the collective efforts of citizens, the state, and all other stakeholders in promoting awareness, encouraging voluntary adherence, and integrating these duties in every aspect of life.



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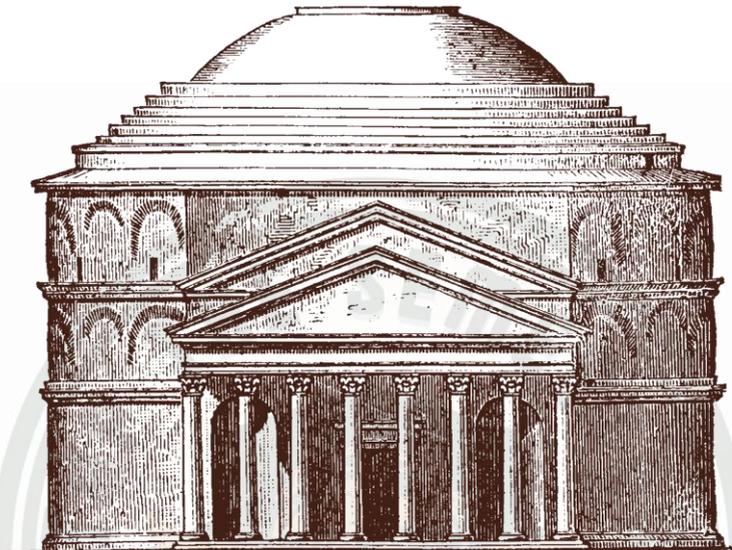
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## REQUIRED CASE READINGS

### CASE BRIEFS AND ANALYSIS

1. **Rajasthan State Electricity Board v. Mohan Lal and Ors.**, AIR 1967 SC 1857
2. **Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.**, AIR 1975 SC 1331
3. **Sabhajit Tewary v. U.O.I and Ors.**, AIR 1975 SC 1329
4. **Ramana Dayaram Shetty v. The International Airport Authyof Ind & Or.**, AIR 1979 SC 1628
5. **Ajay Hasia and Ors. v. Khalid Mujib Sehrawardi and Ors.**, AIR 1981 SC 487
6. **State of West Bengal v. Anwar Ali Sarkar and Anr.**, AIR 1952 SC 75
7. **MR Balaji v. State of Mysore**, AIR 1963 SC 649
8. **Devadasan v. Union of India**, AIR 1964 SC 179
9. **E.P. Royappav. State of Tamil Nadu**, AIR 1974 SC 555
10. **Air India v. Nergesh Meerza (1981) 4 SCC 335**
11. **D.S. Nakara v. Union of India**, AIR 1983 SC 130
12. **Indra Sawhney v. Union of India**, 1992 Supp.2 SCR 454

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13. **Vishaakhav.State of Rajasthan, AIR 1997 SC 3011**
14. **Ashok Kumar Thakur v. Union of India, 2008 6 SCC 1.**
15. **Bennet Coleman Co v. UOI, AIR 1973 SC 106**
16. **R Rajgopalv. St of TN AIR, 1995 SC 264**
17. **Justice K.S. Puttaswamyv. Union of India, AIR 2017 SC 4161**
18. **Indian Young Lawyers Association v. State of Kerala, 2018 SCC Online 1690**
19. **Joseph Shine v. Union of India, AIR 2018 SC 4898**
20. **Pramati Educational & Cultural Trust v. Union of India,(2014) 8 SCC 1**

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1.

**RAJASTHAN STATE ELECTRICITY BOARD V.  
MOHAN LAL AND ORS.,**

**AIR 1967 SC 1857**

**Facts in Brief**

**Facts in Brief**

The case revolves around the Rajasthan State Electricity Board (hereinafter referred to as "the Board"), a body corporate constituted on 1st July, 1957, under the Electricity (Supply) Act, 1948 (No. 54 of 1948). Before the Board's constitution, the supply of electricity in the state of Rajasthan was controlled directly by a department of the State Government named the Electrical and Mechanical Department. Respondent No. 1, Mohan Lal, as well as respondents 4 to 14, were all permanent employees of the State Government holding posts of Foremen in the Electrical and Mechanical Department.

Upon the Board's constitution, the services of most of the employees, including all these respondents, were provisionally placed at the Board's disposal by a government notification issued on 12th February 1958, under section 78A of Act 54 of 1948. The notification directed the Board to frame its own new

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grades and service conditions under its regulations. The employees, whose services were transferred to the Board, were to exercise the option either to accept these new grades and service conditions or to continue in their existing grades and service conditions, except in regard to conduct and disciplinary rules, or to obtain relief from Government service by claiming pension or gratuity as might be admissible on abolition of posts under the Rajasthan Service Rules. However, the Board did not frame any new grades and service conditions up to the time that the present litigation arose.

## Issues

The primary issue in this case was whether the employees transferred to the Board by the State Government and treated as permanent employees of the Board were indeed permanent employees, despite there being no order making them permanent.

Another significant issue was the interpretation of the term "other authority" in the context of Article 12 of the Indian Constitution. The question was whether the Board, constituted under the Electricity (Supply) Act, could be considered a "State" under the Constitution.

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## Arguments

The argument put forth was that since the Board did not frame any new grades or service conditions, it was clear that the respondents continued to be governed by the grades and service conditions already applicable to them when they were in the Electrical and Mechanical Department.

The Board was argued to be an "authority" invested by the Statute with sovereign powers of the State, and hence, it was an "other authority" within the meaning of Article 12 of the Constitution. The Board was responsible for the supply of electricity and was invested by the State with extensive powers of control over electricity undertakings. The power to make rules and regulations and to administer the Act was, in substance, the sovereign power of the State delegated to the Board.

## Held

The Supreme Court held that authorities constitutional or statutory invested with power by law but not sharing the sovereign power do not fall within the expression "State" as defined in Article 12. Those authorities which are invested with sovereign power i.e., power to make rules or regulations and to administer or enforce them to the detriment of citizens and others fall within the definition of

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"State" in Article 12, and constitutional or statutory bodies which do not share that sovereign power of the State are not, in the judgment, "State" within the meaning of Article 12 of the Constitution. The appeal was dismissed.

## **Legal principles with relevant sections**

The case of Rajasthan State Electricity Board vs. Mohan Lal & Ors is a landmark judgment that clarified the definition of "State" under Article 12 of the Indian Constitution. The case revolved around the question of whether the Rajasthan State Electricity Board (RSEB) could be considered a "State" under Article 12. The Supreme Court held that the RSEB was indeed a "State" as it was an authority created by a statute and was carrying out governmental or quasi-governmental functions. This interpretation expanded the scope of Article 12 to include bodies like the RSEB under the definition of "State".

The court also discussed the principle of ejusdem generis, which is a rule of interpretation that when general words follow specific words in a statutory provision, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. However, the court held that this principle could not

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be applied to the interpretation of "other authorities" in Article 12, as there was no common genus or category running through the bodies specifically named in the Article (i.e., the Executive Government of the Union and the States, the Legislatures of the Union and the States, and local authorities).

## **Obiter dictum**

In the judgment, the court also made an obiter dictum, which is a remark or observation made by a judge that, although included in the body of the court's opinion, does not form a necessary part of the court's decision. In this case, Justice Shah made an observation that not every constitutional or statutory authority on whom powers are conferred by law is an "other authority" within the meaning of Article 12. He opined that only those authorities which are invested with sovereign power, i.e., power to make rules or regulations and to administer or enforce them to the detriment of citizens and others, fall within the definition of "State" in Article 12. However, constitutional or statutory bodies invested with power but not sharing the sovereign power of the State are not "State" within the meaning of that Article.

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## Important para from judgement

One of the most important paragraphs from the judgment is as follows:

"The expression 'other authority' is wide enough to include within it every authority created by a statute, on which powers are conferred to carry out governmental or quasi-governmental functions and functioning within the territory of India or under the control of the Government of India. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities, because, under Arts. 19(1) (g) and 298 even the State is empowered to carry on any trade or business. In interpreting the expression 'other authority' the principle of ejusdem generis should not be applied, because, for the application of that rule, there must be a distinct genus or category running through the bodies previously named. The bodies specially named in Art. 12 are the Executive Government of the Union and the States, the Legislatures of the Union and the States and local authorities. There is no common genus running through these named bodies, nor could the bodies be placed in one single category on any rational basis."

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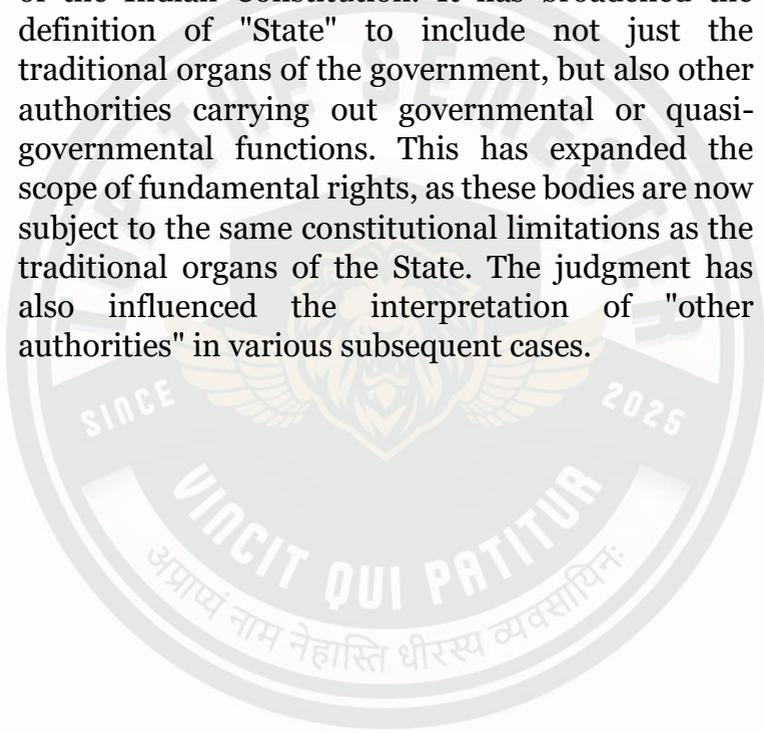
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## Subsequent Impact of the judgement

The judgment in the case of Rajasthan State Electricity Board vs. Mohan Lal & Ors has had a significant impact on the interpretation of Article 12 of the Indian Constitution. It has broadened the definition of "State" to include not just the traditional organs of the government, but also other authorities carrying out governmental or quasi-governmental functions. This has expanded the scope of fundamental rights, as these bodies are now subject to the same constitutional limitations as the traditional organs of the State. The judgment has also influenced the interpretation of "other authorities" in various subsequent cases.



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2.

SUKHDEV SINGH & ORS. V. BHAGATRAM  
SARDAR SINGH RAGHUVANSHI & ANR.

AIR 1975 SC 1331

## **Facts in Brief:**

The case of Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr. was heard and decided by the Supreme Court of India on 21st February 1975. The case involved the petitioner, Sukhdev Singh and others, against the respondent, Bhagatram Sardar Singh Raghuvanshi and another. The case was heard by a bench consisting of A.N. Ray (CJ), Mathew, Kuttily Kurien, Chandrachud, Y.V., Alagiriswami, A., and Gupta, A.C.

The case revolves around the rights of employees in statutory bodies, the nature of subordinate legislation, and the application of Articles 14 and 16 of the Indian Constitution. The case also discusses the manner in which general meetings are convened, the procedure to be followed thereat, and the duties and conduct, salaries, allowances, and conditions of service of officers and other employees and of advisers.

## **Issues:**

The main issues in the case were related to the rights of employees in statutory bodies and the application of Articles 14 and 16 of the Indian Constitution. The case also dealt with the nature of subordinate legislation and

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its force and effect. The case also touched upon issues related to the conditions of service of officers and other employees and of advisers.

## **Arguments:**

The arguments in the case revolved around the rights of employees in statutory bodies and the nature of subordinate legislation. It was argued that the regulations made under the power conferred by the statute are subordinate legislation and have the force and effect. It was also argued that the conditions of service of officers and other employees and of advisers are subject to the shares of the Corporation and can be held and transferred.

## **Held:**

The court held that the regulations made under the power conferred by the statute are subordinate legislation and have the force and effect. The court also held that the conditions of service of officers and other employees and of advisers are subject to the shares of the Corporation and can be held and transferred. The court also noted that the British Broadcasting Corporation was held not to be within the province of government.

The court also noted that Articles 14 and 16 of the Indian Constitution are often resorted to by various Government servants to take up matters till the Court of the last resort even in petty matters like seniority, scale of pay, and even

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minor punishments. The court expressed its unhappiness about this practice.

## **Legal principles with relevant sections**

The case of Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr., AIR 1975 SC 1331, was instrumental in establishing several legal principles. The court held that rules made under the power conferred by a statute are considered subordinate legislation and have the force and effect of law. This principle is particularly relevant to statutory bodies, which are impersonal in nature and operate under the power of the statute that created them.

The court also noted that the process of legislation by departmental regulations is intended to save time and deal with local issues. This principle suggests that statutory bodies have the authority to create regulations that have the force of law, provided they are made under the power conferred by the statute.

## **Obiter dictum**

An obiter dictum in the judgment can be found on, where the court observed that not only Article 311, but also Articles 14 and 16 of the Indian Constitution are often invoked by government servants to take up matters to the Court of the last resort, even in petty matters like seniority, scale of pay, and minor punishments. This observation, while not directly related to the issues at

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hand in the case, provides insight into the court's view of the frequent use of constitutional provisions in litigation.

## **Important para from judgement**

One of the important paragraphs from the judgment can be found, where the court discusses the subject to which the shares of the Corporation may be held and transferred, the manner in which general meetings shall be convened, the procedure to be followed thereat, the duties and conduct, salaries, allowances, and conditions of service of officers and other employees, and of advisers.

## **Subsequent Impact of the judgement**

The judgment in Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr., AIR 1975 SC 1331, had a significant impact on the understanding and interpretation of the powers of statutory bodies and the nature of rules and regulations made under the power conferred by a statute. The case has been cited in numerous subsequent cases, indicating its influence on Indian jurisprudence. The judgment's emphasis on the impersonal nature of statutory bodies and the force and effect of rules made under the power conferred by a statute has shaped the way these issues are approached in later cases.

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3.

## SABHAJIT TEWARY V. U.O.I AND ORS

AIR 1975 SC 1329

### **Facts in Brief**

The petitioner, Sabhajit Tewary, was a junior stenographer in the Council of Scientific and Industrial Research (CSIR). He contended that certain letters relating to his remuneration were discriminatory and violative of Article 14 of the Indian Constitution. The letters in question related to the recommendations of the Finance Sub-Committee of the CSIR with regard to the remuneration of stenographers. The petitioner's allegations were that he should be granted the same number of advance increments as approved and granted to new recruits.

### **Issues**

The main issue in this case was whether the Council of Scientific and Industrial Research (CSIR) is an "authority" within the meaning of Article 12 of the Indian Constitution. This was crucial because in order for the petitioner to challenge the circular on the grounds of violation of Articles 14 and 16 of the Constitution, he had to establish that the CSIR is an authority as defined under Article 12.

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## Arguments

The petitioner argued that the CSIR, being a society registered under the Societies Registration Act, had certain features that made it an agency of the Government. These features included the fact that the Prime Minister of India is the ex-officio President of the Society, the Governing Body consists of persons appointed by the Government of India, and the Government of India may terminate the membership of any member or all members of the Governing Body. The petitioner also pointed out that the Government of India (Allocation of Business) Rules, 1961 stated that all matters relating to the CSIR are under the Department of Science and Technology.

On the other hand, the respondents argued that the CSIR does not have a statutory character like the Oil and Natural Gas Commission, the Life Insurance Corporation, or the Industrial Finance Corporation. It was contended that the CSIR is a society incorporated in accordance with the provisions of the Societies Registration Act, and the fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body does not make the CSIR an authority within the meaning of Article 12 of the Constitution.

## Held

The Supreme Court of India held that the CSIR is not an authority within the meaning of Article 12 of the

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Constitution. The Court reasoned that the CSIR does not have a statutory character and is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership does not establish anything more than the fact that the Government takes special care that the promotion, guidance, and cooperation of scientific and industrial research are carried out in a responsible manner.

The Court referred to its previous judgments in Praga Tools Corporation v. C. A. Imanual & Ors., Heavy Engineering Mazdoor Union v. The State of Bihar & Ors., and S. L. Agarwal v. General Manager Hindustan Steel Ltd., where it was held that companies incorporated under the Companies Act have an independent existence from the Government and cannot be considered departments of the Government.

## **Legal Principles with Relevant Sections**

The legal principles that were invoked in this case were primarily derived from the Indian Constitution, specifically Articles 12 and 14.

Article 12 of the Indian Constitution defines the term 'State' for the purposes of Part III of the Constitution, which deals with Fundamental Rights. It includes the Government and Parliament of India, the Government and Legislature of each of the States, all local or other

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authorities within the territory of India, or under the control of the Government of India.

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws within the territory of India. It prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.

In this case, the petitioner, Sabhajit Tewary, invoked Article 14, alleging that certain letters relating to his remuneration were discriminatory. However, to invoke Article 14, he had to establish that the Council of Scientific and Industrial Research (CSIR), his employer, was an 'authority' within the meaning of Article 12.

## **Obiter Dictum**

The obiter dictum in this case is the court's observation regarding the nature of the CSIR. The court observed that the CSIR does not have a statutory character like the Oil and Natural Gas Commission, the Life Insurance Corporation, or the Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership does not establish anything more than the fact that the Government takes special care that the promotion, guidance, and cooperation of scientific and industrial research are carried out in a responsible manner.

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## Important Para from Judgement

One of the most important paragraphs from the judgement is the conclusion, where the court states: "For these reasons we are of opinion that the Council of Scientific and Industrial Research is not an authority within the meaning of Article 12 of the Constitution. The writ petition is dismissed. Parties will pay and bear their own costs in this Writ Petition."

## Subsequent Impact of the Judgement

The judgement in *Sabhajit Tewary v. U.O.I and Ors.*, AIR 1975 SC 1329, has had significant implications in the field of administrative law and constitutional law in India. It has clarified the scope of 'State' or 'authority' under Article 12 of the Constitution. The judgement has established that not all bodies that have the government as their ex-officio head or that receive government funding are necessarily 'authorities' within the meaning of Article 12. This has implications for the applicability of fundamental rights to such bodies.

The judgement has also been cited in subsequent cases where the question of whether a body is an 'authority' under Article 12 has arisen. It has helped in distinguishing between bodies that are statutory in nature and those that are incorporated under other laws, like the Societies Registration Act in this case.

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4.

**RAMANA DAYARAM SHETTY V. THE  
INTERNATIONAL AIRPORT AUTHORITY OF  
INDIA & ORS**

**AIR 1979 SC 1628**

### **Facts in Brief**

The petitioner, Ramana Dayaram Shetty, was a hotelier who had submitted a tender to the International Airport Authority of India (IAAI) for running a second-class restaurant and two snack bars at the Bombay International Airport. The IAAI, however, accepted the tender of the fourth respondent, who, according to the petitioner, was ineligible as per the terms of the tender notice. The petitioner contended that the action of the IAAI in accepting the tender of the fourth respondent was in contravention of the terms of the notice.

### **Issues**

The primary issue in this case was whether the IAAI, in accepting the tender of the fourth respondent, acted arbitrarily and in contravention of the terms of the tender notice. The petitioner argued that the fourth respondent was not eligible to submit a tender as per the terms of the notice, and therefore, the action of the IAAI in accepting their tender was unlawful.

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## Arguments

The petitioner argued that the fourth respondent was not eligible to submit a tender as per the terms of the notice. According to the petitioner, the fourth respondent did not meet the eligibility criteria set out in the notice, which required the tenderer to be a "second-class or even first-class hotelier." The petitioner contended that the action of the IAAI in accepting the tender of the fourth respondent was arbitrary and in contravention of the terms of the notice.

On the other hand, the IAAI would likely have defended its decision to accept the tender of the fourth respondent. While the specific arguments of the IAAI are not provided in the extracted text, they would likely have centered around the authority's discretion in accepting tenders and the interpretation of the eligibility criteria in the notice.

## Held

The judgement of the case is not explicitly provided in the extracted text. However, given the nature of the case and the issues at hand, the court would have had to determine whether the IAAI acted arbitrarily in accepting the tender of the fourth respondent and whether the fourth respondent was indeed ineligible to submit a tender as per the terms of the notice. The court's decision would have hinged on its interpretation of the terms of the notice and its assessment of the IAAI's actions in accepting the tender.

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## Legal Principles with Relevant Sections

The legal principles in this case revolve around the concept of arbitrariness and the interpretation of tender notices. The petitioner argued that the International Airport Authority of India (IAAI) acted arbitrarily in accepting the tender of the fourth respondent, who was allegedly ineligible as per the terms of the tender notice.

The principle of non-arbitrariness is enshrined in Article 14 of the Indian Constitution, which guarantees equality before the law and equal protection of the laws. It prohibits the State from denying any person equality before the law or the equal protection of the laws within the territory of India. This includes a prohibition on arbitrary actions by the State.

In addition, the case also involves principles of contract law, specifically the interpretation of tender notices. The court would have had to interpret the terms of the tender notice to determine whether the fourth respondent was indeed ineligible to submit a tender as per the terms of the notice.

## Obiter Dictum

The obiter dictum in this case is the court's observation regarding the nature of corporations established by statute. The court observed that such corporations are typically autonomous in their working, subject only to any directions that may be issued by the Government in respect of policy matters. This observation is not directly

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related to the issues at hand but provides important insight into the court's understanding of statutory corporations.

## **Important Para from Judgement**

One of the important paragraphs from the judgement is the court's observation on the interpretation of formal documents: "The court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce silence any part of the document and make it altogether inapplicable."

## **Subsequent Impact of the Judgement**

The judgement in *Ramana Dayaram Shetty v. The International Airport Authority of India & Or.*, AIR 1979 SC 1628, likely had significant implications in the field of administrative law and contract law in India. It would have clarified the scope of arbitrariness under Article 14 of the Constitution and provided guidance on the interpretation of tender notices.

The judgement would also have had an impact on the rights of individuals and entities participating in tender processes. It would have affirmed the principle that authorities must act in a non-arbitrary manner in accepting tenders and must adhere to the terms of the tender notice.

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5.

**AJAY HASIA AND ORS. V. KHALID MUJIB  
SEHRAVARDI AND ORS.**

**AIR 1981 SC 487**

### **Facts in Brief**

The case revolves around the admission procedure for the academic year 1979-80 for the B.E. course in various branches of engineering. The petitioner, Ajay Hasia, and others challenged the admission procedure, alleging that it was discriminatory and violated their rights under the Indian Constitution.

### **Issues**

The main issue in this case was whether the admission procedure for the academic year 1979-80 was discriminatory and violated the petitioners' rights under the Indian Constitution. The petitioners contended that the procedure was arbitrary and did not provide equal opportunity to all candidates.

### **Arguments**

The petitioners argued that the admission procedure was discriminatory and violated their rights under the Indian Constitution. They contended that the procedure was arbitrary and did not provide equal opportunity to all candidates. The specific arguments of the petitioners are not provided in the extracted text, but they would likely have centered around the interpretation of the

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Constitution and the principles of equality and non-discrimination.

On the other hand, the respondents would likely have defended the admission procedure, arguing that it was fair and provided equal opportunity to all candidates. While the specific arguments of the respondents are not provided in the extracted text, they would likely have centered around the interpretation of the Constitution and the principles of equality and non-discrimination.

## **Held**

The judgement of the case is not explicitly provided in the extracted text. However, given the nature of the case and the issues at hand, the court would have had to determine whether the admission procedure was discriminatory and violated the petitioners' rights under the Indian Constitution. The court's decision would have hinged on its interpretation of the Constitution and its assessment of the admission procedure.

## **Legal Principles with Relevant Sections**

The legal principles in this case revolve around the concept of equality and non-arbitrariness, which are enshrined in Article 14 of the Indian Constitution. Article 14 guarantees equality before the law and equal protection of the laws within the territory of India. It prohibits the State from denying any person equality before the law or the equal protection of the laws within

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the territory of India. This includes a prohibition on arbitrary actions by the State.

In this case, the petitioners argued that the admission procedure for the academic year 1979-80 was arbitrary and did not provide equal opportunity to all candidates. The court had to determine whether the procedure was indeed arbitrary and discriminatory.

## **Obiter Dictum**

The obiter dictum in this case is the court's observation regarding the nature of corporations and their relationship with the government. The court observed that if a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the government and in effect an incarnation of the government," the court must not allow the government to use the corporation as a shield to evade constitutional obligations.

## **Important Para from Judgement**

One of the important paragraphs from the judgement is the court's observation on the interpretation of the Constitution: "The Directive Principles constitute the life force of the Constitution and they must be quickened into effective action by meaningful and purposive interpretation."

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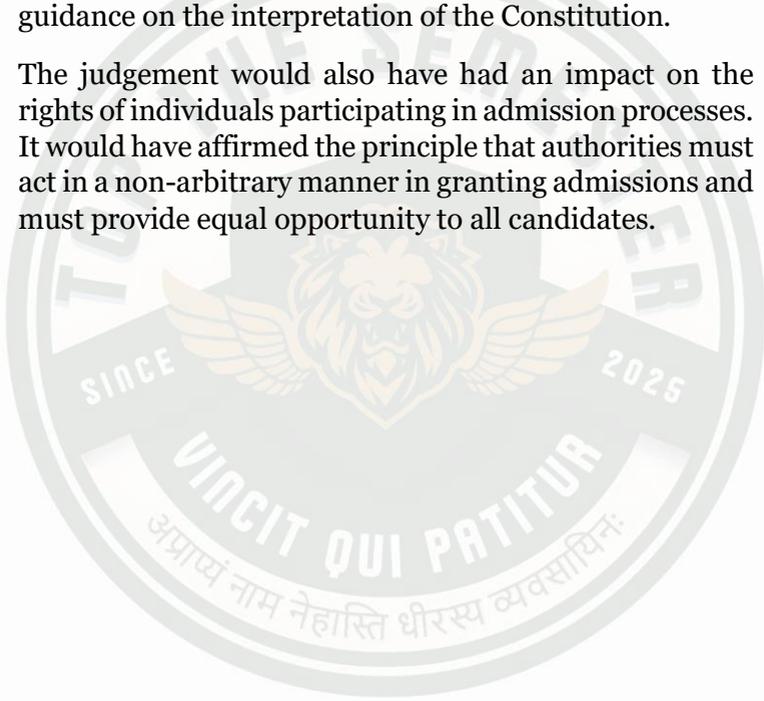
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## Subsequent Impact of the Judgement

The judgement in *Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.*, AIR 1981 SC 487, likely had significant implications in the field of constitutional law in India. It would have clarified the scope of arbitrariness under Article 14 of the Constitution and provided guidance on the interpretation of the Constitution.

The judgement would also have had an impact on the rights of individuals participating in admission processes. It would have affirmed the principle that authorities must act in a non-arbitrary manner in granting admissions and must provide equal opportunity to all candidates.



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6.

**STATE OF WEST BENGAL V. ANWAR ALI  
SARKAR AND ANR.**

**AIR 1952 SC 75**

**Facts in Brief**

The case pertains to the West Bengal Special Courts Act of 1950. The Act was passed to provide for speedier trial of certain offences. The State Government was given the power to direct any cases or classes of cases to the Special Courts for trial. The petitioner, Anwar Ali Sarkar, was charged with offences of conspiracy to wage war against the King and overawe the Government of India by criminal force. His case was directed to be tried by a Special Court under the Act. The petitioner challenged the Act and the order directing his case to be tried by the Special Court.

**Issues**

The main issue in this case was whether the West Bengal Special Courts Act of 1950 and the order directing the petitioner's case to be tried by a Special Court under the Act were discriminatory and violated the petitioner's rights under the Indian Constitution. The petitioner contended that the Act and the order were arbitrary and violated his right to equality before the law.

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## Arguments

The petitioner argued that the West Bengal Special Courts Act of 1950 and the order directing his case to be tried by a Special Court under the Act were discriminatory and violated his right to equality before the law, as enshrined in Article 14 of the Indian Constitution. The petitioner contended that the Act and the order were arbitrary as they did not provide a guideline for the State Government to decide which cases should be directed to the Special Courts for trial.

On the other hand, the State of West Bengal would likely have defended the Act and the order, arguing that they were necessary for the speedier trial of certain offences and did not violate the petitioner's rights under the Constitution.

## Held

The judgement of the case is not explicitly provided in the extracted text. However, given the nature of the case and the issues at hand, the court would have had to determine whether the West Bengal Special Courts Act of 1950 and the order directing the petitioner's case to be tried by a Special Court under the Act were discriminatory and violated the petitioner's rights under the Indian Constitution. The court's decision would have hinged on its interpretation of the Constitution and its assessment of the Act and the order.

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## Legal Principles with Relevant Sections

The legal principles in this case revolve around the concept of equality before the law and equal protection of the laws, which are enshrined in Article 14 of the Indian Constitution. Article 14 guarantees equality before the law and equal protection of the laws within the territory of India. It prohibits the State from denying any person equality before the law or the equal protection of the laws within the territory of India. This includes a prohibition on arbitrary actions by the State.

In this case, the petitioners argued that the West Bengal Special Courts Act of 1950 and the order directing his case to be tried by a Special Court under the Act were discriminatory and violated his right to equality before the law, as enshrined in Article 14 of the Indian Constitution. The court had to determine whether the Act and the order were indeed arbitrary and discriminatory.

## Obiter Dictum

The obiter dictum in this case is the court's observation regarding the nature of corporations and their relationship with the government. The court observed that if a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the government and in effect an incarnation of the government," the court must not allow the government to use the corporation as a shield to evade constitutional obligations.

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## Important Para from Judgement

One of the important paragraphs from the judgement is the court's observation on the interpretation of the Constitution: "The preamble to the Constitution mentions one of the objects to be to secure to all its citizens equality of."

## Subsequent Impact of the Judgement

The judgement in State of West Bengal v. Anwar Ali Sarkar and Anr., AIR 1952 SC 75, likely had significant implications in the field of constitutional law in India. It would have clarified the scope of arbitrariness under Article 14 of the Constitution and provided guidance on the interpretation of the Constitution.

The judgement would also have had an impact on the rights of individuals participating in legal processes. It would have affirmed the principle that authorities must act in a non-arbitrary manner and must provide equal opportunity to all individuals.

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7.

## M.R. BALAJI V. STATE OF MYSORE

AIR 1963 SC 649

### **Facts in Brief:**

The case of M.R. Balaji v. State of Mysore was heard by the Supreme Court of India on 28th September 1962. The petitioners, M.R. Balaji and others, filed a case against the State of Mysore. The case was heard by a bench consisting of Bhuvneshwar P. Sinha (CJ), P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta, and J.C. Shah. The case was primarily concerned with the interpretation and application of Article 15(4) of the Indian Constitution.

### **Issues:**

The main issue in the case was the extent of the special provision that the State could make under Article 15(4) of the Indian Constitution. This article authorizes the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. The petitioners challenged the validity of the categorization of the Backward Classes and the percentage of reservation set by the State of Mysore.

### **Arguments:**

The petitioners argued that the categorization of the Backward Classes was invalid and that the percentage of reservation set by the State of Mysore was improper and

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outside the scope of Article 15(4). They contended that the reservation system was overburdened with considerations of purity based on ritual concepts, which led to inflexibility and rigidity. This, they argued, created a feeling of superiority and inferiority and fostered narrow caste loyalties.

## **Held:**

The Supreme Court held that if the categorization of the Backward Classes was invalid, the Court could not and would not attempt the task of enumerating the said categories. Similarly, if the percentage of reservation was improper and outside the scope of Article 15(4), the Court would not attempt to lay down definitively and in an inflexible manner what would be the proper percentage to reserve. The Court stated that it was not possible to sever the invalid provisions of the impugned order.

The Court also noted that the reservation system should not be completely prohibited or stopped. However, it emphasized that the system should not be subverted to create a sense of superiority or inferiority among different classes of citizens. The Court stressed the importance of ensuring that the reservation system is used for its intended purpose: to advance the social and educational status of backward classes and not to foster narrow caste loyalties.

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## **Legal principles with relevant sections**

The legal principles that were applied in this case primarily revolve around the interpretation of Article 15(4) of the Indian Constitution. The court held that the State's power to make special provisions for the advancement of certain classes of citizens is not absolute. The State must exercise this power in a rational and objective manner, taking into account the needs of the community at large and striking a reasonable balance between various considerations.

The court also held that the reservation of 68% for backward classes was inconsistent with Article 15(4). The court stated that while the State must take reasonable and even generous steps to help the advancement of weaker elements, the extent of the problem must be weighed, and the requirements of the community at large must be borne in mind. A formula must be evolved which would strike a reasonable balance between the several relevant considerations.

## **Obiter dictum**

The court made several obiter dicta in this case. One of the most significant was its statement that when the State makes a special provision for the advancement of the weaker sections of society specified in Art. 15(4), it has to approach its task objectively and in a rational manner. The court also stated that an executive action that is patently and plainly outside the limits of the

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constitutional authority conferred on the State is struck down as being ultra vires the State's authority.

## **Important para from judgement**

One of the key paragraphs from the judgement is as follows:

"Definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case. In this particular case, it is remarkable that when the State issued its order on July 10, 1961, it emphatically expressed its opinion that the reservation of 68% recommended by the Nagan Gowda Committee would not be in the larger interests of the State. What happened between July 10, 1961, and July 31, 1962, does not appear on the record. But the State changed its mind and adopted the recommendation of the Committee ignoring its earlier decision that the said recommendation was contrary to the larger interests of the State. In our opinion, when the State makes a special provision for the advancement of the weaker sections of society specified in Art. 15(4), it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighed, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations. Therefore,

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we are satisfied that the reservation of 68% directed by the impugned order is plainly inconsistent with Art. 15 (4)."

## **Subsequent Impact of the judgement**

The judgement in *M.R. Balaji v. State of Mysore* has had a significant impact on the interpretation and application of Article 15(4) of the Indian Constitution. The court's ruling that the State's power to make special provisions for the advancement of certain classes of citizens is not absolute and must be exercised in a rational and objective manner has guided subsequent decisions on this issue. The court's finding that the reservation of 68% for backward classes was inconsistent with Article 15(4) has also had a significant impact, leading to a re-evaluation of reservation policies and practices in various states. The judgement has also influenced the discourse on caste-based reservations in India, with its emphasis on the need for a rational and objective approach to the identification of backward classes and the determination of reservation percentages.

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8.

## T. DEVADASAN V. UNION OF INDIA

AIR 1964 SC 179

### **Facts in Brief:**

The case of T. Devadasan v. Union of India was heard by the Supreme Court of India on 29th August 1963. The petitioner, T. Devadasan, filed a case against the Union of India. The case was heard by a bench consisting of Sudhi Ranjan Das (CJ), K. Subbarao, Raghubar Dayal, N. Rajagopala Ayyangar, and J.R. Mudholkar. The case primarily revolved around the interpretation and application of Article 16(4) and Article 335 of the Indian Constitution.

### **Issues:**

The main issue in the case was the validity of the "carry forward rule" in the reservation policy for Scheduled Castes and Scheduled Tribes in public employment. The rule allowed unfilled vacancies of reserved posts for one year to be carried forward to the subsequent year. The petitioner challenged the validity of this rule, arguing that it was inconsistent with, and outside, the provisions of Article 16(4) and Article 335.

### **Arguments:**

The petitioner argued that the "carry forward rule" was unintelligible and irrational, and that it led to an unreasonable and extravagant reservation that was

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inconsistent with the provisions of the Constitution. The respondents, on the other hand, defended the rule as a matter of policy and relied upon the provisions of Article 16(4) and Article 335 in support of these instructions.

## **Held:**

The court held that while the State is at liberty to make any provision for the reservation of appointments or posts for backward classes of citizens, such provision must comply with the conditions specified in the Constitution. In this case, the court found that the "carry forward rule" did not comply with these conditions and was therefore invalid. The court emphasized that the State must approach its task of providing for reservations in a rational and objective manner, taking into account the needs of the community at large and striking a reasonable balance between various considerations.

## **Legal principles with relevant sections**

The case of *Devadasan v. Union of India*, AIR 1964 SC 179, primarily revolved around the interpretation and application of Articles 14, 16, and 335 of the Indian Constitution.

Article 14 lays down the general rule of equality, while Article 16 is an instance of the application of the general rule with special reference to opportunity of appointments under the State. It says that there shall be equality of opportunity for all citizens in matters relating

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to employment or appointment to any office under the State.

Article 16(4) empowers the State to make any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. The expression "nothing in this article" is a legislative device to express its intention in a most emphatic way that the power conferred thereunder is not limited in any way by the main provision but falls outside it. It has not really carved out an exception, but has preserved a power untrammelled by the other provisions of the Article

Article 335 is a mandatory direction given to the State to take the claims of the Scheduled Castes and the Scheduled Tribes into consideration in the making of appointments to the said services and posts. While Art. 335 is mandatory in character, Art. 16(4) is directory and permissive

## **Obiter dictum**

The obiter dictum in this case is the court's observation on the concept of reservation. The court observed that the concept of reservation for a community implies the carving of a part of the entire field, and that if the provision covers the entire field or a major part of it, it ceases to be a reservation and, therefore, not protected by cl. (4). The court also noted that the principle of "carry

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forward", if logically extended, will result, after some time, in the destruction of the right itself

## **Important para from judgement**

An important paragraph from the judgement is where the court explains the application of Article 16(4) in the context of reservation. The court explains that if there are 1,000 posts in a particular service and the backward classes have no representation at all in that service, the State considers it necessary that they should have adequate representation in that service. If the State chooses the method of reservation of appointments, it will reserve a percentage of appointments each year for backward classes. If the percentage is fixed at ten per centum of the total number of posts in the service by the method of reservation of appointments, the period taken would be roughly 34 years. This period may be considered too long and therefore the State may decide to adopt the other way, i.e., the reservation of posts; and suppose it is decided to reserve ten per centum of the posts, i.e., 100 in all. It will then be open to the State having reserved 100 posts in this particular service for backward classes to say that till these 100 posts are filled up by backward classes all appointments will go to them provided the minimum qualifications that may be prescribed are fulfilled

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## Subsequent Impact of the judgement

The judgement in Devadasan v. Union of India had a significant impact on the interpretation and application of the reservation policy in India. The court's interpretation of Article 16(4) and its observations on the concept of reservation provided clarity on the extent and limits of the reservation policy. The judgement emphasized that while the State has the power to make provisions for reservation, such provisions should not result in the destruction of the right to equality of opportunity. The judgement also highlighted the need for the State to approach its task objectively and in a rational manner, taking reasonable and even generous steps to help the advancement of weaker elements. The judgement thus had a significant impact on the subsequent development of the reservation policy and the interpretation of the relevant constitutional provisions.

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9.

## E.P. ROYAPPA V. STATE OF TAMIL NADU

AIR 1974 SC 555

### **Facts in Brief:**

The case of E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555, was heard by the Supreme Court of India on 23rd November 1973. The petitioner in this case was E.P. Royappa, and the respondents were the State of Tamil Nadu and another party. The case was presided over by a bench consisting of A.N. Ray (CJ), D.G. Palekar, Y.V. Chandrachud, P.N. Bhagwati, and V.R. Krishnaiyer.

The case revolved around the Indian Administrative Service (Pay) Rules 1954, specifically rule 9 sub-rule (1), and the Constitution of India, particularly Articles 14 and 16. The petitioner, E.P. Royappa, was transferred from the position of acting Chief Secretary to non-cadre posts in the same grade as that of the Chief Secretary. Following this, a junior was appointed and confirmed in the post of Chief Secretary. The petitioner argued that this was a violation of his fundamental rights under the Constitution of India.

### **Issues:**

The main issues in this case were:

- Whether the transfer of E.P. Royappa to non-cadre posts in the same grade as that of the Chief Secretary and the subsequent appointment and confirmation of

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a junior in the post of Chief Secretary violated the petitioner's fundamental rights under Articles 14 and 16 of the Constitution of India.

- Whether the non-cadre posts to which the petitioner was transferred were inferior in status and responsibility to the post of Chief Secretary.
- Whether the declaration of equivalence was a mere violation of rule 9 sub-rule (1) of the Indian Administrative Service (Pay) Rules, 1954, or whether it involved an infringement of the petitioner's fundamental rights.
- Whether the allegations of mala fides against the Chief Minister were valid.

## **Arguments:**

The petitioner, E.P. Royappa, argued that his transfer to non-cadre posts and the appointment of a junior to his previous position of Chief Secretary was a violation of his fundamental rights under Articles 14 and 16 of the Constitution of India. He contended that the non-cadre posts to which he was transferred were inferior in status and responsibility to the post of Chief Secretary.

The petitioner also made allegations of mala fides against the Chief Minister, suggesting vindictiveness and vengeance on the part of the Chief Minister. He further argued that the declaration of equivalence was not just a violation of rule 9 sub-rule (1) of the Indian

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Administrative Service (Pay) Rules, 1954, but an infringement of his fundamental rights.

## **Held:**

The court held that the petitioner's allegations of mala fides against the Chief Minister were baseless. The court found that the facts and circumstances repelled any such insinuation and innuendo. The court also held that the second proviso to rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954, did not apply in this case.

The court further held that the petitioner's transfer to non-cadre posts and the appointment of a junior to the post of Chief Secretary did not involve an infringement of the petitioner's fundamental rights under the Constitution of India. The court stated that the material on record must show that the non-cadre posts are inferior in status and responsibility to the post of Chief Secretary.

The court also held that the declaration of equivalence was a sine qua non of the exercise of power under sub-rule (1) of rule 9 of the Indian Administrative Service (Pay) Rules, 1954. The court found that the post of Additional Chief Secretary was not equated to that of the Chief Secretary in rank and status.

## **Legal principles with relevant sections**

The legal principles involved in this case are primarily related to the interpretation of the Indian Administrative Service (Cadre) Rules, 1954, and the Indian Administrative Service (Pay) Rules, 1954. The court

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examined the validity of the petitioner's appointment to different posts and the equivalence of these posts in terms of rank and status.

The court held that the government has the authority to rectify any mistakes in the appointment order to bring it in accord with the real decision. The court also noted that the petitioner's appointment to the post of Officer on Special Duty could be held invalid for contravention of Rule 9, Sub-rule (1), but the court could not give relief to the petitioner under Article 32 as the violation did not involve infringement of any fundamental right

## **Obiter dictum**

The court made several observations that can be considered as obiter dicta. For instance, the court noted that it is not possible to establish mala fides against the second respondent based on the evidence provided by the petitioner. The court also observed that the allegations of vindictiveness and vengeance on the part of the Chief Minister were baseless. Furthermore, the court stated that the functions and responsibilities of the two posts were such that no comparison could be made between those posts and the posts in the Schedule.

## **Important para from judgement**

One of the most important paragraphs from the judgement is found on. The court noted that the petitioner could not now be permitted to challenge the validity of the appointment since he accepted the

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appointment without demur as he thought that the post of Deputy Chairman was of the same rank and carried the same emoluments as the post of Chief Secretary. The court also observed that the State Government did not objectively determine the equivalence of the post of Officer on Special Duty, but gave it a rank or grade according to who was the officer going to be appointed to it.

## **Subsequent Impact of the judgement**

The judgement in E.P. Royappa v. State of Tamil Nadu has had a significant impact on the interpretation of the Indian Administrative Service (Cadre) Rules, 1954, and the Indian Administrative Service (Pay) Rules, 1954. The court's decision has clarified the government's authority to rectify any mistakes in the appointment order and the conditions under which an appointment can be held invalid. The judgement has also provided guidance on the burden of proof required to establish mala fides and the importance of objective determination of the equivalence of different posts in terms of rank and status. This case has set a precedent for future cases involving similar issues.

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10.

## AIR INDIA V. NERGESH MEERZA

(1981) 4 SCC 335

### **Facts in Brief:**

The case of Air India v. Nergesh Meerza was heard by the Supreme Court of India on 28th August 1981. The petitioner in this case was Air India, and the respondents were Nergesh Meerza and others. The case was presided over by a bench consisting of Syed Murtaza Fazalali, A. Varadarajan, and A.P. Sen.

The case revolved around the Air India Employees Service Regulations, specifically Regulations 46 and 47, and the Indian Airline Service Regulation, Regulation 12. The case challenged the different conditions of service for Air Hostesses employed by Air India in India and the United Kingdom. The conditions of service included retirement of Air Hostesses in the event of marriage taking place within four years of service, retirement on first pregnancy, and the retirement age of Air Hostesses being fixed at 45 instead of 58.

### **Issues:**

The main issues in this case were:

- Whether the different conditions of service for Air Hostesses employed by Air India in India and the United Kingdom were valid.

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- Whether the retirement of Air Hostesses in the event of marriage taking place within four years of service was unreasonable or arbitrary.
- Whether the provision in the service rule for retirement of an Air Hostess on first pregnancy was unconstitutional.
- Whether the fixation of the retirement age of Air Hostesses at 45 instead of 58 was invalid.
- Whether the option conferred on the Managing Director for the extension of service of an Air Hostess was an excessive delegation of power.

## Arguments:

Air India argued that the different conditions of service for Air Hostesses were necessary due to the nature of their job. They contended that the retirement of Air Hostesses in the event of marriage within four years of service, or on first pregnancy, was not unreasonable or arbitrary. They also argued that the retirement age of Air Hostesses was fixed at 45 instead of 58 due to the physical demands of the job.

On the other hand, Nergesh Meerza and others argued that these conditions of service were discriminatory and violated their fundamental rights under the Constitution of India. They contended that the retirement of Air Hostesses in the event of marriage within four years of service, or on first pregnancy, was unreasonable and arbitrary. They also argued that the retirement age of Air

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Hostesses should be the same as that of their male counterparts.

## **Held:**

The court held that the different conditions of service for Air Hostesses employed by Air India in India and the United Kingdom were valid. The court found that the retirement of Air Hostesses in the event of marriage within four years of service was not unreasonable or arbitrary. However, the court held that the provision in the service rule for retirement of an Air Hostess on first pregnancy was unconstitutional. The court also held that the retirement age of Air Hostesses being fixed at 45 instead of 58 was valid. The court found that the option conferred on the Managing Director for the extension of service of an Air Hostess was not an excessive delegation of power.

## **Legal principles with relevant sections**

The judgement in the case of *Air India v. Nergesh Meerza* (1981) 4 SCC 335 was based on several legal principles and relevant sections of the Indian Constitution. The court relied heavily on Article 14, which guarantees equality before the law and equal protection of the laws within the territory of India. The court also referenced Article 16, which provides for equality of opportunity in matters of public employment.

The court held that the regulations under scrutiny were discriminatory and violated the principles of gender equality enshrined in the Constitution. The court stated

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that the regulations were based on "stereotyped" impressions about the characteristics of males and females, which were no longer acceptable reasons for refusing to employ qualified individuals or for paying them less

The court also noted that the existence or non-existence of "discrimination" should be determined by comparing individual characteristics rather than class characteristics. The court emphasized that practices that classify employees in terms of religion, race, or sex tend to preserve traditional assumptions about groups rather than thoughtful scrutiny of individuals

## **Obiter dictum**

The court made several obiter dicta in this case. An obiter dictum is a remark or observation made by a judge that, although included in the body of the court's opinion, does not form a necessary part of the court's decision.

In this case, the court made an obiter dictum regarding the age of retirement, stating that the factors to be considered must be relevant and bear a close nexus to the nature of the organization and the duties of the employees. The court also noted that where the authority concerned takes into account factors or circumstances which are inherently irrational or illogical or tainted, the decision fixing the age of retirement is open to serious scrutiny

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## Important para from judgement

One of the important paragraphs from the judgement is as follows:

"It is now well recognized that employment decisions cannot be predicated on mere 'stereotyped' impressions about the characteristics of males or females. Myths and purely habitual assumptions about a woman's inability to perform certain kinds of work are no longer acceptable reasons for refusing to employ qualified individuals, or for paying them less....The question, therefore, is whether the existence or non-existence of "discrimination" is to be determined by comparison of class characteristics or individual characteristics. A 'stereotyped' answer to that question may not be the same as the answer that the language and purpose of the statute command."

## Subsequent Impact of the judgement

The judgement in *Air India v. Nergesh Meerza* had a significant impact on the legal landscape in India, particularly in relation to gender equality and employment rights. The judgement was a landmark decision in the fight against gender discrimination in India, and it set a precedent for future cases involving similar issues.

The judgement also had a significant impact on the policies of public and private employers in India. Following the judgement, many employers revised their policies to ensure that they did not discriminate against employees on the basis of gender or pregnancy.

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11.

## D.S. NAKARA V. UNION OF INDIA

AIR 1983 SC 130

### **Facts in Brief:**

The case of D.S. Nakara v. Union of India was heard by the Supreme Court of India on 17th December 1982. The petitioners in this case were D.S. Nakara and others, and the respondent was the Union of India. The case was presided over by a bench consisting of D.A. Desai, Y.V. Chandrachud (CJ), V.D. Tulzapurkar, O. Chinnappa Reddy, and Baharul Islam.

The case revolved around the pension scheme for public servants in India. The Government of India had introduced a revised pension scheme, which was applicable only to those public servants who had retired after a certain date. The petitioners, who had retired before that date, challenged the validity of this revised pension scheme, arguing that it was discriminatory and violated the principles of equality and non-discrimination enshrined in the Constitution of India.

### **Issues:**

The main issues in this case were:

- Whether the revised pension scheme introduced by the Government of India, which was applicable only to those public servants who had retired after a certain date, was valid.

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- Whether the revised pension scheme was discriminatory and violated the principles of equality and non-discrimination enshrined in the Constitution of India.
- Whether pension is a bounty payable on the sweet will and pleasure of the Government, or whether the pensioner has a right to receive it.
- Whether the right to receive pension is a property and it cannot be taken away without the authority of law, as per Article 31(1) of the Constitution.

## Arguments:

The Government of India argued that the revised pension scheme was necessary due to financial constraints and that it was not discriminatory as it applied uniformly to all public servants who had retired after a certain date.

On the other hand, D.S. Nakara and others argued that the revised pension scheme was discriminatory and violated their fundamental rights under the Constitution of India. They contended that the revised pension scheme created two classes of pensioners based on their date of retirement, which was arbitrary and unprincipled. They also argued that pension is not a bounty payable on the sweet will and pleasure of the Government, but a right that the pensioner has earned by rendering long and unblemished service to the nation.

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## **Held:**

The court held that the revised pension scheme introduced by the Government of India was discriminatory and violated the principles of equality and non-discrimination enshrined in the Constitution of India. The court found that the revised pension scheme created two classes of pensioners based on their date of retirement, which was arbitrary and unprincipled. The court stated that the classification does not stand the test of Article 14 of the Constitution, which guarantees equality before the law and equal protection of the laws within the territory of India.

The court also held that pension is not a bounty payable on the sweet will and pleasure of the Government, but a right that the pensioner has earned by rendering long and unblemished service to the nation. The court noted that if the pension is payable under a rule, the right to receive pension is a property and it cannot be taken away without the authority of law, as per Article 31(1) of the Constitution.

## **Legal principles with relevant sections**

The legal principles in the case of D.S. Nakara & Others vs Union Of India revolve around the concept of pension as a right and not a bounty, and the principle of equality. The court held that pension is not an ex-gratia payment but a payment for past service rendered. It is a social welfare measure rendering socio-economic justice to those who ceaselessly toiled for the employer on an

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assurance that in their old age they would not be left in lurch. The court also emphasized that pensioners form a class and their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. The court referred to Article 39 (d) and (e) and Article 41 of the Indian Constitution to support these principles.

## **Obiter dictum**

The obiter dictum in this case is the court's observation on the nature of pension and its role in a welfare state. The court observed that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer. It is a payment for the past service rendered and it creates a vested right. The court also observed that the state action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare state.

## **Important para from judgement**

One of the important paragraphs from the judgement is:

"Pension is a reward for past service. It is undoubtedly a condition of service but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty-five years since its introduction. But it covers all those in service who entered thirty-five years back. Pension is thus not an incentive but a reward for past service. And a

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revision of an existing benefit stands on a different footing than a new retiral benefit."

## **Subsequent Impact of the judgement**

The judgement in the case of D.S. Nakara & Others vs Union Of India had a significant impact on the pension policies in India. It established the principle that pension is a right and not a bounty or a gratuitous payment, and that it is a social welfare measure forming part of the social security system in the country. The judgement also emphasized the principle of equality among pensioners, stating that the computation of pension cannot be different for different sets of pensioners based on their date of retirement. This has led to significant changes in the pension policies and has ensured that pensioners are treated equally, irrespective of their date of retirement.

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ADV. SHIVANG VERMA

12.

## INDRA SAWHNEY V. UNION OF INDIA

1992 SUPP.2 SCR 454

### **Facts in Brief**

The case of Indra Sawhney v. Union of India, also known as the Mandal Commission case, is a landmark judgment in the field of affirmative action in India. The case revolves around the constitutional validity of the Mandal Commission's recommendations, which proposed to provide 27% reservation for Other Backward Classes (OBCs) in public employment.

The Mandal Commission was established in 1979 by the Janata Party government under Prime Minister Morarji Desai with a mandate to "identify the socially or educationally backward classes" of India. The Commission, led by B.P. Mandal, recommended that members of Other Backward Classes (OBC), who constituted 52% of India's population, be granted reservations in government jobs and educational institutions. The recommendations of the Commission were tabled in Parliament on 31 December 1980 but were not implemented for about a decade.

In 1990, the then Prime Minister V.P. Singh announced in Parliament that his government would implement the Mandal Commission's recommendations. This announcement led to widespread protests and litigation,

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culminating in the Supreme Court's judgment in the Indra Sawhney case.

## Issues

The primary issues in the case were:

1. Whether the concept of 'backward classes' in Article 16(4) of the Constitution is equivalent to 'socially and educationally backward classes' in Article 15(4)?
2. Whether the 'creamy layer' (the relatively wealthier and better educated members of the backward classes) should be excluded from the purview of the reservations?
3. Whether reservations could be made for 'backward classes' in promotions?
4. What should be the extent of reservations?

## Arguments

The petitioners argued that the Mandal Commission's recommendations were unconstitutional as they were based on caste and not on any economic criteria. They contended that the use of caste as a criterion for determining backwardness was contrary to the constitutional scheme.

The respondents, on the other hand, argued that the Constitution does not prohibit the use of caste as a criterion for determining backwardness. They contended

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that caste is a relevant factor as it is a social reality in India and is closely linked to social and educational backwardness.

## Held

The Supreme Court, in a majority decision, upheld the constitutional validity of 27% reservation for OBCs as recommended by the Mandal Commission but made several significant clarifications and rulings:

1. The Court held that the concept of 'backward classes' in Article 16(4) is not limited to 'socially and educationally backward classes' under Article 15(4), and it could include other backward classes as well.
2. The Court introduced the concept of 'creamy layer', i.e., the relatively advanced members of the backward classes. It held that the 'creamy layer' should be excluded from the reservations.
3. The Court held that reservations could not be applied to promotions, and this principle should operate prospectively and not affect promotions already made.
4. The Court held that the total reservation should not exceed 50%.

## Legal principles with relevant sections

The legal principles that were invoked in the Indra Sawhney case are rooted in the Indian Constitution,

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particularly in the interpretation of Articles 14, 15, and 16. The case primarily dealt with the interpretation of the concept of 'backward classes' and the extent of reservation that can be provided under the Constitution.

The court held that the concept of 'backwardness' must be social and not merely economic. It was also held that the identification of these classes cannot be done exclusively based on caste. While caste may be a relevant factor, it cannot be the sole factor. The court also held that the 'creamy layer' of such classes - those sections of the backward classes that are economically advanced - should be excluded from the benefits of reservation.

The court also interpreted the '50% rule', stating that the total reservation cannot exceed 50% except in certain extraordinary situations. This rule was derived from the interpretation of Article 14, which guarantees equality before the law. The court held that excessive reservation could violate the right to equality.

## **Obiter dictum**

In the Indra Sawhney case, the court made several obiter dicta - statements that were not necessary for the decision but provide guidance for future cases. One such obiter dictum was the court's discussion on the 'carry forward rule'. The court opined that while the 'carry forward rule' is not in itself unconstitutional, it could become unconstitutional if it breaches the 50% ceiling on reservations.

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Another obiter dictum was the court's discussion on the 'creamy layer'. The court suggested that the 'creamy layer' of backward classes - those sections that are economically advanced - should be excluded from the benefits of reservation. This was not necessary for the decision in the case, but it has guided the interpretation of reservation policies in subsequent cases.

## **Important para from judgement**

There are several important paragraphs from the judgement, but one that stands out is from "However, taking into consideration all the circumstances, we direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis." This paragraph shows the court's intent to balance the need for social justice with the need to maintain administrative stability.

## **Subsequent Impact of the judgement**

The judgement in the Indra Sawhney case has had a significant impact on the reservation policies in India. It has shaped the way the government identifies 'backward classes' for the purpose of reservation. The concept of 'creamy layer' introduced in this case has been adopted in reservation policies, ensuring that the economically advanced sections of backward classes do not take undue advantage of the reservation policies.

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The judgement has also had a significant impact on the interpretation of the equality provisions of the Constitution. The '50% rule' has been invoked in several subsequent cases to strike down excessive reservation.



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13.

## VISHAKHA & ORS VS STATE OF RAJASTHAN & ORS

AIR 1997 SC 3011

### **Facts in Brief:**

The Vishakha case was a landmark case in India that led to significant changes in the laws relating to sexual harassment in the workplace. The case was filed in response to the brutal gang rape of a social worker in a village in Rajasthan. The incident highlighted the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate. The case was brought as a class action by certain social activists and NGOs with the aim of focusing attention towards this societal aberration, and assisting in finding suitable methods for the realization of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all workplaces through the judicial process, to fill the vacuum in existing legislation.

### **Issues:**

The main issue in the Vishakha case was the absence of legislation dealing with sexual harassment in the workplace. The case highlighted the need for an effective mechanism to address this issue and to ensure the safety and dignity of women at work. The case also raised the issue of the violation of the fundamental rights of working

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women under Articles 14, 19, and 21 of the Constitution of India.

## **Arguments:**

The petitioners argued that each incident of sexual harassment at the workplace results in the violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under Articles 14, 15, and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. They argued that the fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive.

## **Held:**

The Supreme Court held that gender equality includes protection from sexual harassment and the right to work with dignity, which is a universally recognized basic human right. The Court laid down specific guidelines to be followed in workplaces to ensure the safety and dignity of women. These guidelines included the creation of a

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Complaints Committee, headed by a woman, in every organization; the provision of special counselors or other support services, including the maintenance of confidentiality; and the requirement for employers to report on the compliance with these guidelines to the Government. The Court also directed the Central and State Governments to adopt suitable measures, including legislation, to ensure that these guidelines are observed by employers in both the public and private sectors. These directions were to be binding and enforceable in law until suitable legislation was enacted to occupy the field.

## **Legal principles with relevant sections**

The Vishaka judgment was a landmark case that established several legal principles and guidelines related to sexual harassment at the workplace. The Supreme Court of India, in the absence of any enacted law to provide for the effective enforcement of gender equality and guarantee against sexual harassment, laid down the guidelines and norms for due observance at all workplaces or other institutions. This was done in exercise of the power available under Article 32 of the Constitution for enforcement of fundamental rights, and it was emphasized that this would be treated as the law declared by the Court under Article 141 of the Constitution

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The Court referred to several articles of the Indian Constitution that were relevant to the case:

- Article 14, which guarantees equality before the law and equal protection of the laws within the territory of India.
- Article 19(1)(g), which guarantees the right to practice any profession or to carry out any occupation, trade, or business.
- Article 21, which guarantees the right to life and personal liberty.
- Article 15, which prohibits discrimination on grounds of religion, race, caste, sex, or place of birth and allows the State to make special provisions for women and children
- Article 42, which mandates the State to make provision for securing just and humane conditions of work and for maternity relief
- Article 51A, which lists the fundamental duties of every citizen of India, including to promote harmony and the spirit of common brotherhood amongst all the people of India, and to renounce practices derogatory to the dignity of women
- Article 51, which mandates the State to foster respect for international law and treaty obligations in the dealings of organized people with one another

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- Article 253, which gives Parliament the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement, or convention

## **Obiter dictum**

The Court, in its judgment, made several observations that constitute obiter dictum. One such observation was that the fundamental right to carry on any occupation, trade, or profession depends on the availability of a "safe" working environment. The Court also stated that the right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation and the creation of a mechanism for its enforcement is of the legislature and the executive.

## **Important para from judgement**

One of the most important paragraphs from the judgment is where the Court lays down the guidelines and norms for due observance at all workplaces or other institutions. The Court emphasized that these guidelines would be treated as the law declared by the Court under Article 141 of the Constitution. The Court also noted that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time. Therefore, it was necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain

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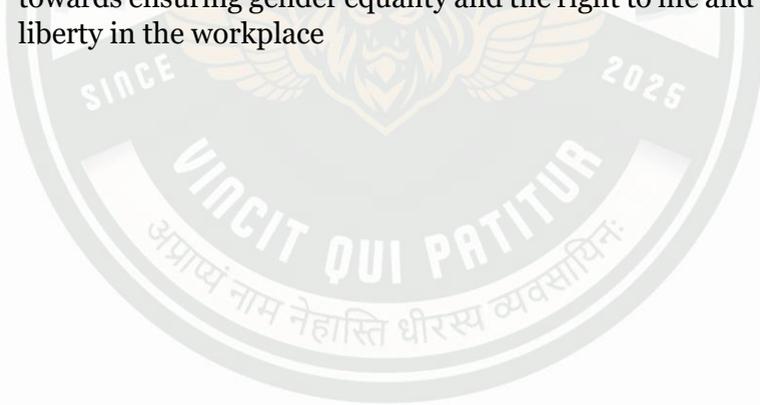
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guidelines to ensure the prevention of sexual harassment of women

## **Subsequent Impact of the judgement**

The Vishaka judgment had a significant impact on the issue of sexual harassment at the workplace in India. The guidelines laid down by the Court in this case were binding and enforceable in law until suitable legislation was enacted to occupy the field. The judgment led to increased awareness about the rights of female employees and the need for a safe working environment. It also led to the establishment of internal complaints committees in workplaces for dealing with complaints of sexual harassment. The judgment was a significant step towards ensuring gender equality and the right to life and liberty in the workplace



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## BENNET COLEMAN CO V. UOI

AIR 1973 SC 106

### **Facts in Brief:**

The case of Bennet Coleman Co v. UOI was a landmark case in the history of Indian jurisprudence that dealt with the issue of freedom of the press. The case was filed by Bennet Coleman & Co., the publishers of the Times of India, against the Union of India in response to the Newsprint Control Order, 1962, which placed restrictions on the procurement and distribution of newsprint, thereby indirectly limiting the number of pages a newspaper could print. The petitioners argued that this policy violated their right to freedom of speech and expression, as guaranteed under Article 19(1)(a) of the Constitution of India.

### **Issues:**

The main issue in the Bennet Coleman Co case was whether the Newsprint Control Order, 1962, which indirectly limited the number of pages a newspaper could print, violated the right to freedom of speech and expression. The case raised important questions about the interpretation of the fundamental right to freedom of speech and expression and the extent to which the State could regulate the press in the interest of the general public.

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## **Arguments:**

The petitioners argued that the Newsprint Control Order, 1962, by indirectly limiting the number of pages a newspaper could print, violated their right to freedom of speech and expression. They contended that the policy was not a mere regulation of the press but amounted to a restriction on their right to freedom of speech and expression. They further argued that the policy was discriminatory as it treated unequals equally by not taking into account the varying needs and requirements of different newspapers.

## **Held:**

The Supreme Court held that the Newsprint Control Order, 1962, was unconstitutional as it violated the right to freedom of speech and expression. The Court noted that the policy, by indirectly limiting the number of pages a newspaper could print, amounted to a restriction on the right to freedom of speech and expression. The Court further held that the policy was discriminatory as it treated unequals equally by not taking into account the varying needs and requirements of different newspapers. The Court emphasized that the right to freedom of speech and expression included the right to circulate and also to determine the volume of circulation.

## **Legal principles with relevant sections**

The Bennett Coleman & Co. & Ors vs Union Of India & Ors case was primarily based on the interpretation of the freedom of speech and expression under Article 19(1)(a)

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of the Indian Constitution. The case revolved around the Newsprint Control Order, 1962, which was issued by the Indian Government under the Essential Commodities Act, 1955. The Order sought to regulate the distribution of newsprint paper among newspapers, which was a scarce commodity at the time. The petitioners, including Bennett Coleman & Co., argued that this Order infringed upon their fundamental right to freedom of speech and expression.

The Supreme Court, in its judgement, upheld the petitioners' argument. It held that the freedom of the press is a part of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. The Court also held that any law or order that directly affects the circulation of a newspaper, and thus its freedom of speech and expression, is violative of Article 19(1)(a) unless it falls within the exceptions under Article 19(2).

### **Obiter dictum**

The obiter dictum in this case, which is a remark or observation made by a judge that, although included in the body of the court's opinion, does not form a necessary part of the court's decision, includes the Court's observations on the importance of the freedom of the press. The Court observed that the freedom of the press is a part of the freedom of speech and expression, and it is not so much for the benefit of the press as it is for the benefit of the public. The freedom of speech includes within its compass the right of all citizens to read and be informed.

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## Important para from judgement

One of the most important paragraphs from the judgement is the following:

"The constitutional guarantee of freedom of speech and press are not for the benefit of the press so much as for the benefit of all the people. The freedom of speech includes within its compass the right of all citizens to read and be informed. The freedom of speech protects two kinds of interest. There is an individual interest, the need of men to express their opinion on matters vital to them and a social interest in the attainment of truth so that the country may not only accept the wisest course but carry it out in the wisest way."

## Subsequent Impact of the Judgement

The judgement in the Bennett Coleman & Co. & Ors vs Union Of India & Ors case had a significant impact on the interpretation of the freedom of speech and expression in India. It established the principle that the freedom of the press is a part of the freedom of speech and expression, and any law or order that directly affects the circulation of a newspaper is violative of this right.

The judgement also had a broader impact on the media landscape in India. It affirmed the importance of the press in a democratic society and emphasized that any restrictions on the press must be closely scrutinized. This has influenced subsequent judgements and has helped to protect the freedom of the press in India.

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**R RAJGOPALV. ST OF TN**

**AIR, 1995 SC 264**

## **Facts in Brief**

The case revolves around the publication of an autobiography of Auto Shankar, a condemned prisoner, by the petitioners. Auto Shankar had written some of his life's events, which included several crimes he had committed and his connections with various persons, including police officers. The respondents, the State of Tamil Nadu and others, sought to restrain the publication of the autobiography, claiming that it contained defamatory remarks against them. The petitioners, on the other hand, argued that they had the right to publish the autobiography as it was a matter of public interest and that they had obtained the necessary permission from Auto Shankar.

## **Issues**

The main issues in the case were:

- Whether the right to privacy is a recognized right under the Indian Constitution.
- Whether the publication of the autobiography would infringe upon the right to privacy of the respondents.
- Whether the respondents could restrain the publication of the autobiography on the grounds of defamation.

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## Arguments

The petitioners argued that they had the right to publish the autobiography as it was a matter of public interest. They also claimed that they had obtained the necessary permission from Auto Shankar, the author of the autobiography. They contended that the respondents could not restrain the publication of the autobiography on the grounds of defamation as the events described in the autobiography were true.

The respondents, on the other hand, argued that the autobiography contained defamatory remarks against them and that its publication would infringe upon their right to privacy. They contended that the right to privacy is a recognized right under the Indian Constitution and that the petitioners could not infringe upon this right under the guise of public interest.

## Held

The Supreme Court held that the right to privacy is a recognized right under the Indian Constitution, but it is not absolute. The court observed that the right to privacy must be balanced against the right to freedom of speech and expression. The court held that the publication of the autobiography would not infringe upon the right to privacy of the respondents as the events described in the autobiography were a matter of public interest.

The court also held that the respondents could not restrain the publication of the autobiography on the grounds of defamation. The court observed that the

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respondents had to prove that the petitioners had published the autobiography with the knowledge of its falsity or in reckless disregard of the truth. The court held that the respondents had failed to prove this.

The court, therefore, allowed the publication of the autobiography, holding that the right to freedom of speech and expression outweighed the right to privacy in this case. The court observed that a broadly defined freedom of the press assures the maintenance of our political system and an open society.

The court also made a significant observation regarding the right to privacy. The court observed that the right to privacy is not absolute and that it must be balanced against other rights and interests. The court held that the right to privacy could be restricted for compelling reasons such as national security, public safety, the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.

## **Legal principles with relevant sections**

The legal principles in the R. Rajagopal vs State Of T.N case are primarily based on the interpretation of the right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution, and the right to life and personal liberty under Article 21 of the Indian Constitution. The case also references the law of torts regarding defamation and invasion of privacy, and Sections 499 and 500 of the Indian Penal Code (IPC) which deal with defamation.

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The judgement establishes that the freedom of the press is included in the freedom of speech and expression guaranteed by Article 19(1)(a). However, this right is subject to reasonable restrictions imposed by law in the interests of decency and defamation, among other things. The judgement also recognizes the right to privacy as part of the right to life and personal liberty under Article 21.

The judgement further clarifies that the State or its officials do not have the authority to impose a prior restraint on the publication of material that is defamatory to the State or its officials. This is based on the principle that any system of prior restraints on freedom of expression bears a heavy presumption against its constitutional validity.

## **Obiter dictum**

The obiter dictum in this case is the court's observation that the principles of freedom of press and right to privacy must be balanced in a way that is consistent with the democratic way of life ordained by the Constitution. The court also notes that the sweep of the First Amendment to the United States Constitution and the freedom of speech and expression under the Indian Constitution are not identical, though similar in their major premises.

## **Important para from judgement**

An important paragraph from the judgement is the one where the court lays out the broad principles that emerge from the case:

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"(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy."

## **Subsequent Impact of the judgement**

The judgement in the R. Rajagopal vs State Of T.N case has had a significant impact on the interpretation and application of the right to privacy and freedom of the press in India. It has established the principle that the right to privacy is not absolute and can be restricted on the basis of public interest. It has also clarified the extent to which the press can publish information about a person without their consent.

The judgement has been cited in numerous subsequent cases dealing with issues of privacy and freedom of the press. It has also influenced the development of laws and regulations related to these issues. For example, it has been used to argue for greater protection of privacy in the context of the increasing use of technology and data collection.

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## JUSTICE K.S. PUTTASWAMY V. UNION OF INDIA

AIR 2017 SC 4161

### **Facts in Brief:**

The case of Justice K.S. Puttaswamy v. Union of India is a landmark judgment in the history of Indian jurisprudence. The case was primarily about the constitutional validity of the Aadhaar scheme, a biometric identification system implemented by the Government of India. The petitioner, Justice K.S. Puttaswamy, a retired judge of the Karnataka High Court, challenged the scheme on the grounds that it violated the right to privacy of Indian citizens. The case was heard by a nine-judge bench of the Supreme Court, which had to decide whether the right to privacy was a fundamental right under the Indian Constitution.

### **Issues:**

The main issue in the case was whether the right to privacy is a fundamental right under the Indian Constitution. The case also raised questions about the extent to which the state could use personal data collected under the Aadhaar scheme. The court had to balance the state's interest in preventing fraud and ensuring social security with the individual's right to privacy.

### **Arguments:**

The arguments in the case revolved around the interpretation of the Constitution and the scope of

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individual rights. The petitioner argued that the right to privacy is inherent in the right to life and personal liberty under Article 21 of the Constitution. The state, on the other hand, argued that while privacy is a valuable right, it is not an absolute right and can be restricted for legitimate state interests. The state also argued that the Aadhaar scheme was a necessary measure to ensure social security and prevent fraud.

## **Held:**

The Supreme Court held that the right to privacy is a fundamental right under the Indian Constitution. The court ruled that privacy is intrinsic to freedom and liberty and is protected under the Constitution. The court also held that the right to privacy is not just a common law right, but a fundamental right falling in Part III of the Constitution. The court recognized that privacy is a primal, natural right which is inherent to an individual. The court also noted that the importance of this right to privacy cannot be diluted and the significance of this is that the legal conundrum was debated and is to be settled in the present reference by a nine-Judges. The court also noted that the importance of privacy may vary from person to person dependent on his/her approach to society and his concern for being left alone or not. That some people do not attach importance to their privacy cannot be the basis for denying recognition to the right to privacy as a basic human right.

The court also noted that the right to privacy is not absolute and is subject to reasonable restrictions for

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legitimate state interests. However, any law that seeks to restrict this right must satisfy the criteria of legality, necessity, and proportionality. The court also directed the government to put in place a robust regime for data protection. The judgment has been hailed as a landmark decision that significantly expands the scope of privacy rights in India.

## Legal principles with relevant sections

The judgment in the case of Justice K.S. Puttaswamy (Retd.) vs Union of India and Ors. is a landmark one that established the right to privacy as a fundamental right under the Indian Constitution. The legal principles and relevant sections that were discussed in the judgment are as follows:

- **Article 21 of the Indian Constitution:** The judgment reaffirmed the interpretation of Article 21, which guarantees the right to life and personal liberty, to include the right to privacy. The Court held that privacy is a necessary condition for the meaningful exercise of the right to life and personal liberty.
- **Article 14 of the Indian Constitution:** The judgment also touched upon the principle of equality before the law and equal protection of the laws under Article 14. It was held that the right to privacy is a precondition to the enjoyment of any of the guarantees against arbitrariness under Article 14.

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- **Article 19 of the Indian Constitution:** The judgment further expanded the scope of Article 19, which guarantees certain freedoms, to include the freedom to develop one's personality and to preserve personal intimacies as a part of the right to privacy.

## **Obiter dictum**

In the judgment, the Court made several obiter dicta, which are statements of law that are not directly related to the facts of the case and do not form a necessary part of the reasoning for the decision. One such obiter dictum was the Court's discussion on the concept of informational privacy. The Court observed that the right to privacy also includes the right to control the dissemination of personal information. This obiter dictum has significant implications for data protection laws in India.

## **Important para from judgement**

One of the most important paragraphs from the judgment is where the Court discusses the concept of dignity. The Court held that "Article 21 protects the dignity of human life, one's personal autonomy, one's right to privacy, etc. Right to dignity has been recognized to be an essential part of the right to life and accrues"

## **Subsequent Impact of the judgement**

The judgment in Justice K.S. Puttaswamy (Retd.) vs Union of India and Ors. has had a profound impact on Indian jurisprudence. It has been cited in numerous cases

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to uphold the right to privacy in various contexts, such as the right to choose one's sexual orientation, the right to eat the food of one's choice, and the right to marry a person of one's choice. The judgment has also influenced the drafting of the Personal Data Protection Bill, which seeks to protect the privacy of individuals' personal data.



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**INDIAN YOUNG LAWYERS ASSOCIATION V.**  
**STATE OF KERALA**

**2018 SCC ONLINE 1690**

### **Facts in brief**

The case of Indian Young Lawyers Association v. State of Kerala, also known as the Sabarimala case, revolves around the practice of prohibiting women of menstruating age (10-50 years) from entering the Sabarimala temple in Kerala, India. The temple, dedicated to Lord Ayyappa, is one of the largest pilgrimage sites in the world, attracting millions of devotees each year. The prohibition was based on the belief that the presiding deity, Lord Ayyappa, is a celibate, and the presence of women of menstruating age would disturb his celibacy.

### **Issues**

The main issue in the case was whether the prohibition of women of menstruating age from entering the Sabarimala temple amounted to discrimination and violated the fundamental rights guaranteed under the Indian Constitution. The case raised important questions about the balance between the right to freedom of religion and the right to equality. It also touched upon the issue of what constitutes an essential religious practice and whether such practices can be subjected to judicial review.

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## Arguments

The petitioners, Indian Young Lawyers Association, argued that the prohibition of women from entering the Sabarimala temple was discriminatory and violated their fundamental rights under Articles 14 (equality before the law), 15 (prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth), and 21 (protection of life and personal liberty) of the Indian Constitution. They contended that the practice was not an essential part of Hindu religion and was merely a superstitious belief.

On the other hand, the respondents, including the State of Kerala and the temple board, argued that the practice was an essential part of the religious beliefs of the devotees of Lord Ayyappa. They contended that the right to manage religious affairs under Article 26 of the Constitution protected the practice.

## Held

The Supreme Court, in a 4:1 majority verdict, held that the practice of excluding women of menstruating age from the Sabarimala temple was unconstitutional. The Court held that the practice violated the fundamental rights of women and amounted to a form of untouchability, which is prohibited under Article 17 of the Constitution. The Court also held that the right to freedom of religion is subject to other fundamental rights, including the right to equality and the right to dignity. The Court observed that the practice was not an essential part of the Hindu religion and could not be protected

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under Article 26. The Court, therefore, directed the State of Kerala to take steps to allow entry of women of all ages into the Sabarimala temple.

## **Legal principles with relevant sections**

The judgement in the case of Indian Young Lawyers Association v. State of Kerala, 2018 SCC Online 1690, was based on several legal principles and relevant sections of the Indian Constitution and other laws. The court interpreted these laws to arrive at its decision.

The primary legal principle invoked in this case was the principle of equality enshrined in the Indian Constitution. The court relied heavily on Article 14, which guarantees equality before the law and equal protection of the laws, and Article 15, which prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. The court held that the ban on women's entry into the Sabarimala temple was discriminatory and violated these constitutional provisions

The court also referred to Article 17 of the Constitution, which abolishes untouchability. The court interpreted the social exclusion of women based on their menstrual status as a form of untouchability, which is anathema to constitutional values

The court also referred to the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, and its rules. The court held that Rule 3(b) of the 1965 Rules, which restricted the entry of women into the Sabarimala Temple, was ultra vires the 1965 Act and violated the

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fundamental rights under Article 25(1) and Article 15(1) of the Constitution

## **Obiter dictum**

The obiter dictum in this case refers to the court's observations and comments that are not directly related to the main issue of the case but provide important insights into the court's reasoning. The court made several such observations in this case.

For instance, the court observed that religious beliefs need not be acceptable, logical, consistent, or comprehensible to others to merit First Amendment protection. The court emphasized that each individual is at liberty to hold his own religious beliefs, however irrational or inconsistent they may seem to some, however surprising

The court also observed that the resolution of what constitutes a religious belief or practice is a difficult and delicate task. However, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation

## **Important para from judgement**

One of the most important paragraphs from the judgement is where the court summarises its conclusions

"(i) The exclusionary practice, which has been challenged, is a violation of the right of women to visit

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and enter a temple to freely practice Hindu religion and to exhibit her devotion towards Lord Ayyappa. The denial of this right to women significantly denudes them of their right to worship.

(ii) The practice of age restriction on women entry to Sabarimala temple cannot be treated as an essential religious practice. The practice is not an essential part of the Hindu religion.

(iii) The practice of excluding women from the temple at Sabarimala is not an essential religious practice which is protected by the right to freedom of religion, Article 25(1) of the Constitution.

(iv) Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 is a clear violation of the right of Hindu women to practice their religious beliefs which is protected by Article 25(1) of the Constitution. The provision is ultra vires the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965.

(v) The religious practices cannot be solely tested on the basis of the doctrine of essentiality. The principles of constitutional morality, transformative constitutionalism and progressive realization of constitutional rights, are to be applied while interpreting the Constitution.

(vi) The dualistic approach against women degrades the status of women, questions their individuality and is derogatory to constitutional values."

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## Subsequent Impact of the judgement

The judgement in this case has had a significant impact on the discourse around gender equality and religious practices in India. It has sparked debates about the balance between the right to equality and the right to freedom of religion. The judgement has also been seen as a landmark decision in the fight against gender discrimination in religious practices.

The judgement has also had practical implications. Following the judgement, attempts were made to allow women of all ages to enter the Sabarimala temple, leading to protests and resistance from certain sections of society. The issue remains contentious and is indicative of the ongoing struggle for gender equality in India.



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## JOSEPH SHINE V. UNION OF INDIA

AIR 2018 SC 4898

### **Facts in Brief**

The case of Joseph Shine v. Union of India is a landmark case in the history of Indian jurisprudence, which decriminalized the act of adultery in India. The petitioner, Joseph Shine, a non-resident Keralite, filed a Public Interest Litigation (PIL) under Article 32 of the Indian Constitution, challenging the constitutional validity of Section 497 of the Indian Penal Code (IPC) and Section 198(2) of the Code of Criminal Procedure (CrPC) on the grounds that they were discriminatory against men.

Section 497 of the IPC made adultery a criminal offense, but it was applicable only to men. According to this provision, a man who had sexual intercourse with the wife of another man without his consent could be held criminally liable. However, the woman, even if willingly involved in the act, was considered a victim and was exempted from punishment. Section 198(2) of the CrPC allowed the aggrieved husband to file a case against the man with whom his wife had committed adultery.

### **Issues**

The primary issue in this case was the constitutional validity of Section 497 of the IPC and Section 198(2) of the CrPC. The petitioner argued that these provisions were discriminatory and violated Articles 14, 15, and 21 of the Indian Constitution. The petitioner contended that

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the law was gender-biased, treated women as the property of their husbands, and infringed upon the right to life and personal liberty.

## Arguments

The petitioner argued that Section 497 of the IPC was based on gender stereotypes and was discriminatory against men. It was contended that the law was based on the assumption that women are the property of their husbands. It was also argued that the law infringed upon the right to life and personal liberty as it deprived women of their agency and autonomy.

The respondent, Union of India, defended the law by arguing that it served as a deterrent against marriages' breakdown. It was contended that the law aimed to preserve the sanctity of marriage and protect the institution from infidelity.

## Held

The Supreme Court, in a unanimous judgment, struck down Section 497 of the IPC and Section 198(2) of the CrPC as unconstitutional. The court held that these provisions were indeed discriminatory and violated the constitutional principles of equality and non-discrimination.

The court observed that a law that may have been justified at the time of its enactment may become outdated and discriminatory with societal evolution and changed circumstances. The court noted that Section 497,

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framed in the historical context of the 1860s, had become obsolete and archaic in contemporary society.

The court held that Section 497 failed to consider both men and women as equally autonomous individuals in society. It was held that the provision was based on gender stereotypes and treated women as victims and men as seducers, which was unrealistic in a consensual sexual relationship.

The court also held that the provision was discriminatory as it deprived women of their agency and autonomy and treated them as the property of their husbands. The court observed that the time when wives were invisible to the law and lived in the shadows of their husbands had long since gone by.

The court further held that the provision was also discriminatory against men as it did not allow a husband to prosecute his wife for adultery. The court observed that the provision was based on the assumption that the aggrieved husband is the only one who suffers from the wife's adulterous act.

## **Legal principles with relevant sections**

The legal principles in the Joseph Shine vs Union of India case revolve around the interpretation of the Indian Penal Code (IPC) and the Constitution of India. The case challenged the constitutionality of Section 497 of the IPC and Section 198(2) of the Code of Criminal Procedure (CrPC).

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Section 497 of the IPC defined the offence of adultery. It stated that if a man had sexual intercourse with a woman he knew or had reason to believe was the wife of another man, without the consent or connivance of the man, he was guilty of adultery. The woman was not considered an abettor and was exempt from punishment.

Section 198(2) of the CrPC stated that no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under Section 497 of the IPC.

The legal principles applied in this case were primarily those of equality and non-discrimination enshrined in the Constitution of India. The court examined these laws under the lens of Articles 14, 15, and 21 of the Constitution.

Article 14 guarantees equality before the law and equal protection of the laws within the territory of India. Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 21 ensures protection of life and personal liberty.

## **Obiter dictum**

An obiter dictum is a remark or observation made by a judge that, although included in the body of the court's opinion, does not form a necessary part of the court's decision. In the context of this case, the court made several observations about the societal implications and perceptions of adultery. The court noted that any provision treating women with inequality is not

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constitutional and it's time to say that a husband is not the master of his wife. Legal sovereignty of one sex over another sex is wrong.

## **Important para from judgement**

One of the most important paragraphs from the judgement is the final declaration of the court, which states:

"We, therefore, declare that Section 497 of the Indian Penal Code, 1860 and Section 198 of the Code of Criminal Procedure, 1973 are violative of Articles 14, 15(1), and 21 of the Constitution of India and are, therefore, struck down as being invalid."

This paragraph is significant as it encapsulates the court's decision to strike down the archaic and discriminatory laws, marking a significant step towards gender equality in India.

## **Subsequent Impact of the judgement**

The judgement had a profound impact on the interpretation of law in India. It was hailed as a significant step towards gender equality and the recognition of women's rights in India. By striking down Section 497, the court acknowledged that the provision was discriminatory against women and infringed upon their right to equality and life with dignity.

The judgement also had a broader impact on the interpretation of personal liberty and the right to privacy. It emphasized that the constitutionality of a law must not

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be determined on the basis of societal norms at the time of its enactment, but must take into account the evolving societal context and constitutional principles.



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## PRAMATI EDUCATIONAL & CULTURAL TRUST V. UNION OF INDIA

(2014) 8 SCC 1

### **Facts in Brief:**

The case of Pramati Educational & Cultural Trust v. Union of India was brought before the Supreme Court of India in 2014. The case was heard by a bench consisting of R.M. Lodha, A.K. Patnaik, Sudhansu Jyoti Mukhopadhaya, Dipak Misra, and Fakkir Mohamed Kalifulla. The case was a reference made by a three-Judge Bench of the Supreme Court in the case of Society for Unaided Private Schools of Rajasthan v. Union of India & Anr. [(2012) 6 SCC 102] to a Constitution Bench.

The case primarily dealt with the validity of clause (5) of Article 15 of the Constitution, which was inserted by the Constitution (Ninety-third Amendment) Act, 2005, effective from 20.01.2006, and the validity of Article 21A of the Constitution, which was inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002.

### **Issues:**

The central issue in the case was the constitutional validity of clause (5) of Article 15 and Article 21A of the Indian Constitution. The clause (5) of Article 15, inserted by the Constitution (Ninety-third Amendment) Act, 2005, allows the State to make any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the

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Scheduled Castes or the Scheduled Tribes, relating to their admission to educational institutions.

Article 21A, inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right.

### **Arguments:**

The petitioners argued that the amendments violated the basic structure of the Constitution by infringing upon the fundamental rights of private educational institutions. They contended that the State's power to make laws related to admission in educational institutions affected the autonomy and rights of private educational institutions as defined by the Supreme Court in T.M.A. Pai Foundation.

On the other hand, the respondents, Union of India, argued that the amendments were necessary to ensure the right to education for all children and to promote social justice and equality.

### **Held:**

The Supreme Court held that the amendments were constitutionally valid. The Court ruled that the identity of a fundamental right, as judicially determined, is not destroyed by the width of the power of the State. The Court further noted that if the State makes a law which is not related to admission in educational institutions and relates to some other aspects affecting the autonomy and

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rights of private educational institutions, such a law would not be within the purview of the amendments.

The Court also held that secularism is a basic feature of the Constitution, but clause (5) of Article 15 of the Constitution, which excludes religious minority institutions in clause (1) of Article 30 of the Constitution, is not violative of the concept of secularism.

### **Legal principles with relevant sections**

The legal principles involved in this case primarily revolve around the interpretation of the Constitution of India, specifically the rights of minority institutions under Article 30(1), and the validity of clause (5) of Article 15 and Article 21A.

The court examined the validity of clause (5) of Article 15, which was inserted by the Constitution (Ninety-third Amendment) Act, 2005. This clause empowers the State to make any special provision, by law, for the advancement of any socially and educationally backward classes of citizens, including the Scheduled Castes and the Scheduled Tribes, relating to their admission to educational institutions

The court also examined the validity of Article 21A, which was inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002. This article provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right

The court also considered the argument that clause (5) of Article 15, which excludes religious minority institutions

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referred to in clause (1) of Article 30, is violative of Article 14 of the Constitution

## **Obiter dictum**

The court, in its obiter dictum, made several important observations. It noted that the identity of a fundamental right, as judicially determined, is not destroyed by the width of the power. It also observed that if the State makes a law which is not related to admission in educational institutions and relates to some other aspects affecting the autonomy and rights of private educational institutions, such a law would not be within the ambit of the Constitution.

## **Important para from judgement**

One of the key paragraphs from the judgement is the one where the court discusses the reason for the insertion of Article 21A into the Constitution. The court notes that although the Directive Principle in Article 45 contemplated that the State will provide free and compulsory education for all children up to the age of fourteen years within ten years of promulgation of the Constitution, this goal could not be achieved even after 50 years. Therefore, a constitutional amendment was proposed to insert Article 21A in Part III of the Constitution.

## **Subsequent Impact of the judgement**

The judgement in this case has had a significant impact on the interpretation of the rights of minority educational institutions under the Constitution. It has clarified the

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extent to which the State can regulate these institutions and has affirmed the validity of the constitutional amendments that provide for the right to free and compulsory education.

The judgement has also had an impact on the interpretation of the rights of private educational institutions. The court's observation that a law affecting the autonomy and rights of private educational institutions would not be within the ambit of the Constitution unless it is related to admission in these institutions has implications for the regulation of private educational institutions in India.

Furthermore, the judgement has reinforced the principle that the identity of a fundamental right, as judicially determined, is not destroyed by the width of the power. This principle is important for the interpretation of fundamental rights under the Constitution.

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#### PAPER 1

#### PART A

**QUESTION 1: WRITE SHORT NOTES ON THE  
FOLLOWING:**

**WRITE SHORT NOTE DEFINE 'STATE'**

In the context of Indian law, the term 'State' carries a specific definition as per the Constitution of India. Article 12 of the Constitution provides a broad definition of the term 'State' for the purpose of Part III, which deals with Fundamental Rights. It is significant to note that this term does not merely refer to the government at the centre or states.

According to Article 12, the term 'State' includes:

1. The Government and Parliament of India - that is, the Executive and Legislature of the Union.
2. The Government and the Legislature of each of the States.

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3. All local authorities within the territory of India or under the control of the Government of India.
4. Other authorities within the territory of India or under the control of the Government of India.

The inclusion of 'other authorities' in the definition means the ambit is not limited to traditional arms of the government. The exact interpretation of 'other authorities' has been the subject of numerous court cases.

One of the earliest interpretations of 'other authorities' came in the case of **Ujjam Bai Vs State of Uttar Pradesh (1962)** where the court held that statutory authorities which have the power to make laws would fall within the definition of 'other authorities'.

However, the scope of 'other authorities' was expanded by the Supreme Court in **R.D. Shetty Vs International Airport Authority (1979)**. The court here held that bodies which are created by a statute and have the power to affect the rights of individuals could also be included in the definition of 'State'.

In the landmark case of **Ajay Hasia Vs Khalid Mujib (1981)**, the Supreme Court held that it is not the constitution of the body but the nature of the power and functions it performs that determines whether it is a 'State' or not. The court identified certain tests to determine if a body can be considered 'State'. These include if the body is financially, functionally or administratively dominated by or under the control of the

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Government.

Hence, the definition of 'State' in the context of the Constitution of India is not merely confined to the government and its arms, but includes all bodies which are instrumentalities or agencies of the Government.

## WRITE SHORT NOTE DOCTRINE OF ECLIPSE

The doctrine of eclipse is a legal principle related to the constitutional validity of laws in India. The doctrine is based on the premise that a law inconsistent with the Constitution does not become null and void ab initio (from the beginning) but becomes only unenforceable, i.e., it is overshadowed by the Constitution and remains dormant, but is not dead.

The doctrine of eclipse is enshrined in Article 13(1) of the Indian Constitution, which states that all laws in force in the territory of India immediately before the commencement of the Constitution, insofar as they are inconsistent with the provisions of Part III (Fundamental Rights), shall, to the extent of such inconsistency, be void.

The doctrine was clarified by the Supreme Court in the landmark case of **Bhikaji Narain Dhakras vs State of Madhya Pradesh (1955)**. In this case, the court ruled that a law inconsistent with the Constitution is not nullity or void ab initio but becomes only unenforceable.

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However, such a law is not dead forever. The inconsistency or contrariety between the law and the Constitution merely results in an "eclipse" of the law.

Importantly, the doctrine of eclipse applies only to pre-constitutional laws and not post-constitutional laws as per the Supreme Court's judgment in **Deep Chand vs State of Uttar Pradesh (1959)**. The court held that post-constitutional laws, if they are viol

## WRITE SHORT NOTE CHILD LABOUR

Child labour, as the term indicates, refers to the employment of children in work that is harmful to their physical and mental development. In India, child labour is a significant social issue, and various constitutional and statutory provisions have been put in place to prevent and combat this problem.

The Indian Constitution embodies provisions concerning child labour and its prohibition. **Article 24 - Prohibition of Employment of Children in Factories, etc.:** categorically prohibits the employment of children below the age of 14 years in any factory, mine, or other hazardous employment. This specific constitutional provision empowers the state to make laws prohibiting the employment of children in factories, mines, or other hazardous occupations. It recognizes the need for child labour regulation.

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**Article 21-A** of the Indian Constitution, inserted by the 86th Amendment Act, 2002, enshrines the right to education as a fundamental right for children in the age group of 6 to 14 years. This article emphasizes the state's responsibility to provide free and compulsory education to all children within this age range. **Article 39(e)** also directs the State to ensure that the health and strength of workers, men, and women, and the tender age of children are not abused.

The **Directive Principles of State Policy**, as outlined in Part IV of the Constitution, include principles that guide the state in creating policies and laws. Several DPSPs relate to child welfare and education, emphasizing the state's responsibility to protect the rights and interests of children.

The government has also enacted several laws to combat child labour. The **Child and Adolescent Labour (Prohibition and Regulation) Act, 1986** is the primary statute dealing with the issue. This Act initially prohibited the employment of children below 14 years in certain hazardous occupations and regulated the conditions of work in other occupations. However, after the 2016 amendment, the Act has prohibited the employment of children up to 14 years in all occupations and of adolescents (14-18 years) in hazardous occupations.

The Supreme Court has also played a significant role in addressing child labour. In **M.C. Mehta vs State of Tamil Nadu (1996)**, the Court laid down detailed

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guidelines and a scheme for the eradication of child labour. It also made it obligatory for employers to pay a certain amount of money to a welfare fund for the purpose of contributing to a child's education.

## WRITE SHORT NOTE RIGHT TO DIE

The 'right to die' is a topic that has sparked substantial debate in the context of constitutional and medical law, primarily revolving around the question of euthanasia and suicide.

The Indian Constitution does not explicitly mention the right to die, but it has been a matter of judicial interpretation in relation to **Article 21** - Protection of Life and Personal Liberty. Initially, in **State of Maharashtra vs Maruti Shripati Dubal (1987)**, the Bombay High Court held that the right to life includes the right to die, and thus struck down Section 309 of the Indian Penal Code (IPC) which criminalizes attempted suicide.

However, this view was overturned by the Supreme Court in **P. Rathinam vs Union of India (1994)**. The Court held that the right to life under Article 21 does not include the right to die, thereby upholding the constitutionality of Section 309 IPC.

Later, in **Gian Kaur vs State of Punjab (1996)**, the

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Supreme Court held that 'right to life' does not include 'right to die' but it includes 'right to die with dignity'. The court maintained that euthanasia and assisted suicide are not lawful in India, and it also upheld the constitutionality of Section 309 IPC.

But in a landmark judgment in **Common Cause (A Regd. Society) vs Union of India (2018)**, the Supreme Court recognized and legalized passive euthanasia and the concept of 'living will' or 'advance medical directive'. It stated that the right to die with dignity is a fundamental right. However, the court maintained that active euthanasia is illegal and punishable under law.

While passive euthanasia is permitted, it must be noted that active euthanasia remains prohibited and punishable under the law. Active euthanasia involves the intentional act of causing the death of a patient in great suffering, for instance, through lethal substances. It is deemed illegal due to concerns about potential misuse and ethical considerations.

The concept of passive euthanasia refers to withholding or withdrawing life-sustaining medical treatment or artificial life support from a terminally ill patient or a person in a persistent vegetative state when it is in accordance with their express or implied wishes. The Supreme Court's judgment in the **Aruna Ramchandra Shanbaug vs. Union of India** case in 2011 allowed for passive euthanasia in specific circumstances under judicial supervision.

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Section 309 of the Indian Penal Code, which criminalised attempted suicide, was also decriminalized by the **Mental Health Care Act, 2017**. As per Section 115(1) of the Act, a person who attempts suicide shall be presumed to be suffering from severe stress, and not subjected to any investigation or prosecution.

## WRITE SHORT NOTE PROHIBITION

'Prohibition' in the context of Indian constitutional law, refers to a type of writ that is issued by a higher court (like the Supreme Court or High Courts) to a lower court or a tribunal prohibiting them from continuing proceedings in a particular case where it has no jurisdiction to try, or from overstepping or exceeding its jurisdiction or acting contrary to the rules of natural justice. It is a part of the broader ambit of the Judiciary's power under the Constitution to issue writs.

**Article 32** and **Article 226** of the Constitution empower the Supreme Court and the High Courts respectively to issue writs, including the writ of prohibition, for the enforcement of the fundamental rights and for any other purpose. While the Supreme Court can issue writs only for enforcement of fundamental rights, the High Courts can issue them for enforcement of fundamental rights as well as any other legal right.

A writ of prohibition is, in essence, a preventive measure,

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and it is issued when it is shown to the court that there is an assumed jurisdiction where there exists none. It is issued when the proceedings are pending in a court. Once the proceedings have become final, the writ will not be issued. The writ of prohibition differs from the writ of certiorari, which is used to quash an order already passed by an inferior court or tribunal.

The purpose of a writ of prohibition is to prevent an inferior court from usurping a jurisdiction which it does not possess. This preserves the hierarchical judiciary system and ensures that the rights of the individuals are not infringed upon by the lower courts acting outside their jurisdiction.

The use of writ of prohibition is exemplified in the case of **Hari Vishnu Kamath vs Ahmad Ishaque (1955)**. In this case, the Supreme Court ruled that a High Court can issue a writ of prohibition even at an interlocutory stage, not merely after the final order has been passed.

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## PART B

**DISCUSS THE CONCEPT OF RESERVATION FOR BACKWARD CLASSES IN THE LIGHT OF INDRA SAWHNEY JUDGEMENT. ALSO DISCUSS THE IMPLICATION OF THE CONCEPT IN THE LIGHT OF RECENT DEMAND FOR OBC RESERVATION BY SOME COMMUNITIES.**

The concept of reservation for backward classes is rooted in the historical injustices and systemic social and educational inequalities faced by certain sections of Indian society. The framers of the Indian Constitution recognised the necessity of a protective discrimination policy to uplift these disadvantaged groups, a commitment that has been enshrined in the form of reservation in public employment, educational institutions and legislatures.

**Indra Sawhney vs Union of India (1992)**, also known as the Mandal Commission case, is a landmark judgement that significantly influenced the interpretation and application of reservation for backward classes in India. The judgement upheld the recommendations of the Mandal Commission, which proposed the provision of 27% reservation for Other Backward Classes (OBCs), bringing the total reservation to 49.5%.

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The Supreme Court, while upholding the constitutionality of reservations for OBCs, set out certain guidelines and limitations. It asserted that caste can be a starting point for recognising backward classes but emphasised that socioeconomic factors should also be considered. It ruled that the 'creamy layer' of OBCs—those earning above a certain income or possessing a certain social status—should be excluded from the benefits of reservation to ensure that the truly disadvantaged receive its benefits. This concept of the 'creamy layer' has since been integral to the discourse on reservation in India.

The Supreme Court in the **Indra Sawhney case** also ruled that reservations should not exceed 50% of the total seats or positions, except in extraordinary situations. This was to ensure that the principle of equality embodied in Article 14 of the Constitution was not overridden by the provisions for reservation in Article 15(4) and Article 16(4).

However, the issue of reservation in India remains highly contentious, with numerous communities demanding inclusion in the OBC list to avail the benefits of reservation. The **Patel (Patidar) agitation in Gujarat**, the **Jat agitation in Haryana**, and the **Maratha agitation in Maharashtra** are recent examples of such demands. These communities argue that they face economic hardship and social marginalisation and should thus be included in the category of backward classes.

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The demand for reservation by these relatively prosperous and politically dominant communities has stirred debates and raised several critical questions. Firstly, it brings into focus the concept of backwardness: Should it be determined only on the basis of social and educational parameters, or should economic factors also be considered? The Constitution (103rd Amendment) Act, 2019 introduced economic reservation by providing 10% reservation for Economically Weaker Sections (EWS) in the general category, thereby indicating a shift towards considering economic factors.

However, the demand for OBC reservation by these communities presents another concern: the potential violation of the 50% limit set by the Supreme Court in the **Indra Sawhney case**. This has led to tensions between those advocating for the preservation of the 50% cap to maintain a balance between equality and social justice, and those pushing for an increase in the cap to accommodate more backward classes.

It is important to note that while reservation aims to correct historical injustices and provide opportunities to the underprivileged, it should not lead to reverse discrimination or perpetuate the very inequalities it aims to eliminate. Therefore, the 'creamy layer' concept, introduced in the **Indra Sawhney case**, plays a crucial role. It ensures that the benefits of reservation reach the most needy and deprived sections of backward classes. However, the determination of the 'creamy layer' remains a complex issue. Various commissions, including the

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**Raghava Reddy Commission** and the **NG Gaikwad Commission**, have been set up to examine the criteria for determining the 'creamy layer' among OBCs, indicating the dynamic and evolving nature of the issue.

Another significant dimension is the intersection of reservation policy with federalism. As per **Article 342A**, introduced by the Constitution (102nd Amendment) Act, 2018, the President, with respect to consultation with the Governor, notifies the socially and educationally backward classes for any state or union territory. This has raised concerns about the state government's role and autonomy in determining the backward classes. The Supreme Court, in the **Maratha Reservation case (2021)**, held that after the 102nd amendment, the state governments cannot designate new backward classes and can only make suggestions to the President.

However, this judgement has been challenged by several states, leading to a reconsideration by a larger bench of the Supreme Court. It reflects the continuous interplay of reservation policy with the principles of federalism, and the need to maintain a delicate balance between the two.

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**“THE FUNDAMENTAL RIGHT TO FREEDOM OF SPEECH AND EXPRESSION HAS IN RECENT TIMES SEEN EXPANDING HORIZONS.” DISCUSS AND POINT OUT THE JUDICIAL APPROACH IN THIS REGARD.**

The fundamental right to freedom of speech and expression, enshrined under Article 19(1)(a) of the Indian Constitution, is pivotal to a democratic society. Over the years, the scope of this right has been significantly expanded through a progressive interpretation by the judiciary, transforming it from a purely civil and political right to one that encompasses various socio-economic and cultural dimensions.

One of the primary expansions of the right to freedom of speech and expression has been the recognition of the freedom of the press as an integral part of this right. Although not expressly mentioned in the Constitution, the Supreme Court in **Express Newspapers (Bombay) Private Ltd. & Ors. vs. The Union of India & Ors. (1959)** held that freedom of the press is included within Article 19(1)(a). It asserted that the press plays a crucial role in the dissemination of thoughts and ideas and is essential for the proper functioning of the democratic process.

Another landmark judgement was **Romesh Thapar vs The State of Madras (1950)**, where the court ruled that the freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion, no public education is possible.

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This judgement emphasised the importance of political discussions as an essential element of freedom of speech and expression.

A further dimension added to the freedom of speech and expression is the right to receive information. In **State of Uttar Pradesh vs Raj Narain (1975)**, the Supreme Court ruled that the right to know, to receive information and to impart information are all included in the right to freedom of speech and expression.

In the modern age of technology and internet, the Supreme Court in **Shreya Singhal vs Union of India (2015)** struck down Section 66A of the Information Technology Act, 2000, which criminalised sending offensive messages through a computer resource, on the grounds of it being violative of Article 19(1)(a). The Court opined that the provision was vague and overbroad, and hence capable of wanton abuse. This judgement marked a significant advancement of freedom of speech in the digital age.

The freedom of speech and expression also extends to the freedom of commercial speech. In **Tata Press Limited vs Mahanagar Telephone Nigam Limited (1995)**, the Supreme Court held that commercial speech is a part of the freedom of speech and expression. However, it is subject to reasonable restrictions under Article 19(2).

One crucial aspect of the freedom of speech and expression is the right to silence. In **Bijoe Emmanuel vs State of Kerala (1986)**, the Supreme Court held that

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the right to silence was also part of the freedom of speech and expression. The case involved three children who were expelled from their school for not singing the national anthem due to their religious beliefs. The Court ruled in their favour, recognising their right to remain silent.

One of the most pressing challenges to the right to freedom of speech and expression in recent times has been the issue of hate speech and the rise of offensive online content. Balancing the right to freedom of speech with the necessity to prevent hate speech has become a complex issue, requiring careful judicial intervention. In **Pravasi Bhalai Sangathan vs Union of India (2014)**, the Supreme Court recognised the need for new legal mechanisms to combat hate speech.

In recent years, the right to freedom of speech and expression has also been considered in light of the right to privacy. In the landmark judgement of **Justice K.S. Puttaswamy (Retd.) vs Union of India (2017)**, a nine-judge bench of the Supreme Court unanimously held that the right to privacy is a fundamental right under the Constitution. The judgment established that freedom of speech must be balanced with the right to privacy, marking a significant evolution in the judicial interpretation of Article 19(1)(a).

In a globalized world, the concept of freedom of speech and expression has also extended beyond national boundaries. In **Manoj Narula vs Union of India (2014)**, the Supreme Court held that in the age of

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internet and globalisation, the freedom of speech and expression extends to the international audience.

The judiciary has also been responsive to the misuse of laws to curtail freedom of speech and expression. In **Disha Ravi vs State of Delhi (2021)**, the Delhi High Court highlighted the importance of the freedom of speech and expression, especially on social media, and ruled that the creation of a WhatsApp group or being editor of an innocuous toolkit is not an offence. This judgement came in the context of the increasing use of draconian laws like sedition and the Unlawful Activities (Prevention) Act to suppress dissent.

However, the challenge of striking a balance between free speech and regulation remains. For instance, the recent IT Rules, 2021, have drawn criticism for potentially curtailing freedom of speech online. In such scenarios, the judiciary's role becomes even more crucial in protecting the right to freedom of speech and expression.

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**DISCUSS THE CONCEPT OF RIGHT TO EDUCATION UNDER ARTICLE 21A OF THE CONSTITUTION. ALSO EXPLAIN THE PROBLEM IN IMPLEMENTING RTE ACT, 2009 FOR THE PURPOSE OF FREE AND COMPULSORY EDUCATION TO ALL CHILDREN.**

The Right to Education, enshrined under Article 21A of the Indian Constitution, is a watershed moment in the history of our democracy. It firmly establishes education as a fundamental right and underscores its essential role in ensuring an individual's holistic development and promoting social justice.

**Article 21A**, introduced by the Constitution (86th Amendment) Act, 2002, mandates that "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine". This amendment affirmed education's place as a fundamental right, bridging the gap between directive principles of state policy and fundamental rights. It firmly places the responsibility of providing free and compulsory education on the state.

To give effect to Article 21A, the **Right to Education Act (RTE), 2009**, was enacted. This Act not only guarantees access to free and compulsory education but also emphasizes quality education, embodying parameters for pupil-teacher ratios, infrastructure, school working days, teacher working hours, etc. The Act further incorporates important principles such as

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prohibition of corporal punishment, banning of capitation fees, and prohibition of screening procedures for admission, to name a few. The Act also mandates 25% reservation in private schools for disadvantaged sections of the society, thus affirming the concept of inclusive education.

While the insertion of Article 21A and the enactment of the RTE Act has transformed the education landscape in India, the implementation of this progressive legislation faces several hurdles.

One of the main issues is the **quality of education**. Despite the RTE Act's provisions, many schools, particularly in rural areas, grapple with substandard infrastructure, inadequate facilities, and poor learning outcomes. The ASER (Annual Status of Education Report) has consistently pointed out the dismal state of learning levels among school children, even as they move to higher classes.

Another significant challenge is the **shortage of trained teachers** and high pupil-teacher ratios. The inadequacy of trained and competent teachers impacts the quality of education. The recruitment process, service conditions, and capacity building of teachers require greater attention to address this challenge.

Moreover, the **implementation of the 25% reservation** in private schools for disadvantaged sections has been fraught with difficulties. There have been instances of resistance from private schools, lack of

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awareness among eligible students, and procedural complexities in availing this provision. Also, concerns have been raised about the capacity of private schools to accommodate these students without compromising the quality of education.

Another hurdle in the implementation of the RTE Act is the **exclusion of certain categories**. The Act applies to children between the age group of six to fourteen years, thus leaving out children under six (the early childhood care and education) and those over fourteen. The lack of a fundamental right to education for these categories can create gaps in the continuity and comprehensiveness of learning. The Supreme Court, in **Unni Krishnan v. State of Andhra Pradesh (1993)**, noted that the right to education up to the age of 14 years is not absolute and beyond that age, it is subject to the limits of economic capacity and development of the State.

A major challenge in the implementation of the RTE Act is the **lack of uniformity**. The implementation of RTE varies widely across states, leading to disparities in access to and quality of education. The norms and standards prescribed under the Act are often not adhered to. Despite the clear definition of a 'school' under the Act, many unrecognised schools continue to operate. These schools often do not meet the prescribed norms, thereby affecting the quality of education provided.

Financial constraints pose another significant challenge. **Insufficient public funding** often results in inadequate infrastructure, a lack of trained teachers, and

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inadequate learning resources, thus impeding the effective implementation of the RTE Act.

Furthermore, the **gap between legislation and societal attitudes** is another key issue. The instances of discrimination against socially disadvantaged students, especially those availing the 25% reservation in private schools, highlight the societal prejudices that act as impediments to the effective implementation of RTE.

While the above challenges seem daunting, they are not insurmountable. The judiciary has played a proactive role in ensuring the enforcement of the right to education. In the landmark case of **Mohini Jain v. State of Karnataka (1992)**, the Supreme Court held that the right to education flows directly from the right to life, and that the right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.

The success of the RTE Act depends on its effective implementation. There is a need for comprehensive planning, a coordinated approach between the central and state governments, sufficient allocation of resources, strengthening of community-based monitoring, addressing teacher vacancies, and most importantly, enhancing the quality of education. The importance of education in shaping the future of the country and its socio-economic development cannot be overstated. Therefore, all stakeholders must work together to overcome the challenges in the implementation of the RTE Act.

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**"RIGHT TO EQUALITY AND PROTECTION TO PERSONAL LIBERTY ARE NO LONGER MUTUALLY EXCLUSIVE". DISCUSS.**

The Constitution of India, as a living document, is continually interpreted and reinterpreted by the courts to reflect the evolving social, political, and economic contexts. One of the most crucial aspects of this interpretation has been the relationship between the Right to Equality under Article 14 and the protection of personal liberty under Article 21. Initially seen as distinct and separate rights, these two fundamental rights have seen an increasing convergence in jurisprudence, reflecting the assertion that "Right to Equality and protection to personal liberty are no longer mutually exclusive."

**Article 14** of the Constitution of India guarantees "equality before the law" and "equal protection of the laws". It lays down a fundamental guarantee that all people shall be equally protected by the laws of the country and prohibits any discrimination by the State in this regard. This right ensures that no person or groups of persons are singled out for discriminatory treatment by laws or by actions of the government.

**Article 21**, on the other hand, guarantees the protection of life and personal liberty, asserting that "No person shall be deprived of his life or personal liberty except according to the procedure established by law". It covers a broad range of rights, including the right to live with human dignity, the right to livelihood, the right to health, the right to privacy, and the right to a clean environment,

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among others.

In the early years of constitutional interpretation, these two rights were often seen in separate silos. However, the post-Emergency era witnessed a transformative shift in the interpretation of these rights, and a new understanding emerged that sought to read these rights in conjunction.

This shift is rooted in the principle of non-arbitrariness which links the Right to Equality and the protection of personal liberty. The concept of non-arbitrariness, as enshrined in Article 14, signifies that any State action must not be arbitrary or unreasonable and must be based on some rational and relevant principle which is non-discriminatory. The principle of non-arbitrariness, therefore, provides a significant link between the right to equality and the protection of personal liberty.

A **landmark judgment** that propounded this link between Article 14 and Article 21 was **Maneka Gandhi v. Union of India (1978)**. In this case, the Supreme Court held that the procedure established by law for depriving a person of personal liberty must be fair, just, and reasonable and not arbitrary, fanciful, or oppressive. Thus, it effectively imported the principle of non-arbitrariness from Article 14 into Article 21, blurring the rigid demarcation that had previously existed between these rights. The Court held that Articles 14, 19, and 21 are not mutually exclusive and instead form part of an integrated scheme in the Constitution.

Another judgment that further substantiated this

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integrated approach was in the case of **Francis Coralie Mullin v. Union Territory of Delhi (1981)**. The Court underscored the relationship between the right to life and personal liberty under Article 21 and the right to equality under Article 14. It asserted that the right to life includes the right to live with human dignity, and that would mean the presence of all those aspects which make life meaningful, complete, and worth living. It further asserted that any action that treats a person with indignity, subjecting him to cruelty and hardship, offends the dignity of the individual and thereby violates Article 21.

In the case of **Bandhua Mukti Morcha v. Union of India (1984)**, the Supreme Court again emphasized the interconnectedness of these rights. It held that any form of forced labour would violate the fundamental rights under Article 21, as well as Article 23 (1), and would also infringe upon the right to live with dignity, which is implicitly ensured under the Right to Equality. This case is of particular importance as it extends the purview of the Right to Equality to include socio-economic equality, thereby recognizing the right to live with dignity as an essential part of the same.

These precedents have laid the foundation for a jurisprudence that seeks to harmonize the right to equality and personal liberty. The principle of non-arbitrariness acts as a crucial thread that ties these rights together, thus reiterating the assertion that Right to Equality and the protection of personal liberty are no longer mutually exclusive.

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**EXPLAIN THE CONCEPT OF JUDICIAL REVIEW IN INDIAN CONTEXT. ALSO EXPLAIN THE LIMITATION OF IT WITH EXAMPLES.**

Judicial Review is a doctrine of constitutional law under which the judiciary reviews the actions of the legislative and executive branches of government to determine whether or not they are constitutional. The concept of judicial review has been adopted in the Indian Constitution from the Constitution of the United States. It is the power of the judiciary to interpret the Constitution and to uphold its sanctity. The Supreme Court (Article 32) and High Courts (Article 226) can issue writs in case of violation of Fundamental Rights of an individual.

The concept of judicial review is enshrined within the Indian Constitution, and its scope and extent depends upon the provisions of the parts of the Constitution which confer such powers upon the Judiciary. In India, judicial review is based on Part III (which deals with Fundamental Rights), Part IV (which deals with Directive Principles of State Policy) and also on other various parts of the Constitution.

## **Judicial Review of Legislative Actions**

The Supreme Court of India, as the guardian of the Constitution, has the power to declare a law passed by the legislature null and void if it finds that the law is unconstitutional and goes against the provisions of the Constitution. For instance, in the landmark case of

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**Kesavananda Bharati vs State Of Kerala And Anr (1973)**, the Supreme Court held that the 'basic structure' of the Constitution is inviolable, and cannot be tampered with by any legislative or executive act.

## Judicial Review of Executive Actions

In addition to legislative acts, executive actions are also under the purview of judicial review. Any executive action, if found to be violative of the Constitution or any legal provision, can be declared null and void by the judiciary. In **Som Prakash Vs Union of India (1981)**, the Supreme Court held that the executive power of the Union is co-extensive with the legislative power of the Union and is subject to the same constitutional or legislative limitation.

## Limitations of Judicial Review in India

Despite the significant role that judicial review plays in safeguarding the Constitution, it also comes with its share of limitations and challenges.

1. **Doctrine of Laches:** According to this principle, if a person does not approach the court within a reasonable time, his/her petition may not be heard by the court. This principle limits the scope of judicial review.
2. **Res Judicata:** The principle of Res Judicata also poses a limitation on the power of judicial review. If a matter has already been decided by a competent court, the same matter cannot be re-

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3. **Bar of Writ Jurisdiction:** Certain Articles like Article 32 and Article 226 provide the power of judicial review to the Supreme Court and High Courts respectively. But, this power is not absolute. There are certain matters which are outside the purview of the writ jurisdiction, such as disputes relating to political questions, or disputes arising out of treaties and contracts between States.
4. **Imposition of Emergency:** During the period of emergency, the power of the courts to review the constitutionality of laws is curtailed to a great extent. The 44th Amendment to the Constitution however has restored the power of the court to protect the Fundamental Rights of the citizens even during emergency, except when a proclamation of emergency is made on the ground of war or external aggression.
5. **Parliamentary Privileges:** Under Article 105, the Constitution gives certain privileges and immunities to the members of the Parliament. The actions taken under these privileges are immune from judicial review.

## Parliament's power to amend the Constitution and its impact on Judicial Review

The Parliament's power to amend the Constitution under

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Article 368 also bears a significant impact on the exercise of judicial review. The extent of Parliament's amending power had been a contentious issue and was the subject of a series of constitutional battles between the Parliament and the Judiciary.

In the **Golak Nath v. State of Punjab (1967)** case, the Supreme Court held that the Parliament does not have the power to abridge or take away any of the Fundamental Rights enshrined in the Constitution. However, in a significant turn of events, the 24th Constitutional Amendment was enacted by the Parliament asserting its authority to amend all parts of the Constitution, including the Fundamental Rights.

This led to the landmark **Kesavananda Bharati v. State of Kerala (1973)** case, where the Supreme Court held that while the Parliament has wide amending powers, it did not extend to altering the 'basic structure' of the Constitution. This doctrine of 'Basic Structure' placed an implicit limitation on the amending powers of the Parliament, thereby ensuring the supremacy of the Constitution.

In the subsequent case of **Minerva Mills v. Union of India (1980)**, the Supreme Court further reinforced the doctrine of 'Basic Structure', and asserted that 'Judicial Review' is a part of this unalterable basic structure. This has ensured that the power of the judiciary to review legislative enactments and executive orders to test their constitutionality remains secure.

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**DISCUSS THE INTER-RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY WITH THE HELP OF DECIDED CASES.**

## **Inter-relationship between Fundamental Rights and Directive Principles of State Policy**

The Constitution of India encompasses a unique blend of Fundamental Rights and Directive Principles of State Policy (DPSPs). These two parts of the Constitution complement each other in maintaining a balance between the political and socio-economic aspirations of the people. While the Fundamental Rights safeguard the individual liberties and freedom, DPSPs provide guidelines for the State to ensure socio-economic justice and the welfare of the people.

**Fundamental Rights** are enshrined in Part III of the Constitution and are enforceable by the courts. They act as a guarantee against the arbitrary and discriminatory actions of the State.

On the other hand, the **Directive Principles of State Policy** are enumerated in Part IV of the Constitution, which are not enforceable by the courts. However, they are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. They aim to establish a welfare state at the federal level as well as the state level.

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## **Balancing Fundamental Rights and Directive Principles**

Initially, there was a perception that Fundamental Rights and DPSPs are contradictory to each other. The conflict arose when laws enacted for implementing DPSPs violated the Fundamental Rights. In the initial years, the Supreme Court took the view that in the event of a conflict, Fundamental Rights would prevail over the DPSPs.

The landmark case that signaled this view was **Champakam Dorairajan vs The State of Madras (1951)** where the Supreme Court struck down a Government Order by the State of Madras, which had provided for caste-based reservations in State educational institutions. The court held that this order was violating Article 29(2) (Right against discrimination in admission into educational institutions) and could not be justified by resorting to Article 46 (a Directive Principle that promotes educational and economic interests of SCs, STs, and other weaker sections).

## **Harmonious Construction**

However, the approach of the judiciary changed in the latter years. The doctrine of 'Harmonious Construction' came into existence. It is the principle that every provision of the Constitution has to be interpreted with the other provisions to make a harmonious construction of the Constitution.

This principle was reflected in the case of **State of**

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**Kerala vs N.M. Thomas (1976)**, where the Supreme Court held that there is no conflict between the Fundamental Rights and DPSPs, rather they supplement each other. The court opined that both are essential for achieving the goal of a welfare state as envisaged by the Constitution.

The most significant shift in this regard occurred in the **Minerva Mills vs Union of India (1980)** case where the Supreme Court held that Indian Constitution is founded on the bedrock of the balance between Parts III and IV. It ruled that to give absolute primacy to one over the other is to disturb the harmony of the Constitution. The Court asserted that Fundamental Rights and DPSPs have to be balanced and harmonized.

### **Evolution towards a Synthesis**

The 42nd Amendment Act of 1976 inserted clauses (1) and (2) in Article 31C to give precedence to Directive Principles over Fundamental Rights under Articles 14 and 19. But the part of the amendment that took away judicial review was declared unconstitutional in Minerva Mills case.

There has been a gradual evolution in the interpretation of the relationship between Part III and Part IV. The courts have been increasingly reading the Directive Principles into Fundamental Rights.

**Unnikrishnan vs State of Andhra Pradesh (1993)** interpreted the Right to Life and Personal Liberty (Article 21) to include the right to education, thus seamlessly

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merging the directive of Article 45 (which mandates provision for free and compulsory education for children) into the realm of Fundamental Rights. This ruling played a significant role in the introduction of Article 21A by the 86th Constitutional Amendment Act, 2002, which made the right to primary education part of the Fundamental Rights.

Another case that significantly highlights the harmonious interpretation of Fundamental Rights and DPSPs is the **M.C. Mehta vs Union of India (1986)** case, where the Supreme Court expanded the scope of Article 21 (Right to Life) to include the right to a healthy environment. In doing so, the court drew from the principles embodied in Article 48A (DPSP concerning protection and improvement of environment).

## **Role of DPSPs in Constitutional Interpretation**

Despite being non-justiciable, DPSPs significantly influence the interpretation and application of Fundamental Rights. They provide a framework within which Fundamental Rights must be read and interpreted. This ensures a broader and more purposeful interpretation of rights. In the **Maneka Gandhi vs Union of India (1978)** case, the court held that Fundamental Rights must be interpreted in a way that results in their expansion rather than their contraction. The interplay of Fundamental Rights with DPSPs has led to the rise of numerous unarticulated rights under Article 21 (Right to Life), like the right to education, the right to health, the right to a clean environment, and so forth.

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**Q9. WRITE SHORT NOTES ON:-**

**(A) FUNDAMENTAL DUTIES**

**(B) UNIFORM CIVIL CODE, ART. 44. OF THE CONSTITUTION**

## **Fundamental Duties**

The concept of Fundamental Duties is a reminder to the citizens that while enjoying their rights, they should also be mindful of certain moral obligations they owe to their country and their fellow citizens. It serves as a reminder to the citizens that they have a role to play in the realization of the vision of a democratic, just, and equitable society as envisaged by the Constitution.

The idea of Fundamental Duties is not indigenous to the Indian Constitution and has been borrowed from the former USSR. These duties were added by the 42nd Amendment Act of 1976 on the recommendations of the Swaran Singh Committee. Presently, the Constitution of India has 11 Fundamental Duties enshrined under Article 51A, ranging from respect for the National Flag and National Anthem, to cherishing and following noble ideals that inspired the freedom struggle, to safeguarding public property and abjuring violence.

Although the Fundamental Duties are non-justiciable in nature, meaning their violation doesn't result in punishment, the Supreme Court, in multiple judgments, has stated that these duties act as a constant reminder of the moral obligations owed by citizens to their nation. In the case of **M.C. Mehta vs Union of India (1988)**, the

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Supreme Court held that the obligation to safeguard and improve the natural environment is a fundamental duty under Article 51A(g).

Further, in the **A.I.I.M.S. Students Union vs A.I.I.M.S. (2001)** case, the court emphasized the importance of Fundamental Duties, stating that while rights are important, the duties correlated with these rights are equally important.

In addition to the examples already provided, another important case to reference is **Bijoe Emmanuel & Ors vs State Of Kerala & Ors (1986)**, where three students were expelled from their school for not singing the national anthem. The Supreme Court held that while respecting the national anthem is a fundamental duty, no legal action can be taken against the individuals for not singing it as long as they maintain proper decorum during the anthem.

In the **Aruna Roy and Ors vs Union of India (2002)** case, the Supreme Court further clarified the importance of the fundamental duties, stating that the duties imposed by Article 51A are important as they maintain the democratic fabric of the nation.

However, it should also be noted that although the courts have attempted to elevate the status of Fundamental Duties, they are not enforceable. This means that while the Courts have recommended them to be followed, there are no specific penalties or punishments associated with the violation of these duties. The non-justiciable nature of the Fundamental Duties does make it harder to ensure

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their implementation in society.

## **Uniform Civil Code, Article 44**

The Uniform Civil Code (UCC), as envisaged in Article 44 of the Constitution under the Directive Principles of State Policy, refers to the proposal to replace personal laws (which are based on religious scriptures and customs of different religious communities) with a common set of laws governing every citizen.

The Constitution, under Article 44, states, "The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India." This provision lays down the foundation for bringing all citizens under a single umbrella of rights and obligations which can create national integration by removing conflicting ideologies in personal laws.

Although the DPSPs are unenforceable in courts, they provide valuable guidance to the legislative and executive branches of the government. They are seen as instrumental in understanding and interpreting the constitutional ethos.

India has a comprehensive set of civil laws encompassing all its citizens except for personal laws. The personal laws of each religious community govern the matters of marriage, divorce, inheritance, adoption, etc. The idea of a Uniform Civil Code is to replace these separate personal laws with a common civil code applicable to all citizens of India, irrespective of their religion or faith.

The Supreme Court, in the landmark judgment of **Shah**

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**Bano vs Mohammed Ahmed Khan (1985)**, emphasized the need for a Uniform Civil Code, stating that a common civil code will help in national integration. However, this statement led to a significant controversy and a religious backlash.

Implementing a UCC involves addressing deeply ingrained religious and cultural sentiments, and it is crucial to ensure that the objective of a uniform code does not undermine the cultural diversity and plurality that define the social fabric of India. The challenge lies in evolving a consensus respecting the nuances of diverse cultures and religious communities.

Implementing a Uniform Civil Code across the nation is fraught with difficulties, primarily due to the diversity of personal laws among different religious communities in India. It is a sensitive issue that needs to be handled delicately due to the possibility of offending religious and community sentiments.

It's important to note that Goa is the only state in India that has a UCC in the form of a common family law, and it's often seen as a model for the rest of the country. The Goan UCC allows equal division of income and property between the spouses. It also allows for the re-marriage of a divorcee with all the benefits of the first marriage and without any discrimination.

However, there are also examples where the court has upheld the personal laws of different communities. In the **Narasu Appa Mali case (1951)**, the Bombay High Court observed that personal laws are not a part of laws

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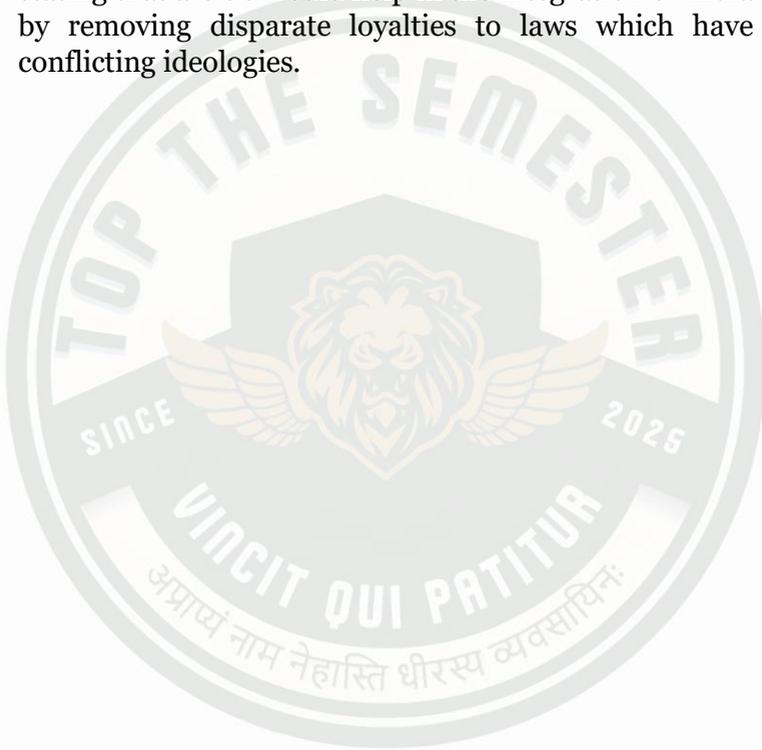
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within the Constitution and thus cannot be subjected to the fundamental rights test.

In the **Sarla Mudgal vs Union of India (1995)** case, the Supreme Court again underlined the need for a UCC, stating that a UCC would help in the integration of India by removing disparate loyalties to laws which have conflicting ideologies.



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## PAPER 2

### PART A

**QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING:**

**WRITE SHORT NOTE DEFINE 'STATE'**

**WRITE SHORT NOTE ON RIGHT TO EDUCATION**

The **Right to Education (RTE)** is a significant milestone in India's constitutional and legislative history, profoundly impacting its socio-economic landscape. It is embodied in **Article 21A** of the Indian Constitution, introduced by the **86th Constitutional Amendment Act in 2002**, promising free and compulsory education to all children between 6 to 14 years of age.

The road leading to this amendment has been transformative. The right to education wasn't expressly stated as a fundamental right in the original Constitution of 1950. The mandate for education was initially set as a Directive Principle of State Policy under **Article 45**, stating that the state shall endeavour to provide free and compulsory education for all children until they complete the age of fourteen years within a period of ten years from the commencement of the Constitution.

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In **Mohan Kumar Singhania and Others Vs Union of India and Others (1992)**, it was contended that the state had failed in its obligation under Article 45 as the period mentioned therein had expired. The Court expressed its inability to issue a writ of mandamus against the government for this.

A significant shift in this narrative occurred in the landmark case **Unnikrishnan JP vs State of Andhra Pradesh (1993)**, where the Supreme Court innovatively interpreted the right to life under **Article 21** to include the right to education. It stated that the right to education flows directly from the right to life. It was also declared that the right to education up to the age of 14 is a fundamental right.

To concretize the principle laid down in the Unnikrishnan case and to make the right to education a reality, the Constitution was amended in 2002, and **Article 21A** was inserted.

Post amendment, the legal framework was further reinforced through the **Right of Children to Free and Compulsory Education (RTE) Act, 2009**. The Act makes education a fundamental right of every child aged between 6 and 14 and specifies minimum norms in elementary schools. It requires all private schools to reserve 25% of seats for poor and other categories of children (to be reimbursed by the state as part of public-private partnership plan). It also prohibits all unrecognized schools from practice, and makes provisions for no donation or capitation fees and no

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interview of the child or parents for admission.

The Act also provides that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. It further states that the school curriculum and the evaluation procedure for children will be laid down by an academic authority to be established by the central or state governments.

Notwithstanding the progress, challenges persist in the form of quality of education, teacher-student ratios, infrastructure disparities, and disparities in the implementation of RTE norms, which need to be addressed.

## WRITE SHORT NOTE ON RIGHT TO EDUCATIONAL RIGHTS OF MINORITIES

The rights of minorities to establish and administer educational institutions is a significant aspect of India's constitutional framework, promoting cultural diversity and inclusivity. These rights are encapsulated in **Article 30** of the Constitution.

Article 30(1) confers upon both religious and linguistic minorities the right to establish and administer educational institutions of their choice. The framers of the Constitution envisioned this right as a means to protect the interests of minorities, enabling them to

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preserve and propagate their unique cultural and linguistic identities.

To understand the interpretation and application of this right, several landmark judgments should be taken into account.

The Supreme Court in **Kerala Education Bill vs Unknown (1958)** case, elucidated on the meaning of 'educational institutions of their choice'. It was held that the term is not limited to institutions that impart instruction in the language of the minority community; it also includes institutions that teach general secular education.

In the **TMA Pai Foundation vs State of Karnataka (2002)** case, the Supreme Court delivered an eleven-judge bench decision that has been a cornerstone for the interpretation of Article 30. It held that linguistic and religious minorities are covered under Article 30, and the right to administer does not mean the right to maladminister.

The court also clarified the parameters to identify a 'minority', stating that the determination of minority status should be done state-wise. So, a community may qualify as a 'minority' in one state but not in another.

Another significant ruling in the context of minority rights was in **P.A. Inamdar & Others vs State of Maharashtra & Others (2005)**, where the Supreme Court held that the state can regulate the admission

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process to maintain fairness and transparency and prevent maladministration. However, it cannot override the minority institutions' right to admit students of their choice.

The **Pramati Educational & Cultural Trust vs Union of India (2014)** case is crucial because it exempted minority institutions from the ambit of the Right of Children to Free and Compulsory Education Act, 2009, affirming their right to 'choice of medium of instruction'.

These rights do not imply immunity from fair and reasonable regulations by the state, especially concerning quality and standards of education. But, as the Supreme Court pointed out in the **St. Xavier's College vs State of Gujarat (1974)** case, such regulations should not impinge on the minority institutions' right to administer the institution.

While this protection under Article 30 fosters cultural and educational diversity, challenges continue to exist. For instance, defining who constitutes a 'minority' remains contentious. Equally significant is the issue of balancing the state's responsibility to maintain educational standards with the right of minority institutions to maintain their distinct identity. Therefore, continuous dialogue and adaptive interpretations are required to address these issues effectively.

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## WRITE SHORT NOTE ON RIGHT TO RIGHT AGAINST DOUBLE JEOPARDY

The **Right Against Double Jeopardy** is a fundamental right protected under **Article 20 (2)** of the Indian Constitution. It provides that "No person shall be prosecuted and punished for the same offence more than once." This right is based on the principle of '**Nemo Debet Bis Vexari**', which means a man must not be put twice in peril for the same offence.

The right against double jeopardy serves two essential purposes. Firstly, it ensures that the government cannot harass an individual repeatedly using criminal prosecutions for the same act. Secondly, it upholds the justice system's integrity by confirming the finality of the criminal judgments.

The essential components of Article 20(2), as interpreted by Indian Judiciary over the years, are as follows:

1. **The person must be accused of the same offence:** It means that the offence for which a person is prosecuted or punished must be identical in facts as well as in law.
2. **Prosecution and punishment:** Both prosecution and punishment are necessary conditions. Merely being prosecuted twice is not covered under Article 20(2).
3. **Proceedings must be judicial:** The proceedings against the accused should be of a

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judicial nature, conducted by a court or judicial tribunal.

One of the leading cases is **Maqbool Hussain v. State of Bombay (1953)**. In this case, the Supreme Court held that the proceedings before a Customs Officer were not of a judicial nature, so the seizure and confiscation of gold by the Customs Officer did not constitute 'prosecution' or 'punishment' under Article 20(2).

Further, in **V. Venkata Subba Rao v. State of Andhra Pradesh (1958)**, it was held that prosecution and punishment by a departmental authority under service rules would not be a bar to a subsequent criminal prosecution and punishment in respect of the same facts.



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## WRITE SHORT NOTE ON RIGHT TO DOCTRINE OF WAIVER

The **Doctrine of Waiver** is a common-law principle, according to which, a person can voluntarily renounce a right that is provided to them by law or by agreement. In Indian Constitutional law, it signifies the voluntary surrender of a known constitutional right.

However, it should be noted that the Indian Constitution does not expressly provide for the waiver of fundamental rights. The applicability of the Doctrine of Waiver to fundamental rights has been a contentious issue and has been addressed in several landmark judgments.

In **Basheshar Nath vs The Commissioner of Income-Tax, Delhi & Rajasthan and Another (1959)**, the Supreme Court, by a majority of 4:1, ruled that there could be no waiver of a fundamental right. The court observed that such a waiver would be inconsistent with the public policy behind these rights.

However, the approach towards waiver of fundamental rights underwent a change with the Supreme Court judgment in **Olga Tellis and others vs. Bombay Municipal Corporation and others (1985)**. The court in this case held that the petitioners, who were pavement dwellers, could not waive their right to live, but they could waive their right not to be evicted from their place of dwelling.

Thus, the Indian jurisprudence concerning the doctrine

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of waiver with respect to fundamental rights is not entirely consistent, and its applicability depends on the nature of the right in question, and the specific circumstances of the case.

The scope of the Doctrine of Waiver has been particularly contentious in the area of constitutional rights. On the one hand, the doctrine is seen as an expression of individual autonomy – an individual should have the freedom to waive their rights if they see fit. However, on the other hand, allowing for the waiver of constitutional rights could potentially compromise the protections that these rights are intended to provide, particularly for the most vulnerable in society.

The Supreme Court has also reiterated in the **Behram Khurshid Pesikaka vs. The State of Bombay (1955)** case that fundamental rights are not absolute and can be restricted under certain conditions provided in the Constitution itself. Therefore, any waiver must conform to the constitutional provisions and principles.

For example, rights that stem from public policy or aim to protect public interest are generally considered non-waivable. The rationale is that allowing the waiver of such rights could undermine public welfare and social stability.

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## WRITE SHORT NOTE ON RIGHT TO RIGHT AGAINST EXPLOITATION

The **Right Against Exploitation**, as enshrined in the Indian Constitution, is a fundamental right that safeguards citizens from any form of forced labor, child labor, and other exploitative labor practices. It is embodied in **Articles 23 and 24**.

**Article 23** prohibits 'traffic in human beings,' 'begar' (forced labor), and other similar forms of forced labor. Any contravention of this provision is an offence punishable by law. Furthermore, Article 23 also provides that no citizen of India shall be discriminated against on grounds of religion, race, caste, class, or gender with regard to access to public places.

The provision has a dual aim. On one hand, it protects the individual not only against the state but also against private citizens. On the other hand, it imposes a positive obligation on the state to take steps to abolish these practices.

Notably, the Supreme Court, in the **People's Union for Democratic Rights vs Union of India (1982)** case, broadened the interpretation of 'forced labor' to include any form of labor where the payment is below the minimum wage.

**Article 24** provides for the prohibition of employment of children below the age of 14 years in any factory, mine, or any other hazardous activity like construction work or

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railway. However, it does not prohibit their employment in any harmless or innocent work.

The issue of child labor has been addressed by the judiciary in various cases. For example, in **MC Mehta vs State of Tamil Nadu (1996)**, the Supreme Court gave certain directions concerning the manner in which children working in hazardous occupations are to be withdrawn from work and rehabilitated, and the manner in which working conditions of children working in non-hazardous occupations are to be regulated and improved.

Moreover, the Child Labour (Prohibition and Regulation) Act, 1986 was enacted as a legislative measure to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. Later, the Child and Adolescent Labour (Prohibition and Regulation) Act of 1986, amended in 2016, completely prohibits the employment of children below 14 years, while allowing the employment of adolescents aged between 14 and 18 years in non-hazardous occupations.

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## PART B

**ELUCIDATE THE DEVELOPMENT OF LAW RELATING TO THE EXPRESSION “OTHER AUTHORITIES” FOR THE PURPOSE OF ENFORCEABILITY OF FUNDAMENTAL RIGHTS UNDER ARTICLE 12 OF THE CONSTITUTION?**

In the Indian Constitution, the ambit of Fundamental Rights is predominantly defined within the framework of Article 12, which provides the definition of the 'State'. Article 12 is the gateway to Part III of the Indian Constitution, which deals with Fundamental Rights. It states:

*"In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."*

While the first part of the Article mentions 'Government and Parliament of India' and 'Government and Legislature of each of the States', the phrase 'all local or other authorities' has been the subject of intense debate and interpretation. The term 'other authorities' has not been explicitly defined in the Constitution, leading to the evolution and broadening of its interpretation through various landmark judgments.

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The primary reason for the focus on this phrase is its implications for enforceability of Fundamental Rights. If an entity is established as 'State' under Article 12, it becomes accountable for upholding Fundamental Rights, and actions contravening these rights can be challenged in the court of law.

## Evolution Through Case Laws

The interpretation of the phrase "other authorities" started with the case of **University of Madras vs Shanta Bai (1954)**, where the Madras High Court, by adopting a narrow interpretation, held that the University of Madras did not fall within the ambit of "other authorities" as it was not created by a statute but was incorporated under a charter issued by the King.

The scope of "other authorities" was further examined in the landmark case of **Ujjam Bai vs State of Uttar Pradesh (1962)**, where it was held that other authorities would include all authorities created by the Constitution or statute on whom powers are conferred by law.

However, the turning point in the interpretation of "other authorities" came in the case of **Rajasthan State Electricity Board vs Mohan Lal (1967)**. In this case, the Supreme Court held that authorities would be considered 'State' if they have been created by a statute and have been given the power to discharge duties of public importance or of a governmental character.

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This judgment opened the doors for a wider interpretation of 'other authorities'. The test evolved from statutory origin to the functional aspect i.e., whether the body is discharging duties and functions of public importance and of a governmental character. The functional test gradually took precedence over the organizational or institutional test.

In the landmark case of **R.D. Shetty vs International Airport Authority (1979)**, the Supreme Court held that bodies which are financially, functionally and administratively dominated by or under the control of the government would come under the purview of 'other authorities' for the purpose of Article 12. This became the basis of the 'instrumentality or agency' test, where if a body is an instrumentality or agency of the government, it will come within the meaning of 'other authorities' in Article 12.

The expansion of the ambit of 'State' continued in the case of **Ajay Hasia vs Khalid Mujib (1981)**, where the Supreme Court held that a society registered under the Societies Registration Act came within the purview of 'other authorities'. The court reiterated the test of 'instrumentality or agency' of the government, and held that the control of the government over the society was deep and pervasive, and it was financially completely dependent on the government.

However, the scope of 'other authorities' was restricted in the case of **Pradeep Biswas vs Indian Institute of Chemical Biology (2002)**. In this case, the court

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developed a new test, known as the 'predominantly controlled' test, to determine whether a body falls within the definition of 'other authorities'. The court held that it is not the government's power to control, but the actual existence of deep and pervasive State control, which determines whether an entity is a State within the meaning of Article 12. This case effectively narrowed down the scope of 'other authorities' as compared to the broad interpretation in R.D. Shetty and Ajay Hasia.

In the recent case of **Zee Telefilms vs Union of India (2005)**, the Supreme Court held that the Board of Control for Cricket in India (BCCI) does not come within the ambit of 'other authorities', as it is not created by a statute, and does not perform any public duties. The court observed that just because a non-governmental body performs some public functions, it does not become a 'State' under Article 12.

This decision was seen as a step back from the expansive interpretation of 'State', and was criticized for limiting the reach of Fundamental Rights. Critics argue that the Zee Telefilms case narrows the definition of 'other authorities' to the detriment of those whose rights are violated by powerful non-state actors performing public functions. They believe that the court, through this judgment, missed an opportunity to extend the applicability of Fundamental Rights to non-state actors performing public duties.

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## **DISCUSS THE SCOPE AND CONTENT OF THE 'FREEDOM OF SPEECH AND EXPRESSION' WITH SPECIAL REFERENCE TO LIBERTY OF PRESS AND SCOPE OF RESTRICTION IN EXERCISE OF THESE RIGHTS?**

Freedom of Speech and Expression is one of the most vital fundamental rights guaranteed by the Indian Constitution. Embodied in **Article 19(1)(a)**, it is often seen as the bedrock of a democratic society, fostering free exchange of ideas, debate, and dissent.

### **Scope of Freedom of Speech and Expression**

The freedom of speech and expression implies the right to express one's views and opinions freely by words of mouth, writing, printing, or any other mode. It includes the freedom of propagation and interchange of ideas, dissemination of information that would help formation of public opinion, and receipt of information from any source.

This freedom is not confined to mere verbal and written expressions, but also includes non-verbal expressions such as signs, symbols, art, music, films, and advertisements. Moreover, the Supreme Court has held in a series of cases that the freedom of speech and expression also includes the freedom of the press, right to information, freedom of commercial speech or advertisements, right to silence, freedom of broadcast, and right against tapping of telecommunication.

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The right to freedom of the press is not expressly mentioned in the Constitution, yet it is implicit in the freedom of speech and expression. The press plays a crucial role in the democratic machinery. The courts have duty to uphold the freedom of the press and invalidate all laws and administrative actions that abridge that freedom.

## Development Through Case Laws

The Supreme Court has expansively interpreted the freedom of speech and expression. In the case of **Maneka Gandhi vs Union of India (1978)**, the court held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thoughts with others.

In the landmark case of **Sakal Papers vs Union of India (1962)**, the Supreme Court defended freedom of the press and held that a newspaper has a fundamental right to publish any number of pages or to fix the price of the newspaper.

In **Indian Express vs Union of India (1985)**, the Supreme Court held that freedom of the press is a part of freedom of speech and expression guaranteed under Article 19(1)(a). The press plays a very significant role in the democratic machinery. It cannot be subjected to undue financial burdens as it impedes its freedom to circulate views and ideas.

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## Restrictions on Freedom of Speech and Expression

While the right to freedom of speech and expression is fundamental, it is not absolute. Article 19(2) of the Constitution provides for "reasonable" restrictions on the exercise of the right to freedom of speech and expression in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

The constitutionality of a restriction is judged by the doctrine of proportionality, which ensures a balance between the restriction and the social goal it seeks to achieve. The restriction must not be arbitrary or of an excessive nature, beyond what is required in the public interest.

In **Brij Bhushan vs State of Delhi (1950)**, the Supreme Court struck down a law requiring pre-censorship of an English weekly as a restriction on the liberty of the press. The Court held that any preventive injunction against a newspaper is a serious encroachment on the freedom of speech and expression.

However, in the **Kedarnath vs State of Bihar (1962)** case, the Court upheld the constitutionality of the sections of the Indian Penal Code related to sedition, stating that speech that incites violence or has the tendency to create public disorder can be restricted under

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Article 19(2).

The Supreme Court further clarified the contours of this restriction in **Shreya Singhal vs Union of India (2015)**, where it struck down Section 66A of the Information Technology Act, 2000, which penalized sending offensive messages through a computer or other communication devices. The Court held that the provision was vague and overbroad, and it unreasonably restricted the freedom of speech and expression. This landmark judgement safeguarded the freedom of speech and expression in the internet age.

Moreover, the Supreme Court, in the **Bennett Coleman & Co. vs Union of India (1973)** case, held that any restriction on the freedom of speech and expression should not be based on the content unless it falls under the categories of restrictions mentioned in Article 19(2).

## Liberty of the Press

As mentioned, the liberty of the press is an essential part of the freedom of speech and expression. The freedom of the press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.

The liberty of the press involves the right to publish with impunity, truth with good motives and for justifiable ends, whether it respects the government, magistrates, or individuals. In **Indian Express Newspapers vs Union Of India (1985)**, the Supreme Court observed

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that the press plays a profoundly important role in the democratic machinery. It cannot be subjected to undue financial burdens that could impede its freedom to express and circulate views and ideas.

However, like the freedom of speech and expression, the liberty of the press is not absolute and is subject to the restrictions provided under Article 19(2).



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**“A LAW DEPRIVING A CITIZEN OF PERSONAL LIBERTY HAS NOT ONLY TO STAND THE TEST OF ARTICLE 21 BUT IT MUST ALSO SATISFY THE REQUIREMENT OF ARTICLES 19 AND 14”. EXAMINE.**

The statement under discussion is an important principle of Indian constitutional jurisprudence. It signifies the interconnectedness of the three articles - 14, 19, and 21 - of the Indian Constitution, referred to as the 'Golden Triangle'. This means that a law depriving a citizen of personal liberty must conform to the requirements of all these three articles and not just Article 21 alone.

### **Interconnection of Articles 14, 19, and 21**

Article 14 guarantees the right to equality, Article 19 ensures certain fundamental freedoms, and Article 21 assures the right to life and personal liberty.

The concept of procedural due process, inextricably linked to Article 21, requires that any deprivation of life or personal liberty must be fair, just, and reasonable. However, what is fair, just, and reasonable is not limited to the mere procedure of deprivation but extends to the substantive law that enables the deprivation as well. It was clarified by the Supreme Court in the landmark case of **Maneka Gandhi vs Union of India (1978)**, where the court held that the procedure established by law under Article 21 must also be just, fair, and reasonable and not fanciful, oppressive, or arbitrary.

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The Supreme Court also held in the same case that the procedure must withstand the test of other fundamental rights. Therefore, any law depriving a person of their personal liberty would have to meet the requirements of Articles 14 and 19 as well.

## **Article 14: Right to Equality**

Article 14 guarantees to every person the equality before the law and the equal protection of the laws. It embodies the principles of non-arbitrariness, fairness, and reasonableness. If a law depriving a person of their personal liberty is arbitrary or unreasonable, it would be violative of Article 14. The principle of non-arbitrariness was further elaborated in **E.P. Royappa vs State of Tamil Nadu (1974)**, where the court held that equality means the absence of arbitrariness.

## **Article 19: Protection of Certain Rights**

Article 19 provides for six fundamental freedoms, including the freedom of speech and expression, to assemble peacefully, to form associations, to move freely, to reside and settle in any part of India, and to practice any profession. If a law depriving a person of their personal liberty infringes any of these freedoms, it must satisfy the test of reasonableness provided under the respective clauses of Article 19.

For example, in the case of **Safeguard of security and public order under Article 19(2) and 19(3)**, the Supreme Court held that the restriction imposed should

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not be excessive or disproportionate to the situation and should be in the interest of public order.

## **Confluence of Article 21 with Articles 14 and 19: The Golden Triangle**

In the case of **Maneka Gandhi vs Union of India (1978)**, the Supreme Court reaffirmed the theory of the confluence of Article 21 with Articles 14 and 19, forming the 'Golden Triangle'. The court held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Therefore, any law depriving a person of their personal liberty would have to satisfy not only the test of non-arbitrariness and reasonableness but also ensure that it does not infringe on the dignity of the individual.

This principle was further cemented in the **Francis Coralie Mullin vs Union Territory of Delhi (1981)** case, where the court expanded the scope of Article 21 to include the right to live with human dignity, indicating that it could not be restricted unless it meets the criteria of Articles 14 and 19 as well.

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**EXAMINE THE NATURE AND SCOPE OF FREEDOM OF CONSCIENCE AND THE RIGHT TO PROFESS, PRACTICE AND PROPAGATE RELIGION. ELUCIDATE YOUR ANSWER WITH HELP OF JUDICIAL INTERPRETATION.**

Freedom of religion is a fundamental right guaranteed by the Indian Constitution. Specifically, Article 25 enshrines the freedom of conscience and the right to freely profess, practice, and propagate religion. The understanding of the nature and scope of these rights has been greatly influenced by judicial interpretation.

### **Freedom of Conscience**

At the outset, the freedom of conscience referred to in Article 25 implies a freedom of thought and inner conviction which enables one to adhere to a particular religion. It includes the right to entertain or espouse the religious beliefs that one chooses, and to declare openly and without fear, one's allegiance to such beliefs.

The term 'conscience' refers to a person's moral sense of right and wrong, viewed as acting as a guide to one's behavior. It is the inner sense which tells a person what is right and what is wrong. This freedom implies that the state cannot interfere in this internal process.

### **Right to Profess, Practice and Propagate Religion**

The freedom to profess, practice, and propagate religion includes the right to communicate a person's beliefs to others. It also encompasses the freedom to convert from

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one religion to another, if the person so desires.

However, the freedom to propagate one's religion does not include the right to convert another person to one's own religion. In **Rev. Stainislaus vs State of Madhya Pradesh (1977)**, the Supreme Court held that the right to propagate one's religion means the right to communicate a person's beliefs to another person or to expose the tenets of that faith, but it does not include the right to convert a person to one's own faith.

## The Scope and Limitations of these Freedoms

Although these freedoms are fundamental, they are not absolute. Article 25(1) itself provides that these rights are subject to public order, morality, and health. Thus, any religious practice that becomes detrimental to the welfare of society can be restricted by the State.

For instance, in the case of **Sarla Mudgal vs Union of India (1995)**, the Supreme Court held that a Hindu husband cannot convert to Islam merely for the purpose of marrying again without divorcing his first wife. The court held that such a conversion would not be bona fide, and it would not stand the test of morality, as envisaged by Article 25(1).

Moreover, these rights are also subject to the other provisions of the Indian Constitution. Article 25(2) allows the State to make laws providing for social welfare and reform or throwing open Hindu religious institutions to all sections of Hindus. Therefore, the right to freedom of

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religion does not prevent the State from introducing social welfare measures.

The judiciary has often had to balance these fundamental rights against the interests of public order, morality, and health. In **The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954)**, the Supreme Court held that while the right to freedom of religion includes the performance of religious practices and rituals, if these practices run counter to public order, morality, and health, the state has the right to regulate them.

The judiciary has also been careful to delineate the boundaries of this freedom, especially when it comes into conflict with other fundamental rights or with the broader public interest. It has been consistently held that the right to freedom of religion cannot be used as a cover to violate other constitutional provisions or to infringe upon the rights of others.

For instance, in the case of **Sardar Syedna Taher Saifuddin Saheb vs State of Bombay (1962)**, the Supreme Court held that excommunication practiced by the Dawoodi Bohra community did not infringe on any of the fundamental rights, and hence, was not unconstitutional.

In addition, certain religious practices may also be subject to reform on grounds of social welfare. In **Sabarimala Temple case (Indian Young Lawyers**

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**Association vs. The State of Kerala, 2018**), the Supreme Court held that the practice of not allowing women of menstruating age into the temple was unconstitutional. The court ruled that this was a form of untouchability, a practice abolished under Article 17. This case illustrates how religious practices are subject to the fundamental rights enshrined in the Constitution.

It is also essential to note that Article 25 is subject to the principles of 'essentiality' and 'integrality'. As per these principles, the judiciary determines whether a religious practice is a fundamental part of the religion. If the court does not consider a practice as an essential and integral part of the religion, it does not fall within the ambit of Article 25 protection.

This doctrine of essential religious practices was first enunciated in the **Shirur Mutt case (1954)**, where the Supreme Court held that the term "religion" will cover all rituals and practices which are integral to a religion. The court has been given the power to determine what constitutes an essential part of a religion.

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**“ARTICLE 32 SEEKS TO PRESERVE THE BALANCE BETWEEN THE COMPETING INTERESTS OF ‘PERSONAL LIBERTY’ AND ‘PUBLIC SAFETY’ AS REFLECTED IN THE TEXT OF THE CONSTITUTION AND ITS SUBSEQUENT INTERPRETATIONS”.**

Article 32 of the Indian Constitution provides an important mechanism for the enforcement of fundamental rights. It is often regarded as the heart and soul of the Constitution by many, including Dr. B. R. Ambedkar, who was the Chairman of the Drafting Committee. Article 32 embodies the principle that for every violation of a fundamental right, there must be a legal remedy.

### **Nature and Scope of Article 32**

Under Article 32, individuals can approach the Supreme Court directly for the enforcement of their fundamental rights. The Supreme Court is empowered to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III of the Constitution.

The right to move the Supreme Court under Article 32 is in itself a fundamental right. The Court has the constitutional duty to protect, preserve and implement the fundamental rights guaranteed by the Constitution. As a result, it acts as the guarantor of the fundamental

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rights of the citizens.

## **Balancing Personal Liberty and Public Safety**

However, like all rights, the rights enshrined in Article 32 are not absolute. There is a clear recognition in the Constitution that these rights must be balanced against other societal needs, including the requirements of public safety, law and order, national security, public health, and morality.

This delicate balancing act is evident in the various interpretations of Article 32 by the Supreme Court of India. While the Court has consistently affirmed the inviolability of personal liberty and the importance of the remedies provided by Article 32, it has also recognized that the exercise of these rights must not undermine the collective good.

## **Landmark Judgments on Article 32**

In **Romesh Thappar vs The State of Madras (1950)**, the Supreme Court underlined the importance of Article 32, stating that it is a guaranteed remedy for the enforcement of fundamental rights and it could not be easily suspended. The Court also stressed that restrictions on this right should only be made in the interest of the public and within the ambit prescribed by the Constitution itself.

However, in the case of **ADM Jabalpur vs Shivkant Shukla (1976)**, popularly known as the Habeas Corpus case, during the period of emergency, the Court took a

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controversial stand. It held that the right of citizens to approach the Court under Article 32 for enforcement of their rights could be suspended during the Emergency. The majority view of the Court was that in times of national emergency, considerations of the state's survival and public safety outweigh the importance of personal liberty.

This judgment was widely criticized and was overruled by the Supreme Court in 2017 in the **Justice K.S. Puttaswamy (Retd.) vs Union Of India** case, where the Court held that the right to privacy is a fundamental right under the Constitution. The Court declared that the judgment in the ADM Jabalpur case was incorrect and it did not reflect the correct position of law.

In **Kanaiyalal Lalchand Sachdev vs State Of Maharashtra & Ors (2011)**, the Supreme Court emphasized that while the Court under Article 32 will not interfere with the policy decisions of the State, it will certainly step in to protect fundamental rights if there is an infringement or a threat of infringement.

The Supreme Court has also reiterated that the right to approach the Court under Article 32 is not absolute. In the case of **K.K. Kochunni vs State Of Madras (1959)**, the Court held that the rights under Article 32 could be suspended during an emergency under Article 359 of the Constitution.

Nevertheless, the overarching principle that emerges from the Court's interpretations of Article 32 is the

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importance of protecting personal liberties against arbitrary state action, while also balancing it against public safety and order. The Court's judgments have sought to ensure that the exercise of personal liberty does not endanger the public or national security, and that state action in the name of public safety does not become a cover for arbitrary or oppressive measures.

In recent years, the use of public interest litigation (PIL) under Article 32 has further expanded the reach of this constitutional remedy. It has enabled the Court to address issues of broad public significance and uphold the rights of disadvantaged or marginalized groups. The use of PIL has allowed the Court to balance the interests of individual liberty with societal goals such as environmental protection, social justice, and the rights of vulnerable populations.



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**Q7. WRITE SHORT NOTES ON:**

**A) WRIT OF CERTIORARI**

**B) WRIT OF PROHIBITION**

**a) Writ of Certiorari**

A writ of certiorari is one of the six writs provided by the Indian Constitution as a constitutional remedy for protection of fundamental rights. Under Article 32 and Article 226, the Supreme Court and the High Courts respectively, are empowered to issue this writ.

The term 'certiorari' is derived from the Latin term 'Certiorari volumus' which means 'to be certified' or 'to be informed'. This writ is issued by the superior court to an inferior court or tribunal to transfer a matter pending before it to the superior court, or to squash or set aside its order.

A writ of certiorari can be issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

A notable example of the application of the writ of certiorari is the case of **Syed Yakoob v.**

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**Radhakrishnan (1964)** where the Supreme Court laid down the circumstances under which certiorari could be issued. The Court held that a writ of certiorari could be issued when a statutory body acted without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or if it had relied on irrelevant grounds for its decision.

It's important to note that its scope is not just limited to reviewing judicial decisions. This writ can also be issued to administrative authorities affecting the rights of individuals. One of the significant instances was in the landmark case of **Hari Vishnu Kamath vs Ahmad Ishaque (1955)**, where it was held that even a decision of the Speaker of a Legislative Assembly can be subject to judicial review and certiorari could be issued against it.

Similarly, in the case of **A.R. Antulay vs R.S. Nayak (1988)**, the Supreme Court laid down that even its own orders could be reviewed under a writ of certiorari, if they were made without jurisdiction, or in excess of it, or in violation of principles of natural justice. Thus, the certiorari writ not only keeps a check on judicial overreach but also ensures that the administrative actions are in conformity with the principles of law and justice.

However, there are certain circumstances where the writ of certiorari cannot be issued. It cannot be issued against legislative bodies, private individuals or organizations, and it cannot be used to determine the constitutionality of legislation. Furthermore, the superior court must be

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convinced that the issuance of a writ is to correct a grave injustice, and it's not issued merely on technical grounds.

## b) Writ of Prohibition

The Writ of Prohibition is another important constitutional writ. The term 'prohibition' means 'to forbid'. This writ is issued by a superior court to prevent an inferior court or tribunal from exceeding its jurisdiction or acting contrary to the rules of natural justice.

In other words, a Writ of Prohibition is issued by any High Court or the Supreme Court to an inferior court, prohibiting the latter from continuing the proceedings in a particular case, where it has no legal jurisdiction of trial. While certiorari is available only after the order or decision has been announced, a prohibition can be issued at any time during the pendency of the proceedings before the decision has been made.

The essential difference between the writ of prohibition and the writ of certiorari is that the writ of prohibition is available during the pendency of proceedings before a subordinate court, while the writ of certiorari can only be resorted to after a decision has been pronounced.

An example of the use of the writ of prohibition can be seen in the case of **East India Commercial Co. Ltd. v. Collector of Customs (1962)**, where the Supreme Court issued a writ of prohibition to the Sea Customs authorities as they did not have the jurisdiction to

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adjudicate upon a matter that required judicial consideration.

The **Writ of Prohibition** plays a preventative role, unlike certiorari, which is corrective. It stops the lower court from proceeding further in the case and prevents the misuse of judicial power. This writ protects individuals from being harmed by the actions of a court acting outside its jurisdiction.

For instance, in the case of **Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia and Ors. vs The State of Bombay and Ors. (1952)**, the Bombay High Court issued a writ of prohibition against an order passed by the Sales Tax Officer. The officer had issued a notice under the Bombay Sales Tax Act to levy tax on the petitioners' business of selling bidis. The court held that the officer was not empowered to issue such a notice and thus, issued a writ of prohibition.

Another significant case is **Hari Bhagwan vs Commissioner of Police, Delhi (1966)** where the writ of prohibition was issued to the Commissioner of Police by the Delhi High Court. The Commissioner had ordered the sealing of a cinema projector and other equipment without giving the owner an opportunity to be heard. The Court held that the Commissioner had acted beyond his jurisdiction and violated the principles of natural justice.

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**DISTINGUISH BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES. EXPLAIN THE NATURE OF SOCIAL CHARTER INCORPORATED UNDER THE DIRECTIVE PRINCIPLES OF STATE POLICIES WITH HELP OF CASE LAW.**

The Indian Constitution is a comprehensive document that provides a detailed framework for the governance of India. Two key components of this framework are the Fundamental Rights and the Directive Principles of State Policy. Although they both aim to establish a just and equitable society, they have different legal status, nature, and roles.

## **Distinction Between Fundamental Rights and Directive Principles**

**Fundamental Rights** are enumerated in Part III (Articles 12 to 35) of the Indian Constitution. They are enforceable by the courts, and the State is prevented from making any law that infringes upon them. These rights are fundamental as they are most essential for the attainment of full intellectual, moral and spiritual status by an individual. The categories of Fundamental Rights include Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and Right to Constitutional Remedies.

On the other hand, the **Directive Principles of State Policy** are listed in Part IV (Articles 36 to 51) of the

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Indian Constitution. These are essentially directives given to the future government of a country to adopt such policies and enact such laws as would promote the welfare of the people. They are non-enforceable by the courts, and the government cannot be compelled to implement them. However, they are fundamental in the governance of the country, and the State shall apply these principles in making laws. They are intended to guide the legislatures and executives in the law-making process.

One of the key differences between the two lies in their enforceability. Fundamental Rights are justiciable, i.e., legally enforceable by courts, while Directive Principles are non-justiciable and cannot be enforced by courts. However, it's pertinent to note that the Constitution itself declares that Directive Principles are fundamental in the governance of the country (Article 37).

In terms of their content, Fundamental Rights primarily protect the rights of individuals against the State's arbitrary actions, whereas Directive Principles guide the State in its activities and direct it to use its powers for the welfare of its citizens.

## **Social Charter under the Directive Principles of State Policy**

The Directive Principles of State Policy can be seen as a social charter as they lay down the framework for achieving economic democracy in the country. They set out the vision of the Constitution makers for the social and economic reorganization of society. The principles

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mandate the state to strive for promoting the welfare of the people by securing and protecting a social order in which justice, social, economic and political, shall inform all the institutions of national life (Article 38).

The Directive Principles include principles related to economic rights and social welfare such as the right to an adequate means of livelihood, equal pay for equal work, protection of workers, especially children, provision of free legal aid, right to work, public assistance in case of unemployment, old age, sickness and disablement, provision for just and humane conditions of work, etc.

Several landmark judgments have been instrumental in shaping the understanding of these principles. For example, in the **State of Kerala v. N.M. Thomas (1976)** case, the Supreme Court held that the State could make any arrangement for reservation in matters of promotions to favour any backward class of citizens which, in its opinion, was not adequately represented in the services under the State.

Another significant case is the **Unnikrishnan v. State of Andhra Pradesh (1993)**, where the Supreme Court held that the right to education at the elementary level could be read into the right to life in Article 21 in combination with the DPSPs, particularly Articles 45 and 41, making it enforceable.

One of the most notable cases that highlight the significance of the DPSPs is the **Maneka Gandhi vs Union of India (1978)** case. Here, the Supreme Court

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opined that Fundamental Rights and DPSPs are not exclusive of each other. Instead, they supplement each other in aiming to establish a welfare state as per the Preamble's objectives. Hence, this judgment started the trend of harmonious interpretation between both these constitutional mandates.

The evolution of the social charter under DPSPs was further exemplified in the case of **Olga Tellis vs. Bombay Municipal Corporation (1985)**. In this case, the Supreme Court recognised the right to livelihood as part of the right to life enshrined in Article 21, thereby effectively expanding its ambit. The Court held that the right to life also includes the right to livelihood, and no person can be deprived of it except according to the procedure established by law. Thus, it reinforced the idea of achieving social and economic democracy through the harmonious construction of Fundamental Rights and DPSPs.

Furthermore, the case of **Chameli Singh vs State of U.P. (1996)** saw the Supreme Court declare that the right to life includes the right to live with dignity, which requires a decent environment and reasonable accommodation. The Court relied upon the DPSPs, primarily Article 39(a) and 39(b), in combination with Article 21, to arrive at this decision.

Lastly, the **Samatha vs State of Andhra Pradesh (1997)** case illustrates the role of the DPSPs in promoting social justice. The Supreme Court observed that the DPSPs provide the basis for creating a socialist

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democratic republic as envisaged in the Preamble. The Court used Articles 38 and 39, particularly Article 39(b) and 39(c), to uphold the rights of the tribal population, stating that the State's actions should not lead to concentration of wealth in a few hands.



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**WRITE SHORT NOTES ON:**

**A) SCOPE OF EQUAL JUSTICE AND FREE LEGAL AID**

**B) UNIFORM CIVIL CODE**

**a) Scope of Equal Justice and Free Legal Aid**

The Indian Constitution guarantees the right to equality and justice to every citizen. This guarantee encompasses the understanding that justice should not be denied to any citizen on the grounds of economic or other disabilities. The concept of providing free legal aid is in line with the Directive Principles of State Policy (DPSP) enshrined in the Constitution under Article 39A, which states that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

**Equal Justice and Legal Aid in Indian Judiciary**

The Supreme Court of India, in the case of **Hussainara Khatoon vs. State of Bihar (1979)**, acknowledged the constitutional mandate of providing free legal aid. The Court observed that it is the state's duty, under the constitutional mandate, to provide free legal aid to an accused person who is unable to secure legal services due to indigence and other similar reasons. Thus, the right to free legal aid has been held to be an essential ingredient of 'reasonable, fair and just' procedure under Article 21 of

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the Constitution.

Subsequently, the **Khatri vs. State of Bihar (1981)** case saw the Supreme Court further reinforcing the state's obligation to provide free legal aid to a poor accused. The court remarked that it is the constitutional right of every accused person who is unable to engage a lawyer due to poverty, indigence or incommunicado situation, the State to provide free legal representation.

## **Legal Services Authorities Act, 1987**

To make the right to free legal aid more effective and implementable, the parliament enacted the Legal Services Authorities Act in 1987. Under this Act, National Legal Services Authority (NALSA) at the centre and State Legal Services Authority (SLSA) at the state level have been established. These authorities are entrusted with the task of providing free legal aid to the poor and weaker sections of the society. The act also defines the criteria for giving legal services to the eligible persons.

## **b) Uniform Civil Code**

Uniform Civil Code (UCC) refers to a proposal to replace the personal laws based on the scriptures and customs of different religious communities in India with a common set of rules governing every citizen. Article 44 of the Indian Constitution, a part of the Directive Principles of State Policy, states that "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India."

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## Significance and Controversy

The main aim behind UCC is to promote unity, equality, and national integration by eliminating discrepancies between various personal laws. It is often argued that UCC would simplify the complex laws around marriage ceremonies, inheritance, succession, adoptions making them one for all the same rules.

However, UCC has been a subject of significant controversy and debate in India. It has faced opposition on the grounds that it encroaches upon the religious freedom of individuals, guaranteed by Article 25 of the Indian Constitution. Many communities perceive UCC as an imposition of majority community's personal laws over their own personal laws.

## Judicial Interpretation

The apex court has, on multiple occasions, emphasised the need for a UCC. In the landmark judgement of **Mohd. Ahmed Khan vs. Shah Bano Begum (1985)**, the Supreme Court observed that a common civil code will help in the cause of national integration by removing disparate loyalties to laws having conflicting ideologies.

In **Sarla Mudgal vs Union of India (1995)**, the Supreme Court reiterated the need for Parliament to frame a Uniform Civil Code, which would help in national integration by preventing the allegiance to laws which have conflicting ideologies.

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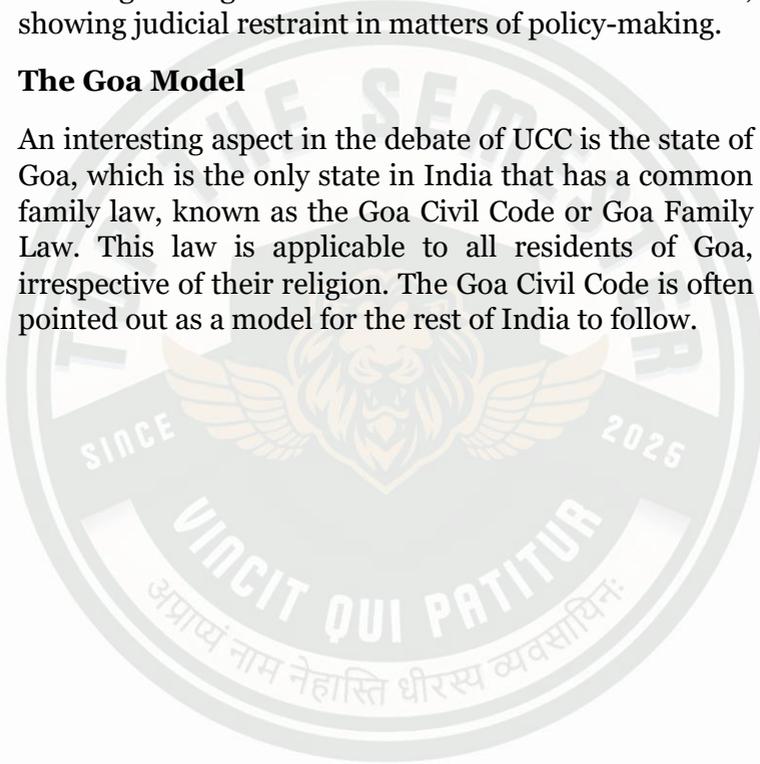
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Yet, in the recent judgement of **Shayara Bano vs Union of India (2017)**, also known as the triple talaq case, the Supreme Court declared the practice of triple talaq as unconstitutional. However, it refrained from directing the legislature to enact a Uniform Civil Code, showing judicial restraint in matters of policy-making.

## The Goa Model

An interesting aspect in the debate of UCC is the state of Goa, which is the only state in India that has a common family law, known as the Goa Civil Code or Goa Family Law. This law is applicable to all residents of Goa, irrespective of their religion. The Goa Civil Code is often pointed out as a model for the rest of India to follow.



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## PAPER 2

### PART A

**QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING:**

**WRITE SHORT NOTE DEFINE 'STATE'**

#### **A) DEFINITION OF STATE UNDER ARTICLE 12 OF THE CONSTITUTION.**

Article 12 of the Constitution of India sets forth the definition of "State" for the purpose of Part III, which pertains to Fundamental Rights. As per this provision, the "State" includes:

1. The Government and Parliament of India: This includes all organs of the central government as well as the Indian Parliament.
2. The Government and the Legislature of each of the States: This extends to all organs of the state government, including its legislative assembly or legislative council.
3. All local authorities: Municipal corporations, district boards, panchayats, and other local bodies fall within the definition of the state.

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4. Other authorities within the territory of India or under the control of the Government of India: This is a more expansive aspect of the definition and has been the subject of interpretation by the judiciary in several landmark cases.

One of the earliest and most important cases in this regard is the **Electricity Board, Rajasthan v. Mohan Lal** (1967). In this case, the Supreme Court held that the term “other authorities” would include all authorities created by the constitution or statute on whom powers are conferred by law.

Later, in the **R.D. Shetty v. International Airport Authority of India** case (1979), the court formulated the principle of ‘instrumentality and agency of the state’. The Court held that if a body is an instrumentality or agency of the state, it would fall under the definition of ‘state’ in Article 12.

This principle was further refined in the **Ajay Hasia v. Khalid Mujib** case (1981), where the Supreme Court laid down a test to determine whether a body falls within the definition of ‘state’. The Court considered factors such as financial resources of the state, deep and pervasive state control, a monopoly status conferred or protected by the state, functions of the body, and transfer of a governmental department to a corporation.

It’s important to note that the judiciary has played a significant role in expanding the scope of ‘State’ to include entities that may not strictly be a part of the

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government machinery but perform public functions or functions closely related to governmental functions. The underlying idea is to ensure that all bodies which are in a position to violate fundamental rights are brought within the ambit of 'State' and thus made accountable under the constitution.

## **B) DOCTRINE OF ECLIPSE AND ITS APPLICATION IN PRE-CONSTITUTIONAL AND POST-CONSTITUTIONAL LAW?**

The doctrine of eclipse is a constitutional doctrine that comes into play in the context of judicial review of statutes in India. The essence of this doctrine is that a law inconsistent with the fundamental rights of the citizens is not null and void ab initio, but is only overshadowed by the fundamental rights. In other words, it becomes unenforceable but not dead. The law is not struck off from the statute book, it remains 'eclipsed' for the time being, until the shadow of the inconsistent fundamental right is removed.

This doctrine finds its genesis in the landmark decision of **Bhikaji Narain Dhakras v. State of M.P** (1955). In this case, the Supreme Court held that a pre-constitutional law inconsistent with the fundamental rights is not a dead letter, but is merely overshadowed by the fundamental rights and remains in a state of

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suspended animation.

Further, the application of the doctrine of eclipse differs for pre-constitutional and post-constitutional laws.

For pre-constitutional laws, the doctrine of eclipse operates to render these laws dormant but not dead, they continue to exist but remain unenforceable until the inconsistency with the fundamental rights is removed by a constitutional amendment. This was reiterated by the Supreme Court in **State of Gujarat v. Ambica Mills Ltd** (1974).

However, for post-constitutional laws, the Supreme Court, in the case of **Deep Chand v. State of U.P** (1959), held that such laws do not get the benefit of the doctrine of eclipse. According to the Court, laws made after the adoption of the Constitution, which are inconsistent with the fundamental rights, are null and void from inception, not merely overshadowed or in a state of eclipse.

It's crucial to note that the doctrine of eclipse is relevant only until the inconsistency with the fundamental right is removed. The moment this happens, the law becomes effective from the date of such removal. This concept was elaborated in the landmark case of **Hans Muller of Nuremberg v. Superintendent, Presidency Jail, Calcutta** (1955) where the Supreme Court held that when the shadow of the eclipse is removed, the eclipse vanishes, and the law shines forth with all its vigour.

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However, it should also be noted that the revived law, after the removal of inconsistency, can operate prospectively and not retrospectively. This point was emphasized by the Supreme Court in **Golak Nath v. State of Punjab** (1967) case.

## C) DOUBLE JEOPARDY

The concept of Double Jeopardy is embedded in Article 20(2) of the Indian Constitution which states: “No person shall be prosecuted and punished for the same offence more than once”. This protection is in line with the principles of fairness and justice which underlie criminal jurisprudence.

The principle of Double Jeopardy contains three key elements:

1. The person must be accused of an “offence”. The term offence is defined under Section 40 of the Indian Penal Code.
2. The accused person has been “prosecuted”, i.e., legal proceedings have been instituted against the accused in a court of law.
3. The accused has been “punished” for the same offence.

The landmark case of **Maqbool Hussain v. State of**

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**Bombay (1953)** is significant in the context of double jeopardy. In this case, the Supreme Court held that the proceedings before a customs officer were not proceedings before a court or judicial tribunal, and therefore, the seizure and confiscation by the customs officer did not constitute punishment for the purpose of Article 20(2).

In **State of Bombay v. S.L. Apte (1961)**, the Supreme Court held that the protection against double jeopardy involves not only being punished more than once but also being prosecuted and tried more than once for the same offence.

However, it's worth noting that the protection against double jeopardy is not absolute and has certain limitations. It applies only when a person is "prosecuted and punished" by a "court" or "judicial tribunal". Proceedings before administrative or executive authorities are generally not considered within the scope of this provision.

## D) FUNDAMENTAL DUTIES

Introduced by the 42<sup>nd</sup> Amendment Act in 1976, the concept of Fundamental Duties constitutes an essential aspect of the Indian Constitution. These duties, found under Article 51A, form a part of Part IVA. They underscore the ethical obligations that the citizens should

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voluntarily follow.

Fundamental Duties serve as a crucial reminder that while enjoying their fundamental rights, citizens have certain responsibilities towards their nation and society. It's a reciprocal concept that signifies that while citizens have rights, they also need to maintain and foster the democratic spirit of the nation through their duties.

The Constitution outlines several duties that every citizen should ideally observe. For example, respecting the Constitution, its ideals and institutions, the National Flag, and the National Anthem, cherishing and upholding the noble ideals of the freedom struggle, and protecting the sovereignty, unity, and integrity of the country, are some of the duties mentioned.

These duties also emphasize the preservation of India's rich heritage and culture, advocating harmony amongst citizens, protecting the natural environment, and promoting scientific temper. Furthermore, citizens are encouraged to safeguard public property, abstain from violence, and strive towards excellence in individual and collective activities. The responsibility of parents or guardians to provide educational opportunities to their children also forms a part of these duties.

Despite their integral role in promoting civic consciousness, Fundamental Duties aren't legally enforceable. There are no penalties or legal liabilities for their non-compliance. However, they serve an essential function in law interpretation and policy formulation. In

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several judgements, the Supreme Court has emphasized the importance of these duties. For instance, in the landmark case of **M.C. Mehta v. Union of India** (2004), the Court observed that Fundamental Duties, though unenforceable by law, are fundamental in the governance of the nation and the judiciary should endeavor to uphold them.

## E) WRIT OF QUO-WARRANT

The term 'Quo-Warranto' essentially translates to "by what authority or warrant". This prerogative writ is issued by a higher court to a person or authority, calling upon them to show under what authority they are exercising a public office, franchise or liberty. The writ of Quo-Warranto is a powerful tool in administrative law and serves as an instrument to prevent illegal usurpation of public offices by individuals.

Under Article 226 of the Indian Constitution, the High Courts have the power to issue writs, including Quo-Warranto, for the enforcement of the rights of any person. Article 32 also empowers the Supreme Court to issue writs, including Quo-Warranto, for the enforcement of Fundamental Rights.

The primary purpose of Quo-Warranto is to prevent a person from holding an office which he is not entitled to, in order to protect the public from the usurpation of an

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office by an individual unlawfully, and to ensure that public offices are not misused.

The following conditions must be fulfilled for the issuance of a writ of Quo-Warranto:

1. The office must be public and it must be created by a statute or by the constitution itself.
2. The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another.
3. There has been a contravention of the constitution or a statute or statutory instrument, in appointing such person to that office.

The Supreme Court in the case of **Jamalpur Arya Samaj Sabha v. Dr. D. Ram** (1954), outlined the conditions when the writ of Quo-Warranto could be issued. In **University of Mysore v. Govind Rao** (1965), the Court held that if the appointment is made contrary to statutory rules, the court can issue a writ of Quo-Warranto.

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## PART B

**“ARBITRARINESS IS THE VERY ANTITHESIS OF EQUALITY”. CRITICALLY EXAMINE THE STATEMENT THE WITH HELP OF DECIDED CASES.**

### **Arbitrariness as the Antithesis of Equality: A Critical Examination**

The principles of equality and arbitrariness are integral aspects of jurisprudence, particularly in the context of constitutional law. The statement that "arbitrariness is the very antithesis of equality" outlines a fundamental tenet of legal reasoning. The principle of equality demands that equals must be treated equally, and it forms the basis for justice and fairness in a democratic society. On the contrary, arbitrariness, which implies a lack of fair, objective, and reasonable decision-making, stands against the core principle of equality.

The concept of equality is deeply embedded in the Indian Constitution under Article 14, which guarantees that the State shall not deny any person equality before the law or equal protection of the laws within the territory of India. This Article is a cornerstone of India's democratic system and offers protection against any form of arbitrary action by the State.

The equality clause in the Constitution comprises two facets:

1. 'Equality before the law' which is a negative

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concept implying the absence of any special privilege in favor of any person.

2. 'Equal protection of the law' which is a more positive concept implying equality of treatment in equal circumstances.

It's crucial to note that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation. This principle was laid down in the landmark case of **State of West Bengal v. Anwar Ali Sarkar** (1952), where the Supreme Court held that while Article 14 forbids class legislation, it does not forbid reasonable classification. However, the classification must satisfy two conditions: i) it must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and ii) the differentia must have a rational nexus to the objective sought to be achieved by the Act.

On the other hand, the concept of 'arbitrariness' denotes a lack of fair, objective, and reasoned decision-making process. Arbitrary actions are typically characterized by bias, prejudice, oblique motives, and unequal treatment of equals. This is inherently opposed to the rule of law, which is the foundation of any democratic society.

Over the years, the Supreme Court has extended the interpretation of Article 14 to include protection against arbitrary actions of the State. In the landmark case of **E.P. Royappa v. State of Tamil Nadu** (1974), the Supreme Court held that Article 14 strikes at arbitrariness

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in State action and ensures fairness and equality of treatment. The court stated, "Equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch."

Later in the case of **Maneka Gandhi v. Union of India** (1978), the Court further broadened the scope of Article 14. It held that the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in compliance with Article 14. The court held that the principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.

In a more recent judgement in **Shayara Bano v. Union of India** (2017), the Supreme Court declared the practice of Triple Talaq as unconstitutional. It was held that the practice is manifestly arbitrary and therefore, violative of Article 14 of the Constitution of India.

From the above judgements, it's evident that the concept of non-arbitrariness is inherent in the notion of equality. It ensures fairness, justice, and equity. Any discriminatory or arbitrary action would be contrary to the principles of equality and justice.

However, the use of the doctrine of arbitrariness to strike down legislation has not been without its critics. Some legal scholars argue that the doctrine extends the reach of

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judicial review too far, enabling courts to strike down legislation merely because they disagree with the policy underlying it. They maintain that it is not the job of the courts to make policy decisions, but rather to interpret and apply the law. This critique was reflected in the dissenting opinion in **Shayara Bano v. Union of India** where it was held that it was not for the court, but for the legislature to decide on the constitutionality of personal laws.

Nevertheless, it's clear that the judiciary has played an active role in upholding the principle of equality by continuously expanding the scope of Article 14 to include the principle of non-arbitrariness. This is reflected in the ruling of the Supreme Court in **Navtej Singh Johar v. Union of India** (2018), where the Court held that the criminalization of homosexuality was irrational, indefensible, and manifestly arbitrary, thereby violating Article 14.

Moreover, the judiciary has also interpreted the principle of equality to encompass positive obligations on the part of the state. This has been seen in the area of socio-economic rights, where the courts have recognized that the state may have a duty to take positive action to ensure equality. A notable case is **Paschim Banga Khet Mazdoor Samity v. State of West Bengal** (1996), where the Supreme Court held that the right to health is integral to the right to life and the government has a constitutional obligation to provide health facilities, thus linking socio-economic rights with the principle of

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equality.

**“LIBERTY OF PRESS CONSISTS IN LAYING NO PRIOR RESTRAINT UPON PUBLICATION.” EXAMINE. HOW FAR THIS LIBERTY OF PRESS IS PROTECTED UNDER THE INDIAN CONSTITUTION?**

**Liberty of the Press and No Prior Restraint on Publication: A Constitutional Examination**

The freedom of the press is a fundamental cornerstone of any democratic society. It is the embodiment of the freedom of speech and expression, providing a platform for the free exchange of ideas and fostering an informed citizenry. The statement that "liberty of press consists in laying no prior restraint upon publication" encapsulates the essence of press freedom. Prior restraint is a form of censorship where the expression of an idea is curbed even before it is communicated. The doctrine of no prior restraint advocates against such censorship, affirming that any punitive action should be post-publication, rather than pre-publication.

In the landmark case **Near v. Minnesota** (1931), the U.S. Supreme Court categorically rejected the practice of prior restraint. The court observed, "The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for

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criminal matter when published." This principle of no prior restraint is considered fundamental to the freedom of the press and is zealously safeguarded in democracies worldwide.

Now, turning to the Indian context, we need to understand the extent to which the liberty of the press, including the principle of no prior restraint, is protected under the Indian Constitution.

The Indian Constitution, while not explicitly mentioning the freedom of the press, provides for the same under the ambit of Article 19(1)(a), which guarantees to all citizens the right to freedom of speech and expression. The freedom of the press is seen as an extension of this right, and over the years, the Supreme Court of India has reiterated this principle in several judgments. In the case of **Romesh Thapar v. State of Madras** (1950), the Supreme Court stated that "freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible."

However, like all rights, the freedom of the press is not absolute. Article 19(2) of the Indian Constitution permits reasonable restrictions on the freedom of speech and expression in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. These restrictions apply

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equally to the freedom of the press.

The principle of no prior restraint also finds expression in Indian jurisprudence. In **Brij Bhushan v. State of Delhi** (1950), the Supreme Court struck down a provision of the East Punjab Public Safety Act, 1949, which empowered the government to pre-censor a newspaper, terming it a violation of the freedom of the press.

Yet, it is important to note that Indian courts have not completely ruled out the possibility of prior restraint on publication. In certain situations, where the potential harm caused by the publication is so grave that it cannot be remedied post-publication, courts have allowed for prior restraint. For example, in the case of **Sahara India Real Estate Corporation v. Securities and Exchange Board of India** (2012), the Supreme Court upheld a temporary restraining order on the press from publishing anything related to a sub-judice matter, citing the need to balance the right to a fair trial and the principle of open justice.

While the press enjoys a wide berth in terms of freedom of speech and expression, it must also uphold its responsibilities to the public. This includes avoiding any form of hate speech, fake news, defamation, or any other form of unlawful content. The freedom of the press does not provide a blanket immunity to the press to publish anything it deems fit. It is a freedom that comes with its own checks and balances. The press is expected to act with due diligence, fairness, and responsibility in its

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reporting.

Over the years, the judiciary has played a pivotal role in upholding the freedom of the press and the principle of no prior restraint in India. A prominent example of this is the judgement in **Indian Express Newspapers v. Union of India** (1985), where the Supreme Court held that the press plays a profoundly important role in the democratic machinery. The court stated that the press stands as a guardian of public interest, and its freedom provides vitality to the principles of democracy.

The court has consistently ruled in favour of the freedom of the press, holding that this right is sacrosanct for the preservation and protection of the democratic ethos of the nation. In **S. Rangarajan v. P. Jagjivan Ram** (1989), the Supreme Court observed, "The freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation." It was further held that the freedom of speech and expression cannot be confined or limited to only those that are in sync with the majority views but also to those that offend, shock, or disturb the state or any sector of the population.

However, in light of the increasing instances of misuse of the freedom of the press, particularly with the advent of digital media, there have been calls for more stringent regulation of the press. While the need for regulation is acknowledged, it's crucial that any such measure does not infringe upon the fundamental principles of press freedom, including the doctrine of no prior restraint. Any

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attempt to control or influence the press would be a grave threat to the democratic principles that our country stands on.

The emergence of new media platforms has brought with it new challenges for press freedom and the principle of no prior restraint. The anonymity and immediacy of digital media have made it a double-edged sword, capable of being used for both good and ill. The spread of fake news, online harassment, and hate speech have raised important questions about the scope and limits of press freedom in the digital age. It's crucial that these challenges are addressed in a manner that upholds the principles of press freedom, while also protecting the rights and interests of individuals and society at large.

In the case of **Shreya Singhal v. Union of India** (2015), the Supreme Court struck down Section 66A of the Information Technology Act, 2000, which had been used to arrest several people for posting allegedly offensive content on the internet. The court ruled that the section was violative of the freedom of speech and expression, as it was vague and overbroad, and had a chilling effect on free speech. This ruling was hailed as a significant victory for press freedom in the digital age

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**“INDIAN SECULARISM IS NEITHER ANTI-RELIGION NOR IS BASED ON TOTAL NEUTRALITY TOWARDS RELIGION, BUT IS BASED ON EQUAL RESPECT FOR ALL RELIGION”. ELUCIDATE YOUR ANSWER WITH THE HELP OF CASE LAW.**

## **Indian Secularism: A Balance of Respect for All Religions**

Secularism, as a concept, bears different connotations in different political and cultural contexts. However, at its core, it entails a separation of religious institutions from the institutions of the state, ensuring that the state does not privilege any one religion over others. The interpretation of secularism in India is a unique one. As the quote suggests, "Indian secularism is neither anti-religion nor is based on total neutrality towards religion, but is based on equal respect for all religion."

Unlike the western concept of secularism, which implies a strict separation of the church and state and often leans towards the state's neutrality or indifference towards religion, the Indian concept of secularism signifies equal respect and recognition for all religions. It ensures that the state does not privilege one religion over others, and does not discriminate against anyone on grounds of their religion.

This understanding of secularism is ingrained in the Indian Constitution. The Preamble to the Constitution declares India to be a "SOVEREIGN SOCIALIST

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SECULAR DEMOCRATIC REPUBLIC". This indicates that the state itself, as an entity, is separate from religion and does not uphold any particular religion as the state religion.

It's also crucial to note that secularism in India does not imply atheism or irreligiousness. Rather, it underlines the state's commitment to promoting equal respect and protection for all religions. In essence, Indian secularism can be seen as a positive concept that actively engages in guaranteeing religious freedom and maintaining religious harmony.

This notion of secularism has been further elucidated and confirmed by the judiciary in several landmark cases. In the case of **S.R. Bommai v. Union of India** (1994), a nine-judge bench of the Supreme Court held that secularism is a part of the basic structure of the Constitution. The court emphasized that the state has a duty to ensure the freedom of religion for all its citizens, and this duty entails neutrality towards all religions. The court observed, "The state is neither pro-religion nor anti-religion; it is merely supposed to be a-religion – in the sense of being indifferent to religion – as a matter of state policy."

In another significant case, **St. Xavier's College Society v. State of Gujarat** (1974), the Supreme Court highlighted that Indian secularism does not reject religion but instead gives equal respect to all religions. The court stated, "Secularism is neither anti-God nor pro-God, it treats alike the devout, the agnostic and the

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atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion."

While the Indian state recognizes and respects all religions equally, it also reserves the right to interfere in religious matters if they violate fundamental rights or public order. This has been highlighted in the controversial **Shah Bano Case** (1985), where the Supreme Court upheld the right of a Muslim woman to receive maintenance from her ex-husband, a ruling that went against the traditional Islamic law. This case brought to the fore the conflict between religious laws and the principles of social justice and gender equality.

Similarly, in the **Sabarimala Case** (2018), the Supreme Court permitted the entry of women of all age groups into the Sabarimala Temple, overruling the centuries-old custom that banned the entry of menstruating women into the temple. In the judgment, the court emphasized that religion cannot be used as a cover to deny rights of worship to women and it is also against the basic tenets of the Constitution. This underlines the fact that while the Indian state respects and acknowledges all religions, it does not shy away from intervening in religious affairs when they infringe upon fundamental rights or the principles of justice, equity, and good conscience.

Another important facet of Indian secularism is its role in preserving and promoting religious harmony. Given the country's immense religious diversity, secularism in India serves as an important tool for promoting mutual

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respect and peaceful coexistence among different religious groups. The state, in its secular role, acts as a neutral arbiter in cases of inter-religious conflicts, ensuring that no group is privileged or disadvantaged because of their religious beliefs.

For instance, in the case of **Lily Thomas v. Union of India** (2013), the Supreme Court ruled that religious conversion just for the purpose of marriage is not valid. The court, in this case, upheld the principle of secularism by emphasising the need for religious freedom and the non-interference of the state in religious matters, while also safeguarding individual rights and liberties.

In the **Ayodhya Verdict** (2019), the Supreme Court again demonstrated the intricate balance that Indian secularism seeks to maintain. Despite the case's deeply religious overtones, the court sought to make a decision based on evidence, law, and the Constitution, not on faith or religious belief. The court reiterated that secularism remains a fundamental tenet of the Indian Constitution and forms a key part of India's ethos.

On the other hand, it's also worth noting that the path of Indian secularism has not always been smooth. There have been instances where the state's intervention in religious matters or its decisions have sparked controversy, raising questions about the true extent and scope of secularism in India. The delicate balance between respecting religious freedom and upholding secular principles often brings the state and judiciary into uncharted territories, where each decision can set a new

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precedent.

For instance, the controversy surrounding the enactment of the **Citizenship Amendment Act (CAA)** in 2019 questioned the principles of Indian secularism. Critics argue that by providing a fast-track route to citizenship based on religion, the CAA violates the principles of equality and secularism enshrined in the Indian Constitution.

Despite these challenges and controversies, the Indian concept of secularism continues to stand as a beacon of religious harmony and mutual respect in a diverse society. The vision of secularism as enshrined in the Constitution and elucidated in various judicial pronouncements suggests an understanding of secularism that goes beyond mere tolerance of religious diversity.

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**“THE SUPREME COURT IN MANEKA GANDHI'S CASE HAS REVOLUTIONIZED THE LAW RELATING TO PERSONAL LIBERTY UNDER ARTICLE 21 OF THE CONSTITUTION”. DO YOU AGREE WITH THE STATEMENT? EXPLAIN.**

**The Maneka Gandhi Case: A Milestone in the Evolution of Article 21**

The judgment of the Supreme Court in the **Maneka Gandhi v. Union of India** case (1978) indeed marked a turning point in the interpretation of Article 21 of the Indian Constitution, which provides, "No person shall be deprived of his life or personal liberty except according to procedure established by law." Prior to this ruling, the understanding of 'personal liberty' was largely narrow and restrictive. However, in this case, the Supreme Court adopted a comprehensive, expansive interpretation of Article 21, revolutionizing the law relating to personal liberty in India.

**Background of the Case**

In this case, Maneka Gandhi's passport was impounded by the Central Government in the 'interest of the general public', under the Passport Act 1967, without giving her a chance to be heard. Maneka Gandhi filed a writ petition under Article 32 of the Indian Constitution, arguing that the government's action was a violation of her fundamental rights under Article 14 (Right to Equality), Article 19 (Freedom of Speech and Expression), and Article 21 (Right to Life and Personal Liberty) of the

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Constitution.

## Interpretation of Article 21

The most remarkable aspect of the judgment is the reinterpretation of Article 21. Prior to the Maneka Gandhi case, the Supreme Court, in the case of **AK Gopalan v. State of Madras** (1950), had interpreted Article 21 in a narrow and restrictive manner, stating that any law that prescribes a procedure for depriving a person of 'life' or 'personal liberty' would be a valid law, even if it is arbitrary, unjust, or unfair. This meant that the state could deprive a person of his life or personal liberty by simply enacting a law for that purpose.

However, in the Maneka Gandhi case, the Supreme Court overruled its decision in the Gopalan case and held that the procedure established by law under Article 21 must be 'fair, just and reasonable'. The court stated that the procedure should not be arbitrary, fanciful, or oppressive. Otherwise, it would be no procedure at all and the requirements of Article 21 would not be fulfilled.

## Interconnection of Fundamental Rights

Another significant aspect of the Maneka Gandhi case is the principle of the interconnection of fundamental rights, which the Supreme Court recognized and upheld in this case. The court held that Article 21 cannot be read in isolation and must be read in conjunction with Articles 14 and 19, thereby marking a departure from its earlier stance in the Gopalan case where it had rejected the

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concept of 'due process of law' and had interpreted each article in isolation.

This interpretation meant that any law depriving a person of 'personal liberty' has to satisfy not only the test of being a validly enacted law but also the requirements of Articles 14 and 19. In other words, the law must be just, fair, and reasonable and not arbitrary or violative of the principles of equality and freedom enshrined in the Constitution.

This judgment was indeed revolutionary in many ways. The widened interpretation of 'personal liberty' to include all varieties of rights which go to constitute the personal liberty of a man, other than those dealt with in Article 19, and the adoption of the due process clause gave a new dimension to Article 21. The court's interpretation of Article 21 in this case has been followed in subsequent cases, leading to the development of various doctrines, such as the right to a healthy environment, the right to live with dignity, the right to speedy trial, etc., which are now considered an integral part of the right to life and personal liberty.

The Supreme Court, through its landmark decision in *Maneka Gandhi*, effectively expanded the ambit of the concept of 'personal liberty' to include not just freedom from restraint on movement, but also a host of other rights. This broadened interpretation, combined with the application of the 'fair, just, and reasonable' test, has had far-reaching implications for the enforcement and protection of human rights in India.

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## Implications of the Judgment

One of the most significant implications of this judgment has been the recognition and enforcement of various unenumerated rights as integral to 'personal liberty'. Through a series of subsequent judgments, the Supreme Court has continued to evolve and expand the interpretation of 'personal liberty', drawing from the spirit of the Maneka Gandhi ruling.

For instance, in the case of **Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and Ors** (1981), the court held that the right to life and personal liberty includes the right to live with human dignity and all that goes along with it. This encompassed within its ambit, the bare necessities of life such as adequate nutrition, clothing, and shelter, and also the reading and writing.

Similarly, the Supreme Court in **Olga Tellis v. Bombay Municipal Corporation** (1985) recognised the right to livelihood as an integral part of the right to life. The court observed that the sweep of the right to life conferred by Article 21 was wide and far-reaching, and it did not mean merely that life cannot be extinguished or taken away, but that life cannot be lived with dignity without the means of livelihood.

Furthermore, in the **Bandhua Mukti Morcha v. Union of India** (1984) case, the court held that the right to live with human dignity, free from exploitation, was a fundamental right under Article 21, and that any act

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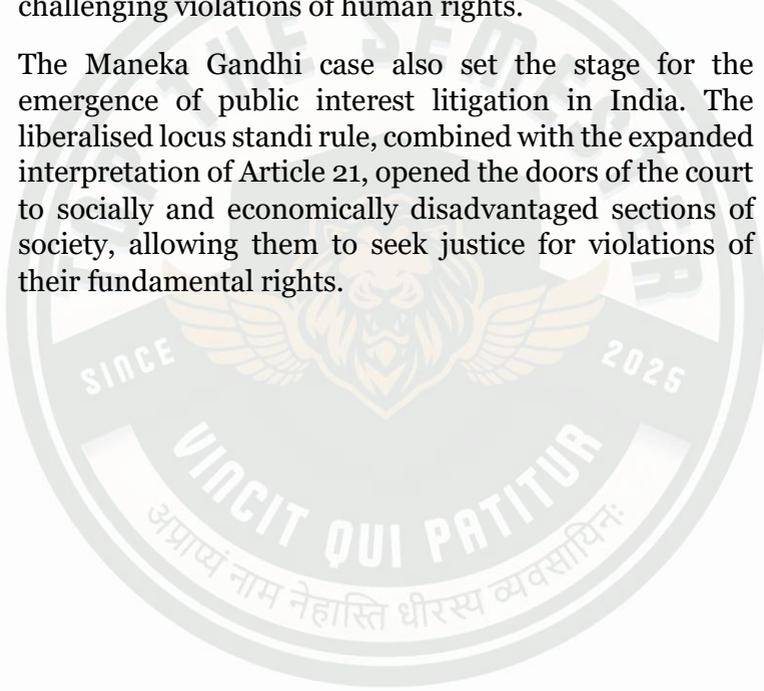
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which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.

Thus, the new interpretation of Article 21 has led to a new jurisprudence of public law remedialism, creating the possibility of enforcing socioeconomic rights and challenging violations of human rights.

The Maneka Gandhi case also set the stage for the emergence of public interest litigation in India. The liberalised locus standi rule, combined with the expanded interpretation of Article 21, opened the doors of the court to socially and economically disadvantaged sections of society, allowing them to seek justice for violations of their fundamental rights.



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**Q6. DISCUSS THE SCOPE OF THE FOLLOWING WRITS:**

**A) CERTIORARI**

**B) MANDAMUS**

**The Scope and Application of Certiorari and Mandamus**

Writs form an integral part of the Indian judicial system, functioning as potent tools to maintain the rule of law and ensure administrative justice. They are directed against any authority, person, or government, mandating them to do or abstain from doing some act specified therein, which pertains to their public duty. This paper will focus on two such writs: Certiorari and Mandamus, examining their scope, application, and impact within the framework of the Indian Constitution.

**a) Writ of Certiorari**

Derived from the Latin phrase "to be certified," the writ of Certiorari is fundamentally a supervisory jurisdiction exercised by higher courts over the proceedings and decisions of lower courts or tribunals.

**Scope of Certiorari**

The scope of Certiorari is to keep the inferior courts and authorities within the limits of their jurisdiction. When an inferior court, tribunal, or quasi-judicial authority has acted:

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1. Without jurisdiction or in excess of it
2. In violation of the principles of natural justice
3. In a way that the decision could not have been arrived at by any reasonable person, i.e., the decision is so arbitrary that it amounts to 'perverse findings'

A superior court can issue a writ of Certiorari to quash their order. The writ is not available against legislative or administrative acts.

## Landmark Cases

In **Hari Vishnu Kamath v. Ahmad Ishaque** (1955), the Supreme Court held that Certiorari is an original jurisdiction of the superior court to control the actions of an inferior court within the sphere of its jurisdiction. The same principle was reiterated in the case of **Syed Yakoob v. Radhakrishnan** (1964), where the Supreme Court stated that an order can be quashed only if it is shown that the inferior court has acted without jurisdiction or in excess of it, or in violation of principles of natural justice.

## b) Writ of Mandamus

The writ of Mandamus (Latin: We command) is an order issued by a superior court commanding a person or a public authority to do or forbear from doing a specific act which falls within their duty. It's a judicial remedy that is essentially of a supervisory nature.

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## Scope of Mandamus

Mandamus is issued when:

1. There is a legal right requiring enforcement.
2. There is a legal duty required to be performed.
3. The person or public authority is bound to perform that duty, and they haven't performed it.

The writ cannot be issued to enforce:

1. Discretionary duties, though it can be issued to compel authorities to exercise their discretion.
2. Private, contractual or non-statutory duties.

## Landmark Cases

The famous case of **State of Bihar v/s Kameshwar Singh** (1952) saw the Supreme Court order the state of Bihar to fulfil its statutory duty via the writ of Mandamus. In the case of **Praga Tools Corporation v. C.V. Imanuel** (1969), the court held that the writ of Mandamus could not be granted to enforce a private contract.

## Extended Scope

In recent years, the courts in India have expanded the ambit of these writs to uphold the rule of law and ensure justice. The writs are no longer confined merely to statutory duties or jurisdictional errors but have seeped into the spheres of administrative obligations and

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procedural lapses. This has contributed immensely to the strengthening of administrative law and constitutional safeguards in the country.

## **Extension of Certiorari**

In terms of Certiorari, the courts have moved beyond traditional limits to keep a check on the functioning of administrative authorities and prevent any potential abuse of power. They have adopted a proactive role to ensure that the principles of natural justice are not violated, and no authority acts in a way that defies logic or fairness.

In the landmark judgment of **Surya Dev Rai vs. Ram Chander Rai and Anr** (2003), the Supreme Court of India elucidated the extended application of the writ of Certiorari. The court held that the power of a superior court to issue a writ of Certiorari is not limited merely by the presence of an alternate statutory remedy but extends to preventing gross miscarriage of justice.

## **Extension of Mandamus**

The Supreme Court has adopted an activist approach in the application of Mandamus, making it more comprehensive and adaptable to a variety of situations. The range of Mandamus has broadened to include not just statutory or public duties, but also certain discretionary powers of authorities.

One significant instance of such an expansion is the use of Mandamus in the realm of environmental law. The

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court has invoked this writ to enforce legal obligations related to environmental protection and conservation. In the case of **M.C. Mehta v. Union of India** (1986), also known as the Oleum Gas Leak Case, the Supreme Court ordered the closure of certain industries causing pollution, under the ambit of the writ of Mandamus.



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**EXAMINE THE SIGNIFICANCE OF ARTICLE 32 OF THE CONSTITUTION IN THE CONTEXT OF PUBLIC INTEREST LITIGATION WITH THE HELP OF CASE LAW.**

## **The Significance of Article 32 of the Constitution in the Context of Public Interest Litigation**

Article 32 of the Indian Constitution, also known as the 'heart and soul' of the constitution as described by Dr. B.R. Ambedkar, is an integral part of the Fundamental Rights enshrined in Part III. This paper aims to delve into the significance of Article 32, particularly in the context of Public Interest Litigation (PIL), underscoring its role as a catalyst for social change, reinforced by significant case laws.

### **The Essence of Article 32**

Article 32 provides for the right to constitutional remedies, which means that a person has the right to move the Supreme Court (and High Courts under Article 226) for the enforcement of his/her fundamental rights. The right guaranteed by this article is in itself a Fundamental Right, thus making it a unique and essential safeguard for the preservation of individual liberty and personal freedoms.

The Supreme Court is empowered to issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto, and Certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part

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III of the Constitution.

## Article 32 and Public Interest Litigation

The connection between Article 32 and PIL lies in the flexible and evolving interpretation of 'Right to Constitutional Remedies'. Traditionally, only the person whose right was directly infringed could approach the court. However, the emergence of PIL has significantly altered this concept.

Public Interest Litigation refers to the legal action taken in a court of law for the protection of "public interest" on matters concerning public welfare. It has given a broader meaning to the term 'locus standi', allowing even public-spirited individuals and organizations to approach the court on behalf of those who cannot do so themselves, due to socio-economic constraints or lack of awareness.

## Landmark Cases

1. **Hussainara Khatoon v. State of Bihar (1979)**: This was one of the earliest instances of PIL in India, where the plight of undertrial prisoners was brought before the court. The court stated that the right to speedy trial is a fundamental right under Article 21, leading to the release of more than 40,000 undertrial prisoners.
2. **MC Mehta v. Union of India (1986)**: This was a significant environmental case where PIL was used to enforce the right to live in a healthy environment, considered an integral part of

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Article 21 (Right to Life).

3. **Vishaka v. State of Rajasthan (1997):** In this landmark judgment, the court acknowledged the significance of PIL in bringing social issues to the forefront. The court issued guidelines to prevent sexual harassment at the workplace, demonstrating the capacity of PIL under Article 32 to address and redress systemic and societal issues.

## Significance and Impact

The use of Article 32 in PILs has opened up a new dimension in the judicial process in India, creating a powerful tool for change in society. It has breathed life into the fundamental rights of the marginalized and disadvantaged sections of the society, ensuring that justice is not denied to anyone on the grounds of economic disability or social disadvantage.

Furthermore, PILs under Article 32 have resulted in the expansion of the meaning and content of fundamental rights. For instance, the right to life under Article 21 has been interpreted to include the right to live with dignity, right to clean environment, right to livelihood and so on.

The Supreme Court, through PIL, has not just remained a passive interpreter of law, but it has become an active participant in the process of ensuring social justice, upholding the spirit of Article 32. It has allowed the courts to break free from traditional shackles of locus

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standi and procedural intricacies, enabling them to directly engage with public issues and deliver swift justice.

## Expanding the Horizons of Justice

In the context of PIL, Article 32 has played a seminal role in expanding the horizons of justice. The broad and dynamic interpretation of Article 32 has made the Supreme Court more accessible to the common people, enabling them to voice their concerns and seek redressal for collective wrongs affecting society at large.

For instance, in the case of **Bandhua Mukti Morcha vs Union of India (1984)**, the Supreme Court recognized a letter written by an NGO regarding the issue of bonded labour as a writ petition under Article 32. This further paved the way for the liberalization of locus standi, leading to a surge in PIL cases addressing issues such as child labour, women's rights, and environmental concerns.

## A Platform for Social Change

The relevance of Article 32, coupled with PIL, goes beyond the purview of legal issues and extends to real-life situations affecting large sections of society. For instance, in the case of **People's Union for Democratic Rights (PUDR) v. Union of India (1982)**, the court accepted a PIL regarding the violation of labour rights of workers during the construction of facilities for the Asian Games. Here, the Court held that the right to life and liberty

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would mean a life of dignity and thus, Article 21 would also include the right to livelihood.

In another landmark judgement, **Rural Litigation and Entitlement Kendra vs State of U.P (1985)**, commonly known as the Dehradun Quarrying Case, the Supreme Court entertained a PIL under Article 32 and stopped illegal limestone mining in the Mussoorie hills. This judgement highlighted the court's proactive role in environmental protection and sustainability through PIL under Article 32.

## **Article 32: A Living Instrument**

Over the years, Article 32 has been used as a living instrument, adapting to the changing social realities and needs of the people. It has been instrumental in invoking the inherent powers of the Supreme Court for the enforcement of fundamental rights. Moreover, it has also amplified the transformative capacity of the Constitution, with the Supreme Court often stepping in to fill the legislative void in areas concerning public interest.

However, the journey is not without its challenges. While Article 32 has significantly empowered the judiciary, it has also raised concerns regarding judicial overreach. Striking a balance between active judicial intervention and respecting the doctrine of separation of powers is of utmost importance.

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**“DIRECTIVE PRINCIPLES OF STATE POLICY HAVE PLAYED A SIGNIFICANT ROLE IN THE INTERPRETATION OF THE CONSTITUTION. DISCUSS.**

## **Directive Principles of State Policy and Their Role in the Interpretation of the Constitution**

The Directive Principles of State Policy (DPSP), enshrined in Part IV of the Indian Constitution (Articles 36-51), are fundamental in the governance of the country. They are guidelines or directives given to the State governments for the creation of a just society in the country. This paper examines the critical role played by the DPSP in the interpretation of the Constitution, highlighting how they have shaped legislative and judicial understanding of constitutional provisions.

### **Nature and Role of Directive Principles**

DPSPs are non-justiciable in nature; they are not legally enforceable by the courts for their violation. Their purpose is to establish social and economic democracy, serving as a guide to the basic philosophy and the direction the State policy should take.

Though DPSPs do not confer legal rights and obligations and cannot override Fundamental Rights, they have a significant role in constitutional interpretation. They serve as interpretative tools to understand the Constitution's ethos, spirit and, social and economic philosophy.

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## Interplay between DPSPs and Fundamental Rights

The relationship between DPSPs and Fundamental Rights has been a complex one. In the early years of the Indian Constitution, there seemed to be a clear demarcation between the two. The Supreme Court, in the case of **State of Madras v. Champakam Dorairajan (1951)**, ruled that in case of a conflict, Fundamental Rights would prevail over DPSPs. However, over the years, this binary approach has been replaced by a harmonious interpretation.

The turning point was the case of **Golaknath v. State of Punjab (1967)**, where the Supreme Court, for the first time, asserted that Fundamental Rights and DPSPs should be interpreted harmoniously. The apex court held that the State shall not make a law infringing the Fundamental Rights while giving effect to the DPSPs.

## Harmonious Interpretation and Doctrine of Eclipse

The landmark case of **Kesavananda Bharati v. State of Kerala (1973)** affirmed the doctrine of harmonious interpretation. The court held that the Fundamental Rights must be interpreted in light of the DPSPs. Furthermore, it was concluded that the balance between Fundamental Rights and DPSPs is a part of the basic structure of the Constitution and cannot be altered even by a constitutional amendment.

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In the **Minerva Mills v. Union of India (1980)** case, the Supreme Court further emphasized the harmonious relationship between Fundamental Rights and DPSPs. The court asserted that Fundamental Rights and DPSPs are complementary to each other, and one cannot exist in the exclusion of the other.

## **The Directive Principles as Tools of Interpretation**

Over the years, DPSPs have been used by courts as interpretative tools to fill the gaps in laws and policies. For instance, Article 39(b) and (c), which mandate that the state should ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, was invoked in **R.C. Cooper v. Union of India (1970)**. The court used these principles to strike down the nationalization of banks as it was not serving the public interest.

Similarly, in the case of **Olga Tellis v. Bombay Municipal Corporation (1985)**, the Supreme Court invoked Article 39(a) and 41, which talk about equal right to an adequate means of livelihood and right to work, respectively. The court held that the right to livelihood was borne out of the right to life as specified in Article 21, demonstrating how DPSPs can inform the interpretation of fundamental rights.

The courts have used the DPSPs as interpretative tools to breathe life into the Fundamental Rights. Through

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harmonious interpretation, the courts have brought about an equilibrium between Fundamental Rights and DPSPs. They have infused flesh and blood into the skeleton of Fundamental Rights, expanding their ambit and deepening their substance.

For instance, in the case of **Maneka Gandhi v. Union of India (1978)**, the court read Article 21 (Right to Life and Personal Liberty) with Article 39(a) and 41 (dealing with the right to a livelihood). The court expanded the scope of Article 21 and held that the right to life is not merely a physical right but includes within its ambit the right to live with human dignity.

Similarly, the case of **Unnikrishnan JP v. State of Andhra Pradesh (1993)**, used DPSP to hold that the right to education until the age of 14 is a fundamental right, implying that it is the state's duty to provide educational facilities to children of that age group.

Furthermore, in the case of **M.C. Mehta v. Union of India (1987)**, known as the Oleum Gas Leak Case, the Supreme Court invoked Article 48A and 51A(g) to hold that the right to a healthy environment is a fundamental right under Article 21 of the Constitution.

In recent years, with the evolution of jurisprudence around the concept of Sustainable Development, the courts have used Article 48A and 51A(g) to push for environmental regulation and protection. Cases like the **T.N. Godavarman Thirumulpad v. Union of India (1996)**, which dealt with forest conservation, and **M.C.**

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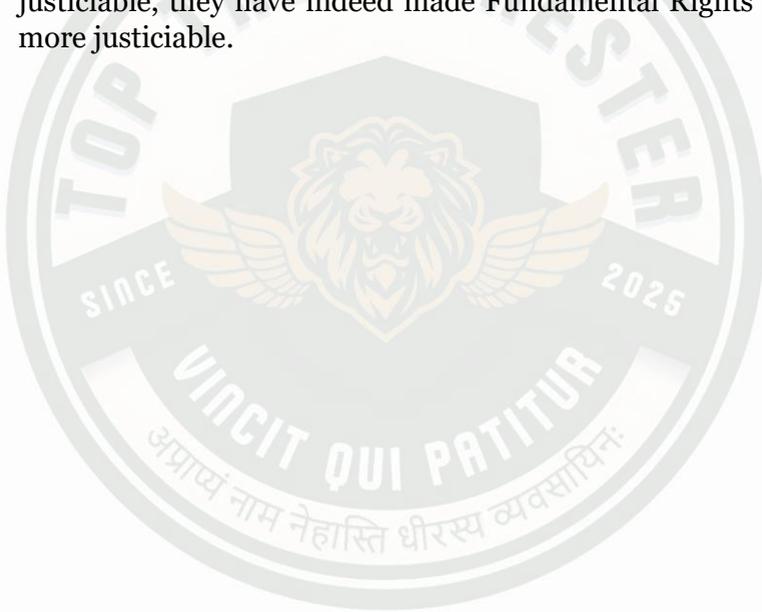
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**Mehta v. Union of India (2002)**, dealing with pollution in the River Ganges, demonstrate the role DPSPs have played in environmental jurisprudence.

Therefore, DPSPs have influenced the interpretation of Fundamental Rights and have helped in making these rights more substantive and effective. They have enabled the judiciary to bridge the gap between the law in books and the law in action. While DPSPs themselves are not justiciable, they have indeed made Fundamental Rights more justiciable.



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**CRITICALLY EXAMINE THE SUPREME COURT OF INDIA GUIDELINES LAID DOWN IN INDIRA SAWHNEY V. UNION OF INDIA, AIR 1993 SC 477**

**Indira Sawhney v. Union of India**, also known as the **Mandal Commission case**, is a landmark judgment of the Supreme Court of India concerning reservations for backward classes in India. This judgment is a watershed moment in India's affirmative action jurisprudence and has significantly impacted the country's reservation policy.

The major contentions in the Indira Sawhney case revolved around the constitutionality of the recommendations of the Mandal Commission, which recommended a reservation of 27% for the Other Backward Classes (OBCs) in central government services.

The Supreme Court, in its judgment, laid down several guidelines and principles concerning reservations in India.

1. **Concept of Social Backwardness:** The Court upheld the principle of social backwardness as the basis for reservation, affirming that caste can be a factor to determine social backwardness. The court recognized caste as a social class in India, and acknowledged its significant role in determining the socio-economic status of people in the country.
2. **Limit of Reservation:** The Court capped the

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reservation quota at 50%, stating that reservation should not exceed this limit except in extraordinary situations. This was to ensure that the principle of equality was not entirely negated in the process of providing reservations.

- 3. Creamy Layer Concept:** The Court introduced the concept of the 'creamy layer'. This concept excluded the more affluent and advanced members of the backward classes from the benefits of reservation. The Court held that the benefits of reservations should not be snatched away by the top creamy layer of 'backward' class, thus ensuring that the neediest sections of the backward classes receive the benefits of reservation.
- 4. No Reservation in Promotions:** The Court also held that reservations could not be applied to promotions, and should be limited to initial appointments only. However, this guideline was later altered by the 77th Constitutional Amendment in 1995, which allowed reservation in promotions.
- 5. Backwardness and Inadequate Representation:** The Court held that 'backwardness' and 'inadequate representation' should be judged on facts, and data should be used to identify backward classes. The decision emphasized the importance of empirical data in making social and economic policies.

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The Supreme Court, in this case, attempted to strike a balance between affirmative action and the principle of equality. It acknowledged the necessity of reservation as a tool to correct historical and systemic discrimination against certain social groups, but at the same time, it sought to limit the extent of reservation to ensure that the basic structure of the constitution - notably, the principle of equality - was not undermined.

While the guidelines laid down by the Supreme Court in the Indira Sawhney case have provided a framework for the implementation of reservation policies in India, they have also been subject to debate and criticism. Critics argue that the 'creamy layer' concept, for example, is problematic as it assumes a homogeneity within castes, which is not the case in reality. Similarly, the 50% cap on reservations is seen by some as arbitrary and not reflective of the actual proportion of backward classes in the population.

The principle of excluding reservations in promotions was also critiqued for maintaining existing inequalities within the job hierarchy. This critique led to the 77th Constitutional Amendment, which allowed for reservation in promotions. This amendment was, however, upheld by the Supreme Court in *M. Nagaraj v. Union of India*, provided the State collected quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment.

On the other hand, the decision has also been lauded for introducing the 'creamy layer' concept to prevent the

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misuse of reservation policies and for emphasizing on empirical data for identification of backward classes.

The 'creamy layer' concept, despite its criticisms, aims to ensure that reservation benefits reach the most marginalized. By excluding the affluent members of the backward classes, the Supreme Court intended to prevent the monopolization of reservation benefits by a relatively privileged few within these classes.

The 50% cap on reservations, on the other hand, was introduced to maintain a balance between affirmative action and the principle of equality. The Court, through this guideline, demonstrated its concern for ensuring that the non-reserved categories also have a fair opportunity to access public employment and education.

The prohibition on reservations in promotions was another contentious guideline. This guideline sought to prevent the perpetuation of reservations at every stage of the service hierarchy. However, the subsequent 77th Constitutional Amendment, which permitted reservations in promotions, reflected the continuing socio-economic disparities in Indian society, necessitating a modification of the guideline.

The Supreme Court's emphasis on empirical data to identify backward classes has underscored the importance of evidence-based policy-making. It acknowledged that the social reality is dynamic and that the identification of backward classes should reflect the changing socio-economic conditions. It rejected a rigid,

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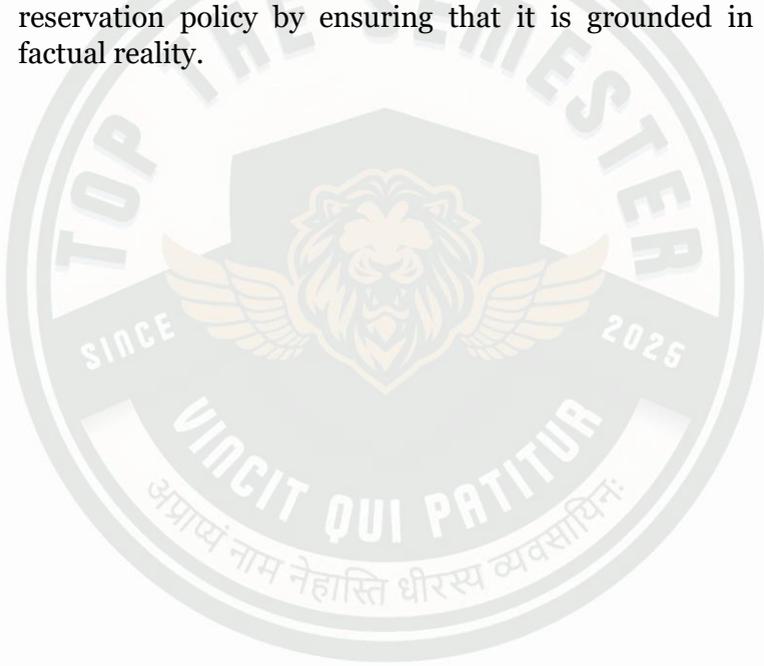
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static view of social backwardness, emphasizing the need for periodic revision and reassessment.

Moreover, the Court's assertion that both 'backwardness' and 'inadequate representation' should be demonstrated for the provision of reservations has played a significant role in ensuring that reservations are not applied arbitrarily. This has strengthened the legitimacy of the reservation policy by ensuring that it is grounded in factual reality.



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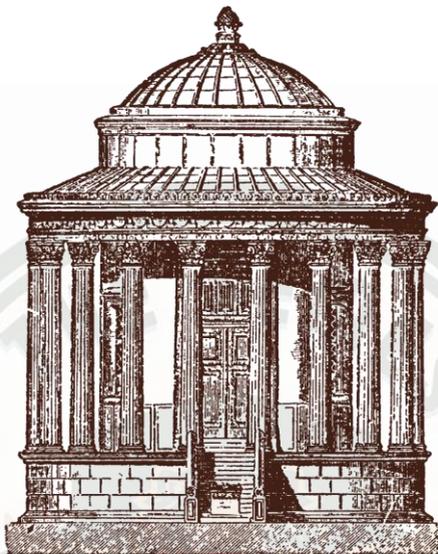
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## UNIT 1

### 01 INTRODUCTION

- Fundamental Rights in democracy
- Basic human rights for development
- Enshrined in the Indian Constitution, Part III



### 02 PRE-CONSTITUTIONAL ERA

- Ancient Indian texts emphasize rights
- British colonial rule introduces regulations
- Foundation for individual rights

### 06

#### CLASSIFICATION OF FUNDAMENTAL RIGHTS

- Right to Equality (Articles 14-18)
- Right to Freedom (Articles 19-22)
- Right Against Exploitation (Articles 23-24)
- Right to Freedom of Religion (Articles 25-28)
- Cultural and Educational Rights (Articles 29-30)
- Right to Constitutional Remedies (Article 32)

## FUNDAMENTAL RIGHTS

### 03

#### INFLUENCE OF OTHER CONSTITUTIONS

- Studying constitutions worldwide
- Bill of Rights (US), Universal Declaration
- Irish Constitution, British common law

### 05 AMENDMENTS TO FUNDAMENTAL RIGHTS

- First Amendment (1951), speech restrictions
- Forty-second Amendment (1976), education
- Ninety-third Amendment (2005), reservations

### 04 CONSTITUENT ASSEMBLY DEBATES

- Drafting Indian Constitution
- Ensuring civil liberties, just society
- Adoption of Part III



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# TOP THE SEMESTER

by

ADV. MOHIT TANWR

ADV. SHIVANG VERMA

## 01 INTRODUCTION

- Fundamental rights enforceable against State
- Article 12 defines the concept of State



## 02 DEFINITION OF STATE

- Government and Parliament of India
- Government and Legislature of each State
- All local/other authorities within India
- Authorities under control of Government of India

## 06

### CONSUMER EDUCATION V. UNION OF INDIA

- Right to health and safety at the workplace
- Fundamental right under Article 21
- Applicable to public and private sectors

# DEFINITION OF STATE

## 03

### JUDICIAL INTERPRETATION OF STATE

- University of Madras v. Shanta Bai (1954)
- Electricity Board, Rajasthan v. Mohan Lal (1967)
- Sukhdev Singh v. Bhagatram (1975)
- RD Shetty v. International Airport Authority
- Ajay Hasia v. Khalid Mujib



## 05 VISHAKA V. STATE OF RAJASTHAN (1997)

- Fundamental right to equality in workplace
- Guidelines against sexual harassment
- Applicable to public and private sectors

## 04 PRIVATE BODIES AND FUNDAMENTAL RIGHTS

- Fundamental rights mainly against State
- Expansion to include private entities



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# TOP THE SEMESTER

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ADV. SHIVANG VERMA

## 01 INTRODUCTION

- Article 12 defines "State" for fundamental rights
- Courts play vital role in interpreting the term



## 02 UNIVERSITY OF MADRAS V. SHANTA BAI (1954)

- University as an authority under Article 12
- Statutory bodies covered in the definition

## 06

### AJAY HASIA V. KHALID MUJIB

- Private entities as State under certain conditions
- Substantial government control and finance

## JUDICIAL INTERPRETATION OF STATE

## 03

### ELECTRICITY BOARD, RAJASTHAN V. MOHAN LAL

- Statutory corporations under Acts are State
- Broader interpretation of Article 12



## 05 R.D. SHETTY V. INTERNATIONAL AIRPORT AUTHORITY

- "Instrumentality and agency" test established
- Control, public functions, financial assistance

## 04 SUKHDEV SINGH V. BHAGATRAM

- Public corporations performing public functions
- ONGC, LIC, IFCI as State entities



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# TOP THE SEMESTER

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ADV. SHIVANG VERMA

## 01 INTRODUCTION

- Fundamental rights primarily against State
- Evolution of extending rights to private bodies



## 02 VISHAKA V. STATE OF RAJASTHAN

- Fundamental right to equality in the workplace
- Guidelines against workplace sexual harassment
- Applicability to both public and private sectors

## 06

### FUTURE IMPLICATIONS

- Further cases may shape the extent of private bodies' obligations
- Ensuring fairness, equality, and dignity in all sectors

# PRIVATE BODIES AND FUNDAMENTAL RIGHTS

## 03

### CONSUMER EDUCATION V. UNION OF INDIA

- Right to health and safety at the workplace
- Fundamental right under Article 21
- Applicable to workers in public and private sectors



## 05 DEBATE AND CONTROVERSIES

- Balance between individual rights and business interests
- Challenges of enforcing fundamental rights on private bodies

## 04 BALANCING FUNDAMENTAL RIGHTS AND PRIVATE ENTITIES

- Recognizing importance of fundamental rights
- Ensuring protection against private entities' actions



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# TOP THE SEMESTER

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## 01 INTRODUCTION

- Right to Equality in Articles 14 to 18
- Doctrine of Reasonable Classification and Absence of Arbitrariness



## 02 RIGHT TO EQUALITY

- Article 14
- Article 15
- Article 16
- Article 17
- Article 18

## 06

### IMPLICATIONS AND SIGNIFICANCE

- Balancing reasonable classification and absence of arbitrariness
- Ensuring equality, fairness, and justice in legal interpretation

## RIGHT TO EQUALITY & DOCTRINE OF REASONABLE CLASSIFICATION

## 03

### DOCTRINE OF REASONABLE CLASSIFICATION

- Judicial principle for permissible distinctions
- Test established in State of West Bengal v. Anwar Ali Sarkar (1952)
- Intelligible differentia, rational nexus with objective



## 05 LANDMARK JUDGEMENTS

- State of West Bengal v. Anwar Ali Sarkar
- E.P. Royappa v. State of Tamil Nadu
- Maneka Gandhi v. Union of India
- Navtej Singh Johar v. Union of India

## 04

### PRINCIPLE OF ABSENCE OF ARBITRARINESS

- State actions should not be arbitrary, irrational
- E.P. Royappa v. State of Tamil Nadu (1974)
- Expanding the scope of Article 14 beyond the classification



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# TOP THE SEMESTER

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## 01 INTRODUCTION

- Right to Equality principles
- Doctrine of Legitimate Expectations, Compensatory Discrimination



## 02 DOCTRINE OF LEGITIMATE EXPECTATIONS

- Administrative law principle
- Ensures fairness in decisions by public authorities
- Protects reasonable expectations from State actions

## 06

### INDRA SAHNEY V. UNION OF INDIA

- Landmark Mandal Commission case
- 27% reservation for OBCs in government services
- Introduction of the "creamy layer" concept

## RIGHT TO EQUALITY & DOCTRINE OF LEGITIMATE EXPECTATIONS

## 03

### UNION OF INDIA V. HINDUSTAN DEVELOPMENT CORPORATION

- Recognition of Doctrine of Legitimate Expectations
- Ensuring fairness in administrative actions
- Extension of natural justice and fairness principles



## 05 M NAGARAJ V. UOI

- The constitutional validity of reservations in promotions
- Conditions for implementing reservation in promotions
- Balancing representation, backwardness, efficiency

## 04

### PRINCIPLE OF COMPENSATORY DISCRIMINATION

- Addressing historical and social inequalities
- Special provisions for backward classes, SCs, STs
- Articles 15(4), 16(4), 46 of the Constitution



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## 01 INTRODUCTION

- Article 19 guarantees freedom of speech and expression
- Vital for a democratic society, citizen participation
- Scope and limitations of these freedoms

## 02 ARTICLE 19(1)(A)



- Ensures diverse forms of expression
- Not absolute, subject to reasonable restrictions (Article 19(2))
- State's power to impose restrictions for various reasons

## 05

### IMPLICATIONS & SIGNIFICANCE



- Balance between freedom and reasonable restrictions
- Essential role of the press in democracy and informed citizenry

## RIGHT TO FREEDOM OF SPEECH AND EXPRESSION (ART.19)

## 03

### FREEDOM OF PRESS

- Implicitly protected under Article 19(1)(a)
- Importance of the press in disseminating information, transparency
- Subject to the same reasonable restrictions as speech

## 04

### LANDMARK JUDGEMENTS

- Romesh Thappar v. State of Madras
- Maneka Gandhi v. Union of India
- S. Rangarajan v. P Jagjivan Ram
- Shreya Singhal v. Union of India



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# TOP THE SEMESTER

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## 01 INTRODUCTION

- Article 19 guarantees freedoms subject to reasonable restrictions
- Judicial role in interpreting and balancing individual rights and public interests

## 02 JUDICIAL INTERPRETATION

- Supreme Court's role in upholding the importance of freedoms
- Recognizing the need for reasonable restrictions

## 05

### IMPLICATIONS & SIGNIFICANCE

- Balancing individual rights and public interests
- Ensuring limitations on freedoms are reasonable, justifiable



## ART.19 – JUDICIAL INTERPRETATIONS & REASONABLE RESTRICTIONS

## 03

### LANDMARK JUDGEMENTS

- Chintaman Rao v. State of Madhya Pradesh (1950)
- Sakal Papers (P) Ltd. v. Union of India (1962)
- Kameshwar Prasad v. State of Bihar (1962)
- O.K. Ghosh v. E.X. Joseph

## 04

### REASONABLE RESTRICTIONS

- Article 19(2) - Sovereignty, Integrity, Security, Foreign Relations
- Article 19(3) - Public order, Sovereignty and Integrity of India
- Article 19(4) - Public order, Morality, Sovereignty and Integrity of India
- Article 19(5) - General public interest, protection of ST interests
- Article 19(6) - General public interest, regulations of professions



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## UNIT 2

### 01 INTRODUCTION

- Vital aspect of Indian Constitution
- Articles 20 to 22 protect against arbitrary State actions



### 02 PROTECTION IN CONVICTION

- Article 20(1) - No conviction for acts, not offenses at the time
- Article 20(2) - Protection against double jeopardy
- Article 20(3) - Protection against self-incrimination

### 06

#### LANDMARK JUDGEMENT

- Maneka Gandhi v. Union of India
- Olga Tellis v. Bombay Municipal Corporation
- K.S. Puttaswamy v. Union of India

## RIGHT TO LIFE & PERSONAL LIBERTY (ART. 20 – 22)

### 03

#### PROTECTION OF LIFE AND PERSONAL LIBERTY



- Fundamental right to life and personal liberty
- Expansive interpretation by the Supreme Court
- Right to live with dignity, privacy, education, environment, health, livelihood

### 05 IMPLICATIONS AND SIGNIFICANCE

- Balancing State's power with individual rights
- Expanding concept of right to life and personal liberty

### 04

#### PROTECTION AGAINST ARREST AND DETENTION

- Article 22(1) - Right to know grounds of arrest and consult legal practitioner
- Article 22(2) - Right to be produced before magistrate within 24 hours
- Article 22(3) to Article 22(7) - Exceptions for preventive detention, procedural safeguard



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# TOP THE SEMESTER

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## 01 RIGHT TO EDUCATION (ARTICLE 21A)

- Fundamental right in Article 21A of the Indian Constitution
- Ensures free and compulsory education for children aged 6 to 14
- Reflects State's commitment to equal access to education

## 02 RTE ACT, 2009

- Operationalizes Article 21A
- Aims to provide free and compulsory education for children aged 6 to 14

## 03

### KEY PROVISIONS

- Right to Free and Compulsory Education
- No child left behind
- Quality education
- No detention policy
- Reservations
- Grievance Redressals

## RIGHT TO EDUCATION (ARTICLE 21A) & RIGHT TO EDUCATION ACT, 2009



## 04 LANDMARK JUDGEMENTS

- Mohini Jain v. State of Karnataka
- Unni Krishnan v. State of Andhra Pradesh
- Society for Unaided Private Schools of Rajasthan v. Union of India



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# TOP THE SEMESTER

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## 01 RIGHT AGAINST EXPLOITATION

- Prohibits forced labour, child employment, and human trafficking

## 02 PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES

- No child below 14 to work in factories, mines, or hazardous activities

## 05



### LEGISLATIVE MEASURES

- Bonded Labour System (Abolition) Act, 1976
- Child Labour (Prohibition and Regulation) Act, 1986
- Immoral Traffic (Prevention) Act, 1956
- Prohibition of Child Marriage Act, 2006

## ART.19 – JUDICIAL INTERPRETATIONS & REASONABLE RESTRICTIONS

### LANDMARK JUDGEMENTS

- People's Union for Democratic Rights v. Union of India
- M.C. Mehta v. State of Tamil Nadu
- Gaurav Jain v. Union of India
- Bachpan Bachao Andolan v. Union of India

## 04

### PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOR

- Article 23(1)
  - Prohibits traffic in human beings, begar, forced labour
  - Offenders punishable by law
- Article 23(2)
  - Allows compulsory service for public purposes without discrimination



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## 01 FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE, AND PROPAGATION OF RELIGION

- Article 25(1)
  - Freedom to profess, practice, propagate religion
  - Subject to public order, morality, health, other provisions
- Article 25(2)
  - The state can regulate or restrict secular activities associated with religion
  - The state can promote social welfare, reform

## 02 FREEDOM TO MANAGE RELIGIOUS AFFAIRS

- Article 26(a) - Right to establish and maintain religious institutions
- Article 26(b) - Right to manage own religious affairs

## 05



### LANDMARK JUDGEMENTS

- S.R. Bommai v. Union of India
- Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt
- St. Xavier's College Society v. State of Gujarat

## FREEDOM OF RELIGION (ARTICLE 26 – ARTICLE 28)

### FREEDOM FROM PAYMENT OF TAXES

- Prohibits compelling payment of taxes for promotion of specific religion

## 04

### FREEDOM AS TO ATTENDANCE AT RELIGIOUS INSTRUCTION

- Article 28(1) - No religious instruction in State-funded educational institutions
- Article 28(2) - Religious instruction allowed in State-administered institutions under endowments or trusts
- Article 28(3) - No compulsion to attend religious instruction or worship without consent



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## 01 RIGHT TO EDUCATION (ARTICLE 21A)

- Fundamental right in Article 21A of the Indian Constitution
- Ensures free and compulsory education for children aged 6 to 14
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- Operationalizes Article 21A
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## 03

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- Right to Free and Compulsory Education
- No child left behind
- Quality education
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## RIGHT TO EDUCATION (ARTICLE 21A) & RIGHT TO EDUCATION ACT, 2009



## 04 LANDMARK JUDGEMENTS

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## 01 RIGHT AGAINST EXPLOITATION (ARTICLE 23 – ARTICLE 24)

- Prohibits forced labour, child employment, and human trafficking

## 02 PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOR

- Article 23(1) - Prohibits traffic in human beings, begar, forced labor
- Article 23(2) - Allows compulsory service for public purposes without discrimination

## 05



### LANDMARK JUDGEMENTS

- People's Union for Democratic Rights v. Union of India
- M.C. Mehta v. State of Tamil Nadu
- Gaurav Jain v. Union of India
- Bachpan Bachao Andolan v. Union of India

## RIGHT AGAINST EXPLOITATION

## 03 PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES

- No child below 14 to work in factories, mines, hazardous activities

## 04

### LEGISLATIVE MEASURES

- Bonded Labour System (Abolition) Act, 1976
- Child Labour (Prohibition and Regulation) Act, 1986
- Immoral Traffic (Prevention) Act, 1956
- Prohibition of Child Marriage Act, 2006
- Protection of Children from Sexual Offences Act, 2012



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## 01 PROHIBITION OF RELIGIOUS INSTRUCTION IN STATE-FUNDED INSTITUTION

- Ensures secular character of public education
- No religious instruction in State-funded educational institutions

## 02 PROTECTION OF INTERESTS OF MINORITIES

- Right to conserve distinct language, script, culture
- No denial of admission based on religion, race, caste, language

## 03

### LANDMARK JUDGEMENTS

- Kerala Education Bill Case
- T.M.A Pai Foundation v. State of Karnataka
- P.A. Inamdar v. State of Maharashtra

## EDUCATIONAL RIGHTS OF MINORITIES



## 04 RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS

- Article 30(1) - All minorities, religious or linguistic, right to establish, and administer educational institutions
- Article 30(2) - State aid without discrimination based on minority management



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## UNIT 3

### 01 RIGHT TO CONSTITUTIONAL REMEDIES

- Heart of Indian Constitution
- Right to move Supreme Court to enforce rights under Part III
- Supreme Court's power to issue writs: habeas corpus, mandamus, prohibition, quo warranto, certiorari

### 02 RIGHT TO CONSTITUTIONAL REMEDIES

- Parliament can empower other courts to exercise the Supreme Court's powers
- Suspension of right only as per Constitution

### 03

#### HIGH COURT WRITS

- Empowers High Courts
- Wider scope than Article 32
- Issue writs, orders, and directions for enforcing fundamental and other legal rights

## RIGHT TO CONSTITUTIONAL REMEDIES



### 04 LANDMARK JUDGEMENTS

- Romesh Thappar v. State of Madaras
- AK Gopalan v. State of Madaras
- Bandhua Mukti Morcha v. Union of India
- Maneka Gandhi v. Union of India



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## 01 INTRODUCTION

- Writ jurisdiction: Power of higher judiciary to issue writs
- Writs: Extraordinary remedies for enforcing rights
- Influence of English common law

## 02 GENESIS

- Origin in English common law system
- Royal orders from King's courts
- Five principal writs: habeas corpus, mandamus, prohibition, certiorari, quo warranto

## 05



### LANDMARK JUDGEMENTS

- A.K. Gopalan v. State of Madaras
- Bandhua Mukti Morcha v. Union of India

## WRIT

## JURISDICTION

## 03 INCORPORATION OF WRIT JURISDICTION

- Importance recognized by framers
- Articles 32 and 226
- Empowers Supreme Court and High Courts to issue writs

## 04 TYPES OF WRIT JURISDICTION

- Habeas Corpus - Produce detained person, release if unlawful
- Mandamus - Compel public authority to perform legal duty
- Prohibition - Prevent exceeding jurisdiction, violating natural justice
- Certiorari - Quash orders of inferior courts/tribunals
- Quo Warranto - Inquire into legality of holding public office



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## 01 INTRODUCTION

- Writs as extraordinary remedies
- Enforced through Articles 32 and 226



## 02 HABEAS CORPUS

- Produce the body"
- Requires release of unlawfully detained person
- Safeguard against arbitrary detention
- Kanu Sanyal v. District Magistrate

## 06

### QUO WARRANTO

- "By what authority"
- Inquires into the legality of public office holder's claim
- Removes unauthorized occupants
- University of Mysore v. Govinda Rao (1964)

## WRITS

## 03

### MANDAMUS

- "We command"
- Directs public authorities to perform duties
- Enforces legal obligations
- State of Bihar v. Rani Sonabati Kumari



## 05 PROHIBITION

- Preventive writ
- Stops inferior courts from exceeding jurisdiction
- Ensures adherence to natural justice
- Hari Vishnu Kamath v. Ahmad Ishaque (1955)

## 04 CERTIORARI

- "To be informed"
- Quashes decisions/orders of lower authorities
- Corrects errors of jurisdiction, natural justice
- Surya Dev Rai v. Ram Chander Rai (2003)



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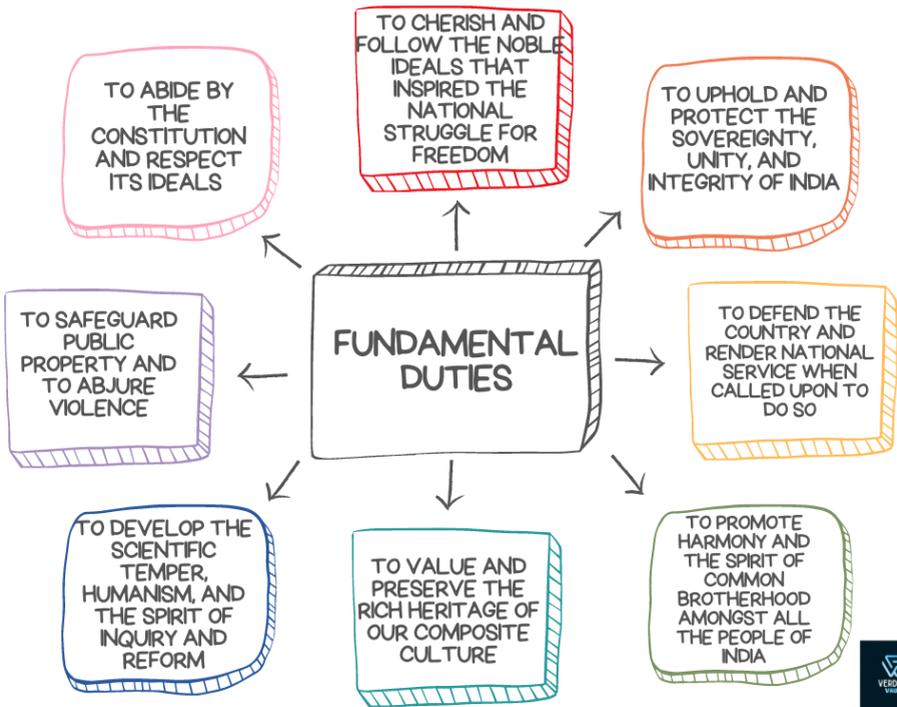
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## UNIT 4



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# TOP THE SEMESTER

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## 01 INTRODUCTION

- Guidelines in Part IV (Articles 36-51) of Indian Constitution
- Aim: Establish welfare state through social, economic, political justice



## DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP)

## 02 NATURE OF DPSP

- Non-justiciable
  - Cannot be enforced by courts
  - A guiding force for policy-making
- Fundamental in governance
  - Inform laws and policies
- Aims and objectives
  - Welfare state, equitable resource distribution

## 03 JUSTIFIABILITY OF DPSP

- Balancing with fundamental rights
- Judicial interpretation and recognition
- Landmark case: Minerva Mills Ltd. v. Union of India
- Influence on legislation and policies



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## **MR. MOHIT TANWAR, FOUNDING MENTOR, TTS**

Mohit Tanwar, a distinguished scholar, holds the prestigious Indraprastha Research Fellowship (IPRF) from Guru Gobind Singh Indraprastha University, New Delhi and is currently pursuing a Ph.D. in law at the University School of Law Legal Studies, GGS IP University, specialising in Digital Payments and Corporate Governance. As an esteemed IPRF scholar at USLLS, he possesses knowledge in diverse legal subjects, including Alternative Dispute Resolutions (ADR), Law of Tort, Code of Civil Procedure, Constitutional Law & Criminal Law. Mohit is the visionary Founding

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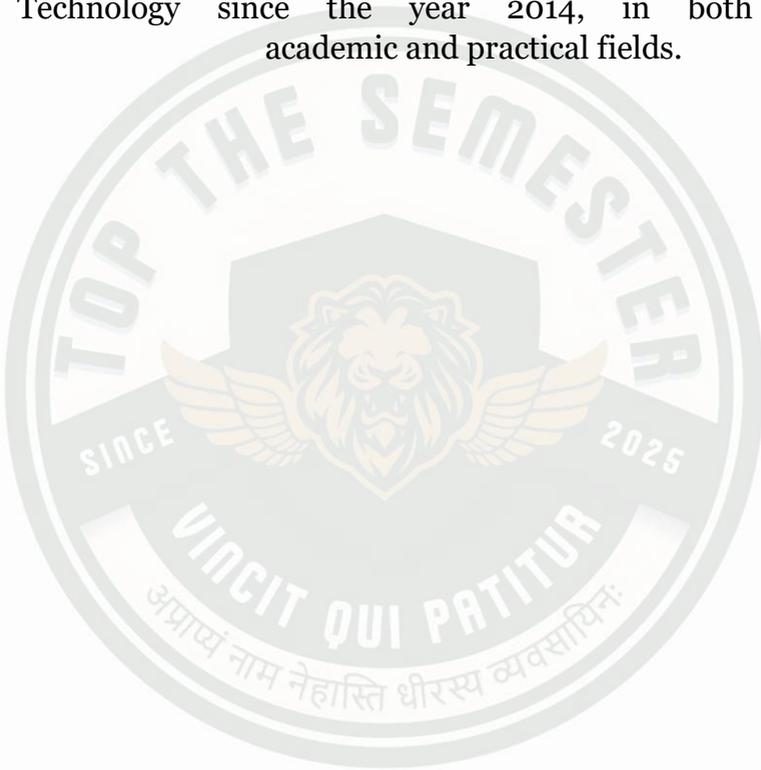
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Mr. Shivang Verma is an accomplished legal professional with a wealth of expertise and brings a dynamic perspective to Top The Semester (Formerly, Verdict Vault). He is passionate about enhancing legal education and empowering the next generation of legal minds. As a lawyer dedicated to innovation and excellence, he embodies Top The Semester's commitment to reshaping the future of legal learning.



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