

THE CONSTITUTION IN PRACTICE: Rights and Duties

*A Practical Guide to Understanding
Constitutional Rights and Duties*



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CHAPTER 1

Features and Nature of the Indian Constitution

By Ritu Chaudhary

INTRODUCTION

The roots of the Indian Constitution can be traced back to the colonial era, wherein various acts, such as the Government of India Acts of 1919¹ and 1935², laid down rudimentary frameworks for governance. The constitution of India has been framed with a lot of hard work and intelligence so it lightens up on various futuristic topics as well, it is because the constituent assembly was full of legal experts. In around two years, eleven months, and eighteen days, the Constituent Assembly created the Indian Constitution. Advocates, politicians, scholars, and distinguished individuals from many fields were represented in the Constituent Assembly. Along with its unique and hybrid nature, the Indian Constitution has a number of noteworthy and distinctive features.

FEATURES OF THE INDIAN CONSTITUTION

The Salient features of the Indian Constitution are as follows-

- **Written constitution:** All governmental organs operate in accordance with the constitution, which is the ultimate law of the territory. Additionally, it is the official origin of constitutional law. Written and unwritten constitutions are the two main categories. In

¹ Government of India Act, 1919

² Government of India Act, 1935

contrast to the British Constitution, which is unwritten, the Indian Constitution, which is modelled after the American Constitution, is written, comprehensive, and thorough.

- **A Sovereign, Socialist, Secular, Democratic and Republic:** The preamble of the constitution enshrines these concepts.
1. The term "**sovereign**" refers to the fact that the state is governed by its own set of laws and that no one other than the government has any authority over it, either domestically or outside. Sovereignty is the backbone of any state. It is basically exercised when there are uncontrolled, absolute and supreme powers with the government of the state.
 2. Although the term "**socialism**" has no clear definition, it often refers to a system in which the government controls the means of production and distribution. In India, however, the idea is understood to mean that everyone has equal access to chances for personal development and advancement. This word was added in the constitution by the 42nd amendment.³ In the case of *Samantha v State of Andhra Pradesh*⁴ where the court said that the term Socialist means that the government will focus on providing equal opportunities to all for their welfare.
 3. "**Secularism**" refers to the absence of a state religion, but it does not imply hostility or atheism; rather, it indicates that all state religions are treated, respected, and safeguarded equally. Secularism promotes unity and brotherhood in the state. In the case of *S.R Bommai v Union of India*⁵ where the court clarified that in matters of the state religion has no place hence the state has no official religion.
 4. The terms "demos" and "Kratos," which translate to "government for the people by the people and of the people," are the roots of the word "**Democracy**". In general, it indicates that people will have a direct or indirect stake in the government. In the case of *Mohan Lal Tripathi v District Magistrate*⁶ where the court held that the term democracy encourages the rights of the people and their right to choose and form government.
 5. "**Republic**" denotes that the head of state is chosen by popular vote; in India, the president, who serves as the executive head of state, is chosen by popular vote, indicating

³ The Constitution (42nd Amendment) Act 1976.

⁴ Samantha v. State of Andhra Pradesh, AIR 1997 SC 3297.

⁵ S.R. Bommai v. Union of India, AIR 1994 SC 1918.

⁶ Mohan Lal Tripathi v. District Magistrate, AIR 1993 SC 2042.

that the people hold the ultimate authority. This concept has been borrowed from the French Constitution where the people have the right to elect their representative. It ensures that there is no heredity rule in the state.

- **Lengthiest and bulkiest Constitution :** The Indian Constitution, which is influenced by several other constitutions, is the biggest and bulkiest in the world. With its 395 Articles, 22 Parts, and 8 Schedules, this constitution was extensive, thorough, and complex when it went into effect in 1950.

The reasons for its vastness are-

1. Governed by various constitutions of the world.
 2. Reduced many unwritten conventions of the British Constitution like in Article 75(3)⁷ where the collective responsibility of the ministers has been mentioned.
 3. Due to India's geographical variedness.
 4. Because of different communities and groups prevailing in the state.
 5. Constituent Assembly being full of legal annuities.
 6. Having provisions for union and center mentioned from Article 245 to 255.⁸
 7. The constitution was a mirror of GOI act 1935⁹ which was itself wide.
 8. Because it is future oriented and has provisions for social welfare as well.
- **Parliamentary form of Government:** Instead of coming from the American Presidential Rule, this clause was adopted from the British Parliamentary rule. Both nominal and real heads exist at the central and temporary levels of government under the parliamentary system. The executive and constitutional heads of state are endowed with actual authority and placed under the legislature's supervision. Majority rule, ministerial participation in the legislature, PM and CM leadership, and collective accountability are the fundamental tenets of parliamentary systems of governance. Articles 74¹⁰ and 75¹¹ address the central level of Parliament, whereas Articles 163 and 164¹² address the provisional level. With

⁷ Art. 75(3), The Constitution of India

⁸ Arts. 245 to 255, The Constitution of India.

⁹ Government of India Act, 1935.

¹⁰ Art. 74, The Constitution of India.

¹¹ Art. 75, The Constitution of India.

¹² Arts. 163 and 164, The Constitution of India.

the executive having more accountability to the legislative, this rule fosters cooperation and coordination between the two branches of government.

- **A federation with a strong center:** India is a federal nation with a codified constitution that is strict and has state supremacy and an independent judiciary, but it is not a federal state of territory. Although the central government and the state have different authorities, the center can make regulations for how the state government operates and can also become more powerful in emergency situations. Indian federalism is different from other federalisms throughout the world. Nonetheless, India's federalism can be referred to as quasi-federalism due to its tendency towards centralization and features that lean it towards a unitary form of government, such as single citizenship, union of states, the president's appointment and removal of governors, flexibility, and an integrated judiciary. The constitution's Article 1 also declares that India is a Union of Declarations, which may be interpreted in two ways: first, that the states are not the product of an agreement, and second, that they have no authority to break away from the center. As defined by *KC Wheare* that India is federal in form but unitary in spirit and basically it is Quasi-Federal.
- **Blend of rigidity and flexibility:** The Indian Constitution is not one, even though it is written and is thought to be inflexible. The Indian Constitution combines elements of both the British and American constitutions, which are strict and flexible, respectively. According to Article 368¹³, which gives us the amendment provisions, the Constitution can be changed in two ways: first, by a special majority, which requires the three-fourths of the members of both houses to be present and vote, as well as the majority of the members in each house; second, by a special majority plus ratification from half of the state legislatures; and third, which is not covered by this article, by a simple majority. According to *AV Dicey*, a flexible constitution is one that can be altered through the regular legislative process, whereas a rigid constitution is one that cannot be altered in the same way as regular legislation. For instance, in India, a simple majority can change the administrative and economic processes, while a special majority can change the federal division of powers.

¹³ Art. 368, The Constitution of India.

- **Adult Suffrage:** With the adoption of Uniform Adult Suffrage, India eliminated the previous system of communal electorates found in the Government of India Act 1935¹⁴. This means that all Indian citizens who are older than 18 years old have the right to vote, with the 61st amendment of 1989¹⁵ lowering the voting age from 21 to 18. We have the right to vote in Lok Sabha and State Legislative Assembly elections under Article 326¹⁶, regardless of our race, gender, caste, creed, or religion. As stated in Article 325¹⁷ of the Constitution, the right to vote is a statutory right, and the right to free and fair elections is guaranteed by the ruling in the 1975 case of *Indira Nehru Gandhi v. Raj Narain*¹⁸. According to Article 329(b)¹⁹, we have the right to contest the election on a number of grounds.
- **Single Citizenship:** India maintains the principle of one citizenship despite having two governments. In contrast to the United States, where dual citizenship—one of the United States and one of the states—causes problems and bias, India has single citizenship, which promotes unity, equality, and integrity because all citizens, regardless of where they were born, are granted only one citizenship. Citizens are given the same civil and political rights without any kind of discrimination. Article 5 states that citizenship will exist on Indian territory, while Article 5-10²⁰ outlines the citizenship laws. Jus sanguinis, or "based on parent," is the premise upon which this trait is predicated.
- **Fundamental Rights:** Based on the American Model, Indian Constitution provides its citizens with fundamental rights under part 3 where there are six rights, right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies. The rights are not for document purposes but they are in reality provided without any discrimination. Though there are certain reasonable restrictions and hence they are not absolute in nature but of great significance. Along with rights there is remedy also provided under the Constitution where one can approach directly to the supreme court in case of violation of these rights

¹⁴ Government of India Act, 1935.

¹⁵ The Constitution (61st Amendment) Act 1989.

¹⁶ Art. 326, The Constitution of India.

¹⁷ Art. 325, The Constitution of India.

¹⁸ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1: AIR 1975 SC 2299.

¹⁹ Art. 329 (b), The Constitution of India.

²⁰ Arts. 3 to 5, The Constitution of India.

and none can revoke these because these are the notions for democratic and political democracy. This part is known as the *Bill of rights for the people of India*.²¹

- **Fundamental Duties:** Originally there was no provision of Fundamental Duties but with the recommendations of Swaran Singh Committee during the time of internal emergency (1975-1977) the Part 4 A was added in the Constitution by 42nd amendment²² which comprises only Article 51A²³ which has 11 duties. The 86th amendment in year 2002²⁴ added one more duty. Though these duties are non-justiciable in nature but should be performed by the citizens because they are also enjoying rights. The rights are the guarantees and the duties are the expectations from the people. These are to maintain certain basic norms, conduct and behavior for building democracy. It was held in the case of *AIIMS students Union v AIIMS and others* (2002²⁵) that the Fundamental Duties are important and significant in nature.
- **DPSPs:** Part 4 of the constitution from Article 35-51²⁶ provides with the Directive Principles of State Policy which is the general guideline for the state to take into consideration while framing the laws. This basically aims to foster social, economic and political objectives to have an ideal democracy. These are not enforceable or justiciable but it is the duty of the state to adhere to these. Article 35²⁷ says that the meaning of the word ‘state’ shall be same as mentioned under Article 12²⁸ of the constitution. According to *B.R. Ambedkar* the DPSP’s is the ‘Novel Feature’ of the constitution. This is similar to the *Instrument of Instruction of Government of India act 1935*²⁹. It was held in the case of *Kesavananda Bharti vs State of Kerala*³⁰ where the court clarified that there is no contradiction between the Fundamental Rights and DPSP, they both are supplementary and complementary to each other and do harmonize with each other. There are three broad categories of DPSP, they are- Gandhian, Liberal and Socialism.

²¹ Bill of rights for the people of India.

²² The Constitution (42nd Amendment) Act 1976.

²³ Art. 51A, The Constitution of India.

²⁴ The Constitution (86th Amendment) Act 2002.

²⁵ *AIIMS Students’ Union v. AIIMS*, (2002) 1 SCC 428.

²⁶ Arts. 35-51, The Constitution of India.

²⁷ Art. 35, The Constitution of India.

²⁸ Art. 12, The Constitution of India.

²⁹ *Instrument of Instruction of Government of India act 1935*.

³⁰ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

- **Independent Judiciary:** The judiciary has been given a very vital role to perform so there has to be judicial independence so that no one interferes with its working. Once the judges of the Supreme and High Courts are appointed by the President, they cannot be removed except impeachment and are not under any authority. Article 124 and 217³¹ deals with the special procedure for the removal of judges in case of incapacity or misbehavior. Once the salaries and allowances of the judges are decided by the Union Parliament then they cannot be diminished. The constitution has given complete independence be it of appointment, administration or of finances to the judiciary so as to secure the foundation of rule of law and democracy. Article 226³² provided High court with power to review and Article 32³³ provides the Supreme Court to Judicial Review. They are also given power to check constitutional validity and if they declare some law as unconstitutional then that law will be void and inoperative.
- **Preventive Detention:** The constitution also provides provisions for preventive detention where the person is arrested before an offence is committed so as to prevent the commission of the offence. This is useful to prevent abuse of power which may be dangerous to national security and welfare and if so then that person might be detained even in a peaceful scenario if the case is of defense, national security, public order, maintenance of supplies and of other national importance which might result in danger to peace in the society. In the case of *A.K. Gopalan vs. State of Madras*³⁴ The constitutionality of the Preventive Detention was upheld.
- **Preamble:** The preamble is a document which sets the stage for constitution, describing the aims, objectives and nature of the constitution. It basically clarifies the essence of the constitution along with the intention of the framers, though it does not grant any right to the constitution. The preamble declares India as sovereign, socialist, secular, democratic and republic state, the word socialist and secular were added in the preamble through 42nd amendment in 1976³⁵. Preamble is the document which was earlier not regarded as the

³¹ Arts. 124 and 217, The Constitution of India.

³² Art. 226, The Constitution of India.

³³ Art. 32, The Constitution of India.

³⁴ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

³⁵ The Constitution (42nd Amendment) Act 1976.

part of constitution according to case of *Re Berubari Union*³⁶ and *Exchange of Enclaves 1960*³⁷ but afterwards with the case of *Kesavananda Bharti V Union of India 1973*³⁸ the preamble was declared as part of the constitution. It is a valuable document used for guidance and delivering justice.

- **Bi-Cameral Parliament:** The constitution provides two houses of Parliament; one is the upper house also known as Council of States which represents the states and the other one is the lower house also known as House of People which represents the Indian federation.
- **Provisions for Emergency:** In case of unforeseen or extra-ordinary situations the President may declare Emergency in the state. This provision has been incorporated to safeguard the unity and integrity of the nation. During an emergency the federal system shifts towards the unitary and politics and administration also go through structural changes. There are three kinds of emergency mentioned in the part 25, national emergency under article 352³⁹ when there is aggression or an armed rebellion, state emergency under article 356⁴⁰ when there is failure in machinery or the state does not comply with the center, financial emergency under article 360⁴¹ when there is a threat to the financial stability of the nation. The cases like *Minerva Mills vs. Union of India*⁴² and *ADM Jabalpur vs. Shivkant Shukla* have significantly impacted how courts review the declaration and implementation of emergency measures.
- **Constitutional Amendment:** As stated under Article 368⁴³ of the Constitution that it can be amended by special majority. There is one other way to amend which is simple majority but it has not been enshrined under Article 368⁴⁴. Till now there are more than 110 amendments in the Constitution which declares that there are traces of being flexible and at the same time rigid.

³⁶ In re Berubari Union, AIR 1960 SC 845.

³⁷ Exchange of Enclaves, AIR 1960 SC 845. (Same as Berubari – part of the Presidential Reference)

³⁸ Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

³⁹ Art. 352, The Constitution of India.

⁴⁰ Art. 356, The Constitution of India.

⁴¹ Art. 360, The Constitution of India.

⁴² Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789.

⁴³ Art. 368, The Constitution of India.

⁴⁴ Ibid.

- **Independent Authorities:** Along with the executive, legislative and judiciary there are other independent bodies at state and central level mentioned in the constitution. They are for the benefit and welfare of the individual and form the pillar and essential part of the democratic system of the country. Election commission is there which facilitates the free and fair elections in the country, there is Auditor and Comptroller General which audits the accounts of government and acts as a watch dog to public purse, there is UPSC which conducts examinations for services and also recommend the President in disciplinary action and at state level there is State Public Service Commission which conducts the examination and recommends the Governor of the state.
- **The Schedules:** Schedules are the documents which are mentioned along with the Articles but serve a different purpose. The schedules majorly have oaths for certain offices or may include certain details; hence they also play an important role. Currently there are 12 schedules in the constitution.
- **Bag of Borrowings:** The Constitution of India is framed after evaluating various Constitutions of the world that is why it reflects experience and futuristic nature. As said by Dr. B.R. Ambedkar that they examined the various constitutions from the world to frame India's Constitution whose major part has been taken from GOI Act 1935⁴⁵; about 250 provisions are taken from this act and its philosophical part is taken from various parts of the world and they are-

Country/Act	Provision taken
GOI 1935	Federal Scheme, Office of Governor, Judiciary, Public Service Commissions, Emergency Provisions, Administrative Details
USA	Fundamental Rights, Independence of Judiciary, Judicial Review, Impeachment of President, Removal of Supreme Court and High Court Judges, Post of Vice-President.
USSR	Fundamental Duties, Ideal of Justice (Social, Economic, and Political) in Preamble.
French Constitution	Republic and Ideals of Liberty, Equality, and Fraternity in Preamble

⁴⁵ Government of India Act, 1935.

Australia	Concurrent List, Freedom of Trade, Commerce, and Inter-course, Joint Sitting of Two Houses of Parliament
South Africa	Procedure for Amendment of Constitution, Election of Members of Rajya Sabha.
Germany	Suspension of Fundamental Rights During Emergency.
Irish	Directive Principles of State Policy, Nomination of Members to Rajya Sabha, Method of Election of President.
Japan	Procedure established by law.
British	Parliamentary Government, Rule of Law, Legislative Procedure, Single Citizenship, Cabinet System, Prerogative Writs, Parliamentary privileges, Bicameralism.
Canadian	Federation with a Strong Centre, Vesting of Residuary Powers in the Centre, Appointment of State Governors by the Centre, Advisory Jurisdiction of Supreme Court

- **Three Tier Government:** Originally there was dual government; central and state but with time the constitutional framer according to Article 40⁴⁶ implemented the idea of Local government which is a distinct feature of the Indian Constitution from the rest of the world because there is majorly no country with LSG. With the introduction of 73rd and 74th amendment of 1992⁴⁷, which added Part 9 and 9A⁴⁸ and the Schedule 11⁴⁹ and Schedule 12⁵⁰ respectively. The 73rd amendment⁵¹ deals with establishment of panchayats at village, intermediate and district level and the 74th⁵² amendment established Municipalities at Urban level. There are three types of municipalities-

First are the Nagar panchayats at the transition areas.

Second are the Municipal Councils in the smaller cities.

Third are the Municipal Corporations in the major cities.

⁴⁶ Art. 40, The Constitution of India.

⁴⁷ The Constitution (73rd and 74th Amendment) Act 1992.

⁴⁸ Part 9 and 9A, The Constitution of India.

⁴⁹ Schedule 11, The Constitution of India.

⁵⁰ Schedule 12, The Constitution of India.

⁵¹ The Constitution (73rd Amendment) Act 1992.

⁵² The Constitution (74th Amendment) Act 1992.

- **Co-Operative Societies:** The 97th constitutional amendment of 2011⁵³ reflected the provisions for co-operative societies which gave constitutional status, protection and recognition to the co-operative society. Through this amendment part 9-B⁵⁴ was added in the constitution. Now the parliament has the power to make laws for co-operative societies and the state legislature can also do the same for other co-operative societies. This has been possible because the article 19 (1)⁵⁵ of fundamental rights enumerates to form co-operative society and article 43 B⁵⁶ of the DPSP claims about the promotion of co-operative societies by the government.
- **Rule of law:** Rule of law which is an animation of natural law and also said as state political morality which broadly means to maintain a balance between the rights and the powers of individuals or individual and state. It basically says that there should be rule and authority of law instead of individuals. As we know that law is based on customs and customs are the beliefs of the people, so at the end rule of law reflects the beliefs and wisdom of people.
- **Uniformity in basic administration:** There is uniformity in vital administrative matters which help to maintain and ensure national integrity, equal distribution and equal protection under law. For example there is an integrated judicial system, uniformity in civil and criminal laws and All India services.
- **Affirmative Action:** Affirmative actions also known as positive discrimination which is done for welfare and development of traditionally marginalized sections or the dis-advantageous section of the society to bring them in the competitive field of the society, for example providing reservation in education or public employment sectors.
- **Special attention to Scheduled Areas and Scheduled Tribes:** There are 5th and 6th schedule⁵⁷ in the constitution dealing with the provisions providing special provisions to the North-eastern and central parts of India. These schedules try to protect them so as to promote and protect the distinct culture and customs they are having. There are various

⁵³ The Constitution (97th Amendment) Act 2011.

⁵⁴ Part 9B, The Constitution of India.

⁵⁵ Art. 19(1), The Constitution of India.

⁵⁶ Art. 43B, The Constitution of India.

⁵⁷ Schedule 5 and 6, The Constitution of India.

article like 15(4)⁵⁸) which allows the state to make special provisions for the advancement of SC's and ST's, article 16(4)⁵⁹ which gives permission to the state to make rules for reservation for SC's and ST's in government jobs, article 330⁶⁰ reserves seats for them in Lok Sabha and article 332⁶¹ which reserves seats for them in State Legislative Assemblies. There is also DPSP under article 46⁶² which asks the government to promote the education and economic interests of marginalized sections of the society.

- **Judicial Review:** The power of judicial review is of utmost importance to keep a check on constitutionality of the laws made by the legislature. The judiciary has the power to do judicial review and if found to be unconstitutional they can declare void. The article 136, 226, 227 and 32⁶³ deals with the provisions of the judicial review. It was held in the case of *Kesavananda Bharti v State of Kerala (1973)*⁶⁴ and in case of *Minerva Mills v Union of India (1980)*⁶⁵, where the court held that the power of judicial review is the part of basic structure.

There are certain matters of policy making or policy decision that cannot be reviewed as they are not under the ambit of judicial review and it was said in the case of *Monarch Infrastructure v Commission, Ulhasnagar Municipal Corporation (2000)*⁶⁶, where it was held that the court cannot interfere in the administrative actions. But there are certain limitations to this rule that if the law is against statutory provisions, unreasonable or arbitrary in nature then the court can have judicial review. In the case of *L. Chandra Kumar v Union of India*⁶⁷, the court held that even through amendments the power of judicial review cannot be revoked.

⁵⁸ Art. 15(4), The Constitution of India.

⁵⁹ Art. 16(4), The Constitution of India.

⁶⁰ Art. 330, The Constitution of India.

⁶¹ Art. 332, The Constitution of India.

⁶² Art. 46, The Constitution of India.

⁶³ Arts. 136, 226, 227 and 32, The Constitution of India.

⁶⁴ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁶⁵ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

⁶⁶ *Monarch Infrastructure v. Commissioner, Ulhasnagar Municipal Corporation*, (2000) 5 SCC 287.

⁶⁷ *L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125.

NATURE OF THE INDIAN CONSTITUTION

The Indian constitution differs from those of the other nations due to its hybrid and distinctive nature. The **constitution's nature** is as follows-

- **Adaptable:** The Indian Constitution is adaptable in nature because it has provisions of amendment under article 368 which ensure that the constitution is relevant in today's era as well.
- **Protective:** The constitution of India protects the rights of citizens, individuals and of marginalized sections through Fundamental Rights, Fundamental duties, DPSP and through other articles like 32,33,46,15(4) and 16(4).⁶⁸
- **Foster Democracy:** The constitution tries to foster the democratic system of the country through various provisions dealing with protection and promotion of democracy. Hence this constitution builds pillars for democratic form of government while protecting the rights and interests of the individual
- **Mirror of modernization:** The constitution of India is like a mirror of modern concepts. Though it was enforced in the year of 1950, it is still working even today with efficiency. The society is changing and with change in time its interpretation also changes to cater to the needs and interests of the society.
- **Unity in diversity:** The constitution provides unity amongst diverse individuals be it through race, creed, color, gender or place of birth but the constitution treats every individual equally and provides it with equal chances and equal opportunity of development and growth.
- **Hybrid:** The constitution of India is hybrid in nature means it is rigid as well as flexible in nature because some provisions are easily amendable and some are too difficult. It's a balance of both, unlike other written constitutions which are rigid but the Indian constitution is different as it is neutral.

⁶⁸ Arts. 32,33,46 and 16(4), The Constitution of India.

- **Revolutionary in nature:** The Indian Constitution is seen as revolutionary since it established a new, democratic, and secular system of government and brought about a number of reforms and changes that broke with India's colonial past. It has eliminated a number of unfair practices while also creating unique chances for the advancement of the weaker groups.

CRITISISM OF THE INDIAN CONSTITUTION

Though the Indian Constitution is very different and unique having all the great ideas from various Constitutions of the world but it also faced a lot of criticism-

- It is criticized that the constituent body which was behind the framing of Constitution was dominated by Hindus.
- The constituent assembly was not representative in nature and hence not a sovereign body as it was believed that the constituent assembly was dominated by congress and hence it does not put forward the spirit of the common people.
- It is a borrowed constitution and that is why various critics claimed that the constitution lacked originality and the assembly just carbon copied the provisions from other constitutions.
- Sir Ivory Jennings says that the constitution derives directly from the Government of India Act, 1935⁶⁹ and another Scholar N. Srinivasan said that constitution is a carbon copy of GOI 1935⁷⁰.
- Some believed it to be anti-Indian which is suggested from remarks of a member from the constituent assembly named K. Hanumanth Aish said that it is as if they wanted the music of veena and sitar but they ended up with an English band.
- It is of elephant size having various articles, schedules and parts which makes it more difficult to implement and understand.

⁶⁹ Government of India Act, 1935.

⁷⁰ Ibid.

- Some believe that the constitution of India is the lawyers paradise because the members of the constituent assembly were mostly lawyers. Ivory Jennings said that it is the Paradise of Lawyers.

CONCLUSION

Though being espoused from colorful sources it reflects the intelligent mind and hard work of our farmers who worked day and night hard. Though there are colorful reviews of the Indian constitution, this document is a masterpiece because its features and its working and living nature makes it so. Having vital and supreme significance in the country, it's the document on which every Indian has faith that this document will cover our rights and will walk along with society's changing needs. The framers of the constitution have applied their mind and have cleverly chosen the stylish of the stylish vittles from the colorful constitution of the world and if some vittles did not fit into our state's need, also they molded that provision. The lawgivers have considered all the factors and have tried to accommodate all the differences in our Country. The Constitution and colorful rights handed in the Constitution acts as a guardian to our citizens.

CHAPTER 2

Preamble to the Constitution of India

By Harshita Thakur

*“The Preamble is the soul of the Indian Constitution and has the philosophy of the entire Constitution.”*⁷¹

-Dr. B.R.Ambedkar

UNVEILING THE PREAMBLE: MEANING AND SIGNIFICANCE

The preamble of the Indian Constitution is an introductory statement and a concise declaration that outlines the core values, nation's identity and the principles upon which the constitution is based.⁷² It is the constitutional beacon of guidance for government, the moral compass for citizens and lawmakers and the benchmark for understanding constitutional provisions. The Preamble to the Constitution declares India to be a "Sovereign, Socialist, Secular, Democratic Republic" and is the philosophy, purpose and soul of the Constitution which enshrines India's commitment to justice, equality, liberty and fraternity for citizens. Eminent jurists like *Nani Palkhivala* and *K.M.Munshi* have described it as the “Identity Card of the Constitution” and the “Political Horoscope of the Constitution”.

⁷¹ Granville Austin, “The Indian Constitution: Cornerstone of a Nation” 50 (Oxford University Press, New Delhi, 1966).

⁷² M.P. Jain, Indian Constitutional Law 98 (Kamal Law House, Calcutta, 5th edn., 1998).

What is a Preamble?

A Preamble is an introductory statement that sets forth the guiding principles, purpose, and underlying philosophy of a statute or constitution.⁷³ The Indian Constitution's Preamble is not merely ornamental, it serves as a preface to the nature of the polity, offering insight into the framer's intentions and the objectives and values they sought to enshrine. According to *Granville Austin*, the Preamble is "the key to the minds of the Constitution makers," summarizing the aspirations and vital values that guided the creation of the document.⁷⁴

The concept of the Preamble originated from the legal classical traditions, which includes ancient Rome and later the political philosophy of the Enlightenment-era. The Preamble is considered a prominent source to answer fundamental questions like: What is its source of authority? Who made the Constitution? What is the nature of the polity? What are the ultimate sanctions behind it? And what are its objectives and goals?⁷⁵ The Supreme Court of India has repeatedly asserted that the Preamble embodies the spirit of the Constitution and is a document which is functional for interpretation, particularly when the provisions of the Constitution are ambiguous.⁷⁶

The Imperative Significance of a Preamble

The Preamble of the Indian Constitution carries immense significance as it signifies that the authority of the Constitution comes from the people of India and articulates the foundational values and vision of India. It encapsulates the aspirations, values and principles which guide the nation such as "justice (social, economic, and political)", "fraternity (assuring dignity and unity)", and "liberty (of thought, expression, belief, faith, and worship)". As the soul and key to the Constitution, the Preamble functions as an important interpretative tool in the constitutional jurisprudence and the courts often refer to it to clarify any ambiguities and affirm that laws and

⁷³ M.P. Jin, *Indian Constitutional Law* 98 (Kamal Law House, Calcutta, 5th edn., 1998).

⁷⁴ Granville Austin, "The Indian Constitution: Cornerstone of a Nation" 50 (Oxford University Press, New Delhi, 1966).

⁷⁵ "Role of Preamble in Interpretation of Statutes," 2–3, Scribd (2025).

⁷⁶ *Kesavananda Bharti v. State of Kerala*, AIR 1973 SC 1461.

state actions conform to the constitutional ideas.⁷⁷ The preamble acts as the moral and philosophical foundation of the Constitution of India, providing a framework for lawmaking and governance that upholds humanitarian ideals and fundamental values.⁷⁸

Drawing from the ideals of the Indian freedom movement, the Preamble reflects the principles like equality and self-governance which continue to shape the nation's democratic ethos. By embedding these ideals, the Preamble ensures that the legacy of India's struggle remains relevant and influential for future generations. It sets a touchstone for legislative and executive actions and ensures that democracy remains aligned and inclusive with the constitutional principles. Despite its non-enforceability, it remains a vital part of constitutional interpretation and national identity, embodying the essence and enduring vision of India's constitutional democracy.⁷⁹

Preamble as a Preface and a Promise

The Preamble is considered as both a preface and a promise. As a preface, it gives an introduction to the Constitution by providing a concise summary to its core objectives: “justice (social, economic, and political)”, “liberty (of thought, expression, belief, faith, and worship)”, “equality (of status and opportunity)”, and “fraternity (assuring dignity and unity)”.⁸⁰ The Preamble is also a promise- it solemnly declares the values the nation commits to uphold. It announces India as a “Sovereign, Socialist, Secular, Democratic Republic,” and sets forth its core objectives and commits the nation to pursue these ideals through its institutions and governance structures.

Dr. B.R. Ambedkar, the principal architect of the Indian Constitution, has emphasized the importance of the Preamble as it reflects the essence of the document. In one of his Constituent Assembly Debates, he declared that “The Preamble would be *the soul of the Constitution*.” The Supreme Court of India in the case of *Kesavananda Bharati v. State of Kerala* (1973), held that

⁷⁷ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁷⁸ *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

⁷⁹ P.M. Bakshi, “The Constitution of India: Preamble,” 37 JILI 1 (1995).

⁸⁰ Vajiram & Ravi, “Q1. Do you think that the Preamble is merely a preface to the Indian Constitution without any substantial significance?” (2024).

the Preamble can be used for interpretation of ambiguous provisions as it is a part of the Constitution. Justice Sikri remarked in that case that the “basic structure” of the Constitution is provided in the Preamble and it cannot be altered even by any sort of constitutional amendment.

The Preamble thus serves a dual function: it is both the *preface* that introduces the Constitution and the *promise* that binds the state and its people to the pursuit of justice, liberty, equality, and fraternity.⁸¹ It is a benchmark that ensures that law and policy is aligned with the nation’s foundational values for a moral compass for governance and constitutional interpretation.

Original Text and Jurisprudential Deconstruction

The Preamble to the Indian Constitution is the foundational statement that outlines the objectives, guiding principles and ideals of the supreme law of the nation. Original Text of the Preamble:

***“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a
3[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its
citizens:***

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

***FRATERNITY assuring the dignity of the individual and the [unity and integrity of the
Nation;***

***IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY
ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”***

The Preamble reveals its purpose as both an interpretative tool and a profound introduction of the philosophical foundational in the Indian Constitutional Law. The Preamble begins with “We, the People of India...” which signifies that the Constitution has derived its authority from the people

⁸¹ P.M. Bakshi, “The Constitution of India: Preamble,” 37 JILI 1 (1995).

of the nation. This phrase emphasizes the democratic foundation of Indian Polity and elevates the doctrine of sovereignty, making the ultimate source of authority, the people for the Constitution.

The Preamble's dual role has been further emphasized by scholarly analysis as a "visionary prelude" and a "constitutional compass." Choudhary comments that the Preamble acts as a substantive source of constitutional values and is not merely decorative and guides the judiciary in filling lacunae in the text and resolving ambiguities.⁸² The objectives enunciated- "justice (social, economic, and political), liberty (of thought, expression, belief, faith, and worship), equality (of status and opportunity), and fraternity (assuring the dignity of the individual and national unity)" have been recognized judicially as standards enforceable for legal reviews and state action and are not just rhetorical thrives.

The words of the Preamble- "Sovereign, Socialist, Secular, Democratic, Republic"- has been subjected to intense judicial and scholarly analysis, each evoking a unique aspect of the Indian constitutional identity. For example, "secular" has been understood as equal respect for all religions, and "socialist" as a pledge to minimize social and economic inequalities.⁸³ The Preamble's principles have been important in developing the scope of rights in areas like social justice and affirmative action as observed by the Indian Journal of Constitutional Law.

THE MAKING OF THE PREAMBLE: HISTORICAL AND GLOBAL CONTEXT

"We are laying the foundations of a Constitution... not for the present, but for the future."

— Jawaharlal Nehru

The Preamble to the Constitution of India is more than a ceremonial foreword but a distilled expression of the country's highest values and hopes. Its crafting was influenced by visionary leadership, fierce debates and informed interaction with international constitutional tradition. The

⁸² Sujit Choudhry, "The Preamble in Constitutional Interpretation," 2 NUJS L. Rev. 1 (2009).

⁸³ P. Satyanarayana, "Secularism and the Indian Constitution: A Jurisprudential Analysis," 6 NALSAR Student Law Review 21 (2011).

following discusses the role of the Constituent Assembly, the input of major leaders, the ideological foundation given by the Objectives Resolution and comparative influence drawn from various constitutions.

Constituent Assembly's Role and Debates

On 9th December 1946, the Constituent Assembly of India was first convened and was assigned to frame a Constitution for the newly independent nation. The Assembly's debates were described as clashes of ideologies, passionate arguments, robust debates, amendments and commitment to deep democratic values.

The earliest debate was concerned about the opening words of the Preamble. *Dr. B.R. Ambedkar* proposed "We, the people of India, having solemnly resolved to constitute India into a sovereign, democratic, republic." The assembly debated whether "Sovereign" should be explicitly included alongside "Independent" in the Preamble. *Hasrat Mohani*, member of the assembly strongly favoured for "Sovereign Independent Republic," but Ambedkar clarified that the inherent meaning of "Sovereign" is independence and ultimately "Sovereign Democratic Republic" was agreed as it preserve the Objectives Resolution spirit and the concise wording.⁸⁴

Members like *H.V. Kamath* proposed that "God" should be invoked at the beginning of the Preamble, while others were in favour of mentioning *Mahatma Gandhi*. All these proposals aimed to capture India's religious nature, however, the Assembly turned them down, opting for a secular and universal tone for the Preamble, free of religious or personal allusions.⁸⁵ The decision by the Assembly to exclude religious references established a precedent for a secular constitutional identity, reinforced subsequently by the 42nd Amendment.⁸⁶

⁸⁴ Granville Austin, "The Indian Constitution: Cornerstone of a Nation" 50-55 (Oxford University Press, New Delhi, 1966).

⁸⁵ Constituent Assembly Debates On 27 December, 1948 Part II, available at: <https://indiankanoon.org/doc/867558/> (Visited on June 10, 2025).

⁸⁶ "How the Constituent Assembly debated over 'God' in the Constitution," Indian Express, Nov. 26, 2024, available at: <https://indianexpress.com/article/research/how-the-constituent-assembly-debated-over-god-in-the-constitution-9691046/> (Visited on June 10, 2025).

The members debated inclusion and prioritization of ideals such as liberty, fraternity, justice and equality and more specific formulations were proposed, but the Committee, under the leadership of Ambedkar opted for clarity and conciseness, making sure the ideals of the Preamble would be inclusive and easy to comprehend.

Although “Socialist” and “Secular” were officially added in by the 42nd Amendment in 1976, their spirits were reflected in early debates. Members advocated inclusively including these principles based on worldwide trends. The Assembly decided to embed these values implicitly, centering on justice, equality and fraternity as the fundamental principles of a secular and socially just nation.⁸⁷

The assembly also debated whether the Preamble was to be legally enforceable or is merely declaratory. Dr. B.R. Ambedkar made it clear that it was a statement of purpose and not a source of authority or limitation. The Supreme Court eventually affirmed its interpretative function and its status as part of the Constitution’s “basic structure.”

The Assembly’s deliberations on the Preamble were a balance of secularism and spirituality, modernity and tradition, collective and individual rights, which reflects the pluralistic and visionary ideals of the founding leaders of India resulting in an inclusive and secular Preamble.

Contributions of Dr. B.R. Ambedkar, Nehru and Others

As the chairman of the drafting committee, DR. B.R. Ambedkar was influential in creating the Preamble. Ambedkar’s leadership made sure that the Preamble reflected the Assembly’s vision for an inclusive and just society, even though he did not draft the text himself. The Preamble, as he described famously, is the “horoscope of our sovereign democratic republic.”⁸⁸

The influence of Jawaharlal Nehru was equally noteworthy. On 13th December, 1946, Nehru introduced the Objectives Resolution, which served as the Preamble’s ideological cornerstone and it was a turning point in India’s constitutional history. Sovereignty, democracy, equality and

⁸⁷ B. Shiva Rao (ed.), *The Framing of India’s Constitution: Select Documents Vol. II 3-7* (Universal Law Publishing, Delhi, 2004).

⁸⁸ M.P. Jain, *Indian Constitutional Law* 98-100 (Kamal Law House, Calcutta, 5th edn., 1998).

fairness were the tenets of the Resolution and were eventually distilled into the Preamble.⁸⁹ The Resolution, which served as the model for the Preamble was approved by the Assembly on 22nd January, 1974. The Preamble's intellectual and textual basis came from the Objectives Resolution, which made sure it mirrored the founding father's vision and the principles of the liberation movement.⁹⁰

Other notables, including Maulana Azad, Rajendra Prasad, and Sardar Vallabhbhai Patel contributed in the debates and ensured that India's pluralistic culture and dedication to social justice would be reflected in the Preamble. Their shared vision was to draft a constitution that would provide hope to a divided and diverse country.

Comparative Influences: US, France, Ireland, USSR, South Africa

The Preamble of India was not drafted in a vacuum, it was inspired by a number of international constitutions. The framers drew inspiration from the constitutional philosophies and preambles of other countries, adapting their best features to the Indian context.

Country	Key Influence	Reflected in Preamble of India
United States	"We the People" and strong focus on justice, liberty and rule of law.	Justice, Liberty, Sovereignty and Democracy
France	Rights of Man Declaration and, from the French Revolution the principles of equality, fraternity, and liberty.	The phrase "Liberty, Equality, Fraternity" was directly adopted

⁸⁹ B. Shiva Rao (ed.), The Framing of India's Constitution: Select Documents Vol. II 3-7 (Universal Law Publishing, Delhi, 2004).

⁹⁰ S. Krishnaswamy, "Objective Resolution and the Preamble: An Enduring Legacy," 2 Indian J. Const. L. 23 (2008).

USSR	Focus on economic equality, socialist principles, and collective welfare	Focus on “social and economic justice” and “Socialist” was included in the 42 nd Amendment
Ireland	The moral tone of Preamble, and focus on the common good and sovereignty	Moral purpose, Democratic values, and National Unity
South Africa	Emphasis on “equality Dignity and human rights,” racial injustice experience	Strengthened resolve for “justice, fraternity and social equality”

By using a comparative method, the framers made sure that the Preamble of Indian Constitution would be both distinctly Indian in its application and universal in its principles. A Preamble that is both visionary and rooted in Indian society’s realities is the product of combining global inspirations with indigenous aspirations.

CONSTITUTIONAL IDEAS: VALUES ENSHRINED IN THE PREAMBLE

“The Preamble embodies the spirit of the Constitution and the aspirations of a nation.”

- Dr. B.R. Ambedkar

India’s constitutional identity is defined by the fundamental ideals embodied in the Preamble to the Indian Constitution. These values, which are expressed in precise terms are a combination of philosophical beliefs, historic goals and legal requirements. A jurisprudential deconstruction of these ideals, backed by scholarly research and court decisions is provided below.

- **Sovereign- Political Independence**

It signifies the absolute autonomy of India in external affairs and internal administration, independent from foreign control. This concept, based on anti-colonial struggle, codifies the state's sole authority to engage in international relations and enact laws. The Supreme Court has confirmed that sovereignty conveys "complete freedom from external control" emphasizing India's self-determination as an integral constitutional tenet.⁹¹

- **Socialist- Economic Justice**

The 42nd Amendment (1976) incorporated the term "Socialist", obligating the state to minimize socio-economic disparities through distributive justice. Compared to doctrinaire socialism, India's model seeks a balance between market economies and welfare commitments. In the case of *D.S. Nakara v. Union of India* (1983)⁹² The Supreme Court observed that socialism requires "equitable distribution of resources" so that marginalized groups maintain their dignity.

- **Secular- Religious Neutrality**

Secularism demands that the state keeps equal distance from all religions so that religious groups get favoured. The court in the case of *S.R. Bommai v. Union of India*⁹³, declared secularism to be a "basic feature" of the Constitution, crucial for upholding pluralism and avoiding majoritarian domination.⁹⁴

- **Democratic- Participation and Representation**

Indian democracy is not limited to electoral politics but extends to participative governance. Universally guaranteed elected adult suffrage, mechanisms of accountability, and enshrined civil liberties provide "government by the people". The Court in *People's Union for Civil Liberties v. Union of India* (2003)⁹⁵ associated democracy with "informed political choice", focusing on transparency and ensuring participation.

- **Republic- Elected Leadership**

⁹¹ *Re Berubari Union* (1960) 3 SCR 250.

⁹² *D.S. Nakara v. Union of India*, (1983) 1 SCC 305.

⁹³ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

⁹⁴ P.M. Bakshi, "Secularism in the Indian Constitution," 37 *JILI* 1 (1995).

⁹⁵ *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399.

A republic denies hereditary governance, requiring that every public office draws its legitimacy from the popular mandate. This guarantees accountability of leadership and parity of opportunity in the public service, as stipulated in the case of *Rameshwar Prasad v. Union of India* (2005).⁹⁶

- **The four Pillars- Justice, Liberty, Equality, Fraternity**

These four intertwined ideals constitute the moral essence of the Indian Constitution:

1. Justice: Includes Social (anti-discrimination), economic (fair distribution of resources), and political (equal participation) aspects.
2. Liberty: Safeguards freedom of expression, thought, and belief, having some reasonable restrictions.
3. Equality: Ensures non- discrimination (Article 14) and positive discrimination (Article 16).
4. Fraternity: Encourages national harmony and collective dignity. Fraternity is considered as the “neglected cornerstone” as observed by the NUJS Law Review that links liberty and equality, not allowing society to fragment.

- **Collective Will and Dignity of Individuals**

The slogan “We, the People” enunciates popular sovereignty, establishing the people as the ultimate locus of constitutional power. At the same time, “dignity of the individual” (associated with fraternity) lays obligations on the state to safeguard human dignity, as held in the privacy judgement of Justice K.S. Puttaswamy.⁹⁷⁹⁸

⁹⁶ *Rameshwar Prasad v. Union of India*, (2005) 1 SCC 245.

⁹⁷ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

⁹⁸ R. Dhavan, "Dignity as a Constitutional Value," 3 *Indian J. Const. L.* 56 (2009).

The ideals of the Preamble are not fixed; they are a living framework for state action and constitutional interpretation.

THE PREAMBLE AND DOCTRINE OF BASIC STRUCTURE

The Preamble occupies a unique place in Indian constitutional jurisprudence, being both the conscience of the Constitution as well as a benchmark for judicial review. The doctrine of basic structure, which was established in *Kesavananda Bharti v. State of Kerala*⁹⁹, safeguards the fundamental characteristics of the Constitution from legislative amendments. According to the basic structure doctrine, “any law which is passed by the Parliament that undermines the fundamental framework of the Constitution would be deemed unconstitutional to the extent that it does violate the basic structure”. Upholding its position as the highest court and preserving the balance of power among the executive, legislative, and judicial branches of the government were the Supreme Court’s primary objectives when formulating this doctrine.

The Preamble and its interface with the doctrine of basic structure has been instrumental in safeguarding constitutional identity as well as circumscribing the authority of constitutional amendments. Scholarly commentary in the NUJS Law Review highlights that the Preamble serves as a “constitutional compass”, directing the judiciary to preserve the core values of the Constitution.¹⁰⁰

The Preamble enshrines the essential values- Socialism, Democracy, Sovereignty, Secularism, Liberty, Justice, Equality and Fraternity, that shape India’s constitutional identity. Academics have posited that these values are not rhetorical flourishes but reflect the “constitutional morality” that permeates the entire legal system.¹⁰¹ The Supreme Court, repeatedly, has identified the Preamble as the “conscience of the Constitution”, a reflection of the hopes of the Framers and citizens.

⁹⁹ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

¹⁰⁰ Sujit Choudhry, “The Preamble in Constitutional Interpretation,” 2 NUJS L. Rev. 1 (2009).

¹⁰¹ U. Baxi, “The Preamble as a Site of Struggle,” 7 NUJS L. Rev. 1 (2014).

LEGAL STATUS AND JUDICIAL PERSPECTIVE

The Preamble to the Indian Constitution, though short, has been instrumental in determining constitutional law and judicial precedent in India. Its legal standing has changed through path-breaking judgements as well as academic critique, making it progress from being a symbolic introduction to a material source for constitutional thought.

The implementation of the Preamble is a matter of substantial judicial and academic controversy. Although the Preamble does not imply enforceable powers or rights, it is by no means a symbol. As eminent scholars and the SC have reminded us, the Preamble is a guide to the spirit of the Constitution, offering crucial direction in interpreting unclear provisions and in ascertaining legislative intention.¹⁰²

The NALSAR Student Law Review notes that the Preamble's appeal in secularism, social action and affirmative action cases illustrates its continued significance in influencing judicial decisions and values of the Constitution.¹⁰³ In modern jurisprudence, the Preamble is more than an introduction, it is a living fountain of constitutional ethos, directing the judiciary to preserve the Constitution's fundamental values from corrosion.

CONSTITUTIONAL AMENDMENTS

The journey of constitutional amendments in India has been deeply influenced by judicial interpretations and legislative interventions, particularly in relation to the Preamble and the Fundamental Rights.

Shankari Prasad v. Union of India (1951)

In this case, the Supreme Court held that Parliament had the authority to amend Fundamental Rights, and that the Preamble was not enforceable or legally binding. Article 13, which restricts

¹⁰² S.C. Kashyap, *Our Constitution* 36-38 (National Book Trust, New Delhi, 2008).

¹⁰³ Smaran Shetty & Tanaya Sanyal, "Fraternity and the Constitution," 4 NUJS L. Rev. 439 (2011); "Fraternity: The Unenforced Promise," 6 NALSAR Student L. Rev. 21 (2010).

the legislature from making laws inconsistent with Fundamental Rights, was interpreted to apply only to ordinary laws and not to constitutional amendments.

Golaknath v. State of Punjab (1967)

The Supreme Court reversed its earlier stance, ruling that Fundamental Rights are immutable and beyond the scope of Parliament's amending power. The Preamble still did not receive recognition as a legally enforceable part of the Constitution.

24th Constitutional Amendment Act (1971)

Parliament responded by restoring its power to amend the Constitution, expressly clarifying that amendments made under Article 368 could extend to Fundamental Rights. This marked a renewed significance of the Preamble, though it remained textually untouched.

Kesavananda Bharati v. State of Kerala (1973)

This judgment became a watershed moment in Indian constitutional history. The Court ruled that while Parliament may amend the Constitution, it cannot alter its “basic structure.” The doctrine of basic structure was thus born, with the Preamble ideals—liberty, equality, justice, and fraternity—forming its essential foundation.

42nd Constitutional Amendment Act (1976)

During the Emergency, this amendment gave sweeping powers to Parliament. It inserted the terms “*Socialist*”, “*Secular*”, and “*Integrity*” into the Preamble, while also attempting to curtail judicial review and expand Parliament's amending authority.

Minerva Mills v. Union of India (1980)

The Supreme Court struck down certain provisions of the 42nd Amendment, reaffirming that the Preamble is an integral part of the Constitution and its values form the “basic structure.” The Court emphasized the need to maintain a balance between Fundamental Rights and Directive Principles, thereby restricting Parliament's amending power.

Indra Sawhney v. Union of India (1992)

This case dealt with the scope of equality and affirmative action in the context of reservations for backward classes. The Court relied on the Preamble's assurance of equality to uphold

reservations, while stressing that the concept of equality is a fundamental and inviolable aspect of the Constitution which cannot be diluted.

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

In this landmark judgment, the Supreme Court invoked the Preamble to reinforce secularism as a core feature of the constitutional framework. The Court held that any state action undermining secularism would be unconstitutional. The Preamble's emphasis on religious neutrality was recognized as an essential element of India's constitutional design.

Justice K.S. Puttaswamy v. Union of India (2017)

In affirming the right to privacy as a fundamental right under Article 21, the Supreme Court once again turned to the Preamble. The Court highlighted liberty as a foundational value, placing it beyond legislative or executive encroachment. By positively invoking the Preamble's promise of liberty, the judgment cemented privacy as an indispensable constitutional attribute.

CONTEMPORARY RELEVANCE AND CIVIC RESPONSIBILITY

“The Preamble is not just a statement of principles; it is a call to action.”

- Nani Palkhivala

The 42nd Amendment of 1976 was a watermark in the history of Indian Constitution. It added the words “Socialist”, “Secular”, and “Integrity” in the Preamble, changing the definition of India from a “Sovereign, Democratic, Republic” to a “Sovereign, Socialist, Secular, Democratic Republic” and emphasizing “unity and integrity of the nation”.¹⁰⁴ Dr. B.R. Ambedkar had himself advised against chaining the upcoming generations to specific socio-economic models,

¹⁰⁴ “The 42nd Amendment: How It Transformed the Indian Constitution,” Sleepy Classes, available at: <https://sleepyclasses.com/the-42nd-amendment-how-it-transformed-the-indian-constitution/> (Visited on June 15, 2025).

questioning that the Constitution should be an instrument of governance and not a manifesto of any given ideology.¹⁰⁵

Can the Preamble be Amended?

Whether the Preamble itself could be amended was settled in the case of *Kesavananda Bharti* in which the SC held that the Parliament cannot tamper with the “basic structure” of the Preamble while it can amend the Constitution. This ruling has been a bulwark against partisan or arbitrary amendments, keeping intact the Preamble’s original intent.

Current Debates: Secularism, Reservations, Federalism, CAA/NRC

The ideals of the Preamble are at the heart of the arguments that rage today, such as arguments over the Citizenship (Amendment) Act, Secularism, Reservations, NRC and Federalism. For example, the critics of CAA assert that it goes against the secular and egalitarian commitment of the Preamble by making religion a qualification for citizenship.¹⁰⁶ Arguments over reservations evoke the promise of equality and social justice of the Preamble, while arguments over federalism evoke its promise of “unity and integrity”.

The Preamble is a powerful tool of civic education that instils constitutional literacy and awareness among citizens. Its brief and clear statement of national values makes it simple and inspiring, being the foundation of school curriculum, university curriculum, and law school curriculum. Journal reviews such as *NUJS Law Review* and *Indian Journal of Constitutional Law* emphasize teaching the Preamble as a living document, one that guides legal interpretation as much as civic conduct.¹⁰⁷

It is the responsibility of law students and lecturers to inculcate and spread the values of the Preamble. Through research, critical thinking, and advocacy, they make justice, liberty, equality, and fraternity more than ideals, but a way of life. The *NALSAR Student Law Review* also reiterates the role of legal education to inculcate civic awareness, ethical leadership,

¹⁰⁵ Forty-second Amendment of the Constitution of India, Wikipedia, available at: https://en.wikipedia.org/wiki/Forty-second_Amendment_of_the_Constitution_of_India (Visited on June 15, 2025).

¹⁰⁶ Smaran Shetty & Tanaya Sanyal, “Fraternity and the Constitution,” 4 *NUJS L. Rev.* 439 (2011).

¹⁰⁷ U. Baxi, “The Preamble as a Site of Struggle,” 7 *NUJS L. Rev.* 1 (2014).

and constitutional patriotism.¹⁰⁸ For all citizens, the Preamble is a right and a responsibility: it enables them to check the power of the state and obliges them to promote harmony, respect diversity, and preserve the country's unity and integrity.

CONCLUSION

The Preamble to the Indian Constitution is a profound expression of the country's shared aspirations, philosophical underpinnings and abiding vision for democratic ideals. Rather than a gratuitous front pageantry, it distills into the fundamental values of justice, liberty, equality and fraternity the soul and personality of the Republic of India. In making India a "Sovereign, Socialist, Secular, Democratic Republic", the Preamble not only announces the sovereignty of the people as the ultimate source of constitutional power but also expresses the ideals that will inform the operation of government, the enactment of laws and the interpretation of provisions of the Constitution.

The fervent debate and innovative leadership in the Constituent Assembly, and particularly the efforts of Dr. B.R. Ambedkar and Jawaharlal Nehru, imbued the Preamble with its clarity, richness and vision. The employment of terms like "Socialist" and "Secular" and the avowed commitment to justice in all its forms, reflects the country's resolve to alleviate inequalities and safeguard pluralism.

Judicial dicta have always acknowledged the significance of the Preamble as a preface and promise. It is a valued instrument of interpretation, especially during periods of Constitution and the core values enshrined within it. The Supreme Court's determination of the Preamble to be part of the "basic structure" of the Constitution further establishes its role as a moral and philosophical guide of the country.

Lastly, the Preamble is the conscience of the Indian Constitution- a document which will propel the Republic for all the time to come towards justice, liberty, equality, and fraternity for all

¹⁰⁸ Editorial, "Fraternity: The Unenforced Promise," 6 NALSAR Student L. Rev. 21 (2010).

Indians. It is a beacon that will guide generations to come to remember India's solemn pledge and the ideals that should continue to be at the heart of Indian democracy.

CHAPTER 3

Union and its Territory (Articles 1–2)

By Khushi jain

INTRODUCTION

The Constitution of India begins with Articles 1 & 2 which set up the territorial identity and territory integration of the Indian Union. Articles 1 and 2 are more than simply declaratory provisions; they provide the legal principles that create the political and constitutional framework of the Indian State.¹⁰⁹ Article 1 states, "India, that is Bharat, shall be a Union of States." There is both absolute unity and solid federal character implicit in the unified state of India. The functions which Article 2 allows Parliament to pursue in the establishment or admission of states are broad powers given to Parliament. These were indispensable in the circumstances of independent India and signing the acceptance of the princely estates.¹¹⁰ Article 2 is still a good thing for Indian life in terms of applying the Constitution to contentious issues in the use of territory.¹¹¹

The chapter aims to have a close reading of Articles 1 and 2, how these two provisions are philosophically and legally justified, their contribution to India's unity in diversity, and how these provisions were utilized in significant constitutional moments such as the accession of Jammu & Kashmir, the formation of new states, and re-organization of territories. There is value in reading these provisions beyond the fledgling years of the republic. Currently, Articles 1 and 2 are useful in the relative peaceful management of federal relationships, tense assertions of linguistic and cultural grounds, and even administrative reorganizations.

¹⁰⁹ H.M. Seervai, *Constitutional Law of India*, Vol. 1, 4th edn., Universal Law Publishing, New Delhi, 2008, at 199

¹¹⁰ M.P. Jain, *Indian Constitutional Law*, 8th edn., LexisNexis, Haryana, 2018, at 182

¹¹¹ V.N. Shukla, *Constitution of India*, 14th edn., EBC Publishing, Lucknow, 2020, at 59.

The chapter traces the historical, doctrinal, and judicial reading of Articles 1 and 2 as a backdrop through key cases and contemporary conversations. Particular note is made of the use of Parliament's powers in relation to Article 2 for the bifurcation of Jammu and Kashmir post-2019, which is a constitutional turning point in geographic terms as well. In summary Articles 1 and 2 epitomise the dynamism of Indian federalism and a pragmatic constitutional picture of integration and unity.

HISTORICAL AND CONSTITUTIONAL BACKGROUND

The colonial legacies and the political goals of newly independent India have explicitly shaped the constitutional framing of Articles 1 and 2.¹¹² The Constituent Assembly was aware of India's fragmentary, diverse, and territorial character around the time of independence and was well aware of how to create the legal identity of India's territoriality and how to integrate the princely states into India.

Debates in Constituent Assembly

In the discussions during the Constituent Assembly meetings, there was lively debate about Article 1 (then Draft Article 1). The Chairman of the Drafting Committee, Dr. B. R. Ambedkar, discussed why he used "Union of States" instead of "Federation of States," and stated boldly that it was meant to demonstrate to the membership that a "Union" of India was a deliberate commitment that India's federation was not just a result of an agreement between independent states (as was the American federation), but instead a Union made by people, through the constitution, with a unity that cannot be dissolved, even if the states are to be reorganized, merged or newly made.¹¹³

Dr. Ambedkar elaborated: The use of the word 'Union' is deliberate. The Drafting Committee wished to establish that although India was to be a federation, it wasn't a federation by agreement of the units, and there existed no right of the units to secede from the federation.

¹¹² B. Shiva Rao (ed.), *The Framing of India's Constitution: Select Documents*, Vol. I, Indian Institute of Public Administration, New Delhi, 1966, at 33

¹¹³ Constituent Assembly Debates, Vol. I, 13 December 1946, at 57

This framing reflected the political necessity of integrating over 562 princely states that had varying degrees of autonomy under British suzerainty. Article 1 provided the legal declaration of India's territorial identity and its permanent nature, while Article 2 equipped Parliament with the necessary power to admit and establish new political entities within the Union framework.¹¹⁴

Post-Independence Integration and Reorganization

Article 2 of the Constitution emerged from the political need to absorb and reorganize princely states. The accession is mainly done through political negotiation by Sardar Vallabhbhai Patel and V.P. Menon. Thereafter, Article 2 turned these political decisions into constitutional perpetuity, through different circumstances for different states, including Hyderabad, Junagadh, and Kashmir; some counter to military action.

Article 1(3) divided the territory of India into three categories:

1. Territories of the states;
2. Union Territories;
3. Territories that may be acquired.

This classification allowed for the emergence of Union Territories on the basis of convenience, administrative utility or geopolitical reasons. For instance, Pondicherry, Dadra & Nagar Haveli and Goa, Daman & Diu were transferred to the Indian Union under Article 2 and related provisions.

Link with the Preamble and Constitutional Philosophy

In the Preamble of the Constitution of India, India is declared as a “Sovereign Socialist Secular Democratic Republic”, whereas Articles 1 and 2 quest for the realization of the sovereignty and unity of this Republic by providing a legal framework for the territorial manifestation of this sovereignty and unity. Unity and integrity were principles that were particularly emphasized in the Preamble - the focus in these articles on 'unity' and 'integrity' has a particular resonance

¹¹⁴ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, 1999, at 75

with the objectives of these two Articles.¹¹⁵ They are, in a tangible sense, the foundation, upon which will rest the federal structure which is geared towards the realization of “Unity in Diversity”.¹¹⁶

Article 1 of the Constitution reflects a dedication to national integration, whereas Article 2 recognizes the authority of Parliament, as a Gilbertian sovereign Parliament, to determine the territorial limits of the Union. In combination, they signify the dynamic force of Indian federalism, in that the constitutional identity of the state can change as long as there is political consensus and new legislation.

Legislative Actions and Amendments

Even though Articles 1 and 2 as such have not been amended, their use has been clearly tied to the legislative enactments as follows:

1. The States Reorganisation Act, 1956, which recognized states on linguistic lines.¹¹⁷
2. The North Eastern Areas (Reorganisation) Act, 1971, entrenched a number of definite states in the north east.¹¹⁸
3. The Jammu & Kashmir Reorganisation Act, 2019, formed the state into two Union Territories, namely, Jammu & Kashmir and Ladakh.¹¹⁹

These developments reflect the application of Articles 1 and 2 of the Constitution to alter and reshape India's political scenario to achieve goals of a secessionist character, purely administrative effect and security considerations in the mainland.

¹¹⁵ S.P. Sathe, “Federalism and the Preamble”, (2001) 43(1) Journal of Indian Law Institute 1, at 5

¹¹⁶ Sujit Choudhry et al., The Oxford Handbook of the Indian Constitution, Oxford University Press, New Delhi, 2016, at 86

¹¹⁷ The States Reorganisation Act, 1956 (Act No. 37 of 1956)

¹¹⁸ The North Eastern Areas (Reorganisation) Act, 1971 (Act No. 81 of 1971)

¹¹⁹ The Jammu and Kashmir Reorganisation Act, 2019 (Act No. 34 of 2019)

DOCTRINAL OR ARTICLE-WISE DISCUSSION

Articles 1 and 2 are brief articles, but they are very important ones. They establish the legal framework of the extent and architecture of the Indian Union while providing Parliament the authority to alter the internal geography of India by admittance of a new state, or states. A doctrinal analysis of each article will illustrate their constitutional mechanics, parameters, and ramifications for federalism in India.

Article 1: India shall be a “Union of States”

Text of Article 1:

1. India, that is Bharat, shall be a Union of States.
2. The States and the territories thereof shall be as specified in the First Schedule.
3. The territory of India shall comprise –
 - (a) the territories of the States;
 - (b) the Union territories specified in the First Schedule; and
 - (c) such other territories may be acquired.

Understanding and Aims

The statement, "India, that is Bharat," describes the historical civilizational identity and the modern political formation.¹²⁰ It establishes the premise of India as having its historical and civilizational continuity and a shared legal and political identity.

The term “Union of States” instead of “Federation of States” was a conscious choice.¹²¹ It signifies that the Indian federation is not the outcome of a voluntary agreement among states—as in the U.S. Constitution—but a union created by the Constitution itself.¹²² This formulation implies:

¹²⁰ Article 1(1), Constitution of India (1950)

¹²¹ Constituent Assembly Debates, Vol. I, 13 December 1946, at 57

¹²² D.D. Basu, *Commentary on the Constitution of India*, Vol. 1, 9th edn., LexisNexis, New Delhi, 2021, at 89

1. The indissoluble nature of the Indian Union.
2. States do not possess a right to secede.¹²³
3. The Union is a single political entity with dynamic boundaries.

Article 1(2) connects the territorial structure of the Union to the First Schedule, and thus creates space for flexibility. Any change to state boundaries, or names, or to statehood itself can be accomplished by ordinary legislation, and that can include a change to the First Schedule.¹²⁴ This legal framework allows for flexibility that otherwise requires a constitutional amending power.

Article 1(3) provides a clear meaning of "the territory of India" to include:

1. The territories of states existing at the time of enactment;
2. The Union Territories of India;
3. Any other territory that may be acquired in the future.

Clause (c) is important in that it empowers the Indian Union to extend its territory by means of cession, conquest or purchase, subject to international law, and the use of diplomatic channels.¹²⁵

Article 2: Admission or Establishment of New States

Text of Article 2:

“Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit”.¹²⁶

Interpretation and Scope

Article 2 grants Parliament the power to:

¹²³ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1

¹²⁴ V.N. Shukla, *Constitution of India*, 14th edn., EBC Publishing, Lucknow, 2020, at 66

¹²⁵ V.N. Shukla, *Constitution of India*, 14th edn., EBC Publishing, Lucknow, 2020, at 67

¹²⁶ Article 2, Constitution of India (1950)

1. Admit a new state into the Union (such as a foreign territory joining India);
2. Create a new state, which may involve the conversion of a Union Territory into a state or the creation of new entities from existing entities.

This clause is particularly relevant regarding the post-1947 integration of princely states. For instance, Sikkim was welcomed as a full state in 1975 through the Thirty-Sixth Constitutional Amendment.¹²⁷ The use of the words “on such terms and conditions as it thinks fit” gives Parliament a great deal of latitude.

It can impose special provisions, exemptions, or transitional measures to suit the integration of unique regions. This was done for Sikkim and also observed in earlier special arrangements for Jammu & Kashmir under Article 370 (before its abrogation in 2019).¹²⁸

Relation with Other Articles: 2A, 3 and 4

Even though Articles 1 and 2 are the gateway provisions defining the territorial configuration of the Union, the provisions should be read in conjunction with other provisions:

1. Article 2A (repealed): Originally inserted to include Sikkim as an associate state through the 35th Amendment Act (1974), it has been repealed since full statehood to Sikkim has been granted (1975).¹²⁹
2. Article 3: Provides Parliament the power to constitute new states, and to alter the areas or names of existing states.¹³⁰ Unlike Article 2, Article 3 deals with internal boundaries together with external additions.
3. Article 4: Clarifies that legislation made pursuant to Articles 2 and 3, would not be considered to be amendments to the constitution under Article 368. Parliament can alter, by a simple majority, the map of India.¹³¹

¹²⁷ The Constitution (Thirty-sixth Amendment) Act, 1975

¹²⁸ Article 370, Constitution of India (before abrogation in 2019)

¹²⁹ The Constitution (Thirty-fifth Amendment) Act, 1974

¹³⁰ Article 3, Constitution of India (1950)

¹³¹ Article 4, Constitution of India (1950); see also Article 368

These provisions collectively reiterate that structurally India has a federal administration, but unitary in its territorial configuration.¹³²

Constitutional Doctrine Related to Articles 1 & 2

Certain important doctrines are derived to the interpretation and application of Articles 1 and 2. They are as follows:

1. **Doctrine of Indestructible Union:** Unlike federations based on compacts, the Indian Union is indivisible. States can be changed or extinguished, but the Union survives.
2. **Doctrine of Territorial Sovereignty:** The power to admit or create new states, and to acquire territories represent the sovereignty of the Union.
3. **Doctrine of Supremacy of Parliament over Territory:** Parliament has exclusive jurisdiction to determine India constitutionally as to its internal and external territorial arrangement. The only limitation on (Parliament's authority to create and abolish Union Territories) is the procedural process of giving previous consideration to the relevant State Legislature (under Article 3) before passing legislation to reorganize the present Union Territories. However, even then, the State Legislature's opinion is not binding on the Parliament.

Practical Applications of Articles 1 and 2

1. Fusion of Goa, Daman and Diu (1961): these territories were formed after liberation from Portuguese colonialism, first as Union Territories under Article 2.¹³³
2. Sikkim State (1975): Sikkim became part of the Union of India after Parliament admitted Sikkim into the Union of India pursuant to Article 2 following a referendum, and changed its status from Associate state to the 22nd state of the Union of India.
3. Reorganisation of Jammu & Kashmir (2019): The Jammu and Kashmir Reorganisation Act, 2019 is legislation that, pursuant to Article 3, divided the State into two Union territories,

¹³² K.C. Wheare, *Federal Government*, 4th edn., Oxford University Press, London, 1963, at 27

¹³³ B. Shiva Rao, *Framing of India's Constitution: Select Documents*, Vol. II, IIPA, New Delhi, 1966, at 203

with the names Jammu & Kashmir and Ladakh, respectively.¹³⁴ However, elements of the reorganisation morph into Article 2, and touch suggested aspects of redefining the Union's territorial base.

In general, Articles 1 and 2 combine to develop a sovereign, yet flexible mechanism, in law that enables India to integrate different territories, reorganise internal structures and maintain a strong, unitary and indivisible Union.

LANDMARK CASE LAWS

Judicial decisions have had a major role in shaping the interpretation and application of the Articles 1 and 2 of the Constitution of India. They raise fundamental issues as to the unbreakable Union, the extent of Parliament powers to reform states and whether states can be said to have consented to matters of territorial concern. Comparatist international jurisprudence also provides us with further comprehension of how sovereign federations understand self-determination and the unity of their territorial arrangements.

In Re: The Berubari Union and Exchange of Enclaves, AIR 1960 SC 845

The matter arose when the Government of India decided to give Pakistan an area of the Berubari Union (in West Bengal), which was part of the agreement between Prime Minister Pt. Jawaharlal Nehru and President Muhammad Ayub Khan of Pakistan, known as the Nehru-Noon Agreement. A Presidential reference was made under Article 143, to find out whether or not such an action was legal. The Supreme Court found that such a cession of territory would not fall under Article 3 of the Constitution and would need to be amended under Article 368. The judgment indicated that while the Parliament has sufficiently wide powers in terms of changes in respects to areas dealt internally, when there is any change in respect to the territory of India, it ought to follow a

¹³⁴ The Jammu and Kashmir Reorganisation Act, 2019 (Act No. 34 of 2019)

stricter measure. This case highlights the constitutional integrity of India's territory, as provided in Article 1 of the Constitution.¹³⁵

Ram Kishore Sen v. Union of India, AIR 1966 SC 644

In this case, the Supreme Court followed the berubari case; they reiterated that any loss of territory by India, and in particular, where the territory was to be transferred to a foreign state, required amendment to the Constitution. The Court said that they were bound by the advisory opinion in the berubari case and reiterated that parliament must follow their procedure strictly when amending any external boundary of India.¹³⁶

N. Masthan Sahib v. Chief Commissioner, Pondicherry, AIR 1962 SC 797

The legal significance of the territory of Pondicherry after its de facto merger into India was central to this case. The petitioner challenged the applicability of Indian laws to that territory; however, the Supreme Court held that once the Government of India states that a territory is "acquired" by the Government of India, the courts must accept that situation. The judgment held that Article 1(3)(c) recognizes the sovereign power of the Union to acquire territories by diplomatic or international means and the declaration's validity is beyond the reconsideration of the courts.¹³⁷

State of West Bengal v. Union of India, AIR 1963 SC 1241

This was a constitutional dispute in which the State of West Bengal contested the Centre's power to acquire land situated within its territory as part of a proposal for a research institution. The Supreme Court held that unlike federations such as the USA the Indian Constitution does not confer sovereignty on states in the same manner. It held that India was a Union of States; the

¹³⁵ In Re: The Berubari Union, AIR 1960 SC 845

¹³⁶ Ram Kishore Sen v. Union of India, AIR 1966 SC 644

¹³⁷ N. Masthan Sahib v. Chief Commissioner, Pondicherry, AIR 1962 SC 797

Centre had precedence over the territory and legislative powers. This case strongly affirmed the meaning of "Union of States" found in Article 1 and the unitary bias of Indian federalism.¹³⁸

Mangal Singh v. Union of India, AIR 1967 SC 944

This case was a challenge against the Punjab Reorganisation Act, 1966 on the ground that it lacked assent from the Punjab State Legislature. The Supreme Court, however, ruled that under Article 3, Parliament has plenary powers to reorganise states subject to the consulting the views of the state legislature concerned; consent is not required. The Court's ruling reinforced the constitutional scheme that allowed configurations of the territories of states to remain within the powers of the Union.¹³⁹

Babulal Parate v. State of Bombay, AIR 1960 SC 51

In this case, the constitutionality of the linguistic reorganisation of states, specifically the formation of Maharashtra and Gujarat from the erstwhile Bombay State was challenged. The petitioner contended that a reorganisation of states based on language was at variance with the spirit of the Constitution. The Supreme Court held that the process that was prescribed in Article 3 was followed, and also the reference by the President to the state legislature was, in nature, consultative in character. The decision reiterated Parliament's broad powers bestowed by Article 3 to make changes to boundaries, names or status of states.¹⁴⁰

T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481

This case focused primarily on the rights of minorities in the realm of education; however it was a case dealing with eleven judges, and in the course of their decision they also dealt with the federal structure of the Constitution. The Court explained that India is not a federation resulting from a contract between sovereign states, rather the Constitution creates the Union of States, and

¹³⁸ State of West Bengal v. Union of India, AIR 1963 SC 1241

¹³⁹ Mangal Singh v. Union of India, AIR 1967 SC 944

¹⁴⁰ Babulal Parate v. State of Bombay, AIR 1960 SC 51

states do not have any inherent sovereignty. This comment is directly related to Article 1 and explains the concept of an indissoluble Union.¹⁴¹

State of Sikkim v. Surendra Prasad Sharma, (1994) Supp (1) SCC 317

The case considered the constitutional position of Sikkim vis-à-vis the Indian Union after being granted statehood. The petitioner challenged certain transitional arrangements exclusively for Sikkim as being unconstitutional. The Supreme Court held that Parliament's authority under Article 2 to admit states on terms and conditions that it considers appropriate is also constitutional. The decision illustrated that Article 2 is operative and confirmed that Parliament may have statutes as a means of creating laws for unique territories.¹⁴²

In Re: Article 370, 2023 SCC OnLine SC 1641

This recent case concerned the constitutionality of the repeal of Article 370, which granted special status to the Jammu and Kashmir region, and the formation of two Union Territories from the region. The petitioners argued that any change in status implicates a change in the federal structure and that a change of status cannot occur unless it is consented to by the parties involved. The Supreme Court ultimately held that the Jammu and Kashmir Reorganisation Act, 2019 was constitutional. The Court stated that, when acting under Article 3 of the Constitution, Parliament has plenary power to reorganise any state and this power includes changing the status of a state. The Union in its law-making capacity and ability to change, through legislation, territorial and administrative boundaries with respect to Union Territories in India was reaffirmed in this decision.¹⁴³

S.R. Bommai v. Union of India, (1994) 3 SCC 1

This case, which ended up being a very important constitutional law case in India involved the termination of the lots of state governments by the Centre, using Article 356, on the grounds that those States had 'lost' the confidence of the assemblies. The case raised important issues

¹⁴¹ T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481

¹⁴² State of Sikkim v. Surendra Prasad Sharma, (1994) Supp (1) SCC 317

¹⁴³ In Re: Article 370, 2023 SCC OnLine SC 1641

regarding the character of the Indian Union and the relationship between the Centre and the States. In *S.R. Bommai*, the Supreme Court held that India is not a federation of States because of an agreement between those States; on the contrary, India is a 'Union of States'; and the States do not have the right to secede from the Union. While deciding *S.R. Bommai*, the Supreme Court set down guidelines for invoking the President's rule and held that federalism is part of the basic structure of the Constitution. The most important part of the decision in *S.R. Bommai* was concluding that the Indian federation, despite certain centralising features, allows for the autonomy of States in a finite constitutional framework. The expression 'Union of States' in Article 1 was adopted to demonstrate that the states do not exist because they are sovereign in their own right, but as sub-units of an indissoluble Union.¹⁴⁴

International Case Laws

Texas v. White, 74 U.S. (7 Wall.) 700 (1869) - United States

This United States Supreme Court case certainly is a broad item of history that decided after the Civil War whether Texas had a rightful secession from the Union and whether Texas could recover federal bonds. The Court observed that the Union was indissoluble, and no state had a right to secession within the Court within the bounds of the law. This indissolubility doctrine is related to India's constitutional composition which states in Article 1 that India is a "Union of States," meaning that no state has a right to leave the federation.¹⁴⁵

Reference re Secession of Quebec, [1998] 2 SCR 217– Canada

This case examined whether Quebec could unilaterally secede in accordance with Canadian law. The Court found that the people of Quebec had a right to self-determination; however, any process towards secession must proceed through legal and constitutional process, with consideration to amend the Constitution, and the need for negotiations to engage the interest of the federal government. This case supports the Indian constitutional principle that no state could leave or amend the structure of the Union without the involvement of the other states and the

¹⁴⁴ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1

¹⁴⁵ *Texas v. White*, 74 U.S. (7 Wall.) 700 (1869)

federal government, and acknowledges the spirit of Article 1, and Article 2 of the Constitution.¹⁴⁶

Table of Landmark Case laws

S. No.	Case Name	Citation	Issue Involved	Relevance to Art. 1 & 2
1	In Re: The Berubari Union and Exchange of Enclaves	AIR 1960 SC 845	Whether cession of Indian territory to a foreign state is valid under Article 3	Held that cession requires a constitutional amendment; clarified limits of Article 3 and the sanctity of Article 1
2	Ram Kishore Sen v. Union of India	AIR 1966 SC 644	Challenge to the transfer of territory	Reaffirmed Berubari; upheld the procedural requirements for territorial alteration
3	N. Masthan Sahib v. Chief Commissioner, Pondicherry	AIR 1962 SC 797	Whether newly acquired territory like Pondicherry was validly part of India	Recognised the sovereign power under Article 1(3)(c) and barred judicial review once territory is declared acquired
4	State of West Bengal v. Union of India	AIR 1963 SC 1241	Whether Centre can acquire land within a state without consent	Affirmed that India is not a federation of sovereign states; supported the idea of “Union of States”
5	Mangal Singh v. Union of India	AIR 1967 SC 944	Validity of the Punjab Reorganisation Act	Held that Parliament has plenary power under Article 3 and state legislature’s views are not binding

¹⁴⁶ Reference re Secession of Quebec, [1998] 2 SCR 217 (Canada)

6	Babulal Parate v. State of Bombay	AIR 1960 SC 51	Challenge to linguistic reorganisation of Bombay state	Reiterated that Article 3 provides only for consultative opinion of the legislature
7	T.M.A. Pai Foundation v. State of Karnataka	(2002) 8 SCC 481	Nature of Indian federalism in educational rights context	Clarified that states have no sovereignty; reinforces the indivisible Union under Article 1
8	State of Sikkim v. Surendra Prasad Sharma	(1994) Supp (1) SCC 317	Challenge to transitional provisions for Sikkim after its accession	Validated Parliament's power under Article 2 to admit new states with special conditions
9	In Re: Article 370	2023 SCC OnLine SC 1641	Validity of abrogation of Article 370 and bifurcation of J&K	Upheld Parliament's authority under Article 3 to reorganise any state, showing the dynamic federalism under Articles 1 & 2
10	S.R. Bommai v. Union of India	(1994) 3 SCC 1	Legality of President's Rule and nature of Indian federalism	Asserted that India is a Union of States; states have no right to secede; federalism is part of basic structure
11	Texas v. White (USA)	74 U.S. (7 Wall.) 700 (1869)	Whether a U.S. state can secede from the Union	Held that secession is unconstitutional; parallels India's Article 1 framework of indissoluble Union
12	Reference re Secession of Quebec (Canada)	[1998] 2 SCR 217	Whether Quebec can unilaterally secede from Canada	Held that unilateral secession is unconstitutional; supports India's territorial unity principle

CONTEMPORARY RELEVANCE

Articles 1 and 2 of the Constitution of India have renewed urgency in the 21st century, as the territorial and federally stipulated order of India continues to develop in response to political, administrative, and socio-economic pressures. These Articles were always intended to aid post-colonial integration and reconstitution, but the recent developments have demonstrated a renewed urgency in adjusting the territories of Indian states, as seen during the bifurcation of Chhattisgarh, Jharkhand, and Uttarakhand, and the continued demands for new statehoods and special statuses, and an ongoing trend toward centralisation.

A. Bifurcation and Reorganisation of States

The most notable case of recent recourse to Articles 1 and 2 is the Jammu & Kashmir Reorganisation Act, 2019, which separated the formerly State of Jammu & Kashmir into two Union Territories—Jammu & Kashmir (with a legislature), and Ladakh (without a legislature). With the federal government supplementing this division via the abrogation of Article 370, we might not have any comparators for what occurred as a matter of statutory action—in essence, that a full-fledged State was downgraded as a Union Territory, and the sweeping consequences in terms of federalism.

While there was significant controversy about federal overreach, the Supreme Court found the reorganisation to be a lawful exercise in *In Re: Article 370* and recommitted to the extensive powers available under Articles 1, 2 and 3. The Centre nonetheless reminded us that territorial flexibility is fundamental to India's constitutional scheme; on the other hand, it provoked a more national conversation about the limits of parliamentary sovereignty and the intent of cooperative federalism.

B. Rising Demands for New States

In recent years, multiple regions across India have renewed their calls for statehood:¹⁴⁷ They're – Gorkhaland (West Bengal), Vidarbha (Maharashtra), Harjit Pradesh (Western Uttar Pradesh), Bundelkhand (Uttar Pradesh and Madhya Pradesh), and Bodoland (Assam).

Each of these movements has certain cultural, linguistic, economic, or administrative grievances. The constitutional adequacy of these claims is rooted in the powers given to the Union in Article 2 (and elaborated in Article 3), which set out the Union's power to create new states and change existing states.

However, unlike the immediate post-independence situation, the current political situation makes reorganisations problematic. The constitutional measure available under Articles 1 and 2 provides a mechanism, but political consensus or administration will often fail to bring the processes to fruition. Further, while the Supreme Court has clarified that "the opinion" of the state legislatures must be secured, their consent is not required, indicating the continuing precedence of Parliament.

C. Border Disputes and Territorial Assertion

Inter-state border disputes have also brought Article 1 into contemporary legal and political discussions. Notable among these are: Assam-Mizoram and Assam-Meghalaya border clashes, The Belagavi (Belgaum) dispute between Maharashtra and Karnataka, and Nagaland-Assam boundary tensions.

While the "territory of India" is clearly established in Article 1, internal boundary lines between states under Article 3 remain unsynthesized. The central government has exercised its authority occasionally under Article 3 to create boundaries or arbitrate means to re-establish them, and any further reconfiguration would be made with reference to the First Schedule under Article 1(2). Accordingly, Article 1 remains especially pivotal in establishing the formal map and jurisdictions of the Union.

¹⁴⁷ S.Y. Quraishi, "India's federal structure faces stress as statehood demands rise", The Hindu, 17 Feb. 2020, available at: <https://www.thehindu.com> (last visited Jun. 26, 2025)

D. Acquisition of New Territory

Article 1(3)(c) allows for the addition of "such other territories as may be acquired." India has not acquired territory in decades, and therefore, it is not an element of concern for Article 1. However, it remains significant to the international legal context over a few matters, particularly:

1. India's claim over POK (Pakistan-Occupied Kashmir);¹⁴⁸
2. The strategic settlements of India's borders in the Northeast and Ladakh.
3. Diplomatic claims in Kalapani, Lipulekh (Nepal) and Arunachal Pradesh (China).

Although these matters are almost entirely diplomatic in practice, if any territory is acquired, it would be completed under Articles 1(3)(c) and 2 by exercising the Constitution's legal authority to Parliament.¹⁴⁹

E. Administrative Federalism and Union Territories

The perceived rise in the number of Union Territories (currently eight) and the apparent degree of vigorous central control over them settlements, including in Delhi and Jammu & Kashmir, has prompted further discussions about the unitary bias of Indian federalism. Article 1(3(b)) places Union Territories in the same category/state, and Article 2 has historically provided a vehicle for their incorporation and ultimate transformation into states (e.g., Goa, Arunachal Pradesh).¹⁵⁰ In this light Articles 1 and 2 continue to afford the Union policy flexibility in regard to managing sensitive or strategically important regions directly, without the levels of complexity full statehood would entail.

F. Federalism in Contemporary Political Discourse

The Centre's authority under Articles 2 and 3-when used more frequently-has invited criticism of its federalism from states. Southern states like Tamil Nadu and Kerala have expressed anxiety

¹⁴⁸ Ministry of External Affairs, "India's Position on Jammu & Kashmir", available at: <https://mea.gov.in> (last visited Jun. 26, 2025)

¹⁴⁹ IDSA, "Border Disputes in the Himalayas: India-China-Nepal Triangle", IDSA Special Reports, March 2021, available at: <https://idsa.in>

¹⁵⁰ R. Rajagopal, "The Growing Centralisation of India's Federalism", The Hindu Centre for Politics and Public Policy, October 2020

around factors associated with centralising aspects of India's federal model. The issue is not about the legality of the Centre's exercise of powers under Articles 1 and 2 but the dangers to constitutional morality, cooperative federalism, and democratic consent.¹⁵¹

Thus, these articles are the constitutional foundations of India's flexible federalism and developing territorial identity, but that exercise ought to take a sensitivity toward democratic legitimacy and regional identity.

CONCLUSION

The Constitution of India's Articles 1 and 2 are the basis of the Republic's territorial and federal structure. Article 1 creates India's inseparable unity by declaring it "a Union of States," and Article 2 gives Parliament the powers of sovereign decision-making in admitting or creating new states broken into such terms as it thinks fit. Together, they also provide a legal framework that is enduring yet flexible - able to meet India's multi-dimensional geographic and political realities. From the historical integration of princely states after independence to the fresh reorganisation of Jammu & Kashmir, these articles have allowed the Indian Union to respond in a flexible manner to internal diversity and external change. The phrase, "Union of States" reflects the intention of the framers to preserve the nation state from separatist impulses by notwithstanding the degree of autonomy that states enjoy in accordance with the Constitution, they will remain part of the nation. Over the years, Parliament's plenary powers under these articles have allowed for peaceful reconstructions of states, the entry of new entities, such as Sikkim, and realignments, such as the elevation of some states to Union Territories, to take place.

Courts have, in most cases, accepted these acts of authority, reiterating the principle that the territorial identity of India is defined not by the pre-constitutional sovereignty of a state, but by the power of the people expressed through the Constitution.¹⁵² Ever so stretching the use of the

¹⁵¹ P.D. Tiwari, "Cooperative Federalism and Indian Polity", (2020) 62(2) Journal of the Indian Law Institute 176, at 188

¹⁵² U.R. Rai, "Territorial Sovereignty and Indian Federalism", (2011) 53(2) Journal of the Indian Law Institute 127, at 138

Article, the constitution has to be balanced very carefully. On almost all counts, legality is hardly questioned, but the genuineness of the act, in terms of cooperative federalism, democratic participation, and identity of the region, requires greater consideration.¹⁵³ The growing clamour for the creation of new states, for resolution of border disputes, and for laying tension on instances of unilateral decisions by the Centre all point out to the need for consultative processes. On a concluding note, it would really be unfair to judge Articles 1 and 2 as rock-hard abominations of the Constitution made at the time of India's founding. The stark reality of Articles 1 and 2, therefore, is what mediates between the conceptions of unity and diversity. They keep the territorial and federal-level fabric of India in tune with the needs of the present without making a false step from the Constitutional spirit.

¹⁵³ Aakash Singh Rathore, *Ambedkar's Preamble: A Secret History of the Constitution of India*, Penguin Random House India, 2020, at 152

CHAPTER 4

Formation of New States and Alteration of Areas, Boundaries or Names (Articles 3–4)

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INTRODUCTION

The Indian Constitution lays out a federal structure which, unlike classical federations, permits significant central authority over the very existence and identity of states. Articles 3 and 4 represent a cornerstone of this structure. They empower Parliament to reorganize the internal political map of the Union by forming new states or altering the boundaries, names, and areas of existing ones. Unlike most federal systems where constituent units enjoy territorial inviolability, India allows the Union government to redraw state boundaries, even without state consent. This peculiar blend of federal form and unitary spirit underscores the *sui generis* nature of Indian federalism¹⁵⁴.

The scope of Articles 3 and 4 is not merely administrative—it reflects the dynamic relationship between national integration and regional identity. From the creation of linguistic states in the 1950s to the contentious bifurcation of Jammu & Kashmir in 2019, these provisions have played a central role in responding to regional aspirations, ethnic demands, and national priorities¹⁵⁵. At the same time, they have triggered legal, political, and constitutional debates over the boundaries of parliamentary supremacy and federal principles. The aim of this chapter is to dissect these Articles through their historical trajectory, doctrinal contours, landmark judicial pronouncements,

¹⁵⁴ H.M. Seervai, *Constitutional Law of India*, Vol. I 390 (Universal Law Publishing, Delhi, 4th edn., 2013).

¹⁵⁵ Government of India, *Jammu and Kashmir Reorganisation Act*, 2019 (Act 34 of 2019)

and contemporary implications. It offers a layered understanding of how the Indian Constitution, while upholding a centralised union, still allows for internal pluralism and flexibility¹⁵⁶.

HISTORICAL AND CONSTITUTIONAL BACKGROUND

The journey of Articles 3 and 4 began in the Constituent Assembly, where the vision for an adaptable yet united India took concrete shape. Dr. B.R. Ambedkar, while defending the Centre's primacy in matters of territorial reorganization, asserted that India was an "indestructible Union of destructible states"¹⁵⁷. Unlike the United States, where the states preceded the Union and held constitutional inviolability, Indian states are creations of the Constitution and subordinate to Parliament. The Assembly anticipated that India's vast diversity—linguistic, cultural, regional—would necessitate frequent adjustments to its political geography, and hence empowered Parliament accordingly. This foresight laid the foundation for a flexible federal structure capable of accommodating change without constitutional amendments¹⁵⁸.

The Constituent Assembly Debates (CAD) reveal a careful balancing act. While some members feared excessive centralization, others saw reorganization as a tool for justice. The need to preserve the unity of the nation while ensuring democratic legitimacy for regional identities was paramount. The flexibility built into Articles 3 and 4 was not an afterthought—it was an institutional device to prevent secessionist tendencies while allowing internal diversity to find political space. Hence, the power conferred on Parliament to reorganize states was accompanied by a procedural requirement: before a bill altering state boundaries is introduced, the President must refer it to the concerned state's legislature for its views. However, these views are not binding, reflecting the supremacy of the Union over state boundaries¹⁵⁹.

The need for such a mechanism became evident in the early years of the Republic. India's first experiment in state reorganization came with the *States Reorganisation Act of 1956*, which

¹⁵⁶ M.P. Jain, *Indian Constitutional Law* 538 (Kamal Law House, Calcutta, 5th edn., 1998).

¹⁵⁷ Constituent Assembly Debates, Vol. IX, 10 August 1949, speech by Dr. B.R. Ambedkar

¹⁵⁸ Ibid

¹⁵⁹ V.N. Shukla, *Constitution of India* 348 (Eastern Book Company, Lucknow, 12th edn., 2013).

marked a watershed moment. Based on the recommendations of the *States Reorganisation Commission (SRC)*, this Act reorganized Indian states primarily along linguistic lines—a radical move aimed at diffusing tensions that arose due to linguistic chauvinism¹⁶⁰. The creation of Andhra Pradesh in 1953, after the martyrdom of Potti Sriramulu, had already demonstrated the force of linguistic sentiment¹⁶¹. The SRC recognized this and recommended reorganizing the states on linguistic and administrative considerations. The result was the dissolution of the colonial provinces and the creation of more culturally homogeneous states, providing a more representative and participatory democratic model.

The use of Article 3 as a constitutional mechanism to promote national integration while acknowledging sub-national identities exemplifies a functional and pragmatic approach to federalism. However, it also created a precedent where emotional, ethnic, or linguistic movements could be seen as legitimate triggers for territorial reorganization—sometimes at the cost of administrative rationality or inter-state harmony¹⁶².

DOCTRINAL AND ARTICLE-WISE DISCUSSION

Understanding the Language and Scope of Article 3

Article 3 of the Constitution is the principal provision that authorizes Parliament to alter the federal map of India. It empowers Parliament to:

1. Form a new state by separating territory from any state or by uniting two or more states;
2. Increase or diminish the area of any state;
3. Alter the boundaries or name of any state.

However, before introducing any such bill, the President is constitutionally obligated to refer it to the legislature of the state concerned to express its views within a prescribed period.¹⁶³ The proviso thus provides for consultation but not consent. The Supreme Court has held consistently

¹⁶⁰ Government of India, *States Reorganisation Commission Report* (1955).

¹⁶¹ A. G. Noorani, *Constitutional Questions in India: The President, Parliament and the States* 95 (Oxford University Press, Delhi, 2000).

¹⁶² P.S. Jaswal, “Constitutional Law-I” XXXVIII ASIL 115-150 (2002).

¹⁶³ The Constitution of India, art. 3, proviso.

that the views of the state legislature are recommendatory, not binding, and that Parliament retains ultimate authority¹⁶⁴. This principle reflects the Constitution's emphasis on national integration over state autonomy in territorial matters.

Unlike the rigid federal constitutions like that of the United States, where states enjoy territorial sanctity, the Indian Constitution enables dynamic restructuring. The Constitution does not prescribe any substantive limits on Parliament's power under Article 3, other than the procedural requirement of presidential reference.¹⁶⁵ Hence, Parliament can pass such legislation with a simple majority under Article 107 read with Article 3, even without a constitutional amendment.

Supplementary Role of Article 4

Article 4 of the Constitution complements Article 3 by stating that laws made under Articles 2 and 3 may include "supplemental, incidental and consequential provisions." It explicitly declares that such laws are not to be considered constitutional amendments under Article 368¹⁶⁶. Thus, any legislation enacted under Article 3—such as the States Reorganisation Act, 1956 or the Jammu & Kashmir Reorganisation Act, 2019—can affect representation in Parliament, allocation of assets and liabilities, or judicial reassignments without following the formal amendment procedure.

Article 4 serves a functional purpose: it ensures that laws under Article 3 can be executed effectively by allowing consequential provisions without inviting judicial objections on procedural grounds¹⁶⁷. In *Mangal Singh v. Union of India*, the Supreme Court clarified that Parliament's power under Article 4 includes the ability to amend the First Schedule (state list) and the Fourth Schedule (representation in Rajya Sabha) without triggering Article 368¹⁶⁸.

Doctrine of Federal Supremacy and Asymmetry

The constitutional scheme of Articles 3 and 4 exemplifies India's asymmetric federalism. While federal in form, it is unitary in spirit with respect to state formation and reorganization. The

¹⁶⁴ *Babulal Parate v. State of Bombay*, AIR 1960 SC 51.

¹⁶⁵ H.M. Seervai, *Constitutional Law of India*, Vol. I 392 (Universal Law Publishing, Delhi, 4th edn., 2013).

¹⁶⁶ The Constitution of India, art. 4.

¹⁶⁷ M.P. Jain, *Indian Constitutional Law* 540 (Kamal Law House, Calcutta, 5th edn., 1998).

¹⁶⁸ *Mangal Singh v. Union of India*, AIR 1967 SC 944.

doctrine of federal supremacy—where Union authority prevails in case of conflict—is institutionalised in Article 3¹⁶⁹. Unlike federations based on a compact model, Indian states are not co-sovereigns. The Supreme Court in *State of West Bengal v. Union of India* affirmed this position, holding that the Indian Union is not a compact of sovereign states and that Parliament has plenary power over territorial changes.¹⁷⁰

This constitutional asymmetry is further reflected in the structure of legislative power. State consent is not a precondition for boundary changes. This has allowed the Centre to restructure states to suit political, administrative, or security considerations—such as in the formation of Chhattisgarh, Jharkhand, Telangana, and the recent reorganization of Jammu and Kashmir.

Legislative Practice and Constitutional Stability

The practice of implementing state reorganization through ordinary legislation under Article 3 has contributed significantly to the Constitution's stability. It has enabled Parliament to respond to regional demands without being bogged down by rigid amendment procedures. This flexibility has also accommodated demands for sub-national autonomy within the overarching framework of a strong Union. However, it also raises questions about democratic legitimacy when the affected state has little or no say in decisions that alter its very identity.

While Article 3 allows responsiveness, its use also demands caution. It must not become a political tool to fracture or manipulate states for electoral gains. The growing use of Article 3 in recent times, without adequate public deliberation, underlines the need for a more participatory model—perhaps through consultative commissions or mandatory public hearings.

¹⁶⁹ V.N. Shukla, *Constitution of India* 351 (Eastern Book Company, Lucknow, 12th edn., 2013).

¹⁷⁰ *State of West Bengal v. Union of India*, (1963) SC 1241.

LANDMARK CASE LAWS

1. *Babulal Parate v. State of Bombay*, AIR 1960 SC 51

This case was the first significant judicial exposition of Article 3. The petitioner challenged the formation of the bilingual Bombay State under the States Reorganisation Act, 1956, on the ground that the President's reference to the state legislature was inadequate.

The Supreme Court, however, held that the reference made by the President under the proviso to Article 3 was not justiciable¹⁷¹. The Court emphasized that the views expressed by the state legislature, once solicited, were not binding on Parliament. The requirement was procedural and satisfied once the opportunity to express views had been given¹⁷². This case firmly established the principle that state legislatures do not enjoy a veto over territorial reorganization, reinforcing the supremacy of Parliament.

The Court also drew a distinction between the legislative power of Parliament under Article 3 and the amending power under Article 368, clarifying that territorial changes do not amount to constitutional amendments.¹⁷³ This case laid the foundation for the central government's continued dominance over territorial arrangements within the Union.

2. *Re: Berubari Union*, AIR 1960 SC 845

In this presidential reference under Article 143, the Court had to determine whether cession of Indian territory to a foreign country, as proposed under the Indo-Pak Agreement (1958), could be accomplished under Article 3.

The Court unanimously held that cession of territory to a foreign country is not covered by Article 3, and must instead be effected by a constitutional amendment under Article 368¹⁷⁴. The decision clarified the external limit of Article 3, distinguishing between internal adjustments of state boundaries and transfer of sovereignty.

¹⁷¹ *Babulal Parate v. State of Bombay*, AIR 1960 SC 51.

¹⁷² *Ibid.*, at 55.

¹⁷³ H.M. Seervai, *Constitutional Law of India*, Vol. I 393 (Universal Law Publishing, Delhi, 4th edn., 2013).

¹⁷⁴ *Re: Berubari Union*, AIR 1960 SC 845.

Although not involving state reorganization per se, *Berubari* is a cornerstone case that delineates the scope of Article 3. It ensures that territorial integrity involving sovereignty is protected from unilateral executive or legislative action, thereby preserving constitutional sanctity.

3. *State of West Bengal v. Union of India*, (1963) SC 1241

This landmark case examined whether laws could be enacted that affected state-owned property without the consent of the concerned state. Though not directly related to Articles 3 and 4, its observations on federalism and the status of states are central to understanding the reorganization power. Parliament

The Supreme Court rejected the claim of West Bengal that the Constitution implied a contractual federalism, akin to the U.S. model. Instead, the Court declared that Indian states are not sovereign entities, but constitutional constructs subordinate to Parliament in specific matters, including territory¹⁷⁵.

This case reinforced the unitary tilt of Indian federalism and validated Parliament's authority to reshape state structures under Article 3, without needing state approval. It remains one of the most cited authorities on the non-federal origins of Indian states.

4. *In re: Special Reference No. 1 of 2002*, (2002) 8 SCC 237

This reference arose out of the Gujarat Assembly dissolution controversy, in which the President sought the Supreme Court's opinion on whether the Election Commission could delay elections indefinitely.

While not directly related to Article 3, the Court's emphasis on the primacy of constitutional procedure and consultative democracy is instructive¹⁷⁶. The judgment underscored that constitutional institutions must adhere to structured timelines and consultative mechanisms, echoing the procedural discipline found in Article 3's reference mechanism.

¹⁷⁵*State of West Bengal v. Union of India*, (1963) SC 1241.

¹⁷⁶*In re: Special Reference No. 1 of 2002*, (2002) 8 SCC 237.

By extension, the case strengthens the argument that even where discretion is granted, such as the President's discretion in referring to a bill under Article 3, the process must respect constitutional norms of transparency and reasonableness.

Recent Developments: Reorganization of Jammu and Kashmir (2019)

The reorganization of Jammu and Kashmir in August 2019 through the *Jammu and Kashmir Reorganisation Act, 2019* reignited constitutional scrutiny over Article 3¹⁷⁷. The Act bifurcated the state into two Union Territories—Jammu & Kashmir and Ladakh—without an active state legislature, since President's Rule was in place.

While technically complying with Article 3, as the President acted on behalf of the dissolved state legislature, critics argue that this was a procedural manipulation and undermines the spirit of democratic federalism¹⁷⁸. Several petitions challenging the Act remain pending before the Supreme Court, and their outcome will likely redefine the procedural sanctity under Article 3.

This event reflects the evolving jurisprudence of territorial reorganization, where national security and politics with constitutional principles. It also illustrates the continued relevance—and controversy—surrounding Articles 3 and 4 in India's constitutional discourse.

CONTEMPORARY RELEVANCE

The constitutional power vested in Parliament under Articles 3 and 4 continues to shape India's internal political structure in profound ways. The recent decades have seen a resurgence in demands for new states driven by factors like regional disparity, cultural assertion, administrative efficiency, and political mobilization. These developments reaffirm the contemporary relevance of Articles 3 and 4, not just as tools for territorial rearrangement but as instruments of governance and identity negotiation.

1. The Reorganization of Jammu & Kashmir (2019): A Turning Point

¹⁷⁷ Government of India, *Jammu and Kashmir Reorganisation Act, 2019* (Act 34 of 2019).

¹⁷⁸ A.G. Noorani, "J&K: Constitutional Trickery", *Frontline*, Sept. 6, 2019.

Arguably the most far-reaching territorial restructuring in post-independence India was the abrogation of Article 370 and the bifurcation of Jammu & Kashmir into two Union Territories: Jammu & Kashmir, and Ladakh. This was effectuated through the Jammu & Kashmir Reorganisation Act, 2019, passed by Parliament under Article 3¹⁷⁹. What made this case unprecedented was that the state legislature had been dissolved, and Parliament, acting through the President, used its authority under Article 356 to substitute itself as the consulting body.

While technically compliant with Article 3's requirement for "consultation" with the state legislature, the action raised critical constitutional and democratic questions. Can a dissolved legislature under President's Rule be deemed to have been "consulted"? Can a full-fledged state with special status under Article 370 be downgraded to a Union Territory without constitutional amendment?¹⁸⁰ The issue is under judicial review in *In re Article 370 Cases*, and the Supreme Court's judgment is expected to define the limits of procedural elasticity under Article 3¹⁸¹.

2. Movements for New States: Gorkhaland, Vidarbha, and Bundelkhand

There is a long-standing demand for a separate Gorkhaland in northern West Bengal. The Gorkha Janmukti Morcha and other political groups have cited cultural distinctiveness and economic neglect as justifications for statehood¹⁸². Similarly, Vidarbha, a region in Maharashtra, has for decades sought separate state status based on claims of underdevelopment and lack of resource allocation despite being rich in minerals¹⁸³. In Bundelkhand, spread across Uttar Pradesh and Madhya Pradesh, proponents argue that geographic isolation and poor infrastructure necessitate a new state for better governance.

These demands reveal that the reorganization of states is no longer solely about linguistic identity, as in the 1950s, but increasingly about regional equity, administrative accessibility, and political representation. Article 3 remains the sole constitutional mechanism to respond to such aspirations. However, critics argue that the central government's political will—not objective

¹⁷⁹ Government of India, *Jammu and Kashmir Reorganisation Act, 2019* (Act 34 of 2019).

¹⁸⁰ A.G. Noorani, "J&K: Constitutional Trickery", *Frontline*, Sept. 6, 2019

¹⁸¹ *In re Article 370*, Constitution Bench Matters (Writ Petitions No. 1099/2019 & connected matters), judgment reserved in 2023.

¹⁸² Sabyasachi Basu Ray Chaudhury, "Statehood Demand and Identity: The Gorkhaland Movement", 44(29) *EPW* 69-75 (2009).

¹⁸³ Sudhir Kale, "The Vidarbha Statehood Demand: A Reassertion of Sub-Regionalism", 53(48) *EPW* 13-15 (2018).

criteria—determines the outcome of such movements¹⁸⁴. The absence of a transparent legal framework or threshold criteria for new state creation renders the process discretionary and politically manipulable.

3. Federalism in Flux: Centre-State Relations and Article 3

The unitary character of Article 3, while constitutionally accepted, has drawn increasing scrutiny. As India transitions into a coalition democracy with powerful regional parties, the top-down nature of state formation appears increasingly out of step with democratic federalism¹⁸⁵. Scholars and jurists have suggested reforms such as requiring a special majority in Parliament, mandatory public consultations, or referendums in affected regions before state boundaries can be changed.¹⁸⁶

Furthermore, the political use of Article 3 to appease or marginalize regional aspirations raises questions of constitutional morality. The Telangana bifurcation in 2014, for instance, was carried out in the face of severe opposition from the residual Andhra Pradesh assembly.¹⁸⁷ The state legislature opposed the bifurcation, but Parliament proceeded nonetheless—highlighting the non-binding nature of state consultation under Article 3. The episode provoked demands for rethinking the balance between democratic participation and legislative supremacy.

4. The Case for Reform: From Discretion to Deliberation

Although Articles 3 and 4 have served the Indian state well by allowing flexibility, there is a growing consensus that the process of state reorganization needs reform. Experts argue for a structured legal framework that incorporates objective benchmarks, such as population size, geographic contiguity, developmental indicators, and cultural distinctiveness¹⁸⁸. Such a framework could be institutionalized through a permanent State Reorganisation Commission or a constitutional amendment mandating broader consultations.

¹⁸⁴ Rekha Saxena, “Reconfiguring the Indian Federation: Statehood Demands and Federal Stability”, 2 *Indian Journal of Federal Studies* 45 (2013).

¹⁸⁵ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* 312 (Oxford University Press, Delhi, 1999)

¹⁸⁶ D.D. Basu, *Introduction to the Constitution of India* 243 (LexisNexis, Nagpur, 24th edn., 2019).

¹⁸⁷ *Andhra Pradesh Reorganisation Act, 2014* (Act 6 of 2014).

¹⁸⁸ R.L. Bhat, “Statehood Demands in India: Need for a Rational Framework”, PRS Legislative Research, available at: <https://prsindia.org>

Until such reforms are implemented, the power under Article 3 will continue to be exercised as a legislative prerogative rather than a democratic process, vulnerable to being shaped by political expediency instead of public interest.

CONCLUSION

Articles 3 and 4 of the Indian Constitution exemplify the framers' pragmatic vision of a flexible yet unified Union. Unlike classical federations where constituent states enjoy constitutional inviolability, the Indian framework empowers Parliament to redraw internal boundaries, change names, and even dissolve or create states based on evolving national interests. This exceptional flexibility has enabled the Constitution to accommodate diverse identities, administrative requirements, and political aspirations without resorting to formal constitutional amendment.

From the linguistic reorganization of the 1950s to the politically sensitive bifurcation of Jammu and Kashmir in 2019, Articles 3 and 4 have operated as vital tools for internal consolidation and responsive governance. The Supreme Court, through landmark decisions such as *Babulal Parate* and *State of West Bengal v. Union of India*, has upheld the paramountcy of Parliament in these matters, reiterating that Indian states derive their existence from the Constitution and not historical sovereignty.

Yet, the current usage of Article 3 reveals significant tensions. The lack of binding consultation with affected state legislatures has led to criticisms of democratic deficit and over-centralization. The opaque process, political expediency, and absence of objective criteria for state creation have further amplified the call for procedural reforms. As India moves deeper into the 21st century, balancing the need for federal flexibility with democratic accountability is no longer just a theoretical concern but a constitutional necessity.

Therefore, reform is essential—not to dilute Parliament's authority, but to strengthen participatory governance. Introducing structured mechanisms such as mandatory public consultations, objective benchmarks, and referendums can harmonize the spirit of Articles 3 and 4 with the principles of cooperative federalism. In doing so, India would preserve its unity while respecting the diversity that continues to shape its federal landscape.

CHAPTER 5

Citizenship (Articles 5–11)

By Sania Haneef

INTRODUCTION

Citizenship, when seen from a philosophical perspective, is seen to be an inherently contested philosophical narrative which is very difficult to understand. When viewed in that light, citizenship can be regarded as a “status between those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed.”¹⁸⁹

Citizens are individuals who are not aliens who do not enjoy rights that citizens usually wouldn't; in India, this can be seen in the way of certain rights and duties which are imposed onto them, inclusive of the right of equality and right to freedom of speech, for example. However, a question arises as to who is considered a citizen. Would it be by birth? If so, what is the status of NRI, which is provided to Indians who are residing outside of India? Does the place of one's residence determine who is a citizen?

The questions which pertain to the same are addressed by our constitutional drafters through 6 provisions present in the Constitution as well as the Citizenship Act, which provides further details on who is considered to be a citizen.¹⁹⁰

PROVISION ANALYSIS

The Constitution views certain aspects of citizenship through the lens of pre-independent India

¹⁸⁹ R.S. Lawy & G.J.J. Biesta, “Citizenship-as-Practice: The Educational Implications of an Inclusive and Relational Understanding of Citizenship” 54 *Brit. J. Educ. Stud.* 34–50 (2006).

¹⁹⁰ G.M. Lamberton, “Indian Citizenship” 20 *Am. L. Rev.* 183 (1886).

and the elements that involve the partition that took place during the time and addresses it effectively. Articles 5 – 8 determine aspects of the citizens of India at the commencement of the Constitution.

Article 5: Article 5 governs citizenship by Domicile in accordance with which a person is only entitled to citizenship by Domicile if he fulfils two qualifications, which include

1. He must have been domiciled in India at the time India's territory was made.
2. He needs to fulfil any one of the three conditions present, which include whether he was born in India, whether his parents were born in India, or whether he must have been an ordinary resident in India five years before the commencement of the Constitution.

In accordance with this article, the key terminology used is Domicile. However, Domicile is not defined in the Constitution. Domicile is not with regards to one's place of residence but rather refers to the physical intention to make the place one's residence. There are two kinds of Domicile: Domicile of origin and Domicile of choice. Domicile of origin is the place where they were born. However, the Domicile of origin does not need to be the citizenship of the person. It attaches itself to a man at the time of the individual's birth. An independent person is allowed to give up on their Domicile of origin until they are able to acquire a new domicile.

The other type of Domicile is Domicile by choice, which is a combination of two aspects, which includes the actual residence in the area or the intention of a person to remain in that place indefinitely.

- *D.P. Joshi v. State of Madhya Bharat*¹⁹¹

This case held that the Indian states have legislative power to determine Domicile differently in the context of personal laws like marriage, divorce, and succession.

- *Pradeep Jain v. Union of India*¹⁹²

The Supreme Court clarified that in the case of professional institutions like medical colleges,

¹⁹¹ D.P. Joshi v. State of Madhya Bharat, AIR 1955 SC 334.

¹⁹² Pradeep Jain v. Union of India, (1984) 3 SCC 654.

“domicile” means an intention to reside within the state forever or for an indefinite period of time. It puts emphasis on intent while determining legal Domicile in such cases.

Article 6: This article lays down guidelines for the status of persons who have migrated to India from Pakistan. This particular article deals with both cases where individuals arrived in present-day India after and before July 19, 1948.

Specifically, if the individual parents or grandparents were born in India as defined in the Government of India Act and if they migrated before July 19, 1948, where he has been ordinary residents of India ever since

Or they have migrated after July 19 1948; he has registered as a citizen as per the directions of the officer who is appointed on behalf of the Dominion of India on the application as well as either his parent or grandparent has been born in India as defined by the Government of India Act.

This is, however, accompanied by a proviso clause where no person will be registered unless they have been a resident of India for the immediate preceding date of the application. It must be noted that this article deals with individuals who migrated to India before the commencement of the Constitution.

Article 7: This article deals with the situation where individuals have migrated to present-day Pakistan, and an individual who has done so after March 1 1947, and is part of the territory considered present-day Pakistan will not be determined to be a citizen of India.

Note: This article does not apply to individuals who have migrated to the territory of Pakistan; nevertheless, they have migrated back to the territory of India under the permit of resettlement or permanent return, which is issued under a competent authority. Article 7 also overrides the powers of Article 5. For even if the person is a citizen of India by virtue of Article 5 and has migrated to Pakistan, then they can't be considered a citizen of India.

- Kulathil Mammu v. State of Kerala¹⁹³

¹⁹³ Kulathil Mammu v. State of Kerala, AIR 1966 SC 1614.

The Supreme Court interpreted the meaning of the word “migrated” under Articles 6 and 7. The majority verdict interpreted it within the context of partition politics and history. The Court determined that “migration” here referred to moving away from India to a location in Pakistan, either permanently or temporarily.

Article 8: Citizenship rights of some Indian-origin individuals living abroad. Regardless of what is said in Article 5, any individual whose parents or grandparents were born in India as defined by the Government of India Act, 1935.

It should be mentioned that the Supreme Court reversed its previous ruling in *Shanno Devi (Smt.) v. Mangal Sain*, AIR 1961 SC 58¹⁹⁴, which had maintained that the term “migrated” refers to moving from one location to another with the goal of settling there permanently.

If certain requirements are met, this article grants Indian citizenship to someone who, on the surface, did not reside in India. Therefore, it is evident that the non-obstante clause used in Article 8 and Articles 6 and 7 is intended to exclude the concept of residence from these three articles. A person who has been registered as an Indian citizen by the Indian diplomatic or consular representative in the nation where he is currently residing, upon his application to that representative, will be considered an Indian citizen as such.¹⁹⁵

Article 9: According to this article, an individual who has willingly obtained citizenship in another country is no longer eligible to hold Indian citizenship. It solely addresses voluntarily obtaining citizenship in a foreign state prior to the Constitution’s ratification. Following the Constitution’s ratification, cases involving voluntary foreign citizenship acquisition must be handled by the Indian government in accordance with the Citizenship Act of 1955. 93 It is the responsibility of the Central Government to decide if an individual has lost their citizenship in this nation and obtained citizenship in another. Only then can the State Government deal with the individual.

If a citizen obtains a passport from a foreign government and the case falls under the contested rule, it may be assumed that he has obtained citizenship in the foreign nation. However, only the

¹⁹⁴ *Shanno Devi (Smt.) v. Mangal Sain*, AIR 1961 SC 58.

¹⁹⁵ Anas Yawar & Aviral Mathur, “Conundrum of Citizenship Law: Legality and Reality” 2 *LexForti Legal J.* 1 (2020).

appropriate authority authorized by the Act to investigate the matter may make that determination. Therefore, it is imperative that the Central Government consider the matter first in any situation where action is “proposed to be taken against persons residing in this country on the ground that they have acquired the citizenship of a foreign State and have consequently lost the citizenship of this country.”

A foreign state, accordingly, is defined as any state outside India unless the President, under a law made by Parliament, declares otherwise for specific purposes.¹⁹⁶

Article 10: Article ten defines provisions in accordance with the continuation of the rights of the citizen, where every person who is considered to be a citizen will be subjected to the decisions made by the Parliament of India.

This showcases how the right to citizenship under this provision, however, has the chance to be destroyed as well as taken away directly.¹⁹⁷

Article 11: This article confers power onto the Parliament to regulate their right of citizenship via law, and there shall be no provision which shall derogate from the power of the Parliament to make any provision with respect to the acquisition and termination of citizenship and with regard to all aspects concerning citizenship.¹⁹⁸

THE CITIZENSHIP ACT, 1955

The Parliament of India legislated the Citizenship Act, 1955 under the provisions of Article 11 of the Indian Constitution. The Act imposes detailed provisions of acquiring and losing Indian citizenship with the commencement of the Constitution. The Act was amended many times in the past years, the most notable of which were through the Citizenship (Amendment) Acts of 2003 and 2005, which made far-reaching changes to its scheme.

The Act outlines five fundamental modes through which Indian citizenship is obtained: (1) by birth, (2) by descent, (3) by registration, (4) by naturalisation, and (5) by inclusion of territory.

¹⁹⁶ H.M. Seervai, *Constitutional Law of India, Volume 1* (Universal Law Publishing, Delhi, 4th edn., 2013).

¹⁹⁷ Vivek Kumar Gupta, “Navigating Indian Citizenship: A Comprehensive Analysis of Laws, Amendments, and Controversies” 4(1) *IJCLLR* 188-193 (2024).

¹⁹⁸ V.N. Shukla, *Constitution of India* (Eastern Book Company, Lucknow, 14th edn., 2020).

1. Citizenship by Birth

Under Section 3 of the Act, an individual shall be deemed to be a citizen of India by birth if he fulfils certain requirements based on the date of birth. Those born in India between 26th January 1950 and 1st July 1987 are automatically citizens, regardless of the nationality of their parents.

Those born between 1st July 1987 and 3rd December 2003 are citizens of India by birth if one or both of their parents were Indian citizens at the time of their birth. Individuals born on or after 3rd December 2003 are citizens by birth only if both parents are Indian citizens, or only if one of them is a citizen of India and the other is not an illegal immigrant at the time of birth.

Exceptions to this rule are provided in Section 3(2). A citizen shall not be a citizen by birth if:

- a) Either parent has diplomatic immunity (i.e., holds the status of accredited envoy of a foreign sovereign) and is not an Indian citizen; or
- b) The person is born in an enemy occupied territory and one parent is an enemy alien at the time of birth.

2. Citizenship by Descent

Section 4 deals with citizenship acquisition by descent for the born abroad. The requirements differ based on the birth date:

For foreign-born children from 26th January 1950 to 10th December 1992, citizenship is provided if the father was a citizen of India by birth. But if the father himself was a citizen by descent, then the child should either get their birth registered in an Indian consulate within a year or the father should have been employed in the Indian government at that time.

For individuals born overseas on or after 10th December 1992, citizenship is granted if one of the parents is a citizen at birth. If the parent is one by descent only, then again conditions of consular registration or government service apply.

Additionally, if a citizen of India by birth is also a national of some foreign country, he or she will be required to renounce foreign nationality within a period of six months of attaining majority. Otherwise, their citizenship will be forfeited.

3. Registration of Citizenship

Section 5 of the Citizenship Act, 1955, provides for the Central Government to grant Indian citizenship by registration to those who are not citizens under the Constitution or under other provisions of the Act. This mode of acquisition of citizenship is regulated by the fulfillment of certain eligibility conditions and filing a proper application before the authorities.

But one of the major restrictions is that the candidate must not be an illegal migrant. Illegal migrant refers to a foreign national who has either:

- a) Entered India without valid travel documents such as a passport, or
- b) Entered with valid documents but stayed for more than the legal duration.

If a person is not an illegal immigrant, he/she may apply for registration as an Indian citizen under one of the categories specified in Section 5(1). These categories are:

- a) Indian origin individuals having been ordinarily resident in India for seven years continuously prior to the time of making an application. An individual shall be considered an Indian origin person if he or either of his parents was born within undivided India or in regions which became a part of India after 15th August 1947.
- b) Indian origin individuals being ordinarily resident in any country outside undivided India.
- c) Married to Indian citizens and normally resident in India for seven years before applying.
- d) Below the age of eighteen years and whose parents are Indians by birth.
- e) Persons of full age and sound disposing ability whose parents are registered Indian citizens under clause (a) of Section 5(1).
- f) Persons of full age and capacity who themselves or whose parents were citizens of Independent India and have resided in India for at least one year prior to making the application.
- g) Overseas Citizens of India (OCIs) registered for a period of five years and residing in India for at least one year immediately preceding the making of the application.¹⁹⁹

4. Citizenship by Naturalisation

¹⁹⁹ Anas Yawar & Aviral Mathur, “Conundrum of Citizenship Law: Legality and Reality” 2 LexForti Legal J. 1 (2020).

Under Section 6 of the Citizenship Act, 1955, anyone who is not an illegal immigrant and is of full age and capacity, may be granted Indian citizenship by naturalisation. On receiving an application for this purpose and being satisfied with regard to the eligibility of the applicant, the Central Government may issue a certificate of naturalisation.

He will be eligible if he:

- a) The candidate must not be a national of a nation that does not allow Indian nationals to obtain its citizenship through naturalisation.
- b) If the candidate is a foreign citizen, he or she must undertake an obligation to relinquish the foreign citizenship upon obtaining Indian citizenship.
- c) The individual must have been living in India or holding a government job for at least 12 months prior to making the application.

Apart from that, in the 14 immediate years prior to these 12 months, the applicant would have spent a total of 11 years in India. An applicant should be of good character. The applicant should possess adequate knowledge of any Indian language specified in the Eighth Schedule to the Constitution.

Finally, there must be a clear intention to live in India or work for the Government upon acquiring citizenship.

The Act further empowers the Central Government to exempt any or all of the conditions in exceptional cases. For instance, if an individual has rendered exceptional service in the field of science, philosophy, literature, art, world peace, or human progress, naturalisation can be granted without adhering to the strict parameters of the normal criteria.

On issue of the certificate and after taking oath of allegiance (under Second Schedule), he becomes an Indian citizen by naturalisation.

5. Citizenship by Incorporation of Territory

According to Section 7 of the Act, where a new territory is incorporated into India, the Central Government may determine, by a formal order, whom among the people who belong to that territory should be considered Indian citizens. Such individuals are Indian citizens from the date

specified in the order. This provision will allow smooth absorption of populations on the expansion of the territory by India.²⁰⁰

TERMINATION OF CITIZENSHIP

The Citizenship Act, 1955 also makes provisions for the loss of Indian citizenship, whether under the Act or under the provisions of the Constitution. The citizenship may be taken away in three manners:

(a) Renunciation of Citizenship

Under Section 8, an Indian full age and capacity citizen may renounce citizenship by voluntary declaration and registration with the Central Government. But if the declaration is made during war, the registration shall stand suspended until otherwise ordered by the Government.

Further, when a person renounces citizenship, his minor children also lose Indian citizenship. But such children regain Indian citizenship by making a declaration one year after turning 18 years old.

(b) Termination of Citizenship

Under Section 9, if a citizen of India voluntarily acquires the citizenship of another country, the citizenship of India automatically ceases. One exception in this respect is for citizens who acquire foreign citizenship by participation in the war against India, under which the deprivation shall not take place.

(c) Deprivation of Citizenship

Under Section 10, Indian citizenship can be terminated by declaration (i.e., voluntary surrender) or can be forcibly terminated by the Central Government in certain situations. This is mainly for those who came to attain citizenship by naturalisation, registration, or residence. The grounds are:

- a) Citizenship has been obtained by fraud, misrepresentation, or concealment of vital facts.

²⁰⁰ Kanwaljit Singh, “Modes of Acquiring Citizenship under Indian Constitution” 5 Int’l J.L. Mgmt. & Human. 731 (2022).

- b) The individual has been disloyal to the Constitution by conduct or speech.
- c) During war, the individual communicated or dealt with the enemy against the law.
- d) Within five years of registration or naturalization, the person has been imprisoned for two years or more.
- e) The person has been abroad persistently for seven years without valid governmental approval.

Before ordering a deprivation, the government must serve a written notice, and in some cases, must refer the case to a Committee of Inquiry. The committee consists of a chairman and two members, and after making an inquiry, its report would typically influence the final order of the government.²⁰¹

ONE CITIZENSHIP IN INDIA

Although India is a federation, it only has one homogeneous citizenship—that of India. There is no state-level citizenship separate from it, as in the United States or Switzerland, where national and state dual citizenship exists. All Indian citizens, regardless of what state or region they are from, have equal legal rights, guarantees, and privileges.

This was reaffirmed in the hallmark case of *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat* (2008) 5 SCC 33²⁰², where the Supreme Court observed that India is a Union of States and not a confederation. It reaffirmed the observation that all Indians could move, settle, and trade anywhere in India and hence promote national integration and unity. The Court emphasized tolerance and respect for each other by communities as crucial for the continued cohesiveness of the nation.

OVERSEAS CITIZENSHIP OF INDIA (OCI)

The Overseas Citizenship of India (OCI) was instituted by the Citizenship (Amendment) Act, 2003, to allow for greater connection with the Indian diaspora. While OCI is not equivalent to full dual citizenship, it does grant a series of advantages to individuals of Indian origin who are

²⁰¹ Niraja Gopal Jayal, “Citizenship” in Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian Constitution* 163–179 (Oxford University Press, New Delhi, 2017).

²⁰² *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat*, (2008) 5 SCC 33.

citizens of other countries.

Eligibility for Registration as an Overseas Citizen of India (Section 7A)

- a) As per Section 7A, the Central Government may, on an application being made, register any person as an overseas citizen of India if they meet certain conditions. The following are eligible for OCI status:
- b) Any person of full age and capacity who is a foreign citizen, but was a citizen of India at any time after the commencement of the Constitution.
- c) A person who was eligible to become an Indian citizen at the commencement of the Constitution, but is now a foreign citizen.
- d) A person who was a citizen of a location that became part of India after 15th August 1947, and is now a foreign citizen.
- e) A child or grandchild of a person who is enrolled as an overseas citizen of India.
- f) A minor child of a registered overseas citizen of India.

However, individuals who are or have been citizens of Pakistan, Bangladesh, or any other country specified by the Central Government are excluded from eligibility for OCI registration.

Rights of Overseas Citizens of India (Section 7B)

According to Section 7B(1), overseas citizens of India enjoy certain rights as specified by the Central Government through official notifications. These include:

- a) A multi-entry lifetime visa to visit India for any reason.
- b) Exemption from registration with the Foreigners Regional Registration Officer (FRRO) or Foreigners Registration Officer (FRO), regardless of the length of stay.
- c) Parity with Non-Resident Indians (NRIs) in economic, financial, and educational affairs, except for acquiring agricultural or plantation land.

Restrictions on OCI Rights (Section 7B(2))

Despite the various advantages, the OCI cardholders are not citizens of India and hence do not enjoy political and constitutional rights that are enjoyed by Indian citizens. As per Section 7B(2), OCI holders are not given the following rights:

- a) The Fundamental Right under Article 16 (equality in matters of public employment).
- b) The right to contest the office of the President (Article 58) or Vice-President (Article 66).
- c) The right to be appointed a Judge of the Supreme Court (Article 124) or a High Court (Article 217).
- d) The right to vote under Section 16 of the Representation of the People Act, 1950.
- e) The right to contest election to Parliament or State Legislatures under various provisions of the Representation of the People Act, 1951.
- f) The right to be appointed to public service and office in connection with the affairs of the Union or a State, except for a few certain offices the government can allow by notification.

The OCI status is thus a hybrid legal category: while it does not grant full citizenship, it creates a practical and symbolic bridge between India and persons of Indian origin around the globe. It enables them to maintain cultural and familial ties with India, participate in its economic and educational life, and travel to the nation without any constraints, while certainly delineating constitutional and political rights for full Indian citizens.

Renunciation and Cancellation of Overseas Citizenship of India

While Overseas Citizenship of India (OCI) offers various privileges to Indian origin citizens living abroad, the Citizenship Act, 1955, also provides for voluntary renunciation and compulsory cancellation of such citizenship under Sections 7C and 7D, which were incorporated by the Citizenship (Amendment) Act, 2003.²⁰³

Renunciation of Overseas Citizenship (Section 7C)

An Indian foreign citizen who is competent to contract and of age can relinquish his OCI status by submitting a formal declaration in the prescribed manner. As soon as the declaration is received and registered by the Central Government, the individual will forfeit his status as an overseas citizen of India.

In addition, the Act mandates that if a person relinquishes their OCI status, their entire minor

²⁰³ Partha S. Ghosh, "Review: The Citizenship Discourse in India" Rev. of *Mapping Citizenship in India* by Anupama Roy, 46(11) Econ. & Pol. Wkly. 28-30 (2011).

children who were so taken on as overseas citizens lose their OCI status as well. However, this is subject to reapplication in the future when such children become a majority, if they wish to obtain OCI status independently.

Cancellation of OCI Registration (Section 7D)

The Central Government also has the power to cancel the registration of a person as an overseas citizen of India on the satisfaction of certain conditions. They are:

- a) If it is discovered that the registration as OCI was obtained by fraud, by false representation, or by concealment of material facts, the registration may be cancelled.
- b) If the OCI cardholder has behaved in a manner of disaffection against the Constitution of India, the OCI status can be revoked.
- c) If the person has traded or corresponded with an enemy during war when India is engaged in war, the OCI registration can be revoked.
- d) Where the OCI holder has been convicted and sentenced to imprisonment for two years or more in the past five years since registration, the status can be revoked.
- e) If, as per the government, retention of OCI status is against the sovereignty and integrity of India, or prejudicial to the safety and security of India, its relations with foreign countries, or the public interest generally, the registration may be cancelled.

These provisions ensure that the privilege of OCI is granted only to deserving individuals who are having a dignified relationship with the Indian state and its constitutional values. These provisions also allow the government to protect national security and public interest by withdrawing such status when necessary. Thus, even though OCI privileges many rights and opportunities, they come with responsibilities and can be withdrawn on clearly defined legal grounds.²⁰⁴

²⁰⁴ J.N. Pandey, *Constitutional Law of India* (Central Law Agency, Allahabad, 55th edn., 2018).

CHAPTER 6

Definition of the State (Article 12)

By Aditya Raj

INTRODUCTION

The Indian constitution has drawn aspiration from the U.S. precedent, particularly in incorporation of fundamental rights. Fundamental rights are a collection of rights which are guaranteed to all the citizens of the nation by the Indian Constitution under Part III.²⁰⁵ These rights are available equally to all citizens residing in the nation, irrespective of their race, birth-place, religion, caste or sex. They are legalized through the law as rights that are due for a high level of protection by the Government and should not be violated by the Government. Fundamental rights should not be enforceable against individuals or private organizations. It is the duty of the state or government or their authorities to protect these rights. It is the preponderance of the Fundamental rights granted to the citizens which are enforceable against the State and its instrumentalities but not against the private agencies²⁰⁶. Article 12 provides a wide meaning to the expression 'state'. It is crucial to define what falls within the ambit of 'State' in order to determine upon whom the constitutional burden or obligation should be placed. The Constitution-makers used the phrase 'the State' in a broader sense than its ordinary or commonly understood meaning. It does not simply imply the Union of States. The word used 'Includes' is used in the article and implies that the definition is partial and as a result of judicial interpretations, the court has extended the scope of the Article way beyond what even the draftsmen of Article 12 could ever have conceived when they were constitution-framing.

State has been defined by several political thinkers and given various meanings in different literature. This chapter deals with the extent of definition of the State according to article 12 of

²⁰⁵ Meenu Pahal, Article 12: State Defined, 28 April 2019, <https://www.scribd.com/document/407872588/Article-12-State-defined> (last visited June 12, 2025)

²⁰⁶ Prateek Tripathi, Instrumentalities of State for the Purpose of Article 12 of the Constitution of India, July 26, 2019 <https://ccrd.vidhiaagaz.com/instrumentalities-of-state-article-12> (last visited June 12, 2025)

the Indian Constitution.²⁰⁷ The scope of Article 12 has been expanded by judicial rulings from time to time. The phrase “other authorities” has been interpreted broadly by courts in different cases. The chapter also includes recent developments and the role of the judiciary in this regard.

Definition: Article 12 of The Indian constitution describes the State. In this article it is stated that “*State means or comprises the government and parliament of India and all the state governments along with the legislature of each state and all local and all the authorities, within India's territory or under the control of the government of India.*”

It does not limit the meaning of state but rather widens the definition to include all powers in the control of government. Any power in the control of the government of India falls within the meaning of the State under Article 12. (*Som Prakash Rekha v. U.O.I*)²⁰⁸

This definition of the State under Article 12 is applicable only for Part 3 (Fundamental Rights) and Part 4 (Directive Principles of State Policy) of the Constitution of India.

That includes:

1. Government (Union and state)
2. Parliament(Lok Sabha & Rajya Sabha) and state legislature (legislative council & legislative council)
3. Local authorities (Municipalities & Panchayat)
4. Other authorities
5. Territory of India
6. Control of the government of India

- **Government (Union and State):** This embraces the Union (Central) Government's executive branches and all those of each State Government, including all their instrumentalities and departments.
- **Parliament and State Legislature:** It encompasses both houses of Parliament of India (Lok Sabha and Rajya Sabha) and the Legislatures of every State (Legislative Assembly and, as the case may be, Legislative Council).

²⁰⁷ Ibid

²⁰⁸ Som Prakash Rekha v. U.O.I, (1981) 1 SCC 449 : AIR 1981 SC 212.

- **Local Authorities:** These are the local administration bodies like Municipalities, Municipal Corporations, Nagar Panchayats, Zila Panchayats, Gram Panchayats, District Boards, and Improvement Trusts.
- **Other Authorities:** "Other authorities" is a deliberately wide term that has been construed by courts as a broad group of statutory and non-statutory bodies that perform governmental or public functions.

Statutory authorities: Organizations formed by statutes like National Human Rights Commission, National Green Tribunal, and Armed Forces Tribunal.

Non-statutory authorities: Organizations not formed by statute but performing public functions like Central Bureau of Investigation (CBI) and Central Vigilance Commission.

The Supreme Court has interpreted that even where the term "body" is not used, if it is substantially owned, controlled, or run by the government, or is performing governmental obligations, it can be treated as "State" under Article 12. These consist of government companies, public sector undertakings, and institutions such as universities and regulatory commissions.

Article 1(3) of the constitution of India states that, The territory of India shall comprise-

- (a) the territories of the States;
- (b) the Union territories specified in the First Schedule;
- (c) such other territories may be acquired.

In the case of *N. Masthan Sahib v. Chief Commissioner, Pondicherry*²⁰⁹ The court held that the territory of India for the purposes of Article 12 means the territory of India as defined in **Article 1(3)**.

Control of the government of India Under Article 12, the control of the Government does not necessarily mean that the body must be under the absolute direction of the government. It merely means that the government must have some form of control over the functioning of the body. Just because a body is a statutory body, does not mean that it is 'State'. Both statutory, as well as

²⁰⁹ N. Masthan Sahib v. Chief Commissioner, Pondicherry, AIR 1962 SC 797

non-statutory bodies, can be considered as a 'State' if they get financial resources from the government and the government exercises a deep pervasive control over it.

In *Biswas v. Indian Institute of Chemical Biology* (a 7-Judge Bench decision), the Court considered the criteria for determining whether a body qualifies as a "State" under Article 12 of the Constitution. It reaffirmed that the principles laid down in *Ajay Hasia v. Khalid Mujib* are not to be applied rigidly. Merely satisfying one of the criteria does not, **ex hypothesi**, render a body a "State" within the meaning of Article 12. The principles laid down are as follows:

1. The determination in each case must be based on the specific facts available. The key question is whether, in light of the cumulative factors, the body is financially, functionally, and administratively dominated by or under the control of the government.
2. Such control must be **specific and particular** to the body in question, and it must be **pervasive** in nature.
3. **Mere regulatory control**, whether under a statute or otherwise, is **not sufficient** to classify a body as a "State." As held in *Zee Telefilms Ltd. v. Union of India*²¹⁰ (Para 33), the mere fact that a non-governmental body performs a public duty does not, by itself, make it a "State" under Article 12.
4. Corporate functions must be assessed in terms of their alignment with governmental functions. A strong link to governmental objectives may support the classification, but each case must turn on its own facts.²¹¹

Under Article 12 of the Constitution, the bodies specifically named include the executive government of the Union, the States, and the local authorities. It is difficult to identify any common genus or shared characteristic among these entities, nor can they be placed into a single category on any rational basis. As a result, the doctrine of *ejusdem generis* (of the same class or kind) cannot be applied to interpret the expression "other authorities" used in this context. The term must, therefore, be interpreted independently, without limiting its scope by reference to the nature of the preceding words.

²¹⁰ *Zee Telefilms Ltd. v. U.O.I.*, (2005)4 SCC 649(para 22)

²¹¹ Sahil Tandon, Case Analysis: *Ramana Dayaram Shetty v. The International Airport Authority of India*, AIR 1979 SC 1628, Scholarticles (4 Sept. 2015), available at <https://scholarticles.wordpress.com/2015/09/04/st3/> (last accessed 14 June 2025).

The expression “other authorities” wide enough to include within it, every authority created by a statute and functioning within the territory of India , or under the control of the government of India - *Rajasthan S.E.B v. Mohan Lal*²¹². While Article 12 is relevant for the enforcement of fundamental rights under Article 32, both **fundamental and non-fundamental rights** can be enforced under Article 226 of the Constitution. In *Anadi Mukta Sadguru S.M.V.S.J.M.S. Trust v. R. Rudani*²¹³, the Supreme Court held that even private bodies discharging **public duties** may be subject to writ jurisdiction under Article 226. Subsequent judicial decisions have expanded the scope of Article 12 by applying specific criteria, resulting in the inclusion of **bodies performing quasi-governmental functions, statutory corporations**, and even **government companies** as “State” within the meaning of Article 12.²¹⁴

THE JUDICIAL INTERPRETATION OF “OTHER AUTHORITIES”

Instrumentalist or Agency Test

In the landmark case of *R.D. Shetty v. International Airport Authority of India*²¹⁵ The Supreme Court broadly enlarged the meaning of "State" under Article 12 by applying the test of concept through the "instrumentality or agency test". The Court ruled that even a statutory corporation or a body not included under Article 12 by special mention could not be treated as a "State" unless it is a government instrumentality or agency.

Justice P.N. Bhagwati laid down several tests to determine whether a body is an instrumentality of the State: Ownership of Share Capital: If the whole share capital of a corporation is owned or controlled by the government, then government control.

1. Financial Support: Large-scale financial support by the State, especially if it is for almost the entire expense, is a sign of the body being an instrumentality of the government.
2. Monopoly Status: The satisfaction of monopoly status conferred or renewed by the State is a determining factor.

²¹² *Rajasthan S.E.B v. Mohan Lal*, AIR 1857 : (1967)3 SCC 377.

²¹³ *Anadi Mukta Sadguru S.M.V.S.J. M.S.Trust v. R. Rudani*, AIR 1989 SC 1607

²¹⁴ Ramaswamy R. Iyer, “Public Enterprises as ‘State’ and Article 12”, (1990) 25(34) Economic and Political Weekly M129–M134, available at: <http://www.jstor.org/stable/4396678> (last accessed 11 June 2025).

²¹⁵ *R.D. Shetty v. International Airport Authority of India*, (1979) 3 SCC 489.

3. Governmental Functions: Whenever the functions performed are of public interest and are closely affiliated with governmental functions, the organization is likely to be treated as "State."
4. Deep and Pervasive Control: Deep and pervasive State control of the body is a matter of particular concern.
5. Transfer of Government Department: If a government department is transferred to a corporation, it is a good sign that the corporation is an instrumentality or agent of the government. The Court clarified that even though an organization is neither a statutory corporation nor a government department, it may be "State" provided it meets the above conditions. This test provides that institutions that discharge public functions or have a high level of government control are amenable to the Constitution to protect fundamental rights

The Functional Test

*Ajay Hasia v. Khalid Mujib Sehravadi*²¹⁶, the Supreme Court in its ruling of the case by Justice P.N. Bhagwati, held that the name or form of an entity (such as a society, corporation, or company) is irrelevant in establishing the status under Article 12. What is relevant is the character of its activities and the degree of control by the government.

The Court reaffirmed and clarified the Instrumentality Test in *R.D. Shetty v. International Airport Authority*²¹⁷ and held that even an un-statutorily constituted society or a body can be "State" if it is:

- Supported by the government financially,
- Government owned or controlled to a large degree,
- Exercising a public function, or
- Structured for the performance of public duties previously fulfilled by the government.

This approach was termed as the Functional Test- Not indifferent to the form or shape of the body but concerned with the character of functions performed by the body. The Court repeated

²¹⁶ *Ajay Hasia v. Khalid Mujib Sehravadi*, (1981)1 SCC 722.

²¹⁷ *R.D. Shetty v. International Airport Authority*, (1979) 3 SCC 489.

that even private or semi-private bodies fall under the ambit of liability under the constitution if they are engaged in public functions or affect public interest.

Applying these principles, the Court decided that the REC was essentially an instrumentality of the State: It was funded almost completely by the State and Central Governments, It was under government control and guidance, Its central goal—providing technical education—was a public goal. Thus, its decision was subject to judicial review for consistency with fundamental rights under Part III of the Constitution. The *Ajay Hasia* judgment expanded the domain of Article 12 by asserting that organizations engaged in government or public activities must operate in the domain of constitutional rights even if they are not legally included in the government. This serves to ensure that constitutional protection is not circumvented by indirect government or privatization.

The Control Test

*Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*²¹⁸- In this case, petitioner Pradeep Kumar Biswas was ousted from service by the Council of Scientific and Industrial Research (CSIR). The ouster was challenged by him under Article 226, alleging that CSIR violated his fundamental rights under Articles 14 and 16. The prime question of law was whether CSIR could be considered "State" under Article 12 and thus under constitutional obligation. The Supreme Court by a 5:2 majority overruled its own previous decision in *Sabhajit Tewary v. Union of India*²¹⁹, in which CSIR was not considered to be a "State." The Court, in a subsequent decision in *Pradeep Kumar Biswas*, held that CSIR was "State" as per Article 12. The court explained and reiterated the tests enunciated in earlier decisions like *R.D. Shetty* and *Ajay Hasia*, and laid stress on "deep and pervasive control" as the test. The Court held that when determining whether a body was a State for the purposes of Article 12, it was not enough to pay regard simply to its government funding or function alone. The correct test was: Whether or not there is deep-seated and pervasive government control of the offending body.

This "Control Test" includes:

²¹⁸ *Pradeep Kumar Biswas & Ors. v. Indian Institute of Chemical Biology & Ors.*, (2002) 5 SCC 111.

²¹⁹ *Sabhajit Tewary v. Union of India*, AIR 1975 SC 1329 : (1975) 1 SCC 485.

- Structural Control: Whether or not the government controls the organisation's structure and makeup.
- Administrative Control: Whether or not the operations are regulated or controlled by the government at the meaningful levels.
- Financial Control: The level of dependence of the organization on government finances.
- Policy Control: Whether policy decisions, appointments, or activities are initiated or substantially controlled by the State.

In the CSIR case, the Court ruled that: It had the President of India as its *ex-officio* chairman and the Union Government provided the principal finance. The government exercised authority over decisions, rules, jobs, and money. Therefore, the Court held that CSIR was under profound and extensive control and hence a "State" under Article 12.

The Control Test enunciated in *Pradeep Kumar Biswas* restated the doctrine that even autonomous institutions can be construed to be "State" if the state is controlling their operation at all levels. This decision is a check against constitutional avoidance by indirect control or financial support of seemingly autonomous entities. Hence, the judgment expanded the field of protection of basic rights and also invoked State responsibility even where the State was acting through statutory corporations or societies. A statutory body is a state within the meaning of Article 12 - *Food Corporation of India v Puroshotom Das*²²⁰. Held further in this case that an employee of a state has no fundamental right to consider therefore.

Whether the state includes the Judiciary?

The definition of state under Article 12 of the constitution does not explicitly mention the judiciary. Judiciary as one of the three great departments of state, The judiciary is also included in the meaning of Article 12. If it were not, the rule of making powers of the Court could violate fundamental rights with impunity. The dicta of *Justice Frankfurter in Snowden v. Hughes*²²¹ is relevant as he states "...if the highest Court of a State should candidly deny to one litigant a rule of law which it concededly would apply to all other litigants in similar situation, could it escape

²²⁰ *Food Corporation of India v Puroshotom Das*, (2008)5 SCC 100.

²²¹ *Justice Frankfurter in Snowden v. Hughes*, (1944) 321 US 1.

condemnation as an unjust discrimination and therefore a denial of the equal protection of the laws?"²²²

The Constituent Assembly Debates shows that there were concerns regarding the comprehensive coverage of the term "authority," and the fear that even judicial functionaries were included under Article 12. Dr. Ambedkar equated "authority" with any body that can legislate or exercise discretion, and perhaps the framers were thinking of the judiciary, but that is a matter of contention.

The Supreme Court in *Naresh Shridhar Mirajkar v. State of Maharashtra*²²³ held that judicial orders of courts within their adjudicatory jurisdiction cannot be challenged as violating fundamental rights because such orders merely resolve disputes between parties and are not "State" action within the meaning of Article 12.

The functions of judiciary can be divided into judicial and non judicial functions:

Judicial Functions: When the court performs judicial function, they will not fall within the scope of the state. Thus the judicial decision of the court cannot be challenged as being violative of fundamental rights

Non judicial function: When the court performs non judicial function, they fall within the definition of the state , thus an administrative decision or a rule made by the judiciary can be challenged as being violative of the fundamental rights

While the judiciary is generally not considered "State" under Article 12 when exercising **purely judicial functions**, its actions may still be subject to constitutional scrutiny when performing **non-judicial or administrative functions**, such as **rule-making**. This distinction was clarified in *Prem Garg v. Excise Commissioner, H.P.*, where the Supreme Court held that the judiciary, when exercising its rule-making authority, does fall within the scope of "State" under Article 12. Thus, the Court adopted a nuanced position: **judicial decisions themselves are not challengeable** under fundamental rights provisions, but **administrative or non-judicial actions**

²²² Kalyani Ramnath, "Guarding the Guards: The Judiciary as State within the Meaning of Article 12 of the Constitution", (2006) 18(2) Student Bar Review 75–94, available at: <http://www.jstor.org/stable/44306656> (last accessed 12 June 2025).

²²³ *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1.

of the judiciary—such as framing rules or issuing administrative orders—**can be challenged** for violation of fundamental rights. The recommendations of the national commission to review the working of the constitution also state that “if the judiciary is not included within the state then , part 3 is made nugatory.”²²⁴

SCOPE OF ARTICLE 12

The term State is widely defined with a view to securing guarantees of fundamental rights in respect of all possible institutions. The scope of this definition has been furthered by judicial interpretation of the term ‘other authorities’. This expansive interpretation promotes the expansion of judicial review as many more bodies are covered under its scope. It helps in the expansion of administrative law as more bodies become subject to the writ jurisdiction, and it also makes bodies amenable to the restriction of fundamental rights. For better understanding the expanded meaning of the term “other authorities” in Article 12 in the Indian constitution²²⁵ it is necessary to understand the origin and scope of Article 12. The present Article 12 was introduced in draft Article 7. Dr. Ambedkar has decided the scope and the reason why it was placed in chapter on fundamental rights as flows:

- The object of the fundamental rights is two-folds. **Firstly**, every citizen must be in a position to climb those rights. **Secondly**, they must be binding on every authority, so the word authority means upon every authority which has got either the power loss or the power to have discretion vested in it.
- The definition of the state under Article 12 of the constitution of India applies only for the purpose mentioned under Part III of the constitution.²²⁶ So if a body of a person not coming under the definition but still a writ under Article 226 may lie against it on non constitutional grounds or on the ground of contravention of any provision of the

²²⁴ Aditya G, Judiciary as a State under Article 12, Scribd (16 September 2019), available at: <https://www.scribd.com/document/426043275/Judiciary-as-a-State-under-Article-12> (last accessed 12 June 2025).

²²⁵ Anubhav Singh, “Article 12 and 13 of the Constitution”, Scribd (Date not specified), available at: <https://www.scribd.com/document/427183780/Article-12-and-13-of-Indian-Constitution> (last accessed 13 June 2025).

²²⁶ Meenu Pahal, “Article 12: State Defined”, Scribd (28 April 2019), available at: <https://www.scribd.com/document/407872588/Article-12-State-defined> (last accessed 14 June 2025).

constitution outside Part iii that means where such body has some public duty to perform or where its acts are supported by the state or Public officials.

Those entities not falling under the definition of "State" under Article 12 are those that do not qualify as government- controlled, government-financed, or engaging in public or sovereign activities. The Supreme Court has interpreted these exceptions in a series of seminal decisions:

Private Individuals and Bodies: Private individuals, bodies, and organizations that are not created by the law and are not under significant control of the government are not covered. In *Shamdasani v. Central Bank of India* ²²⁷, the Supreme Court stated that the fundamental rights are only enforceable against the State and its instrumentalities, and not against private bodies or individuals.

Autonomous Bodies and Societies: Societies or organizations registered under the Societies Registration Act, 1860, yet are autonomous, not largely government-funded, and are not performing any public function are not included either. For example, in *Tekraj Vasandi v. Union of India* ²²⁸ The Institute of Constitutional and Parliamentary Studies was not held to be a "State" as it is a voluntary organization with no widespread government control or public function.

NCERT and Such Organizations: National Council of Educational Research and Training was not a "State" in *Chandra Mohan Khanna v. NCERT* ²²⁹ because it is an independent organization, sponsored by the government to some extent, and not engaged with functions that are intimately connected with governmental affairs. **Companies Not Owned by Limited Government:** Where the corporation or company is not entirely owned by the government (e.g., where the government holds a minority or non-controlling interest) and there is no deep and far-reaching government control or public function, it is not part of the definition of "State." In *General Manager, Kisan Sakhari Chini Mills Ltd. v. Satrugan Nishan* ²³⁰, a cooperative society with 50% government shareholding and no deep control was not included.

Judiciary (in its Judicial Capacity): The judiciary, in the exercise of its intrinsic judicial powers, is not "State" for Article 12. Judicial orders cannot be challenged on the grounds of breach of fundamental rights, although administrative orders of the judiciary can be reviewed.

²²⁷ *Shamdasani v. Central Bank of India*, AIR 1952 SC 59

²²⁸ *Tekraj Vasandi v. Union of India*, [(1988) 1 SCC 236].

²²⁹ *Chandra Mohan Khanna v. NCERT*, AIR 1992 SC 76.

²³⁰ *Kisan Sakhari Chini Mills Ltd. v. Satrugan Nishan*, (2003) 8 SCC 639.

Bodies Not Engaging in Public or Sovereign Actions: The doctrine of ejusdem generis (of the same kind) has been used to exclude bodies that are not engaged in governmental or sovereign actions. For instance, the *Madras High Court in University of Madras v. Shanta Bai*²³¹ excluded unaided universities from the term "State" as they do not engage in such actions

HORIZONTAL ENFORCEMENT OF FUNDAMENTAL RIGHTS

State versus Private Parties under Article 12

The enforcement of fundamental rights under Part III of the Indian Constitution has been traditionally vertical in nature i.e., it controls the interface of the people and the State. Article 12 gives the definition of the term "State" to cover the Government, Parliament, State Legislatures, local governments, and "other authorities." The reasoning is that fundamental rights can be enforced against those who exercise public power. But in the contemporary legal scenario, where private parties are increasingly taking up public functions, there occurs a question of fundamental constitutional significance: Can private parties or individuals be made liable for violating fundamental rights? This raises the controversy on horizontal enforcement.

Vertical vs. Horizontal Enforcement

Vertical enforcement is used when a State institution infringes on an individual's rights. For example, when a government official detains someone illegally, Article 21 (right to life and liberty) is invoked. Horizontal enforcement, on the other hand, is enforcement of the fundamental rights among private sectors, for instance, between an employer and the employee or the private schools and the students.

Indian courts have traditionally been hesitant to apply rights under Part III horizontally. In recent times the changing jurisprudence, however, indicates a reconsideration towards recognizing that some of the fundamental rights, most importantly Articles 14, 15, 17, 19, and 21, can be applied against private parties in certain circumstances.

²³¹ *University of Madras v. Shanta Bai*, AIR 1958 SC 398

JUDICIAL TRENDS AND KEY CASES

*Zee Telefilms Ltd. v. Union of India*²³²

The Supreme Court ruled that the Board of Control for Cricket in India (BCCI) was not "State" under Article 12, but since it performed public functions, it was possible to bring it under writ jurisdiction under Article 226. This was a departure from the previous stance of ruling that even private institutions performing public functions could not be brought under writ jurisdiction.

*Vishaka v. State of Rajasthan*²³³

In this landmark judgement of private employers, the Court held that Articles 14, 15, and 21 imposed a positive obligation on the State to see to it that rights were not infringed in private spheres. This expanded horizontal application via State responsibility.

*Justice K.S. Puttaswamy v. Union of India*²³⁴

The Supreme Court recognized the right to privacy to be a fundamental component of life and liberty under Article 21. It noted that invasion of privacy by private players (i.e., tech companies) can trigger constitutional concerns, marking the dawn of a new budding doctrine of yellow.

*Kaushal Kishore v. Union of India*²³⁵,

In this case the Constitution Bench held that certain basic rights, like Article 19 and 21, are enforceable against even non-State actors, depending on the circumstances. This is a significant acknowledgment of horizontal enforceability in some cases. Conclusion While the Constitution uses vertical language, Indian courts have increasingly stretched the arena of fundamental rights to cover some private acts, especially where public functions, duties, or significant rights like dignity, privacy, and equality are in question. The line between State and private under Article 12 is thus not rigid. In the age of privatization and public-private partnerships, horizontal enforcement of fundamental rights is not only necessary but constitutionally imperative.

²³² Zee Telefilms Ltd. v. Union of India, (2005)4 SCC 649(para 22).

²³³ Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

²³⁴ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

²³⁵ Kaushal Kishore v. Union of India, (2023) 4 SCC 1.

UK PUBLIC FUNCTION TEST vs. INDIA'S ARTICLE 12: A JURISPRUDENTIAL COMPARISON

Under the **Human Rights Act, 1998 (HRA)**, public authorities in the UK can be held accountable by individuals for violations of rights protected under the European Convention on Human Rights (ECHR). The Act incorporates the ECHR into domestic law and introduces the 'public function test' to determine whether a body, even if not strictly governmental, is performing a function of a public nature and thus subject to human rights obligations.

Section 6(1) of the HRA²³⁶ reads: "It is unlawful for a public authority to act in a way which is incompatible with a Convention right."

Section 6(3)(b)²³⁷ further explains the term "public authority" which would include any person certain of whose functions are functions of a public nature, but does not include either the House of Parliament or a person exercising functions in connection with proceedings in Parliament. This is also known as the "Public Function Test."

Key Features of the Public Function Test

The body itself does not have to be a government authority. What's important is the nature of the function that's being performed. Courts determine the nature of the function, and not just the identity of the performer. Leading Case: *Aston Cantlow v. Wallbank*²³⁸ wherein the House of Lords has set out conditions for determining a function as a "public function":

1. Whether it is funded by the public.
2. Whether exercising powers under statute.
3. Whether substituting central/local government.

²³⁶ Human Rights Act, 1998 (UK), s. 6(1).

²³⁷ Human Rights Act, 1998 (UK), s. 3(b).

²³⁸ *Aston Cantlow v. Wallbank*, (2003) UKHL 37.

4. Whether rendering a public service. The test is functional and purposive, enabling courts to hold private parties to account where they are acting as surrogates for the State.

India: Article 12 – Functional and Instrumentality Tests

In India, "State" has been defined under Article 12 to encompass "the Government and Parliament of India," State legislatures, and "other authorities." "Other authorities" have been interpreted by Indian courts broadly to encompass private entities carrying on public functions, employing several tests mentioned below:

- Instrumentality or Agency Test, which was laid down in *R.D. Shetty v. International Airport Authority*²³⁹
- Functional/Public Duty Test, which was laid down in *Ajay Hasia v. Khalid Mujib*²⁴⁰
- Control Test, which was laid down in *Pradeep Kumar Biswas v. IICB*²⁴¹

Landmark Judgment: *Zee Telefilms Ltd. v. Union of India*²⁴²

In this case, the BCCI was not declared to be a "State" under Article 12, but held that its acts could be challenged under Article 226 because its functions were public in nature. This shows convergence with the UK model, even if Article 12 is read narrowly, Indian courts make up for this through Article 226. The UK Public Function Test under the HRA takes a more relaxed, function-centered model to promote horizontal application of human rights. Indian courts, though constrained by a narrower textual scope under Article 12, have increasingly stretched fundamental rights protection through functional equivalence and writ jurisdiction under Article 226. Both of these jurisdictions demonstrate a tendency towards constitutionalizing private power where public interests and rights are involved.

WHY IS ARTICLE 12 CONSIDERED TOO NARROW IN A LIBERAL DEMOCRACY?

²³⁹ *R.D. Shetty v. International Airport Authority*, (1979) 3 SCC 489.

²⁴⁰ *Ajay Hasia v. Khalid Mujib*, (1979) 3 SCC 489.

²⁴¹ *Pradeep Kumar Biswas v. IICB*, (2002) 5 SCC 111.

²⁴² *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649.

1. Emergence of Private Organizations Engaging in Public Duties

Contemporary governance increasingly involves the provision of essential public services like education, transportation, health, etc. by the private sector entities. These private organizations wield considerable power on the rights of individuals but fall outside constitutional oversight under Article 12 unless deemed "State" by judicial definition.

2. Limitative Judicial Tests

The instrumentality test as laid down in *R.D. Shetty* case, functional test as laid down in *Ajay Hasia* case, and control test as laid down in *Pradeep Kumar Biswas* case have yielded significant doctrinal tools. Nonetheless, they are applied in an inconsistent manner wherein they tend to overlook newer variants of quasi-public bodies and emphasizes financial control over functional accountability

3. Horizontal Application Missing

In comparison to the UK (HRA 1998), there is no explicit acknowledgment of horizontal rights, i.e., safeguarding fundamental rights against private parties. For instance, infringement of fundamental rights by private schools, gig economy platforms (e.g., Swiggy, Uber), and private hospitals are often not considered as a violation of constitutional rights.

4. Corporate Autonomy vs. Constitutional Morality

With private players increasingly dominating industries traditionally under the control of the State, a series of conflicts arises between corporate freedom and the requirement to protect constitutional ideals such as dignity, equality, and freedom.

Judicial Efforts to Enlarge Scope

In *Zee Telefilms v. Union of India*²⁴³ BCCI was not declared to be "State", but acknowledged that bodies carrying out public functions are amenable to writ jurisdiction under Article 226. This judgment is now effectively overruled.

In *Binny Ltd. v. V. Sadasivan*²⁴⁴ (2005) the Hon'ble Court highlighted that writs can be issued even against private institutions if they perform public functions. This indicates a bit of flexibility under Article 226, but it does not correct the narrow scope of rights under Part III of the Indian Constitution. Hence, in a liberal democracy such as India, where the major object is to

²⁴³ *Zee Telefilms v. Union of India*, (2005) 4 SCC 649.

²⁴⁴ *Binny Ltd. v. V. Sadasivan*, (2005) 6 SCC 657.

attain justice, equality, liberty, and dignity, the narrow definition of "State" under Article 12 fails to meet the needs of 'the intricacy of modern government.'

Privatization of services

There is a strong argument for either amending the Constitution or for a wider judicial interpretation to encompass private players under Article 12 of the Constitution which performs public functions. Without this, the proper exercise of basic rights is threatened by structural gaps in implementation. In modern times, the distinction between the public and private is blurred. Business and digital actors have enormous power over individuals' basic freedoms and fundamental rights particularly equality, dignity, and speech- ought to apply to them insofar as they exercise public functions or significantly impact individual liberties.

India must develop in the direction of horizontal application of rights, either by way of judicial interpretation or through a constitutional amendment, so that liberal democratic values are sustained within a privatized, digital age.

CONCLUSION

Article 12 is the cornerstone in interpreting and applying Fundamental Rights included in Part III of the Indian Constitution. In defining the term 'State', it prescribes the range of entities like the Government, Parliament, municipalities, and instrumentalities bound to obey and uphold the fundamental rights of citizens.

This dynamic and changing meaning guarantees that private actors undertaking public functions do not go beyond the reach of constitutional accountability. Therefore, Article 12 is a portal of constitutional redress under Articles 32 and 226, safeguarding citizens from the misuse of power by the authority exercising state-like powers.

Therefore, Article 12 is not so much definitional; it is a critical component in attaining constitutional justice, the guarantee that all instruments of power will be answerable to the people and to the rule of law.

CHAPTER 7

Laws Inconsistent with or in Derogation of Fundamental Rights (Article 13)

By Chakshu Jain

INTRODUCTION

Article 13 of the Indian Constitution is a Touchstone provision that checks the validity of pre-constitutional and post-constitutional laws, and their alignment with fundamental rights. In simple words, *it is the guiding light to determine whether laws are inconsistent with or in derogation of the fundamental rights.*²⁴⁵ Article 13 clearly lays down the meaning of “Law” and “Law in force” extending to Part III of the constitution and states that any law whether enacted before or after the Constitution that contravenes fundamental rights shall be void. This puts a limit on wide legislative powers and ensures executive and legislature act within the limits assigned to their authority under the Constitution. The Constitution is the “will” of the people, whereas the statutory laws are the creation of legislators who are the elected representatives of the people declared in the constitution - the will of the people must prevail.²⁴⁶

Article 13 reflects the principle of constitutional supremacy that the Constitution stands above all laws and authorities in India. As laid down in Kesavananda Bharati case *"The Constitution is supreme and Parliament cannot alter its basic features"*.²⁴⁷ It upholds this principle by rendering any law void that infringes Fundamental rights guaranteed under Part III. It played a pivotal role to protect the basic structure of the Constitution by granting a legal protection to individual rights and withholding the principle of “lex superior” of the Constitution.²⁴⁸ In this way, Article 13 becomes a guardian of constitutional morality, maintaining the hierarchy in which the Constitution is the highest legal authority, and all other laws derive their validity from it.

²⁴⁵ Rabindra Kr Pathak, *Untangling the Constitutional Labyrinth* (2010) 22(1) **Bond L Rev** 60.

²⁴⁶ Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441, at 485.

²⁴⁷ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225, 283.

²⁴⁸ Adithya Anil Variath, *Article 13 and Pro Tanto Supremacy of the Constitution of India*, 4 *International Journal of Law* 91, 93 (2018)

The significance of Article 13 lies in the fact that the **doctrine of judicial review inherits within it**, ensuring all organs of the state function within the bounds set by the Constitution. As noted in the judgment of **Brown, Chief Justice of Nigeria**, interpreting the impact of Article 13:

*“The point that I wish to make is that by Article 13 of the Constitution, all laws which are inconsistent with Part III of the Constitution of India are to be declared to be void by the Constitution itself. The task of the Courts is to determine whether the law is inconsistent. Having found that it is, nothing more in strictness remains to be done, because the Constitution has already declared the law to be void and the court’s declaration that the law is void merely reaffirms what the Constitution has already declared”.*²⁴⁹

This statement affirms the role of Article 13 as a self-executing provision, where the judiciary’s function is not to create invalidity but to recognize and reaffirm the unconstitutionality already established by the Constitution. Thus, Article 13 forms the constitutional bedrock upon which the edifice of judicial review, rights enforcement, and constitutional supremacy firmly rests.

OBJECTIVES OF THE CHAPTER

- The primary objective of this chapter is to enable students and readers to develop Comprehensive understanding of Article 13
- To understand the historical development, contemporary relevance and ongoing debates.
- To examine key **judicial doctrines** such as:
 - Doctrine of Severability
 - Doctrine of Eclipse
 - Judicial Review
 - Doctrine of Waiver
- To study Landmark cases interpreting Article 13

²⁴⁹ Id. at 92 (quoting Brown, C.J. of Nigeria, interpreting Article 13 of the Indian Constitution, and citing *Cooper v. Aaron*, 356 U.S. 86 (1958)).

- To Comprehend how Article 13 forms the constitutional foundation for judicial review in India.

HISTORICAL BACKGROUND AND INTENT OF THE FRAMERS

After careful consideration in the Constituent Assembly, Article 13 was included in the Indian Constitution. The necessity of safeguarding Fundamental Rights against possible legislative and executive overreach was well recognised by the framers. The Assembly also aimed to give Indian courts the authority to declare any statute that violated Part III of the Constitution unconstitutional, influenced by international constitutional developments, especially the U.S. Supreme Court's decision in *Marbury v. Madison* (1803)²⁵⁰, which established judicial review the Assembly sought to empower Indian courts to invalidate any law that contravened Part III of the Constitution.

During the Constituent Assembly debates, Article 13 originally Draft Article 8 which was discussed thoroughly on 25th, 26th, and 29th November 1948. The discussions featured prominent constitutional scholars such as Dr. B.R. Ambedkar, Naziruddin Ahmad, and others. Finally, on 29th November 1948, after careful consideration and multiple amendments, Draft Article 8 was adopted, marking the birth of what is now Article 13 of the Indian Constitution.²⁵¹

ARTICLE 13 TEXT

Article 13 of Indian Constitution, 1950 states:

²⁵⁰ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

²⁵¹ Constituent Assembly Debates, Vol. VII, 26 November 1948, available at https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-26#7.61.168 (last visited June 12, 2025).

1. *All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.*
2. *The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.*
3. *In this article, unless the context otherwise requires-*
 - a) *law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usages having in the territory of India the force of law;*
 - b) *laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas;*
4. *Nothing in this article shall apply to any amendment of this Constitution made under Article 368.*²⁵²

CLAUSE-BY-CLAUSE EXPLANATION OF ARTICLE 13

Article 13 is a foundational provision maintaining check on both past and future laws and its compliance with fundamental rights. This Article is structured into four clauses-

Article 13(1): Pre-Constitutional Laws-

“All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.”

This clause targets laws that were enacted prior to the commencement of the Constitution (before 26 January 1950). The primary purpose is to ensure colonial laws or pre-independence laws that are inconsistent with Fundamental Rights are rendered void to the extent of such inconsistency.

²⁵² *Constitution of India, art. 13.*

This guarantees the legal system upholds the principles of democratic framework and respects the fundamental right enshrined in the Constitution.

The Article 13(1) does not have the Retrospective effect this means a person can still be prosecuted and punished under a pre-Constitutional law even after the commencement of the Constitution, for an offence committed before the Constitution came into force, even though the law which made the offence punishable is inconsistent with Part III of the Constitution. This retrospective effect of Article 13 was addressed by Supreme court in landmark case of *Keshavan Madhava Menon v. State of Bombay*²⁵³ in which the court clarified that Article 13 serves as a prospective safeguard of fundamental rights, preventing future violations but not annulling past actions.

For example- A person being prosecuted under a pre-Constitution law for an offence committed **before** the Constitution came into force. The person will held liable Even though the law violated fundamental rights under the new Constitution, the prosecution was valid because:

- The offence was committed before 26 Jan 1950.
- Article 13(1) does not have retrospective operation.
- So, pre-Constitution laws remain valid for acts committed before the Constitution commenced.

Article 13(2): Post-Constitutional Laws-

“The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.”

This clause prohibits the state from passing any legislation which withdraws or curtails rights under Part III. It deals with all legislation enacted after 26 January 1950 so that the legislature and executive don't overstep the bounds of the constitution. The legislative authority of Parliament and State Legislatures under Article 245 is not absolute; it is subject to the

²⁵³ *Keshavan Madhava Menon v. State of Bombay*, AIR 1951 SC 128.

Constitution, including restrictions under Article 13(2). This Clause specifically excludes the State from making laws which deprive or diminish the Fundamental Rights enshrined under Part III. If a law is made, it is invalid ab initio. This clause makes the State incapable of enacting any law that violates Fundamental Rights, Unlike Article 13(1), which refers to laws that were valid at the time of their enactment, Article 13(2) addresses laws enacted after the Constitution and makes them void at the time of enactment if they contravene Fundamental Rights.²⁵⁴

For Example- If the government enacts a law after 26 January 1950 prohibiting all newspapers that are anti-government, it would infringe the right to freedom of speech under Article 19(1)(a). Such legislation would be void ab initio under Article 13(2).

Article 13(3): Definitions Clause

“In this article, unless the context otherwise requires,—

(a) ‘law’ includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) ‘laws in force’ includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed” notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas;

Article 13(3) defines the scope of word “law” and “law in force” in this article. The definition of Law contained under Article 13(3) (a) is, thus, wider than the ordinary connotation of law, which refers to enacted law or legislation. It includes subordinate legislation made in exercise of powers conferred by statute.²⁵⁵

- I. A resolution passed by a State Government under Fundamental Rule 44 of the State;²⁵⁶
- II. a notification²⁵⁷ or an order²⁵⁸ under a statute;

²⁵⁴ *State of Gujarat v. Ambica Mills Ltd.*, AIR 1974 SC 1300.

²⁵⁵ *Jailal V. Delhi Administration*, AIR 1962 SC 1781

²⁵⁶ *State of Madhya Pradesh v. Mandawar*, AIR 1954 SC 493 : (1955) 1 SCR 599.

²⁵⁷ *Madhubhai Amathalal Gandhi v. Union of India*, AIR 1961 SC 21 : (1961) 1 SCR 191.

²⁵⁸ *Pannalal Binraj v. Union of India*, AIR 1957 SC 397 : 1957 SCR 233.

- III. a custom or usage;²⁵⁹
- IV. bye-laws of a municipal or a statutory body;²⁶⁰
- V. regulations made by a statutory corporation like SEBI (*Securities and Exchange Board of India*)²⁶¹

The validity of the above can be questioned under the Fundamental Rights

An important question repeatedly taken up by the judiciary in a series of landmark cases is whether the term “law” in Article 13 includes a constitutional amendment enacted by parliament. An important matter of debate linking to amending power of parliament and protection of Fundamental Right. This matter has been examined in detail in the later part of this Chapter.

Personal Laws and Article 13: This question was first examined in the landmark case of *State of Bombay v. Narasu Appa Mali*,²⁶² The validity of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, was challenged, arguing that it violated the fundamental rights under Article 13. The court observed that;

“..... the framers of the Constitution wanted to leave the personal laws out-side the ambit of Part III of the Constitution (viz., Fundamental Rights). They must have been aware that these personal laws needed to be reformed in many material particulars and in fact they wanted to abolish these different personal laws and to evolve one common code. Yet they did not wish that the provisions of the personal laws should be challenged by reason of the Fundamental Rights.... and so they did not intend to include these personal laws within the definition of the expression “laws in force”.

The Court ruled that personal **laws are not “laws” within the meaning of Article 13**, thereby excluding them from judicial scrutiny under fundamental rights. This position was shifted in case of Indian young lawyer Association v. State of Kerala²⁶³, challenging the age-old custom of prohibiting women from entering the Sabarimala temple, arguing that it violated gender equality

²⁵⁹ *Sant Ram v. Labh Singh*, AIR 1965 SC 314 : (1964) 7 SCR 756.

²⁶⁰ *Tahir v. District Board*, AIR 1954 SC 630.

²⁶¹ *Bhagatram, supra*; *Hirendra Nath Bakshi v. Life Insurance Corp.*, AIR 1976 Cal. 88.

²⁶² *State of Bombay v. Narasu Appa Mali* (AIR 1952 BOM 84)

²⁶³ *Indian Young Lawyers Association v. State of Kerala*, (2018) 10 SCC 689.

under Article 14 and religious freedom under Article 25. The Supreme Court applied broader approach and held that customs and personal laws that infringe fundamental rights fall within the ambit of Article 13, making them subject to judicial review.

Article 13(4): Exclusion of constitutional amendments

Nothing in this article shall apply to any amendment of this Constitution made under Article 368.”

Article 13(4) was added by the 24th Constitutional Amendment act, 1971. Its primary goal is to make clear that constitutional amendments approved by Parliament under article 368 cannot be struck down for violating fundamental Rights. However, this exclusion is not absolute as you will understand in the later sections of this Chapter.

KEY DOCTRINES EVOLVED UNDER ARTICLE 13

a) Doctrine of Severability

Doctrine of severability, also known as the doctrine of Separability. This means that if a part of law is inconsistent with fundamental rights then only the unconstitutional part is struck down, while the remaining part continues to operate. This applies under Article 13(1) and Article 13(2) where laws are stated to be void only to the extent of the inconsistency. This doctrine means that if any particular provision of the statute is unconstitutional and that provision is independent of or severable from the rest, only the offending provision will be declared invalid by the Court and if it is not separable, the whole of the statute shall fail²⁶⁴

***A.K Gopalan v. State of Madras (1950)*²⁶⁵**

First case in which Supreme court used this doctrine by declaring Section 14 of Preventive detention Act void, 1950 upholding the validity of remaining provisions and also stated in case of inconsistency to the Constitution, only the disputed provision of the Act will be void and not the whole of it, and every attempt should be made to save as much as possible of the act.

²⁶⁴ *Pollock v Farmers' Loan & Trust Co*, (1895) 158 US 635;

²⁶⁵ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

***RMDC v. Union of India (1957)*²⁶⁶**

In this case, the Supreme court laid down important guidelines for applying doctrine of Severability to help court to decide whether valid parts of a statute can be separated from the invalid-

1. In assessing whether the valid portions of a statute can be severed from the invalid ones, the intention of the legislature is the determining factor; the test is whether the legislature would have enacted the valid part **independently**, had it known that the remainder would be declared invalid.
2. If the valid and invalid parts are so interwoven and dependent that they cannot be separated from one another, then invalidity of a portion must result in invalidity of act in its entirety. On the other hand if they are distinct then it can be upheld notwithstanding that the rest has become unenforceable.
3. Even when valid and invalid provisions are distinct, if they form a part of a single scheme intended to be operative as a whole, then also invalidity of a part will result in failure of the whole.

b) Doctrine of Eclipse

This doctrine applies primarily to pre-constitutional laws that are inconsistent with fundamental rights. It states that such laws do not become wholly void but remain dormant or “eclipsed” as long as they are in conflict with fundamental rights. Once the conflict is removed by a constitutional amendment, the eclipsed provision revives and becomes operative again. Thus this doctrine preserves the continuity of pre-constitutional legislation with evolving constitutional mandates.

***Bhikaji Narain Dhakras v. State of Madhya Pradesh(1955)*²⁶⁷**

In this case the doctrine of eclipse was applied to a pre-constitutional state law that empowered the government to monopolize motor transport that became inoperative after commencement of the Constitution due to conflict with Article 19(1)(g) which

²⁶⁶ *R.M.D. Chamarbaugwala v. Union of India*, AIR 1957 SC 628.

²⁶⁷ *Bhikaji Narain Dhakras v. State of Madhya Pradesh*, AIR 1955 SC 781.

guaranteed the right to practice any profession, trade, business. However after the first Constitutional amendment, introducing Article 19(6) allowed such monopolies. The law stood revived and became fully enforceable again.

A question that arises is whether Doctrine of Eclipse applies to both pre-Constitutional laws and post-Constitutional laws. In case of *Deep Chand v. State of Uttar Pradesh*²⁶⁸ The Supreme Court ruled that post-constitutional laws inconsistent with fundamental rights are void from beginning and cannot be revived by future amendments. This position was affirmed by court in *Mahendra Lal Jaini v. State of Uttar Pradesh*²⁶⁹ where court observed-

The doctrine of eclipse will apply to pre-Constitutional laws which are governed by Article 13(1) and would not apply to post-Constitutional laws which are governed by Article 13(2). Unlike a law governed by Article 13 (1) which was valid when made, the law made in contravention of the prohibition contained in Article 13(2) is a stillborn law either wholly or partially depending upon the extent of the contravention. Such law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse... [which]...cannot confer power on the state to enact a law in breach of Article 13(2) which would be the effect of the application of the doctrine of eclipse to post-constitutional laws.

Thus, post- constitutional laws are void-ab-initio/void from inception and incapable of revival.

It is well established that the Doctrine of Eclipse applies only to the extent of the inconsistency with the Fundamental Rights available to the person concerned. Where a pre-Constitutional law conflicts with a right guaranteed exclusively to citizens (such as Article 19), it becomes inoperative only against citizens but continues to operate in full force against non-citizens, for whom no such right exists.²⁷⁰

c) Doctrine of Waiver

²⁶⁸ *Deep Chand v. State of Uttar Pradesh*, AIR 1959 SC 648.

²⁶⁹ *Mahendra Lal Jaini v. State of Uttar Pradesh*, AIR 1963 SC 1019.

²⁷⁰ *Supra* note 10.

The doctrine of Waiver states that an individual can voluntarily give up a right conferred by law. However, Supreme Court held that fundamental rights cannot be waived because under Indian Constitution Fundamental rights are considered sacrosanct unlike in U.S where individuals can waive their rights,

Basheshar Nath v. Commissioner of Income Tax (1958)²⁷¹

The Supreme Court in this case held that no citizen can waive their Fundamental right. This is because these rights are not only for the benefit of individuals but also meant for the benefit of society and cannot be compromised.

Olga Tellis v. Bombay Municipal Corporation (1985)²⁷²

In this case, pavement dwellers in Mumbai signed an undertaking not to contest demolition of their huts. The court held that fundamental rights cannot be waived by any such agreement emphasizing the right to life under Article 21 which cannot be abandoned.

d) Doctrine of Judicial Review

The doctrine of Judicial review is a cornerstone of the Indian Constitution empowering Judiciary to examine the validity of legislative enactments and to strike them down if they violate provisions of the Constitution. This serves as the primary mechanism for supremacy of the Constitution. Article 13 provides foundation for Judicial Review in India by giving power to courts to test validity of both pre-Constitutional and post-Constitutional laws.

The concept of Judicial Review in India was inspired from U.S Supreme Court that asserted itself power to invalidate laws that conflict with constitution in case of *Marbury v. Madison*²⁷³. This doctrine has two important functions like legitimizing government action and protection of the constitution against any undue encroachment by the government.

²⁷¹ *Basheshar Nath v. Commissioner of Income Tax*, AIR 1959 SC 149.

²⁷² *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

²⁷³ *Supra* note 6.

*A.K Gopalan v. State of Madras(1950)*²⁷⁴

An early instance where the Supreme Court exercised judicial review to examine the validity of the Preventive Detention Act, 1950 against fundamental right 19 and 21 although the scope was limited.

*Kesavananda Bharati v. State of Kerala(1973)*²⁷⁵

In this case judicial review was declared as a part of basic structure of the constitution even beyond the reach of Constitutional Amendments ensuring courts retain power to strike down laws that violate Fundamental rights.

LANDMARK JUDGEMENTS AND CONSTITUTIONAL AMENDMENTS UNDER ARTICLE 13

Supreme Court over the years interpreted Article 13 through series of landmark cases that have clarified the extent to which Parliament can exercise its power to amend the Constitution and have safeguarded it from legislative overreach and ensured the Fundamental Rights remain protected even when Parliament attempted to expand its amending power through constitutional amendments forming cornerstone of India's commitment to constitutional supremacy.

The *First Constitutional Amendment(1951)*²⁷⁶ that inserted Article 19(6) and Article 31A and 31B, shielding certain laws from being challenged for violating Fundamental Rights. This amendment triggered the ongoing debate about limits on Parliament's Power.

*In Shankari Prasad v. Union of India(1951)*²⁷⁷ The Supreme Court held that "law" in Article 13 must be taken to mean rules or regulation made in exercise of ordinary legislative power and held that the Constitutional **amendment under Article 368 is not "law" within the meaning**

²⁷⁴ *Supra* note 21

²⁷⁵ *Supra* note 3

²⁷⁶ *Constitution (First Amendment) Act, 1951.*

²⁷⁷ *Shankari Prasad v. Union of India*, AIR 1951 SC 458.

of “law” under Article 13, thus cannot be struck down for violating Fundamental Rights. This means Parliament has power to amend any part of the Constitution including Fundamental Rights. This decision was upheld by court in case of *Sajjan Singh v. State of Rajasthan (1965)*²⁷⁸.

However in *Golak Nath v. State of Punjab (1967)*²⁷⁹ The court overruled *Shankari Prasad and Sajjan Singh* and held that **Constitutional amendments are “law” under Article 13** and therefore can be declared unconstitutional if they violate Fundamental Rights. In response to this the then government enacted *24th Constitutional Amendment (1971)*²⁸⁰ adding Article 13(4) stating Constitutional amendments under Article 368 are not “law” within scope of Article 13.

In the landmark case of *Kesavananda Bharati v. State of Kerala (1973)* Supreme court in historic 7-6 verdict, held that **“Parliament can amend any part of the Constitution, but it cannot alter or destroy its “basic structure”**. It upheld the validity of 24th amendment, but laid down Basic structure Doctrine as a permanent limit on Parliament’s amending power. The Judgement did not provide what is included in Basic structure but it has been interpreted in cases like *Indira Nehru Gandhi*²⁸¹, *S.R. Bommai*²⁸², *Keshvananda Bharti* and others to include-

- Supremacy of the Constitution
- Rule of Law
- Judicial Review
- Independence of the Judiciary
- Federalism
- Secularism and Democracy
- Separation of Powers
- Free and Fair Elections
- Welfare State

The *42nd Amendment (1976)*²⁸³ added Article 368(4) and 368(5), which declare that no amendment could be questioned in any court and there shall be no limitation on constituent

²⁷⁸ *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

²⁷⁹ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

²⁸⁰ *Constitution (Twenty-Fourth Amendment) Act, 1971*.

²⁸¹ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299;

²⁸² *S.R. Bommai v. Union of India**, AIR 1994 SC 1918.

²⁸³ *Constitution (Forty-Second Amendment) Act, 1976*.

power of Parliament including basic structure overruling Supreme Court's ruling in Kesavananda Bharti's case.

However, Supreme Court in *Minerva Mills Ltd v. Union of India*(1980)²⁸⁴ struck down these provisions and held that limited amending power and Judicial Review itself is an essential feature of the constitution that cannot be destroyed.

A related issue was Parliament's use of **Ninth Schedule** to protect laws from Judicial review: The Ninth Schedule was introduced by the *First Constitutional Amendment Act, 1951*²⁸⁵ to protect certain laws from being challenged in courts for violating Fundamental Rights. Over time Parliament inserted various kinds of laws shielding them from Judicial Review raising concerns about misuse.

To deal with this Supreme court in case of *Waman Rao v. Union of India*(1981)²⁸⁶ held that all the laws added to the Ninth Schedule before 24th April 1973(the date of the Kesavananda Bharati judgement) would remain valid but those made after this date are open to being challenged on grounds of violation of doctrine of basic structure. This judgement was affirmed in the case of *I.R. Coelho v. State of Tamil Nadu* (2007)²⁸⁷ in which the court held that any law included in the 9th schedule after the date of judgement in Kesavananda Bharati case be subjected to Judicial review and can be struck down if it damages the basic structure of the Constitution.

Table: Timeline of Landmark Cases & Constitutional Amendments Related to Article 13

Case / Amendment	Year	Key Issue	Court's Decision / Outcome
First Constitutional Amendment	1951	Inserted Articles 19(6), 31A & 31B; created Ninth Schedule to protect	Triggered debate about limits of Parliament's amending power.

²⁸⁴ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

²⁸⁵ *Supra* note 32

²⁸⁶ *Waman Rao v. Union of India*, AIR 1981 SC 271.

²⁸⁷ *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1

		certain laws from challenge.	
Shankari Prasad v. Union of India	1951	Whether a constitutional amendment is “law” under Article 13.	Held that it is not “law”; Parliament can amend Fundamental Rights.
Sajjan Singh v. State of Rajasthan	1965	Revisited Shankari Prasad.	Reaffirmed same position.
Golak Nath v. State of Punjab	1967	Overruled Shankari Prasad & Sajjan Singh.	Held that constitutional amendments are “law” under Article 13 and cannot violate Fundamental Rights.
Twenty-Fourth Constitutional Amendment	1971	Response to Golak Nath.	Clarified that constitutional amendments under Article 368 are not “law” under Article 13. Inserted Article 13(4).
Kesavananda Bharati v. State of Kerala	1973	Scope of Parliament’s amending power.	Parliament can amend any part but cannot alter Basic Structure; upheld 24th Amendment.

Forty-Second Constitutional Amendment	1976	Tried to limit Judicial Review and strengthen Parliament's amending power.	Added Articles 368(4) & (5) to bar court review and remove limits.
Minerva Mills Ltd. v. Union of India	1980	Validity of parts of the 42nd Amendment.	Struck down Articles 368(4) & (5); Judicial Review and limited power are part of Basic Structure.
Ninth Schedule	Since 1951	Protected certain laws from Judicial Review.	Initially used for land reforms; later misused for other laws.
Waman Rao v. Union of India	1981	Validity of laws in the Ninth Schedule.	Laws added before 24 April 1973 are valid; later additions can be tested for Basic Structure.
I.R. Coelho v. State of Tamil Nadu	2007	Reaffirmed Waman Rao.	Laws added to the Ninth Schedule after 24 April 1973 subject to Judicial Review and Basic Structure test.

CONCLUSION

Article 13 stands at the heart of India's Constitutional democracy, serving as a strong guard for enforcement and protection of Fundamental Rights. It establishes the relation between an individual's rights and the power of the state, ensuring that no law, whether enacted before or after the commencement of the Constitution, can violate Part III of the Constitution.

Under judicially developed doctrines such as Severability and Eclipse, Article 13 authorizes the courts to make a nuanced analysis of legislative acts. These doctrines permit unconstitutional portions to be invalidated or to render them ineffective while leaving the valid provisions of a law where feasible the framing and deliberate language of Article 13 indicate the framers' desire to afford the broadest possible protection to Fundamental Rights. By encompassing pre-Constitutional and post-Constitutional laws and articulating what comprises "law" and "laws in force," Article 13 establishes a clear and self-operating check on legislative and executive overreach.

Decades have witnessed landmark judgements and constitutional amendments strengthening Article 13 as cornerstone of Judicial Review and Basic structure doctrine ensuring Supremacy of the Constitution. In sum, Article 13 is not just a textual provision but a living mechanism upholding the Spirit of Constitution.

CHAPTER 8

Equality Before Law and Equal Protection (Article 14)

By Barsha Das

INTRODUCTION

The idea of equality is like the heartbeat of democracy. Without it, a democratic society cannot truly survive. In India, this idea is clearly written in Article 14 of the Indian Constitution. It states :

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

This sentence seems to be simple at first. However, it has a lot of profound meaning. Article 14 is not merely a paragraph in the Constitution, but the breathing principle. The courts will use it when wanting to shield individuals against unfair treatment, unfair laws, and discrimination based on factors such as caste, gender, etc.²⁸⁸

I am also reminded of the time when I took Article 14 during my first year in law school. It was disorientating. What is meant by equality before the law? And when one is treated unequally, how will that be equal? However, eventually, I learned that equality is not about treating everybody in the same way, but in an equal way, depending on their circumstances.

Now, let us put it into small pieces:

A. There are two Major Sections of Article 14

²⁸⁸ Tarunabh Khaitan, *Equality: Legislative Review Under Article 14* (SSRN Research Paper, 2015) (discussing the two limbs of Article 14: formal equality and protection against arbitrariness)

1. **Equality before law**- This implies, every human being is equal in front of the law. Nobody stands above the law, not even a king or a government officer.²⁸⁹

Legal Maxim:- “Nemo est supra leges”- No one is above the law.

2. **Equal protection of the laws**- This suggests that each person in comparable circumstances must be treated alike under the law and somebody can be treated differently, should they fall into a special situation; however under a justified reason.²⁹⁰ This enables the government to come up with laws which serve to suit the less privileged members of society.

Legal Maxim:- “Ubi eadem ratio, ibi eadem lex”- Where the same reason, there the same law exists.

Simply put, the former is concerned with formal equality (everyone is treated equally), and the latter with real or substantive equality (you sometimes must treat people differently in order to treat them fairly).²⁹¹

B. What and Where Are the Origins of These Notions?

1. Equality before law is a product of British law, more specifically, *A.V. Dicey's* Rule of law, whereby no person is above the law.²⁹²
2. The 14th Amendment of the Constitution of the U.S provides so much protection of our laws.²⁹³

They also ensure that the law is not only consistent but also just and fair when they are together.

C. Who is entitled to use Article 14?

The right is provided to any person, not only to the Indian citizens. That includes:

1. Indian Citizens
2. Foreigners

²⁸⁹ *State of West Bengal v. Anwar Ali Sarkar*, (1952) SCR 284

²⁹⁰ *Indra Sawhney v. Union of India* (1992) 3 SCC 1

²⁹¹ *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3

²⁹² A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (8th edn, Macmillan 1959)

²⁹³ Constitution (Fourteenth Amendment) of the United States, 1868

3. Companies
4. Law firms (such as NGOs, companies)

This implies that all Indians are covered in Article 14.²⁹⁴

D. What have been the Uses of Article 14 by Courts?

Over the years, Indian courts have applied Article 14 in various ways. Previously, the courts were only interested in putting through a test of whether or not a law contained a reasonable classification of it -i.e., whether or not, it treated different groups differently for a good reason.

The courts now go further than that. They do check as well:

1. The fairness and non-arbitrariness of government action will be brought out.
2. Does the law contribute to the achievement of actual equality (and not only formal)?
3. Whether the treatment is in balance with the circumstance

Legal Maxim:- “Lex iniusta non est lex” - And unjust law is not law.

This implies that, in case any law is unjust or it threatens equality then that law can be abolished by the court.

E. So What Will This Chapter Do?

1. The manner in which courts have treated Article 14 with time.
2. This is important regarding cases and principles such as reasonable classification, non-arbitrariness, substantive equality, and proportionality.
3. The implementation of Article 14 on law and state actions, private provisions policy, or even in the fields of housing and employment.

We will also address the other nation dealing with equality and pose the question: Is Article 14 actually leading to formation of an equal society? Or is it all but a legal dream?

²⁹⁴ *Constitution of India*, Art 14 (1950), included via Part III, Fundamental Rights, (Ministry of External Affairs, Govt of India); General Clauses Act, 1897, s 3(42)

F. Why Is Article 14 Important in India?

India is a diverse country, with inequality in many forms—rich vs. poor, men vs. women, upper caste vs. lower caste, urban vs. rural. In such a society, equality is not just a right—it is a promise of dignity and fairness.

Legal Maxim:- "Fiat justitia ruat caelum" – Let justice be done, even if the heavens fall.

This means that justice should be pursued regardless of the consequences.

CONSTITUTIONAL TEXT

In the heart of Indian Constitution, the greatest promise of equality is seen in the **Article 14** as it states:

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

This one sentence contains two powerful and slightly different ideas:

1. **Equality before the law**
 2. **Equal protection of the laws**
-

A. Equality Before the Law – British Origin

This section is on the British **Rule of Law** in which a short explanation of this has been given by *A.V. Dicey*. It implies that any person, including politicians or judges, is not above the law.

E.P. Royappa v. State of Tamil Nadu (1974)²⁹⁵: In this landmark case, senior IAS officer E.P. Royappa challenged his transfer, arguing that it was arbitrary, made in bad faith, and without valid reason. The Supreme Court observed that arbitrariness and equality are sworn enemies, and

²⁹⁵ **E.P. Royappa v. State of Tamil Nadu**, AIR 1974 SC 555.

that Article 14 of the Constitution is violated when the State acts arbitrarily. The Court emphasized that equality is not merely a matter of treating equals equally but also requires absence of arbitrariness in state action. This applies equally to the government, which must provide justifiable reasons for its actions.

- Key Principle: *"Equality is the antithesis of arbitrariness."*
- Legal Maxim: *Nemo est supra legem — No one is above the law*

Maneka Gandhi v. Union of India (1978)²⁹⁶: In this case, Maneka Gandhi's passport was impounded without being given any reason or opportunity to be heard. The Supreme Court held that procedural fairness is integral to Article 14, and that any law or state action must be just, fair, and reasonable. The judgment expanded the scope of Article 14 to include not just equality before the law but also equality in the fairness of law and its implementation.

- Key Principle: Arbitrary state action — even if backed by law — violates the principle of equality. Equality under Article 14 includes both the fairness of the law and the fairness of its application.

B. Equal Protection of the Laws – American Influence

This is the explication of the 14th Amendment of the U.S constitution. It enables the government to treat people unevenly but the disparity has a good reason and it is reasonable. It permits sensible classification, but the classification should:

1. Depend upon an intelligible differentia (a reason which can be understood), and
2. Bear a rational nexus (logical relation) to the purpose of law.

State of West Bengal v. Anwar Ali Sarkar (1952)²⁹⁷: In this case, the State of West Bengal enacted a special law that established Special Courts for the expedited trial of certain offences. However, the law allowed the government to select individuals who would be tried before these special courts, without laying down any clear or objective criteria. **What the Court Held:** The Supreme Court struck down the law as violative of Article 14 of the

²⁹⁶ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

²⁹⁷ State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75.

Constitution. The Court held that classification must not be arbitrary, and must rest on an intelligible differentia that has a rational nexus with the objective of the law. The power conferred on the executive to choose individuals for special treatment, without legal standards, was held to be discriminatory and unconstitutional.

Key Principle: Unequal treatment must be legally justified, not based on vague or discretionary grounds.

Legal Maxim: *Aequitas sequitur legem* — *Equity follows the law*.

Justice must be delivered in accordance with the law, not beyond or outside it.

Indra Sawhney v. Union of India (1992) (Mandal Commission Case)²⁹⁸: This case involved a challenge to the implementation of 27% reservation for Other Backward Classes (OBCs) in public employment, based on the recommendations of the Mandal Commission. Petitioners argued that such reservations violated Article 14 by creating unequal treatment. What the Court Held: The Supreme Court upheld the validity of OBC reservations and held that Article 14 permits reasonable classification in pursuit of substantive equality. The Court emphasized that treating unequals equally is inherently unequal. Reservations were seen as a constitutional mechanism to address social and educational backwardness, and to promote fair access to public employment.

Key Principle: Equality does not imply identical treatment for all; rather, it requires fair and differentiated treatment based on actual needs and disadvantages. Article 14 supports affirmative action when it aims to promote equity and correct historical injustices.

C. Harmonious Blend of Both Principles

Both of them were included by the creators of the Constitution:

- **Official equality** (British model) and
- **Substantive** (American model)

Indian courts have the leeway to see whether a law is:

²⁹⁸ Indra Sawhney v. Union of India, AIR 1993 SC 477.

- Fairly written, and
- Implanted evenhandedly.

Navtej Singh Johar v. Union of India (2018)²⁹⁹: This case challenged the constitutional validity of Section 377 of the Indian Penal Code, which criminalised consensual same-sex relations between adults. The petitioners argued that the provision was discriminatory and violated fundamental rights, particularly those of the LGBTQ+ community. What the Court Held: The Supreme Court read down Section 377, decriminalising consensual sexual relations between adults of the same sex. The Court held that criminalising consensual same-sex conduct was a clear violation of Article 14 (Right to Equality), Article 15 (non-discrimination), Article 19 (freedom of expression), and Article 21 (right to dignity and privacy). The judgment affirmed that equality under Article 14 includes the protection of individual dignity, autonomy, and the right to love and express oneself freely. Discrimination on the basis of sexual orientation was held to be unconstitutional.

Legal Maxim:-“Fiat justitia ruat caelum”- *Justice should be done though the heavens fall.* Justice and dignity should be preserved even when the society may not be prepared.

D. Who is Protected? – Meaning of “Any Person”

The phrase any person in Article 14 indicates to us that it is applicable to:

- Indian citizens
- Non nationals
- Business entities and organizations

State Trading Corporation of India Ltd. v. Commercial Tax Officer (1963)³⁰⁰: In this case, a corporation invoked Article 14 of the Constitution, alleging that it had been subjected to unequal treatment by the taxation authorities. The question arose whether a legal entity, such as a company or corporation, could invoke the protection of fundamental rights under Article 14. What the Court Held: The Supreme Court held that legal persons, including companies

²⁹⁹ Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.

³⁰⁰ State Trading Corporation of India Ltd. v. Commercial Tax Officer, AIR 1963 SC 1811.

and corporations, are entitled to the protection of Article 14. While companies do not possess fundamental rights in the same way natural persons do, they can still claim protection against arbitrary or discriminatory state action.

- The Court clarified that **equality before the law is not confined to human beings**, but extends to **any person or legal entity** within the territory of India that suffers discrimination or unequal treatment under the law.
- **Key Principle: Article 14 applies to all "persons" — natural or legal —** who are subjected to discriminatory or arbitrary state action within Indian jurisdiction.

Legal Maxim:- "Ubi jus ibi remedium"- Where there is a right there is a remedy. The law will defend you, even when you aren't a personal individual, provided that you are mistreated. Finally, Article 14 unites two strong legal concepts:

- Britain: No one is above the law; everyone is treated equally.
- American: Fairness is to pay attention to differences in real life.

Both concepts have been applied by Indian courts to defend the citizens against ill laws, arbitrary interference as well as social injustice. With the help of the above concepts and examples we get an idea that Article 14 is just not a right but a sword and a shield to justice in India.

TESTS AND DOCTRINAL DEVELOPMENTS

Judicial interpretation has had profound influence on the development of **Article 14** of Indian constitutional law. Over the years, the Indian judiciary has developed a series of standards and criteria to assess whether a law or state action violates the right to equality. These tests do not only plot the boundaries of state power, they also inform the action of a legislature and executive action particularly when they entail classification or differing treatment. The most important ones are the Reasonable Classification Test, the Non-Arbitrariness Test, the evolutionary trend towards Substantive Equality and the endorsement of the Proportionality Doctrine.

A. Justified Classification Test

The transformative fear of Article 14 can be traced to one of the very first judicial reactions in the form of the doctrine of a reasonable classification, which is enunciated in the legal cases like “*State of West Bengal v. Anwar Ali Sarkar*³⁰¹, and *Kathi Raning Rawat v. State of Saurashtra*³⁰².” Under this doctrine equality does not imply uniformity at all and one can classify individuals or groups of individuals and as long as this is done in a reasonable manner the state is allowed to do so.

The Two Conditions are Required:

1. Intelligible Differentia -There should be a clear and understandable distinction of a classification.
2. Rational Nexus- this difference cannot be connected irrationally to the goal that legislation aims to accomplish.

As in cases such as the *D.S. Nakara v. In Union of India*³⁰³, the scheme of a pension scheme which arbitrarily brought a group of pensioners under exclusion was struck by the Apex Court on the ground that this classification was not founded on any rational difference bearing any relevance to the object of the pension policy.

The test was effective in addressing the judiciary in the initial years of the Republic, but it somehow became mechanical and formalistic, mostly tending to ignore the underlying aspects of equity and effects.

B. Non-Arbitrariness Test

One of the major changes in equality jurisprudence was that of *E.P. Royappa v. In State of Tamil Nadu*³⁰⁴. The Supreme Court has underlined that equality and arbitrariness are two opposite concepts. It was such a famous pronouncement of Justice Bhagwati:

³⁰¹ *State of West Bengal v. Anwar Ali Sarkar* (AIR 1952 SC 75)

³⁰² *Kathi Raning Rawat v. State of Saurashtra* (AIR 1952 SC 123)

³⁰³ *D.S. Nakara v. In Union of India* (AIR 1983 SC 130)

³⁰⁴ *E.P. Royappa v. In State of Tamil Nadu* (AIR 1974 SC 555)

“Equality is a moving concept that has numerous aspects and dimensions... where there is something arbitrary, there it is not equal according to the logic of politics and the law of the constitution.”

This **was a paradigm shift**. The Court went an extra step as they started to doubt whether the act of the state was arbitrary in itself. This came to be firmly established in *Maneka Gandhi v. Union of India*³⁰⁵ where **fairness, reasonableness, and non-arbitrariness** have emerged as essential components of any state action that restricts life or liberty as a result of the Court's linking of **Article 14's** provisions to **Articles 19 and 21**³⁰⁶.

Non-arbitrariness doctrine allows us to even abolish a law that has a reasonably good classification system on the ground that its action or establishment is unjust, open ended or otherwise excessive.

C. Substantive equality

Going beyond procedural fairness, however, India has more recently come to adopt the concept of substantive equality, a paradigm that not only emphasizes upon treating individuals equally, but also that of actually getting rid of practical inequality. This was observed to be followed in gender, sexuality, religion and caste cases.

One most notable case is *Navtej Singh Johar v. Union of India*³⁰⁷, wherein the Supreme Court nullified the Section 377 of IPC and de-criminalized the homosexual relations provided they are consensual in nature³⁰⁸. The Court held that equality should not be a mere formality and facade, but it has to be real and significant.

On the same note, in the case of *Joseph Shine v. Union of India*³⁰⁹ The Court held invalid the adultery law because it had stereotyped women, regarded them as the property of their husbands and violated their right to equality.

³⁰⁵ *Maneka Gandhi v. Union of India* (AIR 1978 SC 597)

³⁰⁶ Constitution of India, Art 19 and 21

³⁰⁷ *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1

³⁰⁸ Indian Penal Code, S.377

³⁰⁹ *Joseph Shine v. Union of India* (2019) 3 SCC 39

Such transition into impact-based logics implies that the courts no longer focus on the intent behind a law, but on its consequences to marginalized groups.

D. Proportionality Doctrine

The doctrine reviews the proportionality of means that are followed by the state to the objectives sought. There are **four elements** of this test:

1. Legitimate Objective
2. Rational Association
3. Imperative
4. The limited definition of proportionality and balancing

The case of *K.S Puttaswamy v. Union of India* (the Aadhaar case), the Court used this test to conclude that that biometric data collected by the state had or had not violated the right to privacy³¹⁰. It maintained that any infringement of privacy should achieve the test of proportionality.

Once again in the case of *Indian Young Lawyers Association v. State of Kerala* (Sabarimala case), in order to decide whether women could be excluded from the temple due to their biological characteristics, the Court applied this theory. It stated that the only possible justification was when such exclusions were attached to a legitimate and proportionate religious purpose³¹¹.

The proportionality approach is based on a subtler, more situation-specific interpretation of equality, in which the state interest and the individual interests are balanced, so that the rights are not put on the altar of the entire population because of mere acceptance.

E. Thematic Summary of the Evolution

Doctrine	Key Focus	Leading Cases	Judicial Trend

³¹⁰ *K.S Puttaswamy v. Union of India* (2019) 1 SCC 1

³¹¹ *Indian Young Lawyers Association v. State of Kerala* (AIR 2018 SC 243)

Reasonable Classification	Logical grouping	<i>Anwar Ali Sarkar, Kathi Raning Rawat</i>	Early phase; formalist
Non-Arbitrariness	Fairness of process	<i>E.P. Royappa, Maneka Gandhi</i>	Shift toward purposive equality
Substantive Equality	Impact on the disadvantaged	<i>Navtej Singh Johar, Joseph Shine</i>	Anti-stereotyping, inclusive equality
Proportionality	Balancing rights and interests	<i>Puttaswamy, Sabarimala</i>	Rights-centered approach

F. Conclusion to Section

With these doctrinal evolutions Article 14 has taken the form of a rule of equal treatment to one of ever-evolving instruments of justice and equity. The Indian approach to equality is much more sensitive to the realities of the lives of individuals today, especially the marginal segments of society. Such doctrinal instruments have rendered the judiciary with the authority and capability to understand Article 14 as a provision of constantly changing constitutional morality, which can battle the emerging demands presented by gender biases, caste discrimination and discriminatory e-practices.

AREAS OF APPLICATION

The ideals of **Article 14** of the Indian Constitution do not stand in the realm of theory anymore but, rather, they are implemented in different spheres of governance and law. The right to equality can act as a constitutional **benchmark whether in the enactment of laws, adoption of executive discretion, determination of employment in the public sector, or management of reservations**. In this part, we are going to look into the broad application areas in which **Article 14** is used to guarantee **equal, fair, and reasonable treatment**.

A. Legislation

The courts have always believed that the law enacted by the Parliament, or passed by state legislatures should be in concurrence with Article 14. Whenever law makes unreasonable classification, does not have a rational nexus or makes arbitrary targeting of particular groups, it may be discussed as unconstitutional. In *Ajay Hasia v. Khalid Mujib Sehravardi*³¹² it was stated that:

- The Supreme Court gave the view that although an institution never forms a direct combination with the government, it can still be considered as State (as it performs public functions) and therefore, the actions of such organizations should satisfy the standards of **Article 14**.
- The law has commonly overturned discrimination laws based on **unreasonable criteria, like gender, religion, or regional discriminations** without any reasonable basis.

Article 14 forms a form of legislation safeguard whereby rule of law as well as equality is not abridged even when policies are drafted to be adopted in the governance.

B. Executive Action

Any administrative and executive decision should also be **fair and not some arbitrary decision**. Any acts of **government departments, municipal adhocs, police or bureaucrats may be questionable in the court of law**, should it be found to have gone against **Article 14**. In *Maneka Gandhi v. Union of India*³¹³ issuance of a passport without giving any justification was declared as arbitrary and contrary to Article 14 in conjunction with Article 21³¹⁴.

Article 14 thus ensures that **state discretion is exercised transparently, with accountability**, and not as a tool for favoritism, vendetta, or corruption.

C. Public Employment

A prime feature of **Article 14** in relation to public employment is **equality in public employment** when it is constructed along the lines of **Article 16** read with **Article 14** which

³¹² *Ajay Hasia v. Khalid Mujib Sehravardi* (AIR 1981 SC 487)

³¹³ *Maneka Gandhi v. Union of India* (AIR 1978 SC 597)

³¹⁴ Constitution of India 1950, Article 14 and 21

envisages equality of opportunity in public employment. Deprivation of promotions on **unjust grounds, disparity in salaries, or transfer on discriminative grounds** are all arguable under Article 14. The case of *Randhir Singh v. Union of India*³¹⁵ The Court made its statement of the principle of equal pay equal work, according to which **equal wages could not be arbitrarily denied and this would constitute discrimination**. Courts, through Article 14 have **enhanced meritocratic choices, discouraged favorites and nepotism** and enforced such that rules governing recruitment are given primacy to every candidate.

D. Reservation Policies (with Articles 15 & 16)

The reservations are frequently viewed as the exception to the rule of equality but rather than that, they are constitutionally approved means to facilitate substantial equality. Article 14 is read in harmony with Article 15(4), Article 15(5) and Article 16(4) then limits affirmative action of the underprivileged to gain an actual contact with equality. *Janhit Abhiyan v. Union of India* (2022)³¹⁶, the Supreme Court affirmed the **103rd Constitutional Amendment** that promised 10% reservation EWS in **education and employment** in the government³¹⁷. Those reservations which are made on the sole economic grounds and are not contrary to Article 14 provided they are made with a reasonable ground and caused by a legitimate purpose. The reservation in SC, ST, OBC, and the new reservation in EWS are thus considered as ways to level the playing field; though not unequal treatment³¹⁸.

E. Administrative Discretion

The state governments are usually left with a large margin of discretion in the exercise of decisions in such spheres as **land acquisition, licensing, grants, or housing allotments**. But the absence of control over discretion could result in arbitrariness and discrimination.

³¹⁵ *Randhir Singh v. Union of India* (AIR 1982 SC 879)

³¹⁶ *Janhit Abhiyan v. Union of India*, (2022) 10 SCC 1 (Constitution Bench)

³¹⁷ The Constitution (One Hundred and Third Amendment) Act, 2019 inserted Articles 15(6) & 16(6)

³¹⁸ “EWS Reservation Judgment: SC Upholds 103rd Amendment in 3-2 Majority - Supreme Court Observer,” *available at*: <https://www.scobserver.in/reports/ews-reservation-judgment-sc-upholds-103rd-amendment-in-3-2-split-verdict/>

The case of *Indira Nehru Gandhi v. Raj Narain* the Apex Court declared an election law which granted the Prime Minister an unfettered position above the scrutiny, as arbitrary and unconstitutional of the basic structure including **Article 14**³¹⁹.

To avoid the misuse, the discretionary powers must be exercised in reasonable manner as mandated by the courts using transparent procedures and such discretion which can be reviewed by the court of law under **Article 14**.

CRITICAL EVALUATION

Some of the issues raised by scholars though the progression of **Article 14** in terms of changing the formal equality with substantive and result-oriented interpretations are to be commended:

A. Critique of the Reasonable Classification Test

The Reasonable Classification Test has been attacked as a cloak of judicial comfort by academics including “*Prof. Upendra Baxi*”. This test is argued as being:

- Promoted formalist interpretation in which courts merely ticked the two factors (**intelligible differentia and rational nexus**) without looking into any further economic-socio effects.³²⁰
- Below it permitted some laws that had unequal impact by their very nature to remain alive provided that the state could make some sort of justification.³²¹

B. Conflict between Non-Arbitrariness and Decentralization of Power

Although progressive, the Non-Arbitrariness Test as laid down in **E.P. Royappa and Maneka Gandhi** have been criticized for redrawing the boundaries between executive and judicial roles.

In his treatise on constitutional adjudication, legal theorist “*T.R.S. Allan*” cautions that without guide rails, courts that strike down what they find to be arbitrary state action stand in danger of

³¹⁹ *Indira Nehru Gandhi v. Raj Narain* (AIR 1975 SC 2299)

³²⁰ Baxi, Upendra, “The judiciary as a resource for Indian democracy” (2010) *India-Seminar* No. 615

³²¹ Baxi, Upendra, *On How Not to Judge the Judges: Notes Towards Evaluation of the Judicial Role* (1983) 25(2) *Journal of the Indian Law Institute* 211

judicial overreach: **they replace democratically elected legislatures with the courts in making such a decision.**³²²

C. Proportionality Doctrine, Too Vague?

Although the Proportionality Doctrine deepens the study of equality, critics are of the line of thought that the doctrine is accused of:

- **Vague thresholds:** A notion such as necessity or least restrictive meanings is very subjective.³²³
- **Discretion salmon:** The judges are delegated the authority to re-balancing policy consideration and this may cause issues of discretionary policymaking under a new guise.³²⁴

EXCEPTIONS TO ARTICLE 14 (RIGHT TO EQUALITY)

Although Article **14** states equality before the law, some individuals and cases are offered **special protection**, a thing that will imply that the ordinary laws of equality will not count against them. The major exceptions are as follows:

A. Article 361 Special protection to President and Governors

Special privileges are accorded to the President of India and the Governors of States in doing their official work. The following are the protections:

- During their tenure no criminal cases are allowed to be filed or carried on against them.
- They are not arrested or jailed during their time of office.
- Civil types of cases (such as property or contract cases) must be submitted only after a **2-month notice**, with respect to only things that they personally (not officially) did³²⁵.

³²² Allan, T. R. S, *Human Rights and Judicial Review: A Critique of "Due Deference"* (2006) *Cambridge Law Journal* 65(3) 671–95

³²³ "Review: Proportionality, Punishment and Judicial Review: A Response to Jeydev C.S. – Constitutional Law and Philosophy," *available at*: <https://indconlawphil.wordpress.com/2017/07/12/proportionality-punishment-and-judicial-review-a-response-to-jeydev-c-s/>

³²⁴ Chandrachud, Abhinav & Sorabjee, Soli, "Proportionality under Article 25?: A Response to Kartik Kalra" (*Constitutional Law and Philosophy*, 2022)

³²⁵ Constitution of India 1950, Article 361

B. Parliamentarians and State Assemblies

Article 105 (by MP) and **Article 194** (by MLAs) provide:

- Strength of Parliamentary or State Assemblies Freedom of speech³²⁶.
- Immunity against prosecution over anything they say or do within the House during their line of duty³²⁷.

C. Laws to give effect to some Directive Principles (Article 31-C)

In the event that a law is enacted in accordance to some **Directive Principles of State Policy** (such as the **Article 39(b)** and **39(c)**) that talk of the distribution of wealth and the avoidance of economic inequality)³²⁸, then:

- These laws cannot be taken to court on grounds that such laws breach the **Article 14** (Right to equality).
- This is because the Supreme Court pointed out: When application of **Article 31-C** is made, application of the **Article 14** is not³²⁹.

CONCLUSION: SUMMARY OF FINDINGS AND PERSONAL INSIGHTS

The case law in Article 14 expresses a full and dynamic story of doctrinal divine maturation of Indian constitutional law. Since its initial entrenchment to the Reasonable Classification Test, where differential treatment could be tolerated provided it made sense, Article 14 has evolved to embrace a wider meaning of fairness, justice and inclusiveness.

The Non-Arbitrariness Test introduced a new era, as the court could no longer fail to get an ample glimpse of the form of the law and take into consideration the fairness and the legitimacy thereof in procedures. Such a transition was additionally supported by the Constitutional advancement of a theoretical layer of thought, the presence of Substantive Equality that concentrates on the actual effectiveness of the laws to historically underprivileged populations transforming abstract equality to a sense of practical justice. The implementation of the

³²⁶ Constitution of India 1950, Article 105 and 194

³²⁷ *P.V. Narasimha Rao v. State* (1998) 4 SCC 626

³²⁸ Constitution of India 1950, Articles 31-C, 39(b), and 39(c)

³²⁹ M.P. Jain, *Indian Constitutional Law*, 8th edn (LexisNexis, 2018)

Proportionality Doctrine introduced a strict and multi-stage procedure on the assessment of the fundamental rights limits within the Indian jurisprudence, bringing it to the global standards of abiding with the constitutional law.³³⁰

As much as both doctrines have led to a more neat and responsive approach to the interpretation of equality, their application is not devoid of limitations. Opponents cite the possible runaway interpretation by the courts, vagueness and possible contradictions in its application. However, the fears share space with the undoubted developments of converting Article 14 into a living instrument of constitutional review.

These doctrines, in the contemporary age, are vital checks to the constitution when there still is constant emergence of new challenges threatening dissimilarity, including digital governance, economic inequality, and identity- based exclusion. They make sure that the actions of the state, both in legislation, execution, and the judiciary system are not against the principle of fairness which has entrenched itself in the Indian Constitution.

This study of doctrinal progression under Article 14 proves that equality in India is not an ideal which is not static, but that it is a doctrinal commitment that is evergreen and one in which the courts have had to exercise vigilance, contextual sensitivity and a need to weigh each person's interests against the community's well-being.

³³⁰ Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980)

CHAPTER 9

Prohibition of Discrimination (Article 15)

By Priya Gangwani

INTRODUCTION

Article 15 of the Indian Constitution intends to shield the people from unjust discrimination. The essence of it and the very reason for which it is a fundamental right is to protect the people from being treated unjustly on the mere basis of only religion, race, caste, sex or where they were born whether the treatment is by the State or by its citizens. It helps in preserving access to public areas like parks, stores and schools for those who have been generally restricted for the same due to prevalent social barriers. It is an ever-lasting step taken by the constitution makers to ensure their country remains an inclusive place for each of its members and where respect remains a bare minimum existence.

The reasoning behind the existence of this article is not only to prevent unfair treatment but to recognize that an extra push or additional assistance is needed to help some historically disadvantaged groups like women, Scheduled Castes and Scheduled Tribes to advance in order to be at par with the rest. For such additional support, the article enables the government to take proactive measures for their benefit. This helps in highlighting the principle of ‘equality before law’ which is in Article 14 but enacted through Article 15 of the Indian Constitution.

In present times, due to Article 15 the marginalized communities and groups have increased access to economic and academic possibilities. This is possible because the government can make policies and take affirmative action specifically for their progress under Article 15. Such abilities being granted to the government is necessary to govern a diverse and vast country like India where each and every one not only remains protected but has the opportunity to prosper without any unfavorable biases.

HISTORICAL AND CONSTITUTIONAL BACKGROUND

To fully comprehend the existence of Article 15 of the Indian Constitution, examining the historical social conditions and conflicts is of significant importance. In addition to its great diversity, India has historically had a deeply divided society, particularly with regard to caste, religion, gender, and place of birth. For a long time now, numerous populations have faced unjust discrimination and even exclusion. These include lower castes like Dalits or Scheduled Castes who were not even granted basic rights and targeted for social marginalization. Among them women were also held subject to systemic bias and were excluded from decision making.

Attempts to solve these social issues during British administration were occasionally unsuccessful or even served to widen rifts. For example, distinct electorates for specific underprivileged groups were introduced by the Communal Award of 1932. Mahatma Gandhi was among the numerous leaders who opposed it because they believed it would further divide Indians, even if it provided some political representation. Meanwhile, social equality was promoted by well-known figures like Dr. B.R. Ambedkar and Gandhi. Gandhi opposed untouchability and referred to the disadvantaged as "Harijans," or "children of God," while Ambedkar, a Dalit, battled for constitutional protections for underprivileged people.

Post India's independence in 1947, the constituent assembly was given the daunting job of drafting a constitution which would confront the ongoing issue of socioeconomic inequality and bring unity throughout the whole country. During this they realized that political freedom would remain just a dream until social justice was brought to reality first. Dr. Ambedkar, the head of the drafting committee played an immense role in ensuring equality and suppressing discrimination.

A prominent part in the vision of equality, Article 15 was adopted on November 26, 1949. It clearly conveyed how the state could not grant differential treatment on the basis of religion, race, caste, sex or place of birth. This was like that relief of water in the desert as the long ongoing social discrimination had become normal. However, the framers also incorporated a significant exception that the government can establish specific measures to promote the advancement of Scheduled Tribes, Scheduled Castes, and socially and educationally

disadvantaged groups. This was a forerunner in acknowledging that in order to achieve full equality, historically oppressed people may need to take proactive measures, such as affirmative action.

This idea of uniform treatment will just remain a superficial formality until a deep dive is taken to go deep and attain the reality of substantive equality by going beyond what is necessary to assist people who begin in a less fortunate position. This unveils a sympathetic and realistic view of India's societal structure.

Article 15 was strengthened over time. Clause (3) was inserted to the First Amendment in 1951, allowing the State to provide particular measures for women and children. Women needed specific protection and chances to level the playing field, and this was a crucial realization that gender discrimination needed to be addressed directly.

The Supreme Court has played its role well by interpreting Article 15 in such a way so as to favor the government in taking affirmative action for upliftment of the lower castes. Steps like reservation in public education are absolutely needed to break the centuries old chain of prejudice.

The makers of the Constitution were also inspired by the global concepts of equality and human rights. The 1948 adoption of the Universal Declaration of Human Rights had an impact on numerous international constitutional provisions, including those of India. By specifically permitting positive discrimination, which many other constitutions did not, India's Constitution made a distinctive contribution.

Article 15, as of today, is the most significant source for the birth of socially impactful measures like reservations for Scheduled Tribes, Scheduled Castes, and Other Backward Classes (OBCs) under the constitution. It also backs initiatives for women's empowerment and rights. As India changes, discussions on the breadth and extent of affirmative action show continuous attempts to strike a compromise between justice and equality.

ARTICLE-WISE DISCUSSION

Under article 14 of the Indian Constitution, the principle of equality before law focuses on treating everyone equally and ensuring uniform protection within the borders of India. However, the breadth and abstractness of it has led to a more specific and practical applicability via Article 15 which prohibits the State from discriminating on the basis of religion, race, caste, sex and place of birth. In that sense, Article 15 is a natural extension of Article 14—it takes the general guarantee of equality and applies it directly to certain areas of public life, ensuring that equality is not only promised but also protected in practice. The doctrinal relationship between Article 14 and Article 15 has been upheld in various landmark judgments such as *State of West Bengal v. Anwar Ali Sarkar*³³¹ and *Indra Sawhney v. Union of India*³³², where the Hon’ble Supreme Court recognized that Article 15 is a specific application of the general principle of ‘equality before law’ contained in Article 14.

In simpler terms, if Article 14 is the soul of equality, Article 15 is its functioning body. Article 15 tells us that not only must everyone be treated equally, but the law must also protect people from being treated unfairly in specific areas, like access to public places, schools, or government benefits. At the same time, Article 15 also understands that true equality sometimes requires giving a helping hand—so it allows the government to make special provisions for women, children, backward classes, and the economically weaker sections. This balance between non-discrimination and positive support reflects the deeper vision of Article 14. Together, they work to ensure that equality in India is not just a right on paper, but a reality on the ground.

Article 15(1)³³³

Clause (1) prohibits the State from discriminating against citizens on grounds only of religion, race, sex, caste, place of birth or any of them. The expression ‘discriminate against’ in the *Concise Oxford Dictionary* means, “select for unfavorable treatment” which points towards unfavorable bias. The use of the word "only" is key—it indicates that if discrimination is based entirely on these grounds without any reasonable justification, it is unconstitutional. However, if

³³¹ *State of West Bengal v. Anwar Ali Sarkar* AIR 1952 SC 75

³³² *Indra Sawhney v. Union of India* AIR 1993 SC 477

³³³ The Constitution of India, art. 15(1).

there is a legitimate purpose behind a classification where these factors are just included and not form the sole basis, and it satisfies the test of reasonable classification under Article 14 (i.e., there is intelligible differentia and a rational nexus), then such action may not violate Article 15(1).

This clause applies strictly to actions of the "State" as defined under Article 12 and does not directly govern private conduct. The aim is to ensure that every citizen has equal access to public rights and benefits, and is not disadvantaged due to religion, gender, caste, or origin. In *D.P. Joshi v. State of Madhya Bharat*³³⁴, the Supreme Court held that a law which discriminates on the ground of residence did not infringe Article 15. Place of birth in Article 15(1) was different from residence.

Article 15(2)³³⁵

No citizen of India can be stopped or restricted from entering or using public places such as shops, hotels, restaurants, or places of entertainment, simply because of their religion, race, caste, sex, or place of birth. Similarly, they cannot be denied the right to use public facilities like roads, wells, tanks, or bathing areas that are maintained by the government or are open for general public use. This clause ensures equal treatment and access to public spaces for all citizens, aiming to prevent any kind of social discrimination based on identity factors listed in the Constitution.

Article 15(3)³³⁶

Article 15(3) allows the State to make special laws or provisions specifically for the benefit of women and children, even though Article 15(1) generally prohibits discrimination based on sex. This means that giving women and children certain advantages or protections under the law does not amount to unconstitutional discrimination or which can also be called as affirmative action or positive discrimination; instead, it is considered a step towards ensuring real and effective equality.

³³⁴ D.P. Joshi v. State of Madhya Bharat AIR 1955 SC 334

³³⁵ The Constitution of India, art. 15(2).

³³⁶ The Constitution of India, art. 15(3).

This provision recognizes that women and children may face unique challenges or disadvantages in society, and therefore, they may need additional support or opportunities to be on an equal footing with others.

This clause thus, relieves the state from the bondage of Art. 15(1) and enables it to make special provisions to accord socio economic equality to women. However, it is pertinent to note that only such special provisions can be made which are reasonable and do not altogether obliterate or render illusory the constitutional guarantee under other articles like Art 16(2).³³⁷

In *Yusuf Abdul Aziz v. State of Bombay*³³⁸, The Bombay High Court upheld Section 497 IPC (Adultery) which exempted women from punishment. The Supreme Court held that this exemption was constitutionally valid under Article 15(3), affirming that special treatment of women is not unconstitutional. Hence, the government is empowered to take proactive steps with constitutional backing in order to ensure an egalitarian society.

Article 15(4)³³⁹

Article 15(4) of the Indian Constitution allows the government to make special provisions for the social and educational advancement of Socially and Educationally Backward Classes (SEBCs), Scheduled Castes (SCs), and Scheduled Tribes (STs). This clause was added through the *First Constitutional Amendment in 1951* after the Supreme Court's decision in *State of Madras v. Champakam Dorairajan*³⁴⁰, where caste-based reservations were struck down as unconstitutional under Article 15(1).

To correct this, Article 15(4) was introduced as an exception to the general rule of non-discrimination. It gives the State the constitutional power to take positive action like reservations in educational institutions, scholarships, hostels, and other supportive measures for disadvantaged communities. This provision acknowledges that true equality cannot be achieved without supporting those who have historically been marginalised.

³³⁷ M.P. Jain, *Indian Constitutional Law* 937 (Lexis Nexis, 7th edition)

³³⁸ *Yusuf Abdul Aziz v. State of Bombay* AIR 1954 SC 321

³³⁹ The Constitution of India, art. 15(4)

³⁴⁰ *State of Madras v. Champakam Dorairajan* AIR 1951 SC 226

The clause is enabling in nature, meaning the State may make such provisions but is not bound to do so. The aim is to promote substantive equality by recognising the social and educational disadvantages certain groups face, especially due to caste hierarchies and systemic exclusion.

Other cases with important judgments include *M.R. Balaji v. State of Mysore*³⁴¹ in which the Supreme Court ruled that it is necessary for the backwardness to be social and educational both for which the test of caste cannot be the sole criteria as caste is not synonymous with class. It also ruled that reservations must not exceed 50%.

In *Indra Sawhney v. Union of India*³⁴² The court held that the reservation for Other Backward Classes (OBCs) under Article 15(4) and clarified that economic status alone is not sufficient. It reaffirmed the 50% limit on total reservations with exceptions for extraordinary situations.

Article 15(5)³⁴³

Article 15(5), inserted by the *93rd Constitutional Amendment Act, 2005*, allows the State to make special provisions for the educational advancement of Socially and Educationally Backward Classes (SEBCs), Scheduled Castes (SCs), and Scheduled Tribes (STs). This includes reservations in admissions to both aided and unaided private educational institutions, but excludes minority institutions under Article 30(1).

This amendment was introduced to address educational inequality and improve access for disadvantaged groups, especially in the expanding private education sector. It enables the State to implement affirmative action in private non-minority institutions, balancing the right to equality with the goal of social justice.

In the case of *P.A. Inamdar v. State of Maharashtra*³⁴⁴ The Supreme Court held that private unaided institutions (including professional colleges) have autonomy in admissions and the State cannot impose reservations on them. This judgment created a barrier for affirmative action in private institutions.

³⁴¹ *M.R. Balaji v. State of Mysore* AIR 1963 SC 649

³⁴² *Supra* note 2

³⁴³ The Constitution of India, art. 15(5)

³⁴⁴ *P.A. Inamdar v. State of Maharashtra* (2005) 6 SCC 537

In response to Inamdar, in *Ashoka Kumar Thakur v. Union of India*³⁴⁵ The Court upheld Article 15(5) and the validity of reservations in private unaided institutions under the *Central Educational Institutions (Reservation in Admission) Act, 2006*, while excluding minority institutions and applying creamy layer exclusion to OBCs.

CASE LAW DISCUSSION

State of Madras v. Champakam Dorairajan³⁴⁶

Facts: The Government of Madras issued an order allocating seats in medical and engineering colleges based on caste quotas. Champakam Dorairajan, a Brahmin candidate, was denied admission despite better marks due to the communal reservation system.

Issues: Whether the communal G.O. (Government Order) violated Article 15(1) of the Constitution?

Arguments:

- **Petitioner:** The G.O. is discriminatory solely based on caste and violates the equality clause under Article 15(1).
- **Respondent:** The G.O. was intended for social justice and was in consonance with Directive Principles.

Judgement: The Supreme Court struck down the order as violative of Article 15(1). It held that caste-based reservations not backed by constitutional amendments cannot be justified.

Impact: This case led to the *First Constitutional Amendment (1951)* which inserted Clause (4) in Article 15, enabling the State to make special provisions for socially and educationally backward classes.

Analysis: This decision set the foundation for interpreting positive discrimination vis-à-vis equality before law. It reinforced the notion that Directive Principles cannot override Fundamental Rights unless constitutionally amended.

³⁴⁵ *Ashoka Kumar Thakur v. Union of India* AIR 2008 SC 289

³⁴⁶ *Supra* note 10

M.R. Balaji v. State of Mysore³⁴⁷

Facts: The State of Mysore reserved 68% of seats in engineering and medical colleges for backward classes. A petition was filed challenging the excessive reservation.

Issues: Whether 68% reservation is constitutional under Article 15(4)?

Arguments:

- Petitioners contended that excessive reservation amounts to reverse discrimination.
- The state defended the policy as an instrument of social justice.

Judgement: The Court held that reservation should be reasonable, and 50% is a fair benchmark. The classification of backward classes must be based on social and educational backwardness, not caste alone.

Impact: This case laid the 50% ceiling rule and emphasized the necessity of objective criteria in identifying backwardness.

Analysis: Balaji is pivotal in shaping India's affirmative action discourse, ensuring reservation policies remain balanced and not arbitrary.

Mandal Commission Case³⁴⁸

Facts: The Central Government implemented the Mandal Commission recommendation granting 27% reservation to OBCs in central services.

Issues: Whether reservation for OBCs under Article 15(4) and Article 16(4) was constitutional?

Arguments:

- Petitioners argued that economic criteria should be considered.
- The State justified reservations based on social and educational backwardness.

Judgement: The Supreme Court upheld 27% reservation for OBCs under Article 15(4), but excluded the creamy layer. It reaffirmed the 50% ceiling on reservations.

³⁴⁷ Supra note 11

³⁴⁸ Supra note 2

Impact: It institutionalised the creamy layer doctrine, ensuring that benefits reach the truly disadvantaged among backward classes.

Analysis: A significant advancement in social justice, the case balanced equality with equity and refined the reservation mechanism.

Anuj Garg v. Hotel Association of India³⁴⁹

Facts: A Delhi law prohibited women from working in places where liquor is served. It was challenged as violative of Articles 14 and 15.

Issues: Is such a blanket prohibition against women constitutional under Article 15(1)?

Arguments:

- Petitioners argued that the law was paternalistic and gender discriminatory.
- The state contended it was a protective measure.

Judgement: The Supreme Court held the law violated Article 15 and struck it down. It ruled that gender-based discrimination must pass strict scrutiny.

Impact: A progressive interpretation of gender rights under Article 15. The court rejected "protectionist" laws that perpetuate stereotypes.

Analysis: The decision broadened the ambit of equality and dignity of women. It marked a shift from formal equality to substantive equality.

Navtej Singh Johar v. Union of India³⁵⁰

Facts: Petitioners challenged Section 377 IPC, which criminalised consensual homosexual acts, as being violative of Articles 14, 15, and 21.

Issues: Whether criminalising consensual same-sex relationships violates Article 15?

Arguments:

- Petitioners: Discrimination on the basis of sexual orientation falls within "sex" under Article 15.

³⁴⁹ Anuj Garg v. Hotel Association of India (2008) 3 SCC 1

³⁵⁰ Navtej Singh Johar v. Union of India (2018) 10 SCC 1

- State: Defended the provision as moral legislation.

Judgement: The Court held that Section 377, insofar as it criminalises consensual acts between adults, is unconstitutional. It recognised that "sex" in Article 15 includes sexual orientation.

Impact: Landmark case for LGBTQ+ rights in India, expanding the scope of Article 15 to include sexual orientation.

Analysis: A transformative verdict, this judgment has rewritten equality jurisprudence by reading down colonial morality and embracing constitutional morality.

CONTEMPORARY RELEVANCE

Article 15 of the Indian Constitution plays a vital role in ensuring protection against discrimination by the state on the grounds of religion, race, caste, sex, or place of birth. In recent years, its importance has grown in the face of rising social inequalities, debates over affirmative action, and increasing public awareness of identity-based discrimination.

Article 15 has been traditionally applied via a test of 'reasonableness standard' which is not very practical as it merely focuses on associating some half fulfilling logic behind the action of the authorities or the law in question. However, as legal scholar Tarunabh Khaitan points out in his article *"Beyond Reasonableness – A Rigorous Standard of Review for Article 15 Infringement,"*³⁵¹ This test often allows discriminatory policies to pass judicial scrutiny too easily.

The grounds that have been mentioned in Article 15 like caste and religion have been substantially associated with individual freedom and respect and that is why Khaitan supports the use of a Rigorous Standard of Review (RSR) in certain circumstances. Allowing discrimination on these grounds is simply not justifiable because it just reiterates systemic inequity. He therefore recommends that courts require that any legislation that violates Article 15 must be the least detrimental means of accomplishing a legitimate state objective. Influenced by

³⁵¹ Khaitan, Tarunabh. "Beyond reasonableness—a rigorous standard of review for Article 15 infringement." JILI 50, no. 2 (2008): 177-208.

constitutional norms in other nations, such as Canada and South Africa, this threshold is more stringent than the one that is in place now.

Currently, the need for a better test than reasonableness is clearly felt. The promise of Article 15 is still far from being realized, as seen by issues such as the expansion of reservations to economically weaker sections (EWS), prohibitions based on religion in personal legislation, and gender discrimination in religious settings. For instance, discussions surrounding the triple talaq ruling or the Sabarimala temple entry issue demonstrate how gender equality is frequently marginalized in the name of cultural or religious conventions.

An excellent illustration of the application of a stricter threshold may be found in the Supreme Court's ruling in *Anuj Garg v. Hotel Association of India*³⁵², which overturned a statute that prohibited women from working in facilities that served alcohol. In addition to violating women's right to personal autonomy, the Court acknowledged that these regulations are founded on antiquated, patriarchal ideologies. Nonetheless, Khaitan points out that these progressive decisions are still uncommon.

In a setting where gender bias, religious discrimination, and caste-based violence are still prevalent, it is imperative that courts do more than just provide a superficial check. It is crucial to see Article 15 as a safeguard for those marginalized communities that have been losing or compromising their worth since long and facing unjust treatment.

In the end, taking a stricter judicial stance will help guarantee that Article 15 is not diminished to just symbolic significance. Rather, in a democratic and diverse country like India, it can be a potent tool for achieving true, meaningful equality.

CONCLUSION

A pillar of the fundamental rights framework, Article 15 of the Indian Constitution guarantees protection from discrimination on the basis of race, religion, caste, sex, or place of birth. The judicial interpretation of this Article has changed dramatically over the years, moving from

³⁵² Supra note 19

simply prohibiting discriminatory acts to requiring substantive equality and permitting positive discrimination for historically underrepresented groups.

Through constitutional amendments and pivotal rulings such as *M.R. Balaji*, *Indra Sawhney*, *Navtej Singh Johar*, and *Sabarimala*, Article 15 has come to embody a dynamic and inclusive equality guarantee. Its ground-level application, however, is nevertheless uneven despite its progressive jurisprudential evolution, especially when it comes to public places, housing, work possibilities, and education.

Proposed Reforms include:

1. Effective anti-discrimination law: At the moment, India does not have a general law that forbids discrimination in the private sphere. This legislative void can be filled and enforceable civil remedies can be provided by a specialized statute that is based on international frameworks such as the UK's Equality Act.
2. Broadened Protection Categories: The explicit inclusion of grounds such as disability, gender identity, sexual orientation, and marital status should be taken into consideration by constitutional or legislative changes in order to expand the scope of Article 15.
3. Evidence-Based Affirmative Action: By carrying out a thorough socioeconomic caste census, reservation policies might be more precisely targeted and made sure to be founded on up-to-date, verifiable measures of backwardness.
4. Empowerment of Oversight Institutions: Accountability and redress would be improved by bolstering the authority and autonomy of equality organizations like the National Commissions for SCs, STs, OBCs, and Women.

In summary, although Article 15 offers a strong legal basis for equality, its effective implementation necessitates deliberate institutional and legislative changes in line with India's democratic and pluralistic values.

CHAPTER 10

Equality of Opportunity in Public Employment (Article 16)

By Jayvardhan Choudhary

INTRODUCTION

One of the fundamental rights, the right to equality, enshrined in Article 1 of the Universal Declaration of Human Rights (UDHR), which reads as follows: “*All human beings are born free and equal in dignity and rights*”.³⁵³ The Indian constitution incorporates this right in a string of articles made to encompass the multidimensional aspect of equality in its true essence.

Article 14 declares: “*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*”.³⁵⁴ The said article has been interpreted by courts to provide both a positive and a negative right to the citizens, though generally seen as negative right against arbitrary state action the said article has been thoroughly construed to incorporate the equal protection principle of the US 14th amendment which proclaims that all persons should have the right to equal protection by the state³⁵⁵. The said positive right enables the state to take necessary steps in order to ensure equality in a comprehensive manner taking into consideration the pre-existing inequalities.

The said aspect of the article has been further incorporated in Articles 15–18 to elaborate the various schemes of this positive right that is granted under Article 14. Article 16³⁵⁶ provides for equality of opportunity in public employment, in a way supplementing Article 14 and Article 15(1) in matters of employment in public office. While Article 16(2) prohibits discrimination in

³⁵³ Article 1, Universal Declaration of Human Rights (UDHR), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Visited on June 10, 2024).

³⁵⁴ Article 14, The Constitution of India, 1950.

³⁵⁵ Amendment XIV, The Constitution of the United States of America (1868), available at: <https://constitution.congress.gov/constitution/amendment-14/>

³⁵⁶ Article 16, The Constitution of India, 1950.

absolute terms, subsequent clauses function as a saving clause for positive action by the various state bodies, these entail limited reservations in public employment to certain socially and educationally backward sections of the society to further their inclusion in the mainstream.

Public sector employment has been long seen in India as an enabler of social mobility which is accessible to all equals, in a state where wealth concentration and systemic inequality has been part and parcel of the state machinery reminiscent of the centuries of caste and class-based feudalism combined with a general dearth of private employment opportunities. *Rawls' theory of justice*³⁵⁷ which is understood as a critique on utilitarianism says while maximising a country's utility may be efficient and utilitarian but the same cannot be justified from *Kant's moral perspective* and Rawls' idea of justice as fairness, a fairness that originates from equality of opportunity and access to basic primary goods of liberty and equality. The said provides a justification of reservation as a necessary evil made from a veil of ignorance.

An intersection of Rawls' idea of justice as fairness with equality of opportunity and a fair distribution of primary goods is very well captured in the provisions of the Indian constitution,³⁵⁸ especially Article 16 of the Indian constitution which has been recognised as an enabler of a constitutional right in equality of opportunity and employment in public offices.

TEXT OF ARTICLE 16

Article 16 lays down the mandate of equality in opportunity in matters of public employment. The text of this Article is essential to understand how it operationalises the broader right to equality by ensuring that no citizen is denied access to public office on arbitrary grounds, while also providing scope for affirmative action to remedy historical disadvantage.

***Article 16. Equality of opportunity in matters of public employment*³⁵⁹.**

General Guarantee

³⁵⁷ John Rawls, *A Theory of Justice* 83-90 (Harvard University Press, Cambridge, MA, 1971).

³⁵⁸ *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*, 1995 Supp (2) SCC 549

³⁵⁹ Article 16, *The Constitution of India*, 1950.

16 (1); There shall be equality of opportunity for all citizens in matters relating to employment appointments to any office under the State.³⁶⁰

Prohibition of Discrimination

16 (2): No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.³⁶¹

Exception – Residence-Based Qualification

16 (3): Nothing in this article shall prevent Parliament from making any law prescribing, in regard of a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.³⁶²

Reservation for Backward Classes

16 (4): Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.³⁶³

Reservation in Promotions for SCs/STs

[(4A) Nothing in this article shall prevent the State from making any provision for reservation 3 [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]³⁶⁴

Carry Forward of Unfilled Reserved Vacancies (Inserted by the 81st Amendment, 2000)

[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up

³⁶⁰ Article 16(1), The Constitution of India, 1950.

³⁶¹ Article 16(2), The Constitution of India, 1950.

³⁶² Article 16(3), The Constitution of India, 1950.

³⁶³ Article 16(4), The Constitution of India, 1950.

³⁶⁴ Article 16(4A), The Constitution of India, 1950 (Inserted by the 77th Amendment, 1995).

*in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]*³⁶⁵

Economic Reservation (EWS) (Inserted by the 103rd Amendment, 2019)

*16 (5): Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.*³⁶⁶

KEY DOCTRINAL THEMES

Equality of Opportunity in Public Employment

Equality of opportunity in public employment vis-a-vis equality of opportunity in matters relating to employment or appointment to any office under the State encompasses that every individual, regardless of their background, caste, religion, gender, or socio-economic status should have a genuine and equal opportunity to compete for government employment on the basis of merit and ability. It allows that barriers erected by the system and historical disadvantages should not discourage marginalized communities from being able to access job opportunities in the public sphere.

The supreme court has consistently affirmed that right to equality and by extension the right to equality in public employment is part of the basic structure of the Indian constitution. In the case of ***M.G. Badappanavar v. State of Karnataka***³⁶⁷ The court pronounced “*Equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequal as equals will be in violation of the basic structure of the Constitution of India.*” This principle underscores that mere declaration of formal equality in public employment is insufficient and the continuation of the same shall infringe the right to equality to the marginalized and serve against the basic structure of the constitution.

³⁶⁵ Article 16(4B), The Constitution of India, 1950 (Inserted by the 81st Amendment, 2000).

³⁶⁶ Article 16(6), The Constitution of India, 1950 (Inserted by the 103rd Amendment, 2019)

³⁶⁷ M.G. Badappanavar v. State of Karnataka, AIR 2001 SC 260.

To ensure an inclusive and substantive form of equality of opportunity of public employment Article 16 draws upon the idea classification in favour of certain underprivileged and underrepresented communities, in order to connect them to the mainstream.

Formal vs. substantive equality

Article 16 of the Indian Constitution embodies a very liberal construction of equality. While early interpretations of the article catered to the idea of formal equality, entailing absolute identical treatment for all citizens, it later evolved to fundamentally take into consideration the many structural disadvantages and historical injustices that required deferential treatment to achieve true equality of opportunity, thereby advancing substantive equality.

This evolution is understood by many as a progressive development through various judgments and constitutional amendments. The case of *State of Madras v. Champakam Dorairajan* (1951)³⁶⁸ marks the first time that a constitutional court pronounced its verdict in favour of formal equality, narrowing the scope and ambit of positive action under the triad of Articles 14, 15, and 16—a limitation that led to the First Amendment of the Constitution.

The majority judgment in *State of Kerala v. N.M. Thomas*³⁶⁹ enriches the understanding of substantive justice, specifically clarifying the intersectionality between Articles 14, 15, and 16. While explaining the scope of Article 16, Chief Justice Ray held that “the three articles form a string of constitutionally guaranteed rights, supplementing each other, and Article 16 is just an offshoot of Article 14” a reasoning that justifies reasonable classification in public employment. The doctrine of reasonable classification, requiring a nexus with the objective, has been held as the benchmark for validating positive action for disadvantaged groups.

The judgment reinforces the idea of equality not as merely a token of absolute fairness, as earlier judgments suggested, but as an enabler for underprivileged groups to secure a meaningful share of equality in public employment.

Scope of the application of Article 16: Article 16 ensures the equality of opportunity in matters of public employment, against discrimination based on religion, race, caste, sex, descent, place of birth and residence. Though this is a corollary from Article 16(2), clauses (3), (4) and (5)

³⁶⁸ *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

³⁶⁹ *State of Kerala v. N.M. Thomas*, AIR 1976 SC 490.

make certain exceptions. However, these clauses have more recently been deemed as enabling provision for a greater application Article 16 in general.³⁷⁰ These include special provisions favouring classifications in matters of residence, backwards classes of citizens who are not adequately represented in state services, offices of religious or denominational institutions.³⁷¹

The scope of the application of Article 16 is vast and has been the subject to court interpretation since Independence. Public employment encompasses all the levels of state recognised under the preview of Article 12 which includes the central government and the parliament, the state and governments and legislatures, local authorities and other authorities. The scope of local authorities and other authorities have been the subject of judicial interpretation and is an ever-evolving matter of policy and governance.

The doctrine of equality of opportunity in first appointments under Article 16(1) provides a level-playing field to all citizens with an equal opportunity to compete for government jobs. Though the state can prescribe qualifications and conditions in order to ensure efficiency and discipline, they have to be reasonable, non-arbitrary and ought to have a rational nexus with the desired purpose. The Supreme Court, in ***Krishan Chander Nayar v. Chairman, Central Tractor Organisation***³⁷², held that arbitrary prohibitions or exclusions are against this basic right. The case held that the government could indeed "pick and choose" among candidates, but such process should provide fair consideration on merits, and disqualification, if any, must be on objective considerations and due process.

The ruling also explained that Article 16(1) not only assures the right to seek public employment but also the right to be considered reasonably for the post. Blanket prohibition or discriminatory treatment precluding such consideration is unconstitutional unless based on good grounds. This doctrine supplements reservation under Article 16(4) policies, which allow affirmative action for the disadvantaged, but guarantee that general appointments are free of arbitrary or unfair exclusion. The judgment emphasizes that though the state has the prerogative in recruitment, it must be within the limits of constitutional justice, guaranteeing that no one is deprived of opportunity without fair reason.

³⁷⁰ V.N. Shukla, Constitution of India 452-455 (Eastern Book Company, Lucknow, 13th edn., 2021).

³⁷¹ D.D. Basu, Introduction to the Constitution of India 210-215 (LexisNexis, New Delhi, 25th edn., 2022).

³⁷² *Krishan Chander Nayar v. Chairman, Central Tractor Organisation*, AIR 1962 SC 602.

Doctrine of Reasonable Classification

The doctrine of reasonable classification emerges as an exception to the formal structure Article 14, laid down in the case of *Rajasthan State Electricity Board vs Mohan Lal*.³⁷³ This doctrine permits the state to treat different classes of people differently if the classification is based on *intelligible differentia* and has a *rational nexus* with the object sought to be achieved. In the context of Article 16, it allows the government to frame employment policies to cater to special provisions for marginalised groups of individuals without violating the general equality as enshrined in Article 14.

AMENDMENTS AND LEGISLATIVE DEVELOPMENT

77th Amendment (1995) – Article 16(4A)

The Constitution (Seventy-seventh Amendment) Act, 1995³⁷⁴ introduced Article 16(4A) to enable the state to make provisions to provide reservation in promotions to the Scheduled Castes and Scheduled Tribes in public employment. This amendment sought to reverse the verdict of *Indira Sawhney v. Union of India*³⁷⁵ (1992) (Mandal Commission Case), in which the Supreme Court barred reservation in promotions. The amendment clarified that the state possesses the power to make provisions of reservation in promotions if it concludes that the SCs/STs were inadequately represented in governmental services. It aimed to ensure continued affirmative action for historically disadvantaged groups beyond initial recruitment.

85th Amendment (2001) – Consequential seniority

The Constitution (Eighty-fifth Amendment) Act, 2001 amended Article 16(4A) by substituting the words “*in matters of promotion, with consequential seniority*” for “*in matters of promotion*”. This amendment explicitly introduced the concept of consequential seniority for SC/ST employees promoted through reservation. This ensures that the employees promoted through reservation shall have the retail seniority of the general-category employees who were promoted later, even if the latter had more experience. The amendment assuaged the concerns expressed in

³⁷³ Rajasthan State Electricity Board v. Mohan Lal, AIR 1967 SC 1857.

³⁷⁴ The Constitution (Seventy-Seventh Amendment) Act, 1995.

³⁷⁵ Indira Sawhney v. Union of India, AIR 1993 SC 477.

the case of *Vipul Singh Chauhan* ³⁷⁶(1995), In which the court held that reserved - category promotions could not claim seniority over the general- category peers. The 85th Amendment ensured that the reservation benefits in promotions were not affected and diluted by seniority rules.

81st Amendment (2000) – Article 16(4B)

*The Constitution (Eighty-first Amendment) Act, 2000*³⁷⁷ made an addendum to Article 16 by adding Article 16(4B), allowing the carry-forward of unfilled reserved seats even if it crosses the 50% reservation cap instated in the Indira Sawhney case. Previously these vacant seats were deemed lapse if they exceeded the 50% in a year. This amendment provided for backlog vacancies to be treated as a separate class and filled in the subsequent years without clubbing them with fresh vacancies. It aimed to address the issues of systemic deficiencies and ensured meaningful representation for the SCs/STs.

103rd Amendment (2019) – EWS quota (also affects Article 15(6))

*The Constitution (One Hundred and Third Amendment) Act, 2019*³⁷⁸ introduced 10% reservations for the Economically weaker sections (EWS) in governmental jobs and educational institutions, by adding Articles 15(6) and 16(6) into the constitution. This marked the first instance of economic criteria in which a yearly income of less than ₹8 lakh/year was used as a metric for backwardness allowing members of the general category to avail reservations on economic grounds to the exclusion of SCs/STs/OBCs. The amendment aimed to uplift the economically marginalised individuals of the upper – caste however it faced legal challenges it breached the 50% cap set by the Indira Sawhney Judgement and violated the basic structure of equality. In *Janhit Abhyan v. Union of India* ³⁷⁹(2022), the Supreme Court upheld the amendment by 3:3 majority, citing economic reservations as a standalone criterion for affirmative action, distinct from social and educational backwardness.

³⁷⁶ *Vipul Singh Chauhan v. State of Maharashtra*, AIR 1995 SC 1432.

³⁷⁷ *The Constitution (Eighty-First Amendment) Act, 2000*.

³⁷⁸ *The Constitution (One Hundred and Third Amendment) Act, 2019*

³⁷⁹ *Janhit Abhiyan v. Union of India*, AIR 2023 SC 1.

COMMENTARY AND ANALYSIS

Evolution through cases

The constitutional mandate of equality of opportunity in public employment under Article 16 has been a dynamic and evolving concept in the judicial scheme of interpretation, moulded by competing and contrasting imperatives of social justice, administrative efficiency and individual rights. From the *State of Madras v. Champakam Dorairajan*³⁸⁰(1951) to *Janhit Abhiyan v. Union of India*³⁸¹ (2022), the evolving jurisprudence has mirrored the changing socio-political context of the Article and various complexities that came inherent in balancing equality with affirmative action.

From Formal Equality to Affirmative Action: In the *Champakam Dorairajan*, the Supreme Court barred caste-based reservations in educational institutions, upholding a formalistic interpretation and limiting the scope of equality through positive action. Thereby, limiting Article 16(1) and 16(2) in a strict sense as a guarantee of non-discrimination. This led to the First Constitutional Amendment and laid the foundation for affirmative action through Article 15(4) and, by extension, Article 16(4) overruling the said case.

The tussle between equality and affirmative action in the form of protective discrimination became pronounced in *T. Devadasan v. Union of India*³⁸²(1964), where the Court overruled the "carry forward" rule which previously led to excessive reservation, upholding that Article 16(4) is an exception to the general equality guaranteed by Article 16(1). However, in the *State of Kerala v. N.M. Thomas*³⁸³(1976), the Court shifted the earlier stance, holding that Article 16(4) is not an exception of Article 16(1) but another facet of the right to equality itself. This judgment marked the judicial acceptance that substantive equality sometimes requires differential treatment of the unequal to ensure substantive equality.

OBC reservations and the 50% ceiling and reservations in promotions: The Mandal Commission submissions highlighted that the earlier categorisation of SCs and STs excluded a

³⁸⁰ *Champakam Dorairajan*, supra note

³⁸¹ *Janhit Abhiyan*, supra note

³⁸² *T. Devadasan v. Union of India*, AIR 1964 SC 179.

³⁸³ *N.M. Thomas*, supra note

major portion of the population requiring affirmative action under the substantive equality aspect of Article 14. The submissions suggested the formation of a category for other backwards castes which constituted the castes excluded from the presidential orders of 1950. The classification was made on the basis of a detailed survey of communities. The **Indira Sawhney v. Union of India**³⁸⁴ 1992 affirmed the founding of the Mandal commission and upheld the OBC reservations. However, it introduced a set of doctrinal limits on the scope of reservations. Among the limitations, a 50% cap on reservations saved for extraordinary circumstances was placed. Economic backwardness as a sole criterion for backwardness was dropped. A subcategorization of the OBCs was implemented and a strict bar on reservations in promotions was placed.

Subsequently The *77th Amendment*³⁸⁵(1995) and *85th Amendment*³⁸⁶(2001) reintroduced reservations in promotions for SCs/STs, overriding Indra Sawhney. However, in *M. Nagaraj v. Union of India*³⁸⁷(2006), the Court upheld these amendments but imposed the "triple test": It required the state to prove three things to grant reservations namely backwardness of class, Inadequate representation in services and maintenance of administrative efficiency.

This was further simplified in the case of *Jarnail Singh v. Lachhmi Narain Gupta*³⁸⁸2018 which kept the subclassification of the OBCs i.e. the creamy layer exclusion but disposed off with the fresh backwardness proofs for the SCs/STs. More recently in *Neil Aurelio Nunes v. Union of India*,³⁸⁹ The Supreme Court upheld the constitutional validity of 27% OBC reservation.

Sub-Classification and Legislative Overreach: The theme of subclassification was evolved in the case of *Indira Sawhney v. Union of India*³⁹⁰ for the purpose of carving separate categories within the OBC category in order to provide targeted benefits of affirmative action to the ones who required it the most to enable a true and substantive sense of equality. However, the scope of this subclassification in other reserved categories has been sharply contrasted. In *E.V. Chinnaiah v. State of A.P. 2005*³⁹¹, the Supreme Court categorically barred any subclassification within the

³⁸⁴ Indira Sawhney, supra note

³⁸⁵ 77th Amendment, supra note

³⁸⁶ 85th Amendment, supra note

³⁸⁷ M. Nagaraj v. Union of India, AIR 2007 SC 71.

³⁸⁸ Jarnail Singh v. Lachhmi Narain Gupta, AIR 2018 SC 3871

³⁸⁹ Neil Aurelio Nunes v. Union of India, AIR 2022 SC 112.

³⁹⁰ Indira Sawhney, supra note

³⁹¹ E.V. Chinnaiah v. State of A.P., AIR 2005 SC 162.

Scheduled Castes (SCs) and Scheduled Tribes (STs), While holding the same the court said that the SCs and the STs constituted of a single, homogeneous class for the purpose for reservations and any further subclassifications within these categories will violate the constitutional safeguards.

The said proposition was recently reaffirmed in *State of Punjab v. Davinder Singh*³⁹²(2023), which struck down the Punjab's attempt to subclassify the Scheduled Caste category for preferential quota allocation, ruling that such tinkering with the Presidential List would distort the original intent of Articles 341³⁹³.

Economic Criteria a sole reason to grant reservations: The Supreme Court in *Indra Sawhney v. Union of India*³⁹⁴1992, has firmly rejected economic backwardness as a standalone ground for affirmative action under Article 16(4), it held that reservations in public employment should address social and educational backwardness linked to caste-based discrimination. In *Ashoka Kumar Thakur v. Union*³⁹⁵, (2008) the apex court re-affirmed this proposition and struck down attempts to introduce economic quotas in education, it held that historical marginalisation and not poverty justifies affirmative action.

However, the 103rd Constitutional Amendment Act³⁹⁶ 2019, introduced 10% reservations for Economically Weaker Sections (EWS) through Article 16(6). This was the first time economic deprivation alone was recognised as a valid ground for affirmative action, while for other non-SC/ST/OBC categories. The amendment was opposed on legal grounds as being violative of the 50% cap and the fundamental structure doctrine. However, *in Janhit Abhiyan v. Union of India*³⁹⁷ (2022), the Supreme Court also upheld the EWS quota, holding that economic backwardness is a separate category of exclusion and the 50% cap is only for reservation on the basis of caste under Article 16(4) and not on EWS under Article 16(6).

³⁹² State of Punjab v. Davinder Singh, AIR 2023 SC 45.

³⁹³ Article 341, The Constitution of India, 1950.

³⁹⁴ Indira Sawhney, supra note

³⁹⁵ Ashoka Kumar Thakur v. Union of India, AIR 2008 SC 1587.

³⁹⁶ 103rd Amendment, supra note 5

³⁹⁷ Janhit Abhiyan, supra note

CONTEMPORARY ISSUES

Private sector reservations

Article 16 of the Indian Constitution mandates equality of opportunity in public employment, but its applicability to the private sector has been a contested issue. Unlike the express mandate of equality of opportunity in public, private sector employment lacks an explicit guarantee of equality of opportunity. The Supreme Court in *P.A. Inamdar v. State of Maharashtra*³⁹⁸(2005) and *TMA Pai Foundation*³⁹⁹ (2002) has held that mandatory reservations in private entities infringes upon the fundamental freedom to trade. The *117th Constitutional Amendment Bill*⁴⁰⁰ 2012 sought to extend SC/ST reservation benefits to private sector entities receiving state aid. However, the bill lapsed without passage.

Transgender reservations

The Supreme Court's landmark *NALSA v. Union of India*⁴⁰¹ (2014) judgment recognized transgender persons as a "third gender" entitled to reservations under Article 16, classifying them as socially and educationally backward. Despite this constitutional mandate, legislative action has been slow and inconsistent. Early efforts like the *Rights of Transgender Persons Bill, 2014*⁴⁰² proposed 2% reservations in jobs and education but lapsed in Parliament. Similarly, the *Constitution (Amendment) Bill, 2022*⁴⁰³, which tried to ensure political representation through nominations to legislatures, lapsed as well

States like Karnataka and Tamil Nadu introduced 1% horizontal reservations in government jobs. Courts have consistently emphasized that horizontal reservations – which operate across existing categories like SC/ST/OBC – are the most equitable approach, as seen in cases like *Sangama v. State of Karnataka*⁴⁰⁴(2021) and *Rakshika Raj v. State of Tamil Nadu* (2024). However, the

³⁹⁸ P.A. Inamdar v. State of Maharashtra, AIR 2005 SC 3226.

³⁹⁹ TMA Pai Foundation v. State of Karnataka, AIR 2003 SC 355.

⁴⁰⁰ Constitution (Amendment) Bill, 2012 (Lapsed).

⁴⁰¹ NALSA v. Union of India, AIR 2014 SC 1863.

⁴⁰² Rights of Transgender Persons Bill, 2014 (Lapsed).

⁴⁰³ Sangama v. State of Karnataka, AIR 2021 Kar 45

⁴⁰⁴ Rakshika Raj v. State of Tamil Nadu, AIR 2024 Mad 12.

absence of a central framework has led to uneven progress, with many states offering only welfare schemes instead of substantive employment quotas.

The *Transgender Persons (Protection of Rights) Act, 2019*⁴⁰⁵ further exposed legislative shortcomings by omitting reservation provisions entirely. This contrasts sharply with judicial directives, creating a gap between legal recognition and practical empowerment. The proposed 2022 Constitutional Amendment Bill, though progressive in intent, lapsed without debate, highlighting Parliament's reluctance to institutionalize transgender representation. Meanwhile, activists argue that vertical reservations (like OBC quotas) fail to address intersectional marginalization, particularly for Dalit and Adivasi transgender individuals, who face compounded discrimination.

Equal pay for equal work (contemporary analysis)

The principle of "equal pay for equal work", though not explicitly mandated in Article 16, is established through its interpretation. The judgements of *Randhir Singh v. Union of India & Others*⁴⁰⁶ (1982) and *Pramod Bhartiya v. Union of India & Others*⁴⁰⁷ (1993) established this doctrine from Articles 14, 16, and 39(d), prohibiting arbitrary pay disparities for similar work. However, implementation challenges persist, particularly for women facing gendered pay gaps and contractual workers denied parity with permanent staff, as seen in *Jagjit Singh (2017)*.⁴⁰⁸ Despite legislative measures *like the Code on Wages (2019)*⁴⁰⁹ enforcement remains inconsistent, often diluted by administrative excuses.

CONCLUSION

⁴⁰⁵ The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019).

⁴⁰⁶ *Randhir Singh v. Union of India*, AIR 1982 SC 879.

⁴⁰⁷ *Pramod Bhartiya v. Union of India*, AIR 1993 SC 1134.

⁴⁰⁸ *Jagjit Singh v. State of Punjab*, AIR 2017 SC 110.

⁴⁰⁹ The Code on Wages, 2019 (Act 29 of 2019).

Equality in public service jobs is necessary so that opportunities do not seem to be abstract but concretely within reach of every citizen, especially marginalized sections. Judicial interpretations and constitutional changes over the decades have defined its parameters, striking a balance between formal equality and affirmative action to correct past wrongs.

From the initial formalistic response in Champakam Dorairajan to the progressive acknowledgement of substantive equality in N.M. Thomas, the judiciary has been instrumental in widening the ambit of Article 16. Milestone cases such as Indra Sawhney and M. Nagaraj laid down fundamental doctrines—like the 50% cap, exclusion of the "creamy layer," and the "triple test"—and subsequent amends (77th, 81st, 85th, and 103rd) illustrated legislative intent to solidify social justice. The recent upholding of the EWS quota by Janhit Abhiyan similarly illustrates the dynamism of reservation policies, now embracing economic deprivation in addition to caste-based disadvantage. Yet today's challenges remain. The denial of the private sector access to reservation mandates, unequal enforcement of transgender reservations, and pay disparities under the "equal pay for equal work" principle indicate loopholes in achieving equality. Although judicial intervention has been progressive, legislative and administrative enforcement must harmonize to provide for effective enforcement.

Finally, Article 16 is a vibrant instrument of social change, seeking to balance merit with fairness. Its ongoing evolution will be a matter of fine nuances—preserving constitutional morality while adjusting to India's shifting socio-economic landscape. As the legislature and judiciary grapple with these issues, the underlying guarantee of equality of opportunity must remain non-negotiable, and public employment must constitute a true means of empowerment and social justice.

CHAPTER 11

Abolition of Untouchability (Article 17)

By Akshaya Uprit

INTRODUCTION

“17. Abolition of Untouchability. – “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable by law.”

The key characteristics of the bare text are, in the first place, the inverted commas and initial characters that are used deliberately in the words, untouchability; and, in the second place, the two-fold pronouncement of the Article not to use or know any untouchability and not to impose on any individual any disablement or weakness that assumes out of the said practise⁴¹⁰. Despite its brevity, the Article is of overwhelming moral and legal importance, not only declaratory but also serving as the foundation of penal law and as a ground of judicial action.

The first observation is that, the untouchability here is not the actual meaning of the word but the indigenous meaning it has developed to hold in the light of religion, caste and suffering by a historical perspective⁴¹¹. B.R. Ambedkar has written volumes, including his *magnum opus*, in defining untouchability, historically, socially, and culturally, speaking at length about the immense suffering it caused to individuals – including himself.

The framing of the Article provides it with an absolute meaning, covering state action as well as acts or omissions by individuals, institutions or juristic bodies⁴¹². It gives effect to the idea of fraternity, eliminating a long-standing practice, and also operationalising equality in practice.

⁴¹⁰ MP Jain and Sanjay Jain, *Indian Constitutional Law* p. 1091 (LexisNexis, Gurgaon, 9th edn., 2023)

⁴¹¹ Mahendra P. Singh, *V.N. Shukla's Constitution of India*, 261 (Eastern Book Company, Lucknow, 14th edn., 2022)

⁴¹² *State of Madhya Pradesh v Puranchand*, AIR 1958 MP 352.

This chapter will start with the historical background of the term with an emphasis on the importance of this Article in the constitutional process. Further, I will relate it to the legal framework that has been established in modern India to help in the abolition of untouchability by substantiating it with important judicial decisions. Its efficiency and the current status will be described as well. “Untouchability” might be unique to our subcontinent, but Ambedkar once said, *“What is the use of fundamental rights to the Negro in America, to the Jews in Germany and to the Untouchables in India?”*.

HISTORICAL BACKGROUND

The acknowledgement of Article 17 of the Indian Constitution meant the turning point in the legal and moral development of the country signifying the definitive departure from the centuries of discrimination based on caste criteria. One needs to explore the extent of its meaning by tracing the social and legal context in which it was drafted, the arguments that guided the question of its incorporation in the Constitution and the intellectual impetus with which Dr. B.R. Ambedkar was replete in giving it its expression.

The Indian concept of untouchability is not just a personal bias but is an institutionalised social order based on the caste system. Members of the so-called untouchables who came to be known as the Scheduled Castes were traditionally isolated from the rest of society, they were not allowed to enter temples, wells, schools, or even cross the road. It was not only a social discrimination but a spiritual discrimination that was based on the theological construction of purity and pollution. This form of oppression became so ingrained in the psyche that the lives, desires and identities of millions of people were affected in their day-to-day existence. The British colonial regime did not attempt too much to destroy this system. Despite certain legal reforms being made that abolished at least some of the caste-based legal handicaps, including the Caste Disabilities Removal Act of 1850, the general colonial policy was one of non-interference in religious and customary practices. Its codification in the form of censuses and legal categories was known in most cases to reinforce its rigidity.

The best and strongest attack was made against untouchability in modern India by Dr. B.R. Ambedkar. Ambedkar was born into a Dalit family, and from his early schooling years, he faced

severe caste discrimination, such as being denied access to water and being segregated from other children. Despite these humiliations, his academic brilliance shone through, eventually enabling him to pursue higher education abroad.⁴¹³ In contrast to other nationalist leaders who appealed based on the caste as a reform-driven approach, Ambedkar regarded it based on a radical conflict that is irreconcilable with democracy. He maintained that caste was not just a split of labour but a split of labourers blessed by religion and sustained by violence. In his 1936 essay “The Annihilation of Caste”, originally written as a speech for a conference of Hindu reformers, Ambedkar launched a blistering attack on caste and casteists. When the organisers asked him to tone down his remarks, he refused and instead published the essay on his own.⁴¹⁴ He claimed that outcastes are a by-product of the caste system. Well, there will be outcasts as long as there are castes. Without the end of untouchability of course, so far as is concerned to Ambedkar, the abolition of untouchability was not a moral act of charity or a ceremonious act, but something without which there cannot be a viable definition of citizenship and equality⁴¹⁵.

The necessity of the insertion of a constitutional prohibition of untouchability received acute agreement in the Constituent Assembly. The Draft Article 11 (that subsequently passed into Article 17) was proposed without much adverse reaction. While introducing the article, Ambedkar underlined a point that this was not a mere pious statement. It was a constitutional mandate that was enforceable and the state was required to legislate and punish the violations. His demands of legal enforceability were essential- He knew all too well that social change could not be left to the good-will of the upper castes or the fusion of social forces. This strategy got the nod of the Assembly. The article found favour in the opinion of such members as H.N. Kunzru, K.M. Munshi among others⁴¹⁶. They understood that India had no right in calling itself a modern democratic republic and allowed such practice, against which all the principles of equality and human dignity are so deeply contradicting.

Charles Gouzou on the other hand points out another interesting aspect that the Constituent Assembly purposely failed to define the term untouchability. Others were worried by the vague nature, yet Ambedkar justified the unclarity. In his opinion, any efforts to specifically designate

⁴¹³ Gail Omvedt, *Dalits and the Democratic Revolution: Dr. Ambedkar and the Dalit Movement in Colonial India*, p. no. 35 (Sage Publications, New Delhi, 1994).

⁴¹⁴ Arundhati Roy, *The Doctor and the Saint* p. no. 35 (Penguin Books, Gurgaon, 2017)

⁴¹⁵ Act 22 of 1955

⁴¹⁶ Constituent Assembly Debates, Vol. VII, p. no. 650-659 (November 29, 1948)

the very notion would tend to limit its reach and be unable to reflect the ever-changing and various types of exclusion that were exercised on the regional and communal levels. The ability of the Constitution to entertain an open-ended term admitted the possibility of its interpretation and extension by the courts as time went by, a step that has been instrumental in current rule of law.

The untouchability under the Article 17 was subsequently completed with the statutes like the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.⁴¹⁷ Such laws were aimed to meet the constitutional promise and convert it into positive legal solutions, punishing discrimination and exclusion practices and violence. However, the disparity between what India envisions and what it practices continues to be large, hence, the widespread persistence of caste atrocities in present day India. Implementation is possible only through strong political will, the mandate of Article 17, supportive jurisprudence, and progressive social change.

UNDERSTANDING ARTICLE 17

The Article is not only abolishing untouchability symbolically but as a firm and binding decision accompanied by the consequences of penalties. Through this, it goes beyond the declarative nature of fundamental rights and creates a solid constitutional interdict,⁴¹⁸ However, contrary to the other fundamental rights, Article 17 has a horizontal application – applicable against both state and individuals, recognizing private wrongs as constitutional wrongs, which is a rare occurrence in the Indian constitution.⁴¹⁹ The use of the word “abolished” also indicates the ultimate and irrevocable character of the Article’s directive.

Article 17 can be said to complement the cluster of fundamental rights that collectively provide for equality and non-discrimination, i.e., Article 14 (equality before law), Article 15 (prohibition of discrimination), and Article 16 (equality of opportunity), with a penal sanction for social practices. The timelessness of Article 17 lies in its two-fold character: it is not only a moral condemnation of caste that must be obeyed, but also a plea to look more deeply into the society

⁴¹⁷ Mahendra P. Singh, *V.N. Shukla’s Constitution of India*, p. 268 (Eastern Book Company, Lucknow, 14th edn., 2022)

⁴¹⁸ MP Jain and Sanjay Jain, *Indian Constitutional Law* p. no. 1092 (LexisNexis, Gurgaon, 9th edn., 2023)

⁴¹⁹ Durga Das Basu, *Commentary on the Constitution of India*, p. no. 107 (S.C. Sarkar & Sona Pvt. Ltd., Calcutta, 1st edn., 1952)

and change it.⁴²⁰ It balances constitutional morality and social reforms which are grounded on ideals of liberty, equality and fraternity. It is a constitutional indictment against inherited inequality and it has imposed on the state and society the duty to make dignity a working value and not a remote ideal.

One of the most important aspects of Article 17 though it caused a controversy when being drafted is that it does not attempt to define what is meant by the term Untouchability. Although a few members in the constituent assembly were concerned with this ambiguity, Dr. Ambedkar and other framers did not define the term. Their vision was that a particular designation could unintentionally narrow the scope of the Article, and it could fail to capture the different and changing manifestations of exclusion which are practiced in different regions and communities.⁴²¹ Such an open-ended method allows the judiciary the flexibility it needs to interpret and extend the application of Article as new forms of caste-based discrimination appear with time, a move that is critical towards the future evolution of the rule of law. It supports the dynamic nature of the Article, which allows it to constantly challenge the practices in the society based on the developing norms of constitutional morality.

The scope of this Article is further expanded by way of Judicial interpretation. Courts have affirmed and re-affirmed at various instances that untouchability covers not only physical avoidance but also any form of social exclusion or disability on the basis of caste, in areas including but not limited to, public facilities, religious institutions, housing, employment, or education. It is the mandate of the Constitution, to remove every manifestation of caste-based exclusion.⁴²² No exception can be made on the basis of tradition, religion or custom as per the Article and the secular and egalitarian nature of the Constitution. The power of the Article is in its absoluteness, subjecting traditionally and socially approved practices to the test of constitutional morality, thereby increasing the moral imperative of dignity.⁴²³ It abolishes not only traditional untouchability but also similar habits strengthening its dynamic nature. Constitutional transformation however, does not come merely from courts and court victories.

⁴²⁰ Government of India, *Constitution of India*, Preamble (Ministry of Law and Justice, New Delhi, 2023).

⁴²¹ Constituent Assembly Debates, Vol. VII, pp. 655-657 (November 29, 1948)

⁴²² *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

⁴²³ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* p. no. 51–52 (Oxford University Press, New Delhi, 1984).

Another critical finding is the transition to substantive equality: the acknowledgement of the historical injustices of formal inequality, the necessity of correctional activities towards all people, equally: the same treatment of all the people. According to Kymlicka, liberal political philosophy has moved beyond the idea of equality of opportunity (formal equality) which merely provides an equal starting point to the more substantial models (Rawls difference principle, Dworkin equality of resources) that acknowledge the moral arbitrariness of both social and natural inequalities. These theories propose the existence of compensatory systems, which help to redress the scales of the playing field by correcting the unearned disadvantage and the undeserved privilege.⁴²⁴ Article 17, eradicates the systems and customs that institutionalises caste-based stigma such as social segregation, economic boycotts or exclusion from leadership positions.⁴²⁵ Constitutional guarantee is, along with a promise of equal treatment, a directive towards transforming societal arrangements that constraints genuine equality. The Article has a close connection between the moral imperative and the constitutional value of fraternity. The spirit of fraternity stands defeated by the practice of untouchability, for unless it is abolished, it continues to institutionalise hierarchy and exclusion.⁴²⁶

The legal infrastructure supporting Article 17 is articulated through the Protection of Civil Rights Act, 1955⁴²⁷ [originally the Untouchability (offences) Act], that provides actionability to the constitutional directive.⁴²⁸ In this regard, it is important to note that Article 17 is not a declaration, but a self-imposing article of the constitution derived with the force of law that directly connotes the responsibility of the state by law to legislate and penalize. The article clearly provides that the enforcement of any disability on the grounds of the Untouchability shall be an offence punishable by law. This necessity was directly connected to the adoption of certain laws by the Parliament which made sure that the constitutional promise was turned into the positive law solutions which had a penal implication. Despite such endeavours, the legislation has a number of procedural shortcomings including poor conviction rates, under-reporting and

⁴²⁴ Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, p. no. 56 (Oxford University Press, 2nd edn., 2002).

⁴²⁵ *State of Karnataka v Appa Balu Ingale*, (1993) 2 SCC 73.

⁴²⁶ Human Rights Watch, *Hidden Apartheid: Caste Discrimination Against India's "Untouchables"* (Human Rights Watch, New York, 2007).

⁴²⁷ Act 22 of 1955

⁴²⁸ *Jagdish Ram v State of Rajasthan*, (2004) 4 SCC 432

bureaucratic indifference to its transformative capabilities. Although the legislative intent is commendable, the act has several times failed on the altar of implementation.

In order to understand the legislative failures, one must be well aware of the social and ground-level realities. The prevalence of caste-based discrimination is very alarming in India despite the strong constitutional safeguards and progressive laws. The statistics are pointing towards the fact that inequalities still persist even in the most fundamental aspects of life such as in the case of Dalit students in schools and universities who are subjected to implicit and explicit discrimination which can have an impact on their receiving good education and fair evaluation.⁴²⁹ Dalits are still excluded – partially or completely from several places of worship. Discrimination is prevalent in housing, employment and access to basic resources employing Dalits into low-paid, informal and risky jobs⁴³⁰.

The most graphic indication of such deep-rooted systemic discrimination is the fact that manual scavenging is widely practiced, which is in itself a direct violation of the spirit of Article 17.⁴³¹ Although the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013⁴³² was passed by the government, which officially prohibits this dehumanizing kind of work, its real implementation is still far beyond poor. Thousands of people, mostly Dalits, continue to work in cleaning human excreta, which is collected in dry latrines and sewers, which is a significant gap between the law and reality.⁴³³

Nevertheless, there are still major implementation issues. Social stigma and economic inequality have entrenched themselves and many Dalits are still in the clutches of poverty and marginalization. This is aggravated by poor enforcement of law, bureaucratic indifference and culture of impunity, where those who commit caste atrocities are likely to go unpunished, further discouraging reporting and creating fear.

Outside India, the caste discrimination struggles are echoed in the global scenario, such as racism and apartheid. Human rights activists and scholars tend to draw parallels between the structural

⁴²⁹ India's Employment Report: Understand Data and Challenges Through the Lens of Caste, *The Mooknayak*, March 30, 2024.

⁴³⁰ Sukhadeo Thorat, S Madheswaran, and BP Vani, *Schedule Castes in the Indian Labour Market: Employment, Discrimination and its Impact on Poverty* (Oxford University Press, 2023)

⁴³¹ *Safai Karamchari Andolan v Union of India*, (2014) 11 SCC 224

⁴³² The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, s. 5. (Act 25 of 2013)

⁴³³ “National Conclave on ‘Implementation and Challenges of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013’”, *National Law School of India University*, Bangalore, February 28, 2025.

elements of caste-based discrimination and the racial segregation of the United States in the past or the institutionalized racism of the apartheid-era South Africa. These parallels indicate that the terms may change, but the end outcomes are regrettably the same, exclusion, dehumanization, and depriving people the dignity of status depending on birth, make the battle of social justice one of us all.

However, the complete implementation of the mandate of the Article is still far-fetched. Many aspects of social and cultural practices based on caste still exist in various parts of the country, even though it is constitutionally guaranteed. Housing discrimination, Dalit violence as well as economic deprivation are far from uncommon. Regardless of legal tools available, the implementation process is broken, procedural failures and social hesitation are perpetuated.⁴³⁴ Nevertheless, Article 17 is still a powerful legal and rhetorical tool of rights, activism and legal action. It can be hailed as an instrument of constitutional change. It is an indication of constitutional break with the repressive history of India and a commitment to realize a more participatory future. It is necessary to re-vision the social order with a revolutionary approach; it is not sufficient that strong legal interpretation is done. In order to realize its complete potential, multi-faceted struggle of political will, good legal interpretation, and deep social transformation on the part of every citizen is required. As long as untouchability is recognized by a significant number of people, the moral and legislative urgency of Article 17 will be present.

CASE LAW ANALYSIS

*1. Devarajiah vs B. Padmanna*⁴³⁵

Facts of the Case

The conflict was based on a complaint filed by Devrajiah against B. Padmanna. Devrajiah had charged Padmanna that he had done the round of distributing pamphlets to the effect that Devrajiah and two other persons were not bona fide Jains. The pamphlet therefore requested that they should not be allowed to attend Jain temples, worship and even associate with the Jain people. Devrajiah argued that such an exclusion advocacy was tantamount to promoting untouchability, and therefore, it was against the provisions of the Untouchability (Offences) Act,

⁴³⁴ Divya Sharma, *Untouchability: A Reality Check*, 8 Int'l J. L. Mgmt. & Human. 1109 (2025).

⁴³⁵ *Devarajiah vs B. Padmanna* AIR 1958 KANT 84

1955. Although the City Magistrate had started the proceedings under the Indian Penal Code of defamation, he had dismissed the charge under the Untouchability Act, so Devrajiah had a revision petition to the High Court. The position of Padmanna, which was the same as that of the Magistrate at first, was that the objection to the pamphlet was to the supposed violations of the rules of the Jain religion, and to heterodoxy, and not to the fact of the birth of the persons.

Arguments

Devarajiah: Devrajiah argued that the sole purpose of the pamphlet was to spread the concept of untouchability in the Jain community, which was propagating the idea of systematic exclusion of certain people in religious and social life. They wanted a wide interpretation of the word untouchability which would mean that any form of practice caused disabilities similar to those of traditional untouchability, no matter what the immediate justification, would fall within Article 17 and could be prosecuted under the 1955 Act. The constitutional intent, as argued, was to eliminate any dignity denying exclusion.

Padmanna: The defence argued that when taken by its letter, Untouchability referred to disabilities and disqualifications attached to an individual only because he (or she) was born by a given caste. The pamphlet was related to non-adherence of religious tenets and not caste, Article 17 does not apply.

Decision

The Mysore High Court underlined that Article 17 of the Constitution as well as the 1955 Act did not provide a definition of untouchability. Emphasis was laid on the use of inverted commas on the term Untouchability in Article 17. According to the Court, this stylistic decision indicated clearly that the Article was dealing with the practice as it had evolved historically in this country. The judgment made it clear that Article 17 was specially enacted to end social disabilities that were imposed on people of some classes because they were born into some historically recognized untouchable castes. Hence the Court held that social boycott or exclusion of persons on other grounds than birth into such communities, such as in this case, perceived religious non-adherence, did not fit within the narrow confines of untouchability as conceived of by Article 17 and the Untouchability (Offences) Act, 1955.

2. People's Union for Democratic Rights v Union of India⁴³⁶

Facts of the case

People Union of Democratic Rights (PUDR) filed a case as a public interest litigation (PIL) under Article 32 of the Constitution. The petition was anchored on a fact-finding report which showed gross contravention of labour laws at the locations of projects associated with the construction of the 1982 Asian Games in Delhi. The workers employed by contractors and sub-contractors were not receiving minimum wages, were not allowed any basic rights and in most instances were forcibly bonded to their employers. Many of such employees were Scheduled Castes and oppressed classes and that raised the questions about the exploitation based on the castes and structural inequalities.

Arguments

The petitioners submitted that the conditions of the labourers were that of bonded labour which was banned under the Bonded Labour System (Abolition) Act, 1976. These exploitative acts were in contravention with Article 21 (right to life and dignity), 23 (prohibition of forced labour) and Articles 17 (abolition of untouchability). The bonded labour was not only an economic exploitation of the labourers since the majority of the affected labourers were either Dalits (untouchable castes) or members of oppressed castes by caste which is a continuation of untouchability in a modern form.

The state claimed that the government had nothing to do with the violations because the employees were hired by third parties. It rejected the suggestion that bonded labour is practiced in any systematic way or that it is caste based and asserted that it is adhering to the statutory provisions.

Decision

The Supreme Court disapproved the limited meaning provided by the State. Justice P.N. Bhagwati believed that the Fundamental right contained in Articles 17 is enforceable not only against State but also against individuals. The Court emphasized that untouchability goes beyond physical or ceremonial isolation, to caste-based economic and social exploitation and bonded

⁴³⁶ People's Union for Democratic Rights v Union of India (1989) 4 SCC 730

labour status where Dalits are excessively coloured. As long as the practices based on caste hierarchy and social exclusion are perpetrated by private actors, the latter are acting in contravention to the constitutional requirements and the State is obliged to prohibit and correct such acts. It was the constitutional default of the State to provide protective labour laws and prevent exploitative actions of the privates. The Court explicitly stated that Article 17 is not just a limitation on any State action but it is also a ban on any form of discrimination that may be undertaken by individuals or any other non-State entities. It is also horizontally applicable, that is, it applies between individuals and legal entities, so that the practice of untouchability by any individual becomes a constitutional offence, whether the State is involved directly or not.

3. State of Karnataka v Appa Balu Ingale⁴³⁷

The ruling of the Supreme Court in *State of Karnataka v. Appa Balu Ingale* (1993) is a constitutional milestone in construing Article 17 of the constitution of India which outlaws untouchability. It was a turning point because the judicial system realized that it is time to abandon the limited, traditionalist interpretation of the term untouchability and explore the substantive and rights-based meaning of the term in the context of the transformative spirit of the Constitution. The case gave legal clarity to the extent of the protection of the Protection of Civil Rights Act, 1955 (PCRA) which implements Article 17 and extended its coverage to modern and institutionalized caste-based discrimination.

Facts of the case

The case was filed as an appeal to a decision by the State of Karnataka against the acquittal of persons accused under the PCRA. The accusations included the causes of caste-based discrimination against the members of the Scheduled Castes, including the denial of access to the public space and services, and the social boycott. The trial and lower appellate courts had assumed a narrow approach to untouchability whereby they looked at it mostly in the historical context of physical purity and pollution and as such the accused was acquitted. This case finally reached the Supreme Court which was asked to decide on what should be the correct extent of Article 17 and what should be the legal interpretation of the term untouchability in the light of modern constitutional democracy.

⁴³⁷ *State of Karnataka v Appa Balu Ingale* (1993) 2 SCC 73

Arguments

The narrow question of law before the Court was whether constitutional abolition of untouchability by Article 17 and its enforcement by PCRA ought to be understood in narrow terms of physical untouchability as existed historically or in broader terms of social handicaps and exclusion on the basis of caste. The State of Karnataka held that any form of narrowness would make Article 17 futile as nowadays discrimination based on caste can be in non-actual but still demeaning forms. It stated that the aim of Article 17 was to dislodge the entire social and institutional structure upon which caste-based subordination is based and that PCRA must be interpreted in this spirit so as to punish a wider variety of acts of discrimination. But the respondents tried to restrict the implementation of the provision to past practices of touch-based pollution claiming that their actions did not constitute such untouchability.

Decision

The Supreme Court made a strong and wide interpretation of Article 17. It stated that the word untouchability cannot be taken literally, grammatically or even historically. Instead, it is used in a general sense to mean the social disability, exclusion and stigma that is imposed on people just because of their caste status. The Court observed that these disabilities can be in the form of denial of access to public places, economic and social boycott, discrimination in services and other caste-based marginalization. It also made it clear that Article 17 is not just proclamatory, but it is a positive constitutional obligation to eliminate untouchability in its various forms. Any act that acts to enforce disability based on caste, whether it is based on custom, religion, or tradition or not, is therefore unconstitutional. The Court therefore reversed the acquittal holding that acts of caste discrimination which were alleged in the case were within the scope of untouchability and were punishable under the PCRA.

4. Indian Young Lawyers Association v State of Kerala⁴³⁸

Facts

The case was a result of a Public Interest Litigation by Indian Young Lawyers Association and others that was against the practice and the law that the women in the reproductive age (10 to 50 years) were not allowed to enter the Sabarimala Ayyappa Temple in Kerala. It was defended by

⁴³⁸ Indian Young Lawyers Association v State of Kerala (2019) 11 SCC 1

temple officials and justified by Rule 3(b) of Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which allowed restrictions to the temple entry in the interest of upholding religious traditions. The reason behind the prohibition was that the god, Lord Ayyappa, was unmarried and that the entry of women belonging to the specified age group which is associated with menstruation would interfere with the spiritual nature of the temple. The petitioners argued that this limitation constituted a violation of constitutional rights and they wanted this rule to be declared invalid.

Arguments

The petitioners argued that the ban violated Articles 14 (equality before law), 15 (prohibition of discrimination) and 25 (freedom of religion) because women were denied the freedom of enjoying equal access to a place of worship as against men based on mere grounds of sex and status as physiological beings. More to the point, they also utilized Article 17, arguing that menstrual impurity exclusion was a social stigma and ritual pollution was synonymous to untouchability. They argued that exclusion of a person based on the issue of impurity to enter a public temple was a form of discrimination that strengthened social stratification and went against the dignity of women. The respondents among whom the Travancore Devaswom Board and others who were defending the custom, claimed that the custom was a necessary religious practice and was guaranteed by Articles 25 and 26. They refused to associate it with Article 17 stating that the prohibition was based on the celibate nature of deity and it did not discriminate against any caste or connote untouchability in constitutional terms.

Decision

By a 4:1 majority, the Supreme Court ruled that Rule 3(b) of the 1965 Rules were unconstitutional and invalidated the exclusion of women. The Court adjudged that the exclusion was not a religious practice that was essential and the worshippers of Lord Ayyappa did not represent a distinct religious group that is deserving of protection of the Constitution under Article 26. Most of them stressed the importance of constitutional morality over religious custom and repeated that discriminatory treatment of any gender in the public places is not acceptable and even in temples. Justice D.Y. Chandrachud in his concurring opinion paid special attention to Article 17, as exclusion on the basis of menstruation is based on the ideas of purity and pollution, which are at the core of the ideology of untouchability. He claimed that the omission discoursed

stigmatization of women due to their biological functions and promoted structural discrimination similar to untouchability in caste. Therefore, whereas most of them based the verdict on the Articles 14, 15, and 25, Chandrachud interpretation placed Article 17 in the limelight, asserting that untouchability is applied to other forms of exclusion based on rituals. The court, especially concurring opinion by Justice Chandrachud, had greatly broadened the latitude of interpretation of Article 17. It implied that untouchability is not limited to caste-based discrimination but there are other exclusionary acts based on the purity-pollution paradigm such as the gender-based stigma related to menstruation. This interpretation was consistent with the previous jurisprudence which perceived Article 17 to be an instrument of destruction of systematic and symbolic forms of discrimination as exemplified in cases such as Appa Balu Ingale. The case upheld the fact that places of worship that are open to the public cannot accommodate exclusionary practices that compromise constitutional rights to dignity and equality. Through the similarities between the caste and gender discrimination, the judgment furthered an intersectional interpretation of untouchability and reiterated the applicability of Article 17 in addressing the emerging modes of social exclusion. The dissent and the eventual referral to a larger bench however, indicates the inability of Indian society to reconcile differences in terms of the extent of constitutional morality over religious practices.

CONCLUSION

The history of Article 17, the Indian Constitution, and its current interpretation illustrates the complicated and sometimes difficult road that India took to get rid of untouchability. The brainchild of the deep understanding of Dr. B.R. Ambedkar and the determination of the Constituent Assembly, Article 17 was not aimed at becoming just a ceremonial declaration but a powerful and binding constitutional obligation to eradicate centuries of discrimination on the basis of caste.

The implementation of the promise of Article 17 is still yet to be realized despite the obvious intentions and the consequent legislative initiatives such as the Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Lack of equality among the Scheduled Castes is also depicted by statistical figures and realities at the

ground level. As an example, it has been noted that Dalit students still experience discrimination in educational institutions and are still not provided access to places of worship, housing and formal jobs and many are driven to low paying, informal and risky work. The bleak truth of manual scavenging, even though it is prohibited by the 2013 Act, with thousands, mostly Dalits, continuing to perform this dehumanizing activity, is but graphic evidence of the wide disjunction between law and reality.

The judicial interpretation has greatly expanded the meaning of untouchability especially in the case of *People Union of Democratic rights v Union of India* and *State of Karnataka v Appa Balu Ingale* where they went further than the mere physical contact and extended the definition of untouchability to all forms of social, economic, and ritualistic exclusion on the basis of caste. Such interpretation was further extended to other cases of exclusion on behalf of purity-pollution paradigms like the case of discrimination on gender grounds with reference to the subject of menstruation as an example of the living and evolving nature of the Article 17 application in the *Indian Young Lawyers Association v State of Kerala* case with the Justice Chandrachud concurring with the view of the case.

Nevertheless, it is not enough to achieve legal triumph in order to break long-established societal patterns. The existing problems of low conviction, failure to report atrocities, bureaucratic apathy and a culture of impunity emphasize the need of having high political will and transformation of the thinking pattern in the society. Article 17 is a strong testimony of the constitutional provisions of equality and dignity in India. However, its full potential can be realized only in the course of a complex and ongoing effort, which includes the effective application of the laws, active social reforms, and shared social goal of eliminating all types of discrimination that challenge the values of liberty, equality, and fraternity. The fact that untouchability, in one form or another, persists, is a reminder that Article 17 is of continuing moral and legislative concern.

CHAPTER 12

Abolition of Titles (Article 18)

By Falguni khaparde

INTRODUCTION

The removal of titles in line with Article 18 of the Indian Constitution is a constitutional promise to egalitarian ideals, a clear departure from India's feudal heritage and colonial past. The provision was directed towards uprooting spurious distinctions which sustained social hierarchy and undermined democratic equality. The abolition of titles pursuant to Article 18 of the Indian Constitution is the country's pledge for equality and rejection of feudal and colonial superior hierarchies. A part of the Right to Equality (Articles 14–18), Article 18 forbids the state from granting titles (with the exception of military and academic honors) and disallows citizens from being granted titles from foreign states. This was aimed at breaking the British system of honors that perpetuated social stratification and subjugation to colonial masters.⁴³⁹

The Raja and Maharaja titles were not just honorifics but they were the instruments of political control over social stratification.⁴⁴⁰ The colonial era delved into the system under the aegis of imperial honours such as Knighthoods and the Rai Bahadur, instruments of co-option, these titles had generated a class of local elites whose loyalty to the British Crown overshadowed nationalist expectations.⁴⁴¹ These titles reinforced colonial domination and created a class of brown sahibs who thrived under the imperial order. The nationalist movement, specially leaders like Gandhi and Nehru, opposed these differences as an anti-egalitarian view of India, setting the stage for their constitutional elimination.⁴⁴²

⁴³⁹ M.P.Jain, Indian Constitutional Law 300 (Kamal Law House, Calcutta, 8th edn., 2023)

⁴⁴⁰ *Ibid.*

⁴⁴¹ V.N.Shukla, Constitution of India 258 (Eastern Book Co., 7th edn., 1982)

⁴⁴² Dr. Amit Kumar Ishwarbhai Parmar, “Fundamental Rights Under the Indian Constitution” ISSN 2394-9724, 4 (2014).

The Constituent Assembly debates reveal that Article 18's scope was the subject of intense deliberation. Prof. K.T. Shah urged for an absolute ban on titles, warning that even non-hereditary distinctions could foster tendencies towards feudalism. A central point of contention was whether the prohibition should extend only to hereditary titles or to all state-conferred honors.

C. Rajagopalachari, speaking in opposition, maintained that while hereditary titles were objectionable, special services deserved limited recognition in the form of state awards. The Assembly, however, rejected the proposal to strip individuals of pre-1947 titles, as it feared this would lead to divisive consequences.

Ultimately, the debates underscored Article 18's two-fold role:

1. Negative aspect – prohibiting the State from granting titles.
2. Positive aspect – reinforcing the constitutional ideal of civic equality.

This chapter provides a comprehensive analysis of Article 18 since it examines its background, constitutional meaning, judicial enforcement, alongside modern-day challenges. It shall consider further whether Article 18 has reached its transformative potential. It shall also determine if it is still being hindered by socio-political realities and also implementation voids.

ARTICLE 18 TEXT

Article 18 of constitution reads as follows:

“18.

(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while holding any office of profit or trust under the State, accept any title from a foreign State without the President's consent.

(4) No person holding any office of profit or trust under the State shall accept any present, emolument, or office from a foreign State without the President's consent.”⁴⁴³

⁴⁴³ *Supra* Note 3

The interpretation of this article is negative in nature as it bars and prohibits the state from granting titles, with exceptions for military gallantry awards (e.g., *Param Vir Chakra*) and academic distinctions (e.g., *Ph.D.*). Further it bars Indian citizens from accepting foreign titles (e.g., *British knighthoods*). It also restricts foreign honors for government officials without presidential approval.

It has an exception, it exempts military and academic titles from the prohibition of titles. This exemption acknowledges the merit based distinctions, awarded based on individual achievements in different fields. Titles such as major, captain, general in military, and professor, Doctor in academia are allowed.

Article 18's four clauses establish a comprehensive framework. Clause 1 prohibits the state from conferring titles, with exceptions for military and academic honors. As interpreted in *Balaji Raghavan v. UOI* (1996)⁴⁴⁴, this distinction hinges on whether an award functions as a "title" by becoming an appendage to one's name. Clause 2 bars citizens from accepting foreign titles, a provision tested in *Indira Gandhi v. Raj Narain* (1975)⁴⁴⁵, where the SC held that unauthorized acceptance violates constitutional morality. Clauses 3–4 regulate foreign honors for public officials, reflecting concerns about divided loyalties.

DEBATES ON ARTICLE 18 IN THE CONSTITUENT ASSEMBLY

The Constituent Assembly debates, as analyzed in Shukla's work, reveal heated discussions on the scope of Article 18. A key contention centered on whether to ban only hereditary titles or

"That in clause (1) of article 18, for the words 'No title, not being a military or academic distinction, shall be conferred by the State,' the words 'No title, not being a military or academic distinction, shall be conferred by the State upon any citizen of India' be substituted." - **Mr. Naziruddin Ahmad** ⁴⁴⁶

Prof. K.T. Shah advocated for an absolute prohibition, warning that even non-hereditary awards could revive feudal tendencies.

⁴⁴⁴ *Balaji Raghavan v. UOI* (1996) 1 SCC 361.

⁴⁴⁵ *Indira Gandhi v. Raj Narain* AIR (1975) SC 2299.

⁴⁴⁶ Parliament of India, Vol. 7th Constituent Assembly Debates, 1948 (2014).

“I rise to support the principle behind Article 18 but I would go further than what is proposed. In my opinion, not only should titles be prohibited, but even the acceptance of any honour, decoration, distinction of any kind from any foreign State by any Indian citizen should be completely banned—without exception. It affects national dignity and may compromise the allegiance of our citizens.” - K.T shah⁴⁴⁷

The final compromise, permitting military and academic distinctions, reflected Sardar Patel's pragmatic approach.

“British titles corrupted public life their abolition must be absolute.” - Sardar Patel⁴⁴⁸

Nehru's Opposition to titles, he argued titles were "relics of medievalism" and antithetical to democracy. He warned that state-conferred honors could revive feudal tendencies.

“Titles create artificial inequalities and distinctions in a democratic society. If democracy is to have any meaning, it is essential that every man, whatever his birth or position, is treated equally before the State. We cannot allow a new class of titled persons to emerge again in independent India.” - Dr. Jawaharlal Nehru⁴⁴⁹

Ambedkar gave a legal rationale he emphasized that Article 18 was enforceable, it is not merely symbolic so he rejected exception for non- hereditary titles, saying it could be misused. The Assembly rejected a proposal to strip pre-1947 titles, fearing divisive repercussions. The debates underscored Article 18's dual role: as a negative injunction against state power and a positive affirmation of civic equality.

“The expression ‘no title shall be conferred by the State’ is quite definite and conclusive. The object of the article is to put an end to all kinds of titles and to stop any future creation of titles except military and academic ones.” – Dr. BR Ambedkar

After the debates various amendments were done, initially the hereditary titles were only banned. Then later on T.T. Krishnamachari amended it to include all titles except military/ academic.

“I support Article 18 as it stands. It is a matter of deep satisfaction that this article abolishes all titles of honour except those that are academic or military. We must rid ourselves of the colonial

⁴⁴⁷ Ibid at 52.

⁴⁴⁸ Constituent Assembly Debates, Vol. III, 30 April 1947, p. 494 (Statement of Sardar Vallabhbhai Patel).

⁴⁴⁹ Constituent Assembly Debates, Vol. VII, 30 November 1948, p. 981 (Statement of Jawaharlal Nehru).

legacy that burdened us with artificial distinctions, which had no relevance in a democratic society.”-T.T Krishnamachari.

AWARDS DEBATE ON ABOLITION OF TITLES

Ambedkar expounded in the discussions that the prohibition of titles was not a privilege being conferred on the citizens but an obligation for maintaining citizenship. This explanation emphasizes that Article 18 is a restrictive article, preventing any citizen from seeking a hereditary or honorary title creating artificial social distinctions.⁴⁵⁰ The main aim of eliminating titles was to destroy feudal distinctions and uphold egalitarian principles. During pre-independence India, titles like Rai Bahadur, Sawai, Rai Sahab, Zamindar, and Taluqdar were badges of British patronage, frequently bestowed upon loyalists who supported colonial rule. Titles encouraged social stratification, which reinforced class and caste divisions.

By barring them, the Constitution aimed to stop injurious generalizations—where those with titles were seen to be superior, fostering insecurity and resentment among the common masses. A titularly divided society could never reach democratic solidarity.

A democracy survives through equality, not privileges granted through birth or by the state. Article 18 prevents any one person from asserting superiority through the adoption of a title, thus stopping the formation of an elite class. As Ambedkar and other drafters had claimed, political and social equality are incompatible with titles that place a few individuals higher than others.⁴⁵¹

The British employed titles as a means of manipulation, bestowing titles on collaborators to disintegrate Indian society. In post-independence India, maintaining such differentials would have derailed national integration. While hereditary and feudal titles were abolished, the Constitution does not forbid state-awarded honors for distinguished service in areas such as science, literature, arts, and public administration. Nonetheless, even those awards (Bharat Ratna, Padma Vibhushan, etc.) cannot be used as prefixes or suffixes (e.g., one may not officially address themselves as "Padma Shri Dr. X"). This difference was important merit-based awards were allowed, but honorary titles that conveyed superiority for life were prohibited.

⁴⁵⁰ Dr. Raju Bandi, “Provision and Practices of Fundamental Rights in Indian Constitution - A Perspective” ISSN 2277-7881 IJMER, 4 (2019).

⁴⁵¹ Ranjana Sehgal, “Social Work and Social Development” ISBN 978-81-266-4573-2, 276 (2010).

In 1954, the Government of India instituted a series of national civilian honours—namely, the Bharat Ratna, Padma Vibhushan, Padma Bhushan, and Padma Shri—to recognise and reward individuals for their exceptional contributions in various fields of endeavour. But not everyone was cheering. Acharya Kripalani, for one, basically called them out for being a sneaky way to bring back elitism, just with a fancier name tag, which kinda clashes with Article 18. That article’s supposed to shut down all the old-school, “I’m better than you” titles.⁴⁵²

In the late 1970s, the Janata Government suspended the conferment of civilian awards, perceiving them as remnants of colonial practices. However, in 1980, the succeeding Congress Government reinstated these honours, emphasizing that acknowledging excellence in various fields was both valuable and necessary.

The Supreme Court has clarified the scope of Article 18, holding that the constitutional prohibition applies to titles of nobility acquired by birth and not to distinctions conferred in recognition of merit. In *Indira Nehru Gandhi v. Raj Narain* (1975), the Court observed that State honours such as the Bharat Ratna or Padma awards are not unconstitutional, provided they are conferred judiciously and not distributed indiscriminately.

Article 18 was intended as a repudiation of feudal and colonial hierarchies, affirming the principle of equality by rejecting hereditary privileges. Nevertheless, debates continue as to whether civilian awards risk creating a new class of exclusivity. In this sense, Article 18 operates as a constitutional safeguard, ensuring that honours do not translate into social or political superiority, but remain instruments of genuine recognition.⁴⁵³

JUDICIAL INTERPRETATIONS RELATING TO ABOLITION OF TITLES

The Supreme Court’s doctrine under Article 18 has evolved increasingly through seminal judgments on the balancing of legitimate respect for merit with constitutional equality in a harmonious way. The Court in *Indira Gandhi v. Raj Narain* (1975)⁴⁵⁴ established a five-point test analyzing aspects like permanence, transferability, and privileges to differentiate allowable

⁴⁵² *Supra* Note 4 at 4.

⁴⁵³ *Supra* Note 13 at 280.

⁴⁵⁴ *Indira Gandhi v. Raj Narain* 1975 AIR 1590.

awards from disallowed titles. *Balaji Raghavan v. Union of India (1996)*⁴⁵⁵ did greatly reaffirm at least this structure. There, the Court recognized Bharat Ratna as well as similar national awards under constitutional status, as long as they ensure a strictly non-titular status and transparent selection methods.

The courts have been especially vigilant against efforts to restore feudal distinctions. *Raghunathrao Ganpatrao v. Union of India (1993)*⁴⁵⁶ staunchly defended the abolition of princely privileges, with *Ramesh Yeshwant Prabhoo v. Prabhakar Kunte (1996)*⁴⁵⁷ applying this principle to religious-political honorifics invoked in election contexts. In *Subramaniam Balaji v. State of Tamil Nadu (2013)*⁴⁵⁸, the Court averted balkanization of honors by declaring invalid state-level award schemes, reinforcing the Union's sole jurisdiction over official recognition.

Professional and functional differences have been treated with greater sensitivity. *Indira Jaising v. Supreme Court of India (2017)*⁴⁵⁹ allowed the "Senior Advocate" designation as a non-hereditary professional honorific, whereas *University of Calcutta v. Abhijit Sen (2005)*⁴⁶⁰ set careful limits around academic distinctions by precluding honorary degree holders from using the prefix "Dr.". Military honors have been repeatedly safeguarded under the constitutional exception, as upheld in *Kehar Singh v. Union of India (1989)*.⁴⁶¹

The courts have also considered enforcement issues, specifically foreign titles in the Vijay Mallya case, raising lacunae in regulating globalized citizenship. Companion cases such as *State of Uttar Pradesh v. Raj Narain (1975)*⁴⁶² and *S.P. Gupta v. Union of India (1981)*⁴⁶³ have considered the confluence of titles with political and judicial positions.

The Rajasthan High Court in *Bhagwati Singh v. Raja Laxman Singh (2022)*⁴⁶⁴ ruled that actively using hereditary titles like "Raja" in elections violates Article 18's equality principle,

⁴⁵⁵ *Balaji Raghavan v. Union of India* 1995 INSC 900.

⁴⁵⁶ *Raghunathrao Ganpatrao v. Union of India* 1993 AIR 1267.

⁴⁵⁷ *Ramesh Yeshwant Prabhoo v. Prabhakar Kunte* 1996 AIR 1113.

⁴⁵⁸ *Balaji v. State of Tamil Nadu* AIR ONLINE 2013 SC 153.

⁴⁵⁹ *Indira Jaising v. Supreme Court of India* (2017) 10 S.C.R.478.

⁴⁶⁰ *University of Calcutta v. Abhijit Sen* (2005) 3 Cal LJ 107.

⁴⁶¹ *Kehar Singh v. Union of India* 1989 AIR 653.

⁴⁶² *Uttar Pradesh v. Raj Narain* 1975 AIR 865.

⁴⁶³ *S.P. Gupta v. Union of India* 1981 Supp (1) SCC 87.

⁴⁶⁴ *Bhagwati Singh v. Raja Laxman Singh* S.B. Civil Writ Petition No. 20051/2019.

though allowing their passive retention as surnames. The judgment prevents exploitation of feudal prestige for electoral advantage while permitting historical identity markers.

INTERNATIONAL COMPARISONS OF TITLES

Different nations have adopted varying approaches, some completely prohibiting aristocratic distinctions, others retaining them with reforms, and a few creating hybrid systems. India's Article 18 represents one of the strictest prohibitions, while permitting limited exceptions for military and academic distinctions. This strict approach contrasts quite sharply with the modified versions of aristocratic honors systems retained by other common law jurisdictions.⁴⁶⁵

The United Kingdom maintains perhaps the most well-known honors system among modern democracies, along with it preserves titular distinctions like knighthoods and peerages while implementing meaningful reforms. The Life Peerages Act of 1958 did transform the hereditary House of Lords through the introduction of life peers. Later changes lessened aristocratic privileges more. Periodic "Cash for Honors" scandals exemplify potential political patronage, yet the British system continues receiving criticism. Unlike India's absolute prohibition, the UK has chosen to democratize rather than eliminate its titular system.⁴⁶⁶

The United States took even a more stringent constitutional position in comparison to India by way of its Title of Nobility Clause located in Article I, Section 9. This provision does prohibit both federal and state governments from the granting of titles. It also mandates theoretically that Americans accepting foreign titles without consent from Congress lose citizenship. This penalty is mostly unenforced still, though the U.S. rejects aristocratic traditions far more than India does with its system, which gives civilian awards like Padma honors and the Bharat Ratna.

After its revolution, France cultivated a distinctive republican form as it eliminated aristocratic status with the establishment of the *Légion d'Honneur* as a merit system alternative. It preserves titular styles such as "Chevalier" and "Commandeur" but renders them dependent on achievements recognized by the state rather than by birth. The French experience shows how revolutionary governments tend to replicate hierarchical differentials even as they do so through

⁴⁶⁵ Yash Thakur, "Article 18 of the Indian Constitution: What You Need to Know" in Effective laws (2025).

⁴⁶⁶ *Ibid.*

alternative structures - a tendency that India's constitutional form tried to bypass with Article 18's blanket prohibitions.⁴⁶⁷

Post-imperial Germany and post-apartheid South Africa also provided an alternative means in which they manage the past claims under democratic transformations. Germany's Weimar Constitution ended aristocratic political privileges but also allowed former titles to remain as surname elements, thereby sacrificing tradition and egalitarianism. South Africa revised its honors system. That too was done in post-1994, substituting colonial-era differences with new national orders while making room for traditional leadership titles in its constitution.

In contrast to most democracies that have maintained adapted honors systems or established new merit-based substitutes, India's founders chose virtually complete prohibition as part of their design for a casteless, equal society. This goes beyond even the U.S. model in some ways, especially by virtue of its express prohibitions against citizens accepting foreign honors. Yet India's establishment of the Padma awards system shows how democracies can reward greatness without re-creating privilege of birth - an innovation other countries may learn from as they reform their honors systems.

TITLE VS RECOGNITION

Titles and honors are a core constitutional dilemma in democratic cultures. Titles, by definition, grant legitimized social rankings through hereditary or honorary titles that tend to translate into concrete advantages. State awards and decorations, on the other hand, seek to recognize excellence without creating permanent class divisions.⁴⁶⁸ This tension is at the core of India's Article 18, which eliminated feudal titles but allowed for some merit-based honors, establishing a special system that reconciles egalitarian values with the human need for recognition.

Constitutional systems around the world have taken divergent responses to this problem. The United States enforces one of the strictest prohibitions through its Title of Nobility Clauses (Article I, Sections 9 and 10), which ban both the granting of noble titles and the acceptance of

⁴⁶⁷ *Supra* Note 3.

⁴⁶⁸ Apoorva, "Whether power of attorney, will, agreement to sell can be recognised as title documents conferring rights in any immovable property" SCC online (2023).

foreign titles or emoluments without Congress's approval. In France, the revolutionary rejection of feudal privilege paved the way for Napoleon's *Légion d'honneur*, a secular, merit-based system recognizing bravery and service. In the United Kingdom, the constitutional monarchy has preserved its honors system while reducing political power of hereditary peers—through the Life Peerages Act of 1958 and the House of Lords Act of 1999, which respectively introduced non-heritable peerages and removed most hereditary peers. These comparative models illustrate different pathways by which societies mediate between equality and recognition.

The fundamental legal distinction is one of the enforceability and permanence. Valid titles constitute legally enforceable social castes with the heritable status and economic benefits. Modern state awards, when properly defined, avoid these defects by being non-hereditary, non-titular, and conferring no legal privileges.

India's Padma award is a good example of this strategy – though the great honors, they cannot be employed as prefixes or suffixes and confer no tangible benefits, remaining symbolic. Yet the distinction between recognition and de facto title remains thin. Psychological hierarchies necessarily arise around the state honors, such as with social capital for Bharat Ratna receivers. The Indian judiciary has sought to police this threshold through court decisions barring use of “Dr.” for honorary degrees and overturning state-level award mechanisms, but the practical differences will inevitably blur for popular perception. This engenders a perpetual tension between social realities and the constitutional ideals.

RECENT TRENDS

The matter of state awards and honorary degrees has become increasingly controversial in recent years with a number of celebrity and public figure refusals and returns of high-end honors. This is an expression of increasing anxiety about politicization of awards and their waning credibility. These include, for instance, novelist Nayantara Sahgal returning her Sahitya Akademi Award in protest of increasing intolerance, and documentary filmmaker Anand Patwardhan refusing the Padma Shri following controversies surrounding the government's selective honoring of dissenters.⁴⁶⁹ These acts of refusal have sparked important conversations about whether state-conferred honors still carry genuine prestige or have become tools for political messaging.

⁴⁶⁹ *Ibid.*

Apart from state awards, a still more prevalent but no less essential controversy has been triggered regarding the spread of "title-like" titles in the corporate and political spheres. As Article 18 of the Indian Constitution clearly forbids state-awarded titles, private sector titles like "Chief Evangelist" or "Brand Ambassador" have established fresh social hierarchies. Likewise, in the political sphere, unofficial but commonly used titles like "Netaji" or "Didi" served as de facto titles, having a tendency to acquire hereditary connotations when transmitted between political dynasties. These trends raise fundamental issues regarding whether India's constitutional ban on titles is being breached through new occupational and social norms.

The courts have intervened from time to time in enforcing the purpose of Article 18. The law has been unable to adapt enough to the new forms of social recognition, specially in the internet age where self-descriptive titles like "influencer" or "thought leader" can confer a lot of social capital. This regulatory space has allowed new forms of de facto hierarchy to emerge, which can dismiss the constitutional guarantee of equality. The challenge is to separate the genuine professional titles from the honorifics that serve the same purpose as forbidden titles.

Other democracies face similar issues in balancing recognition with the egalitarian principles. The United Kingdom continues to follow with the criticism of its honors system being outdated and elitist, while the United States maintains a stricter prohibition but it sees parallel issues with corporate honorifics. France's *Légion d'honneur* system, despite its meritocratic intentions, frequently faces allegations of political favoritism.

ANALYSIS

The enforcement of Article 18 presents a paradox in India's constitutional framework. While the provision successfully abolished the formal titles of nobility, its implementation reveals the significant gaps. Unlike the United States' Title of Nobility Clause which carries the threat of citizenship revocation, India's provision lacks serious penalties for violations of the article.⁴⁷⁰

The government maintains without a thorough registry of foreign honors that citizens receive, and authorities rarely and inconsistently enforce regulations. Judges interpret with caution, courts reluctantly expanding the article's scope so it covers emerging forms of social distinction that function likewise to prohibited titles.

⁴⁷⁰ *Supra* Note 1 at 300.

Caste surnames, religious titles, also occupational designations became modern titles after traditional hierarchies reinvented themselves. Such informal systems of recognition often create stronger social stratification. Traditional titles were substituted by those ones. The business world of India has evolved for itself its own aristocracy in the form of titles such as "Chairman Emeritus" or "Distinguished Fellow." Although these titles are not state-awarded, they do exert significant social capital and professional benefit. Similarly, political dynasties create networks of favor. Family titles and honorifics do endure over generations by way of these networks hereditary. The digital era has complicated the issues further due to the reality that social media personalities who are self-proclaimed gurus do create novel models of titular authority that are not in control of the state.⁴⁷¹

CONCLUSION

In the modern republic, Article 18's core intention is greater than the initial importance. Despite eliminating aristocratic titles, it now faces new challenges in regulating the de facto hierarchies operating outside state sanction. Corporate designations do rise, influencer culture still evolves, all show that social stratification evolves more than it disappears. This article closely examines titles states grant and ignores subtler, yet likewise strong, status increases in private and digital spaces. Enforcement of the Article 18 selectively furthermore sparks inquiries about its effectiveness. Lacking strict penalties for foreign titles, without a regulatory framework for non-state honorifics, also the judiciary being reluctant to interpret broadly weakened its impact. Caste and religious honorifics still work as the social titles without regulation. The Constitution sought for one to abolish exclusion, but those titles act to subsidize it.

In Article 18, India's rejection of inherited inequality is indeed symbolized. Inequality by the state is also rejected. But then its full promise is one that can only be realized through needed social and also legal reforms. These reforms dismantle not just formal titles but also the deeper structures of privilege that they represent. Article 18's spirit must change within a republic seeking true equality rather than merely token equality to face 21st-century hierarchies.

⁴⁷¹ *Supra* Note 2 at 258-59.

CHAPTER 13

Rights to Freedom (Article 19)

By Bhargavi Moreshwar Manapure

Right to Freedom

19. Protection of certain rights regarding freedom of speech, etc.—

(1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

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

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

(e) to reside and settle in any part of the territory of India; 1 [and] 2

*[(f) * * * * *]*

(g) to practise any profession, or to carry on any occupation, trade or business. 3

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 4 [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.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 4 [the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 4 [the

sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in 5 [sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, 1 [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.]

INTRODUCTION

Part III of the Indian Constitution is a chapter that talks about the Fundamental Rights from Article 12 to 35, which guarantees and protects the basic rights of the citizens to ensure equality, dignity, and liberty. Article 19, part of the chapter of the Indian Constitution, comprises six clauses, numbered from clause (1) to (6), which have been framed uniquely to strike a balance between rights and reasonable restrictions. It talks about two types of rights, **one** is given only to the citizens of India, which is the right to speech and expression, to assemble peacefully and without arms, to form associations and unions, to move freely, to reside and settle in any part of the country, and to practice any profession or carry out any occupation, trade or business, and on

the other gives restrictions in the hands of state by applying which they could curtail the rights of the citizens.

Article 19 is available only to citizens, and it can only be exercised against the state and not against private individuals or entities. It is enforceable against the state under Articles 32 and 226 of the Constitution. The whole article can be divided into two parts, the first 19(1), which gives exclusive six freedoms to citizens to enjoy various liberties, and 19(2) to 19(6), which give rights to the state to formulate various restrictions that no citizen can unlawfully use their rights. Article 19 is said to be the backbone of Part III of the Indian Constitution.

HISTORICAL & CONSTITUTIONAL BACKGROUND OF ARTICLE 19

Post independence in 1947, India was an independent state with no sovereign rule over it, so it required a framework of rules and regulations to govern a diverse and newly democratic country. There was a traditional structure made by the Government of India Act in 1935, but it was not enough for the country, which is why in 1946, under the Cabinet Mission Plan, the Constituent Assembly was formed, which consisted of 389 members. Dr. Rajendra Prasad was the Chairman of it, and Dr. B.R. Ambedkar was the Chairman of the drafting committee. The committee took three years to draft it, and it was adopted on November 26, 1949, which then came into effect on January 26, 1950, and is celebrated as Republic Day.⁴⁷²

During the British rule, basic freedoms were not allowed to Indians, which included the right to express themselves freely in public, as it was considered a threat to the colonial authority, and if some freedom fighters used their voices, like Mahatma Gandhi, Bal Gangadhar Tilak, they used to get punished for it.

ARTICLE-WISE DISCUSSION

The primary objective of Article 19 is to safeguard the rights of citizens to express their opinions, to form associations, to practice any profession of their choice, and to protect citizens

⁴⁷² Tushar Sharma, "THE CHANGING FACE OF FREE SPEECH: A STUDY OF ARTICLE 19 IN THE DIGITAL AGE IN INDIA", International Journal of Law and Social Sciences (IJLS) Volume 9, Issue 1, 2023

against arbitrary restrictions. It also includes rights given to the state to impose reasonable restrictions on unlawful practices. Restrictions can only be imposed through laws made by the government, and these are listed under Article 19(2) to 19(6).

19(1)(a) Freedom of Speech and Expression

Article 19(1)(a)⁴⁷³ The Constitution of India covers three types of rights of citizens: the right to receive information, the right to express their ideas, and the right to keep any communication secret. Reasonable restrictions under Article 19(2)⁴⁷⁴ are only applied to Sovereignty and integrity of India, which includes security of the state, friendly relations with foreign states, public order, contempt of court, defamation, incitement to an offence.

Judicial Interpretations

Freedom of Press- Romesh Thappar vs. State of Madras (1950)⁴⁷⁵

Facts- Under section 9(1-A) of the Maintenance of Public Order Act, 1949, the Government of Madras banned the entry and circulation of 'Cross Roads', an English weekly published in Bombay. Romesh Thappar was the publisher and editor of the paper who challenged this ban as it violated his right to freedom of speech and expression under Article 19 (1) of the Indian Constitution.

Issue- Does this ban on the circulation of the paper violate the fundamental right of freedom of speech and expression under A-19(1)(a)?

Judgment- The Supreme Court ruled that freedom of speech and expression includes freedom of the press as it is an essential part of A 19(1)(a). Section 9(1-A) of the Maintenance of Public Order Act was held unconstitutional as it was observed by the court that any restrictions imposed by the Madras Government did not fall within the ambit of 'reasonable restrictions' under A 19(2) as existed at the time.

Freedom of Press- Bennett Coleman & Co. vs. Union of India (1973)

Facts- There was an order issued by the Central Government, the Newsprint Control Order, 1972, which restricted the maximum number of pages that a newspaper could print based on the quantity of newsprint allocated. This decision was taken due to the scarcity of the newsprint, an

⁴⁷³ Article 19(1)(a), Constitution of India, 1950.

⁴⁷⁴ Article 19(2), Constitution of India, 1950.

⁴⁷⁵ Romesh Thappar v. State of Madras, 1950 SCC 436

imported commodity, which was aimed to be distributed equitably by the government. Bennett Coleman & Co., the publisher of a leading newspaper, challenged this order, claiming it violated their freedom of speech and expression under A 19(1)(a).

Issue- Does this order of Newsprint Control violate the freedom of speech and expression under A 19(1)(a)?

Judgment- The Supreme Court struck down the Newsprint Control Order as unconstitutional because its effect was to restrict the freedom of the press. The Court rejected the government's argument that the focus should be on the subject matter rather than its impact on freedom of speech. The freedom of the press is a vital aspect of Article 19(1)(a), and any restriction that disproportionately limits this freedom must pass the test of reasonableness under Article 19(2). Restricting the number of pages a newspaper can publish directly interferes with editorial freedom and the ability to disseminate information. This decision established the "effect test" as the correct standard to evaluate laws impacting fundamental rights, ensuring that disguised or indirect restrictions are not allowed.⁴⁷⁶

Right to Information- Union of India vs Association for Democratic Reforms (2002)

Facts- The Association for Democratic Reforms (ADR), a non-governmental organization, filed a public interest litigation (PIL) in the Delhi High Court, seeking directives to the Election Commission (EC) to compel candidates contesting elections to disclose their criminal records, financial assets, liabilities, and educational qualifications. The Delhi High Court directed the EC to mandate candidates to provide this information. The Union of India (UOI) appealed to the Supreme Court, arguing that such disclosures were not explicitly required under existing electoral laws.

Issue- Does the voter's right to know about the background of candidates contesting elections fall under the freedom of speech and expression guaranteed by Article 19(1)(a)?

Judgment- The Supreme Court declared that voters have a fundamental right to know relevant information about candidates under Article 19(1)(a), which includes the freedom to receive information. The Election Commission (EC) was directed to ensure that candidates contesting elections disclose the following:

⁴⁷⁶ Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788

- Criminal records, including convictions, pending cases, and punishments.
- Assets and liabilities, including those of the candidate and their family.
- Educational qualifications.⁴⁷⁷

People's Union for Civil Liberties vs Union of India (2003)⁴⁷⁸

Facts- People's Union for Civil Liberties, a public interest organization, filed a writ petition challenging the constitutional validity of Section 33-B of the Representation of the People Act (RPA), 1951. Section 33-B was introduced to nullify an earlier Supreme Court directive mandating candidates to disclose personal information such as criminal records, assets, liabilities, and educational qualifications. Section 33-B states that the candidate could not be required to disclose information beyond what was explicitly mandated by the RPA under it.

Issue- Does the voter's right to know about the background of candidates contesting elections fall under the freedom of speech and expression guaranteed by Article 19(1)(a)?

Judgment- The Court held that candidates are required to disclose personal information, including criminal records, assets, liabilities, and educational qualifications. The Supreme Court struck down Section 33-B of the RPA, 1951, as unconstitutional and violative of Article 19(1)(a).⁴⁷⁹

Right to Remain Silent- Bijoe Emmanuel vs State of Kerala (1986)⁴⁸⁰

Facts- Three children belonging to the religious refused to sing the National Anthem during a school assembly in Kerala, citing their religious beliefs. The children stood respectfully during the anthem but did not participate vocally, which was considered a violation of a Kerala government circular mandating participation. To which the school expelled the children, which led their parents to challenge this expulsion, as it violated their fundamental rights under Article 19(1)(a), freedom of speech and expression.

Issue- Does the freedom of speech and expression under Article 19(1)(a) include the right to remain silent?

⁴⁷⁷ Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294

⁴⁷⁸ People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399.

⁴⁷⁹ Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294

⁴⁸⁰ Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615.

Judgment- The Supreme Court ruled in Favor of the children, which holds their expulsion unconstitutional and a violation of their fundamental rights under Article 19(1)(a). The Court mentioned that standing respectfully during the National Anthem demonstrated adequate respect and did not constitute a lack of patriotism.⁴⁸¹

Khushboo vs Kanniamal & ANR (2010)⁴⁸²

Facts- A Tamil actress, S. Khushboo, made public comments supporting pre-marital sex and live-in relationships, emphasizing individual choice and personal freedom. Her comments sparked outrage, leading to multiple criminal complaints and FIRs filed against her in various parts of the country. The complaints alleged that her statements were defamatory and hurt public morality, under Sections 292, 499, and 500 of the IPC. Khushboo challenged these cases, claiming they violated her freedom of speech and expression under Article 19(1)(a).

Issue- Does expressing an opinion on a controversial topic fall under freedom of speech and expression?

Judgment- The Supreme Court dismissed all criminal complaints and FIRs against Khushboo, ruling that her statements were protected under Article 19(1)(a). The Court held that expressing an unpopular opinion, even on sensitive topics, is an essential component of freedom of speech in a democratic society.⁴⁸³

R. Rajagopal vs State of Tamil Nadu (1994)⁴⁸⁴

Facts- A death row prisoner, Shankar, wrote an autobiography that revealed his criminal activities and alleged collusion with high-ranking jail officials. Before his execution, he handed the manuscript to his wife, intending to have it published. The Inspector General (IG) of Prisons opposed the publication, claiming it was false, violated prison rules, and threatened legal action against the publishers for defamation. The publishers approached the Supreme Court, arguing that the IG's actions amounted to prior restraint, violating their freedom of speech and expression under Article 19(1)(a).

⁴⁸¹ Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615

⁴⁸² Khushboo v. Kanniamal & Anr., (2010) 5 SCC 600.

⁴⁸³ S. Khushboo v. Kanniammal, (2010) 5 SCC 600

⁴⁸⁴ R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632.

Issue- Can the government impose prior restraint on the publication of material critical of its officials?

Judgment- The Supreme Court held that imposing prior restraint on publication is unconstitutional, except in exceptional cases such as threats to national security, public order, or morality. The government has no authority to prevent the publication of defamatory content against its officials, they can only seek remedies through defamation laws post-publication. The Court ruled that the autobiography could be published, as there was no legal provision to prevent it. Public officials cannot use their position to block criticism or prevent the publication of material. They have a remedy under defamation laws, but only after publication.⁴⁸⁵

Shreya Singhal vs Union of India (2015)

Facts- Section 66A of the Information Technology Act, 2000⁴⁸⁶ criminalized online content that was considered offensive, including content that caused annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will. Several public interest litigations were filed before the Supreme Court, challenging the constitutional validity of Section 66A, arguing that it was overly vague and violated the freedom of speech and expression guaranteed under Article 19(1)(a). The petitioners contended that the section was unconstitutionally broad, as it restricted a wide range of speech without clear definitions, leading to arbitrary enforcement.

Issue- Does Section 66A of the Information Technology Act, 2000 violate Article 19(1)(a) (freedom of speech and expression)?

Judgment- The Supreme Court struck down Section 66A of the Information Technology Act as unconstitutional, ruling that it violated the right to freedom of speech and expression under Article 19(1)(a). The Court held that Section 66A was too vague and failed to meet the "reasonable restrictions" under Article 19(2). The Court clarified that freedom of speech is not limited to discussion or advocacy, even if unpopular, but only extends to incitement to commit illegal acts.⁴⁸⁷

Navtej Singh Johar vs Union of India (2018)

⁴⁸⁵ R. Rajagopal v. State of T.N., (1994) 6 SCC 632

⁴⁸⁶ S. 66A, Information Technology Act, 2000.

⁴⁸⁷ Shreya Singhal v. Union of India, (2013) 12 SCC 73

Facts- Section 377 of the Indian Penal Code (IPC) criminalized "carnal intercourse against the order of nature", which included consensual same-sex relations. Navtej Singh Johar, along with other petitioners, challenged the constitutionality of Section 377, arguing that it violated freedom of expression under Article 19(1)(a), among other constitutional rights.

Issue- Does Section 377 of the IPC violate Article 19(1)(a), which guarantees freedom of speech and expression?

Judgment- The Supreme Court held that Section 377 was unconstitutional as it criminalized consensual same-sex relations between adults. The Court emphasized that freedom of expression includes the right to express one's sexual identity, and criminalizing same-sex conduct violates this fundamental right.⁴⁸⁸

Article 19(1)(b) – Right to assemble peacefully and without arms

This right ensures that individuals have the freedom to assemble for lawful purposes, which includes dissent, supporting a cause, or celebrating an event. This right is only limited to peaceful gatherings, which do not incite violence or threaten public order. The gathering should be unarmed, which emphasizes non-violence.⁴⁸⁹ Under Article 19(3)⁴⁹⁰, which allows the state to impose limits in the interests of sovereignty, integrity, public order, and morality.

Judicial Interpretations

Himmat Lal Shah vs Police Commissioner, Ahmedabad

Facts- Himmat Lal Shah, a resident of Ahmedabad, sought permission to hold a public meeting on a public street. The Police Commissioner denied permission under a rule that granted him wide discretionary powers to regulate public meetings. Shah challenged the decision, arguing that it violated his fundamental right under Article 19(1)(b) to assemble peacefully.

Issue- Does the right to assemble peacefully under Article 19(1)(b) include the right to hold meetings in public streets or places?

⁴⁸⁸ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

⁴⁸⁹ Art. 19(1)(b), Constitution of India, 1950.

⁴⁹⁰ Art. 19(4), Constitution of India, 1950.

Judgment- The Supreme Court held that the right to assemble peacefully includes the right to use public spaces, but this right is subject to reasonable restrictions under Article 19(3) for maintaining public order. The Court ruled that the rule granting the Police Commissioner unfettered discretion to prohibit public meetings was unconstitutional. Restrictions on public meetings must be reasonable and must not give arbitrary powers to authorities.⁴⁹¹

Amit Sahni vs Commissioner of Police

Facts- A public protest was organized at Shaheen Bagh, Delhi, against the Citizenship Amendment Act (CAA). Protestors occupied public roads for an extended period, causing significant inconvenience to commuters and disrupting public order. Amit Sahni, a lawyer, filed a petition seeking the removal of protestors, arguing that indefinite occupation of public spaces violated the rights of others.

Issue- Does Article 19(1)(b) grant an absolute right to assemble peacefully in public spaces?

Judgment- The Supreme Court held that while the right to peaceful assembly is a fundamental right under Article 19(1)(b), it is not absolute. It is subject to reasonable restrictions under Article 19(3). Protests cannot obstruct public roads indefinitely, as they infringe on the rights of others to access those spaces. The Court emphasized that protests and demonstrations expressing dissent must be held in designated areas, ensuring a balance between the right to protest and the rights of the general public.⁴⁹²

Article 19(1)(c)- Right to form associations or unions

The Indian Constitution grants every citizen the fundamental right to form associations or unions, enabling them to collectively pursue common goals or interests. This right is crucial for fostering social, political, economic, and cultural development in a democracy. Citizens have the freedom to form organizations such as political parties, trade unions, clubs, societies, or other groups.⁴⁹³ This includes the right to join or not join any association. The right is subject to reasonable restrictions under Article 19(4).⁴⁹⁴ The State can impose restrictions on the Sovereignty and integrity of India, Public order, and Morality.

⁴⁹¹ Himat Lal K. Shah v. Commr. of Police, (1973) 1 SCC 227

⁴⁹² Amit Sahni (Shaheen Bagh, In re) v. State, (2020) 10 SCC 439

⁴⁹³ Art. 19(1)(c), Constitution of India, 1950.

⁴⁹⁴ Art. 19(4), Constitution of India, 1950.

Judicial Interpretations

Sitaramacharya vs Deputy Inspector of Schools (1958)

Facts- Sitaramacharya, a teacher in a government-aided school, was dismissed for participating in the activities of a teachers' association. The dismissal was challenged because it violated the teacher's fundamental right to form associations under Article 19(1)(c) of the Constitution. The school authorities argued that participation in the association disrupted school discipline and administrative control.

Issue- Does the dismissal of Sitaramacharya for participating in a teachers' association violate his fundamental right under Article 19(1)(c)?

Judgment- The Court ruled in Favor of Sitaramacharya, holding that the dismissal was an unreasonable restriction on the right to form and participate in associations. The Court emphasized that participation in lawful activities of an association does not disrupt public order or the functioning of the school. Article 19(1)(c) guarantees the right to form associations, and any restriction on this right must satisfy the test of reasonableness under Article 19(4). Restrictions cannot be imposed solely based on an apprehension of disruption without concrete evidence. Participation in lawful and peaceful association activities does not amount to a valid ground for dismissal.

Article 19(1)(d)- Right to move freely throughout the territory of India

This article gives rights to citizens to move, to travel in parts of the country, without any restrictions within the geographical boundaries of India. It is not absolute; it has reasonable restrictions provided by Article 19(5), to maintain law and order, to protect the rights and culture of the tribal community, and access to their areas is certainly restricted.

There were reasonable restrictions during the COVID-19 pandemic, the lockdown was there to prevent the spread of the disease and to protect the environment.

Judicial Interpretation

***Chambara Soy v. State of Orissa*⁴⁹⁵**

⁴⁹⁵ Chambara Soy v. State of Orissa, 2007 SCC OnLine Ori 42

Facts- A tribal person, Chambara Soy, had been living and cultivating a piece of forest land for many years, which was his livelihood. He was forcefully displaced from the land he had been cultivating for years, without any proper procedure or compensation. He challenged that this was a violation of his fundamental rights, right to livelihood, and movement.

Issue- Whether such displacement infringes his fundamental right under Article 19(1)(d)?

Judgment- The court held this displacement unconstitutional, a forceful eviction, without following due process of law, amounts to a violation of his fundamental right under Article 19(1)(d). His freedom of movement, which includes the right not to be arbitrarily displaced from one's place of residence.

Article 19(1)(e)- Right to reside and settle in any part of the Territory of India

Citizens can reside in any part of the territory, a city, town, or village, without any restrictions. They can choose to settle in any part of the country, which means to start their livelihood, their business. This right is exclusively for Indian citizens.⁴⁹⁶

There is a reasonable restriction under Article (19)(5)⁴⁹⁷, which gives power to the state to restrict citizens from residing in sensitive areas, in war areas, or in places where there is a high chance of natural disaster.

Judicial Interpretations

Louis De Raedt & Ors vs Union of India and Ors (1991)⁴⁹⁸

Facts- Louis De Raedt and some other foreign nationals had been living in India for many years under a long-term visa, and when they wanted to renew it, it was rejected by the Indian government. They challenged this as claiming their fundamental right under Article 14, 21, and 19(1)(d) and 19(1)(e).

Issue- Whether a foreign national can claim to reside and settle in any part of the territory of India?

⁴⁹⁶ Art. 19(1)(e), Constitution of India, 1950.

⁴⁹⁷ Art. 19(5), Constitution of India, 1950.

⁴⁹⁸ Louis De Raedt v. Union of India, (1991) 3 SCC 554

Judgment- The court held that Article 19(1)(e), right to reside and settle in India, is a fundamental right that is only given to citizens of India, not foreign nationals. The court dismissed the petition and upheld the sovereign right of the Indian government to decide on the entry and stay of foreign nationals in the country.

Article 19(1)(g)- Right to practice any profession, or to carry on any occupation, trade or business.

This Article gives rights to its citizens to carry on trade and commerce without even minimal government interference in the economy.⁴⁹⁹ It was discussed in the case of *Excel Wear vs UOI*, the constitutional validity of certain restrictions placed on the freedoms to carry on trade, in which the court emphasized the balance between state ownership and private ownership, socialism should not be used unlawfully by the state.⁵⁰⁰ It introduced the concept of a Level playing field, which ensures fair competition.

But it also allows the state to create a monopoly by imposing some restrictions under Article 19(6), on certain sectors, which include for public welfare.⁵⁰¹

Judicial Interpretations

Akadasi Padhan vs State of Orissa⁵⁰²

Facts- In this case, the State of Orissa enacted a law that gave the State a monopoly over the trade in certain commodities (like food grains). The petitioner, Akadasi Padhan, challenged the law, arguing that it violated his fundamental right under Article 19(1)(g), which guarantees the right to carry on trade, business, or occupation.

Issues- Whether the state monopoly on trade violated the right to carry on trade under Article 19(1)(g).

Judgment- The Supreme Court ruled that laws relating to trade activities taken over by the State must be presumed to be reasonable and in the public interest. The Court further held that the

⁴⁹⁹ Art. 19(1)(g), Constitution of India, 1950.

⁵⁰⁰ *Excel Wear v. Union of India*, (1979) 1 SCC 224.

⁵⁰¹ Art. 19(6), Constitution of India, 1950.

⁵⁰² *Akadasi Padhan v. State of Orissa*, 1962 SCC OnLine SC 26

State's right to create a monopoly for administrative and public welfare reasons is stronger than the individual's right to carry on trade.

Liquor Trade- Cooverjee vs Excise Commissioner, Ajmer

Facts- Cooverjee challenged the restriction imposed by the Excise Commissioner on selling intoxicating liquor in Ajmer, arguing that it violated his right to carry on trade under Article 19(1)(g) of the Indian Constitution.

Issue- Whether the right to sell intoxicating liquor is protected under Article 19(1)(g), and if the state can prohibit or regulate this trade based on public interest.

Judgment- The Supreme Court ruled that there is no inherent fundamental right to sell intoxicating liquor. It acknowledged that the trade of liquor is dangerous to the community, and therefore, the State has the authority to completely prohibit it or regulate it under conditions that serve public welfare.⁵⁰³

Street Hawkers- Bombay Hawkers' Union vs Bombay Municipal Corporation

Facts- This case involved the Bombay Hawkers' Union challenging the Bombay Municipal Corporation's restrictions on hawking in public places. The municipal corporation had taken action to prevent street vendors (hawkers) from setting up businesses on public streets, arguing that it caused inconvenience to the public.

Issue- Whether hawkers have a fundamental right to carry on business in public spaces under Article 19(1)(g), and if so, to what extent the State can regulate their activities to prevent public inconvenience.

Judgment- The Supreme Court ruled that while hawkers have a right to carry on trade under Article 19(1)(g), this right must not cause inconvenience to the public. The Court recognized the need for a balance between the rights of hawkers and the public interest. Therefore, the Court directed that the municipal corporation set up hawking zones within the city, where hawkers could carry on their business without obstructing public spaces.⁵⁰⁴

⁵⁰³ Cooverjee B. Bharucha v. Excise Commr., (1954) 1 SCC 18

⁵⁰⁴ Bombay Hawkers' Union v. Bombay Municipal Corpn., (1985) 3 SCC 528

Slaughter of Animals- MH Quareshi vs State of Bihar

Facts- This case involved the State of Bihar imposing restrictions on the slaughter of animals, including cows, bulls, bullocks, and buffaloes. The issue was whether such prohibitions violated the right to carry on trade under Article 19(1)(g) of the Indian Constitution, which guarantees the right to trade and business.

Issue- Whether the prohibition on slaughtering cows, as well as bullocks, bulls, and she-buffaloes under the age of 25 years, violates the fundamental right to trade under Article 19(1)(g).

Judgment- The Supreme Court upheld the prohibition on slaughtering of cows, as well as male and female calves of cows or buffaloes, holding this to be a reasonable restriction. The Court considered these animals to be of special importance in Indian society, and the prohibition was justified in the public interest.

IMPACT AND ANALYSIS

The major impact of Article 19 is firstly in the world of social media, where influencers and actors, or any other common man, can use the online platform to express their views, opinions on the things happening around them, in the environment, in politics, governance or society, they could use their right of freedom of speech and expression, but with some limitations which means reasonable restrictions, they could express their views on anything, but not in a negative way by which they could hurt other person's or place's reputation or by which they could defame them.⁵⁰⁵ There have been multiple cases that have happened in recent times over free speech, including the 2021 case of the arrest of the Comedian Munawar Faruqui. He was under arrest on the accusation of insulting religious sentiments, which targeted the Hindu god during a live act. In which he was charged under section 295A of the Indian Penal Code, the case intricates the

⁵⁰⁵ Tushar Sharma, "THE CHANGING FACE OF FREE SPEECH: A STUDY OF ARTICLE 19 IN THE DIGITAL AGE IN INDIA", Volume 9, Issue 1, 2023

challenges that artists and comedians face when exercising their free speech rights. The 2006 case of M.F. Husain, in which he found himself in the pool of litigations and widespread protests for his renditions of Hindu gods, perceived by some as derogatory, this case involved various debates on how far an artistic freedom can be, to which extend, in which it was emphasized that there should be balance struck between promoting free artistic expression and quelling social disharmony.

CONCLUSION

Article 19 of the Indian Constitution is considered to be an important part of the Constitution, which guarantees six various rights to the citizens of India, right to speech and expression, right to assemble peacefully and without arms, right to form associations or unions, right to move freely throughout the territory of India, and to reside and settle in any part of the territory of India, and to practice any profession, or to carry on any occupation, trade or business, this rights are exclusively given to the citizens of India. These rights also come with some reasonable restrictions to preserve national integrity, morality, and public order, given by the state, which were discussed with the landmark judicial interpretations like *Romesh Thappar v. State of Madras*, *Shreya Singhal*, and *Navtej Singh Johar*, *Amit Sahani v. Commissioner of Police for peaceful assembly*, and case of *MH Qureshi v. State of Bihar*.

Article 19 has also evolved and helped in recent modern challenges, which include digital, social media, which help people to express their views, voice, and opinion on various things freely in public, but with some limitations. There are various protests on online speech, for which the Constitution, through Article 19, guarantees to be tested and reaffirmed through evolving jurisprudence.

In conclusion, Article 19 is not just some written rules or legal provisions; it is an important part of India's democratic ethos. As society is growing, it becomes more complex, which makes it more difficult to uphold these freedoms and to ensure that they are not misused. It does not disrupt the aspect of the Constitution of the balance of rights and responsibilities in society.

CHAPTER 14

Protection in Respect of Conviction for Offences (Article 20)

By Purna Dabhi

INTRODUCTION

The Indian Constitution provides several fundamental rights for citizens and for foreign individuals. These rights are mentioned in the Part III of Constitution of India, 1950. One of which is Article 20, which protects the accused in respect of conviction of offences.

These Fundamental Rights have been conceived in a liberal spirit and seek to draw a reasonable balance between individual freedom and social control. These rights constitute a counterpart of the American Bill of Rights and though there are quite a few signs of resemblance between the two, the Fundamental Rights in India cover a much wider ground and are expressed in much greater detail than is the case in the U.S.A. The Bill of Rights in the U.S.A. has served as a bulwark against abuse of authority by the organs of government and has made a tremendous contribution to the promotion of a regime of freedom and liberty. The Fundamental Rights also play a similar role and promote rule of law in India.⁵⁰⁶

Article 20 only deals with criminal offences. It is one of the most important articles from the Indian Constitution, as during the proclamation of emergency except Article 20 and Article 21 all other fundamental rights are suspended.

This principle was established via the 44th CAA, 1978. Initially, in our 1950 constitution Article 359 permitted the suspension of all fundamental rights during the Proclamation of emergency. Later a case emerged challenging the suspension of fundamental rights during emergency.

⁵⁰⁶ M.P. Jain, *Indian Constitutional Law* 115 (9th edn., LexisNexis 2024).

ADM Jabalpur v. Shivkant Shukla, 1976

The facts of the case revolve around the National Emergency of 1975-1977 by the then Prime Minister Indira Gandhi. This period marked a profound social, legal and political turmoil.

During this period Shivkant Shukla and many other petitioners argued that the right to habeas corpus (right to challenge unlawful detention) should not be suspended as it violated our fundamental rights.

The issues raised were 1. Whether the fundamental right to life and personal liberty under Article 21 of the Indian Constitution could be suspended during the Emergency period.

2. Whether the petition under Article 226 is maintainable in court of law during an emergency.

The Supreme court held the decision in 4:1 ratio of Majority: Minority

The majority decision upheld the government's action and allowed suspension of fundamental rights during Emergency and Right to petition in the High Court under Article 226 of COI.

Additionally, the majority clarified the distinction between Articles 358 and 359, emphasizing that Article 359 suspends the enforcement of fundamental rights and allows for the suspension of any proceedings pending for the enforcement of such rights.

Only Justice H.R. Khanna had the sole dissenting opinion, he said that the right to life and liberty cannot be suspended without the proper authority of law. He said that Article 21 cannot be suspended during an emergency.⁵⁰⁷

The judgment of ADM Jabalpur paved the way for 44th CAA, 1978.

This amendment revised Article 359 and ensured that Articles 20 and Article 21 cannot be suspended during the Proclamation of Emergency.⁵⁰⁸

Furthermore International Covenant on Civil and Political Rights (ICCPR), in its Article 4(2) states that during emergencies there should be no derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18.

Article 6 (Every human being has the inherent right to life)

Article 15 (No Retrospective criminal laws)

Also, Article 14(3)(g)- (no one can be compelled to testify against himself or confess guilt)

And Article 14(7)- (Right against double jeopardy)

⁵⁰⁷ *Additional District Magistrate, Jabalpur v. Shivkant Shukla* AIR 1976 SC 1207

⁵⁰⁸ The Constitution (Forty-Fourth Amendment) Act, 1978.

Article 20 is inspired by these articles.⁵⁰⁹

Article 20 has three clauses

20(1)- Right against Ex Post Facto Laws

20(2)- Right against Double Jeopardy

20(3)- Right against Self Incrimination

ARTICLE 20(1)- RIGHT AGAINST EX POST FACTO LAWS

There are two types of laws

a. **Retrospective Law**- A law that applies to actions or events that had happened in the past and it may or may not change the legal consequence of it.

b. **Prospective Law**- A law that applies to events or actions that will occur after the law is enacted. It does not affect past events or actions.

‘Ex post facto’ is a legal maxim which means ‘from a thing done afterwards’ it refers to criminal laws which are being enforced retrospectively.

Article 20 clause 1 says that all criminal laws should be applied in prospective manner i.e. not upon acts already done or increases the penalty for past acts. Prohibiting ex post facto laws.

[Article 20(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.⁵¹⁰

Article 20(1) consists of two parts:

The second part makes sure that no disproportionate punishment is declared beyond what was stipulated in the relevant law at the time of the offence, while the first part protects a person from being found guilty of an act that was not illegal under any applicable laws at the time it was committed.

⁵⁰⁹ International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, entered into force 23 March 1976, art. 21.

⁵¹⁰ Constitution of India, 1950

The following requirements must be met in order for someone to request protection under Article 20(1):

1. He or she needs to be accused with a crime;
2. The accused must have done nothing that would have broken any laws that were in effect at the time the offence was performed. This guarantees that the accused won't be penalised for an action that was legal at the time it was committed; and
3. The punishment can't be more severe than what would have been possible under the legislation that was in effect when the offence was committed. However, if the penalty for a crime is lessened during the trial phase, the accused may benefit from the lowered penalty.

Exception to Article 20(1)-

1. This Protection against Ex post facto laws only applies to Judicial orders and not preventive detentions by administrative authority.

According to the case of Pralhad Krishna Kurane vs The State Of Bombay, 1951

Facts- In accordance with the 1950 Preventive Detention Act, Pralhad Krishna Kurane was placed under arrest. A provision (Section 12) of the Preventive Detention (Amendment) Act, 1951, which was later passed, stated that any detention order that was in effect at the time of the Act's passage would remain in effect as though it had been issued under the revised Act. Kurane contested the legality of his incarceration, claiming that his fundamental rights were infringed by the amendment's retroactive application.

Issues- a. Whether Kurane's fundamental rights were violated by the Preventive Detention (Amendment) Act, 1951's retroactive application to detention orders that were already in place.

b. Whether the amendment's retroactive application could make the detention orders invalid, even if they were previously legitimate.

Judgement- The Preventive Detention (Amendment) Act, 1951's retroactive application was affirmed by the Bombay High Court. The Court reasoned that Kurane's fundamental rights were not violated because the change was a legislative act intended to validate existing detention orders. The Court further explained that the detention orders were legitimate despite the amendment's retroactive effect. The Court underlined that the legislature can pass laws that have retroactive effect, particularly if those provisions are meant to uphold earlier laws' activities. Kurane's imprisonment under the modified Act was therefore considered legal.⁵¹¹

⁵¹¹ Pralhad Krishna Kurane vs The State Of Bombay AIR1952 BOM 1

2. Article 20 does not restrict a civil liability being imposed retrospectively i.e. a civil offence can be punished retrospectively.

In the case of *M/S. Hatisingh Mfg. Co. Ltd. And Another vs Union Of India And Others*, 1960.

Facts- Three industrial establishments were closed between February and April 1957: a textile mill in Ahmedabad, a coal mine purchased in 1953, and a spinning-and-weaving mill in Jamnagar. Despite their proprietors paying notice wages as required by Section 25FFF(1) of the Industrial Disputes Act, 1947 (updated in November 1956), none of them paid the additional closure compensation. This clause obliged employers to provide 15 days' average wages per year of service to all employees who had been with the company for at least a year before closure. The affected employers challenged this retroactive provision (which took effect on November 28, 1956) through petitions filed under Article 32, arguing that the alteration was unlawful.

Issues: The Supreme Court identified three basic constitutional issues:

- a. Did Section 25FFF(1) unjustly limit the freedom to conduct business, including the ability to cease an operation, by imposing compensation responsibilities?
- b. Did employers who shut down before and after November 27, 1956, experience unjust classification or discrimination?
- c. Does applying compensation retroactively to closures made after that date constitute an ex-post-facto penal measure that could be prosecuted as a violation under Article 20(1)?

Judgement: A panel of five judges rejected all petitions.

The Court ruled that Section 25FFF(1) did not forbid businesses from closing. Closing may come first, followed by compensation. Article 19(6) states that the compensation requirement was a reasonable limitation that was warranted in order to protect the public interest, including that of employees who were at risk.

Since the classification was based on chronology rather than individual qualities, the Court determined that the provision's application to closures after a specific date was a lawful legislative tool that did not discriminate under Article 14.

The Court decided that the liability was civil rather than criminal in accordance with Article 20(1). Under the Act, arrears might be recouped but were not punishable by imprisonment; instead, any enforcement used land-revenue techniques. Closures were not penalised or

non-payment was not made a crime under Section 25FFF(1). Consequently, there was no retroactive criminal penalty and no protection under Article 20(1).⁵¹²

Likewise in the case of Shiv Dutt Rai Fateh Chand Etc. Etc vs Union Of India & Anr. Etc, 1983. Facts- In accordance with the Central Sales Tax Act of 1956, the petitioners were dealers involved in interstate commerce. They contested the constitutionality of the Central Sales Tax (Amendment) Act of 1976's Section 9(2-A) of the Act. This clause approved the imposition of fines for defaults that occurred before it was passed, retroactively. The petitioners argued that the Constitution's Article 20(1), which forbids ex post facto criminal provisions, was violated by such retroactive fines. Additionally, they contended that the amendment gave state authorities an undue amount of legislative authority.

Issues- a. Whether the Central Sales Tax Act, 1956's Section 9(2-A) retroactive fines infringe upon the Constitution's Article 20(1) guarantee against ex post facto laws.

b. Whether the amendment violated the constitutional norm of legislative competence by giving state authorities an excessive amount of legislative authority.

Judgment- The Central Sales Tax Act of 1956's Section 9(2-A) was affirmed as constitutional by the Supreme Court. The Court made a distinction between criminal penalties and civil liabilities, stating that the Act's penalties were civil in character and did not fall under Article 20(1)'s protections. In order to address the shortcoming noted in the previous Khemka ruling and guarantee the efficacy of penal measures over time, it was decided that the retrospective validation of fines was required. Furthermore, the Court determined that the modification did not entail undue delegation because it only added pre-existing penalty measures to the central framework without giving state laws legislative competence.⁵¹³

Rule of Beneficial Construction When a legislation passed after someone has committed an act cannot convict them of that conduct or inflict a more severe penalty than what was in place at the time, according to Article 20(1). But it is acceptable when a legislation is passed retroactively and reduces punishment or the penal load. In these situations, courts use the rule of beneficial construction, which states that the accused must get the benefit of the lighter penalty. As in the case of [Rattan Lal vs State Of Punjab, 1964- Facts- On May 31, 1962, a Gurgaon magistrate found 16-year-old Rattan Lal guilty of violating Sections 451 (home trespass) and 354 (outraging

⁵¹² M/S. Hatisingh Mfg. Co. Ltd. And Another vs Union Of India And Others 1960 SCR (3) 528

⁵¹³ Shiv Dutt Rai Fateh Chand Etc. Etc vs Union Of India & Anr. Etc, AIR 1984 SC 1194

modesty) of the Indian Penal Code. He received a fine in addition to a severe six-month jail sentence. He appealed his conviction to the Sessions Judge and subsequently the High Court, which upheld it without using the recently expanded Probation of Offenders Act of 1958. This Act, which went into effect in Gurgaon on September 1, 1962, required that probation be offered in lieu of jail time for criminals under the age of 21. Rattan Lal then filed a Special Leave to Appeal motion with the Supreme Court. Issues- Whether Rattan Lal was convicted prior to the Probation of Offenders Act being extended to his jurisdiction, does this mean that he is still subject to its provisions?

Whether the Act changed sentencing guidelines after the crime had been committed, does Article 20(1) of the Constitution forbid the Act's retroactive benefits?

Judgment- The Supreme Court ruled by a vote of 2:1 that:

The Act established a beneficial alternative (probation) for young offenders—a reform, not a punishment—even though it did not alter the offence or the maximum term.

Using the concept of advantageous construction, the Court determined that the Act was not prohibited by Article 20(1) because it lowered the severity of punishment. Article 20(1) permits a measure that retroactively lowers the punishment (lawyersclubindia.com).

Even though Rattan Lal was sentenced prior to the Act's application in that region, the appellate court (High Court) was able to order him to probation under Section 11(1) of the Act because Article 20 only forbids the retroactive imposition of harsher punishment, not retroactive mitigation.⁵¹⁴

Currently many countries around the world have incorporated the right against ex post facto laws like Singapore, Germany, United States, Canada, Japan Etc. Many global instruments incorporate the same principle like the Universal Declaration of Human Rights (UDHR) under Article 11(2) and the International Covenant on Civil and Political Rights (ICCPR) under Article 15. The very first instance of constitutional prohibition on ex post facto criminal laws appeared in the US Constitution in its Article 1 Section 9 -No Bill of Attainder or ex post facto Law shall be passed.⁵¹⁵ and Article 1 Section 10 -No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make

⁵¹⁴ Rattan Lal vs State Of Punjab, AIR 1965 SC 444

⁵¹⁵ U.S. Constitution, Art. I, § 9

any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.⁵¹⁶

In the U.S. the landmark case is *Calder v. Bull*. 1798 -

Facts- A law passed by the Connecticut legislature permitted the probate court to give a second trial in a case involving a will contest even after a final judgement had been issued. *Calder* and other appellants had previously challenged a deceased person's will, and the probate court had upheld the validity of the will. Under the new provision, *Bull* and the other appellees attempted to have the judgement reversed. Issue- Does the U.S. Constitution's ban on ex post facto laws apply to state statutes that provide a new trial following a final judgement in a civil case? Judgment- Majority Opinion: In a unanimous ruling, the Supreme Court ruled that ex post facto laws are only prohibited by criminal statutes and not by civil laws. Thus, the U.S. Constitution was not violated by the Connecticut Act. Significance: The ex post facto provision only applies to criminal statutes, according to the principle established in this case. This distinction has impacted later legal interpretations.⁵¹⁷

ARTICLE 20(2)- RIGHT AGAINST DOUBLE JEOPARDY

Double Jeopardy means no one should be prosecuted twice for the same crime or offence with the same set of facts. It also includes the accused who are convicted of a certain offence should not be prosecuted again on the same set of facts. ‘*nemo debet bis vexari pro una et eadem causa*’ is a common law legal maxim which translates to ‘no one ought to be vexed twice for one and the same cause.’ If a person is prosecuted again in court after his trial or acquittal he/she can plead ‘*Autrefois convict* and, *Autrefois acquit*’ which is a common law legal maxim which represents the principle of Double Jeopardy.

Article 20(2) No person shall be prosecuted and punished for the same offence more than once.⁵¹⁸ . *Bhartiya Nagrik Suraksha Sanhita* under section 337 embodies the constitutional safeguard against Double Jeopardy as guaranteed under our Constitution.

Exceptions to Right against Double Jeopardy.

⁵¹⁶ U.S. Constitution, Art. I, § 10

⁵¹⁷ *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798)

⁵¹⁸ Constitution of India, 1950

1 Appeals- Appellate courts may take appeals if they feel there is a miscarriage of justice done by the lower court while delivering the judgment. There is a specific time frame to file an appeal and if the time is passed no re-trial can be done unless there is new evidence available.

2 Multiple Punishments in a single trial is not equal to multiple prosecution. In the case of *Bijoy Singh & Anr. v. State of Bihar*, Facts- Vijay Singh, 16, and Sanuj Singh were shot on August 25, 1991, during the Shravan Purnima celebrations in Tarawanna Khanda village. Vijay died instantly, while Sanuj suffered serious injuries. Sections 302, 307, 149 IPC, as well as Section 27 of the Arms Act, were used to charge twelve defendants, including Bijoy Singh. Under the 302/149 and 27 Arms Acts, the Trial Court found them guilty and sentenced them to life in prison and three years of harsh imprisonment, respectively. The Section 307 accusation was withdrawn because it was combined with the murder conviction. These convictions were maintained by the High Court.

Issues- 1. Whether each defendant had been appropriately connected to the crimes, considering that Section 149 convictions require involvement in a joint venture rather than concrete proof of particular actions.

2. Whether the further conviction for attempted murder (Section 307) was warranted given that Section 302 already mandated life terms for murder.

Judgment- The Supreme Court confirmed that although Jawahar Singh and Upender Singh had strong evidence against them, including direct witness testimony, they cleared the other ten defendants, including Bijoy Singh, because of serious concerns raised by the delayed filing of formal complaints, the inconsistent statements of witnesses, and the lack of concrete evidence connecting any of them to the crimes. The Court cautioned against over-inclusion under the pretense of common intention and underlined that in group offenses, courts must carefully sort the evidence to ensure that only truly guilty persons are punished. An important distinction made by the ruling was between repeated convictions and several prosecutions. The Court ruled that Article 20(2), the constitutional safeguard against double jeopardy, is unaffected even in cases where an accused person may receive multiple sentences for distinct offenses committed in a single incident, so long as all charges stemmed from the same trial (i.e., not from separate prosecutions). Whether separate prosecutions were brought for the same offense is more important than the quantity of penalties. There was no double jeopardy because each defendant

was subject to a single consolidated trial. In contrast to recurrent prosecutions, this confirmed that various punishments for different offenses in a single trial are constitutionally admissible.⁵¹⁹

3 Departmental proceedings does not amount to trial by judicial authority i.e. If a person has had a departmental proceeding against him/her, that person can be also tried in a judicial court; it won't be concluded as double jeopardy. This was established in the case of [Maqbool Hussain vs The State Of Bombay, Facts- The appellant was subject to seizure and a fine under the Sea Customs Act, an administrative procedure, after being found in possession of 107 tolas of undeclared gold at Santa Cruz airport. For the same actions, he was soon charged with a crime under the Foreign Exchange Regulation Act.

Issue- Whether, absent the ensuing criminal trial, the customs procedures qualified as a prosecution and punishment under Article 20(2).

Judgment- The Court's majority decision was negative. It emphasized that a court of law or judicial tribunal that is formally established and using its adjudicatory powers based on sworn legal evidence must prosecute and punish under Article 20(2). The customs authority did not invoke constitutional double jeopardy protection because its actions were administrative in nature and lacked judicial components like oath-taking, legal arguments, and adjudication. Therefore, there was no violation of Article 20(2) by the criminal prosecution. This ruling made it clear that departmental or administrative sanctions, no matter how harsh, are different from criminal verdicts. As a result, if the initial action was not a proper judicial prosecution and punishment, a person may get a customs penalty and still face further prosecution. While defining constitutional limitations, the Supreme Court's reasoning relied on comparative common law views, referencing both the American double jeopardy analogy and the British *autrefois convict*.⁵²⁰ In India we use the Doctrine of Double Jeopardy for criminal cases and for civil cases we use Doctrine of Res Judicata. Res Judicata is a latin legal maxim which means 'a matter judged'. Section 11 of Civil Procedure Code, 1908 states that- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided

⁵¹⁹ Bijoy Singh & Anr. v. State of Bihar, (2002) 9 SCC 147.

⁵²⁰ Maqbool Hussain vs The State Of Bombay, AIR 1953 SC 325

by such Court.⁵²¹ In English Common Law the doctrine of double jeopardy evolved through legal maxims like ‘nemo bis in idipsum’ and ‘autrefois acquit and autrefois convict’ which means ‘no one shall be tried twice in the same matter’ and ‘formerly acquitted,formerly convicted’ respectively. In United States the doctrine was enshrined in the 5th Amendment it states - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.⁵²² Global Instruments like European Convention on Human Rights in its Protocol 7 Article 4(1) No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.⁵²³ and Article 4(2) The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case,⁵²⁴ contains a right against double jeopardy; also International Covenant on Civil and Political Rights in its Article (7) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country,⁵²⁵ contains right against double jeopardy.

ARTICLE 20(3)- RIGHT AGAINST SELF INCRIMINATION

There is a legal maxim ‘nemo tenetur seipsum accusare’ which means ‘no one is bound to accuse himself’. Article 20 clause 3 of the Indian Constitution says that no one can be forced to give testimony which gets him/her in trouble.

⁵²¹ Civil Procedure Code, 1908, Section 11

⁵²² U.S. Constitution, amend. V

⁵²³ Protocol No. 7 to the European Convention on Human Rights, Art. 4(1)

⁵²⁴ Protocol No. 7 to the European Convention on Human Rights, Art. 4(2)

⁵²⁵ International Covenant on Civil and Political Rights, Art. 14(7)

Article 20(3) No person accused of any offence shall be compelled to be a witness against himself.⁵²⁶ The main provision regarding crime investigation and trial in the Indian constitution is Art. 20 (3). It deals with the privilege against self-incrimination. The privilege against self-incrimination is a fundamental canon of common law criminal jurisprudence. Hence although an accused person may of his own accord make a voluntary statement as to the charge against himself, a justice, before receiving such a statement from him is required to caution him that he is not obliged to say anything and that what he does say may be given in evidence against himself. Hence, also arises the rule that evidence of a confession by the accused is not admissible unless it is proved that such confession was free and voluntary.⁵²⁷

The right against self incrimination only applies when these 3 essential conditions are met. (a) If the individual is charged with a crime;

(b) If they are forced to testify; and

(c) If the evidence is incriminating.

Three significant instances that represent the turning points in this constitutional journey have meticulously defined the scope and significance of the right to self-incrimination under Article 20(3) of the Indian Constitution. In the case of *M. P. Sharma And Others vs Satish Chandra, 1954*, *Facts-* In accordance with the Delhi Special Police Establishment Act, a corporate director's residence was searched and documents were taken. He argued that Article 20(3) was breached by the forced submission of such materials.

Issue- Under Article 20(3), would forcing an accused person to disclose papers constitute self-incrimination?

Judgment- An eight-judge panel decided that, if gathered under duress, documentary evidence is likewise covered by Article 20(3), in addition to oral testimony. Nonetheless, legitimate search and seizure were regarded as not falling under the definition of "compulsion." This expansive view highlighted that, as long as it is forced, any testimony that establishes the accused's guilt is considered self-incrimination.⁵²⁸ then in the case of *The State Of Bombay vs Kathi Kalu Oghad And Others, 1961*, *Facts-* As part of a criminal investigation, a number of defendants were asked to provide voice examples, handwriting samples, and fingerprints.

⁵²⁶ Constitution of India, 1950

⁵²⁷ Dr. J. S. Chandpuri and Dr. Mohd. Raufa "PROTECTION AGAINST SELF-INCRIMINATION : AMBIT AND DIMENSION IN CRIMINAL PROCEEDINGS – AN OVERVIEW" 2 IRJI 4 2016.

⁵²⁸ *M. P. Sharma And Others vs Satish Chandra*, AIR 1954 SUPREME COURT 300

Issue- Does Article 20(3) constitute testimonial coercion when an accused person is forced to produce tangible evidence, such as handwriting or fingerprints?

*Judgment- According to a panel of eleven judges, testimonial acts rather than tangible evidence are the only instances in which Article 20(3) is applicable. It decided that handwriting samples or fingerprints are only identifying characteristics and do not amount to self-incriminating declarations.⁵²⁹ This ruling introduced a significant distinction between testimonial and physical evidence, which helped to reduce the interpretation of M.P. Sharma. Then in the case of *Selvi & Ors vs State Of Karnataka & Anr*, 2010, Facts- The petitioners contested the investigating authorities' involuntary use of brain mapping, polygraph testing, and narco-analysis without their agreement.*

Issue- Did the accused's employment of coerced scientific methods breach their right to self-incrimination under Article 20(3)?

Judgment- A three-judge bench ruled that using these tests without permission violated Article 20(3) and amounted to testimonial compulsion. The Court placed a strong emphasis on the accused's dignity, autonomy, and mental privacy. Narco-analysis was considered self-incriminating testimony because it extracted information straight from the subject's mind, unlike fingerprints or handwriting.⁵³⁰ This ruling applied the Kathi Kalu concept to update this idea and applied it to scientific methods that violate the cognitive domain in an involuntary manner.

There are various different aspects that Article 20 (3) covers like-

1- The right to remain silent during interrogation, this right was established in the case *Nandini Satpathy vs Dani (P.L.) And Anr*, 1978, Facts- Vigilance police questioned former Odisha Chief Minister Nandini Satpathy regarding excessive assets. She was prosecuted under PC Section 179 IPC for willfully refusing to respond to a legitimate question because she refused to answer incriminating inquiries.

Issue- Whether the protection against self-incrimination provided by Article 20(3) applied to police interrogation and permitted an accused person to stay mute in the face of potentially incriminating inquiries.

⁵²⁹ The State Of Bombay vs Kathi Kalu Oghad And Others, AIR 1961 SUPREME COURT 1808

⁵³⁰ Selvi & Ors vs State Of Karnataka & Anr, AIR 2010 SUPREME COURT 1974

*Judgment-The Supreme Court ruled that Article 20(3) applies not just during a trial but also during an investigation. It said that at any point during police interrogation, an accused person has the right to remain silent in the face of damning questions. As a result, Satpathy's Section 179 prosecution was deemed void and dismissed.*⁵³¹ .

In India, The Right to Stay Quiet is included within the larger right to not self-incriminate, which is protected by Article 20(3) of the Constitution. Indian criminal jurisprudence operates on the principle of “guilt beyond reasonable doubt,” meaning an accused person cannot be forced to forfeit their rights unless their guilt is proven in a court of law⁵³²

2- Parliamentary Privilege is subordinate to fundamental rights, this was established in the case of *Raja Ram Pal v. Lok Sabha & Ors.*, 2007, *Facts- Raja Ram Pal was one of the MPs called to account by the Lok Sabha's Privileges Committee after a sting operation exposed MPs accepting bribes. The MPs contended that it would be against their Article 20(3) protection against self-incrimination to force them to respond to questions regarding the accusations.*

Issue- Even though an accused person is protected from being forced to testify against oneself by Article 20(3), may a legislative privileges committee nonetheless require an MP to respond to questions that could lead to self-incrimination?

*Judgment- The Supreme Court ruled that constitutional rights are not superseded by parliamentary privilege. Even disciplinary actions taken by Parliament cannot force testimony that contravenes Article 20(3). The Court upheld the idea that parliamentary privilege is subordinated to basic rights.*⁵³³

3- A secret recording of the accused is admissible in the court of law as long as it is obtained voluntarily and without any coercion. This was established in the case of *Yusufalli Esmail Nagree vs The State Of Maharashtra*, 1967, *Facts- In 1960, Yusufalli Esmail Nagree twice offered Shaikh, a municipal notice clerk, a bribe. During a police trap, a covert microphone placed in Shaikh's home was used to covertly record the second payment. The recorded audio supported Shaikh's testimony on the bribe.*

⁵³¹ Nandini Satpathy vs Dani (P.L.) And Anr, AIR 1978 SUPREME COURT 1025

⁵³² Shivam Mani Tripathi, “RIGHT AGAINST SELF-INCRIMINATION: A COMPREHENSIVE STUDY”, IV IJRL 255, 2024

⁵³³ Raja Ram Pal v. Lok Sabha & Ors.,(2007) 3 SCC 184

Issue- Despite being gained without Nagree's knowledge, was the surreptitiously recorded conversation permissible under the Indian Evidence Act and Constitution, and did it violate his protection to self-incrimination under Article 20(3)?

*Judgment- Because the recording caught a contemporaneous conversation that was part of the res gestae under Sections 7 and 8 of the Evidence Act, the Supreme Court ruled that it was admissible. Voices were recognized, and the tape was found to be undamaged, proving the recording's legitimacy. The most significant factor is that it was voluntarily; Nagree was not forced to talk nor made aware of the recording. Therefore, there was no breach of Article 20(3), which states that a confession must be forced in order to invoke protection, which was not the case in this instance.*⁵³⁴ In the United States in the 5th amendment the right against self incrimination is mentioned. It states that No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.⁵³⁵ In contrast to India, where this protection only extends to the accused, in the United States, both witnesses and defendants have the right to invoke protection against self-incrimination during investigations and court proceedings.⁵³⁶ Many global instruments like International covenant of civil and political rights (ICCPR) in its Article 14(3)(g) and American convention on human rights in its Article 8(2)(g); etc. enshrines the right against self incrimination.

⁵³⁴ Yusufalli Esmail Nagree vs The State Of Maharashtra, AIR 1968 SUPREME COURT 147

⁵³⁵ U.S. Constitution, amend. V

⁵³⁶ Swati Mishra, "ORAL TESTIMONIAL COMPULSION: A COMPARATIVE STUDY OF INDIA AND USA" 7 IJLLR 2550, 2017

CHAPTER 15

Protection of Life and Personal Liberty (Article 21)

Sanskruti Dhobley

INTRODUCTION

“Article 21 embodies the constitutional value of paramount significance in a democratic society.” — Justice P.N. Bhagwati, Maneka Gandhi v. Union of India (1978)

There are not many provisions in the Constitution of India, which has undergone so much transformation as Article 21⁵³⁷. Article 21, in Part III, which deals with fundamental rights, says, *“No person shall be deprived of his life or personal liberty except according to procedure established by law.”* Short though its provisions are, over time this Article has become the constitutional source of an array of rights--civil, political, sociomedical--each won through the painstaking, evolving work of interpretive construction by the judiciary.

In its initial years, Article 21 was interpreted in a limited, procedural manner. The words of the constitution were perceived to serve as a check only upon executive action, as long as the legislature had enacted a law that was valid. With the passage of time, constitutional evolution, driven by changing judicial priorities and social scenarios, expanded its scope beyond the confines of formal legality. What was initially a procedural provision was understood to be a substantive assurance of liberty and dignity.

This chapter traverses the constitutional evolution of Article 21 from narrow textual guarantee to expansive, rights-granting provision. It inquires into how the operative words—life, liberty, and procedure established by law, have developed the layered meanings they now possess. It reflects on what must be present for liberty to be meaningful, and how law reacts when the conditions are

⁵³⁷ The Constitution of India, art. 21.

withheld. The research is doctrinal as well as analytical, based on jurisprudential evolution, institutional changes, and social necessity.

The chapter also hypothesises that Article 21 has emerged as the pivot of Indian constitutionalism, a realm in which the law engages most intimately with human life. It assesses whether judicial interpretation has aligned with the promise of the Constitution to provide justice and whether the widening scope of Article 21 is still rooted in legal principle.

As constitutional law adapts to address new challenges, technological, ethical, and institutional, Article 21 continues to be at the heart of understanding what liberty means in India. Its meaning is not only legally characterized in its interpretation, but deeply reflective of the society it seeks to safeguard.

INTERPRETATION OF ARTICLE 21

What seems like a modest provision has evolved into the foundation of personal freedoms in India. The expressions “life”, “personal liberty” and “procedure established by law” are liberally construed and include in their fold a variety of rights and freedoms that are indispensable for the human dignity. Through decades of jurisprudence of the courts, Article 21 has widened to become a far-reaching constitutional principle of wider dimensions from a simple procedural guarantee.

‘Life’ does not just refer to mere existence or physical survival. Life in law is a meaningful life. Life, under constitutional interpretation, must have significance. A life wherein human dignity does not exist, that entails no access to food, to a place in which to live, to the right to health or education can hardly be referred to as a life. Courts in India time and again have stressed that the right to life under Article 21 is inclusive of all that is needed to live a life of decency, consolation and human dignity. This can be different for different segments of society. For the poor, this may entail the right to shelter or a means to sustain themselves. For children, it may encompass education and nurturing. For the disabled or the aged, it may be protection, health care, and access. The conceptualization of life through the Constitution is therefore in consonance with the actual experience of people in society.

Personal Liberty has also acquired a broad and expansive connotation. It is not only freedom from unlawful detention or inhibition but also the right to travel, make personal decisions, and express oneself, as well as enjoy bodily autonomy. Liberty here is both internal and external—defending the freedom of the individual's body as much as their mind and emotions. Crucially, liberty should be available to everyone, not just theoretically but practically. For those from marginalised or vulnerable groups, the challenges to liberty are frequently more profound, and the ability to exercise it harder. It is in such situations that the constitutional guarantee of personal liberty gains its full meaning. Not only must the State refrain from encroaching upon liberty, it must actively promote it where it is under threat.

The term "procedure established by law" was initially interpreted literally. In early constitutional law, the view that it would suffice if a law were validly enacted and that as such any deprivation of liberty or life under it would be constitutional upheld. This view, however, changed over time. It was realized that laws, though formally valid, could not be unreasonable or unfair. The legal procedure required by law itself has to be reasonable, fair, and non-arbitrary. This provided an additional layer of substantive protection, so that the constitutional promises are not subverted by unfair laws passed in constitutional form.

Together, the three ideas—life, personal liberty, and procedure established by law, have made Article 21 one of the most living and expansive shields in the Constitution of India. They capture a deeper constitutional vision: that the law must be at the service of justice, and that individual dignity and personal liberty is at the centre of constitutional rule.⁵³⁸

EVOLUTION OF ARTICLE 21

Judicial construction of Article 21 has been radically different after the adoption of the Indian Constitution. The kernel of this shift is in the words "procedure established by law," a conscious deviation from the American usage "due process of law." The framers of the Constitution, taking into account the chary outlook of Justice Felix Frankfurter and the apprehensions of B.N. Rau, were worried that the incorporation of the due process clause would permit excessive judicial

⁵³⁸ V.M. Bachal, "Judicial Interpretation of Article 21 of the Constitution of India", 25 The Indian Journal of Political Science, 231-240, (1964).

intrusion and bar progressive legislation. Consequently, Article 21 was prepared in the narrower terminology, giving the legislature more freedom but restricting the judiciary's field of review.

This trend was strongly approved by *A.K. Gopalan v. State of Madras (1950)*⁵³⁹, in which the Supreme Court ruled that the validity of a law depriving personal liberty depended solely on its enactment by a competent legislature. The substance or rationale of the law made no difference. Fundamental rights were construed in isolation, and even the potential for mutual interrelation among Articles 14, 19, and 21⁵⁴⁰ was stated to be denied. But dissenting opinions in this case, most notably by Justice Fazl Ali, cautioned that this rendered constitutional protection weak and made personal freedom susceptible to legislative overreach.⁵⁴¹

A turning point was *R.C. Cooper v. Union of India (1970)*⁵⁴², when the Court started interpreting basic rights as interrelated rather than in isolation. This paved the way for a more cohesive understanding of constitutional protection. The landmark departure from the *Gopalan* framework came in *Maneka Gandhi v. Union of India (1978)*⁵⁴³. In this case, the Supreme Court held that any process stripping a person of life or personal liberty has to be "just, fair, and reasonable." The Court reiterated that Article 21 could not be interpreted independently and needed to be harmonized with Articles 14 and 19. This shift in interpretation functionally brought into Indian constitutional law the doctrine of substantive due process, even though it was textually excluded.

With this development, the expression "procedure established by law" was imbued with the constitutional ingredients of due process, equality, non-arbitrariness, and compliance with natural justice. The role of the judiciary in interpretation widened from requiring legality to enforcing constitutional compliance in laws themselves. The *Maneka Gandhi* judgment converted Article 21 into a living constitution provision, protecting both personal dignity and democratic accountability.⁵⁴⁴

⁵³⁹ *A.K. Gopalan v. State of Madras (1950)* AIR 1950 SC 27.

⁵⁴⁰ The Constitution of India, art. 14, 19, 21.

⁵⁴¹ K. K. Nigam, "Due Process of Law: A Comparative Study of Procedural Guarantees Against Deprivation of Personal Liberty in The United States and India, 4 *Journal of Indian Law Institute*, 99-105, (1962).

⁵⁴² *R.C. Cooper v. Union of India (1970)* AIR 1970 SC 564.

⁵⁴³ *Maneka Gandhi v. Union of India (1978)*, AIR 1978 SC 597.

⁵⁴⁴ Monarch Trivedi, "Due Process of Law v/s Procedure Established by Law and India's Position", National Law University, Lucknow.

KEY COMPONENTS OF ARTICLE 21

The evolution of Article 21 has seen it grow from a purely procedural protection to a substantive promise of a life of dignity. By way of judicial interpretation, many integral elements have been infused into the right to life and liberty. They include the right to dignity, the right to privacy, access to legal aid, and the guarantee of basic socio-economic conditions for effective human living and many more.

At the heart of Article 21 lies the concept of human dignity. The constitutional guarantee is not just to safeguard life in its biological form but to make sure that life is lived with honor and respect. Dignity is the common thread which ties up the various rights that have developed under this article. The understanding that people need to be capable of existing without humiliation, fear, or deprivation has informed choices in a broad array of matters—whether prisoners, the homeless, or individuals subject to systemic exclusion. The understanding of life as including dignity is a part of an overarching constitutional commitment to human flourishing.⁵⁴⁵

The right to privacy is another core component. Originally neglected, this right later came to be recognized as a central aspect of the concept of liberty. It includes autonomy of the person, freedom of mind, integrity of the body, and control over one's own personal information. In a technologically driven society, the guarantee of privacy has come to form the nucleus of the bond between the individual and the State. Liberty under Article 21 is now understood to entail freedom to make private personal decisions without undue interference.⁵⁴⁶

Access to legal aid has also been identified as essential to the protection of liberty. Legal procedures, however well drafted, are rendered worthless to those who cannot access them. Right to counsel and right to a reasonable and expeditious trial have been looked at as fundamental to ensuring no individual is deprived of justice just because of their socio-economic status. These assurances are especially important to vulnerable populations, such as juveniles and the economically disadvantaged, who have systemic barriers in the exercise of their rights. Article

⁵⁴⁵ Sushant Chandra, Shireen Moti, “Dignity and Human Rights in India”, 2nd International Conference on Future of Social Sciences, (2019).

⁵⁴⁶ Khushi Chopra Surya Pratap Kasaudhan, “From Constitutional Rights to Data Protection: Article 21 and Comparative Perspectives on Privacy”, Manupatra Articles (2024).

39A of the Constitution of India⁵⁴⁷ lays the foundation for the provision of free legal aid in India, emphasizing the importance of free and accessible legal aid and assistance to everyone in need.⁵⁴⁸

Article 21 has also come to cover vital socio-economic rights, such as the right to health, food, shelter, education, and a clean environment. Courts have recognized that in the absence of these bare essentials, the right to life becomes a meaningless proposition. The State, thus, is not only obliged to stay out of the way of life and liberty but also to produce and sustain the conditions in which people can survive and flourish. It is the living nature of the Constitution, attuned to evolving needs and rooted in social fact, that this interpretation is consistent with.

Notably, the scope of Article 21 reaches as far as the criminal justice system. Undertrial prisoners, detainees, and even death row inmates are to be treated with dignity. The right to life persists in prison confines, guaranteeing access to clean conditions, proper nutrition, prompt medical treatment, and guarding against abuse. The principle that all citizens continue to enjoy their constitutional rights despite the adverse conviction or detention is illustrative of the wide-ranging and inclusive character of Article 21.⁵⁴⁹

DOCTRINES RELATED TO ARTICLE 21

Article 21 has not only been influenced by the rulings of the courts but also by the incorporation of significant constitutional doctrines. Three of them—due process, substantive due process, and proportionality have significantly contributed to determining the extent and boundaries of State action under this article. These concepts find no mention in the Constitution, yet they have been assimilated into Indian law through interpretation.

The phrasing "due process of law" was intentionally omitted by the framers of the Constitution. The judiciary, especially post-Maneka Gandhi era, started to implement its fundamental principles. The conception of due process is that any law impacting life or liberty should not only be brought into effect in a correct manner but should also be fair, equitable, and reasonable in its

⁵⁴⁷ The Constitution of India, art. 39A.

⁵⁴⁸ Prabhjot Singh Chahal, "Legal Aid in India: Enhancing Access to Justice for All", *International Journal for Multidisciplinary Research*,

⁵⁴⁹ Shriya Jaiswal, "Article 21 - Its Scope and Expansiveness", 4, *Indian Journal of Legal Review*, 1008-1022 (2024).

context and enforcement. This comprehension provides that State action cannot be sustained simply because it is pursuant to a valid statute—it must satisfy minimum standards of fairness. This departed from the initial stance in *A.K. Gopalan*, which prioritized legislative power without analyzing the substance of legislation.⁵⁵⁰

Intimately related to this is the doctrine of substantive due process. Unlike procedural safeguards that focus on how a law is applied, substantive due process examines the law itself. It allows courts to strike down laws that are inherently unjust, even if the procedure followed is correct. This doctrine empowers the judiciary to assess whether a law that limits personal liberty serves a legitimate public purpose and respects individual dignity. By adopting this method, Indian courts have struck down legislation that unreasonably limits reproductive rights, mobility, and freedom of speech etc.⁵⁵¹

The proportionality principle is also pivotal in assessing limitations placed upon fundamental rights. It demands that any limitation on life or liberty must itself be proportionate to the goal sought to be attained. The State has to demonstrate that the action is necessary, there is no less restrictive alternative, and the harm inflicted is not excessive in proportion to the benefit accrued. This test prevents individual rights from being gambled away for inconsequential or arbitrary motives and ensures that the balance between public interest and individual liberty is maintained.

PROCEDURAL FAIRNESS: BAIL, ARREST AND PREVENTIVE DETENTION

Article 21 assures that no individual will be deprived of life or personal liberty except by procedure prescribed by law. This provision not only requires legislative adherence, but also imposes an obligation of reasonableness in the application of laws. Procedural fairness thus becomes a constitutional requirement in the context of arrest, bail, and preventive detention.

For purposes of arrest and detention, the right to bail is in direct relation to liberty of the person. Arbitrary refusal of bail or excessive pre-trial detention may constitute a violation of Article 21.

⁵⁵⁰ Granville Austin, “The Indian Constitution: Cornerstone of a Nation”, Oxford, Clarendon Press, 1966.

⁵⁵¹ Monarch Trivedi, “Due Process of Law v/s Procedure Established by Law and India’s Position”, National Law University, Lucknow.

The Supreme Court has ruled in *Joginder Kumar v. State of U.P. (1994)*⁵⁵² that arrest should not be routine. The police will have to account for the need for arrest on reasonable grounds. The Court noted that a person's liberty cannot be suspended simply because an offence is cognizable; there should be procedural justification for depriving liberty.

In the same vein, in *Hussainara Khatoon v. State of Bihar (1979)*⁵⁵³, the Court addressed the fate of hundreds of undertrial prisoners who were trapped in jail incommunicado without a trial. It held that speedy trial is a *sine qua non* of the right to life and personal liberty. The case revealed the structural injustice that exists within the criminal justice system and prompted a chain of reforms in bail practices, particularly for poor and marginalized accused persons.⁵⁵⁴

As far as preventive detention is concerned, the Constitution allows for such action under Article 22 but prevents powers from being exercised arbitrarily by the interpretation of Article 21. Preventive detention legislation denies people their freedom of liberty without the normal trial protection, and judicial review is thus inevitable. The courts have reaffirmed that procedural protection also has to be strictly followed even in such instances.

The Supreme Court in *Prem Shankar Shukla v. Delhi Administration (1980)*⁵⁵⁵, upheld that handcuffing of prisoners in transit in the absence of cogent reasons was against human dignity under Article 21. The ruling upheld that all custody must be based on minimum human dignity and procedural fairness.

Therefore, Article 21 requires the State to not only justify any limit on individual freedom through the fact of a law being present but also through a process which is fair, non-arbitrary, and humane in operation.⁵⁵⁶

RECENT DEVELOPMENTS

The contemporary application of Article 21 is as much a response to timeless issues of liberty and due process as to the challenges of our time. Some of the most important developments

⁵⁵² *Joginder Kumar v. State of U.P. (1994)* AIR 1994 SC 1349.

⁵⁵³ *Hussainara Khatoon v. State of Bihar (1979)* AIR 1979 SC 1369.

⁵⁵⁴ Madhu Rani, Dr. Rana Parveen, "Right to Bail as a Constitutional Right", 5 *International Journal of Law Management & Humanities* (2022).

⁵⁵⁵ *Prem Shankar Shukla v. Delhi Administration (1980)* AIR 1980 SC 1535.

⁵⁵⁶ Gopal Krishan, "Preventive Detention in India: A Legal Perspective", 7, *International Journal of Reviews and Research in Social Sciences* (2019).

include the inclusion of digital rights, bodily autonomy, and the changing legal approach to death and dying.

The expanding role of technology in government and everyday life has placed digital rights at the center of individual liberty. In *Shreya Singhal v. Union of India (2015)*⁵⁵⁷, the Supreme Court invalidated Section 66A of the Information Technology Act, 2000⁵⁵⁸, criminalizing online communication that was "offensive" or "annoying." The Court held that ambiguous and arbitrary curbs on digital expression breach Article 21's guarantee of free and fair liberty. This ruling confirmed that the right to internet access, freedom of online communication, and the freedom against unreasonable online restraints are all components of a person's personal freedom.⁵⁵⁹

The identification of the right to die with dignity was another milestone in Article 21 jurisprudence. In *Aruna Ramchandra Shanbaug v. Union of India & Ors. (2011)*⁵⁶⁰ The Court exercised caution in permitting passive euthanasia in special situations by establishing rigorous procedural safeguards. This was followed up later in *Common Cause v. Union of India (2018)*⁵⁶¹, wherein a Constitution Bench established that the right to life entails the right to a dignified death. The Court maintained the legality of passive euthanasia and validated living wills as legitimate assertions of autonomy. It held that people possess the constitutional right to withhold life-sustaining treatment in a terminal or vegetative state, thus reaffirming bodily autonomy as an entitlement of protection under Article 21.

These rulings have redefined liberty to encompass not only the right to live, but also the right to live with a purpose—and, where the case warrants, die with dignity.⁵⁶²

The controversy over the death penalty also keeps transforming in the shadow of Article 21. Although capital punishment remains constitutional, the Court has kept its application limited to the "rarest of rare" cases first coined in *Bachan Singh v. State of Punjab, (1980)*⁵⁶³. Procedural justice, taking into account extenuating circumstances, and procedural delay in carrying out the

⁵⁵⁷ *Shreya Singhal v. Union of India (2015)* AIR 2015 SC 1523.

⁵⁵⁸ the Information Technology Act, 2000, Sec. 66A.

⁵⁵⁹ Mansi Singh, "Freedom of Expression and Online Speech", 8 International Journal of Novel Research and Development (2023).

⁵⁶⁰ *Aruna Ramchandra Shanbaug v. Union of India & Ors. (2011)* AIR 2011 SC 1290.

⁵⁶¹ *Common Cause v. Union of India (2018)* AIR 2018 SC 1665.

⁵⁶² R. Sai Gayatri, "Transcending Legal Position of Right to Die with Dignity in India", 29 Supremo Amicus, 288 (2022).

⁵⁶³ *Bachan Singh v. State of Punjab, (1980)* AIR 1980 SC 898.

punishment have all been bases for judicial interference, according to the rights-sensitive and cautious approach of the Court.

These advancements prove that Article 21 is not fixed. It evolves with technological advancement, ethical concerns, and social transformations—keeping the Constitution an ever-living document, sensitive to the aspirations of its citizens.

LANDMARK CASES

A.K. Gopalan v. State of Madras (1950): First interpretation of “procedure established by law”

In this case the Supreme Court made its first significant interpretation of Article 21. The petitioner objected to his preventive detention on grounds that it was violative of his rights under Articles 14, 19, and 21. The majority of the Court (5:1) adopted a narrow, formalist approach, interpreting "procedure established by law" to mean any procedure prescribed by a validly enacted law, irrespective of fairness or reasonableness. The Court also declined to read the constitutional rights as a cohesive whole, isolating Articles 14, 19, and 21 from each other. But Justice Fazl Ali dissented, stating that the basic rights had to be read together and that the process in Article 21 had to be fair. Though he was in the minority then, his argument would form the core of constitutional interpretation later on.⁵⁶⁴

Maneka Gandhi v. Union of India (1978): Expanded scope of personal liberty

This change took place categorically in *Maneka Gandhi v. Union of India* (1978). The case was triggered by the petitioner's passport being seized without reasons stated or a hearing, leading to a challenge on Articles 14, 19, and 21. Breaking with the Gopalan norm, the Court ruled that any legislation touching life or liberty must be fair, reasonable, and just—not oppressive or arbitrary. It also ruled that Articles 14, 19, and 21 are not mutually exclusive but form a “golden triangle” of rights that reinforce each other. In effect, the Court adopted the core of Justice Fazl Ali’s dissent from Gopalan, reading substantive due process into Indian law. The ruling was a watershed moment in constitutional adjudication, making Article 21 a fountain of both

⁵⁶⁴ A.K. Gopalan v. State of Madras AIR 1950 SC 27.

procedural and substantive protection and allowing the judiciary to read into it a broad selection of unenumerated rights like privacy, dignity, and fair procedure.⁵⁶⁵

Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981): Life includes dignity and decent living

Here, a detainee challenged limitations placed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. The Supreme Court held that Article 21 includes the right to live with human dignity. This covers access to bare essentials like proper food, clothing, shelter, and reading, writing, and expression facilities. The Court held that life is not just sustained physical life but a dignified, worthwhile life. This ruling laid the foundation of understanding Article 21 as a source of socio-economic rights, and extended the protection of the Constitution to the conditions enabling dignity.⁵⁶⁶

Olga Tellis v. Bombay Municipal Corporation (1985): Right to livelihood part of life

This seminal case involved pavement dwellers in Mumbai protesting against their forced eviction without rehabilitation. The Supreme Court reaffirmed that the right to life in Article 21 encompasses the right to livelihood, arguing that life without minimum sustenance and income ceases to have meaning. The Court explained that orders of eviction have to be couched in a procedure that is just, fair, and reasonable, and that proper rehabilitation or alternative housing must be ensured. By subsuming the right to livelihood under the rubric of life, this judgment made a landmark contribution to socio-economic jurisprudence by extending constitutional protection to basic needs of survival and dignity.⁵⁶⁷

Sunil Batra v. Delhi Administration (1978): Prisoner rights under Article 21

In this case, a prisoner objected to inhuman treatment within prisons and the constitutionality of corporal punishment in Tihar Jail. The Supreme Court held that prisoners, even those under death sentence, do not lose all their basic rights by getting themselves confined. The Court held that Article 21 right to life extended to behind prison walls for humane treatment, decent medical care, reasonable living standards, and safety from inhuman or degrading punishment. This judgment reiterated that the custodial atmospheres had to be respectful of human dignity and that

⁵⁶⁵ Maneka Gandhi v. Union of India AIR 1978 SC 597.

⁵⁶⁶ Francis Coralie Mullin v. The Administrator, Union Territory of Delhi AIR 1981 SC 746.

⁵⁶⁷ Olga Tellis & Ors v. Bombay Municipal Corporation & Ors. AIR 1986 SC 180.

prisoners were entitled to judicial recourse when exposed to cruel, inhuman, or degrading treatment.⁵⁶⁸

Sheela Barse v. State of Maharashtra (1983): Legal aid and treatment of women prisoners

This case arose out of a public interest litigation that brought to light the deplorable situation of women prisoners—deficient sanitation, minimal medical attention, and absence of privacy—in the prisons in Maharashtra. The Supreme Court reiterated that Article 21 is extended to custodial dignity and that legal aid is the right of all prisoners. It directed state governments to nominate female visitors to visit women's facilities, provide timely legal aid, and keep records of personal articles. The ruling highlighted that access to justice and humane treatment go hand in hand with individual freedom, affirming constitutional duties towards vulnerable and marginalised prison populations.⁵⁶⁹

M.C. Mehta v. Union of India (1987): Right to clean environment under Article 21

In the case of Oleum gas leak, the Supreme Court acknowledged that the right to reside in a clean, pollution-free environment is inherent in Article 21. Public interest litigation initiated by M.C. Mehta resulted in judicial intervention against noxious industrial undertakings. The Court stated that the State is duty-bound to provide environmental protections and citizens possess the constitutional right to fresh air and clean water. This ruling set the precedent that environmental well-being is part of the right to life, extending Article 21 to include ecological health as part of human dignity and survival.⁵⁷⁰

Justice K.S. Puttaswamy v. Union of India (2017): Right to privacy is a fundamental right

A nine-judge bench held unilaterally that the right to privacy is implicit in Article 21 and constitutional freedoms. The case concerned the challenges to Aadhaar and other surveillance legislation that impaired individual autonomy and informational privacy. The Court recognized privacy's multi-dimensionality—bodily integrity, decisional autonomy, informational control, and spatial sanctity—and held that any law violating privacy has to meet a three-part test: lawfulness, necessity, and proportionality. This historic ruling turned personal freedom into a strong constitutional protection in the information age, grounding new rights related to

⁵⁶⁸ Sunil Batra v. Delhi Administration AIR 1980 SC 1579.

⁵⁶⁹ Sheela Barse v. State of Maharashtra AIR 1983 SC 378.

⁵⁷⁰ M.C. Mehta and Anr v. Union of India & Ors AIR 1987 SC 1086.

information, identity, and individual autonomy in the fundamental protection of life and liberty.⁵⁷¹

COMPARATIVE ANALYSIS

Protective provisions for life and liberty have developed differently across jurisdictions, yet a common orientation to dignity, equity, and autonomy exists. While the Indian approach under Article 21 has developed through judicial reasoning, foreign jurisdictions usually express such protections through express provisions, providing valuable points of comparison.

In the United States, the "due process of law" clause finds reference in both the Fifth and Fourteenth Amendments⁵⁷². The Supreme Court of the United States has established an elaborate jurisprudence that differentiates between procedural due process, which guarantees fairness in the means of law enforcement, and substantive due process, which assesses the reasonableness of the law itself. Illustrative cases include *Roe v. Wade* (1973)⁵⁷³ regarding reproductive freedom and *Obergefell v. Hodges* (2015)⁵⁷⁴ regarding marriage equality, where liberty came to safeguard personal choices integral to individual identity. Substantive due process is still contentious, but it remains a forceful tool to examine legislation affecting core freedoms.

The South African Constitution, adopted after apartheid, is globally considered to be one of the most progressive constitutions in the world. Section 10⁵⁷⁵ clearly enshrines the right to dignity, and Section 12⁵⁷⁶ secures freedom and security of the person. Notably, the South African Bill of Rights itself contains justiciable socio-economic rights, such as access to health care, housing, and education—which have been enforced by the courts in cases such as *Government of the Republic of South Africa and Others v Grootboom and Others* (2000).⁵⁷⁷ This demonstrates a

⁵⁷¹ Justice K.S.Puttaswamy (Retd) v. Union of India AIR 2018 SC 237.

⁵⁷² United States Constitution, 5th & 14th Amendments.

⁵⁷³ 410 U.S. 113 (1973).

⁵⁷⁴ 576 U.S. 644 (2015).

⁵⁷⁵ Constitution of Republic of South Africa, sec 10.

⁵⁷⁶ Constitution of Republic of South Africa, sec 12.

⁵⁷⁷ 2001 (1) SA 46.

constitutional model that instills human dignity as value and as right, weighing individual freedom against social justice.⁵⁷⁸

In Europe, the European Court of Human Rights has, under Article 8 of the European Convention on Human Rights⁵⁷⁹, construed a general right to respect private and family life. It is not merely protection against State interference but includes positive obligations to support dignity and autonomy. The proportionality doctrine of the Court—weighing individual rights against public interest—has become a template for judicial thinking across the world, shaping new democracies as well as mature legal orders.

Together, these traditions highlight a global consensus on liberty, dignity, and equality as foundational constitutional values and principles that continue to develop across systems to meet new challenges in society.

CONCLUSION

The evolution of Article 21 from a limited procedural provision to a living treasure trove of substantive rights is a testament to the Indian judiciary's sustained commitment to constitutional morality and human dignity. What started as a protection against State arbitrariness has, over time, become a potent instrument for upholding individual autonomy, social justice, and democratic values. By a series of historic rulings, the Supreme Court has construed life and individual liberty not in a fixed or literal manner, but as dynamic concepts sensitive to the needs and constitutional aspirations of the time.

From acknowledging the rights of prisoners, pavement dwellers, and undertrial detainees to the recognition of the right to privacy, health, education, and even the right to die with dignity, Article 21 has remained the constitutional pillar for promoting both civil and socio-economic rights. The introduction of substantive due process, fairness, and proportionality into Indian law has consistently brought it at par with international constitutional practices, while simultaneously being sensitive to India's own social realities.

⁵⁷⁸ Arthur Chaskalson, “Dignity as a Constitutional Value: A South African Perspective,” 26, *American University International Law Review* (2011).

⁵⁷⁹ European Convention on Human Rights, art. 8.

As India charts new challenges—digital monitoring to ecological destruction—Article 21 will remain a living instrument. Its future relevance is in its ability to enforce the dignity of all individuals, even as society and technology advance beyond the framers' dreams.

CHAPTER 16

Protection Against Arrest and Detention (Article 22)

Anurima Biswas

“Loud knocks washed over me. Sitting up with a start, I stared at the door in that dimly lit room. 4:45 am. The door showed signs that it would crumble under the strong hits. My flatmate made way to the door, opening it only a creak. Men in uniform stood. He was dragged through the door.

“Come with us, you’re arrested.”

“Sir, I didn’t do anything...”

“Shut up.”

I watched it all in horror, dread coiling inside me.

Take a minute to think. Does it seem the right act by uniform clad men? Let your thoughts flow at the back of your mind while I introduce you to Article 22⁵⁸⁰ of the Constitution and possibly towards an answer to the above incident. The simplest explanation would be what the incident shakes within you. The sense of right and the wrong. The bare reading of the Article will tell you that it protects you from arrest and detention. But apart from this, it has another role to play. *Playing the Devil*. That is— Preventive Detention, embedded within the ambit of Article 22 where arrest can be made without actual violation of any law of the land. This said Article therefore has a dual role, one, to protect your freedom of free movement and of life and liberty and two, to take away the same freedoms in special circumstances.

⁵⁸⁰ The Constitution of India, art. 22

This brings us to what you will take away after a careful and mindful reading of this chapter. You will realise the origins of this law, why at all it was included as one of the fundamental rights, further, more than just textual knowledge you will dive into some pondering, landmark case studies, timelines to jog your memory and its recent commotion around the globe debated with Human Rights laws. Packed with constitutional debates, associated laws, and doctrines — you will be informed A LOT.

While part one, is there. Part two— Preventive Detention is what garners the concern of the public. This is also the relevance of Article 22 in the contemporary landscape, where individual rights, rule of law, and human rights have established themselves strongly against arbitrary actions of arrest and detention, particularly in cases where detention is only precautionary. In the words of, Lord Robert Finley in *R v. Halliday*⁵⁸¹, “it is not punitive but a precautionary measure.”⁵⁸², H.V. Kamath, “it is a day of sorrow and shame. May God help the Indian people.” Pandit Thakur Das Bhargava who was severely critical of this provision called it, “the Crown of all of our failures”. Then why at all should we concern ourselves with a failure of a provision? Because this failure or call it the *necessary evil*, gave way to loopholes and challenged the very fabric of democracy, led to misuse and abundant police discretion and legal abuse. Even though a failure and *kalank*, it was a *glorious* one. It haunts the supporters of liberty till this day.

Historically, the saga started in the year 1950 just after a month of the enactment of the Indian Constitution in 1950, when *Preventive Detention Act (PDA)*⁵⁸³ was introduced for the very first time in India. This came as a consequence of Communists in Telangana causing uproar and to take needed action by the State. However, it was lighted out in the year 1969 due to severe criticism by the forces standing firm against it. This did not stop the next Act, *Maintenance of Internal Security Act (MISA)*⁵⁸⁴ which was passed in 1971 and contained provisions of preventive detention, however in 1977 with the Janta Government coming to the power MISA was snuffed out too. However before in 1976, MISA was held constitutionally valid in the case of *ADM Jabalpur v. Shivkant Shukla*⁵⁸⁵. The Acts were a series of enactments and abolishments, but the provision in the Constitution was still there and remained intact. Upendra Baxi, a legal

⁵⁸¹ *R v. Halliday*, [1917] UKHL 662.

⁵⁸² Gopal Krishan, “Preventive Detention in India: A Legal Perspective” 7 *IJRRSS* 453 (2019).

⁵⁸³ Preventive Detention Act, 1950 (Act 4 of 1950).

⁵⁸⁴ Maintenance of Internal Security Act, 1971 (Act 26 of 1971).

⁵⁸⁵ *ADM Jabalpur v. Shivkant Shukla*, 1976 AIR 1207.

scholar who found himself in the critical crowd of Preventive Detention, argued that it looks down upon the fundamentals of democracy and the rule of law and hence called it “*Draconian Detention*”. His 1982 writings⁵⁸⁶, criticised the Preventive Detention System (PDS) from the Criminal Justice System (CJS), as it has little judicial mind and people are detained without judicial justification and gives tremendous power to the Executives. While apparently maintaining public order it is basically a vehicle for unchecked state power. In 1962, following the Indo-China war, *The Defence of India Act* (DSA)⁵⁸⁷ 1962, was enacted. This Act too had provisions for preventive detention. During the 1965 and 1971 wars with Pakistan, the State used the DSA to keep detaining people. Laws such as *The Unlawful Activities (Prevention) Act* (UAPA)⁵⁸⁸ 1967, was also following the principles of preventive detention. Under this law, the State had the power to declare any organization illegal and could imprison anyone for interrogation if the said organization or person questioned the Indian *sovereignty* territorially. Before the MISA was extinguished in 1977, during the emergency period from 1975-77, the law was milked to its full potential to send people in detention. Similarly we have laws such as *Armed Forces (Special Powers) Act* (AFSPA) 1958⁵⁸⁹, *National Security Act* (NSA) 1980⁵⁹⁰, TADA⁵⁹¹, POTA⁵⁹², State laws etc. which have provisions for Preventive Detention.

Before we take it forward let’s take a glance at the Constitutional Debate on Article 22 specifically on the 15th and the 16th days of September 1949. It was not included in the initial draft but was later introduced by the Chairman of the Drafting Committee, Dr. B. R. Ambedkar. The debate addressed both parts of Article 22 called the general part – part one as abovementioned and the special part -part two respectively, and initially was under Article 15A.

Shri M. Ananthasayanam Ayyangar (Madras General) questioned the general part of Article 15A, on the words “as soon as may be” and, produced before the nearest Magistrate within “24 hours” of such arrest. On which questions came as to why not a First-Class Magistrate and simply any Magistrate. Shri Mahavir Tyagi (United Provinces General) further pointed out as to why do we need penal provisions in the Constitution? Moreover he went to the extent of saying

⁵⁸⁶ The crisis of the Indian legal system -book

⁵⁸⁷ The Defence of India Act, 1962 (Act 51 of 1962).

⁵⁸⁸ The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967).

⁵⁸⁹ Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958).

⁵⁹⁰ National Security Act, 1980 (Act 65 of 1980).

⁵⁹¹ Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 28 of 1987).

⁵⁹² The Prevention of Terrorism Act, 2002 (Act 15 of 2002).

“had Dr. Ambedkar spent a day and night with myself in jail and handcuffed he would have understood better...”. He was of the opinion to not make laws that would be used against themselves in the future.

Shri Mahavir Tyagi:

*“Instead of giving more guarantees, Dr. Ambedkar has only brought in a couple of clauses from the Criminal Procedure Code which are no new guarantees, and immediately along with those clauses he has brought in a clause for detention.”*⁵⁹³

Dr. B. R. Ambedkar was completely enraged with his fellow house speakers especially with them who were lawyers and had knowledge of the law. Enraged he explained, what exactly is not understood? The 3 lists of the Seventh Schedule, which gives the Executives power to make laws on arrest and detention, it would be simply stupid if the judiciary has no role in it and let the Executives have unchecked powers. This Article was also an attempt to curtail and put limitations on the Executive’s power. Further commenting on the Magistrate to be brought before, he said, if specified it would become a loophole to extend the 24 hours’ time, stating that a particular rank Magistrate is not there.

Shri Mahavir Tyagi:

“Will you help a layman understand as to why you have not provided for the revision by the Advisory Board of the cases under clause (4)?”

Dr. B.R. Ambedkar:

“I cannot explain to him the legal points in this House. This House is not a law class...”

The Article was thus extensively discussed. Later when numerous Acts were enacted, they were also constitutionality challenged and judicially reviewed by the Courts in India. Preventive Detention laws were therefore not static, it evolved through interpretations by the Court. Keeping in mind the Fundamental Rights under Part III of the Constitution, all contested laws were reviewed.

Now, you all would have an idea about what the apprehension of the members in the Constitutional Assembly was all about. The apprehension was reasonable, the curtailing of

⁵⁹³ Constituent Assembly Debates On 16 September, 1949 Part I, available at: <https://indiankanoon.org/doc/157329/>.

liberty was actual, and the detention based on doubt was sheer power for the Police Executives. Let us now understand the bare provisions sub-section wise.

Article 22. “*Protection against arrest and detention in certain cases*”

Getting arrested is not desirable neither is making an arrest. It is not based on the whims and fancies of the authorities. The SC has abundantly clarified in *Joginder Kumar v. State of Uttar Pradesh*⁵⁹⁴ that no arrest can be made because it is lawful for the police officer to do so. There must be justification for the exercise of such power. The police officer must be able to justify the arrest apart from his power to do so.⁵⁹⁵

It is to be noted that Article 21 and Article 22 work in tandem. It is the violation of Article 21 and Article 19 cumulatively that gives rise to the safeguards given in Article 22. Therefore when Article 22 is silent on a matter, recourse can be taken from Article 21. The following sub-sections 22(1) and 22(2) are rights that a person in arrest enjoys. They are four in number.

(1). “*No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*”

RULE 1: To inform the detained of the grounds of his arrest.

As we read in the incident with which we started off, taking someone away without giving that person even the basic details of why the arrest took place, is a blatant exercise of power. In the case of *State of Madhya Pradesh v. Shobharam (AIR 1966 SC 1910)*⁵⁹⁶ The Supreme Court mandated this as a rule to give information on the grounds of arrest. This is done to allow the arrested person to have him represented, file for bail extending to *habeas corpus* writ petition. In *Re Madhu Limaye (AIR 1969 SC 1014)*⁵⁹⁷, it was further presented that failure to fulfil this rule grants the arrested the right to be released. However, on reasonable and justifiable grounds this relaying of information may be delayed.

RULE 2: Right to consult a lawyer of their choice.

⁵⁹⁴ *Joginder Kumar v. State of Uttar Pradesh*, AIR 1994 SC 1349.

⁵⁹⁵ Justice Jasti Chelameswar and Justice Dama Seshadri Naidu (eds.), *M. P. Jain Indian Constitutional Law 1234-1279* (Lexis Nexis, Haryana, 8th edn., 2018).

⁵⁹⁶ *State of Madhya Pradesh v. Shobharam*, AIR 1966 SC 1910.

⁵⁹⁷ *Re Madhu Limaye*, AIR 1969 SC 1014.

Not everyone is literate in matters of the law. When given a chance, it is most desirable that a lawyer may be appointed to fight on their behalf and more so by a lawyer in whom they are confident. The consultation may be private to protect the interests of the arrestee and in order to consult a lawyer of his choice fairly and reasonably. The law is not violated if no request for lawyer has been made and no request has been turned down⁵⁹⁸. From day 1 of the arrest this right arises. In *Nandani Satpathy v. PL Dani* (AIR 1978 SC 1025)⁵⁹⁹ the Judge Iyer J, clarified that this does not mean that the right can be denied to those who are not under arrest. USA laws follow *due process of law* and therefore if a counsel is not engaged and the defendant is not capable of protecting his own person due to any reason, the Court shall appoint a counsel.

(2). “Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

RULE 3: To be produced within 24 hours before the nearest Magistrate.

This provision ensures that the arrest is fair, legal and procedural. In *D. K. Basu v. State of W.B.*⁶⁰⁰ In the wake of custodial deaths, the Court has given detailed guidelines for arrest and detention while in police custody.⁶⁰¹ More often than not, when a Magistrate in the undesirable conduct of his authority colludes with the Police and aids the Executive, it is a great violation of constitutional rights of the accused. Same thing was witnessed in the case *Bhim Singh v. State of Jammu & Kashmir*⁶⁰², where the Magistrate put the accused to police custody without personally getting produced before him. The Court ordered Rs. 50,000/- as compensation to the accused.

RULE 4: To not be detained beyond 24 hours without authority.

The Courts have abundantly made it clear that if the detention goes beyond the period of 24 hours the said person can be released.

(3). *Nothing in clauses (1) and (2) shall apply—*

⁵⁹⁸ Ramsarup v. UOI, AIR 1965 SC 247.

⁵⁹⁹ Nandani Satpathy v. PL Dani, AIR 1978 SC 1025.

⁶⁰⁰ D.K. Basu v. State of W. B., AIR 1997 SC 610.

⁶⁰¹ Mahendra Pal Singh (ed.), *V. N. Shukla's Constitution of India* (EBC Publishing, Lucknow, 13th edn., 2022).

⁶⁰² Bhim Singh v. State of Jammu & Kashmir, AIR 1986 SC 494.

(a) *To any person who for the time being is an enemy alien; or*

(b) *To any person who is arrested or detained under any law providing for preventive detention.*

The exception in Article 22 is this particular sub-section. Meeting these two conditions, protection laid out in Article 22(1) and 22(2) are non-applicable. In *A. K. Gopalan v. State of Madras* (AIR 1950 SC 27)⁶⁰³, Patanjali Shastri J, defended the provision remarking an infant Republic such as India, needs so for national welfare. The law is sinister but as already addressed it is a *necessary evil*. The life of the nation is of utmost importance and in this life, there may arise occasions when its own citizens may act subversely and cause threat to the young life. This importance is placed on higher pedestal than individual liberty. This also marks the distinction between punitive and preventive detention. One based solely on suspicion that wrong might be committed if not detained unlike detention after fair trial and conviction. Exercising caution in application of this provision especially during peace time is imperative. Other nations like the USA, Canada use it specifically during war-time. In *Vijay Narain Singh v. State of Bihar*⁶⁰⁴ The SC clarified that criminal prosecution must be proceeded if it suffices over preventive detention.

While this feature exists, safeguards are also given from 22(4) to 22(7). *Maneka Gandhi v. UOI*⁶⁰⁵, *A. K. Roy v. UOI*⁶⁰⁶, clarified that even after using the above clauses, it does not exclude safeguards provided from Article 14⁶⁰⁷, 19⁶⁰⁸ and 21⁶⁰⁹. The law-making power is given under Entry 9, List I and Entry 3, List III. The Centre enacted the COFEPOSA, 1974⁶¹⁰ using its residuary power under Entry 36, List I. The following safeguards are given.

(4). *No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—*

⁶⁰³ A. K. Gopalan v. State of Madras, AIR 1950 SC 27.

⁶⁰⁴ Vijay Narain Singh v. State of Bihar, AIR 1984 SC 1334.

⁶⁰⁵ Maneka Gandhi v. UOI, AIR 1978 SC 597.

⁶⁰⁶ A. K. Roy v. UOI, AIR 1982 SC 710.

⁶⁰⁷ The Constitution of India, art. 14

⁶⁰⁸ The Constitution of India, art. 19

⁶⁰⁹ The Constitution of India, art. 21

⁶¹⁰ The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Act 52 of 1974).

(a) An Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) Such a person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

Under this provision, the safeguards Advisory Board is given. That is no longer than 3 months shall the arrested be detained unless extended by the Advisory Board. The members of this Board are HC Judges (are, have been, or qualified). If it is decided that there is no justification for the detention, the government is bound to release the arrested.

(5). When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

This is natural justice woven into the sinister feature. It has two branches and if any use is violated the detention becomes bad. One, communicate the grounds of arrest which are facts. Two, offer the earliest opportunity to represent. The second is not mere formality. However, if all documents during communication are not presented, the order still stays and doctrine of severability is applicable to each separate grounds for detention. *Khudiram Das v. State of West Bengal*⁶¹¹ another case which demonstrates the application of several grounds. “*The Courts protect this right quite jealously* .⁶¹²” The right of communication on grounds. In *Kamarunnissa v. Union of India*⁶¹³ case detention orders became bad as representation was not effective because it was impaired by the lack of documents.

It is to be noted that nowhere it mentions who the representation is to be made to. But a representation is not admitted unless signed and dated.

⁶¹¹ *Khudiram Das v. State of West Bengal*, AIR 1975 SC 550.

⁶¹² *Shaik Hanif v. State of West Bengal*, AIR 1974 SC 679.

⁶¹³ *Kamarunnissa v. Union of India*, AIR 1991 SC 1640.

(6). *Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.*

(7). *Parliament may by law prescribe—*

(a) *The circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);*

(b) *The maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and*

(c) *The procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).*

Article 22(7)(a) overrides 22(4)(a) clause and gives the Parliament the power to bypass Advisory Boards. In *A. K. Gopalan* case, the *and* between ‘circumstances’ and ‘class’ are not to be read as together but give the meaning of *or* and therefore not mandatory to furnish both the groups. This was overturned in *Sambhu Nath Sarkar v. State of West Bengal*⁶¹⁴, where the Court made it a point that 22(7)(a) is an exception for 22(4), and should be used only in extraordinary circumstances and to attribute the same and general meaning the Parliament intended. The contention was section 17⁶¹⁵ of MISA. This provision is ultimately to detain the arrested beyond three months on justified grounds.

Some of the landmark cases mentioned here started right in 1950 with the Supreme Court case of *A. K. Gopalan v. State of Madras (AIR 1950 SC 27)*⁶¹⁶ where, a communist leader from the state of Madras (Tamil Nadu) was arrested in Malabar for a speech which caused public disorder on the 17th day of December 1947. While being prosecuted for the same, another detention order was issued under MMPOA, 1949⁶¹⁷. The second one was held illegal by the Madras High Court. Again, he was detained under the PDA, 1950. Following which he filed a *habeas corpus* writ

⁶¹⁴ *Sambhu Nath Sarkar v. State of West Bengal*, AIR 1973 SC 1425.

⁶¹⁵ Maintenance of Internal Security Act, 1971 (Act 26 of 1971), s. 17

⁶¹⁶ *A. K. Gopalan v. State of Madras*, AIR 1950 SC 27.

⁶¹⁷ Madras Maintenance of Public Order Act, 1949 (Madras Act XXIII of 1949).

petition under Article 32(1)⁶¹⁸. He claimed his rights were violated under Article 19, 21 and 22, since his detention from 1947. Out of the five issues raised, the first three concerns Preventive Detention. The court held that PDA, 1950 does not conflict with Article 19 as it allows for limitation through law. Section 14 of PDA⁶¹⁹ was held *ultra vires* and capable of severability. Thus, PDA was held constitutional and therefore the detention thus valid.

*Kharak Singh v. State of U.P. (AIR 1963 SC 1295)*⁶²⁰ another landmark case where personal liberty, privacy and state surveillance was questioned. Previously Kharak Singh was a suspect in armed robbery, but was released due to insufficient evidence. The U. P. Police Regulations subjected him to extreme surveillance including domiciliary visits. He challenged the same through a writ petition claiming his rights under Article 19(1)(d) and 21 were violated. The SC upheld by majority the inclusion of Right to Privacy under Article 21 and made domiciliary visits unconstitutional.

*Ankul Chandra Pradhan, Advocate Supreme Court v. UOI (AIR 1997 SC 2814)*⁶²¹ This case dealt with whether prisoners in trial and convicts can exercise their voting rights. Shri Rajinder Sacher represented the petitioner institution in the instant case. The case challenged sections 4, 5, and 62(5) of the RPA, 1951⁶²². The petitioner claimed it violated Article 14 and 21 of the COI. The issue raised was whether the denial of voting rights to prisoners was unconstitutional. The SC upheld the Act and decided that prisoners do not have the fundamental right to vote. Its distinction is well within the ambit of Article 14 and non-discriminatory. Preventive Detention detainees are an exemption in the case provided they are out on bail. Otherwise no case arises if confined in jail.

*Ahmed Noormohmed Bhatti v. State of Gujarat (AIR 2005 SC 2115)*⁶²³ a landmark case where detention orders under Gujarat Prevention of Anti-Social Activities Act, 1985⁶²⁴ was challenged along with section 151 of CrPC, [35(1) of BNSS⁶²⁵]. The petitioner was detained without trial on

⁶¹⁸ The Constitution of India, art. 32(1)

⁶¹⁹ Preventive Detention Act, 1950 (Act 4 of 1950), s. 14

⁶²⁰ *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295.

⁶²¹ *Ankul Chandra Pradhan, Advocate Supreme Court v. UOI*, AIR 1997 SC 2814.

⁶²² The Representation of the People Act, 1951 (Act 43 of 1951), ss. 4, 5, 62(5).

⁶²³ *Ahmed Noormohmed Bhatti v. State of Gujarat*, AIR 2005 SC 2115.

⁶²⁴ Gujarat Prevention of Anti-Social Activities Act, 1985 (Act 16 of 1985).

⁶²⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 35(1)

grounds of being a dangerous *person*. He filed a writ petition under Article 226⁶²⁶ and section 482 of CrPC, [528 of BNSS⁶²⁷]. The High Court declared that powers under section 151 of CrPC is defined and has protections from arbitrariness and unreasonableness hence is not unconstitutional. The court further made distinction on law and order and public order violation. The detenu having disturbed *public order*, the SC upheld the detention.

*Supreme Court Legal Aid Committee v. UOI (1994 SCC (6) 731)*⁶²⁸ shed light on speedy trials in detention cases. The driving factor for this petition under Article 32 was the delay in disposing cases under NDPSA, 1985⁶²⁹ where foreigners were involved. Especially those cases where foreigners were detained for exceeding two years. But it was pointed out that this blatant differentiation from citizens would raise questions. The petition was revised and now the cause extended to all prisoners detained for more than two years. The court said, “Article 14, 19 and 21 nourish each other”. Speedy trial was also explored in the case of *Hussainara Khatoon v. Home Secretary, State of Bihar*⁶³⁰. The SC held that speedy trial is a fundamental right and detention prolonged without justified grounds and without trial is unconstitutional.

Unlike India, when the very first step towards Preventive Detention was taken in 1818 during the British Colonial rule under Bengal Regulations III⁶³¹, the world saw this coming faster. In the United Kingdom, Magna Carta sowed the seeds of Preventive Detention right on the 15th of June, 1215⁶³². Through the decades, the framework has changed. When once upon a time Preventive detention was glorified and was must, it now irks the consciousness of the people at the global level. We have statistics to show from NCRB data, Common Cause India and on the Global platform from Reports like Global Prison Trends 2025⁶³³ – an effort by the Penal Reform International and the Thailand Institute of Justice, in its 11th edition shows the data on violence on inmates⁶³⁴; and reputed journals that Preventive detention is causing havoc around the globe and arrest procedures are not duly followed. It is further complicating the prison system and

⁶²⁶ The Constitution of India, art. 226

⁶²⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 528

⁶²⁸ Supreme Court Legal Aid Committee v. UOI, 1994 SCC (6) 731.

⁶²⁹ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

⁶³⁰ Hussainara Khatoon v. Home Secretary, State of Bihar, 1979 AIR 1360.

⁶³¹ Bengal State Prisoners Regulation, 1818 (Act III of 1818).

⁶³² Tripti Paliwal and Rudra Pradeep Sachdeva, “Evolution of Preventive Detention: Legislative and Judicial Trends in India” 44 *JPT* 2936 (2023).

⁶³³ Penal Reform International and Thailand Institute of Justice, 11th Report on Global Prison Trends (May, 2025).

⁶³⁴ Global Prison Trends 2025, available at:

https://www.tijthailand.org/en/publication/detail/pri_global-prison-trends-report-2025.

causing much overcrowding. In this decade Preventive Detention cannot be isolated from human right laws when liberty is curtailed, fair trial is denied in the name to ensure national security and public order. When India is part of the International Covenant on Civil and Political Rights (ICCPR), the laws in India ought to be in sync with international treaties and covenants particularly in this covenant with Article 9 and 14. We are still far from that. In 2021 itself, UNHRC concerned itself with worry over UAPA, NSA and Public Safety Act (PSA)⁶³⁵ laws in India. 2022 Report by the Amnesty International stated, “*India has one of the world’s most misunderstood laws on preventive detention, further saying it is draconian and repressive*”⁶³⁶ Human Rights Watch in 2021, made a point that UAPA seems to specifically put a bull’s eye on journalists and activists. UDHR has also emphasized that detention laws shall not be arbitrary and must not deviate from the fair procedure. Apart from comments from organizations, we also have case studies. In 2018, the *Miller and Carroll v. New Zealand*⁶³⁷ case arose in New Zealand as reported by the UN Human Rights, where two men namely Allan Brian Miller and Michael John Carroll were convicted for rape in 1991 and 1988 respectively. They though after being qualified for parole after 10 years of imprisonment were kept imprisoned still. They were arbitrarily detained and in 2014 sent individual letters to the UNHCR Committee. They took up the case and decided that New Zealand had violated its duties under ICCPR. The Committee referred to its views in *Rameka v. New Zealand*⁶³⁸ on preventive detention to address the instant case. *Velásquez Rodríguez v. Honduras*⁶³⁹ another case determined by the Inter-American Court of Human Rights in 1988. The case particularly talks about *enforced disappearances* and that it underpins human dignity. It was in September 1981, one Mr. Manfredo Velásquez Rodríguez, a college student was abducted by civilian dressed armed State agents using a car without plate number. *Habeas Corpus* suits were filed and soon also rejected.

Recently, the commotion around the globe on preventive detention is heavy. In India post 2020, cases like, *Harini v. State of Tamil Nadu (2022)*⁶⁴⁰, *Vasanthi v. Secretary to Government (2023)*⁶⁴¹ and, *Dhanya M v. State of Kerala (2025)*⁶⁴² have all demonstrated the misuse of preventive

⁶³⁵ The Jammu and Kashmir Public Safety Act, 1978 (Act 6 of 1978).

⁶³⁶ Amnesty International, 2022/23 Report on The State Of The World’s Human Rights (March, 2023).

⁶³⁷ *Miller and Carroll v. New Zealand*, [2010] NZCA 600.

⁶³⁸ *Rameka v. New Zealand*, IHRL 2756 (UNHRC 2003).

⁶³⁹ *Velásquez Rodríguez v. Honduras*, IHRL 1390 (IACHR 1990).

⁶⁴⁰ *Harini v. State of Tamil Nadu*, H.C.P.No.2679 of 2022.

⁶⁴¹ *Vasanthi v. Secretary to Government*, H.C.P.No.2397 of 2023.

⁶⁴² *Dhanya M v. State of Kerala*, 2025 INSC 809.

detention laws under various State Acts too. They are now being used to sidestep ordinary procedures like bail cancellation. The grounds for safeguards are taken callously, intimations to relatives becoming informal and improper, and overall made a joke of. All of the three cases were quashed citing grounds that ought to be basic requirements. The provision is extraordinary and requires that touch while detaining under it. Contemporarily the exception is the new prevalence.

Summing up, like friction, it too is a *necessary evil* and a double-edged sword. Without it, the young Nation will suffer at the hands of its own citizens but with it? The same as what happened in the beginning incident will. Now equipped with knowledge on Article 22, was the act right? You now have an answer.

CHAPTER 17

Right Against Exploitation (Articles 23–24)

Pretty Jagdish Bhatia

INTRODUCTION

The Indian Constitution, in Articles 23⁶⁴³ and 24⁶⁴⁴, reflects a serious commitment to safeguarding its citizens from injustice and inequality, specifically redressing socio-economic exploitation. These provisions play an effective role in curbing child labor, forced labor, and human trafficking. This essay examines the constitutional provisions, their historical origins, and their contemporary significance in India's legal and social fabric. It also examines judicial interpretations and real-world implementations, culminating in a critical examination of enforcement mechanisms and emerging issues in India's changing socio-economic context.

The Right Against Exploitation, as codified in Articles 23 and 24 of the Constitution of India, is a basic protection against all types of violations of human rights. The basic reason for incorporating these Articles was to safeguard individuals from exploitation by preventing practices like forced labor, human trafficking, and child labor. The Constitution writers saw the urgent necessity to eliminate such practices, both from a constitutional perspective and to vindicate the principles of social justice and human dignity. "Exploitation" essentially means where an individual is forced to labor against their will.⁶⁴⁵

Among the basic rights, in the Right Against Exploitation, as articulated under Articles 23 and 24, the direct prohibition of a few of the most serious human rights violations is dealt with, namely:

- Human trafficking

⁶⁴³ Article 23, Constitution of India, 1950.

⁶⁴⁴ Article 24, Constitution of India, 1950.

⁶⁴⁵ *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235

- Forced labor
- Child labor

These Articles are meant to protect the freedom of an individual and vowed specifically to outlaw human trafficking and other forms of coerced work. In the past, during the period of colonization, such occupations were systematic and pervasive:

- Begar (forced unpaid work)
- Bonded work
- Child work.

These provisions of the constitution are not only aspirational; they are justiciable, that is, individuals may seek legal recourse in courts in case of their violation. A unique aspect of Articles 23 and 24, in contrast to the majority of fundamental rights, is their enforceability against not only the State but also private individuals. This chapter seeks to present a balanced view of their place in India's constitutional scheme by looking at judicial interpretations and operational applications. It terminates with a detailed critical examination of the current enforcement mechanisms and the continuing and new challenges in India's ever-changing socio-economic reality. In particular, Article 23 of the Constitution of India mainly deals with prohibiting human trafficking, begar, and all other types of forced labor, whether such exploitation is done by the State or private persons. Conversely, Article 24 is exclusively devoted to the safeguarding of children, disallowing the employment of individuals under the age of 14 years in any factory, mine, or other dangerous profession. The right to live with dignity and freedom is a basic right for each citizen under the Indian Constitution, and any infringement upon these provisions is liable under law. This chapter is committed to giving exhaustive and comprehensive information about how the Indian Constitution operates to protect its most vulnerable citizens from systemic, economic, and structural exploitations.

HISTORICAL BACKGROUND

The insertion of Articles 23 and 24 by the Constituent Fathers was a conscious attempt to remove decades of institutionalized inequalities and exploitative tendencies that had taken deep root in Indian society. The fundamental aim behind enacting and including these Articles was to bring

an end to the widespread exploitation and inequality that pervaded during the pre-independence period.

Under British rule, exploitative labor systems (begar) and forced labor were the order of the day, mainly under the zamindari system. Poverty-stricken peasants and tribal groups were often coerced into unpaid, or insufficiently paid, forced labor. Indian cheap labor formed the backbone of the British colonial economy, both in India and abroad, as evidenced from the recruitment of plantation workers and railway workers.

Cherishing these deep-seated historical injustices, the Constituent Assembly specifically incorporated Articles 23 and 24 into the Constitution for a number of crucial reasons:

- To eradicate forced labor and human trafficking.
- To safeguard children from dangerous work conditions.
- To establish the bases of a modern, equitable society rooted in the values of dignity and equality.

ARTICLE 23 OF THE INDIAN CONSTITUTION

Article 23 of the Indian Constitution explicitly mentions the ban on human trafficking and forced labor. In the past, several anti-social practices like bonded labor, begar, human trafficking, and prostitution were common, and the victims of these practices were often brutally exploited. Article 23 aims to eliminate such inhuman activities by making it mandatory that any person who goes against this Article would be punished under the law.

Article 23 is vital for the protection of human dignity. Clause (1) clearly provides that nobody, regardless of his/her socio-economic status, shall be subjected to arbitrary servitude. It wholly prohibits all kinds of trafficking, begar, and forced labor.

Article 23(2) makes a limited exception to introduce compulsory service for public purposes, like military service or duty in emergent circumstances. This clause makes sure that such obligatory service is applied without any discrimination on the grounds of religion, race, caste, or class.

Purposes of Article 23 of the Indian Constitution

Article 23 is a basic right aimed at safeguarding the people from exploitative and anti-social activities. Its prime aims are:

- It is created in a universal manner applicable to both citizens and foreigners.
- Its foremost goal is to avoid exploitative activities and to secure the people from being forced into labor.
- It ensures every individual's right to live and work with dignity by negating all means of exploitation, such as trafficking, forced labor, and begging.

Landmark Cases Relating to Article 23 of the Indian Constitution

The Indian judiciary has been instrumental in interpreting the scope and applicability of Article 23 by rendering several landmark judgments:

***People's Union for Democratic Rights v. Union of India*⁶⁴⁶**

Facts: The ASIAD Workers Case, as this case was also referred to, concerned construction workers who were hired by contractors in Delhi for working on the preparations of the 1982 Asian Games. Numerous workers, including minors and migrants, did not receive minimum wages. The contractors broke numerous labor laws, and the work environment was unsafe. The petitioners highlighted the struggles of these workers, who were working below the minimum wage rate, with some even being minors.

Issue: The key question was whether the failure to pay minimum wages was forced labor under Article 23.

Judgment: The Supreme Court decided that failure to pay minimum wages to poor workers did actually amount to forced labor under Article 23.

Rationale: The Court greatly extended the definition of "force" to embrace economic compulsion. It ruled that labor cannot be said to be voluntary if the individual is forced to labor under conditions of exploitation because of poverty, stressing the point that "consent given in desperation is not true consent."

***Bandhua Mukti Morcha v. Union of India*⁶⁴⁷**

⁶⁴⁶ People's Union for Democratic Rights v. Union of India AIR 1982 SC 1473

⁶⁴⁷ Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802

Facts: In accordance with Article 32, the NGO Bandhua Mukti Morcha, initiated by Swami Agnivesh, approached the Supreme Court to deal with inhumane work conditions in stone quarries in Haryana's Faridabad. Out of sheer poverty, workers were consigned to bonded labor and were refused clean water, medical treatment, education for their kids, and mobility.

Issue: The question before the Court was whether these workers were bonded laborers and their exploitation was against Article 23.

Judgment: The Court held unequivocal proof of bonded labor and directed their immediate release and rehabilitation.

Rationale: The Court ruled that it is unlawful to obtain labor by virtue of traditional, social, or economic means and thus upheld the extensive meaning of forced labor.

***Sanjit Roy v. State of Rajasthan*⁶⁴⁸**

Facts: As a measure of relief against a severe drought, the Rajasthan government hired local workers for relief work like digging and constructing embankments. But they were paid below the minimum wage as stipulated by law. The state argued that this was humanitarian relief and not employment. The petitioner contended that this went against the fundamental rights of the workers under Article 23.

Problem: The issue was whether the state was allowed to skirt minimum wage legislation during emergency relief work.

Decision: The Supreme Court held that minimum wages have to be given even for work relating to drought relief, observing that withholding this constitutes forced labor and is an infringement of Article 23.

Reasoning: The Court held that individuals are compelled to agree to any conditions because of financial hardship, and such a mode of forced labor is not voluntary. There is no welfare motive that trumps a constitutional right.

***Neerja Chaudhary v. State of Madhya Pradesh*⁶⁴⁹**

⁶⁴⁸ Sanjit Roy v. State of Rajasthan AIR 1983 SC 328

⁶⁴⁹ Neerja Chaudhary v. State of Madhya Pradesh AIR 1984 SC 1099

Facts: In Madhya Pradesh, a number of bonded laborers were recognized and released under the Bonded Labour System (Abolition) Act, 1976. Nevertheless, it was discovered that no meaningful rehabilitation services, such as economic assistance, shelter, or employment aid, had been provided. The petitioner also maintained that the exploitation endured contrary to Article 23 and that their release was de facto nullified by the inability to rehabilitate them.

Problem: The problem was whether or not Article 23 required the rehabilitation of released bonded laborers.

Ruling: The Supreme Court ruled that the rehabilitation of released bonded laborers is what is called for by Article 23 of the Constitution and not just a welfare activity.

Rationale: The Court noted that protection against exploitation becomes illusory and useless if a bonded laborer is released without ensuring their socio-economic betterment. Article 23, thus, demands both post-release dignity and protection against compulsion.

***Deena v. Union of India*⁶⁵⁰**

Facts: In these proceedings, the prisoners of Yerwada Central Prison in Maharashtra were forced to engage in hard labor as a form of punishment but were not paid for their labor. The jail administration justified the labor as part of rehabilitation and correctional discipline. The petition contended that such unpaid compulsory labor constituted forced labor under Article 23 of the Constitution.

Case: The case was if compulsory unpaid work in prisons breaches Article 23.

Ruling: The Court held that not all prison work is illegal, but that it was forced labor when required without reason or without reasonable compensation.

Reasoning: The Court emphasized the point that the conditions of work should be reasonable, just, and non-exploitative, and the inmates are not deprived of their fundamental rights. Forced labor is when the required labor is not reasonable, just, or non-exploitative.

***Lakshmidhar Mishra v. State of Bihar*⁶⁵¹**

⁶⁵⁰ Deena v. Union of India AIR 1983 SC 1155

⁶⁵¹ Lakshmidhar Mishra v. State of Bihar AIR 1986 SC 1136

Facts: Poor Dalit families in rural Bihar were discovered to be practicing bonded labor as a result of ancestral debts that had been incurred. The debt was carried over from generation to generation and unpaid.

Issue: The question was whether inherited debt bondage was against the Bonded Labour System (Abolition) Act and Article 23.

Judgment: The Supreme Court directed the state to rehabilitate and release the families and ruled that inherited bonded labor is unconstitutional.

Rationale: The Court reasserted that customary or inherited servitude on the grounds of caste and class oppression is illegal. Work has always to be voluntary, under the protection of law and with free consent.

ARTICLE 24 OF THE INDIAN CONSTITUTION

Article 24 of the Indian Constitution specifically forbids children's employment in hazardous jobs. This Article clearly states: "No child below the age of 14 years shall be employed to work in any factory or mine or be engaged in any other hazardous employment."

Objectives of Article 24

The primary goals of Article 24 are:

- To ban the use of children aged under 14 years in factories, mines, and other hazardous employment.
- To safeguard children against physical and psychological injury due to hazardous child labor.
- To save children from being used in exploitative employment, thus securing their right to education and healthy development.
- To bind the state into putting an end to the economic exploitation of children irrespective of socio-economic grounds like poverty or consent of parents.

LAWS IN AID OF THE RIGHT AGAINST EXPLOITATION

The constitutional provisions are supplemented by a strong body of legislations in aid:

A. The Constitution of India, 1950

- Article 23⁶⁵²: Forbids human trafficking, enforced labor, and begar (compulsory unpaid labor).
- Article 24⁶⁵³: Forbids employment of children under the age of 14 in hazardous occupations such as factories and mines.

B. The Bonded Labour System (Abolition) Act, 1976⁶⁵⁴

The primary aim of this Act, which was put into practice on the 25th of October, 1975, is to eliminate the bonded labor system throughout India. Bonded labor or debt bondage is an institution where a person is forced to labor in order to pay back a loan, sometimes without the payment of just wages, freedom to quit the employment, or a definite termination of the debt. This institution is most typically associated with abject poverty and illiteracy.

C. The Child Labour (Prohibition and Regulation) Act, 1986⁶⁵⁵

This Act:

- Prevents employment of children under 14 years in all trades.
- Prevents children between 14 and 18 years from employment in hazardous occupations.
- Permits limited exceptions to family enterprises and entertainment (non-hazardous) subject to strict conditions.

D. The Immoral Traffic (Prevention) Act, 1956⁶⁵⁶

- This Act seeks to prevent human trafficking and sexual exploitation by:
- Punishing persons involved in prostitution, trafficking, and solicitation.
- Protecting and rehabilitating victims.

E. The Factories Act, 1948⁶⁵⁷

⁶⁵² Article 23, Constitution of India, 1950.

⁶⁵³ Article 24, Constitution of India, 1950.

⁶⁵⁴ The Child Labour (Prohibition and Regulation) Act, 1986.

⁶⁵⁵ The Child Labour (Prohibition and Regulation) Act, 1986.

⁶⁵⁶ The Immoral Traffic (Prevention) Act, 1956

⁶⁵⁷ The Factories Act, 1948

This Act:

- Prohibits children under 14 years from working in factories.
- Regulates working hours, safety, and welfare of both young and adult workers.
- Guarantees good working conditions in the industrial environment.

F. The Minimum Wages Act, 1948⁶⁵⁸

This Act provides that the workers must receive minimum wages fixed by the government so that the economic exploitation of the workers, particularly the unskilled and the migratory laborers, is prevented.

G. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989⁶⁵⁹

The Act is intended to safeguard marginalized communities from discrimination, forced labor, and exploitation, placing strict prohibitions against the economic and social exploitation of SCs and STs.

H. Exploitation-Related Sections Under Bharatiya Nyaya Sanhita, 2023 (BNSS)

The Bharatiya Nyaya Sanhita (BNSS), 2023, comprises several key sections that discuss exploitation:

- Section 95 – Recruiting, Employing, or Engaging a Child to Offend: Imposes imprisonment between 3 to 10 years and a fine in case a child is enrolled to commit crimes like sexual exploitation, trafficking, or pornography.⁶⁶⁰
- Section 96 – Child Purchase: Whoever willingly causes a child to move or act by knowing it could result in exploitation is liable to 10 years of imprisonment and a fine.⁶⁶¹
- Section 98 – Child Selling for Prostitution: Selling or giving away a child for prostitution is liable for up to 10 years of imprisonment and fine. Malicious intent is presumed for girls under the age of 18.⁶⁶²

⁶⁵⁸ The Minimum Wages Act, 1948

⁶⁵⁹ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

⁶⁶⁰ Section 95, Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶⁶¹ Section 96, Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶⁶² Section 98, Bharatiya Nagarik Suraksha Sanhita, 2023.

- Section 99 – Buying a Child for Prostitution: Hiring or buying a child for prostitution is punishable by 7 to 14 years of imprisonment and fine. Intent is presumed automatically for girls under the age of 18.⁶⁶³
- Section 137 – Human Trafficking (Replaces IPC Section 370): Delivers definitions for trafficking for purposes such as slavery, prostitution, forced labor, or organ trade. Punishment is from 7 years to life imprisonment based on gravity.⁶⁶⁴
- Section 139 – Exploitation of a Trafficked Person: Comprises physical or sexual exploitation of trafficked persons, punishable with 5 to 10 years' imprisonment.⁶⁶⁵
- Section 143 – Trafficking in Persons: Includes recruitment, transport, or harboring for the purpose of exploitation. It is punishable with imprisonment for 7 to 10 years and fine.⁶⁶⁶
- Section 144 – Exploitation of a Trafficked Person: Child trafficking for sexual exploitation invites 5 to 10 years imprisonment along with a fine, and adult trafficking for sexual exploitation invites 3 to 7 years imprisonment along with a fine. The consent of the victim makes no difference.⁶⁶⁷
- Section 145 – Repeated Dealing in Slaves: Repeatedly buying, selling, or trafficking in slaves is an offense punishable by life imprisonment or 10 years' imprisonment and fine.⁶⁶⁸
- Section 146 – Compulsory Unlawful Labour: Forcing labor without legal authority is an offense punishable by up to 1 year of imprisonment, fine, or both.⁶⁶⁹

Landmark Cases Around Article 24 of the Constitution

Judiciary has time and again reaffirmed the protective scope of Article 24 in a number of landmark decisions:

Gaurav Jain v. Union of India⁶⁷⁰

⁶⁶³ Section 99, Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶⁶⁴ Section 137, Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶⁶⁵ Section 139, Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶⁶⁶ Section 143, Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶⁶⁷ Section 144, Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶⁶⁸ Section 145, Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶⁶⁹ Section 146, Bharatiya Nagarik Suraksha Sanhita, 2023.

⁶⁷⁰ Gaurav Jain v. Union of India AIR 1997 SC 3021

Facts: The petitioner was concerned about the situation of children of sex workers, a large number of whom were being trafficked and forced into hazardous child labor against their rights under Articles 21, 23, and 24.

Issue: Whether the children of sex workers were being deprived of basic rights by being made to work in hazardous and exploitative conditions.

Judgment: The Court, in order to end the cycle of exploitation, ordered that children in red-light areas be educated and rehabilitated.

Rationale: While reading along with Article 21 (Right to Life), Article 24 calls for positive action to keep vulnerable children from getting exploited in risky situations.

***Bachpan Bachao Andolan v. Union of India*⁶⁷¹**

Facts: The non-governmental organization Bachpan Bachao Andolan had moved several Public Interest Litigations (PILs), pointing towards the extensive occurrence of child trafficking and exploitation through forced labor in workshops, road side restaurants, and domestic service.

Issue: Whether neglect to rescue and rehabilitate these children contravened Article 24 and related legislations.

Judgment: The Court gave clear directions to the Centre and states on how to conduct rescue operations, ensure rehabilitation, and regulate child labor in unorganized sectors.

Rationale: Article 24 creates a positive obligation on the state. It is breached not merely by direct employment but also by regulatory failure or positive inaction.

***In re: Exploitation of Children in Orphanages in Tamil Nadu*⁶⁷²**

Facts: The Court addressed allegations that minors were being used for unpaid labor in orphanages, including cleaning, cooking, and even light production, under the guise of discipline or rehabilitation.

Issue: Whether it violates Article 24 of the Constitution to force children in orphanages to engage in unpaid labor under an appearance of discipline or rehabilitation.

⁶⁷¹ Bachpan Bachao Andolan v. Union of India (2011) 5 SCC 1

⁶⁷² In re: Exploitation of Children in Orphanages in Tamil Nadu (2005) 13 SCC 661

Judgment: The Supreme Court held that it goes against Article 24 to compel orphaned children to work commercially or without payment.

Rationale: In the opinion of the Court, Article 24 is applicable everywhere and even covers children in privately owned institutions.

***Sampurna Behura v. Union of India*⁶⁷³**

Facts: This PIL highlighted the large-scale non-implementation of the Juvenile Justice Act of 2000. Sampurna Behura, the petitioner, reported to the Court that inadequate rehabilitation homes, welfare committees, and infrastructure resulted in exploitation and abuse of a huge number of vulnerable children.

Issue: Is exposing children to exploitation due to the failure to implement child protection legislation a violation of Article 24?

Judgment: In order to avoid exploitation and safeguard Article 24, the Supreme Court instructed all states to develop proper child welfare mechanisms and correctly enforce juvenile justice mechanisms.

Rationale: Safeguarding children from exploitation requires both the ban on child labor and the institution of effective welfare institutions. Inaction by the state is tantamount to a structural abuse of Article 24.

***People's Union for Civil Liberties v. Union of India*⁶⁷⁴**

Facts: Children were being withdrawn from school and employed as child laborers due to the fact that they were not being provided with healthy school lunches, as per a series of petitions.

Issue: Whether the non-provision of mid-day meals leads to child labor and is against constitutional rights.

Judgment: To ensure the attendance of children at school, the Court directed the Mid-Day Meal Scheme to be implemented nationwide.

⁶⁷³ Sampurna Behura v. Union of India (2007) 6 SCC 486

⁶⁷⁴ People's Union for Civil Liberties v. Union of India (2001) 5 SCC 241

Rationale: Food and education rights are essential in averting child labor, and Article 24 has the underpinning socio-economic rights that reinforce it.

***Satyendra Kumar v. State of Bihar*⁶⁷⁵**

Facts: A Public Interest Litigation (PIL) was filed by the petitioner in the Patna High Court highlighting the large-scale employment of children under the age of 14 in Bihar's roadside eateries, tea stalls, and dhabas. The children labored for extended hours in hazardous environments without proper amenities or education.

Issue: Is Article 24 of the Constitution applicable where children are being employed within such unofficial roadside labor settings?

Judgment: The Court declared that this form of work flagrantly violates Article 24 and directed the state to conduct inspections, fire child workers, and give them education and rehabilitation.

Rationale: Article 24 of the Constitution prohibits children from being subjected to hazardous, exploitative, or damaging conditions anywhere; its applicability is not restricted to lawfully recognized industries.

***Save the Childhood Foundation v. Union of India*⁶⁷⁶**

Facts: Children were being used in the entertainment sector under unregulated circumstances, raising concerns about their exploitation.

Issue: Is it against Article 24 for children to engage in uncontrolled entertainment?

Judgment: The Delhi High Court held it as unconstitutional and issued guidelines to regulate child participation in the entertainment industry.

Rationale: Article 24 also covers protection from emotional and mental abuse, going beyond purely physical risks.

***Registrar, Orissa High Court v. Cuttack Municipal Corporation*⁶⁷⁷**

⁶⁷⁵ Satyendra Kumar v. State of Bihar 2003 SCC OnLine Pat 32

⁶⁷⁶ Save the Childhood Foundation v. Union of India 2013 SCC OnLine Del 1809

⁶⁷⁷ Registrar, Orissa High Court v. Cuttack Municipal Corporation W.P. (C) No. 17960 of 2015, Order dated 19 June 2025 (Orissa HC)

Facts: The Court suo motu noticed media reports where young boys employed by the Cuttack Municipal Corporation (CMC) were seen performing hazardous manual drain cleaning without protective gear.

Problem: Does Article 24 ban the employment of children below the age of 14 for hazardous municipal work?

Ruling: Yes. The Court ordered safer, mechanized methods of work on June 19, 2025, and instructed an immediate halt to the deployment of children in this endeavor.

Explanation: Article 24 forbids child labor outright in any hazardous occupation. Convenience or cost cannot be reasons to infringe upon child rights.

***M.C. Mehta v. State of Tamil Nadu*⁶⁷⁸**

Facts: M.C. Mehta moved a PIL revealing the extensive use of children in Sivakasi, more so in the hazardous and exploitative matchstick factories. Young children below 14 years worked long shifts in dangerous environments, with inflammable substances around them, frequently being afflicted by illness and injuries. They received meager wages and were deprived of basic rights such as education and safety.

Issue: Whether child labor in dangerous factories contravenes Article 24.

Judgment: The Court directed their dismissal, held such work to be unlawful, and ordered rehabilitation in the form of education and financial aid for the concerned children.

Reasoning: A child's inherent right to security, education, and health has priority over any notion of economic need.

COMPARATIVE ANALYSIS

Right against exploitation is a universally accepted human right but has different meanings and implementations in various states. In India, Articles 23 and 24 of the Constitution are the pillars of this right.

⁶⁷⁸ M.C. Mehta v. State of Tamil Nadu (1996) 6 SCC 756

Article 23 expressly prohibits begar (forced unpaid labor), human trafficking, and other forced labor, which applies both to the state and individuals. Article 24, on the other hand, prohibits the employment of children below the age of 14 years in any hazardous occupation. Indian law stands out in the express prohibition of begar, forced labor, and human trafficking, which have traditionally been linked to caste-based exploitation, standing in contrast to most world frameworks.

By comparison, the United States eliminated slavery and involuntary servitude with the 13th Amendment to the United States Constitution. The nation also has particular legislation like the Trafficking Victims Protection Act (TVPA) of 2000, which provides a broad framework for combating human trafficking, and the Fair Labor Standards Act (FLSA), which governs child labor. Yet the particular limits and how they are enforced can differ from state to state in the U.S.

CRITICISM

Although Articles 23 and 24 are central to the founding objectives of the International Labour Organization, they have been criticized for failing to provide satisfactory protection against vague, organized, or non-material kinds of exploitation. For example, although Article 23 clearly delineates slavery and forced labor, it refers nowhere directly to new types of exploitation like digital slavery, platform exploitation, or algorithmic management of freelance workers. These new types of exploitation have a tendency to exist in a grey area without explicit legislative protection.

In addition, Article 24, though banning child labor from hazardous sectors, allows the same in family enterprises and unregulated sectors. Within such environments, exploitation and abuse are commonly rampant but often do not fall under official observation. Such critics justify that this lacuna opens doors to informal and exploitative employment patterns, especially for marginalized sections like migrants, Dalits, and the transgender population, whose agonies are often ignored. The absence of effective enforcement tools and the necessity for more contemporary meanings have, to a certain degree, hindered the revolutionary energy of these Articles.

Critics also argue that the Constitution does not appropriately deal with concerns such as financial slavery, more commonly disguised as contractual consent, in the burgeoning gig economy. Here, workers often fall victim to algorithmic control without pertinent legal safeguards, illustrating an important loophole in the prevailing legal framework.

RECOMMENDATIONS

In order to enhance the right against exploitation in Modern India, various legislative and infrastructural reforms need to be introduced with utmost urgency.

To begin with, Articles 23 and 24 should be thoroughly redefined so as to encompass new forms of exploitation. These should clearly encompass digital labor manipulation, pressures in the gig economy, and clandestine forced work that nowadays frequently occurs through informal contracts. This way, the law will accommodate new forms of exploitation in the modern economic environment.

Secondly, Parliament must explore establishing a "Right against Exploitation Code," which would harmonize separate categories of labor laws and extend protection to unregulated industries. The code must particularly focus on industries like domestic work, construction, and online platforms, where employees are more susceptible to exploitation. Thirdly, the meaning of 'hazardous' work in Article 24 must be enlarged and updated regularly to respond to evolving scientific and occupational standards so that emerging hazards are identified and tackled at the earliest opportunity.

Third, there has to be focused legal and administrative concern for the exploitation endured by marginalized groups. These include, but are not limited to, Dalits, Adivasis, migrants, and transgender individuals, whose suffering is often unseen and whose vulnerabilities are often exacerbated by systemic discrimination. There must be proactive steps taken to identify, guard, and rehabilitate these groups.

CONCLUSION

The prohibition against exploitation, as enshrined in Articles 23 and 24 of the Indian Constitution, is a significant guarantee for protection against inhuman practices like forced labor, human trafficking, and child labor. The provisions clearly reflect India's constitutional promise of upholding human dignity, liberty, and equality. The Indian Judiciary has positively gone beyond the horizon of these basic rights and their enforceability by a series of judicial dicta, modifying them in tune with present-day challenges. Yet, continued vigilance, legislative change, and firm enforcement are necessary to enable the promise of these Articles to be fully realised and ensure that every citizen is safeguarded against exploitation of its diverse expressions.

CHAPTER 18

Freedom of Religion (Article 25)

Aanya Agrawal

INTRODUCTION

Article 25 of the Indian Constitution guarantees freedom of religion, giving everyone the right to proclaim, practice, and spread their faith. The Constituent Assembly established India a *secular republic* when they wrote the Constitution. They made it clear that religion and state authority should not mix. So, we need to understand Art. 25's assurances in light of this secular context. One important ruling said, "our Constitution does not prohibit the practice of any religion... [it] enjoins the State to accord equal treatment to all religions and religious sects."⁶⁷⁹ The historical background is crucial: discussions in 1948-49 centered on whether religious freedom would allow for coerced conversions or whether the government might enforce social change. The Assembly turned against changes that would have taken away the freedom to preach religion, saying that doing so "would lead to public awareness" and community cohesion.⁶⁸⁰ It also expanded the social welfare provision (Art. 25(2)(b)) to include Sikhs, Jains, and Buddhists in addition to Hindus.⁶⁸¹ In short, Art. 25 represented the liberal vision of its framers: equal and vigorous religious liberty, subject only to modest public-interest constraints (public order, morals, health) and the particular welfare measures in clause (2).

TEXT AND SCOPE OF ARTICLE. 25

The language of Art. 25(1) reads, in clear terms:

⁶⁷⁹ S.R. Bommai v. Union of India, AIR 1994 SC 1918.

⁶⁸⁰ Constituent Assembly Debates, Vol. VII, 6 Dec. 1948, available at: <https://cadindia.clpr.org.in/> (Visited on June 12, 2025).

⁶⁸¹ *ibid.*

*“Everyone has the same right to freedom of conscience and the right to freely profess, practice, and spread religion, as long as it doesn’t violate public order, morality, or health.”*⁶⁸²

Sub clause (1) so provides freedom of conscience and the rights to profess, practice, and promote religion. Notably it protects all humans, not merely citizens.⁶⁸³ The right is specifically made subject to public order, morals, health and to other fundamental-rights restrictions. Clause (2) then specifies specific exceptions:

- Art. 25(2)(a) authorizes the State to “regulate or restrict any economic, financial, political or other secular activity associated with religious practice”.
- Art. 25(2)(b) enables legislation for “social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus”.

These provisions underline that although belief is unhindered, conduct even if religiously motivated may be controlled if it includes secular activity or furthers social transformation. For example, required kirpan (a knife) is officially listed as religious under the Sikh religion.⁶⁸⁴

In constituent deliberations, members were concerned that dissemination would entail forced conversion, but eventually the Assembly retained this right.⁶⁸⁵ One Deputy Chairman claimed that restricting dissemination would hamper inter-religious knowledge and “communal understanding and peace,” and the Assembly rejected attempts to restrain it.⁶⁸⁶ Similarly, an amendment was enacted to expand the social-reform provision to Jains, Buddhists and Sikhs. In short, Art. 25’s text was designed liberally, and its interpretation has also been liberal: it embraces personal belief and outward behaviour, restricted only by the precise constraints in sections (1) and (2).

KEY DOCTRINES AND INTERPRETATIONS

Indian courts have evolved many theories to implement Art. 25’s wide provisions. Prominent among these is the Essential Religious Practices (“ERP”) concept. Under this approach, courts consider whether a certain activity is basic and important to a religion before sheltering it from

⁶⁸² The Constitution of India, art. 25.

⁶⁸³ *Ratilal Panachand Gandhi v. State of Bombay*, AIR 1954 SC 388.

⁶⁸⁴ *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Tirtha Swamiar*, AIR 1954 SC 282.

⁶⁸⁵ Constituent Assembly Debates, *supra* note 2.

⁶⁸⁶ *ibid.*

governmental control. The doctrine traces to Commissioner, *HRE v. Lakshmindra Thirtha Swamiar* (the *Shirur Mutt* case, 1954),⁶⁸⁷ where the Court held that the content of “religion” must be judged by that religion’s own doctrines, and that “it is not possible to protect only the ‘essential practices’ of a religion” unless those practices are truly fundamental. Subsequent rulings have highlighted that only activities needed for the dissemination or profession of a religion qualify as “essential”.⁶⁸⁸ For example, in *Sarla Mudgal* (2016) the Court concluded that “essential religious practices include only the practices that are required for the profession and promulgation of religion”⁶⁸⁹ ruling that immediate triple-talaq was not among them. The ERP test has been attacked for judicially judging religious orthodoxy, yet it remains a crucial instrument in reconciling religion and change.

Another crucial factor is the social welfare provision of Art. 25(2)(b). This authorizes the State to reform or open Hindu religious organizations for social benefit. Early decisions (e.g. *Lakshmindra Swamiar*) concluded that secular reform measures (such eliminating temple levies or child marriage) were legally lawful,⁶⁹⁰ even while religious believers opposed. The provision is viewed as an express license to adopt social laws that could accidentally impact religious beliefs. Courts have traditionally accepted broad social laws (abolishing untouchability, sati, etc.) as coming within this welfare requirement. However, the clause’s wording specifically refers to Hindus (expanded by Explanation II to Jains/Buddhists/Sikhs), therefore its literal scope is limited.⁶⁹¹ Theoretically, equivalent sections do not exist for other faiths; in fact the State depends on police and criminal legislation to govern ceremonies of all religions, subject to Art. 25’s other constraints.

Interaction with Art.s 14, 15, 21: Freedom of religion does not exist in isolation. Art. 25 is part of Part III, and its implementation is subject to Art.s 14 (equality), 15 (non-discrimination), and 21 (life/liberty), among others. Thus, the State cannot pick out a religion for undesirable treatment without breaching Art. 14/15. For instance, in *S.R. Bommai v. Union of India* the Court highlighted that Art. 25 “inhibits the Government to patronise a particular religion as State

⁶⁸⁷ Commissioner, supra note 6.

⁶⁸⁸ Shayara Bano v. Union of India, (2017) 9 SCC 1.

⁶⁸⁹ Pranav Verma, “Essential Practices Test and Judicial Intervention in Religion” 12 NUJS L. Rev. 185–193 (2020).

⁶⁹⁰ Commissioner, supra note 6.

⁶⁹¹ The Constitution of India, supra note 4.

religion” and that secularism is a component of the fundamental framework.⁶⁹² Art. 14 mandates that any limitation on religion be based on a legitimate categorization (e.g. just forbidding excessive loudspeakers, not targeting one faith). Art. 15 clearly bans discrimination on grounds of religion, thus a law that, for instance, forced exclusively Muslims to cease a behavior would be unconstitutional. As for Art. 21, the SC has read religious freedom into “personal liberty” (life and dignity), stressing that compelled interference in one’s beliefs frequently undermines fundamental human dignity.⁶⁹³ Notably, however, Art. 21 cannot be utilized to overrule the specific constraints of Art. 25 (public order, etc.) it is not a superior right but a parallel one. In practical sense, courts settle controversies by reading Art. 25 narrowly (using doctrines like ERP) such that it does not trespass excessively on equality or public interest.

COMPARATIVE ANALYSIS (U.S. AND U.K. MODELS)

India’s religious-freedom system, although largely open, varies in significant areas from Western models. Under the U.S. Constitution, religion is protected under the First Amendment’s Establishment and Free Exercise Clauses.⁶⁹⁴ The American approach builds a “wall of separation” between church and state, forbidding any state-sponsored religion or preferential treatment. By contrast, India deliberately eliminated “religion” from the Preamble (making India autonomous, communist, secular) and forbade any official religion. Like the U.S., India permits free exercise subject to public order, but where U.S. courts apply strict-scrutiny or neutral-application tests (see *Sherbert v. Verner*⁶⁹⁵ or *Employment Division v. Smith*⁶⁹⁶), Indian courts often ask instead whether a practice is “essential” and then whether the law is a valid exercise of secular power.⁶⁹⁷ Thus, the U.S. concern on the religious sincerity and impartiality of legislation finds only a limited resonance in India. Indian doctrine has sometimes been critiqued as less accommodating of minority practices (as Pranav Verma notes, the essential-practice plea has an 84% failure rate in India), whereas U.S. jurisprudence has in recent years given strong

⁶⁹² Bommai, supra note 1.

⁶⁹³ *ibid.*

⁶⁹⁴ First Amendment, U.S. Constitution.

⁶⁹⁵ *Sherbert v. Verner*, 374 U.S. 398 (1963).

⁶⁹⁶ *Employment Division v. Smith*, 494 U.S. 872 (1990).

⁶⁹⁷ Pranav Verma, supra note 11.

protection to even burdens on unpopular religious exercise (e.g. RFRA, Masterpiece Cakeshop).⁶⁹⁸

In the U.K., the model is again different. The Church of England is still established in law, although religious freedom is safeguarded under Art. 9 of the European Convention on Human Rights (as included in the Human Rights Act 1998) and the Equality Act.⁶⁹⁹ Art. 9 provides freedom of thought, conscience, and religion subject to “public safety, order, health, or morals, or for the protection of the rights and freedoms of others” (essentially similar to India’s restrictions). The U.K. courts tend to read religion liberally but also deferentially, typically accepting reasonable prohibitions (e.g. on religious attire in schools or prisons) provided they serve a legitimate objective. India’s approach is considerably more formalized (with specific constitutional wording) and context-specific. Unlike the U.S., India’s religious-freedom rights are not absolute and specifically authorize proactive state reform actions. Unlike the U.K., India has a codified secularism and equality mandate, making religious liberty part of a wider plan of social justice. These differences matter in case law: for example, India’s *Mirzapur Moti Kassab*⁷⁰⁰ (2006) upheld a ban on cow slaughter (an important Hindu norm) as not violating Art. 25, whereas an American or British court might well have struck down a religious exception to a neutral animal-cruelty law on free-exercise grounds.⁷⁰¹

LANDMARK JUDGEMENTS UNDER ARTICLE 25

• *Commissioner, HRE v. Sri Lakshmindra Tirtha Swamiar* (1954)⁷⁰²: In the *Shirur Mutt* case, the Madras Temple Act enabled governmental management of a tiny Hindu math. The Math’s leader (Swamiar) contested this, citing breach of Art.s 25, 26. The SC upheld the legislation, stating that intervention in management of a Hindu temple did not infringe Art. 26(b) (because the Mutt was in debt and had no apparent religious role). Significantly, the Court put out the essential-practices

⁶⁹⁸ Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 584 U.S.(2018).

⁶⁹⁹ Human Rights Act 1998 (U.K.), art. 9.

⁷⁰⁰ State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, AIR 2006 SC 212.

⁷⁰¹ Smith, supra note 18 ; Masterpiece Cakeshop, supra note 20 ; Wilcox v. Jeffery [1951] 1 All ER 464.

⁷⁰² Commissioner, supra note 6.

test: a feature of religion must first be “essential” (decided by the faith’s own scriptures) to warrant protection. Practices solely part of tradition, or intended for secular (financial) purposes, might be controlled. This judgment acknowledged the state’s ability under Art. 25(2) to reform and control even key religious organizations, providing the behaviors struck down were not “essential to religion” by orthodoxy.

- *Ratilal Panachand Gandhi v. State of Bombay* (1954)⁷⁰³: This early case addressed the Bombay Public Trusts Act, which tried to govern Hindu and Jain temples and trusts. The SC knocked down clauses that made the Charity Commissioner an ex officio trustee of all public trusts, concluding that this unnecessarily interfered with religious organizations. The Court decided that every individual (not just citizens) has a basic right to profess, practice and spread religion. It highlighted that “rites and ceremonies enjoined by religion” are intrinsic to religion, and that a secular authority cannot announce (for example) that temple rituals are just secular activity. In fact, the decision interpreted Art. 25 broadly: so long as a practice is required by the religion itself (even if it includes property or spending), it is free from governmental takeover. The Court nullified Section 44 of the Act (appointing the Charity Commissioner as trustee) as infringing Art. 25.

- *Syedna Saifuddin v. State of Bombay* (1962)⁷⁰⁴: The Dawoodi Bohra (Muslim sect) community’s hereditary head (Saifuddin) challenged the Bombay statute that penalized excommunication (ostracism) of members. The SC supported the leader’s power to excommunicate, striking down the statute as violative of the community’s freedom to control religious matters. In the current summary: the Court concluded that religious groups had a basic freedom under Art. 26(b) to run their own affairs. The BJP government’s exile act intruded impermissibly. This judgment maintained that Art. 25/26 preserve internal religious discipline.

- *Rev. Stanislaus v. State of M.P.* (1977)⁷⁰⁵: Challenging Madhya Pradesh’s Freedom of Religion Act (which criminalized conversions by “fraud, force or allurement”), petitioners said the statute breached their Art. 25 freedom. The Court maintained the ban, ruling that the freedom to spread

⁷⁰³ Ratilal, supra note 5.

⁷⁰⁴ Syedna Saifuddin v. State of Bombay, AIR 1962 SC 853.

⁷⁰⁵ Rev. Stanislaus v. State of Madhya Pradesh, AIR 1977 SC 908.

religion did not include the right to convert someone by compulsion. Stated differently, propagation is free speech, but it falls short of guaranteed conversion rights. As one critic notes: “the right to propagate one’s religion does not include the right to convert someone else”. The Court consequently enabled governments to limit opportunistic conversions to maintain public order. This ruling has been contentious, since it offers legal basis for anti-conversion measures that currently loom large in several jurisdictions.

- *Bijoe Emmanuel v. State of Kerala* (1986)⁷⁰⁶: Three kids (Jehovah’s Witnesses) refused to perform the national anthem on religious grounds and were dismissed. The SC concluded that deportation infringed their basic rights under Art. 25 (and Art. 19(1)(a)). Observing that the students neither disrupted order nor displayed disrespect, the Court declared in favor of tolerance: “Our tradition teaches tolerance, our philosophy preaches tolerance, our Constitution practices tolerance; let us not dilute it.”. The children were restored. This decision underlined that Art. 25 protects even unpopular activities (here, denying a secular ceremony) so long as they do not jeopardize public order.

- *S.R. Bommai v. Union of India* (1994)⁷⁰⁷: A milestone on secularism, federalism and religion. Although the case relied on state governments and Presidential power, the Court made key judgments concerning religion. It said secularism is part of India’s “basic structure,” meaning the State must be impartial among religions. A constitutional court noted that Art. 25 “inhibits the Government to patronise a particular religion as State religion”. The Court ruled down political appeals to religion as unconstitutional, underlining that the Constitution “ensures to the individual... the right to belief or propagate teachings conducive to secular living”. *Bommai* therefore maintained that religious freedom exists in a secular polity: the State cannot advocate or favor any religion, and political parties must abstain from religious propaganda.

- *Ismail Faruqui v. Union of India* (1995)⁷⁰⁸: The challenge against the Acquisition of Certain Areas at Ayodhya Act, 1993 (after the Babri Masjid destruction) reached the SC. Petitioners alleged that purchasing mosque property violated Art.s 25 and 26. The Court upheld the statute

⁷⁰⁶ *Bijoe Emmanuel v. State of Kerala*, AIR 1986 SC 490.

⁷⁰⁷ *Bommai*, supra note 1.

⁷⁰⁸ *Ismail Faruqui v. Union of India*, AIR 1995 SC 605.

and famously stated that “mosque is not an essential part of the practice of the religion of Islam”: Muslims may conduct namaz anywhere, including in the open. Thus, purchase did not impede religious freedom. The Court went on to remark that governmental steps intended to “arrest escalation of communal tension” are by no stretch against secularism. Faruqui is important for applying the essential-practices criteria in a high-profile scenario and for favoring secular crisis-management above rigid sanctuary of minority houses of worship.

- *Adithyan v. Travancore Devaswom Board* (2002)⁷⁰⁹: This Kerala temple-entry case (frequently eclipsed by Sabarimala later) dealt with the restriction on women access at Sabarimala Temple. Petitioners alleged this violated Art. 25 equality among Hindus. The SC affirmed the prohibition in *Adithyan*, noting that the limitation was founded on religious reasons (not arbitrary sex discrimination) and was part of the temple’s essential practice. It observed that the tradition preceded any legislation and was intrinsic to that shrine. The case demonstrates the tension: courts must occasionally tolerate internal religious regulations (if “essential”) even if they collide with gender equality. (*Adithyan* has subsequently been overridden by Sabarimala.)

- *Indian Young Lawyers Association v. State of Kerala* (Sabarimala, 2018)⁷¹⁰: A historic five-judge court examined *Adithyan*. It unanimously threw down the barring of women of menstruation age (1050 years) from the Sabarimala Temple, ruling it breached Art.s 14, 15 and 17 (prohibition on untouchability), and interpreted Art. 25 narrowly. The Court concluded the prohibition was not an important religious practice. It notably said that constitutional ideals must overcome patriarchal norms, and ordered temples to open to all women. Although not directly stated above, this judgment radically altered the reach of Art. 25 in favor of gender equality.

- *Shayara Bano v. Union of India* (2017)⁷¹¹: This case addressed the practice of triple talaq (instant divorce by Muslim males). Shayara Bano, a Muslim woman, challenged triple talaq as breaching Art.s 14, 15 and 21. A five judge bench found the practice unlawful. Critically for Art. 25, the Court decided triple talaq was not an essential Islamic practice (leaning on *Adityan*’s argument) and hence could be abolished without breaching Islam’s fundamental beliefs. The

⁷⁰⁹ *Adithyan v. Travancore Devaswom Board*, AIR 2002 SC 3538.

⁷¹⁰ *Indian Young Lawyers Association v. State of Kerala*, (2018) 11 SCC 1.

⁷¹¹ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

court therefore employed the essential-practices concept to combine religious freedom with constitutional morality and gender fairness.

- *Farzana Akhtar & Ors. v. Union of India* (2022)⁷¹²: Although still awaiting review (and controversially connected to Shayara Bano), this case further investigated triple talaq. A Constitution Bench finally affirmed Shayara Bano's decision but highlighted that prohibitions were by legislation (Muslim Women (Protection of Rights on Marriage) Act, 2019) rather than just by judicial order. The fact that this case reached the highest bench illustrates Art. 25's persistent relevance in the growing conversation on religion and personal law.

- *Fathima Bibi v. State of Tamil Nadu* (2016)⁷¹³: A Kerala HC case (2018) addressing age of consent for Muslim women. The petitioner wanted to equalize the Muslim marriageable age with that of others. The Court concluded that personal legislation must conform with constitutional protections. It decided that any custom dispensing with statutory age under personal law could not withstand Art. 21 and Art. 25's standards. This case illustrates that religious norms cannot infringe fundamental rights of life and liberty.

- *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* (2005)⁷¹⁴: Gujarat has prohibited cow slaughter. Muslim butchers disputed this as compromising their Art.s 25/26 rights to kill animals according to their beliefs. The SC maintained the prohibition, ruling that slaughtering cows (the holy animal for Hindus) is a permissible public order/morality limitation. It recognized that Art. 48 (Directive to safeguard cows) and secular morals authorized such measures. This ruling indicates that when commercial activity (butchery) incorporates religious components, Art. 25 typically bends to social welfare and majority values, particularly considering that Islam itself encourages non-Muslims (and even Muslims) to refrain.

- *M.P. Gopalakrishnan Nair v. State of Kerala* (2005)⁷¹⁵: A Kerala HC ruling threw down a temple regulation that prevented non-Brahmins from access to a Hindu temple, on the premise

⁷¹² Farzana Batool v. Union of India, (2021) 2 SCC 754.

⁷¹³ Fathima Thasneem v. State of Kerala, 2018 SCC OnLine Ker 5266.

⁷¹⁴ State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, AIR 2006 SC 212.

⁷¹⁵ M.P. Gopalakrishnan Nair v. State of Kerala, 2005 (3) KLT 276.

that it violated Art. 25's concept of equality among Hindus. The Court decided that caste-based exclusion is not integral to Hinduism and falls beyond A25. (This logic predicted *Sabarimala*). While this decision occurred at the HC level, it has affected contemporary law by maintaining that constitutional morality wins over regressive practices. Each of the aforementioned examples indicates how Art. 25 has been applied: safeguarding essential values while providing the state leeway to reform and regulate. The tendency has typically been to promote individual religious liberty (as in *Bijoe*, *Shayara Bano*, *Mirzapur*) while rejecting arguments that tried to extend freedom of religion into areas of societal dispute.

CRITICAL EVALUATION: CHALLENGES AND CONTROVERSIES

Art. 25 jurisprudence is plagued with contestation. One problem is definitional: what qualifies as “religion” or as an “essential practice”? Critics claim that courts cannot objectively analyze faith's underlying teachings. Indeed, studies show that the ERP test frequently reflects judges' personal biases: cases have turned out differently for various groups, particularly in a contentious political context. For example, Indian courts have been criticized for defending Hindu temple admission reforms (reducing caste exclusion) more quickly than for Muslim personal law reforms (e.g. triple talaq took decades to knock down).

Another debate is gender and equality. Practices like *Sabarimala's* prohibition or triple talaq generate conflicts between religious freedom and gender justice. While the SC has knocked down discriminatory practices (as in *Shayara Bano and Sabarimala*), there is an ongoing argument regarding courts' ability to meddle in religious groups (some believe this breaches autonomy). The latest *Shayara* review (Farzana) and continued calls for universal civil code (Art. 44) suggest that Art. 25 will remain at the core of confrontations between pluralism and reform. State regulation versus. theology is also contested. Many religious organizations say that rules against cow slaughter, anti-conversion or charity commissioners (as in *Ratilal*) unduly restrict religious activities. Others say that minority communities require more legal protection against persecution or majoritarian policies that may effectively abolish their rites. The balance is delicate: the Constitution's secular character requires the State to be even-handed, but the absence of an explicit prohibition on “appealing to religion” in politics (unlike the U.S. or

European treaty models) means violations sometimes slip through until challenged (as *Bommai* and later election-law amendments show).

Finally, comparable arguments continue. Some experts recommend India benefit from the American religious-liberty jurisprudence, which increasingly supports individual conscience above community standards. Others say India's unique setting (different religions with overlapping communities) demands for keeping room for traditional religious practices, even at the sacrifice of uniform rights. The future of Art. 25 may depend on whether courts move toward a more neutral rule-of-law approach (using religion-neutral legislation equally) or maintain the practice of establishing religion-specific standards. Recent cases hint to an unsettling balance: the State may regulate under the social welfare clause, but it must do so without destroying the essence of any religion; conversely, religious organizations may claim autonomy, but that autonomy now specifically prohibits invidious discrimination and coercion.

CONCLUSION AND FUTURE DIRECTIONS

In essence, Art. 25 has proven a dynamic and contentious promise. It has been interpreted both expansively (supporting individual conscience and minority worship rights) and narrowly (upholding social-reform measures and majority moral standards). The Constitutional aim of a secular, equal society animates its implementation. Key conclusions emerge: the freedom to believe is absolute, while the right to practice is conditioned by the state's role to promote welfare and equality. Over time, the court has curtailed activities that contradict with constitutional morality, while maintaining essential freedoms of religion.

Looking forward, Art. 25 will continue to adapt despite societal change. Issues including religious conversions, temple reforms, inter-faith marriages, and faith-based educational autonomy are expected to spawn fresh lawsuits. The SC's approach will be significant in either sustaining or recalibrating the essential-practices test and other principles. Scholars have urged for a more principled, religion neutral framework that respects all religions without overbearing judicial theology. Meanwhile, the comparative turn (monitoring U.S. and European trends) may

impact Indian law. What is evident is that Art. 25 written at a time when religious war had just ended in partition remains at the constitutional core of India's plurality. Its future jurisprudence will determine India's character as a secular democracy valuing both religion and reform.

CHAPTER 19

Freedom to Manage Religious Affairs (Article 26)

Vidhi Srivastava

INTRODUCTION

The Indian Constitution is a sui generis legal document which enshrines the fundamental right of each citizen to freedom of religion, thereby mirror-imaging India's pluralistic and secular polity. Of its many provisions, Article 26 specifically guarantees religious denominations autonomy to administer their internal affairs. Much attention is drawn to Article 25⁷¹⁶, which cherishes the freedom of conscience and the right to profess, practice and propagate religion; but Article 26 adds an important institutional dimension to it by conferring a set of collective rights on religious institutions.

The text of Article 26⁷¹⁷ reads:

"Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

[a] to establish and maintain institutions for religious and charitable purposes;

[b] to manage its own affairs in matters of religion;

[c] to own and acquire movable and immovable property; and

[d] to administer such property in accordance with law."

This is an exercise in finding a balance between religious autonomy and state control: religious groups should be capable of managing their own affairs, yet not absolutely or without regard for the constitution. Article 26 is wide-ranging, it includes such matters as temple administration,

⁷¹⁶ The constitution of India, Art. 25

⁷¹⁷ The constitution of India, Art. 26

property or revenue management, appointment of priests in any denomination, and state intervention in dealing with the mismanagement of the affairs of religious institutions. These issues have generated significant jurisprudence before Indian constitutional courts that have defined this right through several landmark rulings.

The aim of this chapter is to explore Article 26 through a constitutional, historical and jurisprudential lens. The chapter will start by examining the constitutional and historical background of this provision which will include debates of the Constituent Assembly and legislative history. The discussion will be illuminative of the scope, objectives and language of Article 26 and will be substantiated with references to key constitutional doctrines including the “essential religious practices” test, “secularism doctrine” and judicial interventions in religious autonomy. This will be followed by a comprehensive examination of a landmark decisions, including the ratio decidendi, legal reasoning and later influence on constitutional law.

Moreover, the chapter will examine the importance of Article 26 in contemporary India, taking into consideration the current Supreme Court judgments and emerging state policies and the new social movements. The chapter will end with a critical appraisal and some suggestions for reform to fortify India’s constitutional structure governing religious freedom.

In effect, Article 26 continues to be a cornerstone in maintaining the balance between religious freedom and constitutionalism and its interpretation over time has proved to be one of the key aspects in the architecture of the Indian Constitution.

HISTORICAL AND CONSTITUTIONAL BACKGROUND

Pre-Constitutional Stance and Colonial Background

The inspiration behind Article 26 is also rooted in the history of Pre-independence India where religious institution was operated under the indigenous rulers and the colonial ruler with varying degrees of freedom. The British colonial state was a self-declared neutral or secular state with no 'official' religion, yet it regularly involved itself in temples through indirect means of influencing temple activities and religious endowments by means of statutes like:

- Religious Endowments Act, 1863⁷¹⁸
- Madras Hindu Religious Endowments Act, 1926⁷¹⁹
- Hindu Religious and Charitable Endowments Act, 1951⁷²⁰ (post-independence amendment).

These laws were primarily intended to reduce mismanagement and corruption, but they led to fears of state control over religious organizations. This colonial history shaped the framers' attentive equilibrium between religious freedom and needed state regulation.

Constituent Assembly Debates – The Foundational Deliberations

In the Constituent Assembly Debates (CAD), the extent of religious freedom under Draft Article 20 (which later became Article 26) was discussed at length.

While introducing the draft in the constituent Assembly debate, Dr. B.R. Ambedkar stated that the religious denominations as such are also granted this right so that they may conduct their own affairs according to their own rules, unconcerned about state control, unless public safety, public morality or public health be involved.

Some members, like K.M. Munshi and Alladi Krishnaswamy Ayyar, argued that freedom to administer religious affairs was a part of India's secular ethos, but did not imply license to have unbridled practices which offend public order or constitutional morality. Of course, Munshi made it clear that some state regulation was allowed to head off "practices that may be abhorrent to modern sensibilities and constitutional ethics."

The debates also explained that though the term "religious denomination" was left unexplained, yet it would "naturally embrace" organizations whose members are joined together into fellowship and unity of belief and practice and that characteristic customs and ceremonies bound together those who belong within the same church patent to the ordinary observer. "The freedom to publish" is not infinitely elastic; it is not inexorably tethered to the notion that the public is better off being informed about everything, at any time, in whatever form it is available. The framers of our Constitution explicitly rejected that complete freedom in the First Amendment, and chose, instead, to keep it answerable to "public order, morality, and health."

⁷¹⁸ The religious Endowments Act, 1863 1 ACT NO. 20 OF 1863

⁷¹⁹ The Madras Religious Endowments Act of 1926

⁷²⁰ Madras Hindu Religious and Charitable Endowments Act, 1951

Relation with Preamble and Constitutional Philosophy

Clause (1) of article 26 flows directly from the promise made in Preamble of its “liberty of thought, expression, belief, faith and worship” and such a conception is the foundation of India’s embrace of a principled secularism, later identified in *S.R. Bommai v. Union of India*⁷²¹.

Unlike the Western conception of radical detonation of relationships, Indian secularism is prepared to involve the state positively in the regulation of the secular elements, though without affecting basic religious freedoms. As noted by V.N. Shukla:

“Indian secularism is based on the principle of equal respect for all religions not on the basis of irreconcilable separation of state and religion.”⁷²²

Therefore, Article 26 also serves as a constitutional device which guarantees the institutional independence of religious groupings but under the overarching constitutional structure.

Post – Constitutional Amendment and Legislative Developments

Article 26 has not itself seen any revisions since it was first introduced, but the legal environment of religious endowments has:

- Hindu Religious and Charitable Endowments Act, 1951⁷²³ (HRCE Act): It allows for state intervention in the administration of temples without interfering with religious practices.
- Waqf Act, 1995⁷²⁴: Regulates Muslim religious and charitable endowments.
- Sikh Gurdwaras Act, 1925⁷²⁵ (as amended after independence): Controls the management of Sikh Gurdwaras.
- Places of Worship (Special Provisions) Act, 1991⁷²⁶: It intends to preserve the religious character of any place of worship as on 15th August 1947.

⁷²¹ *S.R. Bommai v. Union of India*, 1994 SCC OnLine SC 134

⁷²² V. N. Shukla, *Constitution of India*, 193, Eastern Book Company, Lucknow, 12th edn., 2013.

⁷²³ Madras Hindu Religious and Charitable Endowments Act, 1951

⁷²⁴ The Waqf Act, 1995 ACT NO. 43 OF 1995

⁷²⁵ The Sikh Gurdwaras Act, 1925

⁷²⁶ Places of Worship (Special Provisions) Act, 1991

These are examples of the twin implication of Article 26, that while religious matters will be protected by the former, the latter can be regulated by the State to ensure against maladministration, to safeguard public interest and to enforce constitutional morality.

The Indian model of the constitution is different from the First amendment to the constitution of the US, which makes it compulsory to provide a distinction between religion and state. Article 26 allows for a more pragmatic involvement, acknowledging India's socio-religious diversity.

As MP Jain rightly observes: "Indian secularism aims for a halfway house, sheltering religious autonomy while granting the state some regulatory authority in non-essential domains."⁷²⁷

The development of Article 26 can only be understood in the light of both the history and the structural underpinning of the Constitution, a product of the framers' complex perceptions of institutional religious autonomy that played off against the state's regulation for the common good. This equilibrium maintains its role in judicial construction by ensuring that religious liberty not be wielded to deny validity to the Constitution or to hamper social progress.

DOCTRINAL OR ARTICLE- WISE DISCUSSION

Article 26 of the Constitution of India reads:

"Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law."

The article contains both substantive freedoms and inherent limitations, which have been extensively interpreted by the Supreme Court of India to balance religious autonomy with constitutional supremacy.

⁷²⁷ M. P. Jain, *Indian Constitutional Law*, 1103, LexisNexis, Gurugram, 2018, 8th edn.

What Is a “Religious Denomination”?

The term “religious denomination” is not defined in the Constitution. This working definition has been introduced by the court in *The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*⁷²⁸ (popularly known as Shirur Mutt Case). "A religious sect may be defined as a group of people who have crystallized their beliefs, faith, and discipline around some sectarian tradition, some time-honored leader, or some type of religious sentiment.”

In *S.P. Mittal v. Union of India*⁷²⁹ (1983), the Court further elucidated that there are 3 key components which have to be in place:

- Common faith,
- Common organization,
- Being known or designated by a unique name.

In that case, even groups like Ramakrishna Mission or Ananda Margis would be eligible, if they pass these tests.

Scope of clause [a]- Establishment and Maintenance of Institutions

By Article 26(a), religions denominations are entitled to found and maintain institutions for religious as well as charitable purposes. This allows them to:

- Construct temples, mosques, churches, gurdwaras or ashrams;
- Establish trust for charitable purpose, dharamshalas, educational and medical institutions, provided these are connected to religious causes.

But such institutions should operate under general statute law and regulations that deal with public health, education quality, and fiscal responsibility. For example, minority institutions set up on religious denomination basis are still bound by Article 30⁷³⁰ read with Article 26.

⁷²⁸ *The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282

⁷²⁹ *S.P. Mittal v. Union of India*, 1983(1) SCC 51

⁷³⁰ The constitution of India, Art. 30

Scope of clause [b] – Manage Own Affairs in Matters of Religion

Sub-clause (b) vouchsafes self-sufficiency in religious affairs and not in secular matters of administration and the properties. Within the judiciary, a working distinction is made between:

- Religious matters: Customs, religious rites and forms of worship, celebrations, appointment of religious office bearers.
- Worldly matters: Financial administration, temple management, public donations, appointment of trustees, sale of property.

The case of Shirur Mutt held that :

The expression “matters of religion” also embraces even what is treated by the community as facets of its religion.

Yet, the Court, in subsequent cases, refined this by developing what is known as the "Essential Religious Practices" (ERP) Doctrine, which checks if a practice is "fundamental" to the religion.

Doctrine of Essential Religious Practices (ERP)

The ERP Doctrine now plays a key role in Article 26 (b). This framework arose from the Shirur Mutt case and elaborated in:

- Seshammal Vs State of Tamil Nadu⁷³¹
- Bijoe Emmanuel v. State of Kerala⁷³²

In these instances, the Court determined that only practices that were fundamental to the religion are to be given constitutional protection. Non-essential or strictly temporal practices can be subject to regulation or even prohibited by the state. The strategy, however, has been criticized as permitting the judiciary to decide on what content constitutes the very innards of religious beliefs, which could violate religious autonomy.

Scope of clause [c] – ownership and acquisition of property

⁷³¹ *Seshammal Vs State of Tamil Nadu*, (1972) 2 SCC 11

⁷³² *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

Clause (c) guarantees right of religious denominations to own and administer/material/immovable property. On the other hand, property rights under Article 26(c) are not unqualified. They are subject to:

- Land acquisition laws,
- Urban ceiling laws,
- Public interest restrictions, and
- Sensible government regulation.

The supreme court in *Ratilal Panachand Gandhi v. State of Bombay*⁷³³ has held that the state legislation can provide for regulating secular administration of temple's property and it would not violate Article 26(c).

Scope of clause [d] – Administration of Property in accordance with Law

Clause (d) permits imposition of reasonable laws by the state on the management of religious institutions. The state may:

- Frame rules for financial audit,
- Appoint trustees,
- Regulate endowments,
- Prevent misappropriation.

But, the control of the State must not go to the extent of total ouster or replacement of religious authorities unless necessity is compelling, as enunciated in *Kashi Vishwanath Temple case*.

Public Order, Morality, and Health

All rights enshrined in Article 26 are directly dependent on public order, morality, and health. This allows the state to step in where religious customs transgress:

Criminal laws (such as untouchability, sati),

- Morality (public temple needs),

⁷³³ *Ratilal Panachand Gandhi v. State of Bombay*, [1954] SCR 1055

- Health considerations (e.g., environmental legislation).

For example, in *Indian Young Lawyers Association v. State of Kerala*⁷³⁴ (Sabarimala Case) the constitutional morality was invoked by the Court to strike down the bar on entry of women to the Sabarimala temple notwithstanding the claim of practice being an essential practice.

Doctrine of Constitutional Morality

The doctrine of constitutional morality is also assuming significance in contemporary interpretation of religious freedom. Constitutional morality, as has been propounded in *Navtej Singh Johar vs Union of India*⁷³⁵, “constitutional morality calls for majoritarian values to be tempered and mediated by the discipline of fundamental rights.”

- Respecting the dignity of the individuals,
- Guaranteeing equality and non-discrimination,
- Favoring basic rights over majority will or longstanding religious customs.

The Court has in recent times employed constitutional morality to invalidate discriminatory or oppressive religious practices, particularly if they infringe Articles 14,15 and 21⁷³⁶.

Relationship with other Fundamental Rights

Article 26 vaguely intersects with numerous other fundamental rights in:

- Article 25: Right to freedom of religion.
- Articles 29-30⁷³⁷: Rights of minorities in education and culture.
- Article 14: Equality before the law.
- Article 19⁷³⁸: Freedom of association for religious bodies.
- Article 21⁷³⁹: Right to dignity and life.

⁷³⁴ *Indian Young Lawyers Association v. State of Kerala*, (2016) 16 SCC 810

⁷³⁵ *Navtej Singh Johar vs Union of India*, (2018) 10 SCC 1

⁷³⁶ The constitution of India, art. 14, art. 15 and art. 24

⁷³⁷ The constitution of India, art. 29, art.30

⁷³⁸ The constitution of India, art. 19

⁷³⁹ The constitution of India, art. 21

Judges must frequently conduct a delicate exercise of these conjoined/interdependent interests.

LANDMARK JUDGEMENT BY THE SUPREME COURT OF INDIA

The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiar of Shirur Mutt

The Shirur Mutt-a religious institution of the Madhwa sect- was hit by the Madras Hindu Religious and Charitable Endowments Act, 1951, which empowered the State to do whatever religious authorities could have done including nominating trustees and managing endowments funds and properties of religious institutions. The Seer of Shirur Mutt who took the issue to the apex court had contended that it violated the right of religious autonomy of the Mutt.

Violation of article 26, or in particular, the freedom of association of religious denominations to autonomously run their religious affairs.

Does the State have the right to distinguish secular from religious capacities when regulating?

Petitioner: Assert the Mutt is a religious denomination which has full freedom to administer its religious affairs including matters administrative and fiscal.

State: Argued that it was only regulating secular activities (such as financial and property matters), which do not comprise aspects of religion and thus can be regulated by the state.

The Supreme Court granted that Shirur Mutt is a religious denomination as contemplated under Article 26. Made an important distinction between “religion” matters and “property” administration. Upheld the principle that Art 26(b) grants protection to the right of administration of religious institutions and only secular activities, if any (like owning property) can be regulated by the state.

Invalidated those sections of the Act that permitted "a non-neutral application of secondary effects doctrine to create excessive entanglement between government and religion" by way of giving state officials too much authority in defining religious practice.

The Essential Religious Practices Doctrine is the doctrine holding that only the essential religious practices of a religion are constitutionally protectable.

Rattilal Panachand Gandhi v. State of Bombay

The case was in relation to a challenge to the Bombay Public Trusts Act, 1950⁷⁴⁰ by which the religious and charitable trusts were brought under the control of the Charity Commissioner. The petitioners, who were followers of Jain religion, contended that the Act violated their right to religious worship by regulating administration of temples and trust property.

Whether control over the religious trust property by a statutory authority is against Articles 25 and 26⁷⁴¹?

Is landlord-ism a right of religious expression or property management?

Petitioners -Contended property and deity management was an essential aspect of their religion; asserted it was a part of their religious denomination's right to manage religious affairs under Article 26.

State: That the Act prescribed only a secular administration and no religious doctrines or ceremonies.

The Supreme Court affirmed the position held in Shirur Mutt wherein the difference between religious practices which are essential and those which are mere secular practices namely administration in the administration of religious institutions has been recognized.

Article 26(c) and (d) allows religious groups to own and acquire property; however , this can be regulated, if it is for the purpose of public order, morality, or health.

They found the Act to be valid because it did not impinge on religious rituals or beliefs but rather only concerned the secular aspect of trust administration.

⁷⁴⁰ The Bombay Public Trusts Act, 1950.

⁷⁴¹ The constitution of India, art. 26

This enhanced the state's power to intervene even in the secular affairs of religious bodies to prevent fraud or mismanagement. It confirmed that property management is not by nature religious, and control is not infringement of religious liberty.

Seshammal v. State of Tamil Nadu

The Government of Tamil Nadu enacted the Tamil Nadu Hindu Religious and Charitable Endowments Act in 1970. This amendment removed the hereditary rights of temple priests (archakas). Historically, temples in Tamil Nadu used to recruit ineligible priests if they were born into the family to which the hereditary priesthood was granted. The new law created a system of appointment according to merit and training, thereby shattering the tradition of centuries.

The petitioners, including the members of a dynasty of priests, had challenged the amendment by arguing that the hereditary appointment for priesthood was an integral part of the religion of Hinduism and hence protected under Article 25 and Article 26.

Is abolition of hereditary priesthood an infringement of the right of religious denominations to administer religious orders under article 26(b)?

Is the ordination of priests a religious or secular process?

Petitioners: 'Hereditary' succession of priests is part and parcel of religious traditions and it being an essential religious practice, especially so where rituals have to be performed in entirety and in the ancestral lineage.

State: Held the appointment of priests to be a secular function. What counts in these religious rites is that the priest carries out the rites, not whether he inherited his job.

The state law was upheld by the Supreme Court. The Court stated that "Actual practice of the religion is of its essence, Actual performance of a religious practice is a religious act and whatever is done in pursuance of the religious practice is as much a part of religion as the practice itself" and thus having held that the performance of tarpan was a part of the religion and protected u/ Art. 25 looked into the expressive part of the action and addressed the issue of whether a claim for tarpan on one's own behalf (or for self) was religious.

But the appointment of priests is a temporal affair even in its religious connections. Provided only that one appointed a priest is educated and serves the sacred rites properly, the method of that appointment is in the hand of the State.

Indian Young Lawyers Association v. State of Kerala (Sabarimala Case)

In Kerala's Sabarimala temple, women learners (10-50 years of age) were not allowed to enter the temple under celibacy of Lord Ayyappa. It was challenged to be violative of fundamental rights under Articles 14, 15, 17⁷⁴², 25 and 26 by a group of young lawyers.

Whether the exclusion of women contravenes gender equality and non-discrimination as per Articles 14 and 15?

Whether such custom is a fundamental religious practice guaranteed under Article 25 and 26?

Whether the doctrine of constitutional morality can supersede religious practice?

The ban was set aside by 4:1 majority by a 5-judge Constitution Bench. They held that the ban is an affront to gender stereotypes and offends Articles 14 (equality) and 15 (non-discrimination). Held that women are not a denominational group and cannot be excluded under the cover of Article 26. The practice was not central to the religion and failed the ERP test. Set constitutional morality as a signpost: Religious freedom cannot compromise individual dignity and equality.

Huge victory for gender justice and religious reform. This opened the gates for judicial scrutiny of religious customs which are repugnant to constitutional values. Spurred protests and a backlash, reflecting strains between faith and reform.

This case is now under the consideration of an extended bench which will also look at the boundaries of ERP doctrine.

***Shayara Bano v. Union of India*⁷⁴³ (Triple Talaq Case)**

⁷⁴² The constitution of India, art. 17

⁷⁴³ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

Bano had opposed the practice of triple talaq, also spelt as talaq-e-biddat, where Muslim men can divorce their wives by uttering "talaq" thrice in quick succession. The practice was accused of being arbitrary, discriminatory and illegal.

Whether instant triple talaq is an integral part of the religion under Article 25.

Whether it contravenes the basic rights of Muslim women under Articles 14, 15 and 21.

Three out of five judges in the Court ruled that instant triple talaq was unconstitutional. And it said the practice, which has been outlawed in many Muslim countries, was not theologically supported by the Quran and did not form an integral part of the practice of religion under Islam. It was also found to be arbitrary, thus transgressing the mandate of Article 14. The decision also stressed that religious freedom is not a cover behind which to stand for practices which are transparently discriminatory.

The ruling was significant for the potentiality of personal law reform in India. It was a precedent in applying Essential Religious Practices to personal law. Parliament later passed the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalizing instant triple talaq.

Central Board of Dawoodi Bohra v. State of Maharashtra⁷⁴⁴

Community practice of excommunication was also contested on the ground that it violated the fundamental rights of the members of the community under Article 21 (right to life and personal liberty). The community long held that the system was justified under Article 26(b), which empowers them to have control over their own religious institutions and to impose sanctions on members.

Whether the right to excommunicate a member infringes on his or her fundamental rights under Article 21. If the principle laid down by the judgement in the case of Sardar Syedna Saifuddin needs to be re-visited.

A larger Supreme Court bench is reviewing the matter. The Court has further seen that religious liberties of collectivities cannot take precedence over the dignity and liberty of the individual. It has also recognized the necessity of reconciling religious autonomy with constitutional morality.

⁷⁴⁴ *Central Board of Dawoodi Bohra v. State of Maharashtra*, (2023) 4 SCC 541

This is a crucial case for the future of religious liberty in India. So, it asks who religious communities are even able to discipline under structures that could impact someone's dignity, right to make a living and livelihood, and social being. It might eventually shift Article 26 to the sphere of Article 21.

***Employment Division v. Smith*⁷⁴⁵ [U.S. Supreme Court]**

Two Native American employees were fired after ingesting peyote (a hallucinogen) as part of a religious ritual. They had been denied unemployment benefits, and they challenged the decision as a violation of their First Amendment right to free exercise of religion.

Whether the First Amendment requires states to provide a religious exemption to a neutral, generally applicable law that places a substantial burden on religious exercise.

The U.S. Supreme Court opined that the Free Exercise Clause no longer provides broad protection to religious conduct that is prohibited by neutral, generally applicable laws. The decision restricted the reach of religious freedom in the U.S and stated that religious beliefs are not a valid basis for violating the basic laws.

The case was a reversal from earlier, more aggressive readings of religious freedom. In sharp contrast to the French, the Indian Constitution provides more robust protections to religious activity, albeit only to the extent such conduct amounts to a religious essential.

Bijoe Emmanuel v. State of Kerala, 1986

Three Jehovah's Witnesses children were kicked out of school for not singing the national anthem in violation of their religious beliefs. They rose respectfully but didn't join in singing, since their religion forbade idolatry or worshipping anything other than God.

⁷⁴⁵ *Employment Division v. Smith*, 494 U.S. 872 (1990)

If their expulsion contravened Article 25 (freedom of conscience and religion).

If their behavior was disrespectful of national symbols.

The Supreme Court agreed with the students, holding that their fundamental right to freedom of religion and conscience is safeguarded by Article 25. It was held by the Court that singing of the national anthem is no test of any one's loyalty and that simply abstaining from singing it without committing any acts of disturbance in the assembly held with the object of singing the anthem does not by itself constitute misconduct. The Constitution shields the freedom to refrain from action, grounded in conscience.

This case is seen as a major milestone in individual religious freedom guaranteed in the Indian constitution. It showed that the state “may not demand actions contrary to religious conscience unless it had reason to think that they violated public order or morality.

CONTEMPORARY RELEVANCE

But it is also a testament to the fact that article 26 is one of the most contested and dynamic of the Indian constitutional provisions, and this is, in no small part, thanks to the extent of diversity that India's society embodies. With the transformation of constitutional morality, equality jurisprudence, and social change, Article 26 occupies a confluence of religious freedom and constitutional ideals.

State Control vs. Religious Autonomy

A recurring tug-of-war is over the extent of administrative power that the State should wield upon religious institutions. The tension has been thrown into sharp relief by a series of recent controversies, such as:

- In *Sundar v. State of Tamil Nadu*⁷⁴⁶, the Madras High Court permitted state control to persist but laid stress on transparent and accountable administration.

⁷⁴⁶ *Sundar v. State of Tamil Nadu*, 2009 (14) SCC 244

- Critics contend that the state's interference discriminates against certain religions, mainly Hindu temples while minority institutions continue to be autonomous under the purview of personal law bodies.⁷⁴⁷

Gender Equality and Constitutional Morality

Judgments such as Sabarimala and Triple Talaq are examples of such recent decisions which exhibit the Court's growing willingness to interfere where religious practices clash with principles of equality and dignity.

- Sabarimala Review: The case is referred to constitution bench with larger issues regarding judicial review on the scope of religious freedom.
- The Shayara Bano case led to the likes of the Muslim Women (Protection of Rights on Marriage) Act, 2019, which is aimed at criminalizing instant triple talaq.
- These cases are indicative of a change in the jurisprudence where constitutional morality is gaining preference over religious autonomy, especially with respect to women's rights.

Uniform Civil Code (UCC) Debate

Those who have been demanding the implementation of the UCC (Uniform Civil Code), as per Article 44 of our Constitution, have now re-ignited the controversy surrounding Article 26:

- Supporters say UCC advances gender justice and equality by removing discriminations in personal laws across religions.
- Opponents warn that it would potentially encroach on religious freedom and autonomy under articles 25-26.

⁷⁴⁷ c.f. Ramakrishna Mission v. State of West Bengal, 1995

In *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*⁷⁴⁸, the Supreme Court opined that failure to enforce UCC on the part of India involves non-achievement of the constitutional mandate.

This struggle is well illustrated in the current debate on UCC.

Judicial Balancing of Competing Rights

Judges are increasingly conducting a proportionality analysis when weighing Article 26 rights against:

- Equality (Article 14)
- The right to non-discrimination (Article 15)
- Right to Life and Human Dignity (Article 21)
- Freedom of Religion (Article 25)

The Central Board of Dawoodi Bohra case on excommunication powers is an example of this narrative at play. Instead, the Supreme Court looks today at whether religious practices tend to greatly infringe upon other constitutional protections, and whether there is some less intrusive alternative.

Political Debates and Legislative Trends

Religious management has become politically charged:

Kashi Vishwanath-Gyanvapi Dispute – Ongoing litigation of religious character of disputed places and the issues related to extent of state intervention in religious rights.

- Places of Worship Act, 1991: Its constitutionality is being examined; the outcome will have significant implications for the administration of certain historical religious places.

⁷⁴⁸ *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, (2019) 20 SCC 85

- Anti-Conversion Legislation: Various states have passed legislation to govern conversion from one religion to another, posing Article 26 challenges on the right to propagate and to administer conversion-related affairs.

In *Rev. Stainislaus v. State of Madhya Pradesh*⁷⁴⁹, the Supreme Court did uphold the anti-conversion laws, but new constitutional ground could crystallize with fresh challenges.

CONCLUSION

The constitutional commitment under Article 26 stands as bulwark against the erosion of India's pluralist identity as well as facilitates frontiers in the direction of progressive constitutional transformation. Its sophisticated structure ties religious collective autonomy to constitutional oversight with the aim of enabling religious communities to self-regulate religious life while the states may regulate public order, public morality and public health.

The doctrine of Essential Religious Practices (ERP) has evolved as a major judicial tool to separate the value of derivative secular practices and non-essential practices that the state can regulate and those that are sacrosanct aspects of the religion that need to be protected. And while this doctrine has protected true religious freedom, it has also drawn fire for leading to judicial overreach into theological matters, where courts in effect decide which practices are “essential” to a faith — an inherently delicate and subjective task.

And then, after 2015, a competing sense of what could be called constitutional morality has redefined the constitutional narrative. Whether the foregoing can challenge or reject belief-centric institutions is the subject of debate; however, case law such as *Sabarimala* and *Shayara Bano* points to a developing judicial posture in favor of defending dignity and equality even if they do not conform to centuries-old religious practice. In this, the former is an evolved jurisprudence that goes beyond group autonomy for doctrinal protection.

Current issues ranging from the Uniform Civil Code to state control over temple management and regulation of conversion, to the incorporation of LGBTQ+ rights in the space of religious

⁷⁴⁹ *Rev. Stainislaus v. State of Madhya Pradesh*, (1977) 1 SCC 677

freedoms — ensure that Article 26 remains not just legally thriving, but socially and politically relevant. The recurring controversies such as those around Gyanvapi, anti-conversion debates and pending constitutional references such as the Dawoodi Bohra excommunication, keep on testing the flexibility of the doctrinal structure of Article 26.

Reform Suggestions

It will take the courts making the right decisions many times over to stop this incessant litigation. It's time we have clear laws defining the religious and secular sides of administration (be it a graduation ceremony, a prayer before a high school football game or what have you).

- It is possible for the judiciary to set up specialized constitutional benches or for constitutional commissions with the availability of theological experts to hear ERP cases in as best as a manner possible making sure that we don't churn out merely legalistic interpretations out of religious teachings.
- Inter-faith reforms and codification of religious practices within the faith groups, if encouraged, can also enable communities to modernize with their traditions.

Finally, section 26 is indicative of the Constitution's promise to respect religious diversity and basic constitutional values. Its careful safeguarding, and principled judicial reading, is indispensable to the operation of India's secular and democratic edifice.

CHAPTER 20

Freedom from Taxation for Promotion of Religion and Religious Instruction (Articles 27–28)

Khushi Bhatnagar

INTRODUCTION

“I like the religion that teaches liberty, equality and fraternity” ~ Dr. Bhimrao Ambedkar.

As correctly said by our then jurist and former minister of law and justice- Dr. BR. Ambedkar, The Constitution gives us the shaft of Stopgap- Harmony, Opportunity, People’s participation and Equality. It provides the foundational frame for governance, defines abecedarian rights and duties that one should inherit and abide by and ensures responsibility. It's a comprehensive document, composed of a Preamble, 395 papers and 8 schedules. The Constitution recognizes religious freedom as an integral abecedarian right that ensures, we the people of India can freely profess, exercise and propagate any religion. To dig deeper into the realm of Indian constitution with respect to religion, introductory understanding of composition 27 and 28 is imperative.

Article 27 of Indian constitution, Freedom as to payment of levies for creation of any particular religion states that No person shall be compelled to pay any levies, for the creation or conservation of any particular religion or religious denotation, which means that the constitution of India ensures that any Indian citizen will not pay religious taxes like Zakat, Jizya and Kharaj or any other religious taxes. It further impedes that just because a person is following a particular religion, he/she is liable to pay taxes. But why is curbing religious tax so important? It is to maintain a secular state where the government remains impartial towards all religions and prevents the government from using tax revenues to promote any particular religion.

Article 28 of Indian Constitution, Freedom as to appearance at religious instruction or religious worship in certain educational institutions states that no religious education will be provided by a government funded institution. Furthermore, it asserts that state recognized or state funded schools, colleges or any other educational institution in association with religious groups,

without the permission of the parents or guardian cannot provide religious instructions. Educational institutions wholly funded and managed by religious groups can provide religious instructions. The only exception to the article is that any institution established at the time where furnishing religious education was allowed whether it is state or government funded will be exempted from the provisions of article 28. As we go forward, we will gain plentiful insights and acquire the knowledge of how these articles are applicable in our jurisdiction.

HISTORICAL BACKGROUND

The Constitution of India is immensely intertwined with the country's transition from the British social rule to fighting for independence and also ultimately getting a trace of the freedom of independent Bharat on the holy land recaptured by reputed numbers similar as Mahatma Gandhi, Jawaharlal Nehru, Sardar Vallabhbhai Patel, Subhas Chandra Bose are some among numerous. It was formulated by the demands for tone- governance during the Indian independence movement. Denomination evolved on the lines of indigenous revolution; it was a gradual separation of religious and political spheres, told by the decline of religious authority and advancement of wisdom. Pluralistic History, Ancient forbearance, social dislocations, Gandhi's vision, indigenous guarantee, Nehruvian denomination and denomination as a unifying principle strengthened the pathway of denomination through the freedom movement. Right to freedom of religion covers 4 articles, namely Article 25: Freedom of Conscience and free profession, practice and propagation of religion, Article 26: Freedom to manage religious affairs, Article 27: Freedom as to payment of taxes for religious promotion, and freedom as to attendance at religious worship or instruction. The literal background of Composition was espoused for the need to help any state favoring any religion, analogous to former ages when lords used to collect levies to promote a specific religion, a practice that's supposedly unbecoming for a temporal India. The draft 21 which later came as composition 27 was passed by the constitution on December 7, 1948. The draft composition was espoused without any amendments on the specified date. The purpose of drafting this composition is to help the citizens from paying religious levies, to promote a specific religion. Looking ahead on composition 28, it surfaced from the literal background of India's struggle for independence and its commitment to denomination, hence it

did not allow state funded or government funded educational institutions to give religious instructions or religious deification. The draft of composition 28 which was also known as draft composition 22 was batted in the constituent assembly, reduplicating the part of religion in education.

LITERATURE REVIEW

Article 27 of the Indian constitution prevents the use of tax proceeds to favor any specific religion. Notably many renowned academic and scholarly commentaries have been passed on the application and literature of the respective article:

- Dr. D.D. Basu in “Commentary on the constitution of India, emphasized that Article 27 is a pure resemblance of the secular character of the Indian state after independence from the British raj. Furthermore, he states that this article is important to maintain secularism as it prevents individuals from indirectly supporting a religion they do not believe in.
- H.M. Seervai in his commentary popularly known as “Constitutional law of India”, stressed that article 27 does not bar all state aid to religious institutions, though prohibits taxation for specific promotion or maintenance for religion. In the opinion of Seervai, expenditures incurred on religious events, considered as a part of cultural heritage or public order, may not necessarily contradict Article 27. He quotes that this is a critical role in maintaining neutrality.
- M.P. Jain in Indian Constitutional Law says that Article 27 prevents both direct and indirect monetary support to religious institutions by means of public funds.
- An article in the Indian Bar Review (Vol. 44, 2017) criticizes the judiciary for allowing government funding to religious institutions under welfare schemes, demanding stricter judicial inspection.
- NUJS Law Review (Vol.5, 2012) delivered their opinionated view on the misuse of public funds in religious infrastructures and interpreted Supreme Court’s decisions in stabilizing Article 27 with Directive principles of State policy.

Article 28 of the Indian Constitution gives the freedom to attend religious worship or instruction in educational institutions. Following are the leading academic views, key commentaries and Notable journal articles:

- Professor M.P Singh highlighted Article 28 as a refined clause that authorizes religious instructions under certain predefined conditions, especially contrasting between State and private educational institutions.
- Seervai observed that there is a thin line between religious freedom and the secularist nature of education funded by the state under Article 28.
- D.D Basu noted that Article 28 sub clause 1 and sub clause 3 prohibits the compulsion of students in state funded schools, thus upholding both religious liberty and secularism.
- Subhash C. Kashyap, in one of his well-known commentaries stated that Article 28 avoids indoctrination in state funded institutions.
- JILI (Journal of the Indian Law Institute) published an analytical essay (Vol 58, 2016) interpreting how Article 28 intertwines with minority rights under Article 30.
- SCC Journal (Vol. 10, 2019) covered case law developments discussing religious education in aided versus unaided minority institutions, analyzing judicial interpretations of Article 28(3).

CONSTITUTIONAL INTERPRETATION

VERBATIM CONSTITUTIONAL PROVISION OF ARTICLE 27: *“No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.”*

At times of Constituent Assembly debate (CAD) on Article 27 of Indian Constitution, Article 22 of the Draft Constitution which later was known as article 27 was interpreted on 7 December 1948. The foremost intention of article 27 was to protect the secular nature of the states within the country and prevent the state from inclining towards any religion monetarily through compulsory taxation. DR BR Ambedkar, chairman of the drafting committee, analyzed the article and explained that it was to secure funds of the state that should not align with promotion

of any religion they do not believe in. Professor K.T Shah on the other hand supported the clause for prohibiting the misuse of state funds for religious purposes. This fosters state neutrality which is important for smooth functioning of the constitution without any religious clashes. Comprehending the opinions and the intent of the drafting committee and other nobles, Article 27 was introduced to differentiate between religion and state funds, guaranteeing monetary and religious secularism in a secular democratic republic.

Key themes of the debate:

- Non endowment of religion: The main intention of the drafting committee was to ensure that India would not support the concept of state religion. Article 27's main target was to eliminate religious taxes to support or promote religion one does not believe in. This idea was derived from the First Amendment to the US Constitution, thus protecting the establishment of religion by state.
- Financial Compulsion: Article 27 protects citizens from being forced to accord financial support for religion they do not profess. DR BR Ambedkar noted that "If a person wants to contribute voluntarily, he is allowed to do so, but no person can be coerced to support this propaganda of religion. As India is a country with diverse culture and religion, Article 27 is important to maintain secularism otherwise it may lead to resentment and communal tensions within the country.
- Voluntary Support: Pandit Hriday Nath Kunzru noted that the money used for supporting religion can be voluntarily submitted which means without any influence or coercion of an external community. Thus, indirect use of tax money that happens to benefit a religious site or maintaining a heritage site would not violate article 27.

ARTICLE 27 ~ CLAUSES AND ITS EXCEPTIONS

- Article 27 clearly states that no person shall be coerced to pay taxes especially for the purpose of promotion or maintaining any specific religion or religious groups.
- The phrase "**specifically appropriated**" implies that tax money cannot be set aside for religious advancements. This doesn't mean religion cannot benefit indirectly from State spending, but the intention and allocation of the funds matter.

EXCEPTIONS

- General welfare spending: If the tax is collected for the purpose of general welfare, it is not a violation. For example, repairing a religious monument that is a tourist site can be funded by the public.
- Secular activities: The state can fund administration, education and land management of religious institutions as they are considered secular administrative taxes. For example, state managing temple affairs.

VERBATISM CONSTITUTIONAL PROVISION OF ARTICLE 28: *“The freedom to attend religious worship or instruction in educational institutions.”*

At times of Constituent Assembly debate (CAD) on Article 28 of Indian Constitution, the Advisory Committee on Fundamental Rights presented its draft in August 1947, which included provisions related to religious instruction in educational institutions. This article aimed to ensure that students were not forced to engage in religious activities in state-funded educational institutions. DR.BR Ambedkar emphasized the importance of secular nature of the state and against the inclusion of religious instruction in state funded educational institutions. KT Shah argued that this provision should not only apply to institutions but also to those receiving partial aids. On the other hand, scholars like Muhammad Ismail Sahib advocated that religious instructions or worship should be an integral part of educational institutions as it is necessary for moral development.

Key themes of the debate:

- No religious instructions to wholly state funded educational Institutions shall be provided as to suffice the clauses of Article 28.
- No person who is a part of any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be carried out in such institution or to attend any religious worship that may be conducted in such institution or within walls of educational institutions, unless such person or, if such person is a minor, his guardian has given his consent for the same.

ARTICLE 28: CLAUSES AND ITS EXCEPTIONS.

- Clause 1: No religious instructions shall be provided in wholly state funded educational institutions.
- Clause 2: Nothing in clause 1 should be applied to those institutions which are administered under state but are established by endowment or trust. Thus, it is necessary in these institutions that religious instructions must be imposed.
- Clause 3: if the person is a minor whose guardians have consented or an adult who has consented to attend religious instructions or worship in an educational institution is not violative of article 28 even if the educational institute is wholly state funded or is recognized by the state.

EXCEPTIONS.

- Institutions established under trust or endowment (clause 2).
- Voluntary participation in the educational institution on religious worship (clause 3).

CASE LAW ANALYSIS

ARTICLE 27

Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindara Thirtha Swami (1954) (also known as the Shirur Mutt Case)

FACTS: The Madras legislature enacted the Madras Hindu Religious and Charitable Endowments Act, 1951, which levied a payable amount on religious institutions. The petitioner contended that this contribution was a tax and violated Article 27.

JUDGEMENT: The Supreme Court held that the contribution imposed under the Act was a tax. However, the Court interpreted that the purpose of such a tax was the proper administration of religious institutions and endowments. Therefore, Article 27 was not violated because the tax was not used for the advancement or maintenance of any religion.

State of Gujarat v. Islamic Relief Committee, Gujarat & Others (2017)

FACTS: This was a public interest litigation (PIL). At the time of 2002 communal riots in Gujarat, various places of worship were damaged and destroyed. The Gujarat High Court directed the state government to pay compensation for the refurbishment of these religious structures. The state challenged this order, arguing that it violated Article 27.

JUDGEMENT: The order passed by the Gujarat High Court was reversed by the supreme court advocating that using state funds for the purpose of restoring religious infrastructure is violative of the secular nature of the state as mandated by article 27.

T.M.A Pai foundation & Ors .v. State of Karnataka & Ors. (2002)

FACTS: T.M.A Pai foundation and other petitioners were private educational institutions run mostly by the religious minorities. They challenged the government regulation on fees, admission and overall running of these institutions. The Karnataka government restricted the autonomy of such institutions. The petitioners namely T.M.I Pai foundation and Manipal Institute of Technology argued that the provision violated Article 19, 26 and 30 respectively.

JUDGEMENT: The Supreme Court held that while the state cannot provide monetary aid specifically to religious institutions, it can extend support or assistance to secular institutions established by religious or linguistic minorities. The Court interpreted that such support should not be used for the promotion or maintenance of any religion as Article 27 prohibits the use of compulsory taxes for advancement of religion, although this article is not violative when the purpose is secular education.

Prafull Goradia v. Union of India (2004)

FACTS: The petitioner challenged the Haj Committee and related government subsidies for Indian Muslims undertaking the Haj pilgrimage. The petitioner advocated that the taxes were used to fund the Haj Pilgrimage that was Muslim centric religious activity.

JUDGEMENT: The petition was rejected on the grounds that no religious discrimination is done. In addition to that only a small amount of taxes levied were used for the motive of advancement and maintenance of the Haj pilgrimage, thus it would not violate Article 27.

Papanna v. State of Karnataka (1983)

FACTS: The Papanna and other petitioners challenged section Sections 4(1) and 6 of the Karnataka Land Acquisition Act, 1964. These notifications declare that the land was needed for specific purposes, especially for construction of Hindu Temple. The petitioners argued that this violated Article 27 as public funds are not supposed to be used for maintenance or promotion of religion or religious institutions.

JUDGEMENTS: The Supreme Court interpreted that the government's policy of providing financial aid to religious institutions did not violate Article 27, as the assistance was not used for the promotion or maintenance of any religion.

ARTICLE 28

Aruna Roy & Ors. v. Union of India (2002)

FACTS: The Supreme Court addressed the constitutionality of the National Curriculum Framework for School Education (NCFSE). The PIL (public interest litigation) was advocated as NCF included moral education based on religious philosophies, that violated Article 28. The NCFSE was considered anti- secular as it was believed that they did not align with the provisions of Article 28.

JUDGEMENT: The Supreme Court held that NCFSE did not violate Article 28. The Court observed that moral education and value-based teachings intended to cultivate constitutional values, ethics, and civic responsibilities cannot be equated with imparting religious instruction. The objective of the NCFSE was to promote national integration, tolerance, and character development, all of which are consistent with the constitutional mandate of secularism. Thus, the framework was upheld as valid and constitutional.

Bijoe Emmanuel & Ors. v. State of Kerala (1986)

FACTS: Three Jehovah's Witness students refused to sing the national anthem in school which was a state-recognized educational institution aligning to religious beliefs. Due to their disobedience in the said institution, they expelled the students for not following the religious worship.

JUDGEMENT: The Supreme Court stated their refusal to not sing the worship was a conscientious act, protected under the ambit of Articles 25 and 28. They students have all the rights to stand silently, and hence cannot be coerced to participate in acts that are against their religion.

T.M.A. Pai Foundation & Ors. v. State of Karnataka (2002)

FACTS: Educational regulations on private and minority institutions were challenged. Linked to Article 28 regarding religious instruction and worship.

JUDGEMENT: The Court interpreted the three categories under Article 28:

- 28(1): No religious instruction should be imparted in wholly state-funded schools;
- 28(2): State-run educational institutions founded under a religious trust or endowment may impart such instruction;
- 28(3): In state-recognized/aided schools, participation in religious instruction or worship must be voluntary (with consent) either of the person or if a minor then by their guardian.

CONCLUSION

After analyzing the chapter thoroughly, we all have come to the conclusion that Articles 27: (No person is liable to pay any tax for the maintenance or promotion of a particular religion) and 28: (Wholly state funded educational institutions are not allowed to hold religious instructions or worship) are necessary components of the Indian constitution to maintain secularism throughout the country and not to Favour any specific religion by any means also ensures that the government maintains a neutral stance over all the religions. The core of both the articles are interpreted in the chapter keenly with the views of notable individuals that will help you understand the intention and aim of introducing the Articles, also to know why their presence is important.

CHAPTER 21

Cultural and Educational Rights of Minorities (Articles 29–30)

Muskan Attri

INTRODUCTION

Articles 12 to 35, mentioned in Part III of the Indian Constitution, are known as Fundamental Rights. As the term "Fundamental Rights" suggests, their very nature is that these are basic and essential rights that must be granted to every citizen without hindrance, subject to reasonable restrictions. The Indian Constitution provides six Fundamental Rights, and Articles 29 and 30, which collectively form the fifth category, offer Cultural and Educational Rights.⁷⁵⁰

In this chapter, we will take a closer look at why Cultural and Educational Rights were included as Fundamental Rights in the Indian Constitution. These rights are not just legal guarantees—they are essential for protecting the identity, dignity, and development of minority communities in a diverse country like India. To understand their importance, we will explore the historical background and the conditions that existed at the time these provisions were adopted. This will help us understand why the protection of minorities was a major concern for the framers of the Constitution.

We will also try to understand what the framers intended when they included Articles 29 and 30 in the Constitution. What values and goals were they trying to achieve? To make this clearer, we will go through the exact wording of these Articles—breaking them down step by step—so that the constitutional language becomes easier for us to understand.

As we move forward, we will analyse these provisions using important case laws that have interpreted and shaped their meaning over time. We will also examine the role of the National Commission for Minorities and how it helps protect the rights guaranteed under Articles 29 and

⁷⁵⁰ *Constitution of India*, 1950.

30. Finally, we will look at how these two Articles are connected and how, together, they form a strong framework for safeguarding cultural and educational rights in India.

Why Cultural and Educational Rights? Rights of minorities from struggle to safeguard.

India, having been a victim of long-term colonial slavery under European powers, especially the British, has been left with countless scars and is still recovering from its history of oppression. Learning from past circumstances—such as the Revolt of 1857⁷⁵¹, the British “divide and rule” policy, nationwide protests⁷⁵², and the freedom struggle—the minorities of that time became increasingly aware of their rights and were unwilling to compromise on them.

The Constituent Assembly, in its effort to make the Constitution widely accepted across the nation and to ensure effective governance, recognized the importance of including Cultural and Educational Rights. These rights were not only crucial for securing the trust and legitimacy of the minorities towards the Indian Constitution but also essential for upholding *constitutionalism*, the *rule of law*, and the right to equality under Article 14 of the Constitution of India.

Minorities rights in a Diverse Nation: India is a nation of immense diversity. Each state has its own cultural and historical significance, and even within these states, there exists sub-cultural diversity. Therefore, there was a need to protect India’s cultural diversity, as it represents the core uniqueness of our nation. Since a few groups constitute the minority of the population, a good constitution, guided by the spirit of the *rule of law* and *constitutionalism*, should not only serve the needs of the majority but must also ensure the protection of minorities.

Beyond cultural protection, there was also a pressing need to safeguard educational rights, especially for minorities. While culture forms the core of a community, education is fundamental and essential to the very existence and progress of humankind. The exchange of knowledge is critical for the development of individual potential and the advancement of society. Education brings out the best in humanity. Article 21A of the Indian Constitution guarantees the Right to

⁷⁵¹ *First War of Indian Independence*.

⁷⁵² Such as: *Mappila Rebellion* (1921), *Ghadar Movement* (1913-1919), *Akali Movement* (1920s), *Khilafat Movement* (1919-1924), *Dravidian and Tamil Identity Movements* (early 20th century), *Punjabi Language Assertion* (pre-1947).

Education⁷⁵³, and Article 26 of the Universal Declaration of Human Rights (UDHR)⁷⁵⁴ also declares that everyone has the right to education.

Minorities, who are distinguished by their unique religions and languages, require the right to establish their own educational institutions. This ensures that they can preserve and transmit their cultural, religious, and linguistic values from generation to generation. Therefore, Article 30 of the Indian Constitution specifically grants minorities the right to establish and administer educational institutions.

CONSTITUENT ASSEMBLY DISCUSSIONS ON MINORITY RIGHTS

The minority question in the Constituent Assembly was surrounded by the claims of three different communities, already safeguarded by the British and the Princely States during the colonial period⁷⁵⁵. At that time, every other community sought to be recognised as a minority and wanted protection under the Constitution of India. The real issue before the Assembly was to grant recognition to the genuine minority groups while maintaining a balance with majority interests to avoid conflicts. Minority safeguards were introduced against the interest of national unity, secularism, democracy, equality, and justice.⁷⁵⁶

Rochna Bajpai worked extensively on the question of minority rights in the Constituent Assembly Debates (hereafter, CAD). Later, *Dr. B.R. Ambedkar* played a pivotal role—not only in addressing and responding to the issues raised in the CAD regarding minority rights but also in shaping the Constitution as a whole.

{...The Constituent Assembly further set up an *Advisory Committee*, chaired by *Sardar Patel*, to deal with the subject of Fundamental Rights, including the rights of minorities. A Minorities Sub-Committee, chaired by *Mr. H. C. Mookherjee*, prepared an interim report, which recommended the following:

⁷⁵³ Constitution of India, Art. 21A (inserted by the Constitution (Eighty-sixth Amendment) Act, 2002)

⁷⁵⁴ United Nations, *Universal Declaration of Human Rights*, Art. 26 (1948), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Visited on June 28, 2025).

⁷⁵⁵ Abdulrahim P. Vijapur, “Rights of Minorities to Establish and Administer Educational Institutions in India: Some Constitutional Reflections” 51 *The Indian Journal of Politics* 3 (2017).

⁷⁵⁶ Abdulrahim P. Vijapur, “Rights of Minorities to Establish and Administer Educational Institutions in India: Some Constitutional Reflections” 51 *The Indian Journal of Politics* 3 (2017).

1. All citizens are entitled to use their mother tongue and its script and to adopt, study, or use any other language and script of their choice.
2. Minorities in every unit shall be adequately protected in respect of their language and culture, and no government shall enact laws or regulations that may operate oppressively or prejudicially in this regard.
3. No minority—whether of religion, community, or language—shall be deprived of its rights or discriminated against regarding admission into state educational institutions, nor shall any religious instruction be compulsorily imposed upon them.
4. Notwithstanding any custom, law, decree, usage, presumption, or terms of dedication, no Hindu shall be precluded from entering educational institutions dedicated or intended for the use of the Hindu community or any section thereof on the grounds of caste, birth, or denomination.
5. No disqualification shall arise on account of sex in respect of public services or professions or admission to educational institutions, except that this shall not prevent the establishment of separate educational institutions for boys and girls.

The *Advisory Committee*, while partially accepting these recommendations, proposed the following clauses to the Constituent Assembly:

1. Minorities in every unit shall be protected in respect of their language, script, and culture, and no laws or regulations shall be enacted that may operate oppressively or prejudicially in this respect.
2. No minority, whether based on religion, community, or language, shall be discriminated against regarding admission into state educational institutions, nor shall any religious instruction be compulsorily imposed on such minorities.
3. (a) All minorities, whether based on religion, community, or language, shall be free in any unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing state aid to schools, discriminate against schools under the management of minorities, whether based on religion, community, or language.

On 7th October 1948, the question “What rights could or should be conceded to minorities?” was debated. Later, on 7th and 8th December 1948, Draft Article 23 of the Draft Constitution—later becoming Articles 29 and 30 of the present Constitution—was debated.

The clause was added as Clause 24, with some drafting changes, in the draft constitution prepared by the Constitutional Advisor. After two revisions of Clause 24 by the Drafting Committee—significantly re-drafting sub-clause (1)—the clause became Article 23 of the Draft Constitution. Eventually, the Drafting Committee divided Article 23 into two separate articles, resulting in Articles 29 and 30 of the existing Constitution of India...}⁷⁵⁷

These articles were intensely debated in the Constituent Assembly, reflecting India’s commitment to protecting the identity, culture, and educational rights of minorities.

Debate on Article 29 (Draft Article 23:

Draft Article 23, which became Article 29, was debated on 7th and 8th December 1948.

Dr. B.R. Ambedkar clarified that the article does not limit protection to minorities only but extends to any section of citizens.

Prof. K.T. Shah proposed an amendment to make it exclusive to minorities, which was rejected, reinforcing the inclusive nature of Article 29.

Shri Naziruddin Ahmad expressed concern about the overlapping of clauses with Article 15 and stressed the need for clarity.

This shows that although there were numerous opinions in the Constituent Assembly and several proposed amendments, they were all addressed thoughtfully, creating constitutional harmony.⁷⁵⁸

Debate on Article 30 (Draft Article 23-A:

Draft Article 23-A, later adopted as Article 30, was debated on 8th and 9th December 1948.

Pandit Lakshmi Kanta Maitra emphasized that, for preserving the identity of minorities, educational and cultural rights were essential.

⁷⁵⁷ Abdulrahim P. Vijapur, “Rights of Minorities to Establish and Administer Educational Institutions in India: Some Constitutional Reflections” 51 *The Indian Journal of Politics* 4-5 (2017).

⁷⁵⁸ VII, *Constituent Assembly Debates*, 923.

T.T. Krishnamachari, supporting the article, pointed out the need to ensure freedom and equality in educational opportunity.

Hussain Imam and others insisted that these rights should not be subject to unnecessary state interference.

T.T. Krishnamachari also stated that it was not the intention of the framers of the Constitution to destroy minority institutions, but to give them a sense of security.

Thus, the Constituent Assembly thoughtfully balanced the principle of equality with the need to protect the rights of minorities. Articles 29 and 30 together serve as strong safeguards to uphold the pluralistic and inclusive character of Indian democracy, fully reflecting the values enshrined in the Preamble of the Constitution⁷⁵⁹ ... }⁷⁶⁰

CONSTITUTIONAL TEXT

Article - 29. Protection of interests of minorities — *(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.*

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Breakdown of Article 29 - Protects the interests of minorities⁷⁶¹ i.e.,

1. Any section of the citizens residing in the territory of India or any part thereof having a distinct-
 - Language,

⁷⁵⁹ VII, *Constituent Assembly Debates*, 924.

⁷⁶⁰ *Constituent Assembly Debates* on December 7-9, 1948 available at: <https://www.constitutionofindia.net/constitution-assembly-debates/>

⁷⁶¹ *Constitution of India*, 1950, art.29.

- Script
- or culture

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

0. **No citizen** shall be denied admission into any **educational institutions**

- maintained by the State or
- receiving aid
- out of state funds
- on grounds only of: - religion, race, caste, language or any of them

Note: The rights under Article- 29(2) are provided not only to minorities but to all the citizens, subjected to reasonable restrictions.

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

[(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Breakdown of Article 30: Right of minorities to: - **establish** and **administer** educational institutions⁷⁶² -

1. All minorities, whether based on: -
 - religion

⁷⁶² *Constitution of India, 1950, art.30.*

- Or language

shall have the right to

- Establish
- and Administer

educational institutions of their choice.

(1A) In making any law providing for

- the compulsory acquisition of any property of an educational institution
- established and administered by a minority,
- referred to in **clause (1)**,
- the State shall ensure that the
 - amount fixed by
 - or determined

under such law for the

- acquisition of such property

in such as would not

- restrict
- or abrogate

the right guaranteed under that clause.

- The State shall not,
- in granting aid to educational institutions,
- discriminate against any educational institution

on the ground that it is under the management of a minority,

whether based on

- religion
- or language.

Analysis:

The Cultural and Educational Rights, which are protected under Articles 29 and 30 of the Constitution of India, are Fundamental Rights and are enforceable in a court of law. The framers of the Constitution of India have intentionally kept the scope of these Articles open to interpretation by the courts. The courts have emphasized the application of these Articles based on the specific circumstances of each case. Although freedom is provided for the protection of minority interests and the right of minorities to establish and administer educational institutions, these rights are subject to reasonable restrictions. The Constitution of India is a living document that belongs to all generations and can be interpreted by the courts within the reasonable limitations imposed by the Constitution itself.

As demonstrated in the landmark cases, it is evident that these rights are not merely theoretical but are actively applied in the real world. These rights are not limited to minorities but also extend to linguistic majority groups, recognizing that a group may be a national majority but still a minority in a specific region or locality.⁷⁶³

In the *Aligarh Muslim University (AMU)*⁷⁶⁴ case, it was earlier held that *AMU* is not a minority institution as it was established by an *Act of Parliament*⁷⁶⁵. The issue before the court was whether *AMU* is, in fact, a minority institution. The court has overturned the previous reasoning of not recognising the said university as a minority institution and has held that an educational institution does not lose its minority status merely because it is created by statute. The Court confirmed that Article 30(1) applies to institutions established both before and after the Constitution's adoption. Further, it has laid down criteria for minority educational institution status as well.

This dedication demonstrates that the court, as the guardian of the Constitution of India, is not only concerned with preserving the essence of the Constitution but is also committed to ensuring just, fair, and reasonable practices in the protection of minority rights.

⁷⁶³ *D.A.V. College v. State of Punjab*, AIR 1971 SC 1737.

⁷⁶⁴ Pending (2024).

⁷⁶⁵ *S. Azeez Basha v. Union of India*, AIR 1968 SC 662.

Case Laws:

1. *Bal Patil v. Union of India*⁷⁶⁶-

Issue: Definition of minority under the National Commission for Minorities Act, 1992.

Held: The Supreme Court ruled that minority status must be determined state-wise, not nationally. Religion may be a factor, but population within the state is the decisive criterion.

2. *P.A. Inamdar v. State of Maharashtra*⁷⁶⁷ -

Issue: Admission and reservation policies in minority unaided professional institutions.

Held: Such institutions are not bound by state reservation policies. They enjoy autonomy in admissions but must ensure merit-based and transparent procedures.

3. *Sindhi Education Society v. Govt. of NCT of Delhi*⁷⁶⁸

Issue: Government takeover of a minority educational institution.

Held: Under Article 30(1), minority institutions are protected and cannot be taken over unless there is grave mismanagement.

The National Commission for Minorities Act, 1992 (NCM)⁷⁶⁹ and Articles 29 and 30: The Constitution of India provides for minority rights, but it does not define the term "minority." This leaves a wider scope for interpretation in the hands of the judiciary. Minorities might face consequences due to the lack of a proper definition of minority status, which gives broad powers to the judiciary, leading to several consequences and conflicts.

The National Commission for Minorities Act, 1992 was established in response to the recommendation of the *Sachar Committee* and in furtherance of India's constitutional obligation to protect minority rights under Articles 29 and 30. The Act came into force on 17 May 1993. It provides safeguards for the rights and interests of minorities at the national level.

⁷⁶⁶ *Bal Patil v. Union of India* (2005) 6 SCC 690.

⁷⁶⁷ *P.A. Inamdar v. State of Maharashtra* (2005) 6 SCC 537.

⁷⁶⁸ *Sindhi Education Society v. Govt. of NCT of Delhi* (2010) 8 SCC 49.

⁷⁶⁹ The National Commission for Minorities Act, 1992, No. 19 of 1992, Acts of Parliament, 1992 (India).

The Central Government has notified the following six religious communities as minorities at the national level: Muslims, Christians, Sikhs, Buddhists, Parsis (Zoroastrians), and Jains (added in 2014).

The NCM plays a crucial role in ensuring the enforceability and monitoring of the educational and cultural rights of minorities. It has been given the power to intervene in cases where minority educational institutions are harassed or face discrimination. The Commission, along with protecting the minorities under Articles 29 and 30, also acts as a watchdog for the implementation of these Articles. It adds complementary support for their enforcement.

However, the NCM has also been subject to criticism, such as:

- Lack of binding authority – The recommendations of the NCM are not mandatory for the government.
- Political influences – The appointments to the Commission are made by the Central Government.
- Limited enforcement power – The Commission cannot issue binding directions like courts.
- Passive functioning – It is often accused of being passive or reactive, rather than proactive.

Suggestions: The Commission should be given enhanced enforcement powers by the courts.

- Its recommendations should be made mandatory and binding.
- Appointments should be made in a fair and transparent manner to overcome political influence.
- The Commission should be strictly monitored to avoid corruption, undue influence, and must be actively involved in decision-making.

Therefore, the NCM serves as an important constitutional body meant to uphold the spirit of Articles 29 and 30. Though the Commission has faced severe criticism, its functioning can be improved through the adoption of suitable measures and recommendations.

Articles 29 and 30 are closely connected with the NCM, as minorities are often identified considering the definition provided under the NCM framework. The Commission acts as a complementary body to the constitutional rights guaranteed under Articles 29 and 30.

RELATIONSHIP BETWEEN ARTICLE 29 AND 30

Articles 29 and 30, both part of Part III of the Constitution of India, fall under the category of Fundamental Rights. They are specifically aimed at safeguarding the interests of minorities, particularly in the spheres of culture, language, and education.

In the case of *St. Xavier's College v. State of Gujarat*⁷⁷⁰, the Supreme Court emphasized that Articles 29 and 30 must be read together, as they are complementary in nature and are designed to preserve the cultural and educational rights of minorities.

{...The Court held: “Article 30(1) covers institutions imparting general secular education. The object of Article 30 is to enable children of minorities to go out into the world fully equipped. It would be wrong to read Article 30(1) as restricting the right of minorities to establish and administer educational institutions of their choice only to cases where such institutions are concerned with the language, script, or culture of the minorities.”

The Court further added: “Articles 29 and 30 create two separate rights, though it is possible that the rights might intersect in a given case.”

The interrelationship between Article 29(2) and Article 30(1) has been a subject of controversy in numerous cases⁷⁷¹, raising important questions such as:

- Can minority educational institutions deny admission to students based on religion or language?
- Can preference be given to minority students in admissions, overriding the criterion of merit?

⁷⁷⁰ AIR 1974 SC 1389.

⁷⁷¹ *Sidhrabhai v. State of Gujarat*, AIR 1963 SC 540; *Sheetansu Srivastava v. Principal, Allahabad Agricultural Institute, Naini, Allahabad and another*, AIR 1989 All 117; *St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558.

These questions were notably addressed by the Supreme Court in the *St. Stephen's College v. University of Delhi*⁷⁷² case. The Court observed: “Every educational institution, irrespective of the community to which it belongs, is a melting pot in our national life. Students and teachers are the critical ingredients. It is there that they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential, therefore, that there should be a proper mix of students from different communities in all educational institutions.” ...} ⁷⁷³

In another significant ruling, *T.M.A. Pai Foundation v. State of Karnataka*⁷⁷⁴, the Court clarified that Article 29(2) is subject to Article 30(1). This means that a minority institution can exercise reasonable preference in admissions to its own community without violating Article 29(2).

Therefore, it can be said that the Supreme Court has consistently emphasized a harmonious interpretation of these Articles. It has highlighted their interrelationship and interdependence, while preserving the original intent of the Constituent Assembly. In doing so, the Court has contributed to shaping the moral framework of the Constitution, and maintaining a delicate balance between Articles 29 and 30.

CONCLUSION

The essence of Cultural and Educational Rights lies in protecting minorities, both religious and linguistic⁷⁷⁵, and even linguistic majority groups that may be minorities in a particular region or locality. The court’s approach to defining minorities considers the possibility that a majority at the national level can be a minority in another region⁷⁷⁶, reflecting the diversity of India and making the practical application of these Articles more effective.

The understanding of Articles 29 and 30 has been thoroughly examined and effectively debated during the Constituent Assembly, eventually shaping them into the refined constitutional provisions we see today. The judiciary, in the present context, interprets these articles by closely analysing their historical background, the objectives of the Constituent Assembly, and the

⁷⁷²(1992) 1 SCC 558.

⁷⁷³ { ... } Abdulrahim P. Vijapur, “Rights of Minorities to Establish and Administer Educational Institutions in India: Some Constitutional Reflections” 51 *The Indian Journal of Politics* 8-9 (2017).

⁷⁷⁴ (2002) 8 SCC 481.

⁷⁷⁵ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

⁷⁷⁶ *D.A.V. College v. State of Punjab*, AIR 1971 SC 1737.

extensive debates and discussions that led to their enactment. This interpretative approach allows the judiciary to adapt these provisions to the realities of the modern world, ensuring they remain relevant while upholding the integrity and legitimacy of the Constitution—especially in protecting the rights of religious and linguistic minorities and maintaining the harmony of the nation.

Meanwhile, the enactment of the National Commission for Minorities Act, 1992 provides complementary support to these constitutional provisions, offering a more structured and institutional means of understanding and addressing minority concerns. Articles 29 and 30, when read collectively, contribute significantly to the protection, promotion, and overall development of minorities. Although an overlap exists between their respective scopes, this interrelationship strengthens their constitutional significance. The judiciary plays a vital role in harmonising these overlaps and ensuring their practical and effective enforcement in accordance with constitutional principles.

Understanding the reason behind the incorporation of these Cultural and Educational Rights as fundamental rights for the protection of minorities is essential to grasp their true significance. This also opens the scope for legal interpretation, which upholds the ideology and intention of the framers of the Constitution of India. Interpreting these Articles through relevant case laws not only makes their language more accessible but also broadens their scope through judicial interpretation. The courts have interpreted these Articles to meet the evolving needs of minorities over time, without restricting their application through rigid or narrow readings. Hence, the judiciary has maintained a reasonable balance between minority and non-minority communities, thereby preserving the integrity of the country.

CHAPTER 22

Former Right to Property (Article 31) and Right to Constitutional Remedies (Article 32) **By Anisha Giri Goswami**

INTRODUCTION

This chapter discusses Right to Constitutional Remedies (Article 32) and the Former Right to Property (Article 31).

Article 31 which provided citizens with the right to property as a fundamental right, was repealed by the 44th Constitutional Amendment Act, 1978. Initially, it was a fundamental right by virtue of Section 299 of the Government of India Act, 1935⁷⁷⁷, and Article 17 of the Universal Declaration of Human Rights.⁷⁷⁸ A variety of amendments were implemented, like the 4th and 25th Amendments, which will be discussed further in the chapter, but to no avail, and eventually the total repeal of Article 31 seemed to be the best possible solution. In lieu, Article 300A was added by the same amendment- the 44th Constitutional Amendment, 1978. The right to property, thus, was transformed from a justiciable fundamental right into a legal right.

Dr B.R. Ambedkar, father of the Indian Constitution, once said that if he was asked to name one article of the constitution as the most important- an article without which the entirety of the constitution would have no value- he would say it is Article 32. Article 32, Right to Constitutional Remedies, is the heart and soul of the Constitution. “What is the use of Fundamental Rights if there is no provision to address the violation against them?” Fundamental Rights become defunct if there is no mechanism in place that can guarantee their enforceability.

⁷⁷⁷ Section 299, Government of India Act, 1935

⁷⁷⁸ Article 17, Universal Declaration of Human Rights, 1948.

"Constitutional remedies" means remedies that are available as a matter of constitutional right for the redress of constitutional wrongs.⁷⁷⁹ Article 32 mandates the Right to Constitutional Remedies, which provides citizens with the right to seek relief from the Supreme Court if their Fundamental Rights have been violated. The Supreme Court has the power to issue 5 types of writs, i.e., Habeas corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari, to facilitate the enforcement of fundamental rights.

ARTICLE 31: THE FORMER RIGHT TO PROPERTY

Before the 44th Constitutional Amendment of 1978, there had been only two articles which provided protection to private property. These Articles were Article 19(1)(f) and Article 31. However, with the repeal of these articles, private property was left bare and open to legislative appropriation.⁷⁸⁰

In this section we will be examining the doctrinal foundations and constitutional evolution of Article 31(1) and Article 32(2) prior to its repeal and the important constitutional amendments made to it before it was finally repealed in 1978.

ARTICLE 31(1) & 31(2)

Article 31(1) prescribed the following, "*No person shall be deprived of his property save by authority of law.*"⁷⁸¹ Although Article 31 was repealed, clause 1, word to word, reappears in Article 300A. It essentially entails that a person cannot be deprived of his property and the only circumstance in which they can be deprived is when it is by authority of law.

Before its repeal in 1978, the amended Article stood as follows, "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes

⁷⁷⁹ Alfred Hill, "Constitutional Remedies", (1969) 69 *Columbia Law Review* 1111.

⁷⁸⁰ M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) 1352.

⁷⁸¹ Art. 31, Constitution of India (repealed by the Constitution (Forty-Fourth Amendment) Act, 1978).

the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.”⁷⁸² Clause 2 had undergone a series of amendments from 1950 to 1978 which led to its final standing as aforementioned.

Article 32(2) primarily discussed four main concepts, and these were (1) Property (2) Compulsory Acquisition or requisitioning (3) Amount (4) Public purpose.

The term ‘Property’ was interpreted in a broader sense in this provision as even an actionable claim could be regarded as property.⁷⁸³ The phrase ‘Compulsory Acquisition or Requisitioning’, through judicial precedents, was held to be synonymous with the term ‘deprivation’ in Article 31(1).⁷⁸⁴ It was also irrelevant whether the state was acquiring the property for public use or merely seeking to regulate it; if the right to enjoy the property was impaired in any way, compensation became payable.⁷⁸⁵

The government, however, found it difficult to manage economic affairs when mere regulatory laws would invite Article 32(2). Considering the same, the 4th Constitutional Amendment, 1955 came into effect, amending Article 32(2) by which the words ‘acquisition and taking possession of’ were replaced by the expression ‘compulsorily acquired or requisitioned’.⁷⁸⁶ Article 31(2A) was added to explain these terms. Now compensation would only be payable when transfer of ownership or possession of property was affected. ‘Deprivation of property’ was properly distinguished from ‘Compulsory Acquisition or Requisitioning’ and Article 31(2) would only be attracted in case of the latter.

⁷⁸²Art. 31(2), Constitution of India (repealed by the Constitution (Forty-Fourth Amendment) Act, 1978).

⁷⁸³ M.M. Pathak v. Union of India, AIR 1978 SC 803 : (1978) 2 SCC 50; Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan, AIR 1986 SC 1126 : (1986) 2 SCC 431.

⁷⁸⁴ State of West Bengal v. Subodh Gopal, AIR 1954 SC 92 : 1954 SCR 587; Dwarkadas v. Sholapur Spinning and Weaving Co. Ltd., AIR 1954 SC 119 : 1954 SCR 674; Saghir Ahmad v. State of U.P., AIR 1954 SC 728 : (1951) 1 SCR 707.

⁷⁸⁵ M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) 1364.

⁷⁸⁶ Ibid.

Moving on to Amount– the amount payable by the government as compensation for the private property acquired by it became a controversial topic. Initially, the courts interpreted ‘compensation’ to be just or adequate and before 1955, the courts had the power of judicial review to determine whether compensation paid was adequate or not.⁷⁸⁷ In *West Ramnad Electric Distribution Co. Ltd. v. State of Madras*, the court emphasized on the aforementioned point and said it was a justiciable matter that the courts could adjudicate upon.⁷⁸⁸

However, after the 4th Constitutional Amendment, 1955 the courts no longer had the power to exercise judicial review. Article 31(2) was amended in a way that if the compensation was adequate could no longer be a ground to challenge a law or question the state.⁷⁸⁹ Given the aforementioned, In *Vajravalu v. Special Deputy Collector*, the courts still tried to maintain a semblance of reasonableness by holding that compensation, even after the amendment, could not be illusory or arbitrary and that the amended article still retained the word ‘compensation’ as was given in *Bella Banerjee* that it had to be just and was accepted to be the norm.⁷⁹⁰ It was reiterated in many cases that compensation could not be challenged unless it was fraudulent or illusory.⁷⁹¹

Then came the 25th Constitutional Amendment, 1971 which replaced ‘Compensation’ with ‘Amount’. The main purpose of this was to curb judicial review as the term ‘compensation’ had a connotation of being ‘just equivalent’ but ‘amount’ was devoid of such a connotation.⁷⁹²

The effect of this change was discussed by the Supreme Court in *Kesavananda Bharati v. State of Kerala*⁷⁹³ and it was held that ‘amount’ was not the same concept as ‘compensation’ but the courts could not decide upon the question of adequacy of amount. However, the amount could not be ‘illusory’ or ‘arbitrary’ and even if the market value was not considered in the computation of the amount, there would have to exist a reasonable relationship between the

⁷⁸⁷ M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) 1366; *State of West Bengal v. Bella Banerjee*, AIR 1954 SC 170 : 1954 SCR 558.

⁷⁸⁸ *West Ramnad Electric Distribution Co. Ltd. v. State of Madras*, AIR 1962 SC 1753 : (1963) 2 SCR 747.

⁷⁸⁹ M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) 1367.

⁷⁹⁰ *Vajravalu v. Special Deputy Collector*, AIR 1965 SC 1017 : (1965) 1 SCR 614.

⁷⁹¹ *Union of India v. Metal Corporation of India*, AIR 1967 SC 637 : (1967) 1 SCR 255; *State of Gujarat v. Shantilal Mangaldas*, AIR 1969 SC 634 : (1969) 1 SCC 509.

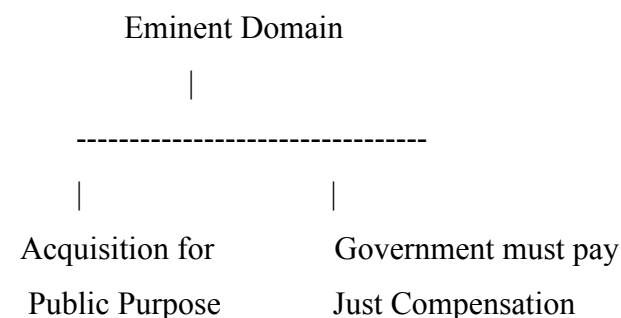
⁷⁹² M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) 1370.

⁷⁹³ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 : (1973) 4 SCC 225.

amount to be given and the property acquired by the government. However, the power of the courts was limited to deciding upon the illusory nature of the amount.

Lastly, the state could only acquire property for public purposes. This was said to be a constitutional requirement even after all the amendments. Valid instances of 'Public Purpose' have been established by virtue of judicial pronouncements and some of them are as follows, nationalization of land, housing individuals with no accommodations, establishing an institution of technical education etc.⁷⁹⁴

A combination of public purpose and compensation is found in the doctrine of eminent domain.



Eminent domain is to be found in entry 42, List III, which says, "acquisition or requisitioning of property". In *Kameshwar*,⁷⁹⁵ The Court emphasized that the power to acquire property compulsorily meant power to take property for a public purpose and for compensation. The Court defined eminent domain as "the power of the sovereign to take property for public use without the owner's consent upon making just compensation." The ideas of public purpose and 'compensation' are thus inherent in entry 42.⁷⁹⁶

The 44th Constitutional Amendment was brought in 1978. It brought the significant change of deletion of article 19(1)(f) and 31 and provided for reincarnation of that right to property as article 300-A recognizing it as a legal right.⁷⁹⁷

⁷⁹⁴ M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) 1373.

⁷⁹⁵ *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 458.

⁷⁹⁶ M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) 1354.

⁷⁹⁷ A.K. Ganguli, "Right to Property: Its Evolution and Constitutional Development in India", 48(4) *Journal of the Indian Law Institute* 489 (2006), available at <http://www.jstor.org/stable/43952060> (last visited June 25, 2025).

The 44th Amendment was mainly enacted by the Janata Party after their coming into power at the Centre to undo the amendments made by the 42nd Constitutional Amendment. While there was no formal reason explained for the deletion, it can be safely inferred from the history of amendments to the Article that the main reason for its deletion was probably to ease the difficulties faced by the Government in implementation of its economic and infrastructure policies. The conversion of the nature of the right narrates the shift from individual interest to state interest.

ARTICLE 32: CONSTITUTIONAL REMEDY FOR FUNDAMENTAL RIGHTS

The heart and soul of the Constitution, Article 32 is itself a fundamental right i.e., the ability to approach the Supreme Court to enforce a Fundamental Right is a fundamental right in itself.⁷⁹⁸

Article 32 finds its roots in the English Legal System, from the concept of prerogative writs. These writs were exclusive writs issued by the King. In the Constituent Assembly Debates, Article 32 was discussed as Article 25, and contested amendments to it were debated on 9th December, 1948. Some of the major proposed amendments were that the jurisdiction should extend beyond the Supreme Court to make it more accessible to the poorer sections of society; the writs that the Supreme Court can issue shouldn't be restricted to the ones specified in the Article; other courts should be empowered, by way of the parliament, to be able to exercise the same powers as the Supreme Court and last but not least, the entirety of clause 4 that suspends Article 25 during the event of an emergency should be deleted.⁷⁹⁹ The draft article was adopted with some of these amendments on 9th December, 1948.

⁷⁹⁸ Kavalappara Kottarathil Kochuni v. State of Madras, AIR 1960 SC 1080; (1960) 3 SCR 887

⁷⁹⁹ Constituent Assembly Debates, 9 December 1948, available at <https://eparlib.sansad.in/>... (accessed 16 June 2025).

DOCTRINAL ANALYSIS

Article 32(1) prescribes the following, “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.”⁸⁰⁰

The foundation of clause (1) of Article 32 is built by Article 13 of the Indian Constitution which enables the mechanism prescribed in Article 32. By virtue of Article 13, Fundamental Rights become justiciable i.e enforceable. Article 13 confers a power, imposes a duty and an obligation on the courts to declare a law void if it’s inconsistent with a Fundamental Right.⁸⁰¹ Clause 1 of Article 32 provides a guarantee that Fundamental Rights can be enforced by moving the Supreme Court for the writs in the Article.⁸⁰²

This guarantee primarily entails that the power of the Supreme Court to issue writs cannot be suspended except under Article 359 read with Article 32(4) and that no legislation or amendment can be passed by the Parliament to take the Supreme Court’s power away. Any law which negates or trifles the exercise of the Supreme Court’s power of issuing Writs will be void.⁸⁰³

Furthermore, there is no strict interpretation of the term ‘*appropriate proceedings*’ as laying down a rigid procedure would defeat the entire purpose of the Article itself considering that a significant number of the population of India is poor, uneducated and legally unaware– a large section would then not be able to seek relief.⁸⁰⁴ In *Bandhua Mukti Morcha v. Union of India*⁸⁰⁵, it was said, “The Constitution-makers deliberately did not lay down any particular form of proceeding for enforcement of a Fundamental Right nor did they stipulate that such proceeding should conform to any rigid pattern or straight jacket formula.”

⁸⁰⁰ Article 32(1), Constitution of India.

⁸⁰¹ M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) at 1408.

⁸⁰² Durga Das Basu, *Commentary on the Constitution of India*, 5th edn., rev. & enl. (LexisNexis, 2015) Vol. 2 at 270.

⁸⁰³ *Ibid.*, p. 271.

⁸⁰⁴ Rupali Chourasia, “Right to Constitutional Remedies: An Analysis of Article 32 of the Indian Constitution”, (2022) 4(4) *Indian Journal of Law and Legal Research* 4.

⁸⁰⁵ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802

Proceeding to the next clause, Article 32(2) prescribes the following, “The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”⁸⁰⁶

Article 32(2) confers power on the Court in its widest terms.⁸⁰⁷ "It is not confined to issuing the high prerogative writs", but "it is much wider and includes within its matrix power to issue any directions, orders or writs which may be appropriate for enforcement of the Fundamental Right in question."⁸⁰⁸ However it is pertinent to note, a writ does not lie to create or establish a legal right but to enforce a Fundamental Right that has already been established.⁸⁰⁹

In the Constituent Assembly debates for Article 32, a moot point for amendment was the specification of only 5 writs that the Supreme Court could order. Members had argued that with the evolution of time and law, these specified writs could prove to be an obstacle and in effect deteriorate the essence of the article. However, it was argued that the specified writs were ahead of their time and would be able to cope up with the evolution of both law and people. Still, it isn't a restriction upon the Court to only issue the 5 writs. The phrase ‘*in the nature of*’ in the clause invokes a wider sense of scope to it.⁸¹⁰

The Supreme Court can issue 5 writs in order to enforce a Fundamental Right– Habeas Corpus, Mandamus, Prohibition, Quo warranto and Certiorari.

Firstly, Habeas Corpus is the Latin term for ‘you shall have the body’. This writ is issued by the Supreme Court in order to release a person from arbitrary or wrongful detainment or arrest by the executive authority.⁸¹¹ Additionally, the illegally detained detainee can file a writ petition or

⁸⁰⁶ Article 32(2), Constitution of India

⁸⁰⁷ M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) at 1413

⁸⁰⁸ *Ibid.*, p. 814.

⁸⁰⁹ *Ibid.*, p. 1408.

⁸¹⁰ Itika Sharma, “Right to Constitutional Remedies: The Heart and Soul of Constitution”, (2021) 4(3) *International Journal of Law Management and Humanities* 2479.

⁸¹¹ Nirmalendu Bikash Rakshit, “Right to Constitutional Remedy: Significance of Article 32”, (1999) 34(34/35) *Economic and Political Weekly* 2379

someone else can do so on their behalf. Courts can also act Suo motu in the interest of justice on any information received by it from any source.⁸¹²

Secondly, Mandamus translates to ‘We Command’ in Latin. Mandamus, unlike Habeas Corpus, doesn’t apply to private bodies and primarily concerns constitutional, statutory, non-statutory authorities. This authority may be a ‘body’ or an individual. The writ of Mandamus is issued to direct/command such authority to either to do an act it failed to do or restrain it from doing an act it did do. However, the writ of Mandamus can only be issued when there exists a duty, established by law, to perform legal obligations in the interest of the public. Henceforth, the petitioner, who pleads for this writ to be issued, must prove the rule of Locus Standi.⁸¹³

This writ is applicable to not just public servants but also the Government itself. Subordinate courts or any other judicial body also comes within the scope of this writ. However, this writ will not be applicable to the President or Governor of a State.⁸¹⁴

Thirdly, Prohibition is issued to forbid a judicial or quasi-judicial body when they are acting either in excess of jurisdiction or there is lack of jurisdiction. This writ is issued to inferior or lower courts by the Supreme court. Furthermore, Prohibition can be issued when there is violation of principles of natural justice or Fundamental Rights, or unconstitutionality of a statute.⁸¹⁵ This writ is an important instrument to ensure courts don’t exceed their authority and are held accountable for misuse.

Fourthly, Certiorari empowers the Superior Court (Supreme Court or High Court) to transfer a case for review or completely remove a case from the jurisdiction of a subordinate court or inferior court on the grounds of jurisdictional error, prima facie error of law, violation of principles of natural justice, thus expanding the power of judicial review.⁸¹⁶ This writ can be

⁸¹² Rupali Chourasia, “Right to Constitutional Remedies”, (2022) 4(4) *Indian Journal of Law and Legal Research* 6.

⁸¹³ Aadya Ungal and Aastha Sharma, “Writs: Constitutional Remedies – Article 32 and Article 226”, (2023) 5(1) *Indian Journal of Law and Legal Research* 5.

⁸¹⁴ *Ibid.*, p. 6

⁸¹⁵ *Ibid.*, p. 5

⁸¹⁶ *Ibid.*, p. 5

issued against judicial, quasi-judicial and even administrative authorities but it cannot be advanced against legislative bodies, private bodies or individuals.⁸¹⁷

On the surface, the writ of Certiorari and Prohibition may seem similar but they're distinct from each other. Certiorari is most often issued after the decision of a case is taken and issued to review it to see if it should be quashed or upheld. Whereas Prohibition can be issued when the proceedings are still ongoing and before the lower court has arrived at a decision.

Lastly, Quo Warranto translates to 'By what authority?' meaning that the Court can issue this writ in order to challenge an individual's claim to hold public office.⁸¹⁸ The office holder bears the burden of proof to show that they are legally entitled and bound to hold the office under challenge.⁸¹⁹ If the holder fails to demonstrate so, they can be vacated from their office. This writ exists to ensure that there is no illegal usurpation of public office.

Article 32(3) prescribes the following, "Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)."⁸²⁰

This clause provides the Parliament with the power to confer upon, without encroaching upon the Supreme Court's power to issue writs, other courts the ability to issue writs within the local limits of their jurisdiction. Article 32(3) is essential for it furnishes the Indian citizen with multiple platforms to seek redressal in the event of violation of their Fundamental Rights. Similarly, Article 226 confers writ jurisdiction upon the High Court but the jurisdiction of the High Court is much wider under Article 226 as violations of legal rights can also be redressed under it.⁸²¹

⁸¹⁷ Ibid., p. 5

⁸¹⁸ Ibid., p. 5

⁸¹⁹ Itika Sharma, "Right to Constitutional Remedies", 4(3) *International Journal of Law Management and Humanities* 2481.

⁸²⁰ Article 32(3), Constitution of India

⁸²¹ Ibid., p. 5

M V Pylee propounds," the first three sections of the article, taken together, make fundamental rights under the Constitution real and, as such, they form the crowning part of the entire chapter."⁸²²

Like any other Fundamental Right, Article 32 is not absolute and has an exception. This exception is found in Article 32(4) which prescribes the following, "The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."⁸²³

The phrase 'as otherwise provided for by this Constitution' comes to fruition and finds its application by virtue of Article 359 which provides that the President may by order suspend the enforcement of the right conferred by Part III of the Constitution during emergencies. An individual cannot, during such an emergency, move the Supreme Court, even if he feels that he has been unduly deprived of his Fundamental Right.⁸²⁴

While it may seem like this exception contradicts the foundation of democracy, the core of this exception is based on the belief that the overall welfare of the state is paramount to that of the individual interest especially in the event of an emergency. Dr. B.R Ambedkar observed that in such a situation wherein the very foundation of the state is threatened, individual liberty cannot be allowed to destroy the very fabric of national security.⁸²⁵ He observed, "...it is equally clear that in certain cases, where, for example, the state's very life is in jeopardy, these rights must be subject to a certain amount of limitations."⁸²⁶

BASIC STRUCTURE DOCTRINE & PUBLIC INTEREST LITIGATION

In the landmark judgement of *Kesavananda Bharati v. State of Kerala* (1973)⁸²⁷, it was established that while the Parliament can amend the constitution, it cannot make any such

⁸²² M.V. Pylee, *Constitutional Government in India*, 5th edn. (S. Chand, 2007) at 60–62.

⁸²³ Article 32(4), Constitution of India,

⁸²⁴ Rakshit, "Right to Constitutional Remedy", 34(34/35) *Economic and Political Weekly* 2379.

⁸²⁵ Ibid.

⁸²⁶ D.D. Basu, *Introduction to the Constitution of India* 100 (LexisNexis, 24th edn., 2022).

⁸²⁷ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 : (1973) 4 SCC 225

amendments that would alter or destroy the basic features of the Constitution. Thus, the basic structure doctrine was established with this case.

Among the many basic features of the constitution that cannot be amended, there is judicial review. Article 32 confers upon the Supreme Court of India the power of Judicial Review and thus it becomes ostensible that the Article cannot be amended in a way that would take away this power. Underlining the significance of Article 32, the Supreme Court has characterized the jurisdiction conferred on it by Article 32 as "an important and integral part of the basic structure of the Constitution because it is meaningless to confer Fundamental Rights without providing an effective remedy for their enforcement, if and when they are violated."⁸²⁸ A right without a remedy is a right in vain.

In *Fertiliser Corporation Kamgar Union v. Union of India*,⁸²⁹ Chandrachud, CJ held that "the jurisdiction conferred on the Supreme Court by Article 32 is an important and integral part of the basic structure of the Constitution." Furthermore, in *L. Chandra Kumar vs Union Of India And Others*,⁸³⁰ It was again held that "the jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution." Henceforth, Article 32 is a part of the basic structure of the Constitution.

Moving onwards, Public Interest Litigation (hereinafter referred to as 'PIL') is a redressal mechanism through which any citizen, even third-party to a cause, can file a case under Article 32 or 226, wherein the interest of the masses has been affected and it's for the purpose of public welfare. The manner of filing a PIL is the same as that of filing a writ petition. The main objective of the concept of PIL is the representation of that aggrieved class of people that are unable to seek justice on their own.

Thus, securing justice has become more accessible as the Court has, through judicial precedents, diluted the rule of Locus Standi in PILs. Even a letter or postcard or telegram can count as a writ

⁸²⁸ M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) 1409

⁸²⁹ *Fertiliser Corporation Kamgar Union v. Union of India*, (1981) ILLJ 193 (SC), 11.

⁸³⁰ *L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125, 100 : (1997) 3 SCC 261.

petition.⁸³¹ Also if a person is acting bona fide and has a sufficient interest in the PIL, it will be allowed to proceed with it but it's a must that their intentions must be devoid of personal profit and/or political motive.⁸³²

CASE LAW ANALYSIS

Article 31

Kameshwar Singh v. State of Bihar (1952)⁸³³

In this case, the constitutional validity of the Bihar Land Reforms Act, 1950 was challenged that aimed to abolish zamindari by acquiring states. Singh contended that it violated his right to property under Article 31 and was discriminatory under Article 14 in the absence of fair and adequate compensation. The state's response came in the addition of Article 31A. The main issue was whether 31A provided sufficient legitimacy to land reform laws.

While the Supreme court upheld the act, it declared some of the provisions of it discriminatory particularly pertaining to the assessment of compensation. The court opined that compensation could not be illusory or arbitrary. The significance of this case is that it lit the match that eventually led to the repeal of Article 31.

R.C. Cooper v. Union of India (1970)⁸³⁴

Popularly known as the **Bank Nationalisation Case**, in this the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 was challenged under which 14 major private banks, including Cooper's Bank of India, were nationalised. It was contended that the act violated Article 19(1)(f) and Article 31 as the compensation was illusory. The state contended that the Act was a legitimate exercise of the State's power to nationalise, in public interest. The

⁸³¹Mohan Lal Sharma v. State of U.P., (1989) 2 SCC 609; Sunil Batra v. Delhi Administration, (1978) 4 SCC 494 : AIR 1978 SC 1675; Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

⁸³² Chourasia, "Right to Constitutional Remedies", 4(4) *Indian Journal of Law and Legal Research* 12.

⁸³³ Kameshwar Singh v. State of Bihar, AIR 1952 SC 252.

⁸³⁴ R.C. Cooper v. Union of India, AIR 1970 SC 564.

main issue was a.) Whether the Act violated Fundamental Rights and b.) Whether the effect or object of a Law should ascertain its constitutionality.

The supreme court held the Act unconstitutional. It said that nationalisation was not public interest and the compensation was not just or adequate. It also went on to say that a law's effect determines its constitutionality. This case overruled *Bella Banerji* and *Shankari Prasad*. Its significance comes from the fact that it led to the 25th Amendment.

Jilubhai Nanbhai Khachar v. State of Gujarat (1995)⁸³⁵

In this case, the Gujarat Agricultural Lands Ceiling Act, was challenged on the grounds that it deprived them of property and violated Article 300A of the Constitution. The main issue was whether property rights remained fundamental even after the 1978 amendment and whether Article 300A required due process and adequate compensation for acquisition.

The Supreme Court upheld the validity of the Act and concluded that prescribed compensation was not arbitrary. It also held that Article 300A is no longer a Fundamental Right and thus not a part of the basic structure of the constitution, though it is a legal right.⁸³⁶ This case further empowered the state to implement land reform laws for socio-economic development.

Kolkata Municipal Corporation v. Bimal Kumar Shah (2024)⁸³⁷

In this case, the Kolkata Municipal Corporation (KMC) attempted to forcefully occupy private land without following the prescribed process for statutory acquisition. Bimal Kumar Shah contended that this violated Article 300A. The main issue was whether deprivation of property requires following procedure established by law and what procedures are to be followed if a person is deprived of property.

The Court laid down mandatory procedural safeguards and sub-rights, in line with Article 300A of the Constitution, that must be present under any legislative enactment that aimed to

⁸³⁵ Jilubhai Nanbhai Khachar v. State of Gujarat, AIR 1995 SC 142.

⁸³⁶ G. Kanniga Shree & P. Brinda, "A Study on Evolution of Right to Property under Indian Constitutional Law", 2(1) *ILE Property and Land Law Review* (2024), available at <https://pllr.iledu.in/wp-content/uploads/2024/12/V2I1I2.pdf> (last visited June 27, 2025).

⁸³⁷ Kolkata Municipal Corporation v. Bimal Kumar Shah, (2024) SCC OnLine SC 418.

compulsorily acquire land for the purpose of public interest. Seven procedural sub-rights laid down by the court include (i) the right to notice, (ii) the right to be heard, (iii) the right to a reasoned decision, (iv) the duty to acquire only for public purposes, (v) the right to restitution and fair compensation, (vi) the right to an efficient and expeditious process, and (vii) the right to a conclusion. These seven sub-rights are to be the foundation of any law enacted under Article 300A of the Constitution, and the absence of any one would invite judicial review.

Appeal in Bengaluru–Mysuru Infrastructure Corridor Project (BMICP)⁸³⁸

In this case, the properties of landowners' were acquired in 2005 for BMICP but compensation was delayed until 2019. The delay and valuation of property was contended. The main issue was whether delay in compensation violated Article 300A and whether compensation should be on the basis of market value at the time of possession or the day of payment of compensation.

The Supreme Court held that Article 300A property cannot be deprived without adequate compensation. The court also invoked Article 142 to issue fresh awards on the basis of the market value in 2019 and not the acquisition date. This recent judgement elevated compensation quality under Article 300A and furthered the concept of market value compensation on the basis of payment of compensation rather than acquisition date.

Article 32

***Romesh Thappar v. State of Madras*⁸³⁹**

The facts of this case were that Cross Roads, a journal published by Romesh Thappar, was banned in the then State of Madras by a prohibition under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949.

Thappar contended that the ban was unconstitutional. He stated that the ban infringed his fundamental right to freedom of speech and expression under Article 19(1)(a) and filed the

⁸³⁸ State of Karnataka v. Landowners of BMICP Project, (2025) SCC OnLine SC 7.

⁸³⁹ Romesh Thappar v. State of Madras, AIR 1950 SC 124.

petition under Article 32. The main issue was whether the ban violated Article 19(1)(a), whether an infringement of right was actionable under Article 32 as statutory remedy and if Article 32 could be invoked directly.

The Supreme Court examined the restriction as applied to Thappar and declared the ban unconstitutional. The Court held that free speech was a fundamental right, and that the restrictions imposed were unreasonable. It was the first significant case to address Article 32, and effectively established it as a remedy to enforce violations of fundamental rights, as well as establishing the judiciary as the body to check the executive as an independent constitutional institution.

S.P. Gupta v. Union of India⁸⁴⁰

This case was primarily concerning the transfer and appointment of Judges. It was contended there was a lack of transparency in these processes and political interference and biases existed. The main issue was whether third parties were allowed to file writ petitions.

The supreme court allowed a relaxed interpretation of the rule of locus standi thus expanding its scope and paving the way for the foundation of public interest litigation cases. This case is invaluable in terms of enhancing the access to constitutional remedies to the masses.

Nilabati Behera v. State of Orissa⁸⁴¹

In this case, the son of the Petitioner died while he was in police custody. It was contended that her son's death invited violation of Article 21 (fundamental right to life) and she sought compensation. The main issue was whether or not compensation could be awarded under Article 32 in the event of custodial death.

The Supreme Court held that a custodial death is a violation of Article 21, but also made it clear to the State that they must award the appropriate compensation under Article 32 as this is part of the petitioner's right to a constitutional remedy. This case validated the general legal principle that a violator can and

⁸⁴⁰ S.P. Gupta v. Union of India, AIR 1982 SC 149.

⁸⁴¹ Nilabati Behera v. State of Orissa, AIR 1993 SC 1960.

should be held liable for custodial violence by state actors, and because it paved the way to compensatory remedies via writ jurisdiction.

Manohar Lal Sharma v. Union of India⁸⁴²

In this recent case, irregularities were found in the allocation by the government of coal blocks. This was challenged through a PIL under Article 32. It was contended that the allocation was done arbitrarily and did not have transparency. The main issue before the court was whether the unreasonable allocation of natural resources breached constitutional provisions.

The supreme court found the allocations to be unconstitutional and illegal and quashed 214 coal blocks between 1993 and 2010. This case highlights the ability of PILs to be able to expose high-level corruptions and unveil nationwide scams.

Anuradha Bhasin v. Union of India⁸⁴³

In this case, in light of Article 370 being abrogated, internet services were indefinitely suspended in Jammu and Kashmir. It was contended that this order by the government was in violation of Article 14, 19, 21 of the Constitution of India. The main issue was whether such indefinite suspensions were allowed and could pass the test of proportionality.

The supreme court held that though Fundamental Rights were subject to reasonable restrictions, they were protected by the constitution and thus the restrictions had to be reasonable and were subject to judicial review. This judgement furthered digital rights under Article 32 and emphasised the role of judicial review when there is a conflict in the digital arena between civil liberties and state interest.

CONCLUSION

The constitutional journey of Articles 32 and 31 reveals a broader transformation in India's understanding of democracy, from one of formal entitlement to one of practical justice. Article

⁸⁴² Manohar Lal Sharma v. Union of India, (2014) 9 SCC 516.

⁸⁴³ Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.

32 does, nevertheless, remain the primary means for enforcing rights and limiting state action via judicial review. Article 32 is the heart of the Constitution's justice rationale, which supports citizens' efforts to question government action and maintain Fundamental Rights. Furthermore, the developments in PIL and the loosening of standing have expanded the Article's reach even further, contributing to a new model of justice that is more accessible and welcomes broader forms of justice.

Article 31, in contrast, traced the early constitutional movement towards property as a private good as part of conservatism, which later succumbed to the pressures of distribution and social good. The 44th Amendment has had a severe impact on the Constitution itself, dealing several blows to its basic structure, amputating the concept of eminent domain and creating glaring inequities.⁸⁴⁴ With the Right to Property becoming a legal right under Article 300A and the emphasis on public good over entitlement to the property of the individual, Article 32 and Article 31 signify a preference for meaningful equality over formal equality rights. This shift towards a right that is ultimately legislative reflects a similar shift from formal equality to substantive equality.

In my opinion, however, stripping the Right to Property out its Fundamental Right status was a serious blow to the power of the Constitution and democracy itself. Property should not simply be considered an asset to be managed; rather, it is the foundation of dignity, independence, and living securely. After all, the citizens in society, usually the individual citizen, make up society. And if the individual is not protected, does the public have any real future of thriving?

⁸⁴⁴Gopal Sankaranarayanan, *The Fading Right to Property in India*, 44 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 230 (2011), available at <https://www.jstor.org/stable/43239608>.

CHAPTER 23

Legislative Powers to Modify Fundamental Rights (Articles 33–35)

By Nimansha Agarwal

INTRODUCTION

The constitution of any country serves as the foundation for legal statutes, which are often interpreted as rules and regulations for a balanced society.⁸⁴⁵ Legal statutes are the wheels that facilitate the administration of appropriate decisions in cases requiring legal intervention. These legal statutes derive their authenticity and authority from the Indian Constitution, the supreme authority, whose provisions are underpinned by the Preamble, which lays out the basis of all laws.

While the independence of our country gave us freedom from other authorities, it left a void in the justice and administrative officers. The esteemed construction makers of our country drafted our Indian constitution to provide a society with an authority which lays down their rights and duties from which all the laws derive their validity.

It's common knowledge that any law which is in contravention to the constitution is considered invalid. There are numerous rights and duties of people and the authorities involved in the services of the people, which include Articles 33, 34 and 35 falling under Part III of the constitution dealing with Fundamental rights, though these Articles are known as certain limitations to the fundamental rights imposed by legislation under certain circumstances.

These articles are limitations on the Fundamental rights of the people for the overall safety of the people of the nation. These articles cover major circumstances varying from the modifying or

⁸⁴⁵ Government of India, *Ministry of Law and Justice*, “Constituent Assembly Debates,” available at: <https://legalaffairs.gov.in>

modifying of Fundamental rights of certain group primarily covering people in armed forces for effective discharge of duties for public maintenance during disputes to parliaments power to pass laws for indemnifying or validate a action during Marshall law to granting parliament powers to institute laws necessary for effective implementation of sections involved in Part III of the Indian Constitution.

LITERATURE REVIEW

1. M.P. Jain, *Indian Constitutional Law*, page, Lexis Nexis, 9th Edition, 2025- The most standard and most referred to by law practitioners and students for detailed analysis of the constitutional law for interpretation of the articles. As an Expert constitutionalist and Jurist who has contributed to the field and is widely known for his comprehensive books which offer a logical approach by tracing the development of Criminal law, Civil law, and Constitutional law, with commentaries concerning case laws and is updated and its content improved from time to time.⁸⁴⁶
2. DD Basu, *Commentary of the constitution of India*, 9 the Edition, volume 6 -7, 2016- DD Basu known significantly for his renowned work and contributions in the legal field and his book here serves as an analytic and includes case laws of supreme court updating from time to time for an updated and diverse contents.⁸⁴⁷
3. Sujit Choudhary, Madhav Khosla and Pratap Bhanu Mehta (editors), *The Oxford Handbook of the Indian Constitution*, Oxford University Press, 2016- edited by the practitioners of the Indian law field modifying and adding Indian perspective explaining and deep analysis of the topic involved in the Indian constitution for a better understanding of the Indian constitution.⁸⁴⁸

⁸⁴⁶ Jain, M.P., *Indian Constitutional Law* (LexisNexis, 9th edn., 2025).

⁸⁴⁷ D.D. Basu, *Commentary on the Constitution of India*, Vols. 6–7 (9th edn., LexisNexis, 2020)

⁸⁴⁸ Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian Constitution* (Oxford University Press, 2016)

RESEARCH METHODOLOGY

This chapter is an analytic and comprehensive study derived from various primary and secondary sources like books, journals, articles and statutes, and it focuses on the legal analysis of the topic.

ARTICLE 33

[33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.— Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]⁸⁴⁹

The specific purpose of this Article can be interpreted as modify the rights conferred to the armed forces for maintaining public harmony and balance by the parliament for proper discharge of their duties while maintaining discipline by balancing fundamental rights accommodating the requirements of their duties demand for safeguard of the national security and public order exclusively by parliament. As this law is a general exemption of the fundamental rights under Part III as this Article restricts, abrogates or modifies the fundamental rights of the Armed Forces.

⁸⁴⁹ Art.33, The Constitution of India, 1950.

K Kochuni vs State of Madras - This case lays down the interpretation of Article 33 and cites the conditions as the extent necessary, Interpreting that the ambit of Article 33 which mentions the parliamentary power to alter or modify any Fundamental rights of the armed forces personnel for the purpose of effective discharge of their duties.⁸⁵⁰

As the people involved in armed forces undergo crucial role in balancing the peace in society by discharging crucial duties for the security of the nation as they are the individuals with special purpose and task for fulfillment they have special requirements which involves fulfilling of certain exceptional tasks, concealment of information and proceedings in the organization undergoing drastic situations⁸⁵¹ which requires parliament to modify the fundamental rights like

- Restriction of freedom of speech - open discussion of vital incidents, decisions or discussions on social media
- Restriction of access to legal representation - under certain circumstances, the people of the armed forces are restricted in this right.

In Sukhdev Singh v. Union of India, AIR 1975 SC 1331, the Court held that the armed forces, owing to their special duties, operate under specific conditions that justify modifications to their fundamental rights. Parliament has the power under Article 33 of the Constitution to restrict or abrogate such rights to enable members of the armed forces to discharge their functions effectively, even if such duties may otherwise amount to an infringement of fundamental rights.⁸⁵²

Similarly, in S.P.N. Sharma v. Union of India, the petitioner challenged the denial of legal representation during court-martial proceedings as a violation of his rights under Article 22. The Supreme Court upheld the restriction, observing that under Article 33, Parliament is empowered to curtail or modify the application of fundamental rights to armed forces personnel, and therefore the denial did not amount to an unconstitutional violation.⁸⁵³

⁸⁵⁰ K Kochuni vs State of Madras AIR 1960 SC 1080

⁸⁵¹ Deepnainee Kaushal, The Doctrine of Exhaustion of Alternate remedy : A conceptual Analysis , 2020, Volume 3, Issue 3 ,International Journal of legal science and Innovation. page 399-411

⁸⁵² Sukhdev Singh v. Union of India, AIR 1975 SC 1331.

⁸⁵³ S.P.N. Sharma v. Union of India, AIR 1968 SC 1052.

JUDICIAL INTERPRETATION

Article 33 of the Indian Constitution empowers Parliament to modify or restrict the application of fundamental rights to the members of the Armed Forces, paramilitary forces, police forces, intelligence agencies, and analogous bodies in order to ensure the proper discharge of their duties and the maintenance of discipline. The framers introduced this provision to strike a balance between individual rights and the imperatives of national security, public order, and discipline within forces entrusted with special responsibilities.

Originally limited to the Armed Forces, the scope of Article 33 was expanded by the Constitution (Forty-second Amendment) Act, 1976, which brought within its ambit forces charged with the maintenance of public order, such as paramilitary and other armed forces. This ensures that restrictions on their rights are not arbitrary but are instead legislatively sanctioned and directed toward the higher purpose of safeguarding national security and discipline.

Article 33 empowers Parliament to restrict or abrogate the fundamental rights of persons serving in:

- Armed Forces (Army, Navy, Air Forces)
- Paramilitary and combat forces (e.g., Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police, Assam Rifles, etc.)
- Intelligence services (e.g., Research and Analysis Wing (RAW), Intelligence Bureau (IB), etc.)
- Police forces and other forces charged with the maintenance of public order

This wide application flows from the 42nd Constitutional Amendment (1976), which extended Article 33 beyond just the Armed Forces.

To operationalize Article 33, Parliament has enacted a series of statutes that govern discipline, duties, and restrictions on rights:

- Army Act, 1950
- Air Force Act, 1950

- Navy Act, 1957
- Border Security Force Act, 1968
- Central Reserve Police Force Act, 1949
- Indo-Tibetan Border Police Act, 1992
- Assam Rifles Act, 1941 (later amendments/updates)
- Police Acts (central + state-specific legislations regulating police discipline and conduct)
- Intelligence Organisations (Restriction of Rights) Act, 1985 – specifically restricts fundamental rights like freedom of speech, association, and forming unions for members of IB, RAW, and similar agencies.

In *Union Of India vs EX – Flight Lieutenant GS Bajwa*⁸⁵⁴, the Supreme Court clarified the ambit of Article 33 of the Constitution, holding that Parliament is empowered to restrict or abrogate the fundamental rights of armed forces personnel, but only to the extent necessary to ensure proper discharge of their duties, maintenance of discipline, and safeguarding national security and public order. The petitioner, a member of the Air Force, challenged restrictions imposed on his fundamental rights. The Court upheld the validity of such restrictions, observing that they were permissible under Article 33 since they were designed to maintain the efficiency, discipline, and integrity of the armed forces, which are crucial for the security and well-being of the State and society.

In *Ram Swarup vs Union of India* the court held that if, under any circumstances, fundamental rights are modified under the Army Act, then it is assumed that parliament has exercised its power under Article 33 of the Indian Constitution.⁸⁵⁵ However, this decision of the Honourable court was criticized for its nature, and people contended that the explanation wasn't enough to understand the ambit of Article 33

The case *Union of India v. Major Bahadur Singh* modified the regime of rights of persons in the armed forces and clarified that the requirement of discipline takes precedence over the

⁸⁵⁴ Union Of India vs EX (1955)59 DLT 742

⁸⁵⁵ Ram Swarup vs Union of India (2006) 1 SCC 398

unrestricted enjoyment of fundamental rights. The Court emphasized that while members of the armed forces do not forfeit their rights entirely, these rights stand curtailed to the extent necessary for ensuring discipline, efficiency, and readiness of the forces. The judgment reinforced the principle under Article 33 that the special needs of the armed forces justify reasonable restrictions on fundamental rights, provided such restrictions are aimed at safeguarding national security and maintaining the integrity of military service.⁸⁵⁶

In *R.S. Vishwas v. Union of India*, the Supreme Court clarified the scope and ambit of Article 33, addressing many of the questions raised in earlier case law concerning the rights of armed forces personnel.⁸⁵⁷ The Court emphasized that Article 33 grants Parliament the authority to modify or restrict the application of fundamental rights to armed forces, police forces, and analogous bodies in order to preserve discipline and ensure the effective discharge of their duties. Specifically, with reference to the Army Act and other related legislations, the Court affirmed that such statutory restrictions do not amount to a violation of fundamental rights, since they flow directly from the constitutional mandate under Article 33. The judgment thus made the constitutional power under Article 33 more transparent, reaffirming that discipline and operational effectiveness of the armed forces outweigh the need for full enjoyment of rights in certain contexts.⁸⁵⁸

ARTICLE 34

34. Restriction on rights conferred by this Part while martial law is in force in any area.—
*Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.*⁸⁵⁹

⁸⁵⁶ Union of India vs Major Bahadur 2006 1 SCC 368

⁸⁵⁷ Ishan S Joshi, Retrospective Diagnosis of Article 35: Analysis of its Constitutional Evolution,, Centre for Comparative Constitutional Law and Administrative Law National Law University Jodhpur, August 24, 2022

⁸⁵⁸ R.S. Vishwas vs Union Of India AIR 1983 SC 658

⁸⁵⁹ Art.34, The Constitution of India, 1950.

This article aims to provide indemnity (legal protection) to actions of government officials during the enforcement of martial law for the restoration of public order by:

- Validating any punishment
- Indemnifying any person (protection from legal consequences for any act done for public interest)
- Restriction of Fundamental rights during Martial law
- Protect any fortifiers that happened during the Martial Law

Interpretation of the term Martial Law

The word "Martial law" refers to the condition when there is so much disbalance of the public order and security and the civilian government is overpowered by military rule to reestablish the harmony of society.⁸⁶⁰ In the Indian context, martial law refers to the condition where military rules supersede civilian law, with restrictions on certain Fundamental rights like freedom of speech, movement, while excluding certain core Fundamental Rights, but it does not imply arbitrarily taking actions and decisions, and thus it is available for judicial review".

As mentioned in case law of *ADM Jabalpur vs Shivkant Shukla*, though the case doesn't relate to the ambit of Article 34 but it provides with information that if there is any instance of emergency in the country the fundamental rights of the people are limited and it lays the limitations of the executory power during that period and in this it was ruled out that the restriction of Fundamental rights are subjected to judicial review.⁸⁶¹

Since martial law has never been invoked Post-Independence there isn't major recent development in the provisions governing it but from but the amendments done in other provisions have been interpreted through cases decided which resonates with the conditions of the provision for example In the case of *Justice Puttaswamy vs Union of India*, it was ruled out by the court that during any situation Article 21 which Right to Life is cannot be suspended,

⁸⁶⁰ E K Killiam, Martial law in times of Civil Disorder, Volume 37, issue 9, Law and order 1989, page 44-47

⁸⁶¹ *ADM Jabalpur Vs Shivkant Shukla* AIR 1976 SC 1207, Shalini alias Simmy, I, Volume 5, issue 3, Importance of Fundamental Rights in Indian Constitution, page -104-108.

though certain activities can be restricted but it cannot be completely suspended. The court elaborated on the scope and ambit of Article 21.⁸⁶²

Though in our constitution, the situations aren't mentioned specifically, this Article provides the remedy to the officials for their actions, maintaining the security of the nation.

During martial law, general rights like the Right to self-incrimination (Article 20) and the Right to life (Article 21) cannot be suspended.

As we have studied that the history of martial law is a bit complex, as back to the era of British rule, introduced by the British Colonial Authorities, and it was applied various times, like in the 1857 rebellion, where sepoys were protesting for independence from British Raj and on one instance during a people's meeting in Punjab, where in the name of imposition of Martial law, General Dyer opened fire on the people, including women and kids, as he interpreted it as a meeting for planning a rebellion (1919).

Difference between Martial Law and Emergency as mentioned in the case of Makhan Singh v. State of Punjab⁸⁶³ in which the court cited down the thin line differences in the concepts and application of Martial law and Emergency Provisions.

Martial Law	Emergency Provisions in Constitution
1. The concept of Martial law dates back to the era of British law, as it derives its validity from English common law	1. Emergency provisions are distinct from Martial law in certain ways which including their validity under German law
2. During martial law, the military takes over the government proceedings over the civilian government and fundamental rights of the people are suspended, while	2. As the emergency provisions affect all aspects, not just the fundamental rights, for example, Article 352- the extension of parliament, not just the

⁸⁶² Justice Puttaswamy vs Union of India (2017) 10 SCC 1, (The Indian Journal of Constitutional Law, 2020) Volume 8-9, page referred 18,35.

⁸⁶³ Makhan Singh v. State of Punjab AIR 1964 SC 381

the law in existence is suspended, and so are the courts.	Fundamental rights existing, and courts and laws continue to assert
3. It is applicable under the grounds which are not explicitly mentioned but are referred to as any situation affecting National Security and public order.	3. Explicitly defined in emergency provisions, where we have 3 kinds of emergencies which are namely: 1. National Emergency 2. State Emergency 3. Financial Emergency
4. Martial law is imposed under conditions like insurgency. Rebellion, riot, and violent resistance for restoring the public order and peace for national stability	4. The grounds mentioned under the Articles for the imposition of emergency are mentioned: -Wars - External Aggression -Armed Rebellion

Though the case *Makhan Singh vs State of Punjab* is not directly involved in interpreting Article 34 it was related with the interpretation of article 359 which was a emergency provisions and laying down the interpretation that president has the right to suspend the courts to enforce articles 14, 21 and 22 as compared to martial law where courts are suspended permanently unlike these restrictions in emergency.

State of Rajasthan vs Union of India- It involved the state of Rajasthan who claimed to be threatened after the general elections of 1977 that they will face president's rule imposition by several other states. Due to which the court ruled out that the president's power under Article 356 can be questioned when mala fide intentions of the president are involved, and analyzed the

Article. This case is related to the significance of balance of power and its scope is related to the concept of Article 34 of constitution as it says during the critical times the action taken should be lawful and protection from legal action is granted only when there was necessity and in case of absence of mala- fide intention.⁸⁶⁴

Keshavnanda Bharti vs State of Kerala - It is a landmark case which is widely referred to and known as the case which established the “Basic Structure” Doctrine, which is a legal principle which holds that certain fundamental rights cannot be destroyed or modified to safeguard the core values and principles of the constitution. It established that the parliament has the power to amend the Constitution under Article 368. As the case focused on establishing the supremacy of the constitution and defined the Doctrine of Basic Structure, it held that the constitutional powers of parliament in abrogating Fundamental rights during martial law shouldn’t be absolute.⁸⁶⁵

Extra-Judicial Execution Victim Families Association Vs. Union of India- In this case, the petitioner alleged over a thousand fake encounters by the appointed police and armed forces in the state of Manipur, to which the respondents contended that they were necessary. The court ordered a CBI investigation over it and emphasized the right to know about the truth as a basic fundamental right, and established that, no matter what, judicial supervision over the actions of the armed forces is necessary for human rights protection, and affirmed Article 21 even in conflict zones.⁸⁶⁶

ARTICLE 35

35. Legislation to give effect to the provisions of this Part.—Notwithstanding anything in this Constitution,—

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

⁸⁶⁴ *State of Rajasthan vs Union of India* AIR 1977 SC 1361

⁸⁶⁵ *Keshavnanda Bharti vs State of Kerala* AIR 1973 SC 1461, Mohd Faiz Khan and Syed Imam Fatima Hasan, *Doctrine of Judicial Review in Indian Constitution*, 2020, Volume 2 , Issue 3 , *International Journal of Legal Science and Innovation* page 83-94

⁸⁶⁶ *Extra Judicial Execution Victim Families Association v. Union of India*, (2016) 14 SCC 536.

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part,

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.—In this article, the expression "law in force" has the same meaning as in article 372.⁸⁶⁷

Article 35 was incorporated in the Constitution to eliminate inconsistency and ensure legal stability in the effective implementation of Fundamental Rights by centralizing certain legislative powers in the hands of Parliament.⁸⁶⁸ From the very commencement of the Constitution in 1950, Article 35 vested the authority in Parliament to make laws with respect to matters under Articles 16(3), 32(3), 33, and 34, even though they otherwise fall within the State List. This centralization was intended to maintain uniformity in the application of Fundamental Rights and prevent a fragmented approach by different states. Since Parliament is entrusted with the responsibility of maintaining balance and harmony among the people, Article 35 ensures that effective and uniform laws are enacted, treating all citizens equally in these specific areas.

- Article 16(3)- dealing with conditions like “residence”, which is referred to as a condition of employment to which the court can put certain restrictions as it deems fit.
- Article 32(3)-regarding the powers of Parliament regarding the power of courts other than the Supreme Court to issue writs.

⁸⁶⁷ Art.35, The Constitution of India, 1950.

⁸⁶⁸ Dev Nilesh Jaju, Fundamental Rights of Indian Constitution, 2023, Volume 6 , Issue 1, International Journal of law management Humanities page 922- 928

- Article 34 - refers to the power of parliament to indemnify any act of the person during the imposition of martial law.

This Article was introduced for the centralization of the powers to maintain uniformity in terms of the protection of the Fundamental rights of the people. As this article permits only the parliament to enforce laws for managing Fundamental rights regardless of the culture of states for national interest, excluding state legislation from it. As mentioned in the case of :

Prem Chandra Garg Vs Excise Commissioner Uttar Pradesh- though this case didn't directly had Article 35 in issue but the part of verdict that the Parliament's power under Article 35 to enact procedural law as the Four judges bench decided that under Article 142(1) have a wider scope and it has power to enact laws which should be consistent with the Fundamental rights prescribed by constitution which links to Article 35 that the parliament have to enact laws for the enforcement of the Fundamental rights of the people.⁸⁶⁹ It allows parliament to impose penalties and punishments through rules and regulations.

Bachan Singh vs State of Punjab, validated legislation made under article 35 for penal consequences and is a landmark case which is referred to as the case which established a doctrine of "rarest of the rare" in cases of imposition of the Death penalty.⁸⁷⁰ The court emphasized that the death penalty should be imposed only in exceptional circumstances, and of death penalty under Section 302 of the Indian Penal Code, which prescribes the death penalty for the offence of murder. The verdict was backed by Article 21, which is regarding the Right to life.

In *AK Roy vs Union of India*, the Supreme Court addressed the constitutional ordinance and while dealing with the power and validity of the National Security Act 1980 and the power of Parliament to make laws and ordinances under Article 35 for the Fundamental Rights.⁸⁷¹ This case involved a member of Parliament who was detained under National Security Ordinance 1980 as he challenged the detention, saying that his fundamental rights were violated and questioning the validity of the act to which the supreme court ruled out that the act was valid and scope of legislative powers and their limitations for National Security.

⁸⁶⁹ Prem Chandra Garg Vs Excise Commissioner Uttar Pradesh AIR 1963 SC 996

⁸⁷⁰ Bachan Singh vs State of Punjab AIR 1980 SC 989

⁸⁷¹ AK Roy vs Union of India AIR 1982 SC 710

In *Kharak Singh vs State of Uttar Pradesh* it was held that fundamental rights cannot be restricted by state police as Article 35 is exclusive to parliament.⁸⁷² In this case it was alleged that due to the involvement of police to carry out surveillance, maintain records of the movement and activities of the public, the Petitioner's fundamental rights are violated specifically Article 21 (Right to Privacy).⁸⁷³ In this the verdict was given in favour of Petitioner and the odd visits were held unconstitutional and infringement of the Fundamental rights which made it clear that Parliament can enact laws for protection from infringement even by the police force this case was followed and cited in numerous case and was complete establishment of right to privacy in this case.

CONCLUSION

Article 33	Article 34	Article 35
Article 33 aims to provide power to the parliament for modification of the Fundamental rights of the people involved in armed forces for purposes of national security. -Maintaining National Security Fulfilling Special Requirements Protection of Sovereignty	As the Article suggests, the parliament is empowered the parliament balance the needs of the citizen while in dire circumstances like civil war, armed rebellion, insurgency or any situation where any extraordinary severe situation,	The whole purpose of the Article is to have a provision for legislation to make laws to address certain issues about the fundamental rights which lie exclusively with the parliament, not including State legislatures.
Though everyone is considered equal and given the same rights but Article 33	though it's not mentioned in the constitution about any specific situation for the	Though the ambit of Article 35 is done through various case laws interpretations

⁸⁷² Kharak Singh vs State of Uttar Pradesh AIR 1963 SC 1253

⁸⁷³ Namit Oberio, The right to privacy : Tracing the judicial approach following Kharak singh case , Volume 1, Issue 1, The indian Journal of law, 2007, page 224-231

is an exception to the general rule as it allows the parliament to modify fundamental rights of the people's armed forces by restricting them or abrogating them -Amended in 1984 to include certain more fields of forces	protection of individual rights - Although the ambit of Article 34 is done through various case laws interpretations there hasn't been a direct amendment.	there hasn't been direct amendment as this Article is Subjected to the Articles mentioned in the sub- clauses of the Article.

CHAPTER 24

State's Obligation to Promote Welfare (Articles 36–38)

By Tejas Sitaram Husale

INTRODUCTION

The Indian Constitution says that the government should try to make people's lives better in a fair and just society. Part IV (Articles 36–51)⁸⁷⁴ The Directive Principles of State Policy (DPSPs) talks about this point of view. Article 37 says that these rules are not legally binding, yet the government needs them. Articles 36, 37, and 38 make up the welfare state framework of One India.

Article 36 defines "State" as Article 12 of Part III to make sure that Fundamental Rights and Directive Principles are the same. Article 37 says that courts can't enforce these principles, but they are very important for the activities of the government and the legislature. Article 38 declares that the government must make sure that there is a fair social order that makes economic, social, and political inequality less severe. The Preamble to the Constitution says that everyone is equal and has the right to fair treatment. This connects these rules. The Fundamental Rights make it harder for the government to preserve people's freedoms, and the DPSPs call for social justice and the well-being of the public. At first, the Constitution was hard to understand because it talked about rights and duties.

Courts have been able to make Parts III and IV work together thanks to new legal ideas like harmonic construction. DPSPs are having a bigger and bigger effect on welfare programs and regulations. This study shows how rules that can't be enforced can influence the government. There have been changes to Articles 36 to 38 of India's constitution over time. This chapter looks at how the courts have understood them and what policies they have led to. This article shows

⁸⁷⁴ "Part IV- Article 36-51." Unacademy, 18 Apr. 2022, unacademy.com/content/clat/study-material/legal-reasoning/part-iv-article-36-51/.

that these articles give a moral and constitutional basis for setting up a welfare state, even though they can't be enforced.

THE HISTORY AND CONSTITUTION OF WELFARE STATE IDEAS

The Articles 36–38 of the Indian Constitution were meant to address the country's colonial heritage, social and economic inequities, and changes to constitutions around the world. These articles comprise the first part of the Directive Principles of State Policy (DPSPs). They explain how the Constitution imagines a welfare state based on indigenous political movements and models from other countries, such as Ireland, Spain, and socialism.⁸⁷⁵ The DPSPs were based on Article 45 of the 1937 Irish Constitution. This article was based on Spain's 1931 Constitution. These principles were moral obligations to bring about social and economic transformation, but they didn't give anyone legal rights. The framers of the Indian constitution looked to Ireland for inspiration since Ireland, like India, was coming out of colonial domination and sought a fair democracy.⁸⁷⁶ Socialist ideas that proliferated over the world also had an effect on Indian leaders. In India after colonialism, many people thought that the government should alleviate poverty, properly divide resources, and protect poor people.

Socioeconomic Conditions Before the Constitution

British reign in India made the country poorer and made divisions between castes, classes, and genders worse. After independence, the Indian government had to come up with a new plan for a fair society because so many people were illiterate, landless, and denied basic human rights. The Indian National Congress's 1931 Karachi Resolution pledged civil rights, minimum salaries, and free education. These concepts were later added to Part IV of the Constitution.⁸⁷⁷

The 1935 Government of India Act as an example

The 1935 Government of India Act was mostly about administering the country, although it did have "Instruments of Instructions" for governors that were similar to DPSPs. These commands

⁸⁷⁵ Kalse, Anant. Directive Principles of State Policy 2017.

⁸⁷⁶ "Directive Principles of State Policy-Articles 37." Unacademy, 2 Mar. 2022, unacademy.com/content/nda/study-material/general-knowledge/directive-principles-of-state-policy-articles-37/.

⁸⁷⁷ Team, NEXT IAS Content. Directive Principles of State Policy (DPSPs): Part IV (Article 36-51). 9 Mar. 2024, www.nextias.com/blog/directive-principles-of-state-policy-dpsps/.

that didn't have to be followed were the first steps in the Indian Constitution's non-justiciable duties.⁸⁷⁸

Debates in the Constituent Assembly

Discussions in the Constituent Assembly about Articles 36–38 were based on ideas. Dr. B.R. Ambedkar dubbed the DPSPs "new features" of the Constitution, but he said they were important for social and economic democracy. He thought that political democracy wouldn't work without fairness in society and the economy.

Ayyar claimed that DPSPs were important for good government, even though they weren't legally binding. K.T. Shah, a well-known socialist speaker, said that socio-economic rights, such as the right to labour and recognition for unpaid effort, should be enforceable. He said that not being able to enforce these was bad. Even if people didn't agree with him, his views affected the Constitution. For example, the 42nd Amendment inserted "socialist" and "secular" to the Preamble.⁸⁷⁹

Strategic Compromise: Not being able to be sued

It made sense to say that DPSPs couldn't be enforced. In 1950, the Indian government didn't have the money or people to protect social and economic rights in court. Ambedkar termed these regulations "instruments of instruction." The people who wrote the Constitution found a middle ground by adding ideas that could change things without declaring them law.

This part connects Articles 36–38⁸⁸⁰ to the Preamble's commitment of fairness, justice, and respect. Part III's Fundamental Rights say that the state can't get involved, but the DPSPs say that it has to. Because of this connection, court case law has evolved.

The Supreme Court said in the case of *Kerala State v. N.M.*⁸⁸¹ that social justice programs based on the DPSP should uphold Article 14's promise of equality. The Court said that equality has to mean more than just following the rules. Articles 36–38 were written with both historical and forward-looking goals in mind. It brought together knowledge of constitutional law around the

⁸⁷⁸ Mahawar, Sneha. "Government of India Act, 1935." IPLeaders, 6 July 2022, blog.ipleaders.in/government-of-india-act-1935-3/.

⁸⁷⁹ "24 Nov 1948 Archives - Constitution of India." Constitution of India, 2022, www.constitutionofindia.net/debates/24-nov-1948/.

⁸⁸⁰ "Part IV Archives - Constitution of India." Constitution of India, 2022, www.constitutionofindia.net/parts/part-iv/.

⁸⁸¹ *Kerala State v. N.M.*, AIR 1976 SC 490.

world with the social and political reality of India. These standards offer a moral and legal standard for making laws and running the government, even if they can't be enforced in court. They help keep the promise of change in the Indian Constitution by interpreting the law and making welfare policies.

LEGAL ANALYSIS OF ARTICLE 36–38

Article 36, Part IV: What does "State" mean?

[36. “Unless the context requires otherwise, ‘the State’ has the same meaning as in Part III.”]

This simple cross-reference has a big effect on the range of welfare obligations and accountability.

Article 12⁸⁸² The Constitution says that "State" means the central and state governments, legislatures, and all local or other authorities in India or under their control. Judicial interpretation has broadened this idea to include statutory entities, public sector corporations, and even private groups that conduct public work or are significantly controlled by the government.

This reading considerably expands the Directive Principles. Municipalities, panchayats, public colleges, and public-good providers are now responsible for welfare. The Court said in *Ramana Dayaram Shetty v. International Airport Authority* that public institutions must treat contracts equitably and in accordance with the Constitution. Article 36⁸⁸³ gives a broad definition to Part IV's constitutional morality so that it can be used in all public institutions in India.

Article 37: Basic Nature and Not Being Able to Be Judged

[37. *Application of the principles contained in this Part.—The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.]*

⁸⁸² Joshi, Krishnendra. “State” under Article 12 of the Constitution of India.” IPleaders, 10 May 2019, blog.ipleaders.in/state-article-12-constitution-india/.

⁸⁸³ “Article 36: Definition. | Constitution of India.” Kanoongpt.in, 2023, kanoongpt.in/bare-acts/constitution-of-india/articles-part-iv-article-36-8d8c4d2959f4a255.

There are constitutional problems with Article 37. The State must use the Directive Principles when establishing laws, which are "fundamental in the governance of the country," but no court may make them happen.

The writers of this essay chose to compromise. They recognized the DPSPs could make a difference, but the State didn't have much money or staff in the first few years of independence. Because of this, they preferred flexibility to enforcement.

The statement "fundamental in the governance of the country" is very important. Even though courts can't directly enforce regulations, they are ethically and politically enforceable. These rules must be followed by CEOs and lawmakers in their policies.⁸⁸⁴

The Supreme Court has made this moral code in the Constitution stronger over time. The case of *Kesavananda Bharati v. State of Kerala*⁸⁸⁵ said that Parliament has the right to modify the Constitution, but it also said that DPSPs are part of the "basic structure" and can't be modified. The case of *Minerva Mills Ltd. v. Union of India*⁸⁸⁶ said that Parts III and IV make up the Constitution's conscience.

Article 37 says that DPSPs are not legally useless. Instead, they become norms for interpreting the Constitution, establishing policy, and running the government. It keeps governments accountable through the voting process and public opinion, not through the courts.⁸⁸⁷

Article 38: The Order of Social Justice

Article 38 of the DPSP is one of the longest. It says what the State must do:

The first sentence says, *"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political, shall inform all the institutions of the national life."*

⁸⁸⁴ "Justiciability of ESC Rights - the Indian Experience." Umn.edu, 2025, [hrlibrary.umn.edu/edumat/IHRIP/circle/justiciability.htm](http://library.umn.edu/edumat/IHRIP/circle/justiciability.htm).

⁸⁸⁵ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁸⁸⁶ *Minerva Mills Ltd. v. Union of India*, 1980 AIR 1789.

⁸⁸⁷ Team, Edukemy. "Directive Principles of State Policy (DPSP) – Indian Polity Notes." Blog - Edukemy's Blog for Aspirants, Edukemy, 18 Sept. 2023, edukemy.com/blog/directive-principles-of-state-policy-dpsp-indian-polity-notes/.

(2): *"The State shall, in particular, strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities, and opportunities, not only among individuals but also among groups of people residing in different areas or engaged in different vocations."*

These rules make a strategy for a fair society. The first part of the Preamble talks about social, economic, and political justice right away. The 44th Amendment to the Constitution in 1978 inserted Clause (2). This part shows how equality has changed over time. It moves welfare duties from people to groups, considering disparities in jobs and regions.

This two-part plan is very important in India's heterogeneous society. Article 38 says that structural injustice is a constitutional issue and that inequalities between people and groups must be lessened.⁸⁸⁸

Article 38 gets a lot of support from the courts.⁸⁸⁹ The Court backed Article 38's Scheduled Caste and Scheduled Tribe compensation programs in the case of *Kerala State v. N.M.* to promote real equality. The Court looked at D.S. Article 38(2) pension benefits. *The Nakara v. Union of India*⁸⁹⁰ case removed discriminatory laws that kept older retirees from getting new benefits.

Article 38 made a lot of assistance programs, like the National Food Security Act and MGNREGA. These programs give disadvantaged people in cities and rural areas the tools they need to fight social and economic inequality.

TOOLS FOR CONSTITUTIONAL MORALITY AND POLICY

So, Articles 36–38 set out India's aim for welfare in the Constitution. Article 36 says that a lot of government agencies have to obey welfare rules. Article 37 safeguards the main ideas behind these instructions, even though the law can't make them happen. Article 38 says that all countries should work for social fairness. These articles guide morality in policy and the Constitution. They don't have the force of law, but people and lawmakers can use them to judge what the

⁸⁸⁸ Rishabh. "Directive Principles of State Policy: Their Role in Indian Governance." Sleepy Classes IAS, 21 Oct. 2024, sleepyclasses.com/directive-principles-of-state-policy/.

⁸⁸⁹ Verma, Muskan. "Directive Principles of State Policy || BYOL Academy." BYOL Academy, 9 Apr. 2025, byolacademy.com/upsc-prelims-gs-paper-1/directive-principles-of-state-policy/1372/.

⁸⁹⁰ *The Nakara v. Union of India* AIR 1983 SC 130.

government does. Judicial Interpretation and Key Case Laws set up the Strong Non-Justiciable Directives.⁸⁹¹

Articles 36 to 38 are non-justiciable Directive Principles of State Policy (DPSPs), but Indian courts have purposefully read them as constitutional. The courts have put these social and economic rules into action by integrating Parts III and IV, adding to Article 21, and opening up new ways for Public Interest Litigation (PIL).

The Supreme Court said that Parts III and IV need to work together for the Directive Principles to be put into action without violating Fundamental Rights. In *Champakam Dorairajan v. State of Madras*, AIR 1951 SC 226⁸⁹², the Supreme Court said that Directive Principles could not override Fundamental Rights.

The case put an end to the difference between rights that can be enforced and goals that people want to reach.

Kesavananda Bharati v. Kerala (1973) 4 SCC 225⁸⁹³ modified this.

- Key Facts: Religious leaders opposed revisions to the constitution and land reforms that would have an effect on property rights.
- Legal Question: Can Parliament modify the Constitution as much as it wants?
- Arguments: The people who signed the petition said that the modifications went against the Constitution's foundation. The State declared it could adjust anything to reach its social and economic aims.
- Judgment: The Court maintained Parliament's right to modify the Constitution by a vote of 7–6. It also used the Basic Structure Doctrine to keep the Constitution's core safe.
- Effect: The choice makes Parts III and IV just as significant as the Constitution's basic framework.

⁸⁹¹ “Modes of Constitutional Interpretation.” [Www.everycrsreport.com](http://www.everycrsreport.com), 15 Mar. 2018, www.everycrsreport.com/reports/R45129.html.

⁸⁹² *Champakam Dorairajan v. State of Madras*, AIR 1951 SC 226.

⁸⁹³ *Kesavananda Bharati v. Kerala* (1973) 4 SCC 225.

Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789⁸⁹⁴, set up this cooperative reading.

- Facts: The 42nd Constitutional Amendment tried to put DPSPs above Fundamental Rights.
- Legal Question: Did this alteration fit in with the structure?
- Arguments: The petitioners contended it knocked Parts III and IV out of whack.
- Decision: Sections 4 and 5 of the 42nd Amendment were thrown out, showing that fundamental rights and DPSPs are connected.
- Effect: This made it clear that "the Constitution is based on the balance between Parts III and IV." By introducing DPSPs to help with interpretation, the Supreme Court made Article 21 more important.

The Court said in *Maneka Gandhi v. Union of India*, AIR 1978 SC 597⁸⁹⁵, that the right to life encompasses freedom and dignity. This made it possible for social and economic rights.

Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180⁸⁹⁶

- Facts: The people who lived on the sidewalk struggled to stay there, saying they would lose their employment.
- Legal Question: Does Article 21 give people the right to work?
- The Court said that Article 21 involves making a living because it is a component of life.
- Effect: Even though the eviction happened, the verdict transformed how people thought about life socially and economically.

Paschim Banga Khet Mazdoor Samity v. West Bengal, AIR 1996 SC 2426⁸⁹⁷

- Facts: A number of hospitals refused to give the worker immediate medical care.
- Legal Question: Did Article 21 get broken?
- Judgment: The Court said that not giving emergency care was against Article 21 and made Article 47's State duty stronger.
- Effect: Made emergency medical care legal.

⁸⁹⁴ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789,

⁸⁹⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁸⁹⁶ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

⁸⁹⁷ *Paschim Banga Khet Mazdoor Samity v. West Bengal*, AIR 1996 SC 2426.

*Unni Krishnan v. Andhra Pradesh, AIR 1993 SC 2178*⁸⁹⁸

- Facts: People fought against capitation fees and private schools.
- Legal Question: Does Article 21 make sure that everyone can go to school?
- The Court's decision: Articles 41 and 45 protect the right of children under 14 to get a free education.
- Effect: It set the stage for Article 21A in the 86th Constitutional Amendment of 2002.

Lawsuits for the public good and welfare mandates

PILs let courts speak for communities that don't have a voice and collaborate alongside DPSPs.

*Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802*⁸⁹⁹

- Facts: A PIL showed that stone quarries used bonded labour.
- Legal Question: Did bonded labour break Articles 21 and 23 along with Article 39?
- Judgment: The Court gave 21 rehabilitation orders for serious crimes.
- Effect: The case had the effect of using Public Interest Litigations (PILs) to make the state more accountable for meeting the goals of the Directive Principles of State Policy (DPSP), especially those in Article 39(e) and (f).

*People's Union for Democratic Rights v. India, 1982 SC 1473*⁹⁰⁰

- Facts: Workers and children were taken advantage of at ASIAD-82 building sites.
- Legal Question: Can Article 32's rights be forced on private businesses?
- Decision: The court added the right to live with dignity to Article 21, even for private offenses.
- Effect: DPSPs became rights that could be enforced, connecting labour rules to human dignity.

⁸⁹⁸ Unni Krishnan v. Andhra Pradesh, AIR 1993 SC 2178.

⁸⁹⁹ Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802.

⁹⁰⁰ People's Union for Democratic Rights v. India, 1982 SC 1473.

DPSPs have helped courts change the definition of substantive equality from just words on a page.

Kerala State v. N.M. Thomas, AIR 1976 SC 490⁹⁰¹;

- Facts: It was easier for SC/STs to get promoted under Rule 13AA, but this was challenged.
- Legal Question: Is the rule that goes against Articles 16(1) and (2) legal?
- Judgment: The court said that treating people differently to make sure everyone was equal was legal.
- Impact: Stressed that Article 14's definition of equality includes compensatory benefits that are the same as those in Articles 38 and 46.

Air India v. Nargesh Meerza, AIR 1981 SC 1829⁹⁰²

- Key Facts: Female flight attendants were dismissed for getting pregnant for the first time and forced to retire at 35.
- Legal Question: Did these rules break Articles 14, 15, and 16?
- Judgment: The Court said that these aspects were illegal and unfair.
- Effect: Linking basic rights to DPSP equality will help make gender justice better.

Key Takeaway

Indian courts have made the non-justiciable Directive Principles more lively by modifying their meanings. Some important strategies are:

- The Harmonization Doctrine strikes a balance between rights that can be enforced and laws that can't be enforced (Kesavananda, Minerva Mills).
- The extension of Article 21: Olga Tellis, Paschim Banga, and Unni Krishnan say that health, education, and dignity are now basic rights.
- Use of PILs: PILs let poor people fight for social and economic justice (Bandhua Mukti Morcha, PUDR).

⁹⁰¹ Kerala State v. N.M. Thomas, AIR 1976 SC 490.

⁹⁰² Air India v. Nargesh Meerza, AIR 1981 SC 1829.

- Affirmative Action: Real equality instead of just formal equality (N.M. Thomas, Nargesh Meerza). Articles 36–38 are very important to government and lawmaking, even if they can't be enforced in court. The courts have helped the welfare state by showing that social justice and constitutional morality can be enforced.

WELFARE PROGRAMS AND PRESENT PROBLEMS: FULFILLING COMMITMENTS MADE IN THE CONSTITUTION

Articles 36–38 of the Indian Constitution are not legally enforceable, yet they have had a big impact on India's welfare agenda. Governments have run a lot of programs that follow the Constitution over the years. This shows that the government ought to protect justice, make things more equal, and make people's health better.

The MGNREGA

MGNREGA, which was passed in 2005, is a great illustration of Article 38's promise of economic justice and Article 41's promise of freedom for workers. It gives rural households 100 days of paid labour each year, which makes them less financially insecure and prouder of their work. The approach has given rural women more power, improved infrastructure, and gotten more people involved at the grassroots level. But late pay checks and budget cuts have made it weaker.⁹⁰³

PMGKAY (Pradhan Mantri Garib Kalyan Anna Yojana)

The National Food Security Act's PMGKAY initiative gives free food grains to more than 81 crore people. It all started with COVID-19. It follows Article 47's order to make life better and food better. The scheme will go on until 2024. It illustrates that the state must provide people's basic necessities during emergencies and work toward Article 38(1)'s fair economic order.⁹⁰⁴

⁹⁰³ “Mahatma Gandhi National Rural Employment Guarantee Act.” Tnpsethervupettagam.com, 2025, www.tnpsethervupettagam.com/articles-detail/mgnrega.

⁹⁰⁴ “Pradhan Mantri Garib Kalyan Anna Yojana (PMGKAY) | Official Website of Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution, Government of India.” Dfpd.gov.in, 2025, dfpd.gov.in/pradhan-mantri-garib-kalyan-anna-yojana/en.

Ayushman Bharat—PM-JAY

Ayushman Bharat has given health insurance to about 50 crore individuals since 2018, giving each family ₹5 lakh a year. Article 47 improves health, and Article 38(2) reduces differences. The two-part approach, which includes hospitals and wellness centres, has made healthcare better. But there isn't enough infrastructure or knowledge.⁹⁰⁵

The Atal Pension Yojana

Article 41 says that informal sector workers should get pensions after they retire. APY, which started in 2015, helps these people get their pensions. Article 38 says that it lets low-income workers get retirement money to address the social security gap and lower occupational inequality.⁹⁰⁶

e-ShramPortal

The e-Shram Portal made a central database of workers in the unorganized sector in 2021 to satisfy the purpose of Article 38(2), which is to provide universal service. It makes it easier to target insurance, pensions, and maternity leave. But not everyone can utilize it because of problems with digital literacy and internet access.⁹⁰⁷

Protection from poverty and social problems

By 2024, Indian social services will have risen quickly and will cover 48.8% of the population. PM-JAY, MGNREGA, Ujjwala, and Jan Dhan are responsible for this change. According to government figures, social programs assisted more than 24.8 crore people get out of multidimensional poverty between 2013 and 2023. This shows that Articles 36–38 want to change things.⁹⁰⁸

Problems Keep Happening Even Though Things Are Getting Better

- MGNREGA is slow and doesn't have enough money.
- Most people who get PM-JAY or APY don't know what their benefits are.
- Digital marginalization makes it tougher for people in rural India to get to e-Shram.
- Populist policies may put more value on how things look than on how they evolve.

⁹⁰⁵ National Health Authority. “National Health Authority | GOI.” Nha.gov.in, 2019, nha.gov.in/PM-JAY.

⁹⁰⁶ NsdL.co.in, 2025, www.npsdra.nsdL.co.in/scheme-details.php.

⁹⁰⁷ “About the E-Shram Portal | E-SHRAM.” Eshram.gov.in, eshram.gov.in/e-shram-portal.

⁹⁰⁸ “End Poverty in All Its Forms Everywhere | NITI Aayog.” Niti.gov.in, 2025, niti.gov.in/goal-1-end-poverty-in-all-its-forms-everywhere?

- These worries show that Articles 36–38 need more than just plans to work. They need money, political will, and improvements to the system. Welfare must be founded on rights and open to everyone in order to keep the Constitution's guarantee of justice, equality, and dignity.

CRITICAL AND COMPARATIVE VIEWS ON THE WORTH AND USEFULNESS OF ARTICLE 36-38

Even while Articles 36–38 of the Indian Constitution have moral and policy power, they have been criticized for being hard to understand, enforce, and carry out for a long time. Scholars, courts, and politicians still argue about these basic rules that are the foundation of India's welfare state.

Theologies are not defined and overlap

Some people think that Articles 36–38 are overly vague. It is not obvious what "justice—social, economic, and political" and "minimize inequalities" entail. Without a policy directive, Upendra Baxi and Granville Austin talk about Gandhian, liberal, and socialist ideals. The law is tougher for the government and courts to understand and follow. This lack of clarity allows governments to use it whatever they want, but it doesn't ensure results.

Ideas vs. Realism in the Study of the Constitution

Dr. B.R. Ambedkar said the Directive Principles were wrong because India didn't have enough resources when it became independent. On the other hand, K.T. Shah pushed for their enforcement and said that allowing politicians to decide on social and economic rights makes them less valuable. Some current scholars, including Madhav Khosla, think that DPSPs are "soft law," which means they are ethically binding but not legally binding. Rajeev Bhargava, on the other hand, says they are part of India's "constitutional morality," which is important in a country with a lot of inequality. Tarunabh Khaitan suggests "graduated enforceability" for rights that can only be enforced in certain situations.⁹⁰⁹

⁹⁰⁹ De, Rohit. "The Republic of Writs: Litigious Citizens, Constitutional Law and Everyday Life in India (1947-1964)." Academia.edu, 2013,

Ideas for Change in India

A lot of constitutional groups want DPSPs to be looked at again. The NCRWC (2002)⁹¹⁰ suggested enforcing health and housing. The Law Commission (1989)⁹¹¹ said that enforcing education and environmental rights will make the government work better. The Sarkaria Commission of 1983⁹¹² called for laws at the state level. These solutions stress the need to go from broad ideas to specific rights without putting too much pressure on the courts.

Comparisons Around the World

India's government is both minimal and maximal. It is possible to enforce socio-economic rights in South Africa's Constitution with the necessary resources. In *Grootboom* (2000)⁹¹³, the State was found guilty of not giving people emergency housing. The non-justiciable model in Ireland, which inspired India's DPSPs, is being pushed to alter. The U.S. doesn't have any social or economic rights. The Constitution. Legislation is the only way to get welfare. India's hybrid system is different from previous models since its non-enforceable laws are fashioned by judicial innovation and can change and adapt.

The Debate Over Enforceability

Supporters of enforcing Articles 36–38 claim it would make sure that people are held accountable and that welfare is based on rights. Some others argue this might put judges in charge of government tasks, which would be too much power for the courts. A tiered model is a good middle ground. Health, education, and housing would be rights that must be followed, while other rights would be goals to strive for. This method stays within the restrictions set by the Constitution and the law.

Articles 36–38 are very important to India's welfare system. The articles may not be true and may be hard to understand, but they are moral and policy anchors. With selective enforcement, new legislation, and rigorous adherence to the Constitution, these articles can become enforceable rights. This will protect the promise of a fair and open democracy.

www.academia.edu/87039488/The_Republic_of_Writs_Litigious_Citizens_Constitutional_Law_and_Everyday_Life_in_India_1947_1964_?

⁹¹⁰ “National Commission to Review the Working of the Constitution (NCRWC) Report | Department of Legal Affairs, MoL &J, GoI.” legallaffairs.gov.in, legallaffairs.gov.in/national-commission-review-working-constitution-ncrwc-report.

⁹¹¹ “Law Commission of India.” Wikipedia, 9 Nov. 2022, en.wikipedia.org/wiki/Law_Commission_of_India.

⁹¹² Wikipedia Contributors. “Sarkaria Commission.” Wikipedia, Wikimedia Foundation, 5 Dec. 2024.

⁹¹³ *Government of the Republic of South Africa v. Grootboom*, 2000 (1) SA 46 (CC).

CONCLUSION

MGNREGA, PMGKAY, and Ayushman Bharat are all government social schemes but cannot be sued. The courts have employed Article 21, the right to life clause, to establish norms which are not legally binding. Dr. B.R. Ambedkar's caution that "political democracy cannot endure without a foundation of social democracy" is increasingly true since the new judicial establishment has taken over.

Articles 36–38 are still ambivalent, poorly supported, and politically manipulable even with these revisions. The Constitution is not representative of reality, which undermines the welfare state. The government cannot ensure that people comply with these harsh laws, and therefore they do not make sense and cannot be implemented.

Providing them with powers to bring changes is a lot of effort. In order to ensure the State is accountable, Directive Principles should be the most important element of constitutional tests. Such tests can perhaps enable us to notice how far we've progressed and how much more we have yet to go. Second, we have to establish a clear distinction between socio-economic rights and targets we desire to achieve in order to ensure public policy functions better. Third, collaborative work on state and federal budgets could assist in refining aid programs. All should be in a position to see and be part of welfare management.

Fair social audits and community-led monitoring can make individuals trust one another and ensure that resources find their way to the right people. Professor Upendra Baxi indicates that the Directive Principles are moral principles that illustrate how dedicated the Republic is towards "the neglected, the destitute, the disadvantaged, and the voiceless." They alter the way individuals perceive democracy, the way they interpret the Constitution, and the way they behave.

CHAPTER 25

Principles of Economic Justice and Equal Access (Articles 39–39A)

By Urvashi Sharma

INTRODUCTION

The Constitution of India sets various Directive Principles of State Policies (DPSP), which may not be enforceable by law but establishes foundation and guides state to make policies which are core to the spirit of our preamble.⁹¹⁴ The state aims to direct policies to seek social justice and economic welfare in the society, promote social equality and secure distribution of ownership. Part IV comprising Article 36 to Article 51 of the Indian Constitution holds DPSP to lay guidelines for policymaking. “The achievement of a “welfare state” is a multifaceted challenge and requires the consideration of various factors like, giving topmost priority to the issues of women empowerment, environmental conservation, embark on rural development and growth, decentralization process and the formulation of uniform civil code”.⁹¹⁵ Classification of these principles is not officially produced but on the basis of goals, they are divided into 3 categories:-

- Socialistic Principles: It is for welfare of the state (Article 38, 39, 39A, 42, 43, 43A, 47).
- Gandhian Principles: It is for the upliftment of the underprivileged (Article 40, 43, 43B, 46, 47, 48).
- Liberal Intellectual Principles: It is based on the ideology of liberalism (Article 44, 45, 48, 49, 50, 51).

⁹¹⁴ Directive Principles of State policy, *available at:*

<https://knowindia.india.gov.in/profile/directive-principles-of-state-policy.php> (Visited on June 16, 2025)

⁹¹⁵ Prajakta P. Babar, “INDIA'S ROADMAP: UNDERSTANDING PRINCIPLES OF STATE POLICY” 5 *IJRPR* 4703-4708 (2024)

Article 39 plays a very significant role by taking the responsibilities to guide the state and for betterment of the citizens as well as it is tailored for every individual's need.⁹¹⁶ It helps in fulfilling the vision set by the preamble for the construction of policies and laws and protects the justice of social, economic and political welfare. Article 39-A gives the same staging to all as equal opportunities to seek justice. The relationship between fundamental rights and DPSPs is that even after not being justiciable, they are constitutionally enforceable through interpretations.

CONSTITUTIONAL TEXT AND EXPLANATION

Article 39: *“Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing”*⁹¹⁷

This means that the State and all bodies that come under the definition of state in the constitution are directed to follow (non-obligatory) these principles while policymaking for the welfare of its citizens.

*(a) “that the citizens, men and women equally, have the right to an adequate means of livelihood;”*⁹¹⁸

This Article emphasises on adequate i.e. sufficient means of livelihood for both the genders equally and here livelihood can be understood as source of income or way to earn money.

Article 39(a) is associated with Article 21 i.e. Right to Life and Personal Liberty by Supreme Court:

In *Olga Tellis v. Bombay Municipal Corporation*⁹¹⁹ “The court held the obligation on the state to secure an adequate means of livelihood and right to work as these can’t be excluded from the content of right to life. State is not obligated to provide adequate means of livelihood and work

⁹¹⁶ S. Muralidhar, *“LAW, POVERTY AND LEGAL AID: ACCESS TO CRIMINAL JUSTICE”* 72-74 (Lexis Nexis Butterworth, New Delhi, 2nd edn., 2004)

⁹¹⁷ Constitution of India, 1950 (Art. 39 of 1950)

⁹¹⁸ Constitution of India, 1950 (Art. 39(a) of 1950)

⁹¹⁹ *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545

for citizens but if they are destituted from these rights then it's offending the right to life conferred by article 21."

It was also restated in SC's judgement of *Kapila Hingorani vs State of Bihar*⁹²⁰, As the meaning of 'life' in right to life under Article 21 is multifaceted, it includes right to adequate livelihood and many other aspects under it, as observed by field, J. In *Munn v. Illinois*, (1877) 94 US 113 right to life just doesn't end its scope with living rather it includes all the privileges by which life is enjoyed.

(b) "*that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;*"⁹²¹

It means that whatever material resources a community will have, it will be equally distributed among all for the general welfare of the citizens. Illustration: As Assam is the major producer of Crude oil and Natural gas, so can they limit the use to themselves? No, it will be the duty of the state to regulate through policy that all are benefitted from it.

In *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh*⁹²² In Furtherance of Article 39(b) of DPSP it was opinionated that concentration of resources with the few people contradicts the very essence of the constitution as it gives more power to dominate. The main aim of the acquisition imposed through impugned act was to give power in hands of the state to take charge of concentration and redistribution of ownership and control of material goods for the purpose of common good.

In *State of Karnataka v. Ranganatha Reddy*⁹²³ It clarified the scope of the term 'material resources' and included ownership of private resources under it, as anything which is of value or can be used in the material world would be considered material resource. It stated that an individual is a member of a community so his resources are also a part of the community.

⁹²⁰ *Kapila Hingorani vs State of Bihar* (2003) 6 SCC 1

⁹²¹ Constitution of India, 1950 (Art. 39 (b) of 1950)

⁹²² *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh* AIR 1952 SC 252

⁹²³ *State of Karnataka v. Ranganatha Reddy* (1977) 4 SCC 471

In *Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd.*⁹²⁴ It was re-assured that while considering material resources not only a public resource comes under community resources but it includes resources owned by individuals of the community.

The precedent judgments (Ranganathan Reddy and Sanjeev Coke case) were given new perspective as only certain private resources were qualified under Article 39's ambit as per certain criteria. In recent judgement *Property Owners Association v. State of Maharashtra*⁹²⁵ In the interpretation of Article 39(b) of the Constitution, the esteemed Chief Justice suggests that the phrasing indicates an intention to encompass certain privately owned resources. The argument explains that if the provision aimed to include all individual resources, it would have explicitly stated that the "ownership and control of resources is so distributed as best to subserve the common good." Inversely, if the intention was to exclude privately held resources, the language would have specified "ownership and control of resources of the State..." rather than the current wording. The use of "of the community" implies an intent to include some privately held resources, although not all. Therefore, it is concluded that while not all privately owned resources are included, they are not entirely excluded, and certain private resources may indeed be subject to the provision.

*(c) "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"*⁹²⁶

This sub clause means that ultimately the economic system shouldn't pave way to concentration of wealth as well as means of production (that can be land , machinery, capital, etc.) at one place as it can eventually lead to common detriment (i.e. a way that is harmful to someone or something). Illustration: taxation is also a method to secure this principle as taking more tax from people who earn more and less tax from people who earn less to regulate the economic graph.

In *Minerva Mills Ltd. v. Union of India*⁹²⁷ Directive Principles like Article 39 are essential to social justice. SC held that a balance should be maintained between DPSP and Fundamental

⁹²⁴ *Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd* (1983) 1 SCC 147

⁹²⁵ *Property Owners Association v. State of Maharashtra* 2024 INSC 835

⁹²⁶ Constitution of India, 1950 (Art. 39 (c) of 1950)

⁹²⁷ *Minerva Mills Ltd. v. Union of India* 1980 AIR 1789

rights. It restricted the state from protecting all laws constructed in the DPSC, but allowed laws implementing Article 39(b) and Article 39(c) for enjoyment of protection under Article 31C.

(d) “ *that there is equal pay for equal work for both men and women;*”⁹²⁸

This means that the state will ensure that if both men and women are doing the same amount of work, at the same workplace with the same set of skills, then both are to be paid equally. “The principle of 'equal pay for equal work' may properly be applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing different scales of pay do identical work under the same employer.”⁹²⁹

In *Randhir Singh v. Union Of India*⁹³⁰ It was clearly mentioned that equal pay for equal work was not only a demagogic slogan rather it was one of the goals of the Constitution of India which can be procured by constitutional remedies with the help of enforcement of Fundamental Rights. The Directive Principle of state policy mentions in Article 39 (d) that equal pay for equal work for both men and women ,it derives enforcement through Article 14 (Fundamental Right to equality before the law) , Article 19 (Fundamental Right to equality of opportunity in matter of public employment) and Article 32 which secures enforcement of these fundamental rights.

In *D.S. Nakara v. Union Of India*⁹³¹ The Supreme Court highlighted the responsibility of the state to ensure ‘equal pay for equal work’ and maintain equality in status, facilities and opportunities for all genders. It reaffirmed Article 39 (d).

In *State Of Punjab v. Jagjit Singh*⁹³² The court observed that all organs of state are obligated to follow Directive Principle of State Policy as it is not mere theoretical concept but a vital and enforceable standard , widely accepted by many countries , especially to socialistic ones. It carries an essence of equality which aims at a constitutionalist aim of fairness and justice to all.

⁹²⁸ Constitution of India, 1950 (Art. 39 (d) of 1950)

⁹²⁹ M.P. Jain, Indian Constitutional Law, 205 (lexis nexis, gurugram, 8th edn., 2013)

⁹³⁰ *Randhir Singh v. Union Of India* (1982) 1 SCC 618

⁹³¹ *D.S. Nakara v. Union Of India* 1983 AIR 130

⁹³² *State Of Punjab v. Jagjit Singh* (2017) 1 SCC 148

*(e) “that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;”*⁹³³

It means that you can’t abuse and put any men, women, and children in such an occupation which has any bad effect on their health, which is beyond their strength or which is inappropriate for their age just because of economic necessity.

In the landmark case of *Bandhua Mukti Morcha v. Union Of India*⁹³⁴ The Supreme Court established that the right to live with human dignity, as enshrined in Article 21, basically encompasses freedom from exploitation and is essentially linked to the Directive Principles of State Policy. The Court particularly referred to Articles 39(e) and 39(f), alongside Articles 41 and 42, as crucial sources that inform and strengthen this right. The Court further clarified that this constitutional right necessitates the protection of workers' health and well-being, the safeguarding of children from abuse, and the provision of opportunities for their holistic development within a dignified and free environment. Furthermore, the Court underscored the significance of educational provisions, equitable and humane working conditions, and maternity benefits as indispensable elements of a life of dignity...”

In *Consumer Education & Research Centre v. Union Of India* ⁹³⁵“The court held that proper health and medical care rights to workers during the employment as well as after retirement are covered under Article 21 Right to Life incorporated with Article 39(e), 41, 43, and 48A. It helps workers lead a secure and dignified life which is fundamental in the constitution.

*(f) “that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment”*⁹³⁶

It simply means that a state shall ensure that children and youth get all the facilities to live their life, they get all the opportunities to develop themselves in a healthy way, their freedom and their dignity should be taken care off, they are completely protected against exploitation and if any

⁹³³ Constitution of India, 1950 (Art. 39 (e) of 1950)

⁹³⁴ *Bandhua Mukti Morcha v. Union Of India* 1984 AIR 802

⁹³⁵ *Consumer Education & Research Centre v. Union Of India* (1955) SCC 3 42

⁹³⁶ Constitution of India, 1950 (Art. 39 (f) of 1950)

children who doesn't have any parents or whose parents have abandonment state to take care of them. Article 39(f) is an amended clause of Article 39(e) by 42nd Amendment Act, 1976.

In *People's Union For Democratic Rights v. Union Of India*⁹³⁷ It was comprehended that it's State Government's duty to make sure that no child less than 14 years should be employed in construction work or involved in any hazardous employment. The Union of India must ensure that this constitutional mandate should not be violated in any part of the country.

In *M.C. Mehta v. State Of Tamil Nadu*⁹³⁸ Article 39(f) invoked for hazardous industries accountability in relation with instructions for the improvement of quality of life of children employed in factories. It also mentioned about constituting a committee to ensure that these directions are followed and the least the state could do is enforcing intendment proposed through Child Labour (Prohibition and Regulation) Act, 1986

ARTICLE 39-A

*“Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”*⁹³⁹

It ensures the equal opportunity of justice by the help of free legal aid. This Article was introduced by the 42nd Amendment Act of 1976. The motive to add this article was to give responsibility to the state to secure operations of the legal system that promotes justice by giving equal opportunity to everyone to get justice by giving equal opportunity to everyone to seek justice, whether they are rich or poor, men or women, belonging to any religion or caste. If any person is physically, economically or by any other disability incapable to afford legal services then that person shall get free legal aid.

⁹³⁷ *People's Union For Democratic Rights v. Union Of India* 1982 AIR 1473

⁹³⁸ *M.C. Mehta v. State Of Tamil Nadu* (1996) 6 SCC 756

⁹³⁹ Constitution of India, 1950 (Art. 39A of 1950)

Article 39A of the Constitution requires governmental provision of justice accessibility for all citizens. This obligation has been reinforced by judicial precedent, specifically linking it to the fundamental rights to life and personal liberty as enshrined in Article 21.

The Supreme Court, in the landmark *Hussainara Khatoon v. Home Secretary, State of Bihar*⁹⁴⁰ case, established that the provision of free legal aid is a Fundamental principle. The Court emphasized that a fair trial is unattainable without legal representation, particularly for those lacking financial resources. Consequently, the Court determined that the provision of free legal services is an essential component of equality and justice, thereby falling under the purview of Article 21. Therefore, the government is obligated to provide legal assistance to individuals accused of criminal offenses, unless they explicitly decline such assistance

In *Sukh Das v. Union Territory of Arunachal Pradesh*⁹⁴¹ It was reaffirmed that a person facing any legal charges then their life and integrity is at point of question and to provide them with any opportunity for legal assistance in the process of representation is a fundamental right for seeking justice. It is a necessity until there is an exceptional case of economic offences or child abuse where state may not provide free legal aid.

THEMATIC INTERPRETATIONS

- Economic Justice: - economic justice is one of the core ideas of Article 39 as it focuses mainly on welfare legislation. Article 39(b) ensures Redistribution of resources for the purpose of common good.
- Gender Justice: - Equal pay and protection of women and children are secured through Article 39
- Legal aid:- Free legal representation, PIL, access to courts “ Article 39 A of the constitution is relating to promoting justice on the basis of equal opportunity by providing free legal aid to unaffordable sections of society like the poor and economically weaker sections.”⁹⁴²

⁹⁴⁰ *Hussainara Khatoon v. Home Secretary, State of Bihar* 1979 AIR 1369

⁹⁴¹ *Sukh Das v. Union Territory of Arunachal Pradesh* 1986 AIR 991

⁹⁴² Legal Services Authorities Act, 1987

- Equality of opportunity:- Labour protections, public distribution reforms. In this Article it can be concluded that it protects the Labours from Unfair Trade Practices and provides emphasis on public distribution reforms.

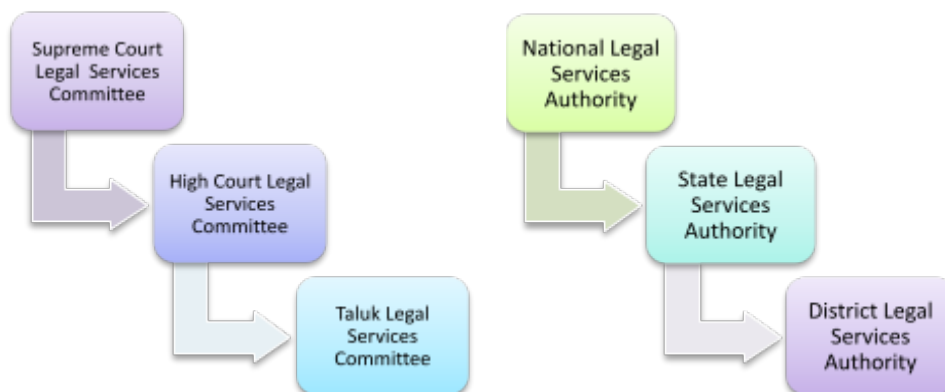
LEGISLATIVE AND INSTITUTIONAL MECHANISMS

Legal Services Authorities Act, 1987 (to enforce Article 39A): “An Act to constitute legal services authorities to provide free and competent legal services

- To the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities,
- To organise Lok Adalats.
- To ensure that the operation of the legal system promotes justice on a basis of equal opportunity.”⁹⁴³

To make this Act effective certain authorities were established at different levels.

Authorities:



⁹⁴³ Ibid

Welfare Schemes: There are various welfare schemes in India like The *Mahatma Gandhi National Rural Employment Guarantee Act, 2005*⁹⁴⁴; The *Minimum Wages Act, 1948*⁹⁴⁵; The *Equal Remuneration Act, 1976*⁹⁴⁶; The *National Food Security Act, 2013*⁹⁴⁷

LANDMARK CASE LAWS OF ARTICLE 39 AND ARTICLE 39A

Kesavananda Bharati v. State of Kerala

- Citation: AIR 1973 SC 1461
- Facts: *Kesavananda Bharati*, a priest in the state of Kerala raised objection to the 24th to 29th amendment as through which Kerala land reforms Acts (1963 & 1969) imposed restrictions on land management.
- Issues: question on power of parliament as well as validity of Amendments.
- Arguments:

Petitioner- Unrestricted power of parliament would lead to exploitation of the spirit of the Constitution.

Respondent: Under Article 368, the state was given power to amend and so, these reforms are valid.
- Judgment: The doctrine of Basic structure was established to protect certain sections of the Constitution from the ambit of amendment. The 24th and 29th Amendments were validated and the 25th was partially validated.

⁹⁴⁴ The *Mahatma Gandhi National Rural Employment Guarantee Act, 2005*, Act No.42 of 2005, Ministry of Law and Justice (India)

⁹⁴⁵ The *Minimum Wages Act, 1948*, Act No. 11 of 1948, Ministry of Labour and Employment (India)

⁹⁴⁶ The *Equal Remuneration Act, 1976*, Act No. 25 of 1976, Ministry of Labour and Employment (India)

⁹⁴⁷ The *National Food Security Act, 2013*, Act No. 20 of 2013, Ministry of Consumer Affairs, Food and Public Distribution (India)

- Impact and Analysis: the Basic Structure Doctrine was introduced in this case. Article 39(b) and (c) integral to "Directive Principles" in Basic Structure.

State of Karnataka v. Ranganatha Reddy

- Citation: AIR 1978 SC 215
- Facts: Ranganatha Reddy, a landowner challenged the constitutional validity of land ceiling legislation based on Article 39(b) in state of Karnataka for concentration of land from the surplus ones and redistribution of land to the needy one.
- Issues: Can private property be considered as ‘material resource’ under Article 39 (b)?
- Arguments:

Petitioner- land distribution comes under the power of state for the purpose of common good in Article 39(b)?

Respondent: Article 39(b) cannot interpret private property as source for redistribution.

- Judgment: Majority did not clarify the scope of Article 39(b), rather checked validity of Karnataka land reforms, Justice Krishnan Iyer strongly opined that ‘material resources’ include private property and it can be redistributed if it’s for common good.
- Impact and Analysis: It marked a different perspective for DPSP and especially for interpretation of ‘material resources’. State ownership under Article 39(b) given priority in coal nationalisation.

Bandhua Mukti Morcha v. Union of India

- Citation: AIR 1984 SC 802
- Facts: A Non-governmental Organisation (NGO) named Bandhua Mukti Morcha which worked for betterment of labours and improve their living condition contended through filing a writ petition (under Article 32) that there is an engagement of large number of bonded labours and they are subjected to inhumane working conditions in Faridabad District of Haryana.

- Issues: Is bonded labour considered illegal and breach the fundamental right under Article 21, 23 and 24? Is the state mandated to follow DPSP under Article 39, 41, 42 and 43 for welfare of Labourers?

- Arguments:

Petitioner- Bonded labourers were under inhumane restrictions and forced to work in small quarries which denied them freedom of movement'

Respondent-The government denied all this information and claimed that it's a paid and wilful labour.

- Judgment: Public Interest Litigation (PIL) is maintainable under Article 32 and Government was instructed to end the practice and re-habitat the bonded labourer as Article 21 and Article 23 has been denied to them.

- Impact and Analysis: Legitimated PIL and gave Article 21 and Article 23 new broadened views. Article 39(e) and (f) enforced for bonded labour rehabilitation.

Property Owners Association v. State of Maharashtra

- Citation: 2024 INSC 835

- Facts: SC referred petition of year 1992 to answer the question raised by 3 judges bench in MHADA property accusations case that private property comes under the ambit of 'material resources' for redistribution if it's for the common good?

- Issues: (i) what will be the correct interpretation of Article 31C of the Constitution with reference to 'Minera mills'case? (ii) Can redistribution of Private resources come under the scope of 'material resources" mentioned in Article 39(b)?

- Arguments:

Petitioner-Precedent judicial opinion (like of Krishnan Iyer) held that both public and private property be considered material resources still they are for common good.

Respondent- This acquisition by the state breaches Article 300A of the constitution.

- **Judgment:** In a 7-2 decision, the Supreme Court determined that not all private property qualifies as 'material resources of the community' under Articles 39(b) and (c) for state acquisition and redistribution. Furthermore, all nine justices affirmed that Article 31-C continues to shield statutes from being invalidated for contravening Articles 14 and 19, provided they implement Articles 39(b) and (c) as interpreted in this judgment.
- **Impact and Analysis:** It gave a major clarification that not all private property be considered 'material resources' but sets a threshold test that comes under the scope. The judgment helped in maintaining social welfare as well as protecting the individual's property rights.

INTERNATIONAL COMPARISON

Country	Comparable Provisions	Nature of Provision
India	Article 39 and Article 39A	Directive Principle of State policy but not enforceable
South Africa	Constitutional Right to legal aid	Enforceable Socio-economic right
United States of America	Due process and equal protection clauses; 6 th amendment	Enforceable right to fair trial and legal counsel
Ireland	Source of DPSP	Minimal Enforceability

CRITICAL PERSPECTIVES

- **Justiciability:** Even if DPSP not directly enforceable, it can be applied under the Umbrella of Article 21 i.e. Right to Life. Some interpretations like right to livelihood and free legal aid have diminished the difference between fundamental rights and DPSP's.

As stated in *Olga Tellis & Ors vs Bombay Municipal Corporation & Ors. Etc.*,⁹⁴⁸ Considering the State's obligation to ensure citizens have sufficient means of livelihood and the right to employment, it would be overly formalistic to exclude the right to livelihood from the scope of the right to life.

- Balancing Property rights with social equity: Article 39(b) stands for equal distribution of resources and right to constitutional protection of property (earlier fundamental right under Art. 31 later amended to Art. 300A) clashes with each other.

In a landmark judgement of the State of *Karnataka vs. Raganathan Reddy*⁹⁴⁹ court accepted redistribution of land for common good , but later on in *Property Owners Association v. State of Maharashtra*⁹⁵⁰ It was decided that not all private property comes under the ambit of redistribution. It was meant to create balance between the two.

- Challenges in implementation of free legal aid:
 - (i)Lack of Awareness: “Amongst issues arising from women's lack of awareness about legal aid services, 82 per cent of experts in Asia Pacific observe that women may not be aware that legal aid services are available at little or no cost”⁹⁵¹
 - (ii)Underfunding: The NALSA (National Legal Service Authority) issued an Annual Report.

CONCLUSION

Articles 39–39A are foundational to the vision of a welfare state as it comes under the socialistic category of DPSP and constitutes its spirit from Preamble. It serves as tools of transformative constitutionalism and creates balance between fundamental rights and DPSP. Their gradual integration strengthens substantive equality and justice.

⁹⁴⁸ Supra note 6, at page number

⁹⁴⁹ Supra note 10, at 3 page number

⁹⁵⁰ Supra note 12, at 3 page number

⁹⁵¹ UNDP & UNODC, *Global Study on Legal Aid: Global Report 8* (United Nations Development Programme & United Nations Office on Drugs and Crime, New York, 2016)

CHAPTER 26

Village Panchayats, Right to Work, and Just Conditions (Articles 40–42)

By Aditi Tanaya Samal

INTRODUCTION

The Directive Principles of State Policy (DPSPs) provide a moral and socio-economic framework of the Indian constitutional design that is listed as Part IV of the Indian Constitution (Articles 36 to 51). These principles have had a decisive impact on the formulation of legislative and executive policy although they are not subject to judicial enforcement. Articles 40, 41, 42, popularly known as the Gandhian Directive Principles embodies the institutional commitment on the part of Mahatma Gandhi to the rural self-rule, decent work and labour welfare⁹⁵².

Article 40 introduced by the **73rd Constitutional Amendment** ensures the formation of village panchayats to form units of self-government. **Article 41** provides a right to work, to education and to assistance payable out of public funds, a value then realised in statutory practice through the enactment of the **MGNREGA and the Right to Education Act**. **Article 42** also establishes a constitutional framework of many labour-welfare laws, by ordaining humane working conditions and maternity relief⁹⁵³.

The current chapter will provide a comprehensive evaluation of Articles 40-42 in the context of Indian socio-legal scenario. Its three-fold structure is aimed at addressing three interwoven facets:

(1) to track the historical and doctrinal underpinning of these Articles;

⁹⁵² V.N. Shukla, Constitution of India, ed. Mahendra P. Singh (Lucknow: Eastern Book Company, 2023) 364.

⁹⁵³ H.M. Seervai, Constitutional Law of India, Vol. II (New Delhi: Universal Law Publishing, 2013) 2041–2055

- (2) to offer a survey of the development of these Articles by the judicial decisions of the era; and
- (3) to assess the adequacy of these Articles by the current socio-economic environment.

The discussion emphasizes that, despite the constitutional non-existence of Articles 40- 42, they have still emerged to be a pillar to statutory framework and judicial interpretation (exegesis) both. These provisions reflect the preamble's faith in a welfare state and the provisions also overlap with the provisions of fundamental rights contained in Articles 14, 15, 21, and 23.

Articles 40 to 42 have filled a central role in the Constitution, including clauses covering a vast range of socio-economic issues, including rural decentralisation, labour rights in the gig economy, maternity rights, and the role of the state in governing welfare. An intense doctrinal explanation, supplemented with a sharp critique of the apt cases, shows that these articles are not just words of good wish but a powerful constitutional tool of social change

HISTORICAL ORIGINS

The nationalist movement's demand for social and economic rights had a direct bearing on the articles 40-42 that are an entrenched part of the Indian Constitution, especially the Gandhi doctrine of '*Gram swaraj*' (village self-governance), labor dignity, and his vision of collective social upliftment. In debates of the Constituent Assembly, B.R. Ambedkar and K.T. Shah claimed that political democracy had to be accompanied by social and economic democracy⁹⁵⁴.

Constituent Assembly Debates

Discussions of Article 40 (then Draft Article 31) focused on de-centralisation of power. Even though Dr. Ambedkar supported the village panchayats as possibly democratic institutions, he disapproved of romanticising village life because of the existence of caste hierarchies and subordination⁹⁵⁵. On the other hand, K.M. Munshi and others argued that panchayats would serve as a nursery to the practice of democracy.

⁹⁵⁴ Constituent Assembly Debates, Vol. VII (Lok Sabha Secretariat, 1948) 526–541.

⁹⁵⁵ Ibid, 528 (B.R. Ambedkar).

Draft Article 32 (later Article 41) spoke to the condition of post-independence scarcity of resources and mandated the state to ensure that they are provided with employment and education under conditions that were explicitly recognized. Alladi Krishnaswami Ayyar and other representatives moved the conditional framing of the provision and it was ultimately sanctioned⁹⁵⁶.

Article 42 (previously Draft Article 33) blended Gandhian ideals to socialist ideals where the main issue discussed was exploitation of work, and the absence of protective measures to women workers. Dr. Ambedkar supported maternity leave and employment conditions as a necessary part of social justice⁹⁵⁷.

Statutory Reforms

The most important legislative embodiment of Article 40 is the 73rd Constitutional Amendment Act, 1992 which has given constitutional status to Panchayati raj institutions (PRIs), regularising statutory elections, and reservation to Scheduled Castes, Scheduled Tribes, and women. By doing so, Part IX came into force in the Constitution, defining the powers of Gram Sabhas, Panchayat Samitis and Zilla Parishads⁹⁵⁸.

Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005 was enacted with the aim of operationalising Article 41 to give a legal right to wage employment, and the Right of Children to Free and Compulsory Education Act, 2009 institutionalised the right of children between the age group of 6 and 14 to education and even though this Act is connected to *Article 21A*, has been based on the spirit of *Article 41*.

Article 42 can be observed in *the Factories Act 1948*, *the Maternity Benefit Act 1961* (which was recently amended in 2017 and provides an extension in paid maternity leave to 26 weeks) and the suite of labour codes that were enacted in the contemporary labour-reform regime. Collectively these legislations maintain human conditions of work, protect reproductive rights and the achievement of occupational protection⁹⁵⁹.

Alliance between Constitutional Goals and Values

⁹⁵⁶ Ibid, 531 (A.K. Ayyar).

⁹⁵⁷ Ibid, 535–537 (Dr. Ambedkar on Draft Article 33).

⁹⁵⁸ M.P. Jain, *Indian Constitutional Law*, 8th ed. (Nagpur: LexisNexis, 2022) 1457–1463.

⁹⁵⁹ Government of India, *Code on Occupational Safety, Health and Working Conditions Act*, 2020.

Articles 40-42 are taken as a centralized criteria of application of the Preamble to apply the Justice- social, economic and political. They are aimed at the promotion of economic democracy and social justice and this should confirm the principles on which the Constitution is built. These provisions are labelled as constituting an essential part of the constitutional fabric, in the seminal analysis provided by H.M.Seervai, as without these, safeguarding of the fundamental rights would remain incomplete⁹⁶⁰.

Articles 40-42 of the Directive Principles of State Policy of the State of India both mirror a number of provisions of the Irish Constitution which was the guiding light behind the creation of the Indian document. These Articles gain their heritage in Gandhian ideology; they encourage decentralised self-governance with trusteeship. According to M.P. Jain, the provisions combine India rights-based system with a more comprehensive duty-based system to move socio-economic entitlements out of the realm of voluntary charity into status of constitutional expectations⁹⁶¹.

ARTICLE 40- ORGANISATION OF VILLAGE PANCHAYATS

“The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

The article 40 represents a normative part of the Directive Principles of Gandhi. It has the spirit of village republics or Gram swaraj that was famously proposed by Mahatma Gandhi as the foundation of Indian democracy⁹⁶². Even though at the inception the provision was not justiciable, it gave conceptual and institutional foundation to decentralised governance and better democratic participation at the grassroots.

Thematic Breakdown and its Interpretation w.r.t.⁹⁶³ the vision of the Constitution Of India

The Doctrine of decentralisation is one of the building blocks of Article 40. Based on the principle of subsidiarity, (i.e. *decisions must be taken at the lowest administrative level*), it

⁹⁶⁰ H.M. Seervai, Constitutional Law of India, Vol. II (New Delhi: Universal Law Publishing, 2013) 2044.

⁹⁶¹ M.P. Jain, Indian Constitutional Law, 8th ed. (Nagpur: LexisNexis, 2022) 1460.

⁹⁶² P.I. Bhat, “Impact of Gandhian Thoughts on Indian Constitutional Jurisprudence,” Journal of the Indian Law Institute, 45(1) (2003): 27–43.

⁹⁶³ w.r.t. stands for 'with respect to'

develops the argument that governance must be run as near as possible to the citizens⁹⁶⁴. Although village panchayats were familiar in pre-colonial India, Article 40 established and constitutionalised them in India.

The development of the Panchayati Raj Institutions (PRIs) in India, was one of the critical breakthroughs which was the result of the *73rd Constitutional Amendment Act of 1992*. The amendment added Part IX (Articles 243 to 243O) and the Eleventh Schedule, which established PRIs to have constitutional position. Remarkably, it mandated periodic elections, necessitated the formation of State Finance Commissions and brought in reservation of women and the marginalised groups⁹⁶⁵.

The passing of autonomous statutory instruments, including *the Bihar Panchayat Raj Act, 2006* and *Karnataka Panchayat Raj Act, 1993*, has seen the Indian state institutionalise constitutional requirements regarding panchayats. These Acts enable panchayat institutions with the strength to govern the public distribution, local education, sanitation, employment generation.

Illustration and Application

State of Uttar Pradesh v. Jeet S. Bisht, the Supreme Court emphasised that Article 40 pertains to the necessity of having an “efficient devolution of power and functions to panchayats” and held that token decentralisation is in contravention of constitutional purpose⁹⁶⁶.

Furthermore, in a similar vein, *Ratlam Municipality case* appealed to the same spirit by highlighting the responsibilities of local authorities with regards to sanitation of the general population⁹⁶⁷.

However, despite constitutional provision, good decentralisation has not been even across states and is marked by fiscal dependence and bureaucratic domination of panchayats. Article 40 in this context is to be considered as a partial achievement of democratic decentralisation as well as a guiding directive that has remained an aspect of continuing development in concern to contemporary initiatives of citizen participation.

⁹⁶⁴ B.S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (Cambridge: CUP, 2017) 298.

⁹⁶⁵ M.P. Jain, *Indian Constitutional Law*, 8th ed. (Nagpur: LexisNexis, 2022) 1457–1464.

⁹⁶⁶ *State of U.P. v. Jeet S. Bisht*, AIR 2007 SC 2769.

⁹⁶⁷ *Municipal Council, Ratlam v. Vardichand*, AIR 1980 SC 1622.

ARTICLE 41- RIGHT TO WORK, TO EDUCATION AND TO PUBLIC ASSISTANCE IN CERTAIN CASES

“The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

The Act proposes a conditional system of socio-economic rights wherein it takes into consideration both the reality of constrained resources as well as the desire of the state to move towards a comprehensive social welfare. Through this it sets the principle foundations of a rights-based approach towards poverty alleviation and welfare⁹⁶⁸.

Doctrinal Basis and their Legislative Implementation

The concept of progressive realisation and the idea of welfare statehood are the theoretical principles the essence of which is the base of Article 41 . It mirrors the growing responsibility that depends on economic growth.

Statutory Implementations include:

- **MGNREGA, 2005:** It acknowledges the right to work as statutory entitlement, giving 100 days of working wage in a year to the rural households⁹⁶⁹.
- **Right to Education Act, 2009:** This Act, although connected with Article 21A marks the enforcement of the Article 41 guaranteed right to education.
- **National Social Assistance Programme (NSAP):** This Act Provides pensions and financial assistance to the old, widows and the disabled as the vision of Article 41. In *Olga Tellis v. BMC*, the right to livelihood was interpreted as part of Article 21, but based implicitly on in Article 41⁹⁷⁰.

⁹⁶⁸ S.S. Suvarnakhandi, “Social Justice Provision in Indian Constitution,” Int’l J. Pol. Sci. 8(2) (2020): 50–61.

⁹⁶⁹ Government of India, MGNREGA Annual Report 2022–23.

⁹⁷⁰ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

Similarly, in *Sanjit Roy v. State of Rajasthan*, the denial of minimum wages under the public-employment schemes was held unconstitutional, supporting the article and its perspective on labour-rights⁹⁷¹.

Illustration and Challenges

Despite such progressive laws, the daily experiences of applying welfare because of the lack of resources in the schemes are still far away from reaching the utopian image of Article 41. It is challenged by leakages in the delivery of welfare, by exclusion errors in job cards, and budget dilutions in MGNREGA. Moreover, the development of the gig economy makes obvious the true plight of the informal workers that elevates the questions of the responsibility of the State to provide workers in this context with proper conditions and social security according to this Article.

ARTICLE 42: LABOUR JUSTICE

Article 42. Provision for just and humane conditions of work and maternity relief

“The State shall make provision for securing just and humane conditions of work and for maternity relief.”

The Article represents the constitutional principle of labour dignity that emphasises the right to safe, fair and equitable working conditions. Though brief in wording, the Article has been a powerful tool in legislative and judicial development⁹⁷².

Legal Enforcement and Interpretation

Numerous statutes were introduced into effect to keep up the spirit of Article 42:

- Factories Act, 1948: It tries to provide workers with safe working hours, good rest in the form of leave as well as conditions that safeguard their health and welfare.

⁹⁷¹ *Sanjit Roy v. State of Rajasthan*, AIR 1983 SC 328.

⁹⁷² D.S. Saini, “Law and Social Development in India,” *Indian J. of Const. Studies*, 12(1) (2018): 82–97.

- The Maternity Benefit Act, 1961 (amended in the year 2017): To ensure a stronger commitment to safeguard the rights and the well-being of working mothers, the act extended paid maternity leave for up to 26 weeks, which was earlier 12 weeks, in the 2017 amendment.
- Labour Codes (2020): The Code on Social Security and the Occupational Safety, Health and Working Conditions Code have been in motion to enhance dignity and safeguard to unorganised sector workmen by consolidating their rights on health, safety, and maternity benefits.

In *M.C. Mehta v. State of Tamil Nadu*, the Supreme Court linked Article 42 to the prohibition of child labour and safe workplace conditions⁹⁷³. In *Bandhua Mukti Morcha*, the Court struck against the violation of human dignity and stated that the exploitation of bonded labour was the violation of human dignity and directed the State to promote humane working conditions as mandated by the Constitution⁹⁷⁴. The judgment in *AIIMS v. Rajesh Tyagi* stressed the principle that denying maternity benefits violates the constitutional obligation for providing a just and humane working conditions.⁹⁷⁵

Case Illustrations and Limitations of the Execution of the Policy

In the informal sector, in which more than 90 per cent of Indian workers find employment, effective regulation of labour is comparatively inaccessible. Though there are statutory schemes such as Maternity Benefit Act which are available, they often do not safeguard women in contract work/domestic labour/ alternative vulnerable work. Women in these industries are very often locked out of the right to maternity support and the State is found to have failed its sovereign obligation towards Article 42, which states that just and humane conditions of work and maternity relief ought to be provided.

⁹⁷³ *M.C. Mehta v. State of Tamil Nadu*, AIR 1991 SC 417

⁹⁷⁴ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

⁹⁷⁵ *AIIMS v. Rajesh Tyagi*, AIR 2014 SC 3951.

The courts exemplifies that the Article 42's commitment should be beyond formal sectors of work and open to women in the informal and contract-based workspace also, in the case *Puducherry Women's Commission v. Union of India*, 2020⁹⁷⁶.

CASE LAW ANALYSIS

Minerva Mills Ltd. v. Union of India

Citation : AIR 1980 SC 1789

- Facts: The petitioner had questioned. Sections 4, and 55 of the 42nd Amendment which conferred absolute supremacy to the Directive Principles over the Fundamental Rights and limited judicial intervention.
- Issue: Whether the amendment was unconstitutional and that it distorted the balance between the Fundamental Rights and Directive Principles and took away the power of judicial review.
- Arguments: The petitioner gave the argument that by prioritising all Directive Principles over rights like equality (Art. 14) and freedom (Art. 19) weakens the foundation of the constitutional essence. To which the Union contended that socio-economic justice warranted such precedence for a welfare state.
- Judgment: The Supreme Court abrogated the provisions, and stated that judicial review and fitness of Parts III and IV to Part IV constitute basic structure and cannot be terminated.
- Impact and Analysis: The case reiterated that, although non-justiciable, the Articles 40–42, are important for the interpretation of the constitution . It had secured the constitutional balance between the personal rights of individuals as well as the social justice objectives in the constitutional democracy of India.

⁹⁷⁶ *Puducherry Women's Commission v. Union of India*, (2020) SCC Online Mad 482

Kesavananda Bharati v. State of Kerala

Citation: AIR 1973 SC 1461

- Facts: Swami Kesavananda Bharati, the leader of a religious mutt in Kerala, was a petitioner against the Kerala Land Reforms Act, 1963 that sought to enforce land ceilings and redistribute land property. The Constitutional Amendment 24, 25, and 29 were enacted during the pendency of the petition which increased the authority of the Parliament to amend the Constitution including Part III.
- Issues: Whether the Parliament which gets its amending powers Article 368, has constitutional restrictions, especially in case of Fundamental Rights and Directive Principles of State Policy.
- Arguments: According to the Petitioners, the absence of restraints on the powers to amend the Constitution would undermine the very basis of the Constitution's values. The State reasoned that it could initiate such socio-economic reforms under Directive Principles (Part IV) and even do so at the expense of Fundamental Rights (Part III) was justified.
- Judgment: The 13-judge Bench also held that Parliament only had the power to amend any of the provisions of the Constitution, and not the basic structure. It was believed that reconciliation between Part III and Part IV was a part of this basic structure.
- Impact and Analysis: The doctrine of basic structure created under the case helped to shield the Directive Principles and Fundamental Rights against abolition. It enhanced the status of Articles 40-42 and established their importance in the interpretation and an essential part in effecting constitutional ideals of justice, equality, and grass-root government¹.

Bandhua Mukti Morcha v. Union of India

Citation: AIR 1984 SC 802

- Facts: Bandhua Mukti Morcha, a non-governmental organisation, filed a writ petition under Article 32 presenting the complaint of the bonded labourers who were engaged in stone-quarries in Faridabad, Haryana and seeking relief. The labourers also faced

inhuman labor conditions, non-payment of wages, and the refusal to provide basic amenities, thereby contravening a variety of labor regulations.

- Issues: Does the use of bonded labourers and the arbitrarily inhumane nature of their employment constitute a breach of both Articles 21, and 23 and even Directive Principles such as Articles 41 and 42?
- Arguments: The petitioner contended that compulsory labor as well as working under inhuman conditions violated not only Directive Principles but also Fundamental Rights. Without providing efficient information or evidence, the Union of India as well as the state government denied the existence of bonded labor.
- Judgment: The Court ruled that the right to live with dignity as provided under Article 21 does not merely comprise a right to livelihood but also working conditions not humiliating to human dignity. The provision made a reference to Articles 39(e), 41, and 42 to determine the content of the right to life, thereby echoing the justiciable nature of Directive Principles.
- Impact and Analysis: This was a landmark on socio-economic rights law. In Article 21 the Court interpreted labour-related Directives (i.e., Articles 41 and 42) judicially. It re-established the importance of the fact that human dignity and social welfare cannot be separated from constitutional rights and duties.

Municipal Council, Ratlam v. Vardhichand

Citation: AIR 1980 SC 1622

- Facts:
Inhabitants of an area within the Ratlam town lodged a complaint/case under Section 133 CrPC against its Municipal Council on the inability to stop open defecation and dirty drains and unbearable stench of open sewers. The municipality argued that it did not have the adequate funds and resources to deal with the sanitation crisis.
- Issues:
Whether statutory powers authorized the Municipal Council to be compelled to take action on this pretext of Article 40 and supporting Directive Principles even when the financial position could be collapsing.

- Arguments:

The aggrieved parties rested their claims on the right to decent and clean life under Article 21. They called the neglect on the part of the municipality as wayward against the principles of vigour of civic duty and public health. The Municipal Council claimed that it did not have the financial ability to perform the sanitation exercises.

- Judgment:

The Supreme Court instructed the Municipal Council to immediately take steps in order to introduce proper sanitation and drainage facilities. The Court had ruled that inability on the financial front was no justification to the fact that means to act in the statutory provisions were not met.

- Impact and Analysis:

It is a first of its kind precedent between Article 40 (self-government in local affairs) with enforceable citizens' rights. The Court related Directive Principles with the Fundamental Rights which provided impetus to the local governments to act on the promises of welfare. It enhanced the enforcement power of the citizens with regard to fundamental amenities by the courts.

Unni Krishnan, J.P. v. State of Andhra Pradesh

Citation: 1993 AIR 2178

- Facts: A coalition of private schools raised an opposition against the state laws that imposed restrictions on fees and admissions. This case was expanded to a wider question whether the right to education was a fundamental right under Article 21 and how far it was connected with the Directive Principles under Article 41.
- Issues: Whether education is part of the right to life provided under Article 21 or not and whether Directive Principles such as Article 41 are enforceable by judicial action to that degree.
- Arguments: The petitioners were against any form of over control of education by the government due to the reasons of autonomy. The State maintained that education is a major socio-economic right under article 41 and therefore, should be controlled to promote abundance of equality.

- Judgment: Thus, the Supreme Court held that the right to education up to the age of 14 years is a fundamental right under Article 21 in part based on Article 41. It allowed the state to exercise sensible regulations in order to enforce this right.
- Impact and Analysis: It was under this judgment that Part III and IV were connected through the interpretation of Article 21 as interpreted by use of Article 41. It established a framework of Article 21A (Right to Education) and established that human rights to social-economic rights such as education and employment are core elements of constitutional dignity.

National Campaign Committee for Central Legislation on Construction Labour v. Union of India

Citation: (2018) 13 SCC 103.

There was a PIL which was undertaken to highlight the vast underutilization and misutilization of welfare money acquired under Building and Other Construction Workers Welfare Cess Act of 1996. There was a total amount of over 29,000 crores accumulated yet there was little benefit accrued to the workers even though there are statutory provisions.

- Issues: Whether the non- enforcement of welfare schemes to construction workers was in violation of Articles 21, 41 and 42 and whether Directive Principles could be used as a regime to provide judicial enforcement of social economic rights.
- Arguments: The petitioners stated that the laxity was unlawful against Article 39, 41 and 42 of the vision of a welfare state in the constitution. The State confessed lapses and claimed that barriers were present in administration.
- Judgment: The Supreme Court instructed the State Governments and Union Governments to come up with appropriate mechanisms in the interest of operating welfare boards in the open and spending money in the interests of workers. The Court emphasized the constitutional duty of the State of providing a right to work and decent labour conditions.
- Impact and Analysis: This decision further reinstated the enforcing power of socio-economic rights according to Article 21 with the Directive Principles such as the

Articles 41 and 42. It acknowledged the rights of the construction workers as the main source of constitutional justice.

In Re: Problems and Miseries of Migrant Labourers

Bench: Ashok Bhushan, Vineet Saran, M.R. Shah

- Facts: The lockdown caused by the COVID-19 created a situation when the Supreme Court made Suo motu deliberations regarding the massive displacement of migrant workers and their plight. The crisis revealed severe administrative gaps in providing the informal workers with food, shelter and wages.
- Issues: Whether the inaction of the State was a violation to the fundamental right to life and dignity under Article 21 and whether the constitutional duties under articles 39, 41, and 42 were violated during the emergency.
- Arguments: Civil society reports show cases of breakdown of welfare regimes, and no implementation of the labour laws. Logistical challenges were reported by the Centre and the States who agreed that better coordination is needed.
- Judgment: The Court ordered that relief packages be available to all the States and the Union Territories to make certain that there is food security under the National Food Security Act when it comes to providing free type of transport and register all the migrant workers to get advantages of welfare schemes under the existing law of labor.
- Impact and Analysis: This case indicated the importance of the Articles 41 and 42 in situations of the humanitarian crisis. It identified the Directive Principles as the guiding principles in order to have the guarantees of welfare both in the long run and at the earliest possible moment to unorganised labourers and casual labourers in addition to the long-term and short-term needs of welfare.

CONTEMPORARY RELEVANCE

Article 40-42 still plays a significant role in the democratic and welfare agenda of India. They are not justiciable yet they still affect their governance and jurisprudence. Although

institutionalisation of the focus given to local self-government in Article 40 via the 73rd Amendment Act 1992 has been tried, there are still issues relating to Gram Sabha functioning, fiscal decentralisation and the representation of women and marginalised sections⁹⁷⁷. The Panchayats were also involved in relief distribution in the post-COVID scenario, deepening their federal significance even more⁹⁷⁸.

Article 41 became more prominent with MGNREGA, especially in the pandemic scenario. In *Swaraj Abhiyan v. Union of India*, the Supreme Court established a link between delayed NREGA payment and constitutional obligation⁹⁷⁹. Issues of false job cards and misappropriation of funds, nevertheless, exist, and this warrants the need to demand an Urban Employment Guarantee⁹⁸⁰. Article 42 that focuses on humane conditions of work affects legislation, such as the Maternity Benefit (Amendment) Act, 2017⁹⁸¹. The informal sector still, however, fails to enjoy benefits. The judicial decisions of recent years extended protection to the contract workers⁹⁸², and active court cases have been riling and active litigation is agitating to change the status of gig workers to that of an employee⁹⁸³. Unsafe working conditions continue to be the case in mining and sanitation⁹⁸⁴. Discrepancies in implementation are made difficult by budgetary needs and informal sector supremacy⁹⁸⁵. However, the development in Courts with regards to integrating Articles 14, 21, 41 and 42 is bringing them into harmony thus following the DPSPs as their living principles⁹⁸⁶.

CONCLUSION

Though not justiciable, the Articles 40-42 reflect in the dream of India in a welfare and participatory democracy⁹⁸⁷. Article 40 advocates the concept of decentralisation by

⁹⁷⁷ Ministry of Panchayati Raj, Annual Report 2020–21 (Government of India, 2021) 32–36.

⁹⁷⁸ Niranjan Sahoo, 'The Pandemic and Panchayats' (2021) 56(2) Economic & Political Weekly 14.

⁹⁷⁹ *Swaraj Abhiyan v. Union of India*, (2016) 7 SCC 498.

⁹⁸⁰ Comptroller and Auditor General (CAG), Performance Audit of MGNREGA (2023) 21–23.

⁹⁸¹ The Maternity Benefit (Amendment) Act, 2017, No. 6 of 2017, Acts of Parliament, 2017.

⁹⁸² *Puducherry Women's Commission v. Union of India*, (2020) SCC Online Mad 482

⁹⁸³ Jayati Ghosh, 'Rethinking Labour Rights for Platform Workers' (2022) 57(4) Economic & Political Weekly 10.

⁹⁸⁴ Usha Ramanathan, 'A Word on Manual Scavenging' (2014) 49(4) Economic & Political Weekly 43–47.

⁹⁸⁵ Shyam Sundar KR, 'Informal Sector Workers and Social Security' (2019) 54(1) Indian Journal of Labour Economics 89.

⁹⁸⁶ M P Singh, V.N. Shukla's Constitution of India (14th edn, EBC 2022) 459–461.

⁹⁸⁷ M P Jain, Indian Constitutional Law (8th edn, LexisNexis 2018) 1325–1328.

Panchayati Raj; this principle is hindered by financial exposure and political interference⁹⁸⁸. Article 41 sustains welfare schemes like MGNREGA and RTE which are being often read in conjunction with Article 21 to secure socio-economic rights⁹⁸⁹. Article 42 ensures humane workers conditions which can be seen through the actions of the Maternity Benefit (Amendment) Act, 2017, but there exists a flaw on the exclusion of gig workers under the new labour codes⁹⁹⁰. The combination of these provisions governs and controls law and governance, proving to represent constitutional morality, adapting themselves to digital labour, gender equality and including social protection inclusivity⁹⁹¹.

⁹⁸⁸ Ministry of Panchayati Raj, Annual Report 2020–21 (Government of India, 2021) 25–28.

⁹⁸⁹ *Swaraj Abhiyan v. Union of India*, (2016) 7 SCC 498; Right of Children to Free and Compulsory Education Act, 2009.

⁹⁹⁰ The Maternity Benefit (Amendment) Act, 2017; Code on Social Security, 2020.

⁹⁹¹ Upendra Baxi, 'Directive Principles and the Culture of Constitutionalism' in Rajeev Bhargava (ed), *Politics and Ethics of the Indian Constitution* (OUP 2008) 161–163.

CHAPTER 27

Living Wage and Decent Standard of Life (Article 43)

By Periyannayagi Bibiana L

INTRODUCTION

The Indian Constitution functions beyond its document status because it establishes fundamental principles that govern the nation through civil rights protection and social duty requirements. Article 43 functions as a basic foundation for labour justice because it presents a deep constitutional outlook for worker welfare that forms the foundation of India's social justice system. This section intends to connect the constitutional requirements of this article with real-world execution to provide an all-encompassing explanation for constitutional law students along with a practical understanding.

At its core, this Article, enshrined within Part IV of the Indian Constitution, mandates that “*The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.*”⁹⁹² This directive forms itself as an essential element of the DPSPs because it guides the State in policy creation and legislative decisions while maintaining its non-justiciable status in court. The non-enforceable status of DPSPs has not stopped judicial activism from transforming them into essential constitutional elements which drive India toward social equality.

India's obligation to guarantee labour rights traces its roots to a colonial transition which moved away from wage exploitation toward more just social welfare systems. The constitutional

⁹⁹² Article 43, The Constitution of India, 1950.

requirement demonstrates how society has advanced to value work dignity through development programs that promote social justice alongside economic growth. The provision stands as a fundamental part of the constitutional framework because it works together with other essential directives, such as Article 39(e) which addresses worker health and strength, and Article 42 which establishes fair work conditions and maternity protection, and Article 21 which protects life and personal freedom to ensure livelihood and a dignified existence.

This chapter contains multiple elements which work together to deliver a complete comprehension of Article 43. Our first task involves detailed analysis of its objectives and main concepts while we explain the distinctions between ‘living wage,’ ‘minimum wage,’ and ‘air wage’ and define the requirements for a ‘decent standard of life’ that reaches past wages to include housing, health care, education and leisure activities. Article 43 receives its universal scope through this chapter, which demonstrates its coverage of industrial and agricultural as well as informal sector workers. Furthermore, it will meticulously examine the legislative framework enacted to support Article 43, including foundational government enactments such as the Minimum Wages Act, 1948⁹⁹³, the Equal Remuneration Act, 1976⁹⁹⁴, the Factories Act, 1948⁹⁹⁵, the Maternity Benefit Act, 1961⁹⁹⁶, and the more recent Code on Wages, 2019⁹⁹⁷. These statutes are direct examples of parliamentary legislation, constituting primary government sources that implement the constitutional vision of labour justice. A significant portion will be dedicated to a detailed analysis of landmark judicial interpretations, exploring how the Supreme Court and High Courts have consistently invoked and expanded the spirit of Article through various judgments. Finally, the chapter will address the contemporary relevance of this article, scrutinizing current challenges such as the informalisation of the economy, the rise of the gig economy, issues of wage theft, and the persistent disparity between minimum wages and the actual cost of living. By combining doctrinal analysis with real-world applications, this chapter aims to empower readers with a nuanced understanding of this Article's pivotal role in shaping India's socio-economic fabric and its continuous pursuit of labour justice.

⁹⁹³ The Minimum Wages Act, 1948

⁹⁹⁴ The Equal Remuneration Act, 1976

⁹⁹⁵ The Factories Act, 1948

⁹⁹⁶ The Maternity Benefit Act, 1961

⁹⁹⁷ The Code on Wages, 2019

HISTORICAL & CONSTITUTIONAL BACKGROUND

The analysis shows India evolved its labour rights stance by transitioning from colonial wage exploitation toward a constitutionally established welfare system. The transition demonstrates India's dedication to social equality and worker respect, which links economic growth directly to employee well-being.

Transition from Colonial Rule to Constitutional Rights

This Article emerged because of historical developments which moved away from colonial wage systems that exploited workers. The Indian Constitution's framers, after independence, aimed to build a nation based on social fairness and economic fairness since they understood that political freedom needed to extend to social and economic progress for every citizen. The Constitution exists as more than a legal code since it serves as a dynamic system that shapes state administration and individual rights together with communal duties. This foundational imperative led to the inclusion of provisions aiming to transform the historical injustices faced by workers into a system that guaranteed their fundamental well-being and dignity.

DIRECTIVE PRINCIPLES OF STATE POLICY (DPSPs)

Article 43 is enshrined within Part IV of the Indian Constitution, which delineates the DPSPs. These principles are fundamental to the governance of the country, guiding the State in policy formulation and legislative action. While the DPSPs, by their very nature, are non-justiciable in courts of law, they are explicitly recognized as foundational in the governance of the country. This means that while a citizen cannot directly approach a court to enforce this Article, the State is morally and constitutionally bound to strive for its realization through suitable legislation and economic organization. Over time, judicial activism has progressively imbued DPSPs, including this Article, with significant constitutional force, making them central to India's pursuit of social equity. This comprehensive directive reflects a broad constitutional philosophy that extends beyond mere subsistence, aiming for a holistic improvement in the lives of workers.

Integration with the Overall Constitutional Philosophy

It is not an isolated directive; It is deeply integrated with the broader constitutional philosophy of social justice, human dignity, and the promotion of a welfare state. It forms a cornerstone of India's social justice agenda. Its objectives resonate strongly with the ideals enshrined in the Preamble to the Constitution, particularly the commitment to secure "Justice, social, economic and political" and to promote "Fraternity assuring the dignity of the individual".

Legislative Background and Amendments

This article requires achievement through "appropriate legislation or economic organisation". The Indian government has established a complete set of legislative measures to implement labour justice principles outlined in this Article. Examples of such parliamentary legislation include:

1. **The Minimum Wages Act, 1948:** This functions as a primary regulation that establishes minimum wage standards to stop worker exploitation.⁹⁹⁸
2. **The Factories Act, 1948:** This establishes rules for factory operations to protect workers through safety measures and health services, and welfare programs.⁹⁹⁹
3. **The Maternity Benefit Act, 1961:** establishes provisions for maternity payments alongside employment protection for women throughout their pregnancy period.¹⁰⁰⁰
4. **The Equal Remuneration Act, 1976:** This aims to prevent discrimination in remuneration based on gender.¹⁰⁰¹
5. **The Code on Wages, 2019:** It functions as a new consolidated legislation which unifies wage-related laws, including minimum wage standards and payment of wages, as well as bonus and equal remuneration requirements.¹⁰⁰²

The legislative foundation of India's Article includes these acts together with multiple other labour laws which establish the core framework of the country's constitutional framework. Through these laws, the government converts the DPSPs into binding legal requirements, which people can find through official government publications and parliamentary documents and legal

⁹⁹⁸ The Minimum Wages Act, 1948.

⁹⁹⁹ The Factories Act, 1948.

¹⁰⁰⁰ The Maternity Benefit Act, 1961.

¹⁰⁰¹ The Equal Remuneration Act, 1976.

¹⁰⁰² The Code on Wages, 2019.

information databases administered by official agencies or their affiliated organizations. Article 43 demonstrates India's development towards building a welfare state, which prioritizes labour justice as its main goal. The government solidifies its position to transform the nation's social and economic framework and its dedication to worker dignity through its placement in the DPSPs, combined with its fundamental rights connections and government legislative measures.

The Indian Constitution's Article 43 exists within Part IV as a DPSP to establish a welfare state based on social justice and human dignity principles for Indian workers. This doctrinal analysis examines the constitutional framework through its objectives and scope, and language, while identifying the essential constitutional doctrines for its modern interpretation and implementation.

OBJECTIVES AND SCOPE OF ARTICLE 43

The language of this Article reveals several critical objectives and a wide scope:

- 1. All Workers Coverage:** The term "all workers, agricultural, industrial or otherwise" conveys a comprehensive and expansive coverage, bringing under the protective canopy of the State every stratum of the labour force, even those in the informal sector. This applicability to all reflects the philosophy of the constitution of treatment and protection on an equal basis to all those who contribute to the economy of the country.
- 2. Securing Work:** Although overshadowed by the "living wage" in much discussion, the call to secure "work" for all workers is central. It invokes a responsibility of the state to provide employment opportunities, acknowledging the inherent association between work, livelihood, and dignity.
- 3. The Doctrine of a "Living Wage":** It makes a distinction between a "living wage" and an ordinary "minimum wage" or "fair wage". A living wage, as conceived by the Constitution, is more than survival. It intends to guarantee a level of remuneration that will not only fulfil basic needs but allow workers to achieve "a decent standard of living and full participation in leisure and social and cultural opportunities, including adequate food, housing, medical care, education, leisure activities, and overall well-being." It

therefore expects not just workers' needs for housing, medicine, education and leisure but the expectation to be able to enjoy all those things that contribute to a full well-being. The goal, therefore, is to lift workers above the poverty line and allow for full engagement in society, suggesting some concern for human dignity and social justice and economic equality.

4. **“Conditions of Work Ensuring a Decent Standard of Life”**: This notion of decent work establishes the living wage idea, underlining the qualitative aspects of work. It stipulates that the work environment itself must allow for a dignified living, ensuring safety, health and welfare, as opposed to just economic sustenance, and must include the "full enjoyment of leisure and social and cultural opportunities," showing a complete view of human welfare beyond the workplace.
5. **Means of Achievement**: It empowers the State to achieve its objectives “by suitable legislation or economic organisation or in any other way”. This broad phrase grants flexibility to the State, allowing it to adopt various policy measures, enact specific laws, or restructure economic systems to realize the directive’s goals.
6. **Integration with Other Constitutional Provisions: Amplifying Scope** - Article’s objectives and scope are significantly amplified through its integration with other fundamental provisions of the Constitution, particularly those related to Fundamental Rights and other DPSPs.
 - **Article 39(e)**: This DPSP directs the State to ensure that “the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength”.¹⁰⁰³ It directly supports this article by creating a protective environment for workers, preventing exploitation and ensuring that employment is not detrimental to their well-being, thus contributing to a “decent standard of life”.
 - **Article 42**: Another DPSP mandates that the State “shall make provision for securing just and humane conditions of work and for maternity relief”.¹⁰⁰⁴ This provision explicitly reinforces the “conditions of work ensuring a decent standard

¹⁰⁰³ Article 39(e), The Constitution of India, 1950.

¹⁰⁰⁴ Article 42, The Constitution of India, 1950.

of life” aspect of Article 43, specifically addressing the humane aspects of the workplace and the crucial need for maternity protection.

- **Article 21: The Right to Life and Personal Liberty:** This Fundamental Right, which guarantees “No person shall be deprived of his life or personal liberty except according to procedure established by law,” has been expansively interpreted by the judiciary. Over time, the Supreme Court has declared that the “right to life” under Article 21¹⁰⁰⁵ includes the right to a dignified existence, the right to livelihood, and the right to live with human dignity. This judicial interpretation has effectively imbued with significant constitutional force, transforming its aspirational goals into de facto enforceable rights. Landmark judgments such as *Olga Tellis v. Bombay Municipal Corporation*¹⁰⁰⁶, which linked the right to livelihood with the right to life and *Sanjit Roy v. State of Rajasthan*¹⁰⁰⁷, which affirmed the right to fair wages under state employment projects, illustrate this crucial linkage. Similarly, cases like *Surya Narayan v. Union of India*¹⁰⁰⁸ and *Consumer Education Research Centre v. Union of India*¹⁰⁰⁹ have interpreted the “decent standard of life” to encompass health, housing, and social security for workers, further reinforcing the bridge between Article 43 and Article 21.

KEY CONSTITUTIONAL DOCTRINES: DPSPs AND JUDICIAL ACTIVISM

The doctrinal significance of this Article lies primarily in its nature as a Directive Principle of State Policy and the subsequent evolution of judicial interpretation.

DPSPs as “Fundamental in the Governance of the Country”

¹⁰⁰⁵ Article 21, The Constitution of India, 1950.

¹⁰⁰⁶ *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180

¹⁰⁰⁷ *Sanjit Roy v. State of Rajasthan* AIR 1983 SC 328

¹⁰⁰⁸ *Surya Narayan v. Union of India* AIR 2013 SC 2164

¹⁰⁰⁹ *Consumer Education Research Centre v. Union of India* AIR 1995 SC 922

Article 37 of the Constitution explicitly states that while DPSPs are not enforceable by any court, “the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws”. This doctrinal position means that even though a citizen cannot directly claim a “living wage” in court based on this Article, the State is morally and constitutionally bound to strive for its realization through policy and legislation. They serve as a moral compass and guiding light for the legislative and executive arms of the government.

Judicial Activism and the Acquired Constitutional Force of DPSPs

Despite their non-justiciable nature, DPSPs, including this article, have “acquired constitutional force through judicial activism”. This is a crucial constitutional doctrine that has transformed the landscape of socio-economic rights in India. The judiciary, particularly the Supreme Court, has progressively interpreted Fundamental Rights in light of the DPSPs. By reading the aspirational goals of DPSPs into the enforceable Fundamental Rights, courts have made it possible for workers to seek redress based on principles like a living wage and dignified work conditions. For instance, in *Chandra Bhawan Boarding v. State of Mysore*¹⁰¹⁰. The Supreme Court invoked Article 43 to justify statutory minimum wages, thereby giving a judicial sanction to legislative action in furtherance of a DPSP. This approach reflects a balancing act where the judiciary guides the State to fulfil its constitutional obligations, ensuring that economic progress is aligned with social justice.

The Doctrine of Harmonious Construction

The broader doctrine of harmonious construction—where courts attempt to balance Fundamental Rights and DPSPs without undermining either—is implicitly at play. The expansion of Article 21 to incorporate aspects of Article 43 is a prime example of such construction, ensuring that the State’s duty to promote welfare (DPSPs) does not conflict with, but rather enhances, the individual's fundamental freedoms and dignity (Fundamental Rights).

In conclusion, this article stands as a pivotal constitutional provision, defining a broad and progressive vision of labour justice in India. Its comprehensive objectives, universal scope, and explicit mention of "living wage" and “decent standard of life” demonstrate a rounded

¹⁰¹⁰ *Chandra Bhawan Boarding v. State of Mysore* AIR 1970 SC 2042

welfare-based philosophy. The doctrinal explanation, especially the creative judicial activism linking Article 43 with the fundamental right to life, has changed from a guiding principle to a powerful weapon for realising the dignity and welfare of all workers across the country. The dynamic relationship ensures that the constitutional vision of social and economic justice has a live, if changing, existence in India's legal and sociopolitical space.

JUDICIAL INTERPRETATIONS

*Chandra Bhawan Boarding & Lodging v. State of Mysore*¹⁰¹¹

In this case, the Supreme Court upheld the constitutionality of minimum wage setting under the Minimum Wages Act, 1948. The Court noted that minimum wage setting addresses the obligation under Article 43 of the Constitution to secure for the workers a living wage and to promote a decent standard of living. The judgment also reiterated that economic justice is at the forefront of constitutional commitments, as evident in the Directive Principles of State Policy, thus signalling a constitutional perspective of labour justice. It also heralded a change from a 'laissez-faire' industrial regime to one that expressed state responsibility to safeguard workers' dignity and livelihood.

*Bijay Cotton Mills Ltd. v. State of Ajmer*¹⁰¹²

In this case, the Minimum Wages Act, 1948, ruled against the employer's argument that it violated their freedom of contract under Article 19(1)(g). It underscored the State's obligation to ensure that every worker commands a just wage sufficient to maintain human dignity. This case reaffirmed Article 43 principle, emphasizing the right to a living wage necessary for a minimum standard of decent life, serving the constitutional purpose of labour welfare and social justice. It was an important affirmation of the State's obligation to limit wage payment to reduce exploitation and assist in the establishment of economic equality.

¹⁰¹¹ Ibid

¹⁰¹² *Bijay Cotton Mills Ltd. v. State of Ajmer* AIR 1955 SC 33

***Express Newspapers v. Union of India*¹⁰¹³**

While primarily dealing with the issue of freedoms of the press, the Court considered wage regulatory provisions about newspaper workers. The Court upheld the Working Journalists Act¹⁰¹⁴ as a valid law, stating that labour laws with respect to ensuring fair wages do not infringe upon fundamental rights where those laws are reasonable. The Court indirectly acknowledged the importance of providing workers with a living wage and social security, which is inherent in Article 43. This case also reaffirmed that under constitutional governance, workers' economic rights and professional freedoms can, at times, exist together in a balanced manner and be included in legislation that is fair to workers.

***Bandhua Mukti Morcha v. Union of India*¹⁰¹⁵**

This major Public Interest Litigation addressed the issue of bonded labour and the exploitation of workers in stone quarries. The Supreme Court stated that the right to live with human dignity also holds the protection of workers' rights incorporated in Article 21 and Article 23, and that the Directive Principles of State Policy, and in particular Article 43 would be important in interpreting the right to life. The Supreme Court provided that the State must take sufficient action to rehabilitate bonded labourers and provide minimum wages, and uphold the labour law. It would mark a shift in which Directive Principles can be held up as legally enforceable components of human dignity, especially regarding the standard of living and labour rights.

***Olga Tellis v. Bombay Municipal Corporation*¹⁰¹⁶**

Pavement dwellers challenged their eviction in this case. The Supreme Court held that the right to livelihood is one of the facets of the right to life as expounded in Article 21. The decision, while not directly about rights of labour, nonetheless implicated the State's constitutional duty to provide the conditions necessary for decent living as aspired to in Article 43. The Court

¹⁰¹³ Express Newspapers v. Union of India AIR 1958 SC 578

¹⁰¹⁴ The Working Journalists Act, 1955.

¹⁰¹⁵ Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802

¹⁰¹⁶ Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180

recognized that denying the urban poor their livelihood violated the aspiration of social and economic justice, and hence placed an indirect obligation on the State to guarantee the basic conditions needed for a dignified life.

***Sanjit Roy v. State of Rajasthan*¹⁰¹⁷**

In this case, the payment of wages below the minimum standard in drought relief work was in issue. The Supreme Court held that paying less than the minimum wage contravened Article 23 (Prohibition of forced labour) and Article 21 (right to life). The case reaffirmed that minimum wages are, by their very nature, fundamental for dignity and necessary under the constitutional scheme, including Article 43. The Court indicated that State-sponsored employment must ensure just and humane conditions - thereby buttressing the State's duty under the Constitution to uphold human dignity, fair wages and social justice.

***M.C. Mehta v. State of Tamil Nadu*¹⁰¹⁸**

This case is related to child labour in matchstick factories. The Court underscored the State's responsibility to protect children, and to guarantee them the right to education, health and dignity. The Court ordered the regulation of the issue of child labour regarding compensation and education of the children in question. Specifically, the judgment mandated that the provisions of Articles 39(e), 39(f), 41, 43 and 45, did take labour justice beyond adults to children in the factories; catching a clear glimpse of the constitutional vision and the State's constitutional duty to bring into being a humane and just society for its most vulnerable members, including children, to ensure their right to a decent standard of life and equal opportunity to realize development.

***People's Union for Democratic Rights v. Union of India (PUDR)*¹⁰¹⁹**

This Public Interest Litigation concerned the exploitation of contract workers during the construction of facilities for the Asian Games. The Court found that the contractors were not paying the contractual workers the minimum wages established in law, nor providing the statutory benefits to them, which amounted to forced labour under Article 23 of the Constitution,

¹⁰¹⁷ Sanjit Roy v. State of Rajasthan AIR 1983 SC 328

¹⁰¹⁸ M.C. Mehta v. State of Tamil Nadu AIR 1997 SC 699

¹⁰¹⁹ People's Union for Democratic Rights v. Union of India AIR 1982 SC 1473

and was therefore a constitutional violation. The judgment reaffirmed that Directive Principles of State Policy, such as Article 43, are important when interpreting and enforcing fundamental rights and explicitly relevant when dealing with human dignity and labour protections. The judgement further reinforced the activism of the judiciary in its commitment to ensure labour justice on behalf of poor and disadvantaged workers as they face systemic exploitation.

***R.D. Shetty v. International Airport Authority*¹⁰²⁰**

Although not specifically a labour case, the Court noted that any action taken by the State in respect of employment or contract must be fair, non-arbitrary, and reasonable under Article 14 of the Constitution. The judgement sets an important precedent for humane conditions of work, and also, therefore, labour rights by universally applying these principles of equality. The judgement and the emphasis on equality and fairness in respect of public employment belong to the same conceptual framing as Article 43, which seeks to promote a decent standard of life and health for every worker by providing equal opportunities, transparent recruitment and merit-based employment. Further, it reinforced the constitutional idea behind the welfare role of the State regarding economic development and welfare outcomes.

***Harjinder Singh v. Punjab State Warehousing Corp.*¹⁰²¹**

The Court has affirmed a reinstatement order as well as an award of compensation to a worker whose contract of service was terminated in bad faith. Furthermore, the Court noted that because the laws about labour must be interpreted strictly and in the manner most favourable to workers, it is even more imperative to protect workers' rights in a climate of increasing privatisation. In a constitutional democratic society, an underlying principle of the constitution is the provision of or respect for Directive Principles like Article 43 that call for decent work and living wages, and the Court noted that economic justice is a major foundation of constitutional democracy. Laws that protect labour must not be approached from an efficiency or reform lens, nor should they be eroded in a climate of economic liberalization.

¹⁰²⁰ R.D. Shetty v. International Airport Authority AIR 1979 SC 1628

¹⁰²¹ Harjinder Singh v. Punjab State Warehousing Corp. (2010) 3 SCC 192

***Air India Statutory Corp v. United Labour Union*¹⁰²²**

This case also broadened the definition of “industry” and “workman” so that actors in the public undertaking were not exempt from the protection of the legislation. The Court also ruled that not only must the Directive Principles be read along with ordinary rights such as Article 43, but we must also find them conformative to give Directive Principles effect. The Court also reiterated that labour welfare is an obligation of the community that enshrines its dignity in positive law, and economic standards cannot and should not diminish that dignity in a climate of economic liberalization. The Court emphasized that employment policies must reflect the constitutional exaltation of social and economic justice.

***Bangalore Water Supply v. A. Rajappa*¹⁰²³**

This decision set out the triple test for determining an "industry" for purposes of the Industrial Disputes Act. The Court held that educational, charitable, and even government institutions may be industries if certain conditions are met. The Court's reasoning emphasized that labour could be included and protected universally. The judgment extends the notion of industrial jurisprudence to ensure that all labour is entitled to rights, wages, and a decent condition of work. This judgment represents the spirit of Article 43, which is intended to secure a just living wage and a dignified life for all classes of working individuals, building the foundation for universal labour justice.

***Surya Narayan v. Union of India*¹⁰²⁴**

In this case, the right of temporary and daily wage-labourers to equal pay for equal work was at issue. The Orissa High Court, consistent with past precedent of the Supreme Court, agreed that to deny fair wages to temporary and daily wage labourers is contrary to equality and dignity. The judgment quoted article 43 of the Constitution, which distinguishes the responsibility of the State from employers to ensure employees decent working conditions, or a fair standard of living. The

¹⁰²² Air India Statutory Corp v. United Labour Union AIR 1997 SC 645

¹⁰²³ Bangalore Water Supply v. A. Rajappa AIR 1978 SC 548

¹⁰²⁴ Surya Narayan v. Union of India AIR 2013 SC 2164

decision upheld the position that all workers are entitled to constitutional protection, whether permanent or temporary; thus reframing the overarching ethos of economic democracy and justice.

***Consumer Education Research Centre v. Union of India*¹⁰²⁵**

The Supreme Court decided that the right to health and safety is part of the right to life under Article 21. The Court ordered that there was a mandatory duty to provide medical treatment, protective equipment and compensation in hazardous industries. The Court relied upon Articles 39(e), 41, 43 and 47 in concluding that health and safe conditions are essential to a level of decency when considering a person's/worker's standard of living. The Court stated that labour rights simply mean human rights, thus reinforcing one of the constitutional objectives of protecting the health, safety and dignity of all workers.

Re Kerala Education Bill¹⁰²⁶

This case, although about education, also examined the relationship between the Directive Principles and Fundamental Rights. The Supreme Court conceded that Directive Principles, such as Article 43, could help interpret the constitutional objectives, including efficient economic and labour justice. The Court pointed out that the State cannot avoid its obligations under its various policies, with rationality, direction and purpose, to enable it to work towards a just social order. This case laid the early foundation for acknowledging that non-justiciable principles can still be treated legitimately and constitutionally relevant, whenever the opportunity arises, in bringing to life the intended welfare State.

CONTEMPORARY RELEVANCE

¹⁰²⁵ Consumer Education Research Centre v. Union of India AIR 1995 SC 922

¹⁰²⁶ Re Kerala Education Bill AIR 1958 SC 956

Article 43 of the Indian Constitution, though a DPSP and thus not directly enforceable, continues to be profoundly relevant in contemporary India, shaping ongoing debates, policy discussions, and legal challenges concerning labour justice. Its objectives of securing work, a living wage, and decent working conditions remain central to addressing the socio-economic realities of the nation's diverse workforce.

One of the most significant contemporary issues highlighting Article's relevance is the rise of the informal and gig economy. India has a vast informal sector, and the burgeoning gig economy, driven by digital platforms, presents new challenges to the traditional understanding of employer-employee relationships. It mandates securing “work, a living wage, conditions of work ensuring a decent standard of life” for “all workers, agricultural, industrial or otherwise”. This comprehensive language implies a constitutional vision that extends protection beyond formal, organized labour. However, workers in the gig and informal sectors often lack formal contracts, social security benefits, and stable incomes, making the realization of a “living wage” and “decent standard of life” a significant contemporary challenge.

Unresolved legal questions persist regarding how to apply the principles of this Article to these evolving work models. For instance, should platform workers be classified as employees or independent contractors, and what implications does this classification have for their rights to a living wage, social security, and fair working conditions as envisioned by Article 43, Article 39(e), and Article 42. Note that “informalisation and gig economy” is a key challenge while the Code on Wages, 2019, is mentioned as a new unified law, but its specific effectiveness in providing a “living wage” and a “decent standard of life” to gig workers or addressing their unique issues is not detailed in the provided material. The debate revolves around legislative innovation to cover these new forms of employment and ensure they are not left outside the constitutional protective umbrella.

Another critical contemporary debate linked to Article 43 is the persistent disparity between the statutory “minimum wage” and the aspirational “living wage”. This explicitly aims for a “living wage” that enables “a decent standard of life and full enjoyment of leisure and social and cultural opportunities,” transcending mere subsistence. However, it acknowledges a “disparity between minimum wage and cost of living” as an ongoing challenge. While legislation like the Minimum Wages Act, 1948, exists to set floor wages, achieving the higher threshold of a “living wage”

remains an unresolved legal and economic question. The judiciary, in cases like *Chandra Bhawan Boarding v. State of Mysore*¹⁰²⁷, has justified statutory minimum wages by invoking Article 43, acknowledging the State's duty. Yet, the practical implementation of a true "living wage" that accounts for housing, health, education, and recreation for all workers, as implied by a "decent standard of living," continues to be a subject of intense debate among labour economists, policymakers, and worker organizations.

Challenges in enforcement and the issue of "wage theft" are also central to the contemporary relevance of this Article. Despite the extensive legislative framework enacted to support Article 43's vision, including acts, the effective implementation of these laws on the ground remains a significant hurdle. It also highlights "wage theft and lack of enforcement" and "low awareness among workers" as ongoing implementation gaps. This indicates that even where legal provisions exist, workers, particularly those in vulnerable sectors, may not receive their rightful remuneration or enjoy the stipulated working conditions due to weak enforcement mechanisms, employer non-compliance, and a lack of awareness of their rights. The judiciary, as seen in *People's Union for Democratic Rights v. Union of India*¹⁰²⁸, has mandated state accountability for legal wage payments. However, the actual lived experience for many workers still falls short of this constitutional ideal.

The broader objective of a "decent standard of life," which this article explicitly includes, also brings into focus contemporary debates around social security, healthcare, and housing for workers. The Supreme Court, in *Surya Narayan v. Union of India*¹⁰²⁹ and *Consumer Education Research Centre v. Union of India*¹⁰³⁰, has interpreted a "decent standard of life" to encompass health, housing, and social security for workers, linking it to the expansive right to life. Despite these judicial pronouncements, extending comprehensive social security nets, affordable healthcare, and adequate housing to the vast majority of India's workforce, especially the unorganized sector, remains a colossal contemporary policy challenge and an unresolved legal question of constitutional entitlement versus State capacity.

¹⁰²⁷ *Chandra Bhawan Boarding v. State of Mysore* AIR 1970 SC 2042

¹⁰²⁸ *People's Union for Democratic Rights v. Union of India* AIR 1982 SC 1473

¹⁰²⁹ *Surya Narayan v. Union of India* AIR 2013 SC 2164

¹⁰³⁰ *Consumer Education Research Centre v. Union of India* AIR 1995 SC 922

CONCLUSION

Article 43 stands as a foundational pillar within India's constitutional framework, encapsulating a profound vision for labour justice and a welfare-oriented society. As a DPSP, it mandates that the State strive to secure for all workers—whether agricultural, industrial, or informal—a living wage, conditions ensuring a decent standard of living, and the full enjoyment of leisure and social and cultural opportunities.

Although non-justiciable in its origin, Article 43 has gained enormous constitutional traction through strong judicial interpretation and activism. Iconic judgments have invoked it time and again to uphold statutory minimum wages, uphold the right to wages, correlated it with basic rights such as livelihood and freedom from bonded labour, and brought its protection to vulnerable sections like child labourers. The judiciary has further employed it to broaden the meaning of workers' rights to encompass health protection as well as social security, establishing its importance as a guiding principle in labour law.

Despite this, the realization of this article's ideals is still a challenge, especially in the face of the recent emergence of the gig and informal economies, continued wage theft, and weak enforcement systems. The large gap between the statutorily prescribed minimum wage and the cost of living is also a challenge, exacerbated by poor awareness among workers of their rights. To close these gaps in implementation and provide for greater enforceability, however, future actions need to concentrate on more muscular legislation and greater executive responsibility. By meeting these challenges, India can further entrench article's status as a cornerstone of its social justice platform, making it an even better “living document shaping all areas of governance, civil freedom, and social conscience” and ensuring the constitutional promise of labour justice becomes a real improvement in the lives of all workers.

Through addressing these issues, India can further entrench the article's position as a touchstone of social justice policy and make it an even more powerful “living framework shaping all facets of governance, civil liberty, and social responsibility”, and ensure the constitutional vision of labour justice translates into concrete gains for all workers.

CHAPTER 28

Uniform Civil Code (Article 44)

By Hifza Qamar

INTRODUCTION

“We must be very careful about clinging to personal laws when they conflict with the principles of liberty, equality and justice. Religion should not be an excuse to deny constitutional rights.”¹⁰³¹

-Dr. B.R. Ambedkar, Constituent Assembly Debates, November 23, 1948

In as much as it is always a right that the citizens of a democracy do not always adhere to the same civil laws owing to the different religions that they profess? Article 44 of the Constitution states that this is the key issue in the current debates on the UCC in India. It is a vision of how all the citizens will be subservient to a single civil statute in regard to other comparable concerns like marriage, divorce, relinquishment, and heritage regardless of the religion they follow¹⁰³².

According to Article 44 of the Directive Principles of State Policy, the state has the mandate to be looking forward to consume a uniform civil code to be available to the citizens across the geo-locations of India¹⁰³³. It is not justifiable but it has very powerful normative force, which is a constitutional readiness to uniformity in the law, gender justice, and secularism¹⁰³⁴.

¹⁰³¹ Constituent Assembly Debates, vol. VII, 23 November 1948, available at https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-23 (Visited on 20 June 2025)

¹⁰³² The Constitution of India, art. 44

¹⁰³³ Ibid

¹⁰³⁴ M.P. Jain, *Indian Constitutional Law* 243 (LexisNexis, Gurgaon, 7th edn., 2022).

Its inclusion in the UCC was after keen deliberation during the Constituent Assembly¹⁰³⁵. Although there were members who supported it vehemently (mainly the minority communities), Dr. B.R. Ambedkar argued strongly in favour of its necessity, citing that it will not interfere with religious autonomy. The compromise was that Article 44 would be treated as a non-binding devise, which could be implemented with future governments at their discretion¹⁰³⁶.

Because, too, the UCC has never really disappeared most especially in judicial opinions, law commission reports, and political manifestos. It has not only emerged as a legal thing, it has also emerged as something metaphoric about the indigenous inconsistency in India of both religious pluralism and universal declaration of equivalency¹⁰³⁷.

This chapter focuses on indigenous foundation, doctrinal evolution, case-law participation, and modern accusations against Article 44. It discusses the manner with which courts have been interacting with the laws based on indigenous value- framed approach, the reaction of the political players to the reform of laws and whether India can get its way with the uniformity of laws without shattering its various social composition.

CONSTITUTIONAL TEXT OF ARTICLE 44

*“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”*¹⁰³⁸

- Article 44, Constitution of India (1950)

Article 44 is included in the Directive Principles of State Policy (Part IV, Articles 36-51). The Directive may be followed by the State and are regarded as basic in the management of the nation though they are not considered under the judicial watch of the Article 37 as far as they are of constitutional concern¹⁰³⁹.

¹⁰³⁵ Constituent Assembly Debates, supra note 1.

¹⁰³⁶ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 134 (Oxford University Press, New Delhi, 2000)

¹⁰³⁷ Law Commission of India, 21st Report on Reform of Family Law (August 2018).

¹⁰³⁸ The Constitution of India, art. 44

¹⁰³⁹ Ibid., art. 37

The choice of words, specifically, the term “shall endeavour” shows that the founders of the UCC wanted it to be an aim and a goal that would be followed in case it is both socially and legally attainable. In both the public realm and as a point of court reasoning, Article 44 has been cited frequently even though it is not legally binding by itself, and this can be interpreted as to its retained moral and constitutional mandate¹⁰⁴⁰.

This brief line is the launch of a debate that has lasted decades so far trying to achieve the integration of both civil law predictability and tolerance to religious diversity in a multicultural society¹⁰⁴¹.

OBJECTIVES OF THE UNIFORM CIVIL CODE (UCC)

The Uniform Civil Code creates equality, secularism, and the certainty of law in accordance with Article 44 of the Constitution. The purpose of the program is to replace personal laws, based on religion and scripture, with common laws covering all Indians. religious quotas in jobs and schools¹⁰⁴².

1. Personal Laws Harmonisation

Different personal laws for Hindus, Muslims, Christians, Parsis, and tribal communities make up India's modern legal system¹⁰⁴³. Inconsistencies, legal ambiguity, and inequity before the law are the results of this disjointed regime. Standardizing civil law, lowering litigation, and guaranteeing that all people are held to the same legal standards in civil issues are the goals of a uniform code¹⁰⁴⁴.

2. Ensuring Gender Justice

Gender stereotypes and biases are often present in personal laws in different societies. Unfair or discriminatory inheritance rights, guardianship rights, and practices like the triple talaq, which

¹⁰⁴⁰ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 80 (Oxford University Press, New Delhi, 1999)

¹⁰⁴¹ M.P. Jain, *Indian Constitutional Law* 245 (LexisNexis, Gurgaon, 7th edn., 2022).

¹⁰⁴² The Constitution of India, art. 44

¹⁰⁴³ Tahir Mahmood, *Uniform Civil Code: Fictions and Facts* 12 (Universal Law Publishing, Delhi, 2003)

¹⁰⁴⁴ Law Commission of India, 21st Report on Reform of Family Law (August 2018)

Shayara Bano (2017)¹⁰⁴⁵ deemed unconstitutional, has traditionally been inequitable to women. It is argued that uniform civil code (UCC) offers gender-neutral rights, and that civil laws are aligned with Articles 14, 15 and 21 of the Constitution¹⁰⁴⁶.

3. Adding to Secularism and National Integration

A civil code for all citizens is an indispensable underpinning for non-preferential secularism, whereby the State can promote impartiality towards religions and cannot have the authority to place one religion above others in civil matters. By stipulating equality before the law and not favouring any religious authorities, the uniform civil code eliminates many identities of all Indians. The Supreme Court in *Sarla Mudgal* (1995) also endorsed this line of thinking and referenced the uniform civil code as an instrument for national integration¹⁰⁴⁷.

4. The Adoption of Civil Legal Standards

While personal laws may often rely upon custom or tradition, the UCC seeks to present a vision that has legally applicable principles inherent in constitutional morality¹⁰⁴⁸. The UCC will uphold legal principles not embedded or entitled to religious exceptionalism but rationally based rights norms, and that are like France and Turkey's civil codes. The UCC aims to update civil law, while ensuring that the right of the freedom of religious belief is not diminished in any way.

To conclude, the UCC seeks to make right of the constitutional promise of legal equality, gender justice, and a form of secular governance by combining various personal laws into unified civil code, in an equitable way by recognising women's and men's human rights.

HISTORICAL AND LEGISLATIVE BACKGROUND

The question of a Uniform Civil Code has origins in colonial India when the British wanted to codify criminal and commercial law, but not personal religious law. Freshly independent India

¹⁰⁴⁵ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

¹⁰⁴⁶ The Constitution of India, arts. 14, 15 & 21

¹⁰⁴⁷ *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531

¹⁰⁴⁸ Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* 322 (Cambridge University Press, 2nd edn., 2006)

inherited dual systems, secular law for public matters and religiously based law for private matters.

Talk of a Uniform Civil Code in Constituent Assembly: Constitutional Ideal or Cultural Infringement?

At the Constituent Assembly, a Uniform Civil Code drew considerable contemplation. Dr. B.R. Ambedkar defended Article 44, which required that the State provide civil equality and address women's rights, specifically customs-based structures of discrimination. He related that the Article is not a prohibition to religious belief, but a method to separate civil obligations from religious obligations¹⁰⁴⁹. Opponents, including Mohamed Ismail Sahib and Naziruddin Ahmad, argued that a Uniform Civil Code would violate the guarantee of religious autonomy and the rights of individuals under Article 25 and they did not want the State to be encouraged in any way¹⁰⁵⁰. The final version made Article 44 non-justiciable, made it Part IV (as a Directive Principle of State Policy) while allowing the State to be encouraged in progressing toward it, rather than requiring the State to adopt it¹⁰⁵¹.

Hindu Code Bills: Partial Codification (1955–56)

As early as the 1950s, the Nehru government introduced the **Hindu Code Bills**, which included:

- Hindu Marriage Act, 1955
- Hindu Succession Act, 1956
- Hindu Adoption and Maintenance Act, 1956
- Hindu Minority and Guardianship Act, 1956

The reforms led to the introduction of monogamy, divorce, equal inheritance, and adoption by Hindus and more so women. Yet other communities remained unaffected so perception of a bias in legal reform towards what might be called a majoritarian agenda fostered, and minorities were even more afraid that a future UCC might reflect a Hindu standard¹⁰⁵².

¹⁰⁴⁹ Constituent Assembly Debates, vol. VII, 23 November 1948, available at https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-23 (Visited on 20 June 2025)

¹⁰⁵⁰ Ibid

¹⁰⁵¹ The Constitution of India, art. 44; art. 37

¹⁰⁵² Flavia Agnes, *Family Law: Volume I* 75–85 (Oxford University Press, New Delhi, 2nd edn., 2011)

Law Commission Reports: Incremental Reform vs Imposition

The 21st Law Commission (2018) determined that a UCC in the present context was "neither required nor desirable"¹⁰⁵³. Rather it proposed a piecemeal and community specific strategy of reforming the discriminatory elements of the personal laws¹⁰⁵⁴.

In contrast, the 22nd Law Commission (2023-now) took the unprecedented step of restarting consultations and invited public views for the UCC, a function of (new) institutional engagement¹⁰⁵⁵. It has made no further significant progress and has produced an official report identifying what it believes to be the timing and political motive behind the re-engagement.

Judicial Encouragement vs Political Under-Engagement

While the UCC was not legislated by successive governments, the Supreme Court has repeatedly referred to it as a constitutional mandate on which the State needs to act¹⁰⁵⁶. In *Shah Bano*, *Sarla Mudgal*, and *John Vallamattom*, the Supreme Court called on the State to implement Article 44. The language of judicial encouragement has rarely resulted in meaningful and/or legislative options, demonstrating the disconnect between constitutional idealism and political realism.

To sum up, the historical trajectory of the UCC has been one of aspirational drafting of law, selective implementation, judicial encouragement, and political disengagement, demonstrating the complexity of civil law reform in a plural society.

LANDMARK CASE LAWS RELATED TO ARTICLE 44 / UCC

The judiciary has taken the central stage in enforcing the principles of personal law in consonance with the prescribed constitutional values and guidelines and has referred to Article 44 to push for a Uniform Civil Code. Let us look at six important cases that had a considerable impact on the UCC issue.

¹⁰⁵³ Law Commission of India, 21st Report on Reform of Family Law (August 2018)

¹⁰⁵⁴ *Ibid*

¹⁰⁵⁵ Law Commission of India, "Call for Suggestions on Uniform Civil Code" (14 June 2023) <https://lawcommissionofindia.nic.in> (Visited on 18 June 2025)

¹⁰⁵⁶ *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945

Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

This was a case of an ailing aged Muslim woman seeking maintenance under Section 125 of the CrPC after divorce. The Supreme Court decided in favour of the divorced Muslim woman, and it held that secular criminal law overrides personal law, in the interest of justice¹⁰⁵⁷. The court also drew attention to Article 44 of the Constitution and encouraged the State to draft a Uniform Civil Code, which can provide a uniform set of secular laws for all its citizens irrespective of religion and it can also remove the boundaries and tensions that religions impose on its women. Following this decision and the political outcry that ensued, a law was made called the Muslim Women (Protection of Rights on Divorce) Act, 1986¹⁰⁵⁸.

Sarla Mudgal v. Union of India, AIR 1995 SC 1531

This case was about Hindu men converting to Islam in order to solemnise second marriages¹⁰⁵⁹. The Supreme Court, while ruling that the conversion was fraudulent, drew on Article 44 again and depicted pluralism in law as a socially ill concept, alluding that a UCC is necessary for national integration, as well as gender justice¹⁰⁶⁰.

John Vallamattom v. Union of India, AIR 2003 SC 2902

To question Section 118 of the Indian Succession Act that curtailed the rights of Christians to bequeath property in furtherance of religious purposes the Court deemed it to be discriminatory and hence invalidated the same. It once again stressed that there was need of a common and fair civil code¹⁰⁶¹.

Shayara Bano v. Union of India, (2017) 9 SCC 1

The Court found instant triple talaq unconstitutional, and in its ruling said practices that violate dignity and equality cannot therefore benefit from Article 25¹⁰⁶². This ruling was not a UCC case, but the conclusions added to the affirmation that personal laws ought to adhere to constitutional morality¹⁰⁶³.

¹⁰⁵⁷ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

¹⁰⁵⁸ The Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25 of 1986, Section 3

¹⁰⁵⁹ Sarla Mudgal v. Union of India, AIR 1995 SC 1531

¹⁰⁶⁰ Ibid

¹⁰⁶¹ John Vallamattom v. Union of India, AIR 2003 SC 2902

¹⁰⁶² Shayara Bano v. Union of India, (2017) 9 SCC 1

¹⁰⁶³ Ibid

ABC v. State (NCT of Delhi), AIR 2015 SC 2569

A single Christian woman wanted to take custody of her child without mentioning the man who impregnated her¹⁰⁶⁴. Even her right under the Guardians and Wards Act was enforced by the Court by displacing religious limits and underpinning the gender-neutral secular civil law¹⁰⁶⁵.

Jose Paulo Coutinho v. State of Goa, AIR 2019 SC 418

The Court supported the civil code of Goa terming it a successful work of UCC in practice¹⁰⁶⁶. It lauded the state because of its single civil law system that is not biased towards religion as compared to the patchy national system¹⁰⁶⁷.

Summary Table: Other Relevant Cases

Case Title	Citation	Contribution
<i>Daniel Latifi v. Union of India</i>	AIR 2001 SC 3958	Preserved the Shah Bano values while adhering to the 1986 Act
<i>Pannalal Bansilal v. State of AP</i>	AIR 1996 SC 1023	UCC can be implemented gradually, not simultaneously
<i>Ahmedabad Women Action Group v. UOI</i>	AIR 1997 SC 3614	PIL was denied by the court; Parliament must implement change.
<i>T. Sareetha v. Venkata Subbaiah</i>	AIR 1983 AP 356	Affirmed the autonomy of the body in marriage

¹⁰⁶⁴ ABC v. State (NCT of Delhi), AIR 2015 SC 2569

¹⁰⁶⁵ Ibid

¹⁰⁶⁶ Jose Paulo Coutinho v. State of Goa, AIR 2019 SC 418

¹⁰⁶⁷ Ibid

Case Title	Citation	Contribution
<i>Mary Roy v. State of Kerala</i>	AIR 1986 SC 1011	Guaranteed Christian women an equal share in inheritance
<i>Githa Hariharan v. RBI</i>	AIR 1999 SC 1149	Upheld the Hindu law's guardianship rights for mothers
<i>Vineeta Sharma v. Rakesh Sharma</i>	(2020) 9 SCC 1	Confirmed the equal coparcenary rights of daughters.
<i>Indian Young Lawyers Assn. v. State of Kerala</i>	(2018) 10 SCC 689	Provided constitutional morality prominence above religious tradition.
<i>M.C. Mehta v. Union of India</i>	AIR 2004 SC 4016	The importance of UCC in a PIL setting was reiterated

In sum, taken together, these rulings indicate that the Court has made the unprecedented decision that civil law has to be consistent with the principles which our Constitution embraces even if that requires re-examining personal laws of a religion. While protecting personal beliefs, the courts have made it clear that legal discrimination is not permissible.

KEY CONSTITUTIONAL THEMES

The Uniform Civil Code straddles a number of values in the Constitution: equality (Article 14), religious freedom (Articles 25-28), gender equality and constitutional morality. Article 44 serves a fundamentally secular purpose, but it is rarely rendered in practice without conflicting with protections given to religious communities. Using the theories of harmonious construction and constitutional interpretation, courts have tried to resolve this conflict.

Article 44 vs Articles 25–28: Legal Uniformity vs Religious Freedom

Article 25 provides freedom of religion, but it is not an absolute right and can be exercised only subject to public order, morality and health¹⁰⁶⁸. According to court rulings, personal rules can be controlled for equality purposes and are not inalienable religious norms¹⁰⁶⁹.

In *Shah Bano* (1985) and *Sarla Mudgal* (1995), the Supreme Court prioritized secular provisions to eliminate inconsistency with religious personal law, referring to constitutional rights that do not yield to religious customs when there is a conflict.

The court has used harmonious construction to show the relationship between both provisions in that religious freedom cannot serve as a tool of discrimination particularly against woman¹⁰⁷⁰.

Rise of Constitutional Morality

In the past few years, courts have started to assert an idea called constitutional morality, which means that the government should reflect the values of dignity, liberty, and equality, as these values are sometimes in tension with established ideas and the majority will¹⁰⁷¹. In *Navtej Singh Johar* (2018)¹⁰⁷² and *Indian Young Lawyers Association (Sabarimala)*, (2018)¹⁰⁷³ The Court pointed out constitutional ideals over tradition.

This provides a normative paradigm to adjudicate personal laws based on the Constitution, which is whether their legitimacy is grounded in religion, or rather, whether it has now become a question of constitutional conformity.

Directive Principles and the Basic Structure

The Court recognized it has to interpret Parts III and IV together. Article 44 is the directive principle with an assurance to commitment to its underlying fundamental commitments, such as equality, secularism, and national integration¹⁰⁷⁴.

Although UCC is not strictly a part of the basic structure, its objectives are consistent with the values protected in the Constitution. As a result, Courts have increasingly taken the view that

¹⁰⁶⁸ The Constitution of India, art. 25

¹⁰⁶⁹ *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945

¹⁰⁷⁰ Seervai H.M., *Constitutional Law of India*, vol. 1, 1223 (4th edn., Universal Law Publishing, 2006)

¹⁰⁷¹ Tarunabh Khaitan, “Constitutional Morality” (2015) 1(2) *Indian Journal of Constitutional Law* 1

¹⁰⁷² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

¹⁰⁷³ *Indian Young Lawyers Assn. v. State of Kerala*, (2018) 10 SCC 689

¹⁰⁷⁴ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789

Article 44 is not merely symbolic, but means something and can be a tool for realizing the constitutional guarantees¹⁰⁷⁵.

In summary, Article 44 captures the Constitution's attempt to bring civil law in tandem with constitutional principles even in a society rich in religious diversity. The changing interpretation of the judiciary will continue this dialogue without forcing sameness but creating a threshold for Personal Law and constitutional morality.

CONTEMPORARY DEVELOPMENTS

The Uniform Civil Code has shifted from a constitutional framework to conversation that is being discussed authoritatively in July 2023 and is being seriously addressed politically. For the first time as a free state, a government has legislated a civil code occurring across different religions leading to a national discussion and engagement with the bureaucracy.

Uttarakhand UCC Bill, 2024

In early 2024, Uttarakhand became the first Indian state to pass a Uniform Civil Code, applicable to all communities (except Scheduled Tribes)¹⁰⁷⁶. The code addresses:

- Plural marriage, divorce, property succession, adoption, and cohabitation
- Investments in mandatory registration of marriages and divorces
- Equal rights for inheritance
- Polygamy prohibited
- Gender-neutral provisions on adoption and guardianship

¹⁰⁷⁵ M.P. Jain, *Indian Constitutional Law* 1125 (LexisNexis, Gurgaon, 7th edn., 2022)

¹⁰⁷⁶ The Uttarakhand Uniform Civil Code, 2024 (Bill No. 01 of 2024), section 3–10

Finally, some of the reiterations stated that codification does not guarantee equality or justice, especially when the implementations are inconsistent and possibly politically motivated¹⁰⁷⁷.

The Uttarakhand UCC is likely to become a testing ground for future reforms in states like Gujarat and Assam, which have expressed similar intent¹⁰⁷⁸.

22nd Law Commission: Renewed Deliberation

The 22nd Law Commission of India in 2023 stirred the debate at a national level by soliciting public comments on the possibility of a UCC, in contrast to the 21st Commission's report from 2018, that found a UCC was "neither necessary nor desirable" in the present time and favoured reforming personal laws in gradual, incremental steps¹⁰⁷⁹.

The 22nd Commission has yet to release its report resulting in critiques about:

- Timing and transparency, especially during election time;
- Sincere consensus-building or paving the way for a top-down enactment.

Nevertheless, by revisiting the issue it suggests the State's intention to engage with Article 44 in a constructive manner¹⁰⁸⁰.

Political Polarisation and Public Opinion

The UCC issue has also become a polarizing element in national politics. The ruling party, the Bharatiya Janata Party (BJP)¹⁰⁸¹ has supported one for a long time, linking it to equality and unity overview states of other parties many Executive Political Committees opposed to it, many are minorities, and therefore they see it as a means of majoritarianism¹⁰⁸².

¹⁰⁷⁷ Editorial, "Uttarakhand's UCC: A Step Forward or a Symbolic Move?" (2024) 59(4) Economic and Political Weekly 8

¹⁰⁷⁸ Faizan Mustafa, "Uniform Civil Code: Should We Start With Consensus or Conflict?" (2024) The Indian Express, <https://indianexpress.com> (Visited on 24 June 2025)

¹⁰⁷⁹ Law Commission of India, "Call for Suggestions on Uniform Civil Code" (14 June 2023) <https://lawcommissionofindia.nic.in> (Visited on 20 June 2025)

¹⁰⁸⁰ Law Commission of India, 21st Report on Reform of Family Law (August 2018)

¹⁰⁸¹ Bharatiya Janata Party, *Sankalp Patra 2024 (Election Manifesto)*, available at <https://www.bjp.org> (Visited on 18 June 2025)

¹⁰⁸² Asaduddin Owaisi, "UCC is an Attack on India's Pluralism" (2023) The Hindu, <https://www.thehindu.com> (Visited on 19 June 2025)

Some women's rights groups have drawn support for it, as an avenue to enforce gender justice in the context of personal laws and arrangements, while other women's groups are concerned about the ramifications of imperative reform without consent from and complicity of the population, which may consequently deepen the conditions of marginalization for minority classes¹⁰⁸³. The idea that the Goa model, frequently presented as a potential UCC action, is not actually uniform in the same way as a UCC and evolved from a very different population dynamic and history¹⁰⁸⁴.

In conclusion, the UCC is no longer an idle concept. The UCC is shaping its priorities on legislative plans, institutional discussions, and campaigning. However, there is more to successful implementation of the UCC than drafting a new legislation. Public support and understanding, legal alignment, and consultation will all be necessary.

CRITICISM AND SUPPORT

The Uniform Civil Code has long divided legal, political, and academic opinion. Supporters of UCC argue that it supports equality and secularism whereas critics fear that the UCC will be used to either eradicate cultural practices or appropriate them by majoritarian cultures.

Criticisms of the UCC

1. Religious Autonomy and Minority Rights

A key objection is that the UCC will violate Article 25 which gives members of religious communities a right to practice and propagate their religion¹⁰⁸⁵. For several communities, personal laws are part of their religious identity¹⁰⁸⁶. Majoritarian organisations, therefore, are at best reduced to rhetoric that:

¹⁰⁸³ Flavia Agnes, "Legal Reforms and Gender Justice in India: Uniformity or Diversity?" (2019) 54(1) EPW 35

¹⁰⁸⁴ Jose Paulo Coutinho v. State of Goa, AIR 2019 SC 418

¹⁰⁸⁵ The Constitution of India, art. 25

¹⁰⁸⁶ Asifa Quraishi, "Interpreting the Constitution in Plural India: Personal Laws vs Universal Norms" (2018) 9(1) NUJS L Rev 44

- the UCC is only a majoritarian Hindu framework;
- it will erase plural traditions and replace them with uniform norms, especially considering the current position of Muslim, Christian, and tribal communities.

2. Threat to Legal Pluralism

As mentioned before, India's constitutional pluralism embraces multiple systems of law, particularly personal and customary law¹⁰⁸⁷. A uniform code may neglect:

- Customary tribal processes are protected by the Fifth and Sixth Schedules¹⁰⁸⁸.
- There is a significant differential in civil law across regions (for example North-East or matrilineal communities)¹⁰⁸⁹.

3. Political Instrumentalization

The UCC is often deployed as a **political slogan**. Critics argue that:

- Its timing and advocacy often align with electoral agendas.
- The lack of meaningful collation will exacerbate mistrust among minority groups, as it has the appearance of a top-down intervention rather than an inclusive project¹⁰⁹⁰.

Support for the UCC

1. Gender Justice and Equality

Numerous personal laws are still fundamentally founded on patriarchal norms. The UCC is a means to:

- Establish gender-neutral rights based on marriage and divorce and inheritance¹⁰⁹¹.

¹⁰⁸⁷ Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* 321 (Cambridge University Press, 2nd edn., 2006)

¹⁰⁸⁸ Flavia Agnes, *Family Law: Volume I* 93 (Oxford University Press, New Delhi, 2nd edn., 2011)

¹⁰⁸⁹ B.K. Roy Burman, "Legal Pluralism and Tribal Communities" (2003) 38(1) EPW 12

¹⁰⁹⁰ Hilal Ahmed, "UCC and the Politics of Selective Equality" (2023) The Wire <https://thewire.in> (Visited on 24 June 2025)

¹⁰⁹¹ Tarunabh Khaitan, "Gender Justice and Uniformity: Between Aspirations and Realities" (2020) 7(2) JILI 22

- Revise or abolish practices that are based on triple talaq, and discriminatory succession laws¹⁰⁹².

Judgements on issues like, Shayara Bano and Vineeta Sharma show the courts are aware of their traditionally held constitutional role in protecting women's rights and would continue to do so, in the absence of a UCC¹⁰⁹³.

2. Secular and Uniform Legal Framework

Supporters endorse that civil law must embrace constitutional secularism and not religious distinctions. UCC reinforces:

- Equality at the same level before law regardless of individual characteristics rooted in religion¹⁰⁹⁴.
- The separation of religion and State with respect to legal matters which recognizes India as a secular Republic¹⁰⁹⁵.

3. Legal Certainty and National Integration

The UCC would harmonise conflicting civil codes, reduce litigation expenses and timely processes, endorse a shared legal framework, and ultimately develop a spirit of national unity. In the Supreme Court cases Sarla Mudgal and Jose Paulo Coutinho, the UCC was recognised to achieve national integration and legal certainty¹⁰⁹⁶.

In a nutshell this UCC dispute is more a matter of political will, cultural legitimacy, and constitutional interpretation than it is a purely legal one. Reform will only be successful if it is accomplished in a way that is not only legally viable but also socially attuned.

COMPARATIVE PERSPECTIVE

¹⁰⁹² The Constitution of India, arts. 14, 15 & 21

¹⁰⁹³ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1; *Shayara Bano v. Union of India*, (2017) 9 SCC 1

¹⁰⁹⁴ *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531

¹⁰⁹⁵ *Ibid*

¹⁰⁹⁶ Law Commission of India, 21st Report on Reform of Family Law (August 2018)

When we analyse how other jurisdictions interact with their civil law system and religious communities, we will see the possibilities and challenges for the enactment of a Uniform Civil Code in India. Some jurisdictions maintain a purely secular model to governance, and others have implemented civil reform in varied ways that are contextually relevant.

France: Secular Civil Code

France has a single unified civil code for all its citizens based on the Napoleonic Code¹⁰⁹⁷. Civil law is completely separate from religious law. A civil marriage certificate (and hence civil marriage) is required before a couple may marry in a religious ceremony, and a couple's personal religious laws cannot provide any legal basis in a civil law context.

France is a strong case of state secularism (*laïcité*) coexisting with religious practice if it treats the citizen's civil duty equally and universally, but France is sometimes faulted for being overly assimilative, particularly in terms of prohibiting public expression of religion¹⁰⁹⁸.

Turkey: Legal Modernisation After 1926

One example like France's incredibly important legal reforms took place in Turkey after it fell under the rule of Mustafa Kemal Atatürk and he began reforms to modernize Turkey¹⁰⁹⁹. Turkey adopted the Swiss civil code in 1926 and terminated all Sharia-based family law, all as part of a larger vision of modernity and national unity through legal secularism. Although these reforms were from the top down (not bottom up), Turkey's case demonstrates that legal reform is possible in a society of religious piety and belief (and especially if it is framed around a project¹¹⁰⁰ of equality and national identity).

United States: No Personal Religious Laws

¹⁰⁹⁷ French Civil Code (Code civil), arts. 75–76

¹⁰⁹⁸ John R. Bowen, *Why the French Don't Like Headscarves: Islam, the State, and Public Space* 102 (Princeton University Press, 2006)

¹⁰⁹⁹ Esin Orucu, "Turkey's Legal System: Between Civil Law and Islamic Law" (2004) 3(2) *Electronic Journal of Comparative Law*

¹¹⁰⁰ *Ibid*

The U.S. does not recognize religious personal laws where civil matters are concerned.¹¹⁰¹ Civil law, though it can differ from state to state, applies to everyone the same regardless of religion, and religious ceremonies can occur, but they can only have legal status if properly recorded civilly.

In the U.S. system, a separation of church and state is a key principle, however, it is in a different context than India's legally religio-pluralism.

Goa: India's Only Functional UCC

Goa remains India's only state with a functioning **Uniform Civil Code**, inherited from the **Portuguese Civil Code**¹¹⁰². In Goa, the implementation of a UCC applies to all religions regarding marriage, divorce, and succession. Polygamy is not permitted and marital property rights of spouses are shared¹¹⁰³.

Although it is termed a model of legal uniformity by the Supreme Court in Jose Paulo Coutinho (2019), most critics of Goa's system imply that since amendments grant exceptions for certain groups (e.g. Muslims and (indigenous) tribal communities), the code is not fully uniform in practice¹¹⁰⁴.

While these observations are comparative, they show that uniform civil codes can be implemented, though they should have adaptations that fit the cultural and contextual forms. In India, this is not only the challenge of drafting legislation, but a democratic consensus which embeds equality alongside pluralism and identity.

CONCLUSION

The Uniform Civil Code (UCC), according to Article 44, is arguably the most divisive constitutional aspiration in the country— UCC is, invigoratingly, theoretical but

¹¹⁰¹ W. Cole Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives* 231 (Wolters Kluwer, 2nd edn., 2019)

¹¹⁰² Jose Paulo Coutinho v. State of Goa, AIR 2019 SC 418

¹¹⁰³ Flavia Agnes, "Goa's UCC: Uniform in Text, Unequal in Practice" (2019) 54(2) EPW 10

¹¹⁰⁴ Jose Paulo Coutinho v. State of Goa, AIR 2019 SC 418

debilitatingly practical. Due to cultural shyness, political hesitation, and judicial nudging, the UCC's portrayal of equality, gender justice, and integrative unity has been called into question¹¹⁰⁵.

Judicial cases *Shah Bano*, *Sarla Mudgal*, and *Shayara Bano* illustrate that the Supreme Court of India has recognized that a UCC is valuable, predominantly note that religious freedom does not trump constitutional values¹¹⁰⁶. Yet, the Centre has nowhere been moved to enact legislation. The Uttarakhand UCC Bill (2024) is a historic moment that shows at least the political will at a state level and may prove it is completely about some sort of aggrandisement with an underlying sense of majoritarianism theatrics and the sense of no real mutual consultation¹¹⁰⁷.

Moving to a national UCC does not necessarily mean uniformity, but can be viewed as a negotiated document that included all citizens, ensured gender equity and is legally enshrined in the Constitution¹¹⁰⁸. The Law Commission's perfunctory engagements with a UCC- from caution in 2018 to an apparent renewed interest now in 2023- signifies a gradually developing understanding that change must be made but if so, done slowly must be intentionally.

But importantly at the end of the day, the UCC is more than a legal mechanism, it is a constitutional balancing act. It involves more than legislative deliberation, it involves an acceptance of public trust, a preservation of plural identities, and bringing civil law in alignment with the notion of justice, liberty, and dignity that the Constitution intends for all.

¹¹⁰⁵ The Constitution of India, art. 44

¹¹⁰⁶ *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945; *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531; *Shayara Bano v. Union of India*, (2017) 9 SCC 1

¹¹⁰⁷ Law Commission of India, "Call for Suggestions on Uniform Civil Code" (14 June 2023); The Uttarakhand Uniform Civil Code, 2024 (Bill No. 01 of 2024)

¹¹⁰⁸ B.K. Roy Burman, "Legal Pluralism and Democratic Governance" (2003) 38(4) EPW 16

CHAPTER 29

Early Childhood Care, Public Health, and Nutrition (Articles 45–47)

By Aman Singh

ARTICLE 45

One of the greatest figures of the 20th century, Mr. Michael Jackson, quoted, “all of us are the product of our childhood.”¹¹⁰⁹ According to Merriam Webster dictionary, Childhood refers to a state of being a child, or the early period of something in making.¹¹¹⁰ It's the childhood that defines what a person will become in future, based on the care and treatment it was provided in his early childhood. There are 3 factors, family, education and social environment that are most likely to affect the behavioral development and personal value of a child.¹¹¹¹ Proper education and care are two crucial and vital aspects which pave the way towards a brighter and better future for a child and therefore it becomes the most important part of childhood. Justice P.N. Bhagwati quotes while establishing the importance of children and need for their care-

*“It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a “supremely important national asset” and the future well-being of the nation depends on how its children grow and develop.”*¹¹¹²

¹¹⁰⁹ Michael Jackson, March 6th, 2001, Oxford University, available at

<https://www.truemichaeljackson.com/speeches/oxford-university-2001/> (last visited on 17/06/2025)

¹¹¹⁰ Merriam Webster dictionary available at <https://www.merriam-webster.com/dictionary/childhood> (last visited on 17/06/2025).

¹¹¹¹ Anamika Barai, “the role of family and education on juvenile delinquents” 10 *international journal of novel research and development* (2025), available at <https://www.ijnrd.org/papers/IJNRD2501191.pdf> (last visited on 17/06/2025)

¹¹¹² Lakshmi Kant Pandey v Union of India 1984 AIR 469

Children are an asset to the nation and care for them is of utmost importance, and for that our constitution bestows upon the state the duty to provide ‘early childhood care and education’ to children.

‘Early childhood care and education’ refers to those strategies and processes that enable a child for his holistic development. ECCE encompasses all those efforts exercised to provide care, physical, social or emotional and nutrition, health, nourishment etc.¹¹¹³ Within a protective environment up to the age of 6.¹¹¹⁴ up to the age of 6 years children is mostly vulnerable but vital for the development of sense, cognition, language and emotions¹¹¹⁵ and at the time the brain develops at its fastest pace to the extent that overall brain development of a person is around 85 percent in his early childhood (up to age of 6 years).¹¹¹⁶

Indian being a welfare state has been entrusted with duty to provide adequate childhood care and preschool education to the children below the age of six, by article 45 of our constitution¹¹¹⁷ which reads thus-

“The state shall endeavor to provide early childhood care and education for all children until they complete the age of six years.”

This provision is given in the 4th part of the constitution which deals with the directive principle of state policy (DPSP) including articles from 36 to 51. DPSP itself being non enforceable, the provision related to early childhood care and education too become non justiciable in the court of law by virtue of article 37 that means no individual can go in courts with contention that state has failed in providing ECCE. It's not a fundamental right of the people of India that the state is bound to protect (not violate) “but the principles therein laid down are nevertheless fundamental

¹¹¹³ Dr. Seema Agnihotri, Dr. Pooja Pant, HISTORY OF EARLY CHILDHOOD CARE AND EDUCATION IN INDIA: POLICIES AND CONSTITUTIONAL PROVISIONS, 1 *modern trends in multidisciplinary subject* 41 (2022) available at https://www.researchgate.net/profile/R-Robert-2/publication/382742083_THE_FUTURE_OF_ARTIFICIAL_INTELLIGENCE_AI_IN_EDUCATION_THREATS_AND_PROSPECTS_FOR_LONG-TERM_GROWTH (last visited on 18/06/2025)

¹¹¹⁴ Vajiram editor, early childhood care and education (ECCE), available at <https://vajiramandravi.com/upsc-exam/early-childhood-care-and-educationecce/> (last visited on 17/06/2025)

¹¹¹⁵ G. BARADHA, ECCE in India – ECCE/ECE/ECD, available at <https://ebooks.inflibnet.ac.in/hsp10/chapter/ecce-in-india-ecce-ece-eed/> (last visited on 18/06/2025)

¹¹¹⁶ Ministry of Women and Child Development, *Launch of National Curriculum and Framework for Early Childhood Care and Education (ECCE)*, Press Information Bureau (11 Mar. 2024), available at <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2013429> (last visited Jun. 18, 2025).

¹¹¹⁷ Article 45, The Constitution of India, 1950.

in governance of the country and it shall be the duty of the state to apply these principles in making laws.”¹¹¹⁸

Here the constitution imposes a mandatory obligation on the state by using the term “shall” and making it mandatory for the state to comply in all laws, thereby provision of Article 45 too is a mandatory obligation of state to comply with, non-compliance to which leads, as said by Ambedkar, the government to answer before the electorate at election time.¹¹¹⁹

Article 45 talks about the duty of the state to endeavor for early childhood care and education upto age of 6 years. ECCE is not merely a guidance to state but the need of hour, as it was felt by lawmakers and they amended the article and substituted the existing law that asked the state to provide free and compulsory education to the children upto age of 14.¹¹²⁰ Thoroughly looking the idea of ECCE was already included in the earlier principle enshrined in art.45, yet, since the free education was made the part of article 21, as FR, its existence in DPSP was serving no purpose, and therefore the lawmaker gave attention to another most important concept of ECCE and enshrined it in the article, so now the state may have a clear vision about ECCE too. Even before the constitution was made Various educationalists like Gijubhai Badheka, Tarabai Modak, Maria Montessori, Mahatma Gandhi and Rabindranath Tagore were a few names who paid special attention to the role of education in the initial years of children long before that.¹¹²¹

Constituent Assembly and Article 45

The contemporary article of Article 45 in the draft constitution of India was Article 36, which was amended once by the resolution brought by Lakshmi Kant Maitra on 23 November 1948. The resolution opposed the wording of article 36 as it started ‘every citizen is entitled to.....’ contending that it was contrary to all other DPSPs and gave it a look of FR, therefore the

¹¹¹⁸ Article 37, The Constitution of India 1950.

¹¹¹⁹ Akanksha Bhola, Scope of enforcement of DPSP, *available at* <https://www.lawctopus.com/academike/scope-of-enforcement-of-dpsps/> (last visited on 18/06/2025)

¹¹²⁰ The Constitution (86th Amendment) Act 2002

¹¹²¹ Dr. Seema Agnihotri, Dr. Pooja Pant, HISTORY OF EARLY CHILDHOOD CARE AND EDUCATION IN INDIA: POLICIES AND CONSTITUTIONAL PROVISIONS, 1 *modern trends in multidisciplinary subject* 41 (2022) *available at* https://www.researchgate.net/profile/R-Robert-2/publication/382742083_THE_FUTURE_OF_ARTIFICIAL_INTELLIGENCE_AI_IN_EDUCATION_THREATS_AND_PROSPECTS_F_OR_LONG-TERM_GROWTH (last visited on 18/06/2025)

wording be substituted with the ‘ the state shall endeavor to’ the amendment was accepted and the line in issue was substituted.

There was also a resolution brought by Naziruddin Ahmad; to include the term primary education in Article 36 (draft constitution) but it was rejected by Dr. Bhimrao Ambedkar, who said that the ‘primary’ was inappropriate as it restricted the scope of education and duty of state.¹¹²²

State’s Action Towards ECCE

The government has initiated various policies and schemes formulated to safeguard the interest of children. These National Policies and Schemes are as follows:

National Policy for Children: NPC was issued by Government of India with various policies for children such as comprehensive health program, adequate nutrition services and free and compulsory education for all children up to age of 14 years¹¹²³. The NPC 2013¹¹²⁴ has been passed as successor to this policy bringing out more welfare such as preschool education for children up to age of 6 years. National Education policy¹¹²⁵ Part I deals with ECCE, emphasizing the need for and importance of ECE along with ensuring that ECCE shall receive high priority and be suitably integrated with ICDS program. NEP also contended for universalization of primary education and providing for preparatory classes before the age of 5, aiming for social, ethical, cognitive, cultural, artistic and linguistic development.¹¹²⁶ The National Nutrition Policy takes account of vulnerable children and then implements various child health and services programs for them; it monitors the nutrition situation in the country.¹¹²⁷ apart from these there are various other policies state has formulated for development of child such as national health policy,

¹¹²² Constitutional Assembly Debate on 23 Nov. 1948 available at <https://www.constitutionofindia.net/debates/23-nov-1948/#99900>

¹¹²³ National Policy for Children 1974, Department of Social Welfare, available at <https://www.hqcr.org/pdf/national-policy-for-children-1974/> (last visited on 18/06/2025)

¹¹²⁴ National Policy for Children 2013, Ministry of Women and Child Development

¹¹²⁵ New Education Policy, 2020, Ministry of Human Resource, available at https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English.pdf (last visited on 18/06/2025)

¹¹²⁶ Early Childhood Care and Education: Foundation of Learning, NEP 2020, <https://ncert.nic.in/pdf/shikshak-parv/PI.pdf> (last visited on 18/06/2025)

¹¹²⁷ National Nutrition Policy 1993, Department of Women and Child Development available at https://icds.gov.in/sites/default/files/policies-document/National_Nutrition_Policy.pdf (last visited on 18/06/2025)

Various scheme in relation to ECCE are mission Indra Dhanush, Rastriya Bal swasthya Kalyan yojana, Janani Shishu Suraksha Karyakram etc., All dealing with welfare of children. mid-day meal scheme of government aims to provide nutritious food to children, another most important scheme is Anganwadi Yojna which is a multitask scheme aimed to give provide preschool education, nutritious food and healthcare benefits to children below age of six.¹¹²⁸ The GOI has launched a new scheme Saksham Anganwadi and Poshan 2.0, which is reconstruction of ICDS and Poshan Abhiyaan, together aiming to provide a range of benefits to children.¹¹²⁹ Right to education act 2002 specifically mandates the preschool education empowering to ECCE.¹¹³⁰

Integrated childhood development service scheme is an Umbrella scheme, covering the aspect of nutrition, education, development and health of a child, which encompasses various initiatives of the state taken towards ECCE such as Mission Indra Dhanush, Anganwadi Scheme and National Nutrition Policy etc.

Judicial Contribution

Mohini Jain was the case in which court held that the access to free education is fundamental right of all citizens irrespective of form of education, higher or primary¹¹³¹. The view of the judgment was upheld in Unnikrishnan v state, but the court restricted the access to free education only to primary upto age of 14. The court held that judiciary cannot direct the state to fulfill the obligation apart from that given in DPSP, as 45 talked about free education upto age of 14 only.¹¹³²

The court held that every child needs care and to grow in an atmosphere of love and affection, the state must provide a convenient environment to the child. The constitution itself provides such a duty to the state to act in welfare of the children as they need proper care and nutrition to grow as a respected citizen.¹¹³³ The bondage labor not only denies a person's constitutional rights but also adversely affects the early childhood care of children leaving for the lack of healthy and

¹¹²⁸ Roma Chatterjee, Ajeet Singh Meena, India 2021, 306-309(65th ed, 2021)

¹¹²⁹ Daily Updates, Drishti IAS, available at

<https://www.drishtiias.com/daily-updates/daily-news-analysis/saksham-anganwadi-and-poshan-2-0> (last visited on 18/06/2025)

¹¹³⁰ Right to Education Act 2009, (act 35 of 2005)

¹¹³¹ Miss Mohini Jain v. State of Karnataka & Ors. (1992), 1992 AIR 1858

¹¹³² Unni Krishnan, J.P. And Ors. V. State of Andhra Pradesh (1993) 1993 AIR 2178

¹¹³³ Lakshmi Kant Pandey v Union of India, 1984 AIR 469

nutritious food and education to the child.¹¹³⁴ The court contended in *MC Mehta v Tamil Nadu* that child labor denies a child's constitutional right to education and nutrition, also the court noted that financial problems that lead a child no other option but to labor must be removed by state as the term 'care' includes such function too.¹¹³⁵

Constitutional Nexus With ECCE

Article 45 is not the only provision that enshrines the ECCE, there are various others which contains the substances provided in the Article 45 such as Article 15(3) provides the power to state to make law for women and children, Article 39 asking the state to provide opportunities and facilities to develop in healthy manner and to safeguard the dignity of childhood and protect them against exploitation, Article 41 directing the state to make laws on education for children, Article 47 talking about improving the health of child, Article 21 is the parent article embodying every principle as provided in DPSP, the right to education has been already declared fundamental right of children upto age of 14.

Hence, Children are the future of the nation and providing them with an adequate and proper environment gives them the opportunity to grow and become a civilized citizen. By this thought the concept of ECCE was included in DPSP so that along with family the state also takes steps to provide care and education. Since inclusion the state has acted positively towards giving children the primary education, health, nutrition and healthy environment. Therefore, various steps taken by the state focus on making childhood better and greater.

ARTICLE 46

Article 46 of Indian constitution assigns states the duty to promote the educational and economic interest of the people who have been left behind from the mainstream development of society, such as weaker sections and marginalized groups, particularly scheduled castes and scheduled tribes.¹¹³⁶ The inclusion of this principle reminds as well as enlightened states the obligation they

¹¹³⁴ *Bandhua Mukti Morcha v Union of India And Ors.* (1983) 1984 AIR 802

¹¹³⁵ *MC Mehta v state of Tamil Nadu And Ors.* (1996) AIR 1997 SUPREME COURT 699

¹¹³⁶ Constitution of India Article 46

are embedded, by the people of the nation, to bring equality by safeguarding the interest of weaker sections of society and protecting them against all forms of exploitation, social economical or educational. The state is required to provide educational empowerment, economic upliftment, protection from social discrimination and safeguarding from exploitation to the weaker section of society and mainly SCs and STs who have long been suffering these atrocities from ages.

Constitutional Background

Article 37 of the draft constitution was provision dealing with the matter today Article 46 deals with, it was approved by the constituent assembly on 23 November 1948. This provision was so necessary that no amendment or objection was raised by the members. The only matter of discussion in the assembly was brought out by Hukam Singh on the scope of the term SC and substitution of it with ‘backward community of whatever class or religion’, the contention was that SC included the backward community of a particular religion *i.e.* Hindu, which was unfair to people of the same caste as well as the same class practicing other religions. Another grievance was with the term ‘in particular’ used in article 37(draft constitution), as it resembled more focus of state diverted from ‘weaker section’ to SC and STs. The amendment was withdrawn as Dr. Ambedkar assured the discussion on matter when they would be dealing with schedule as the amendment was a matter of definition of SC.¹¹³⁷

Constitutional Provision on Protection of Weaker Section

There are plenty of provisions across part 3 and part 4 which safeguards and protects the weaker section of society such as Article 17 protecting from discrimination, Article 14 providing equality, 21 right to life, 19 providing various freedom, Article 38 legal aid, 25 freedom of religion etc. Articles like 330, 332, 335, 338, 338-A and 338-B are provisions enshrined in the constitution related to welfare of SC and STs.

¹¹³⁷ Constituent Assembly debate on 23 Nov. 1948 available at <https://www.constitutionofindia.net/debates/23-nov-1948/#99994>

Analysis of Article 46

Article 46 was brought to provide social and political justice, as propagated by preamble, to weaker sections (SC and ST) in true spirit.¹¹³⁸ The concept of reservation has many constitutional backings, but original motivation was drawn from article 46, as to improve the level of those who are weak, they must be given support so that they may also stand beside the mainstream society. “With the idea of equality or of equal treatment, it is necessary to protect the interest of suppressed at the cost of the interest of those who had been ahead of them. It is a process to bring social, economic and educational equality”.¹¹³⁹

The term weaker section is defined nowhere in the constitution and the interpretation can be done based on what is provided in the article. As 46 talks about educational and economical upliftment and protection from social injustice, it can be understood that people who have suffered social injustice and exploitation and been snatched from education and economic interest are considered weaker sections of society.¹¹⁴⁰

Reservation granted in educational institutions and the economic arena serves the purpose of promoting the interests of weaker sections. Apart from reservation, providing education and making it accessible and affordable is also the duty of the state. This duty demands the state to provide scholarships, living expenses etc. To weaker sections. Further the promotion in financial institutions, providing adequate labor with at least minimum wage, access to banks etc., are the functions 46 demands from the state for economic empowerment of people.

Social injustice and exploitation have been the biggest hurdles in development and growth of the weaker section, or putting it like this, the class which has been subject to social injustice and exploitation is the weaker section, the upliftment and empowerment to which, state is tasked with. ‘Social injustice can take many forms. It permeates various aspects of our lives, from systemic discrimination in education and employment opportunities to prejudice and bias in social interactions’.¹¹⁴¹ discrimination and inequalities are the prevalent forms of social injustice,

¹¹³⁸ Ahmad, Akhlaq, Weaker sections of society and the constitution a socio legal analysis, *available at* <https://shodhganga.inflibnet.ac.in/handle/10603/237787> (last visited on 20/06/2025)

¹¹³⁹ Ibid. Page 216

¹¹⁴⁰ State of Punjab v Davindar Singh, 2024 SCC SC 1860

¹¹⁴¹ Social Injustice: Causes, Consequences, and Solutions *available at* <https://www.graygroupintl.com/blog/social-injustice> (last visited on 20/06/2025)

such as gender pay gap, inequality in income, racial discrimination, untouchability etc. are various forms of social injustice that take place in India. exploitation means use of something unfairly for gain, and that's what has been done with the weaker section of society. Bondage labor, wage disparity, landlessness and denial of education has been the prevalent form of exploitation. SC held that-

"It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin's case– [1981] 1 SCC 608--to live with human dignity, free from exploitation."¹¹⁴²

State's Action

Since the enactment of the constitution, not only has the government launched various initiative legislations to achieve the goal set by the article 46, but the judiciary also has contributed a lot in safeguarding the interests of weaker sections of society and protecting them from injustice and exploitation. The laws which are passed by the state in pursuance to Article 46 are-

1. THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 aimed to prevent hate crime against the SCs and STs.¹¹⁴³
2. THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976 enacted to abolish the bondage labor, one of the cruelest forms of social injustice and exploitation, affecting mainly the people of SC and STs.¹¹⁴⁴
3. THE PROTECTION OF CIVIL RIGHTS (PCR) ACT, 1955 aimed to abolish untouchability and punish those who practice it.¹¹⁴⁵
4. THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006 recognizes and vests right to land to the forest dwelling schedule tribes, and address the social injustice faced by them.¹¹⁴⁶

¹¹⁴² Vincent Panikurlangara v. Union of India & Ors. (1987), 1987 AIR 990

¹¹⁴³ The Scheduled Castes and The Scheduled Tribes (PREVENTION OF ATROCITIES) ACT, 1989, (act 33 of 1989)

¹¹⁴⁴ The Bonded Labour System (ABOLITION) Act, 1976 (act 19 of 1976)

¹¹⁴⁵ The Protection of Civil Rights (PCR) Act, 1955 (act 22 of 1955) available at <https://www.indiacode.nic.in/bitstream/123456789/8384/1/civilrightsact1955.pdf> (last visited on 20/06/2025)

¹¹⁴⁶ The Scheduled Tribes and other Traditional Forest Dwellers (RECOGNITION OF FOREST RIGHTS) ACT, 2006 (act 2 of 2007) available at <https://www.indiacode.nic.in/bitstream/123456789/2070/1/200702.pdf> (last visited on 20/06/2025)

5. THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009, law aiming to provide free and compulsory education to all including the weaker section *i.e.* SC and STs who have longed for education, promoting the educational interest of the weaker section and safeguarding them from social injustice.¹¹⁴⁷
6. Legislation for other weaker section (person with disability) of society include THE REHABILITATION COUNCIL OF INDIA ACT, 1992¹¹⁴⁸, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995¹¹⁴⁹ etc.

Apart from these legislations the government has also launched various initiatives, educational and economical to promote the interest of SC and ST student, such as:

- Prematric scholarship for SC student, national overseas scholarship for SCs, babu Jagjeevan ram chhatravas yojana, Rajiv Gandhi national fellowship for SC student, vanbandhu kalyan yojana, umbrella scheme for education of ST children, overseas scholarship are various scheme for educational empowerment. The initiatives for economic empowerment are schedule cast development corporations, national schedule cast finance and development corporations, Adivasi mahila sashaktikaran yojana etc.
- Beti Padhao Beti Bachao, POSCO e-box, national council for older persons etc., are various other schemes for empowerment of weaker section (*i.e.* women, children and elder people)

In the case of *State of Madras v. Chamapakam Durairajan*, the court recognized the importance and significance of Article 46 in the empowerment and development of weaker sections of society but subject to Article 37 the provision cannot surpass or invalidate the fundamental right. This was the first case in which the government has acted towards the goals set in article 46 and set up a quota system, but being non enforceable the significance of DPSP was not understood by the court.¹¹⁵⁰ After this judgment the government brought the 1st amendment act and

¹¹⁴⁷ The Right of Children to Free and Compulsory Education Act, 2009 (act 35 of 2009) available at https://www.indiacode.nic.in/bitstream/123456789/13682/1/rte_act_2009.pdf (last visited on 20/06/2025)

¹¹⁴⁸ The Rehabilitation Council of India Act, 1992 available at <https://www.indiacode.nic.in/bitstream/123456789/1977/1/199234.pdf>

¹¹⁴⁹ The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 available at https://www.indiacode.nic.in/bitstream/123456789/8866/1/ind51207_%282%29disableact1995.pdf

¹¹⁵⁰ State Of Madras v. Srimathi Champakam Dorairajan 1951 AIR 226

invalidated the decision of the court by bringing amendment into article 15 in consonance with article 46.¹¹⁵¹

In case of *M.R. Balaji & Ors. v. State of Mysore*, the court held that reservation is necessary for empowerment of weaker sections of society, but the state must also not forget that focusing only on weaker sections of society will make the whole society weak and the state must also care for highly deserving candidates.¹¹⁵²

Further in case of *Indra Sawhney v Union of India & Ors*¹¹⁵³ the court upheld the concept of reservation as means to achieve 'social justice' also admitting the guidelines, given in *Ashok Kumar thakur v state of Bihar and Ors*¹¹⁵⁴, of 'creamy layer.'

The court further observed that forced labor also comes within the context of bondage labor under the Bonded labor system (abolition) Act, 1976 and the state is charged by constitution for ending the bonded labor which is a cruel form of social injustice and exploitation.¹¹⁵⁵

The court through various cases has attempted to guide the state and itself acted towards the achieving the goal of Article 46. In a case the court held that manual scavenging of dry latrines is deeply rooted to caste exploitation and leads to the untouchability and discrimination which is an offence under Civil Protection Rights, 1955, and state as assigned by DPSP (Article 46) must act towards eradicating such practice as it is its moral as well legal duty.¹¹⁵⁶

Equality followed by equity is true equality, which our constitution follows and provides for upliftment of those who are weaker. This concept is well addressed in Article 46 and the state has acted towards achieving this objective since the enactment which can be witnessed by the 1st amendment act of constitution which was brought to remove hurdles in enforcing actions given by constitution under DPSP. The state has yet to do a lot to tackle the issue of social injustice and protect the weaker section of society.

¹¹⁵¹ THE CONSTITUTION (FIRST AMENDMENT) ACT, 1951 available at <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-first-amendment-act-1951> (last visited on 20/06/2025)

¹¹⁵² *M.R. Balaji & Ors. V State of Mysore* 1963 AIR 649

¹¹⁵³ *Indra Sawhney v Union of India & Ors* AIR 2000 SUPREME COURT 498

¹¹⁵⁴ *Ashok Kumar Thakur v State of Bihar and Ors* 1996 AIR 75

¹¹⁵⁵ *Bandhua Mukti Morcha v union of India and others* (1983), 1984 AIR 802

¹¹⁵⁶ *Safai Karamchari Andolan and Other V. Union of India and others* 2014, AIR 2014 SC (CIVIL) 1340.

ARTICLE 47

Article 47 is one of the most important provisions of the constitution, It talks about health, nutrition in food, basic standard for living and prohibition on consumption of drugs and intoxicating drinks. A state cannot be welfare if it cannot, at first, take care of its people¹¹⁵⁷ and by this thought our constitutional framers put this provision in the constitution so that the state may work towards achieving the goal as laid in the provision. We will further analyze Article 47 in 3 parts

- Public health and nutrition
- Standard of living
- Prohibition of intoxication

Improvement of Public Health and Nutrition

Protection and improvement of health and nutrition of its public is the primary duty of a state as provisioned in the constitution. The improvement of public health is not mere a duty that is discretion of the state to satisfy but it's more of an obligation, a pious liability on the state laid on by the supreme law of land. As lined in Article 47:¹¹⁵⁸

“The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

The DPSP not merely gives state the pious duties and task to discharge in compliance with the comprehensive system of sociology India has adopted but also, it empowers state to enact laws on various subjects which are preeminent for people of India such as health and nutrition.

¹¹⁵⁷ Vincent panikurlangara v. union of India & Ors. (1987), 1987 AIR 990

¹¹⁵⁸ Constitution of India, Article 47

The state is assigned the task to increase the level of nutrition and improve public health which is almost the same, meaning working on one aspect also levels up the other, as public health can be improved if there is nutritional value in the food or drink.

The state has a variety of functions to achieve the objective such as establishing healthcare and related schemes, regulating the healthcare industries, regulating the food and drinking objects, controlling the pollution and safeguarding the environment etc.

Actions Taken to Improve the Public Health

The medical profession is a matter of concurrent list under entry 29¹¹⁵⁹, that means both, union and state, are authorized to perform the duty as laid on them by constitution. The legislative action includes the statute which is enacted to fulfill the obligation of improving the health of the public. Followings are the various statute which directly or contingently deals with public health-

1. National Food Security Act, 2013: Aims to provide nutritious food to all covering almost 70% of rural and 50% of urban population.
2. Food and Safety Standard Act, 2006: This act was enacted in consonance to raise the level of nutrition of people, to check whether food consumed by people is to the level the state has prescribed.¹¹⁶⁰
3. Maternity Benefit Act, 1961: This maternity benefit act was enacted with a vision to provide maternity benefit to women so that the health of the child and the mother both may improve.¹¹⁶¹
4. Epidemic Disease Act, 1897: Empowers the government to take measures and prescribe regulation for the improvement of public health.¹¹⁶²
5. Clinical Establishment (registration and regulation) Act, 2010: Aims to fulfill its obligation as given under article 47 of the constitution to improve public health by providing standard of facilities.¹¹⁶³

¹¹⁵⁹ *Ibid.* Schedule seventh

¹¹⁶⁰ Food and Safety Standard Act 2006 (act 61 of 2006)

¹¹⁶¹ Maternity Benefit Act 1961, (act 53 of 1961)

¹¹⁶² Epidemic Disease Act 1897 (act 3 of 1897)

¹¹⁶³ Clinical Establishment (Registration and Regulation) Act 2010, (act 23 of 2010)

Pollution Law

Pollution is the biggest enemy of health, not only it weakens the body but also damages the nutritional value of food, affects respiratory, digestive system and almost every body part. The two main sources of pollution which poses risks on health are water and air, to regulate which the government has passed legislation to eradicate the pollution from these sources *i.e.* water and air.

- o Air (prevention and control of pollution) Act 1981¹¹⁶⁴
- o Water (prevention and control of pollution) Act 1974¹¹⁶⁵

The environment (protection) Act 1986 aims to provide protection to environmental beings and aims to reduce the environmental pollution.¹¹⁶⁶

Healthcare is one of the 7 thrust areas under the NCMP¹¹⁶⁷ and improvement in health continues to be an important part of the overall strategy for socio-economic development. The government has taken various and vivid initiatives to improve the health of the public, rural or urban. Under the national health scheme two parallel initiatives *i.e.* national rural health mission and national urban health mission are taken with an aim to provide affordable, equitable and quality healthcare services to the public.¹¹⁶⁸ Ayushman Bharat mission yojana is another initiative aimed to provide free medical service so that people may access healthcare system, Pradhan Mantri Jan Arogya yojana, another mind-blowing initiative of government to provide the medicine at very cheap price, national healthcare mission launched to provide extensive benefit to people in coming years.

Integrated child development scheme, mid-day meal scheme and Poshan Abhiyan are three initiatives taken by the government to provide nutritious food to women and children and aims to improve the health of child and mother.

Nexus with Article 21

¹¹⁶⁴ Air (Prevention and Control of Pollution) Act 1981, (act 14 of 1981)

¹¹⁶⁵ water (Prevention and Control of Pollution) Act 1974 (act 6 of 1974)

¹¹⁶⁶ Environment (Protection) Act 1986 (act 29 of 1986)

¹¹⁶⁷ national common minimum programme,

¹¹⁶⁸ Dr. Durga Das Basu, introduction to the constitution of India, 165 (21st ed. 2021)

The right to maintenance and improvement of public health is included in the right to live with human dignity enshrined in Article 21.¹¹⁶⁹ In *Paschim banga khet mazdoor samiti v state of west Bengal* the court held that denial of medical service by state aided hospitals is violation of one's fundamental right. The state is enjoined to take all such action which will promote health strength and Vigor of workmen as health form life and inseparable part of Article 21¹¹⁷⁰. Clarifying the scope of right to health the court held that this right is not available to the state and its instrumentality as well private industries. Good health of its citizens is the primary duty of the state and taking care and providing nutritional support to pregnant women is statutory as well as constitutional obligation.¹¹⁷¹

Therefore, Health and nutrition are two important factors that human life depends upon, and the constitution by giving this responsibility to the state has done such a wonderful job that in absence of such provision many people including children and women could never have access to healthcare and nutritious food. The state needs to act more swiftly to achieve the goal as set by periodical missions.

STANDARD OF LIVING

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control’.*¹¹⁷²

The state under this provision is required to lay down schemes and enact laws which lead to provide a basic facility necessary to live the life and right to life does not mean to live like animals but with respect and dignity. Standard of living means the way the majority of people are leading their life and increasing it means doing such action which makes their existing way of living better, since India is home to the world's most population it's not an easy thing to do yet

¹¹⁶⁹ J.N. Pandey constitutional law of India 314, (60th ed. 2023)

¹¹⁷⁰ Consumer Education And Research Centre v. Union of India And Ors. (1995) 1995 AIR 922

¹¹⁷¹ Deepika Jagat ram Sahni v union of India, AIR 2021 SC 523

¹¹⁷² UDHR, article 25.1, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

the state is obliged to. The standard of living in India is ‘roti kapda aur Makan’ which basically means bread, clothing and a place to live are necessary things the majority population lacks.

Standard of living increases when following areas of a person’s life are well, or to put it like this state tackles to increase the standard of living by making betterment in following areas of one’s life

- Housing: The government has launched Pradhan Mantri Awas yojana which aims to provide affordable housing and shelter to people, with objective ‘housing for all’.¹¹⁷³
- Food: The Food Security Act, 2013 was brought with the objective to provide food to all so that no person lacks food.¹¹⁷⁴ Mid-day meal is another scheme providing food to children encouraging them to get education.¹¹⁷⁵
- Sanitation: The cleaner the area the better the health of people and with this motive the government has launched the ‘Swachh Bharat mission.’
- Health and nutrition: Pradhan Mantri Ayushman Bharat yojana is a scheme of union government which provides free medical aid and affordable medicines¹¹⁷⁶. Poshan Abhiyan is another initiative aiming to provide nutritional food to women and children.¹¹⁷⁷
- Employment: The government has launched MGNREGA and DAY-NRLM¹¹⁷⁸, aiming to provide for at least minimum employment to laborers.
- Education: Samagra Shiksha Abhiyan, an initiative of the government which aims to provide access to education to every child.¹¹⁷⁹

¹¹⁷³ Ministry of Rural Development, *Pradhan Mantri Awas Yojana-Gramin (PMAY-G)*, Press Release (7 Feb. 2025), available at <https://rural.gov.in/en/press-release/pradhan-mantri-awas-yojana-gramin-pmay-g> (last visited 18 June 2025).

¹¹⁷⁴ Food Security Act 2013 (act 20 of 2013)

¹¹⁷⁵ Pradhan Mantri Poshan Shakti Nirman, ministry of education, available at https://pmposhan-ams.education.gov.in/About_mdm.aspx (last visited on 20/06/2025)

¹¹⁷⁶ Ministry of Health and Family Welfare, *Update on Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB PM-JAY)*, Press Release (28 March 2025), available at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2116209> (last visited 18 June 2025).

¹¹⁷⁷ Ministry of Women and Child Development, *POSHAN Abhiyaan* (Press Release, 24 March 2023), available at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1910409> (last visited 18 June 2025).

¹¹⁷⁸ Ministry of Rural Development, *Factsheet/Scheme Brief*, Government of India (Date), available at <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2023/dec/doc2023126279701.pdf> (last visited 18 June 2025).

¹¹⁷⁹ Department of School Education and Literacy, *Samagra Shiksha – An Integrated Scheme for School Education*, Government of India, available at <https://samagra.education.gov.in/> (last visited 18 June 2025).

- Banking service- PM Jan Dhan Yojana aims to equip everyone with banking facilities.¹¹⁸⁰

CONCLUSION

The standard of living must be continuously monitored by the state, and it should always be consistent to increase the standard by providing health, food, social security, economic security, shelter and education etc. to those who don't have access to that. Only by fulfilling the other obligations given in the DPSP state shall one be truly able to increase the standard of living.

The last part of Article 47 asks the state to prohibit the intoxicating drinks and drugs which are injurious to health except those used for medicinal purposes. This is a great responsibility of the state as it needs to ban all those drugs and intoxicating drinks for consumption which are harmful and dangerous to human life.

In constituent assembly while discussing this topic one member asked the drafting committee to include the term 'except for medicinal purposes' in the draft Article 38, which in his views was must as drugs are used in medicinal purposes also. Further talking on prohibition, he says that although it shall cost the state a lot of revenue by prohibiting alcohol, yet, the sum will be smaller than the money which will be used for the welfare of those men who are drinking. Simply put, 'prohibition is better than cure' was his idea.¹¹⁸¹

Since the matter of alcohol is subject to state list¹¹⁸² It's the states who have authority to ban alcohol in their respective states. Following the constitutional guideline the state of Gujarat¹¹⁸³ became the first state to ban alcohol, following which Bihar¹¹⁸⁴ Mizoram¹¹⁸⁵ and Nagaland¹¹⁸⁶ have also fulfilled their constitutional obligation.

¹¹⁸⁰ Ministry of Finance, *Pradhan Mantri Jan Dhan Yojana (PMJDY) — National Mission for Financial Inclusion — completes a decade of successful implementation*, Press Release (28 Aug. 2024), available at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2049231> (last visited 18 June 2025).

¹¹⁸¹ Constituent Assembly of India, *Proceedings of the Constituent Assembly*, Vol. 7, 24 November 1948, available at <https://www.constitutionofindia.net/debates/24-nov-1948/> (last visited 18 June 2025).

¹¹⁸² Constitution of India, schedule 7, State list entry 51a

¹¹⁸³ Gujarat Prohibition Act 1949 (act XXV of 1949)

¹¹⁸⁴ Bihar Prohibition and Excise Act 2016 (act 20 of 2016)

¹¹⁸⁵ Mizoram Liquor (Prohibition) act 2019 (act 4 of 2019)

¹¹⁸⁶ Nagaland Liquor Total Prohibition Act 1989 (act 4 of 1989)

The central law on governance and regulation of drugs is the NDPS act which defines, regulates, prohibits and controls the manufacturing, processing, distribution and storing of drugs.¹¹⁸⁷ This law aims to step on the way as shown by the constitution in Article 47.

‘Nasha Mukh Bharat Abhayan’ is a government step taken with the aim to make India intoxication free. It provides medical assistance and hosts awareness campaigns to end the intoxication.¹¹⁸⁸ The Department of Social Justice and Empowerment has launched a national action plan for drug demand reduction which works with social organizations to curb drug consumption in India.

Alcohol and drugs are substances which affect the human brain and the person who consumes that has no slight cognizance of his action and this leads to crime, violence and other offences which ultimately causes harm to people and state. The liquor has become curse in labor class as it accelerates sexual violence and cruelty with women and children. The state is therefore through this provision required to end such consumption and bring peace and ultimately the health will improve.

¹¹⁸⁷ Narcotic Drugs and Psychotropic Substances Act 1985 (act 61 of 1985)

¹¹⁸⁸ Ministry of Social Justice and Empowerment, *Key Initiatives and Achievements for the Year 2021*, Press Release (30 Dec. 2021), available at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1786263> (last visited 18 June 2025).

CHAPTER 30

Organization of Agriculture and Animal Husbandry (Article 48)

by Sukriti Chaudhary

INTRODUCTION

The Indian Constitution, in its all-encompassing vision, seeks not just to secure basic rights but also to shape state policy towards the common good of its citizens, creatures, and the earth. Amongst its Directive Principles of State Policy, Article 48 holds a unique and frequently disputed position. It compels the State to organize agriculture and cattle rearing on scientific and modern lines and specifically to ban the slaughter of cows, calves, and other draught and milch cattle.¹¹⁸⁹ Written in the context of a predominantly agrarian economy and drawn from Gandhian thought, Article 48 was meant to be a socio-economic mandate, protecting animal welfare while enhancing sustainable rural livelihoods.¹¹⁹⁰

The section is the expression of a long-standing cultural and moral predisposition with respect to animal life, particularly the cow, as well as an appreciation of the instrumental interests of Indian agriculture. Yet the constitutional intent of Article 48 has been caught up in a conflicting narrative between its moral purpose, its economic justification, and political abuse today.¹¹⁹¹ As climatic change endangers agricultural sustainability, and rural economies are subjected to repeated livelihood crises, the imperative of reinterpreting Article 48 in terms of a modern, realistic understanding grows more critical by the day.

This chapter attempts to critically analyse the development, intent, and contemporary application of Article 48 in the Indian constitutional and economic context. It examines how the provision, originally based on the welfare of humans and animals alike, has at times departed from its

¹¹⁸⁹ The Constitution of India, Art. 48 (Government of India, 1950).

¹¹⁹⁰ M.P. Jain, *Indian Constitutional Law* 1498 (LexisNexis, Haryana, 8th edn., 2018).

¹¹⁹¹ H.M. Seervai, *Constitutional Law of India Vol. II* 2110-2114 (Universal Law Publishing, Delhi, 4th edn., 2013).

scientific and farming basis towards a rigid and exclusionary cow protection form. The chapter poses urgent questions: Firstly, Is Article 48 able to nurture climate-resilient agriculture and moral animal husbandry? Secondly, In what ways has its judicial and legislative interpretation influenced, or arrested, the objectives of sustainable rural development? And most importantly, Thirdly, is a reinterpretation of this directive possible for both ecological justice and economic equity?

Through a historical examination of its origins, critical analysis of judicial rulings, and discussion of its actual socio-political significance, this chapter attempts to reclaim Article 48 as a positive constitutional instrument. Readers will develop a greater appreciation for the way this provision intersects with changing challenges in agriculture, environmental sustainability, and minority livelihoods. The long-term goal is to present a constitutionally rooted but progressive vision for Article 48 that upholds India's developmental imperatives and its climate goals without undermining its democratic and pluralistic character.

HISTORICAL CONTEXT

The inclusion of Article 48 in the Directive Principles of State Policy illustrates the historically close connection in India between agriculture, animal husbandry and culture. Article 48 has philosophical and moral origins. It is linked to Gandhian thought, where the cow was venerated by Hindus as a sacred symbol and was also regarded as an important source of livelihood in rural life. While Gandhi highlighted protection of the cow as a moral duty beyond simply being a religious obligation, he viewed protection of the cow as a means of exercising compassion, simplicity and focusing attention on agrarian welfare.¹¹⁹²

Even before the advent of independence, colonial India had multiple provincial laws restricting or regulating cow slaughter, which was motivated primarily by either preventing communal discord or appeasing religious sentiment. For example, Cattle Trespass Act 1871 was enacted to protect farmers from stray animals damaging crops, and several princely states had enacted specific cow protection laws to deal with local demands.¹¹⁹³ However, these frameworks were devoid of constitutional vision and were inconsistent with respect to scope.

¹¹⁹² M.K. Gandhi, *The Moral Basis of Vegetarianism* 8-10 (Navajivan Publishing House, Ahmedabad, 1959).

¹¹⁹³ The Cattle Trespass Act, 1871 (Act 1 of 1871).

In the pretext of reorganizing animal husbandry in a scientific manner, Article 48 of the Constitution proposed consolidating all the fragmented laws into a singular national framework. The draft proposal sparked intense debates within the CAD (Constituent Assembly Debates). Advocating for the complete constitutional ban of cow slaughter, Pandit Thakur Das Bhargava highlighted the blend of religious sentiment and the economic utility for rural regions. Cow protection, equally viewed as crucial to India's civilization identity, was emphasized by Seth Govind Das alongside other remarks.¹¹⁹⁴

A more rational approach was taken by Dr. B.R. Ambedkar. While he recognized the cultural significance of cattle, he tempered that with practicality. Stating that the Constitution, unlike provisions such as catering to minorities or catering to economic practices based on cattle trade, should not be built on religious dreams.¹¹⁹⁵

The final draft of Article 48, therefore, emerged as a delicate compromise. It states: “*The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle.*”¹¹⁹⁶

In contrast to the binding Fundamental Rights, the Directive Principles were located in Part IV of the Constitution for the purposes of providing aspirational targets for legislation and policy. Therefore, Article 48 was made non justiciable by design due to a largely avoidable caution on the part of the framers of the Constitution seeking to reconcile majoritarian morality with economic modernisation and constitutional secularism.¹¹⁹⁷

While many justiciable rights may share structures or sources of inspiration from a global context, such as those prescribed in the Universal Declaration of Human Rights, 1948, Article 48 is the result of a particularly indigenous genesis shaped primarily by: a country's agrarian base, the dominant cultural ideology of Hindu religiosity, and Gandhian ethics in relation to non-human species.¹¹⁹⁸

¹¹⁹⁴ Constituent Assembly Debates, Vol. VII, 39-42 (Nov. 24–25, 1948)

¹¹⁹⁵ B.R. Ambedkar, “Speech on Directive Principles,” in Constituent Assembly Debates, Vol. VII, 42 (Nov. 25, 1948)

¹¹⁹⁶ The Constitution of India, Art. 48 (Government of India, 1950).

¹¹⁹⁷ H.M. Seervai, *Constitutional Law of India*, Vol. II 2112 (Universal Law Publishing, Delhi, 4th edn., 2013).

¹¹⁹⁸ G. Austin, *The Indian Constitution: Cornerstone of a Nation* 138 (Oxford University Press, New Delhi, 1966).

LITERATURE REVIEW

The scholarly conversation around Article 48 is part of an ultimately bigger conversation about the role of Directive Principles of State Policy (DPSPs) within the Indian constitutional framework. Seervai, by contrast, critiques the selective invocation of Article 48, noting that while it has been used to justify bans on cow slaughter, the "*modern and scientific lines*" on which Article 48 looks to organize religious, and socio-economic significance.

Leading constitutional theorist M.P. Jain regards Article 48 as a reflection of India's agrarian outlook in 1947 and, before independence, the desire to reorganize animal husbandry on more modern lines and to treat the rearing of cattle quintessentially a scientific, rather than a religious or cultural, undertaking.¹¹⁹⁹ While he recognizes its socio-economic origins, he also observes that it has been interpreted primarily in a religio-cultural context when courts have invoked it.¹²⁰⁰

H.M. Seervai, by contrast, critiques the selective invocation of Article 48, noting that while it has been used to justify bans on cow slaughter, the "*modern and scientific lines*" on which Article 48 looks to organize animal husbandry up to now, both legislatures and courts have ignored, in keeping with the stated will of Article 48.¹²⁰¹ He believes that state courts have tended to develop enforceable rights under Article 48 selectively, and sometimes at the expense of Article 19(1)(g) (which gives us the right to practice any profession or trade).¹²⁰²

D.D. Basu, in contrast, has a more respectful apparatus to characterize this directive, describing it as required morality on the part of the State, particularly in defined agrarian and religious contexts involving cattle.¹²⁰³ Basu acknowledges the potential clash between DPSPs and Fundamental Rights, particularly when protecting cows threatens a minority way of life, i.e. livelihood, savings or food choice.

The scholarly literature has also muddled the debate considerably. For example, Faizan Mustafa has argued that the judiciary has decidedly preferred the majority sentiment over constitutional secularism, particularly through Article 48 as a specific endorsement of cow slaughter

¹¹⁹⁹ M.P. Jain, *Indian Constitutional Law* 1499 (LexisNexis, Haryana, 8th edn., 2018).

¹²⁰⁰ *Ibid.*, at 1502.

¹²⁰¹ H.M. Seervai, *Constitutional Law of India*, Vol. II 2112-2115 (Universal Law Publishing, Delhi, 4th edn., 2013).

¹²⁰² D.D. Basu, *Introduction to the Constitution of India* 453-454 (LexisNexis, Nagpur, 24th edn., 2019).

¹²⁰³ *Ibid.*, at 2116.

legislation.¹²⁰⁴ In a differing but parallel fashion, Anuj Bhuwania has cautioned against vigilantism and outside enforcement of laws of cow protection, noting that it could misconstrue Article 48 and damage Rule of Law.¹²⁰⁵

Scholars have begun to address Article 48 in the context of climate change, sustainable farming and animal rights agendas and claimed, based on its original intent, that it is timed to consider a scientifically-informed re-interpretation. These may not contemplate a religious responsibility as dictated in the Directive, but perhaps vehicles for pedestrian forms of ecological and economic justice for rural India.¹²⁰⁶

CONSTITUTIONAL INTERPRETATIONS

Article 48 of the Indian Constitution, which is entitled "*Organisation of agriculture and animal husbandry*", states: "*The State shall strive to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.*"¹²⁰⁷

This article is placed in Part IV of the Constitution, which comprises the Directive Principles of State Policy. Even though non-justiciable, Article 48 is held to be essential to the administration of the nation, evidencing the framers' desire to steer state policy toward agrarian reform and animal protection.

The genesis of Article 48 lies in Draft Article 38-A, first proposed in the Constituent Assembly on 24th November 1948.¹²⁰⁸ The history of its framing captures a mix of economic, cultural, and ethical impulses. Pandit Thakur Das Bhargava favoured the clause, highlighting that the protection of cattle and particularly cows was essential for India's agricultural economy and that the logic behind the ban on cow slaughter was economic rather than religious. Dr. B.R. Ambedkar, although not against the article, highlighted that such provisions best fit in the Directive Principles and not the Fundamental Rights, thus ensuring that they steered governance

¹²⁰⁴ Faizan Mustafa, "Constitutional Morality and the Cow Slaughter Controversy" 50(4) Economic and Political Weekly 15 (2015).

¹²⁰⁵ Anuj Bhuwania, "Cow Vigilantism and the Constitution" 59 EPW 10 (2024).

¹²⁰⁶ Sudhir Krishnaswamy, "Sustainable Development and Constitutional Interpretation in India" 6 NUJS L. Rev. 435 (2013).

¹²⁰⁷ *Supra* note 8

¹²⁰⁸ Constituent Assembly Debates, Vol. VII, 24 November 1948

without being judicially enforceable. K.M. Munshi strongly advocated the provision, and maintained that the safeguarding of cows had profound civilizational connections in India and was not merely religious; he saw the cow symbolizing the agrarian economy and sustainable living. Others such as Pandit Lakshmi Kanta Maitra and Shibban Lal Saksena shared the same views, further stating that cow protection had both religious value and economic usefulness to the rural economy. Such debates clearly illustrate that Article 48 was drafted to promote scientific progress in agriculture while at the same time ensuring that traditional virtues were not lost through a ban on slaughtering economically useful animals.

While Article 48 is non-justiciable, judicial interpretation has influenced the development of laws prohibiting cow slaughter in India. The Supreme Court addressed such laws in *Mohd. Hanif Qureshi v. State of Bihar*, first, by upholding the prohibition on cow slaughter, recognizing both cultural and economic interests associated with the cow's significance.¹²⁰⁹ In finding that a general prohibition against slaughtering bulls and bullocks beyond age and utility was unconstitutional, the Court held that complete prohibition under Article 19(1)(g) is unreasonable; Article 19(1)(g) guarantees the right to practice any profession or carry on any occupation, trade or business. The Supreme Court drew a line between Article 48 and the economic rights contained in Part III of the Constitution. As years passed, the interpretation underwent significant change in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* where a Constitution Bench of seven judges, overruled the earlier decision, upholding a total prohibition on the slaughter of bulls and bullocks regardless of either age or utility.¹²¹⁰

The Court has attempted to rationalize that Article 48 should be interpreted in conjunction with Article 51A(g), one of the Fundamental Duties from the 42nd Amendment, that requires showing pity to every living being. It also took into account scientific studies relating to the contribution of aged cattle (through dung, urine, and biogas). This represented a departure from a purely economic approach to a more integrated one that included long-term sustainability and ethical treatment of animals. The Court also noted that while Article 48 is a guiding principle of law, any legislation that seeks to prohibit the slaughter of cows must meet the reasonable restrictions of Article 19(6) in *Haji Usmanbhai Hasanbhai Qureshi v. State of Gujarat*. However, there is a

¹²⁰⁹ *Mohd. Hanif Qureshi v. State of Bihar*, AIR 1958 SC 731.

¹²¹⁰ *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534.

likelihood that such restrictions could be justified in the name of public interest and social values¹²¹¹.

Through these rulings, the courts have widened the interpretive capabilities of Article 48 and have changed it from a directive principle into a directive influence on both legislative and administrative actions. While it may not provide any enforceable entitlement, Article 48, with the support of Article 51A(g), has given enough enabling power for the courts to sustain a number of state laws that prohibit or restrict cattle slaughter, and consequently demonstrate a sense of jurisprudential art that entwines constitutional morality, public interest and cultural and traditional values.¹²¹² Therefore, Article 48 has transformed from a limited directive into a signal with which to direct animal welfare policy, and the regulation of agricultural practices in India.

JUDICIAL INTERPRETATIONS

Over the decades, the Indian judiciary has significantly contributed to interpreting Article 48 in light of the tensions between Directive Principles of State Policy and Fundamental Rights. The landmark decision in *Mohd. Hanif Qureshi v. State of Bihar*¹²¹³ laid the foundation for this jurisprudence. The Supreme Court, while upholding a total ban on the slaughter of cows as consistent with Article 48, struck down similar bans on bulls and bullocks that had ceased to be useful, stating that once animals outlived their economic utility, imposing a blanket prohibition served no substantial public purpose. The Court clarified that while Article 48 serves as a directive for cattle preservation, it cannot override the fundamental rights guaranteed under Articles 19(1)(g) and 25 unless the restrictions are reasonable and proportionate. This judgment introduced the principle of *functional utility*, distinguishing between productive and unproductive cattle in determining the legitimacy of slaughter bans.

This functional approach was tested again in *Abdul Hakim Quraishi v. State of Bihar* (AIR 1961 SC 448), where the Court reviewed statutory amendments that had raised the age threshold for slaughter eligibility and introduced cumbersome certification procedures. The Court found that these provisions, though framed under the guise of procedural safeguards, effectively

¹²¹¹ Haji Usmanbhai Hasanbhai Qureshi v. State of Gujarat, AIR 1986 SC 1876

¹²¹² The Constitution of India, art. 51A(g).

¹²¹³ Abdul Hakim Quraishi & Ors. v. State of Bihar, AIR 1961 SC 448.

reintroduced a total ban and thus constituted an unreasonable restriction on the petitioners' right to practice trade. The Supreme Court reaffirmed that laws inspired by Article 48 must meet the constitutional standard of reasonableness under Article 19(6) and cannot impose disproportionate burdens through bureaucratic means.

However, a significant shift occurred in *Haji Usmanbhai Hasanbhai Quraishi v. State of Gujarat*¹²¹⁴ where the Court upheld age-based restrictions on cattle slaughter, citing advancements in veterinary science and prolonged utility of bulls and bullocks in an agrarian economy. It held that the prohibition on slaughtering bulls and bullocks below the age of sixteen years was constitutionally valid and not violative of Articles 14 or 19(1)(g), as it was based on intelligible differentia and served the purpose of livestock preservation under Article 48. The judgment marked the beginning of a more deferential approach toward state policies aligned with Directive Principles, provided they were grounded in scientific evidence and rational public interest.

This deferential trend culminated in the landmark seven-judge bench decision in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*¹²¹⁵ where the Supreme Court upheld a total ban on the slaughter of bulls and bullocks, even if they had ceased to be economically useful. The Court explicitly overruled its earlier reasoning in *Hanif Quareshi*¹²¹⁶, stating that Article 48, when read harmoniously with Article 51A(g), *the Fundamental Duty to show compassion towards living creatures warranted a broader, more protectionist interpretation*. The Court opined that cattle, even beyond their draught and milch utility, contributed to the rural economy through dung, urine, and biogas and that their preservation was critical for sustainable agriculture and environmental health. Thus, the Court moved from a narrow functional utility test to a more expansive view that prioritised ecological and ethical considerations over individual commercial rights.

Collectively, these rulings trace the evolving judicial understanding of Article 48 from its early role as a directive principle with limited enforceability to a robust constitutional mandate capable of justifying wide-ranging legislation on cattle preservation. The trajectory underscores the judiciary's shifting posture toward balancing individual rights and collective goals, ultimately

¹²¹⁴ Supra note 23

¹²¹⁵ Supra note 22

¹²¹⁶ Supra note 21

privileging the Directive Principles in matters of agrarian reform and animal welfare when justified by public interest and scientific reasoning.

REAL LIFE IMPACT AND CONTEMPORARY RELEVANCE

Despite its non-justiciable status, Article 48 has had substantial influence on policy-making and administrative practices, particularly concerning cow protection laws. These have had disproportionate impacts on minority groups, especially Muslims, Dalits, and low-income traders engaged in the meat, dairy, and leather industries. For example, in Uttar Pradesh and Gujarat, stringent cow slaughter laws such as the *Uttar Pradesh Prevention of Cow Slaughter Act, 1955* and the *Gujarat Animal Preservation Act, 1954* have led to the criminalisation of cattle transport and even harassment of legitimate dairy farmers and meat traders.¹²¹⁷

A prominent case that brought the real-life implications of Article 48 into national focus was the Dadri lynching case (2015). In Bisada village, Uttar Pradesh, Mohammad Akhlaq, a 52-year-old man, was brutally lynched by a mob on the suspicion of consuming beef. The police invoked sections of the *U.P. Cow Slaughter Act*, and the post-mortem of the meat found in Akhlaq's house became a legal and political controversy, overshadowing the fact that a man had been killed without trial.¹²¹⁸ The incident led to national outrage, exposing how cow protection laws, backed by Article 48, can be misused by vigilante groups to justify mob violence.

Another significant case was the Alwar lynching (2017) in Rajasthan, where Pehlu Khan, a 55-year-old dairy farmer, was attacked and killed while transporting milch cows purchased legally. Despite video evidence and public statements made before his death, the case saw all six accused acquitted.¹²¹⁹ The incident again highlighted the tension between constitutional directives and ground-level law enforcement, raising concerns over selective justice and police complicity. Ironically, Pehlu Khan's intention to improve his dairy business aligned with the economic goals embedded in Article 48, yet it was that very provision's distorted public interpretation that led to his death.

¹²¹⁷ The Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (Act No. 1 of 1956); Gujarat Animal Preservation Act, 1954 (Act No. 13 of 1954).

¹²¹⁸ "Uttar Pradesh: Dadri Lynching Victim Mohammad Akhlaq's Family Gets Threats," *The Hindu*, Oct. 5, 2015.

¹²¹⁹ "All Accused Acquitted in Pehlu Khan Lynching Case," *The Indian Express*, Aug. 14, 2019.

Article 48 has also been utilized in bureaucratic provisions such as the Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017 - which prohibited the sale of cattle for slaughter in a market. This law, later temporarily halted by the Supreme Court of India, struck at the heart of many of the rural livestock markets and caused economic hardship for many farmers reliant on selling unproductive animals for a modest income to assist with household expenses.¹²²⁰ In Maharashtra, for example, when several licensed beef traders sought to renew their permits they were denied on the direction of the government based on 'morality' using Article 48 as the basis for denying the renewal, despite the legality and bureaucratic regulation of those activities. Further, governments have allocated large funding to support gaushalas (cow shelters). A ₹500 crore allocation for cow welfare was made by the Rajasthan government in 2020-21 whilst struggling to fund public education and health programs.¹²²¹ Meanwhile, investigative reports reveal significant overcrowding, starvation deaths, and corruption across many of the shelters, with service delivery efficiency hidden behind the cloak of constitutional objectivity.

These examples illustrate that Article 48 has shifted significantly from its purported aim of facilitating “scientific” animal husbandry. It is now intertwined with symbolic politics and exclusionary governance. This results in an alarming decline of constitutional rights, economic precarity, and public confidence in legal institutions especially for those whose identity or economic activity clashes with the prevailing cow protectionist ideology.

CRITICAL PERSPECTIVE

Although Article 48 was framed as a directive for modernising agriculture and improving livestock management, its real-world interpretation and application have substantially deviated from its original intent. Initially conceived as part of a scientific and economic vision to improve animal husbandry and preserve cattle breeds, the provision has instead come to be synonymous with prohibiting cow slaughter, often with religious and political undertones. This narrow, moralistic reading has invited serious academic and judicial criticism.

¹²²⁰ Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017, Gazette of India (Ministry of Environment and Forests).

¹²²¹ Centre for Science and Environment, “Gau Seva Gone Wrong: A Report on Gaushalas in India,” CSE Report, March 2020.

One of the core criticisms lies in the ambiguity of language. While the article instructs the State to organise animal husbandry on "*modern and scientific lines*," it simultaneously mandates prohibition of slaughter of certain types of cattle terms like "*milch*" and "*draught cattle*" are undefined and open to subjective interpretation.¹²²² This vagueness has led to inconsistent and overbroad legislative measures, such as complete bans on cow slaughter even in cases where the animal is aged, unproductive, or diseased contradicts scientific efficiency and sustainability norms.

Another major criticism is the conflict between Article 48 and fundamental rights, especially Article 19(1)(g) (right to practice any profession) and Article 21 (right to livelihood and dignity). While the Supreme Court in *Mohd. Hanif Qureshi v. State of Bihar* acknowledged that total bans could affect economic rights, subsequent decisions particularly *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* prioritised cultural values over individual liberties.¹²²³ Scholars like H.M. Seervai have criticised such judgments for allowing Directive Principles to override Fundamental Rights, thereby altering the hierarchy originally envisioned in the Constitution.¹²²⁴

The evolution of Article 48's judicial interpretation shows a marked shift from a balanced, economic rationale in the 1950s to a majoritarian, identity-driven approach in the 2000s. In doing so, courts have often ignored or underplayed intersectional impacts how cattle protection disproportionately affects minority groups, informal economy workers, and women in rural livestock care.¹²²⁵ Moreover, the implementation of Article 48 has been uneven and often performative. While gaushalas receive public funding under its guise, the quality of animal care remains poor. States with the most aggressive cow protection laws simultaneously witness high rates of stray cattle deaths, farmer losses due to crop damage, and underfunded veterinary infrastructure.¹²²⁶ The gap between textual fidelity and empirical outcomes raises serious doubts about the instrumentalisation of Article 48 for political symbolism rather than public welfare.

¹²²² D.D. Basu, *Introduction to the Constitution of India* 452 (LexisNexis, Nagpur, 24th edn., 2019).

¹²²³ *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* (2005) 8 SCC 534; *Mohd. Hanif Qureshi v. State of Bihar*, AIR 1958 SC 731.

¹²²⁴ H.M. Seervai, *Constitutional Law of India*, Vol. II 2112-2117 (Universal Law Publishing, Delhi, 4th edn., 2013).

¹²²⁵ Rukmini S., "Cow Protection Policies and Rural Women's Livelihoods," 58 EPW 22 (2023).

¹²²⁶ Centre for Science and Environment, "Gau Seva Gone Wrong: A Report on Gaushalas in India," CSE Report, March 2020.

Finally, critics argue that Article 48 is increasingly being used to undermine secularism. By elevating one religious practice into state policy, it blurs the constitutional boundary between religion and governance. Faizan Mustafa and Rajeev Dhavan have repeatedly pointed out that such use violates constitutional morality, leading to exclusion rather than integration within India's pluralistic society.¹²²⁷ Thus, Article 48's journey from a directive for agricultural modernisation to a tool of religious morality and political mobilization illustrates the dangers of ambiguous constitutional language being co-opted for majoritarian ends. Its current trajectory demands serious constitutional introspection and reform-oriented policy realignment.

COMPARATIVE INSIGHTS: GLOBAL LESSONS AND INDIA'S CONSTITUTION CONTRIBUTION

The constitutional treatment of animal welfare varies globally, yet it increasingly intersects with debates on sustainability, food ethics, secular governance, and rural development where themes directly or indirectly connected to Article 48. While India's approach has often been morally symbolic and culturally sensitive, other countries have adopted more scientific, welfare-oriented, and rights-based frameworks, offering valuable comparative insights.

For instance, Germany amended its Basic Law (Grundgesetz) in 2002 to explicitly include animal protection under Article 20a, making it a constitutional obligation of the State to safeguard animals for future generations. This provision is grounded not in religious belief but in ecological ethics and scientific consensus, providing a model of secular and holistic animal welfare that India can emulate.¹²²⁸

Similarly, Switzerland has integrated detailed animal welfare provisions into both its Federal Constitution and legislation, with an emphasis on preventing cruelty and ensuring proper living conditions for all animals. What stands out is the institutional infrastructure like veterinary offices, cruelty prevention units, and ethical review boards that enforce these rights with accountability and transparency.¹²²⁹ In contrast, India's implementation of Article 48

¹²²⁷ Faizan Mustafa, "Constitutional Morality and the Cow Slaughter Controversy" 50(4) Economic and Political Weekly 15 (2015).

¹²²⁸ German Basic Law, Art. 20a

¹²²⁹ Federal Constitution of the Swiss Confederation, Art. 80, and Animal Welfare Act (Switzerland, 2005)

remains fragmented, vulnerable to politicisation, and often disconnected from modern veterinary or ecological standards.

In the United States, although the Constitution does not directly address animal welfare, statutes like the Animal Welfare Act, 1966 regulate humane treatment, especially in research and transport sectors. Moreover, First Amendment protections ensure that religious practices and dietary choices are constitutionally insulated from majoritarian bans a framework India struggles to balance in the context of beef bans and cow protection laws.¹²³⁰

India, however, can also contribute important constitutional innovations to global discourse, particularly in linking animal welfare with agricultural justice and rural livelihoods. Article 48, despite its shortcomings, is a rare constitutional example that embeds livestock protection within a socio-economic directive, highlighting the interconnectedness of animals, agriculture, and development. If reinterpreted through a secular, inclusive, and climate-conscious lens, it could become a model for countries facing agrarian transitions and ecological stress.

India's constitutional framework also offers a valuable lesson in caution: that morally loaded or ambiguously worded provisions, when not anchored in scientific and rights-based logic, risk exclusion, vigilantism, and institutional breakdown. This experience underscores the need for constitutional clarity, ethical governance, and rights-balancing mechanisms in the design and enforcement of animal welfare laws worldwide.

Thus, while India can learn from international examples of precision, proportionality, and scientific rigor, it also has a unique opportunity to contribute a developmental and justice-oriented approach to the emerging global constitutional ethics of animal welfare.

SUGGESTED REFORMS AND ENHANCEMENTS

To revitalise Article 48 in alignment with its constitutional intent and contemporary needs, a series of multi-tiered reforms that is legal, institutional, and social are essential. *First*, Parliament and state legislatures should consider codifying a uniform national framework for animal husbandry that is grounded in scientific veterinary practices, sustainable breeding, and inclusive welfare measures, rather than narrowly focusing on cow slaughter. Such a framework should

¹²³⁰ Animal Welfare Act, 7 U.S.C. §§ 2131–2159 (1966); U.S. Constitution, First Amendment.

incorporate clear definitions of terms like “milch” and “draught” cattle, and distinguish between economic regulation and religious symbolism, ensuring the law does not become a vehicle for majoritarian moralism.¹²³¹

Second, constitutional interpretation of Article 48 must be realigned through judicial guidance that harmonises it with Articles 14, 19(1)(g), and 21, protecting the rights of minorities, farmers, and small-scale traders whose livelihoods are entangled with cattle economy. Courts could adopt a proportionality test, as used in *Modern Dental College v. State of Madhya Pradesh*, to evaluate whether restrictions imposed under Article 48 reasonably balance public interest and individual freedoms.¹²³²

Third, there is a pressing need for institutional reform. States should establish independent animal welfare boards and regulatory bodies tasked with enforcing scientific standards in gaushalas, monitoring cattle transportation, and curbing extrajudicial vigilantism. Legal aid clinics and rights awareness programs should be set up in rural areas to inform citizens, particularly vulnerable groups about lawful practices, enforcement limits, and redress mechanisms under Article 48-related statutes.

Fourth, reforms must be accompanied by public education and civic dialogue. Awareness campaigns should reframe Article 48 as a tool for sustainable agriculture, biodiversity conservation, and ethical animal care, not communal division. Civil society and academia must play a stronger role in depoliticising animal welfare discourse and promoting a scientific, rights-conscious understanding of constitutional duties.¹²³³

Lastly, the Law Commission or a dedicated parliamentary committee could be tasked with reviewing all state-level cow protection laws for consistency, constitutionality, and compatibility with modern agro-economic realities. A model directive principles code could be proposed to guide state action, much like the *Model Police Act* or *Model Panchayati Raj Act*.

¹²³¹ D.D. Basu, *Introduction to the Constitution of India* 453 (LexisNexis, Nagpur, 24th edn., 2019).

¹²³² *Modern Dental College and Research Centre v. State of Madhya Pradesh* (2016) 7 SCC 353.

¹²³³ Sudhir Krishnaswamy, “Sustainable Development and Constitutional Interpretation in India” 6 NUJS L. Rev. 435 (2013).

Only through such reforms can Article 48 evolve from a contested moral clause into a constructive, justice-oriented provision that balances animal protection with livelihood, dignity, and constitutional morality.

KEY LEARNINGS

1. **Historical Intent Rooted in Agriculture and Ethics:** Article 48 was conceived as a developmental directive anchored in Gandhian values, but aimed at modernising agriculture and improving cattle breeds. It was not initially intended as a religious or exclusionary provision but rather a scientific and economic guideline within the Directive Principles.

2. **Ambiguity in Language and Interpretation:** The vague phrasing of terms like “milch and draught cattle” has led to inconsistent and expansive interpretations by legislatures and courts. This has allowed state laws to vary widely and sometimes deviate from the scientific orientation originally envisioned.

3. **Judicial Shift Toward Cultural Preservation:** Landmark judgments such as *Mohd. Hanif Qureshi* and *Mirzapur Moti Kureshi* show a judicial evolution from balancing rights and directives to privileging majoritarian sentiment. The courts increasingly framed cow protection as constitutional morality, sometimes at the cost of individual rights and economic freedoms.

4. **Real-World Impact: Marginalisation and Vigilantism:** Article 48’s invocation in recent years has contributed to vigilante violence, economic marginalisation, and discriminatory enforcement. Case studies like the Dadri and Alwar lynchings demonstrate how a constitutional provision can be co-opted for extra-legal and communal purposes.

5. **Disconnection Between Policy and Welfare:** Despite large investments in cow shelters and cattle protection programs, outcomes have been poor, revealing a disconnect between symbolic enforcement and actual animal welfare. Many gaushalas suffer from underfunding, poor veterinary care, and administrative neglect.

6. Comparative Lessons from Abroad: Countries like Germany and Switzerland demonstrate how animal welfare can be constitutionally embedded in a secular, rights-respecting, and scientifically grounded framework. These examples suggest that religious sentiment need not override public policy and individual rights.

7. Scope for Reinterpretation and Reform: Article 48 still holds potential as a vehicle for climate-resilient agriculture, biodiversity protection, and inclusive development if reinterpreted in harmony with Fundamental Rights and constitutional morality. Legal reform, institutional restructuring, and civic awareness are key to fulfilling its original promise.

CONCLUSION

Article 48 is a distinctly Indian constitutional provision originating from a postcolonial perspective that expressed ideals of agrarian reform, ethical governance, and animal protection. Its history, as we have seen in this chapter, has not been an unproblematic one. Originally conceived to encourage the scientific organisation of animal husbandry and to preserve indigenous cattle breeds, Article 48 has been transformed into an intensely contested space, laden with judicial elaborations, administrative policies, and political pressure.

To put it less diplomatically, the ambiguous language of the directive and the selective application of Article 48 have allowed it to be utilized by the state as both a symbolic and moralistic project that frequently results in exclusionary practices, religious friction, and economic destruction. The strident mobilisations of violence from, for instance, decisions at the highest court, to the fatal lynchings in Dadri and Alwar, signal a disturbing and dislocating departure from the constitutional promises of developmental governance. Our comparative endeavours have revealed that in other constitutional democracies, for example, Germany or Switzerland, a similar mode of ethical animal welfare is contained in secular constitutional tradition and statutory policy based on science and sustainability. At the very least, these examples can provide potential understandings for how Article 48 might offer a meaningful lens for an alternative meaning that contributes to, and provides balance to, claims of ecological justice and agrarian justice, rather than one for majoritarian domination.

This chapter suggests a variety of reforms aimed at improving the situation: from clarifying the legal framework for cattle protection to setting up independent oversight bodies and educating the public about the scientific and ethical aspects of animal welfare. It's essential to align Article 48 with Fundamental Rights to ensure it upholds constitutional values like morality, pluralism, and inclusive development, rather than undermining them. In the end, Article 48 should transform into a contemporary constitutional tool that not only protects animal welfare but also empowers rural communities, safeguards livelihoods, and promotes environmental sustainability. Rethinking this directive in the context of India's climate challenges, economic uncertainties, and constitutional principles will be crucial to realizing its original intent in both its letter and spirit.

CHAPTER 31

Protection of Monuments and Places of National Importance (Article 49)

By Arjit Pasayat

INTRODUCTION

Humans have learnt to put their fantasy or their passion in many ways and one of them is architecture or building. Simply put, the architecture of a building is not mere well-structured and lined bricks, lime and stone but it is the emotion of the person behind its making. Monuments are also not only a well-structured pile of some fancy stones but carry within a legacy of their thought, culture and their emotions.

When India clutched the freedom from the grip of the British monarchy it was not only the administrative responsibility Indian government acceded but also became the caregiver of the Indian people, land culture and its heritage. The heritage and culture of India is very rich and glorious as India is blessed with unique monuments having scientific, cultural and religious importance to the nation.

ARTICLE 49

The constitution of India has laid on state a duty on the state as part of its directive principle under article 49 which reads

'It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.'

This article obliges the state to protect and safeguard the monuments and objects of national importance. The protection of monuments is to be done from:

- Disfigurement
- Destruction
- Removal
- Disposal or export

DPSP being non enforceable no one can go to court and compel the state to fulfill its obligation to protect monuments yet it being a fundamental principle state shall have to make laws, which safeguards the monuments and objects of national importance.¹²³⁴

The definition of the terms monuments and places of national importance are nowhere found in the constitution, but a statute¹²³⁵ uses the term ancient monument for the reference of monument in Article 49 and defines it as any structure, erection, tumulus, place of interment, cave, rock sculpture, inscription or monolith which is of national importance and has been in existence for not less than one hundred years.¹²³⁶

By this definition every abovementioned object¹²³⁷ older at least one hundred years is a monument if it is of national and archeological importance. Now the term “national importance” is also not defined in our constitution and the same statute gives that anything declared to be of importance is considered so, also providing that anything declared to be of national importance by Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951¹²³⁸ and States Reorganisation Act, 1956¹²³⁹ shall be valid.

CONSTITUENT ASSEMBLY ON THIS PROVISION

¹²³⁴ Constitution of India, article 37

¹²³⁵ THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1958 (act 24 of 1958)

¹²³⁶ THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1958, section 2

¹²³⁷ structure, erection, tumulus, place of interment, cave, rock sculpture, inscription or monolith

¹²³⁸ Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (act 71 of 1951)

¹²³⁹ States Reorganisation Act, 1956 (act 37 of 1956)

The text for this provision in the draft constitution was Article 39 which read-

“It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to law made by Parliament all such monuments or places or objects.”

Draft Article 39 (Article 49) was debated on 24 November 1948. While preservation of history was deemed significant in general, there was no substantial debate on the question. An amendment to add the term ‘disfigurement’ was moved by Dr. B.R. Ambedkar and accepted. Another amendment moved was for removal of words ‘and to preserve and maintain according to law made by Parliament all such monuments or places or objects’ which was also accepted by the members of the assembly. But there was a motion which was raised for substitution of “It shall be the obligation of the state” by “The State shall” citing the reason for uniformity across the whole DPSP but it was not accepted by the assembly and neither was the drafting committee. The amended Draft Article was adopted on the same day, that is 24 November 1948. The phrase ‘under law made by Parliament’ was later inserted by the Constitution (Seventh Amendment) Act, 1956.¹²⁴⁰

OBJECTIVE

The rationale behind putting this duty as part of the constitution has a very far-reaching effect, as monuments are living proof of civilization, part of culture and a heritage. The people connect with these monuments, their emotion and sentiment, for example the Taj mahal although a structure of marble yet connects with it as a symbol of love. They are not merely a building but also a scientific and religious exploration, and in India such a lot is dotted all over, for example there are various monuments of religious as well of scientific fulfillment *i.e.* the *Surya mandir of Konarka, Odisha* known for its pro scientific and artistic work. The nature of monuments in India is as wide as it can be, some showing extraordinary works of art, some science and some religion etc.

¹²⁴⁰ Constituent Assembly Debate held on 24 November 1948 available at <https://www.constitutionofindia.net/debates/24-nov-1948/> (last visited on 27/06/2025)

So, it is the duty of the state to provide its protection to these monuments which are so dear and important to the people of the nation. Apart from cultural and social value the monuments play a crucial role in the tourism which boosts the state's economy and for this sake also the article was put into the constitution.¹²⁴¹

LEGAL FRAMEWORK FOR THE PROTECTION OF MONUMENTS

The constitutional legal framework for protection of monuments arises from Article 49. Although it's the Article 49 that obliges the state to provide protection but the Part 5, Article 51-A, fundamental duties as heading, also gives the duty to the people of India to value and preserve the rich heritage and composite culture, thereby our constitution gives the duty to protect preserve and respect the heritage to both the state and citizen. These articles are moral as well as directive in nature as well as supplementary and complimentary which directs the state and citizen to perform a duty which ultimately aims to achieve the socio-economic goal of the nation as a socialist democratic parliamentary nation. Both Articles 49 and 51-A are interconnected in a way to provide a way for cooperative governance which ultimately leads to consociationalism.¹²⁴²

The protection of monuments as under Article 49 is somehow related with Article 21, since protection includes not only cleaning and protection from people but also environmental protection and clean and healthy environment which is right of a citizen under Article 21, highlighting for the need of a healthy environment as need for an hour for monument and people as well the SC in case of *MC Mehta v Union of India* said that state must adhere to improve the existing level of environment so as to fulfill duty under Article 47. 48-A and 49 (implied).

UNESCO¹²⁴³ is the organ body of the United Nations which aims to protect the cultural prospect of a nation and in a way protect the monument. Simply put, UNESCO is widely recognized as a UN body to protect monuments all over the world and in the process it has brought in its

¹²⁴¹ Erin Fuentes, the importance of historical monuments: preserving heritage and culture *available at* <https://www.appgecet.co.in/the-importance-of-historical-monuments-preserving-heritage-and-culture/> (last visited at 27/06/2025)

¹²⁴² Constitution of India, article 49 and 51

¹²⁴³ UNESCO, *available at* <https://www.unesco.org/en> (last visited on 28/06/2025).

protection around 37 cultural heritage sites in meaning of monuments. The undertaking of these sites under UNESCO not only fulfills the obligation but also binds state to another Article 51-C, obligating the state to make provision for protection of the site. Since UNESCO does not come within the meaning of Article 12 and so for that reason Article 49 is futile for UNESCO yet it works in the same manner as given in the constitutional provision. The other international platform which protects and safeguards the monuments in India are ICOMOS¹²⁴⁴, WMF¹²⁴⁵, and ICCROM¹²⁴⁶.

The Ancient Monuments and Archaeological Sites and Remains Act (or AMASR Act) is an act of the Parliament of India that provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other similar objects. It was passed in 1958.

The Antiquities and Art Treasures Act, 1972 was created in accordance with the UNESCO 1970 Convention and article 49 to regulate the internal and external dealing in antiquities in India. Its purpose is to prevent the permanent export of India's treasures to preserve the country's cultural wealth.¹²⁴⁷

Laws in practice

The Archaeological Survey of India (ASI), established in 1861 under the Ministry of Culture, is the primary agency responsible for fulfilling Article 49 of the Indian Constitution, which directs the State to protect monuments, places, and objects of national importance from spoliation, disfigurement, destruction, or export. The ASI manages over 3,691 monuments under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, ensuring their conservation, as mandated by Article 49. It restores and maintains iconic sites like the Taj Mahal and Ajanta Caves to prevent decay or damage. The ASI regulates construction within 100 meters of protected monuments to safeguard them from disfigurement, aligning with Article 49. It

¹²⁴⁴ *International Council on Monuments and Sites*, available at https://en.wikipedia.org/wiki/International_Council_on_Monuments_and_Sites (last visited on 28/06/2025).

¹²⁴⁵ *World Monuments Fund*, available at <https://www.wmf.org/> (last visited on 28/06/2025).

¹²⁴⁶ *ICCROM*, available at <https://www.iccrom.org/> (last visited on 28/06/2025).

¹²⁴⁷ *Antiquities and Art Treasures Act (1972)*, available at [https://en.wikipedia.org/wiki/Antiquities_and_Art_Treasures_Act_\(1972\)](https://en.wikipedia.org/wiki/Antiquities_and_Art_Treasures_Act_(1972)) (last visited on 28/06/2025).

conducts archaeological excavations at sites like Rakhigarhi to preserve historical remains, fulfilling Article 49's mandate. The ASI prevents illicit export of antiquities under the Antiquities and Art Treasures Act, 1972, directly addressing Article 49's directive on export prevention. It manages 35 UNESCO World Heritage cultural sites, ensuring their protection as per Article 49 and Article 51-C.¹²⁴⁸

The National Monuments Authority (NMA) is a statutory body in India established under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, as amended in 2010. It operates under the Ministry of Culture to protect and preserve monuments and sites of national importance, aligning with Article 49 of the Indian Constitution. The NMA regulates development activities within prohibited and regulated areas around centrally protected monuments to prevent damage or disfigurement. Headquartered in New Delhi, it comprises a chairperson, up to five whole-time and five part-time members, and a Member Secretary, all appointed by the Central Government. The NMA grants permissions for construction, reconstruction, or repairs within 300 meters of protected monuments, ensuring heritage preservation. It collaborates with the Archaeological Survey of India (ASI) and state governments for effective management. The authority categorizes monuments based on cultural, historical, or architectural significance for tailored protection strategies. It also promotes public awareness about heritage conservation through guidelines and online portals. The NMA uses digital tools like the NOC Online Application System to streamline permission processes. It addresses illegal constructions and encroachments near monuments, enforcing strict compliance. The authority's decisions are guided by recommendations from competent authorities appointed in each state.¹²⁴⁹

The National Heritage City Development and Augmentation Yojana (HRIDAY), a central sector scheme launched on 21st January 2015 to renovate and improve the heritage sites in various cities and to protect them in accordance with article 49. The mission ended on 31st March 2019.¹²⁵⁰

¹²⁴⁸Archaeological Survey of India, available at <https://asi.nic.in/> (last visited on 28/06/2025).

¹²⁴⁹National Museum, India, available at <https://www.nma.gov.in/> (last visited on 28/06/2025).

¹²⁵⁰Press Release, Press Information Bureau (PIB), "PressReleaseIframePage.aspx?PRID=1795154", available at <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1795154> (last visited on 28/06/2025).

The Ministry of Tourism launched its flagship scheme of 'Swadesh Darshan' in 2014-15 and provided financial assistance to the State Governments/ UTs Administration/Central Agencies for development of tourism infrastructure at various destinations, subject to availability of funds, submission of suitable Detailed Project Reports, Adherence to scheme guidelines and utilization of funds released earlier etc.¹²⁵¹

CASE LAW ANALYSIS

The Supreme Court in the taj trapezium case set the direct nexus of Article 49 with 47 and 21 saying that it's the state's responsibility laid on by constitution to protect the monuments as they are not mere structure but a living memory of past and they need to be safeguarded against very threat to their, existence. This case dealt with the environmental factor for degradation of Taj Mahal, wherein the court ordered the state to make away all the corporations emitting the pollution from near Taj.¹²⁵² Free practice of religion is what is guaranteed under Article 25, includes the right to worship at any place or monuments and state has no right of interference in it¹²⁵³.

The Supreme Court in this case *Sundararajan v. Union of India (2013)*¹²⁵⁴ emphasized the State's constitutional duty under Article 49 to protect monuments and places of artistic or historic importance. Though the Kudankulam plant itself was not situated directly on a heritage site, the petitioners had raised concerns that the project would affect culturally and historically significant areas nearby, including temples, churches, and heritage structures.

The Court acknowledged these concerns but held that:

“Article 49 casts a duty on the State to protect monuments of national importance, but that cannot be interpreted as an absolute bar to all development in proximity to such monuments. A balance has to be struck between development and conservation, and the project in question has undertaken adequate environmental and heritage safeguards.”

¹²⁵¹Swadesh Darshan Scheme, Ministry of Tourism, available at <https://tourism.gov.in/schemes-guidelines-schemes/swadesh-darshan-scheme> (last visited on 28/06/2025).

¹²⁵² MC Mehta v Union of India, AIR ONLINE 1996 SC 944

¹²⁵³ Sardar Syedna Taher Saifuddin v. State of Bombay (1962) 1962 AIR 853

¹²⁵⁴ Sundararajan v. Union of India (2013) 6 SCC 620

In *INTACH v. Union of India (2005)*¹²⁵⁵ The Delhi High Court addressed a PIL filed by the Indian National Trust for Art and Cultural Heritage (INTACH) opposing the construction of a TV tower and township near the historic Taragarh Fort in Bundi, Rajasthan. INTACH argued that the development would harm the fort's historical and aesthetic significance. The Court invoked Article 49 of the Constitution, emphasizing the State's constitutional obligation to protect monuments of national importance from disfigurement and degradation. While it did not impose an outright ban on development, the Court stressed the need to balance progress with cultural preservation. It directed that any large-scale development near heritage sites must undergo thorough expert assessment of potential impact. Recognizing that protection under Article 49 is an active obligation, the Court ordered the formation of an independent expert committee to evaluate the risks. This case became a significant judicial assertion that urban development must be guided by heritage-sensitive planning, reinforcing the enforceability of Article 49 in the face of modern pressures.

In *Intellectuals Forum, Tirupathi v. State of Andhra Pradesh (2006)*¹²⁵⁶ AIR 2006 SC 1350, the Supreme Court addressed the State's decision to allot portions of two ancient tank beds (Peruru and Avilala tanks) for housing development. While the judgment primarily invoked Articles 21, 48A, and 51A(g) and emphasized the public trust doctrine and sustainable development, its reasoning strongly aligns with the spirit of Article 49 of the Indian Constitution.

Article 49 imposes a constitutional duty on the State to protect monuments and places of artistic or historic interest from spoliation or disfigurement. Though the tanks in question were not formally declared as monuments under Article 49, they were ancient water bodies with significant cultural, historical, and ecological value. The Court acknowledged the importance of preserving such resources, ruling that the State holds them in trust for the people, and cannot alienate them for short-term developmental gains.

The Court's decision to prohibit further construction on the tank beds, mandate rainwater harvesting, and preserve their ecological function reflects the underlying principle of Article 49—that cultural and historical heritage must not be sacrificed in the name of development. In essence, the Court extended the constitutional spirit of Article 49 beyond just declared

¹²⁵⁵ *INTACH v. Union of India* 117 (2005) DLT 717

¹²⁵⁶ *Tirupathi v. State of Andhra Pradesh* AIR 2006 SC 1350

monuments, recognizing that any historically significant public resource deserves protection as part of the national heritage. Thus, while Article 49 was not directly cited, its values and protective ethos were judicially upheld in this landmark ruling.

In *Rural Litigation and Entitlement Kendra v. State of U.P.*¹²⁵⁷ The Supreme Court halted limestone quarrying in the ecologically sensitive Doon Valley to prevent environmental degradation. The Court upheld its spirit (Article 49) by protecting a region of natural and cultural heritage significance. It recognized the State's duty to preserve national heritage, aligning with Article 49's mandate. The judgment applied the public trust doctrine to safeguard the valley's ecological and historic value. This case expanded Article 49's relevance beyond monuments to include environmental heritage.

In *Subhash Kumar v. State of Bihar (1991)*¹²⁵⁸ The Supreme Court addressed pollution of the River Bokaro due to industrial waste, affecting public health and environment. While the case centered on Article 21 (Right to Life), its principles align with Article 49, as the river held ecological and cultural importance. The Court emphasized the State's responsibility to prevent environmental harm, reinforcing the need to protect natural heritage. Though Article 49 was not explicitly invoked, the judgment upheld its protective spirit. It affirmed that safeguarding environmental assets is integral to preserving the nation's heritage.

CONTEMPORARY ISSUES

Article 49 obligates the State to protect monuments and sites of national importance from spoliation, disfigurement, destruction, or misuse. However, as a Directive Principle of State Policy, it is non-justiciable, leading to weak enforcement unless backed by judicial intervention or public interest litigation. In today's context, heritage structures face increasing threats from urban encroachment, infrastructure development, and vandalism, often prioritizing economic growth over conservation.

¹²⁵⁷ *Rural Litigation and Entitlement Kendra v. State of U.P.* 1958 AIR 652

¹²⁵⁸ *Subhash Kumar v. State of Bihar* 1991 AIR 420

Unregulated tourism, for example, has led to damage at sites like Hampi and Ajanta-Ellora. Climate change poses a severe risk through rising temperatures, acid rain, floods, and extreme weather, especially to coastal or exposed monuments like the Sundarbans' heritage zones or Konark. Vandalism, both physical (graffiti, defacement) and digital (misinformation about monuments), reflects poor awareness and civic responsibility.

Meanwhile, rapid urbanisation leads to shrinking buffer zones and violations of conservation laws, as seen in the Central Vista Project or constructions near Qutub Minar. The Ancient Monuments and Archaeological Sites and Remains Act (1958) has legal provisions, but its enforcement is inconsistent. The controversial AMASR Amendment Bill, 2017 weakened protection by allowing development within protected zones.

There's also a lack of coordination between agencies like ASI, municipal bodies, and state governments. Poor heritage impact assessments, limited conservation funding, and inadequate digital documentation compound the issue. While courts have invoked the spirit of Article 49 in PILs (e.g., *INTACH v. Union of India*), such rulings are sporadic and reactive.

To truly uphold Article 49, there's a need for legally binding mandates, heritage-sensitive urban planning, stricter penalties for encroachment and vandalism, and community participation. In the face of globalisation and climate crises, protecting India's cultural heritage must become a national priority, not just a constitutional aspiration.

CONCLUSION

India's monuments are not mere structures of stone but living embodiments of the nation's rich cultural, historical, and emotional legacy. Article 49 of the Indian Constitution, as a Directive Principle of State Policy, mandates the State to protect these monuments and objects of national importance from spoliation, disfigurement, destruction, removal, disposal, or export. This obligation, complemented by Article 51A(f), which enjoins citizens to value and preserve heritage, underscores a shared responsibility to safeguard India's cultural wealth. The Archaeological Survey of India (ASI), supported by statutes like the Ancient Monuments and

Archaeological Sites and Remains Act, 1958, and the Antiquities and Art Treasures Act, 1972, plays a pivotal role in fulfilling this duty, managing thousands of sites, including 35 UNESCO World Heritage cultural properties. Judicial interventions, such as in the Taj Trapezium and INTACH cases, have reinforced the State's responsibility to balance development with conservation, extending Article 49's spirit to environmental and cultural heritage. However, challenges like urban encroachment, unregulated tourism, climate change, and weak enforcement of non-justiciable Directive Principles threaten these treasures. To uphold Article 49, India needs legally enforceable mandates, robust heritage-sensitive urban planning, stricter penalties for violations, and greater public awareness. By fostering cooperative governance and community participation, the State and citizens can ensure that these monuments—symbols of love, science, religion, and history—continue to inspire and connect future generations, preserving India's glorious heritage for posterity.

CHAPTER 32

Separation of the Judiciary and Promotion of International Peace (Article 50-51)

By Melvina Martin

INTRODUCTION

The doctrine of separation of powers follows the foundational principle where the three main organs of the government, which are the legislative, executive, and judiciary, function within their specified and defined domains to prevent the concentration of power by one person or a group, which could lead to tyranny and authoritarianism in the state.

In this chapter, we are going to focus on the principles of separation of powers, its philosophical and historical background, how our country follows the principles of the doctrine, and how our judges have given judgments on the doctrine of separation of power through cases like *Kesavananda Bharati v. State of Kerala (1973)* and *I.C Golakhnath v. State of Punjab*. We will also focus on the essence behind the formulation and articulation of Article 50 in our Indian Constitution, which is part of the Directive Principles of State Policy (DPSP).

PHILOSOPHICAL AND HISTORICAL BACKGROUND BEHIND THE SEPARATION OF POWERS

Aristotle, who is a Greek philosopher, defines three elements of governance in his work, 'Politics'.¹²⁵⁹ The three elements of governance are the General Assembly (deliberative function) which focuses on public policy, the Public Officials (magisterial function) which administers the

¹²⁵⁹ Prabhat Shankar Priya Ranjan, "Separation of Power: A Means to Constitutionalism", IJLPA

government, and the Judicial function, which interprets laws and adjudicates disputes. To prevent tyranny in the state, Aristotle did not advocate for a strict separation of powers; rather, he stressed harmony and balance among the three functions. Aristotle's contribution in his work 'Politics', where he identified the three organs and classified their function, served as the foundational basis for the doctrine of separation of powers.

Baron de Montesquieu is a French philosopher and jurist, and in his book, 'The Spirit of Laws', made the doctrine separation of powers a systematic one. He termed his theory 'Montesquieu's Tripartite system'.

Baron de Montesquieu asserted that if the power of the three organs of the government, which are legislative, executive, and judiciary, were held by a single person or a group, it would lead to a tyrannical form of government where a single ruler exercises absolute authority without the regard of the law or the rights of the people. It could lead to the arbitrary rule that is based on the personal preference of a group. A group that seeks to hold power over all three organs, pass the law according to their wishes, and administer the law in a way that could infringe the rights of individuals and judge them corruptly. Thus, he states that the three organs of the state should be independent of each other for safeguarding political liberty. In the American Constitution, the framers also used the doctrine in the same way.

John Locke, a political theorist, gave the idea of social contract theory and the idea of limited government¹²⁶⁰. In the idea of social contract theory, he contends that the government came into being due to the contract between the individuals. The idea of limited government given by him created a foundation for the functions of the three organs and the separation of powers between the organs. John Locke did not explicitly focus on the separation of powers between the organs, but he did mention the separation of powers between the legislature which formulates the law, and the executive who implements the law. He also focuses on the system of checks and balances, as the government is accountable to the people. John Locke's idea of limited government and the system of checks and balances contributed to the development of the doctrine of separation of powers among the organs of the state.

¹²⁶⁰ Shashank Krishna, "Separation of Powers in the Indian Constitution & Why the Supreme Court was Right in Intervening in the 'Jharkhand' Imbroglio", 18 *Student B. Rev.* 13-37 (2006)

COMPARATIVE ANALYSIS REGARDING THE ROLE OF JUDICIARY AND SEPARATION OF POWER BETWEEN THE US, UK AND INDIA

The separation of powers between the branches of the government in the US is incorporated in the Constitution¹²⁶¹. In the United States, each branch of the government, which is the legislative, executive and judiciary, performs its duties and exercises authority independently with checks and balances to make sure that no one gains power or holds more power than the other two organs. The judiciary in the US is notably empowered with the authority to exercise judicial review, where they can declare any law passed by the legislature or actions taken or executed by the executive as unconstitutional if they do not align with constitutional values or principles. There is tenure specified for the federal judges and Supreme Court justices who are appointed by the president and confirmed by the Senate, which ensures that there is no political party or executive influence on the judges while they are making judgments.

The UK also underscores the separation of powers, even though it lacks a written constitution. But unlike the judiciary of the US, the UK judiciary cannot strike down the primary legislation passed by the UK Parliament, as it does not hold that kind of power. Rather, it plays a key role in interpreting laws passed by the legislature and ensuring that the legislation adheres to the Human rights principles.

The judiciary in India has the authority of judicial review to check that the actions taken, such as the policies or administrative orders by the executive organs, comply with the constitutional values and principles. The independence of the judiciary also plays an important role in protecting and safeguarding the fundamental rights of citizens.

SEPARATION OF POWERS IN INDIA

¹²⁶¹ Shashank Krishna, "Separation of Powers in the Indian Constitution & Why the Supreme Court was Right in Intervening in the 'Jharkhand' Imbroglio", 18 *Student B. Rev.* 13-37 (2006)

In the Indian Constitution, the division of powers is considered a basic structure that the legislature cannot violate.¹²⁶² Separation of power is not clearly stated in the Constitution rather, it is implied. The division between the three organs was done so that the power would not be concentrated in one hand or a group which could lead to arbitrary decisions. The division was done so that the country could run smoothly without arbitrary rule. There is a system of checks and balances where the organs can check the actions of the other organs to prevent any arbitrary action.

The constituent assembly dismissed the motion for a new Article 40-A which dealt with the separation of the powers by Prof. K.T. Shah who is a member of the constituent assembly. Prof. K.T. Shah stressed the importance of complete independence between the three organs to maintain the liberties of the subject, the civil liberties, and the rule of law. He was afraid that if there was a contract between the judiciary and the legislature, and if it was possible for the interchange between the highest judicial officers and the legislature members, then the interpretation of law would be influenced by party influence rather than the institutional integrity of the organs.

The proposal of Prof. K.T. Shah was disagreed by two members of the constituent assembly having completely different viewpoints regarding the separation of powers between the organs, who were Shri K. Hanumanthiya and Dr. B.R. Ambedkar. Shri K. Hanumanthiya remarked that it is necessary to have a harmonious governmental structure rather than having a three-fold conflict between the organs.¹²⁶³ He stressed that the conflict would arise if there were a rigid separation between the organs of the government. Dr. B.R. Ambedkar remarked that it would be very difficult for the members of the parliament to carry on the work of the legislature if there is no initiative and direct guidance from the members of the executive. Dr. B.R. Ambedkar thought that there would not be much of a difference or a great loss if we did not adopt the American method of separating the executive from the Legislature.

The discussion surrounding the motion for a new Article 40-A reveals that the framers of the constitution never intended for the rigid separation of powers between the government's organs.

¹²⁶² P. Parameshwar Rao, "Separation of Powers in a Democracy: The Indian Experience", 37 *Peace Res.* 113-122 (2005)

¹²⁶³ Meha Khiria, "Constitutional Harmony: 'Decoding Separation of Powers' in Indian Perspective", 28 *MPJSS* (2023)

In the Indian Constitution¹²⁶⁴ there is no rigid separation of powers between the three organs but there is harmonious coordination between the organs with each branch having its own defined functions and duties. There is also a system of checks and balances to ensure that there is no abuse of power by any organ. This balance among the organs is necessary to make sure that the fundamental rights of the citizens are protected, and it's crucial for safeguarding and maintaining the rule of law.

JUDGMENTS ON THE SEPARATION OF POWERS

***Kesavananda Bharatia v. State of Kerala (1973)*¹²⁶⁵, (1973) 4 SCC 225**

This case was one of the landmark cases where thirteen judges of the Supreme Court formed a bench to decide on this matter and it was the first case that established the basic structure of doctrine. The legislature was given the power to amend any part of the Constitution, but was not allowed to amend the basic structure of the Constitution under Article 368.

The petitioner, Keshvananda Bharti, was the chief of the Edneer Mutt, which was a religious sect in the district of Kasargod in Kerala. The petitioner, in his name, had certain pieces of land in the sect, and he was the owner of the land. The Land Reforms Amendment Act was introduced by the Kerala government in 1969, which allowed the government to acquire some of the sect's land. The petitioner filed the suit in the Supreme Court under Article 32 of the Indian Constitution for the enforcement of his rights, which are guaranteed under Articles 25, 26, 19(1)(f), 14, and Article 31.

The petitioner contended that the parliament cannot amend the constitution in whatever way it feels like.

The decision of the case was given by a majority of 7:6, where seven judges agreed that the constitution is amendable; however, by keeping the basic structure of the constitution the same,

¹²⁶⁴ Justice B. S. Chauhan, "Separation of Powers and Judicial Review", *Lecture 1* (2018)

¹²⁶⁵ Kesavananda Bharatia v. State of Kerala (1973) 4 SCC 225

as the fundamental rights are granted to the citizens and it can not be changed by the parliament by amending it.

*IC Golakhnath v. State of Punjab*¹²⁶⁶, (1967) 2 SCR 762

In this particular case, the petitioners, who are the members of the Golaknath family, owned agricultural land exceeding 500 acres in Punjab. Under the Punjab Security of Land Tenures Act, 1953, a significant portion of their land was declared surplus and taken over by the state as part of its agrarian reform. The petitioners challenged this action, asserting it infringed their fundamental rights to hold and dispose of property, as guaranteed by Articles 19(1)(f) and 31 of the Constitution. As the relevant law had been shielded under the Ninth Schedule through constitutional amendments, they further argued that Parliament did not possess the authority to amend provisions of Part III that guaranteed fundamental rights.

The Supreme Court, by a 6:5 majority, held that Parliament cannot amend the Constitution to curtail or take away fundamental rights. It ruled that such amendments fall within the meaning of "law" under Article 13 and are therefore subject to judicial review. This marked a significant restriction on legislative power, overruling earlier judgments that had allowed such amendments. While the ruling applied prospectively, it established that fundamental rights are beyond the reach of constitutional amendments and thus limit the legislature's authority in this regard.

*Ashwani Kumar v. Union of India*¹²⁶⁷, (2020) 13 SCC 585

A former law minister and a member of parliament, Dr. Ashwin Kumar, filed a petition before the Supreme Court under Article 32 of the Indian Constitution for seeking a direction to the parliament to enact a legislative framework based upon the "Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment" adopted by United Nations General Assembly.

The Supreme Court ruled that directing the legislature to enact a law falls outside its judicial authority, as the Constitution does not allow courts to advise the executive on policy matters. Since the proposal to legislate based on the UN Convention Against Torture is already under active parliamentary consideration, judicial intervention is unnecessary. The Court added that

¹²⁶⁶ IC Golakhnath v. State of Punjab (1967) 2 SCR 762

¹²⁶⁷ Ashwani Kumar v. Union of India (2020) 13 SCC 585

issuing directions or suggestions would interfere with the constitutional separation of powers and undermine the judiciary's role.

***Vishnu Dutt Sharma v. Manju Sharma*¹²⁶⁸, 2009 (6) SCC 379**

In the case of *Vishnu Dutt Sharma v. Manju Sharma* (2009), the couple got married on 26 February 1993, and they had a daughter in December of the same year. The husband contended that his wife had voluntarily left the matrimonial residence in May 1993 without any valid reason and refused to return, which he claimed constituted cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. On the other hand, the wife claimed that she faced both physical and mental harassment at the hands of her husband and his family members. Both the Trial Court and the High Court rejected the husband's plea for divorce, prompting him to approach the Supreme Court in appeal.

Vishnu appealed to the Supreme Court to grant a divorce since their marriage was in ruins. The court rejected the appeal given by the husband as 'irretrievable breakdown' is not an express ground for divorce under the act and if the court grant divorce on the ground of irretrievable breakdown, then by judicial verdict they would be adding a clause to section 13 which could only be done by the legislatures and is out of the domain of judicial power and authority.

***Madras Bar Association vs. UOI*¹²⁶⁹, (2014) 10 SCC 1**

In this case, the central issue arose from the enactment of the National Tax Tribunal Act, 2005, which aimed to set up a National Tax Tribunal (NTT) to handle appeals in tax matters. This legislation aimed to transfer the authority to decide substantial questions of law in tax cases from the High Courts to the newly established tribunal. The Madras Bar Association challenged the Act by filing a writ petition under Article 32 of the Constitution. They argued that the Act compromised judicial independence, as it allowed the appointment of tribunal members without requiring sufficient judicial qualifications. Moreover, the executive retained significant control over appointments, tenure, and removal of tribunal members.

The petitioners contested that such a transfer of core judicial functions from the High Courts to a tribunal lacking adequate safeguards was unconstitutional and violated the basic structure of the

¹²⁶⁸ *Vishnu Dutt Sharma v. Manju Sharma* 2009 (6) SCC 379

¹²⁶⁹ *Madras Bar Association vs. UOI* (2014) 10 SCC 1

Constitution, which includes the principles of separation of powers and independence of the judiciary.

The 5-judge bench of the Supreme Court observed and declared that the parliament obtains the power to set up the new courts and tribunals or reassign powers that were earlier assigned to the High Courts and tribunals without being violative of the basic structure of the Constitution.

ARTICLE 50 OF THE CONSTITUTION OF INDIA

Article 50- Separation of judiciary from the executive

“The State shall take steps to separate the judiciary from the executive in the public services of the State.” ¹²⁷⁰

Article 50 falls under the Directive Principles of State Policy (DPSP). DPSP is non-justifiable and does not impose a legal obligation; rather, it provides guidelines and principles on matters of governance to the state government.

Article 50 states that the state should take steps to ensure the separation of powers between the judiciary and the executive in the public service so that there is no influence or interference by the executive in the judiciary domain. If the executive interferes in the judicial domain, it could lead to biased decisions in judicial rulings and a lack of public trust in the judicial process.

The Article focuses on the importance of judicial independence to ensure fairness and impartiality of the legal system. To maintain the autonomy of the judicial system, the two organs, the executive and the judiciary, should remain separated. The executive bears the duty of implementing the law and the judiciary bears the duty of interpreting the law and checks if any actions carried out by the executive are violative of the constitution; hence, it is important to have a separation of powers between both the organs of the government to ensure that both the organs work within their limit by upholding the rule of law and preserving democratic governance.

¹²⁷⁰ Art. 50, Constitution of India, 1950

JUDGMENTS ON ARTICLE 50

Union Of India v. Sankal Chand Himatlal Sheth (1977)¹²⁷¹, (1977) 4 SCC 193

Justice Sankal Chand Sheth, serving as a permanent judge in the Gujarat High Court, was ordered to be transferred to the Andhra Pradesh High Court by the President, invoking Article 222(1) of the Constitution. The transfer occurred without his consent. He contested the order, asserting that it infringed upon his fundamental rights and compromised judicial independence.

The Supreme Court held that a High Court judge can be transferred without consent if there is proper consultation with the Chief Justice of India under Article 222(1). The Court ruled that such a transfer is constitutionally valid and does not violate fundamental rights, provided it is not arbitrary or punitive, and judicial independence is maintained.

Supreme Court Advocates on Record Association vs. Union of India (1993)¹²⁷², (1993) 4 SCC 441

In this case, the Supreme Court Advocates-on-Record Association filed a writ petition under Article 32 of the Constitution, contesting the validity of the precedent set in the *First Judges Case* (S.P. Gupta v. Union of India, 1981). That earlier judgment had granted the executive branch the dominant role in appointing judges to the higher judiciary. The petitioners contended that such an interpretation threatened the independence of the judiciary. The primary question raised was about who should have the ultimate authority in the appointment and transfer of judges to the Supreme Court and High Courts, whether it should rest with the executive or the judiciary.

The Supreme Court overturned its earlier ruling in the *First Judges Case* and held that the judiciary must have primacy in the appointment and transfer of judges. It established the **collegium system**, where the Chief Justice of India consults the two senior-most judges in these matters. The Court ruled that the executive cannot override the collegium's decision, ensuring judicial independence as part of the Constitution's basic structure.

¹²⁷¹ Union Of India v. Sankal Chand Himatlal Sheth (1977) 4 SCC 193

¹²⁷² Supreme Court Advocates on Record Association vs. Union of India (1993) 4 SCC 441

***Kumar Padma Prasad v. Union of India*¹²⁷³, (1992) 2 SCC 428**

In this case, the President of India appointed Dr. Kumar Padma Prasad as the Chief Justice of the Gauhati High Court under Article 217(1) of the Constitution. However, before his swearing-in, a complaint was submitted to the President asserting that Dr. Prasad did not fulfil the eligibility criteria outlined in Article 217(2), as he had neither served in a judicial capacity for the required duration nor practiced as an advocate in a High Court for ten years. Based on this claim, the Union of India retracted the appointment before the oath of office could be administered.

The Supreme Court held that once the President issues the warrant of appointment under Article 217(1), the appointment is complete, and taking the oath is only a formality. The executive cannot revoke the appointment afterward. Such withdrawal, without following constitutional procedures like impeachment, is unconstitutional and violates judicial independence.

CRITICAL ANALYSIS OF SEPARATION OF POWERS

Advantages of the Separation of Powers

There is an efficient workflow and smooth functioning of the state, as each organ has a different and specified function or duties, which helps them to focus on different aspects, ensuring accuracy in their assigned work.

- The clear separation of powers reduces arbitrary decisions or accumulation of power in one hand, where there are limits and boundaries specified between the organs of the government.
- It ensures that there is a democratic form of government rather than tyranny or authoritarianism in the state.
- The clear division also ensures that there is no overlapping of powers, functions, and duties between the organs, which results in efficient productivity while governing the state.

Disadvantages of the Separation of Powers

¹²⁷³ Kumar Padma Prasad v. Union of India (1992) 2 SCC 428

- Even though there are several advantages seen when the doctrine of separation of powers is implemented and practiced in the country or the state, there are many concerns that it might lead to executive interference and judicial overreach, which affects or undermines the very principle it seeks to uphold.
- Judicial overreach occurs when the judiciary gets involved in the role of the executive and the legislature, which could disrupt the balance of power where there are defined functions specified for each organ. The judiciary may get involved in the policy-making process or administrative decisions which are outside its domain, which could be seen as encroaching upon constitutional bounds.
- Executive influence and political interference over judicial appointments raise concerns. Lack of transparency, political interference or influence, and delays in judicial appointments lead to undermining judicial independence. Concerns regarding executive influence over judicial appointments led to the proposal of the National Judicial Appointments Commission (NJAC), a body intended to replace the collegium system, where only judges had the power and authority regarding judicial appointments.

Although the Indian Constitution does not explicitly mention or specify the doctrine of separation of powers, it remains a cornerstone in the country's democratic governance. This principle is deeply rooted in philosophical traditions and has been developed over time by thinkers such as Aristotle and Montesquieu. It was designed to prevent the concentration of power in any one branch of government, which could result in tyranny or authoritarianism. In India, the doctrine finds implicit support through various constitutional provisions and most notably in Article 50, which directs the state to maintain a clear boundary between the judiciary and the executive to protect judicial independence. Unlike rigid separation models found in some other democracies, India follows a more flexible structure that promotes coordination among the legislative, executive, and judicial branches.

PROMOTION OF INTERNATIONAL PEACE : ARTICLE 51

In an increasingly interconnected global environment, fostering peace and cooperation among nations has become a core objective of international relations. Reflecting this vision, Article 51 of the Indian Constitution, located within the Directive Principles of State Policy, outlines India's commitment to upholding global harmony. In this chapter, we will dive into the legal interpretation of Article 51, the historical background around it, and how it influenced our country's foreign policy. We will also see how different fields of law, like human rights law, trade law, environmental law, and intellectual property law, have their relationship with international law.

ARTICLE 51

Article 51 states as follows:

The State shall endeavour to—

- (a) promote international peace and security;*
- (b) maintain just and honourable relations between nations;*
- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and*
- (d) encourage settlement of international disputes by arbitration.¹²⁷⁴*

Article 51 The Indian Constitution emphasizes and promotes international peace and security among nations. It is part of the directive principles of state policy and is not legally enforceable. This was adopted in the post-independence period, which shows India's vision and desire to become a peace-loving country.

Article 51 encourages the state to promote peace between nations by maintaining just and honorable relations between the nations, having respect towards international law, and settling

¹²⁷⁴ Art. 51, Constitution of India, 1950

international disputes by arbitration. This article not only promotes international peace and security but also focuses on harmonious trade relationships between the nations.

India's foreign policy is shaped by Article 51. The article focuses on peaceful negotiation through dialogue and talks when disputes occur. It also specifies that India as a country will not interfere in other countries internal matters.

HISTORICAL BACKGROUND BEHIND ARTICLE 51

The origins of Article 51 can be traced to the debates within the Constituent Assembly in 1948, during a time when the architects of the Indian Constitution were shaping India's identity in a newly decolonized, post-World War II world. Initially presented as Draft Article 40, it was discussed on 29th November 1948. The Constitution's framers envisioned India as a nation committed to peace, justice, and international cooperation due to the catastrophic consequences of the Second World War and the establishment of the United Nations.

They believed that adherence to international law and the peaceful settlement of disputes was necessary and important for global stability and for making India a morally grounded leader in international affairs. A prominent and significant leader like Jawaharlal Nehru played a significant role in forming this vision, advocating for dialogue over conflict and positioning India as a mediator during the ideological tensions of the Cold War era. Indian constitutional values and principles focused on shaping its identity in domestic governance and also in the international community.

INFLUENCE ON INDIAN FOREIGN POLICY

Article 51 of the Indian Constitution, though not enforceable, has significantly shaped India's foreign policy by promoting peace, justice, and respect for international law.¹²⁷⁵

India's non-alignment policy Post-independence reflected Article 51's vision, leading to its key role in founding the Non-Aligned Movement.¹²⁷⁶ In line with peaceful global engagement, India maintains a "No First Use" nuclear stance and advocates for complete nuclear disarmament.

India favors bilateral dialogue over external intervention in resolving conflicts, seen in the Shimla Agreement and talks with China, while also engaging in strategic partnerships with nations like Russia, France, Japan, and Australia.

Its commitment to international law is evident through participation in the Paris Climate Accord, the International Solar Alliance, ICCPR, CRC, and WTO. Overall, Article 51 continues to guide India's efforts in aligning domestic policy with global peace and cooperation.

FIELDS OF LAW IN INDIA AND ITS RELATION WITH INTERNATIONAL LAW

India's legal framework blends national priorities with global obligations across key areas such as human rights, environmental law, trade, and intellectual property.¹²⁷⁷ Human rights protections, rooted in the Constitution and supported by the Protection of Human Rights Act¹²⁷⁸, reflect global standards like the UDHR, ICCPR, and ICESCR. Environmental laws, backed by the Environment (Protection) Act and judicial interpretation of Article 21, are influenced by agreements like the Paris Accord and Stockholm Declaration. Trade laws, including the Foreign Trade and Competition Acts, align with WTO norms and international trade agreements.

¹²⁷⁵ Article 51 of the Constitution, available at <https://lawbhoomi.com/article-51-of-constitution/> (Visited on 21 June, 2025)

¹²⁷⁶ Non-Aligned Policy, available at <https://objectiveias.in/political-science/non-alignment-policy/> (Visited on 24 June, 2025)

¹²⁷⁷ Press Information Bureau, *"India's Legacy in UN Peacekeeping: Leadership, Commitment, and Sacrifice"*, Delhi PIB (Mar. 9, 2025)

¹²⁷⁸ Human Rights and Constitution of India, available at https://blog.ipleaders.in/human-rights-constitution-india/#International_Human_Rights_and_Fundamental_Rights_Part_III_of_COI (Visited on 22 June, 2025)

Intellectual property laws follow global standards under TRIPS and WIPO, safeguarding innovation and creators' rights. These legal domains highlight India's effort to harmonize domestic laws with international commitments.

JUDICIAL INTERPRETATION

Article 51 is non-justiciable, but still, judicial interpretation had a significant influence in shaping India's legal and diplomatic approach. Courts have occasionally invoked their principles to uphold constitutional ideals and align domestic laws with international commitments.

***Vishaka and Ors v. State of Rajasthan*¹²⁷⁹, (1997) 6 SCC 241**

Bhanwari Devi was a social worker in Rajasthan, and she was part of a government programme which focused on and aimed at preventing child marriages in rural areas. While working, she tried to stop the marriage of a one-year-old girl; in response, a group of men gangraped her. The trial court acquitted the accused as there were significant gaps and loopholes in the legal framework, as there was no particular law for protecting women from sexual harassment at the workplace. In response to this, a group of women's rights organizations filled public interest litigation in the Supreme Court and in the absence of any law regarding sexual harassment in the workplace, they sought enforcement of fundamental rights under articles 14, 15, 19, and 21 of the Indian Constitution.

In this case, the Supreme Court addressed the lack of legal safeguards against workplace sexual harassment. It ruled that such harassment violates fundamental rights under Articles 14, 15, 19(1)(g), and 21 of the Constitution. In the absence of specific legislation, the Court relied on CEDAW, an international treaty India had ratified, and invoked Articles 51(c) and 253 to affirm that international norms can guide domestic law when no conflicting legislation exists. In the judgment, J.S. Verma CJI, quoted as follows:

“In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of international

¹²⁷⁹Vishaka and Ors v. State of Rajasthan (1997) 6 SCC 241

Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Arts. 14, 15, 19 (1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Art. 51 (c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Art. 253 read with Entry 14 of the Union List in the Seventh Schedule of the Constitution. Article 73 also is relevant.”

This decision played a crucial role in shaping India's legal approach to workplace safety for women and reinforced the judiciary's role in upholding both constitutional rights and international human rights obligations. The ruling also laid the groundwork for the later enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

T.N. Godavarman Thirumulpad v. Union of India (2002)¹²⁸⁰, (2002) 10 SCC 672.

The case began with a writ petition filed by T.N. Godavarman Thirumulpad, a resident of Tamil Nadu, who raised concerns about unchecked deforestation and violations of the Forest (Conservation) Act, 1980, particularly in the Nilgiris region. What initially started as a complaint about illegal logging and forest degradation in one district evolved into a nationwide environmental case, as the Supreme Court expanded its scope to address larger issues affecting forests across India.

The Supreme Court of India delivered a landmark ruling broadening the scope of the Forest (Conservation) Act, 1980, by interpreting "forest" based on its common meaning, not just official records. This expanded legal protection to more forested areas. The Court also cited Article 51 of the Constitution to emphasize India's duty to honor international environmental commitments, reinforcing the role of global treaties in shaping domestic environmental law and policy

¹²⁸⁰T.N. Godavarman Thirumulpad v. Union of India (2002) 10 SCC 672

CONCLUSION

Although Article 51 under the Directive Principles of State Policy is not enforceable by courts, this provision encourages the State to promote peaceful coexistence, uphold respect for international law, engage in fair and honourable relations with other nations, and resolve conflicts through arbitration and dialogue. Adopted in the aftermath of independence and global conflict, Article 51 captures India's resolve to be a constructive participant in international affairs. It has guided the country's foreign policy, influenced legal interpretations, and reinforced India's role in promoting diplomacy, environmental responsibility, disarmament, and global justice.

CHAPTER 33

Fundamental Duties (Article 51-A)

By Mehak Khan

INTRODUCTION

“Ask not what the nation has done for you, but what you have done for the nation”¹²⁸¹ ”

In 1961, President John F. Kennedy, in his inaugural address, famously quoted these lines and urged citizens to introspectively consider what they do for their country in exchange for the numerous rights they hold. How often do we self-introspect from this perspective? How often do we consciously and actively participate in the country’s development?

In any country, especially in a democratic nation like India, people are vested with rights such as the Right to equality, Right to Freedom of speech and expression, and the Right to Life so that they can live a dignified life. Citizens are also empowered to approach the court whenever they feel their rights are being violated. However, as Salmond, a renowned jurist, believed that “No rights exist without corresponding duties,” hence, along with rights, every citizen also owes duties to the country. Rights and duties are two sides of the same coin.¹²⁸²

As citizens, we usually focus heavily on what the nation must provide for us while ignoring our responsibilities towards our motherland. However, obligations do not always fall solely on the state. Citizens are equally responsible for the nation with fundamental duties laid out in Article 51A of the Indian Constitution¹²⁸³, which was added in 1976 through the 42nd Amendment. Consequently, an additional duty was added in 2002 through the 86th Amendment, bringing the

¹²⁸¹ "Ask Not What Your Country Can Do for You (John F. Kennedy’s Inaugural Address, 1961)”, available at: <https://www.ushistory.org/documents/ask-not.htm> (last visited Jun. 22, 2025).

¹²⁸² M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis 2018).

¹²⁸³ Art. 51A, The Constitution of India, 1950

total to eleven fundamental duties¹²⁸⁴. Although these duties are not enforceable in courts like fundamental rights, they are regarded as equally important, as the Supreme Court stated in the case of *Aims Students Union v. Aims*¹²⁸⁵, where merit was prioritized over fundamental rights for admission to PG medical courses. But is this the case?¹²⁸⁶

The objective of this chapter is to examine whether fundamental duties are equally important in comparison with fundamental rights, as held in the abovementioned case, or whether they are simply an overlooked part of our constitution, while focusing on their evolution, international parallels, legal analysis enforceability, committees' recommendations, contemporary relevance, criticism, and discussing a way forward.

HISTORICAL BACKGROUND

In India, fundamental duties were not drafted by the Constituent Assembly because the framers did not feel the need to explicitly include these duties, as they believed every citizen is obligated to their motherland. For ages, a person's 'Kartavya' has held prime importance in India. Even in the Rig Veda, it is quoted- "o, citizens of Bharat! as our ancient saints and seers, leaders and preceptors have performed their duties righteously, similarly, you shall not falter to execute your duties."¹²⁸⁷

But during the emergency of 1975, the government decided to make fundamental duties part of the constitution as then Law Minister HR Gokhale said- "The provision of a chapter on fundamental duties would have a sobering effect on these restless spirits who have a host of anti-national subversive and unconstitutional agitations in the past¹²⁸⁸". Therefore, in 1976, the Swaran Singh Committee was made which suggested – "the inclusion of a separate chapter on

¹²⁸⁴ Mridul Anand, "The Present Formulation and Enforcement of Fundamental Duties: Reassessing Article 51A and its Foundation", *NUJS Constitutional Law Society Blog*, (last visited Jun. 22, 2025)

¹²⁸⁵ *AIIMS Students' Union v. AIIMS*, (2002) 1 SCC 428.

¹²⁸⁶ "Fundamental Duties Have Always Preceded Fundamental Rights: Justice Vikram Nath's Full Speech", *The Print* (Jul. 3, 2022), available at: <https://theprint.in> (last visited Jun. 22, 2025).

¹²⁸⁷ Deewanshi Agrawal, "Fundamental Duties – A Forgotten Chapter of the Indian Constitution", 2 *Indian J.L. & Legal Res.* (2021).

¹²⁸⁸ Adrija Datta, "Imbibing Fundamental Duties among Indian Citizens", 17 *Supremo Amicus* (2020).

Fundamental Duties” and recommended 8 duties. In line with the recommendations and inspired by the soviet model, the Ten Fundamental Duties became a part of the Constitution through the 42nd Amendment.

In 2002, another duty was added through the 86th Amendment that is- “a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years¹²⁸⁹”. While India recognised the need for duty as a constitutional principle 26 years after adopting the constitution, some countries accepted it much earlier and even emphasised it more than individual rights. A comparative look at this global perspective will help us understand the current standing and significance of our fundamental duties.

INTERNATIONAL PARALLELS

Across the world, more than 50 countries have adopted both fundamental rights and fundamental duties in their constitution. Except Japan, major democratic countries like the USA, Germany, and France do not include duties in their constitution. In India, the fundamental duty was borrowed from the constitution of USSR (erstwhile Russia) after 26 years of the constitution came into force and aligns with Article 29(1) of Universal Declaration of Human Rights¹²⁹⁰ which states- “everyone has duties to the community in which alone the free and full development of his personality is possible”. It only extends to citizens of the country, whereas our constitution provides some fundamental rights to foreigners too.

Socialist countries like Russia and China always emphasised more on fundamental duties. Some excerpts from their constitution are-

1. Soviet Constitution ¹²⁹¹(now Russia): Article 59 states “Citizens’ exercise of their rights and freedoms is inseparable from the performance of their duties and obligations. Citizens of the USSR are obliged to observe the constitution of the USSR and Soviet

¹²⁸⁹ Art. 51A(k), The Constitution of India, 1950.

¹²⁹⁰ Art. 29(1), Universal Declaration of Human Rights, 1948

¹²⁹¹ *Constitution of the Union of Soviet Socialist Republics*, 1977.

laws, comply with the standards of socialist conduct, and uphold the honour and dignity of Soviet Citizenship”.

2. China: The constitution of China¹²⁹² specified duties like “To safeguard unification of the country and the unity of all its nationalities” and “To safeguard the security, honour and interests of the motherland”. Also, in Article 56 of the Constitution the duty to pay taxes is explicitly laid out.
3. Vietnam – Article 48 of the constitution¹²⁹³ also binds foreigners to abide by their constitution.

The fundamental duty of any country urges its people to focus on building the nation better in every aspect. In India too, each of the 11 fundamental duties just expects from its citizens to be responsible, respectable, and patriotic enough so that India can strive higher and its growth is not hindered by civic irresponsibility.

LEGAL ANALYSIS OF ARTICLE 51A

Duties are necessary so that they curb the arbitrary functions of the citizens in the name of rights and liberty. Duties and rights are correlative, and one can enjoy their rights peacefully only when others perform their duties sincerely. Duties, though not enforceable like rights, act as a guiding principle to every citizen and help to foster the growth of the country.

The duties of Article 51A can be broadly classified into moral and civic duties. Moral duties mean that a citizen is obligated to perform duties because of ethics and appeals to citizens’ conscience, whereas civic duty appeals to citizens that they have the responsibility to maintain peace, order and progress. Moral duty is not related to state functionality, but is extremely important for national character. Some of the examples are:

Duty	Examples

¹²⁹² *Constitution of the People’s Republic of China*, 1982.

¹²⁹³ *Art. 48, Constitution of the Socialist Republic of Vietnam*, 2013

Moral Duty	Clause a: “ <i>To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem</i> ”.
Civic Duty	Clause d: “To defend the country and render national service when called upon to do so”.

These duties, though not enforceable, can become enforceable by parliament by introducing an Act to urge people to comply with the duties more strictly. These duties also evolved through various judicial pronouncements. Now let's analyse duties individually through cases and legislation.

CLAUSE (a) – “*To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem*”:

MOTIVE- After independence constituent assembly managed to draft the lengthiest constitution with all the rights needed by citizens to live a dignified life. So, it is our responsibility to respect our Constitution and abide by it very sincerely.

Our National Flag and National Anthem symbolise our long struggle, represent our sovereignty and shared identity. They provide us with a sense of pride and instill patriotism. It is a moral duty that every citizen owes to their country.

***Bijoe Emmanuel v. State of Kerala (1986)*¹²⁹⁴**

Facts: The facts of the case include expulsion of students from their school as they refused to sing the National Anthem in their school assembly because of their religious belief.

Issue: Is the expulsion of the students violative of Article 25?

Judgement: The supreme court held that even though showing respect to the national anthem is a fundamental duty it cannot be forced in violation of Article 25. The students stood in silence to show respect and they cannot be forced to sing it as it will violate their fundamental right. Therefore, the expulsion was indeed violative of Article 25.

Relevance - This landmark judgment maintained a balance between fundamental duties and fundamental rights. The Court respected citizens' religious beliefs by clarifying that not singing does not amount to disrespect towards the national anthem. .

¹²⁹⁴ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615.

LEGISLATION: One of the legislations related to this duty is the “*Prevention of Insults to National Honour Act, 1971*”¹²⁹⁵. The law is enacted to prevent disrespect of National Honours and symbols such as the National Flag, National Anthem, etc. Through this act, this fundamental duty is made enforceable in the court of law where violation can lead upto 3 years of imprisonment, fine, or both.

CLAUSE (b)- “*To cherish and follow the noble ideals which inspired our national struggle for freedom*”

MOTIVE: Our great freedom fighters, from Bal Gangadhar Tilak to Rani Lakshmi Bai gave their vision, ideas, and even sacrificed their lives for the country, and hence, at the least as a citizen of Independent India, we can acknowledge their struggles and respect them and their noble ideas.

LEGISLATION- It is a moral duty of every citizen and Parliament made sure to include freedom struggles as a part of the school curriculum for value-based Education.

CLAUSE (c)- “*To uphold and protect the sovereignty, unity and integrity of India*”

MOTIVE- A citizen should put the nation before himself. His topmost priority should be to “protect the sovereignty, Unity and Integrity of the country” and should not engage in any activities which hamper it. It should be the prime duty of a citizen to maintain unity and not to discriminate against anyone because of their caste, religion, gender, etc. A citizen should not conspire or even play the slightest part against their nation, and should also refrain from making any relations with alien enemies.

Union of India V. Naveen Jindal¹²⁹⁶

Facts- The case arises when Naveen Jindal hosted the National Flag on his premises on a non-official day, which was prohibited by the Flag Code of India. **Issue-** Is ‘Right to fly the National Flag’ a fundamental right?

Judgment- The court held- “*Every citizen has the right to the national flag subject to the restrictions specified in Article 51-A (c)*”.

Relevance- The fundamental rights are enforceable in court but are subject to some reasonable restriction, which is laid out in Article 51-A (c) of the Constitution.

¹²⁹⁵ *The Prevention of Insults to National Honour Act, 1971* (Act No. 69 of 1971).

¹²⁹⁶ *Union of India v. Naveen Jindal*, (2004) 2 SCC 510.

LEGISLATION- To protect the Sovereignty, Integrity and Unity of India is a civic duty. There have been several legislations passed by parliament that make this duty enforceable. Some of these legislations are UAPA¹²⁹⁷, BNS¹²⁹⁸ and the National Security Act¹²⁹⁹.

CLAUSE (d)– “*To defend the country and render national service when called upon to do so*”

MOTIVE: India is surrounded by very unfriendly neighbours like Pakistan and China, which is a serious concern for the country. They claim our land as their territory, which makes our borders with these countries very unstable. Pakistan also cowardly uses terrorism to trouble India, a recent example of this is when they killed innocent tourists in Pulwama, Jammu & Kashmir. Thus, to defend the country, the citizens should be readily available.

Sarbananda Sonowal v. Union of India¹³⁰⁰

Facts- Sarbananda Sonowal filed a writ petition to challenge the “Illegal Migrants (Determination by Tribunals) Act, 1983”¹³⁰¹.

Issue- Is the Act Unconstitutional?

Judgment- The Act was held unconstitutional, and the court urges the citizen that it is their duty under Article 51-A (d) to bring these Acts in front of the court.

Relevance- This case was important as it struck down the Act brought in favour of illegal immigrants in Assam, and urged citizens to bring this Act to the notice of the Court.

CLAUSE (e)- “*To promote harmony and the spirit of common brotherhood among all the people of India, transcending religious, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women*”

Motive: India is a very culturally rich and diverse country where people from various religions, castes, practices and beliefs live together. Regardless of this diverse background, the only thing that the nation expects is the spirit of brotherhood and respect towards each other's identity. This duty command to stop any language controversies, mob lynching and discrimination, as these are very prevalent in the current society.

¹²⁹⁷ *The Unlawful Activities (Prevention) Act, 1967* (Act No. 37 of 1967).

¹²⁹⁸ *The Bharatiya Nyaya Sanhita, 2023* (Act No. 45 of 2023).

¹²⁹⁹ *The National Security Act, 1980* (Act No. 65 of 1980).

¹³⁰⁰ *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665.

¹³⁰¹ *The Illegal Migrants (Determination by Tribunals) Act, 1983*.

Article 51-A (e) also focuses on women's empowerment by eliminating any regressive practices from the past¹³⁰². India slowly and steadily evolved from Sati Pratha, child marriages, and dowry deaths. Article 42 of the Constitution also states- “The State shall make provision for securing just and humane conditions of work and for maternity relief”.

Indian Young Lawyers Association v. State of Kerala¹³⁰³

Facts- Women from Age 18 to 50 were prohibited from entering the Sabarimala Temple of Kerala. The Indian Young Lawyers Association filed a writ petition to declare this unconstitutional. **Issue-** Is the practice violative of Article 14, Article 15 and Article 25 of the Constitution?

Judgment- The Supreme Court in this landmark Judgement allowed women of every age to enter the temple without any prohibitions.

Relevance- This Judgement renounced the discriminatory practice against women as specified in this clause.

Aruna Roy v. Union of India¹³⁰⁴

Facts- Aruna Roy filed a writ petition challenging the NCERT curriculum of 2000 and said it was biased towards a particular religious ideology.

Issue- Does the New Curriculum Violate the secular nature of the Constitution?

Judgment- The court held that the curriculum in question is not unconstitutional.

Relevance- This case guards the secular nature of the country and increases tolerance and peace towards each other's beliefs.

LEGISLATION- To foster brotherhood, to remove discrimination and to renounce derogatory practices towards women, various legislation has been made. Some of these Legislations are the “Dowry Prohibition Act”¹³⁰⁵, “The Protection of Civil Rights Act”¹³⁰⁶ and¹³⁰⁷.

CLAUSE (f)- “To value and preserve the rich heritage of our composite culture”

¹³⁰² "The Constitution of India – Protection of Women's Human Rights: Analytical Study", 5 Indian J. Legal Rev, available at: <https://iledu.in> (last visited Jun. 22, 2025).

¹³⁰³ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

¹³⁰⁴ *Aruna Roy v. Union of India*, (2002) 7 SCC 368.

¹³⁰⁵ *The Dowry Prohibition Act*, 1961 (Act No. 28 of 1961).

¹³⁰⁶ *The Protection of Civil Rights Act*, 1955.

¹³⁰⁷ *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*, 1989. (Act No. 33 of 1989).

MOTIVE- It is a moral duty of citizens to value the rich heritage of the country, which is known for its diverse culture. India is one of the oldest civilisations and is culturally rich throughout the ages. From the Vedas, Yoga, Temples and Ayurveda to monuments like the Taj Mahal, Qutub Minar and India Gate, everything is a part of our culture. Thus, citizens should value this heritage and protect it from any damage.

CLAUSE (g)- *“To protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures”¹³⁰⁸”*

MOTIVE- “Man bears solemn responsibility to protect and improve the environment for present and future generations”- This is one of the resolutions that was adopted at the UN conference on the human environment and development in Stockholm in 1972¹³⁰⁹. Mrs. Indira Gandhi attended this conference and in line with these resolutions made a significant impact on environmental jurisprudence. New legislation was introduced, and this duty was established.

***M.C. Mehta v. Union of India*¹³¹⁰(1988)**

Facts: In this case, M.C. Mehta approached the court and filed a petition against leather tanneries as they were polluting our sacred river, the Ganga, by disposing of their wastes.

Issue: Whether polluting the river violates the “Right to clean water”?

Judgment: The Supreme Court held development of a Country should not be done at the cost of the environment, and thus these tanneries violated the fundamental rights of the citizens.

Relevance: It is the dire need of the time to protect the environment for our well-being.

***Mohd. Hanif Qureshi v. State of Bihar*¹³¹¹**

Facts- In this case, the petitioner challenged the ban on cow slaughter imposed by certain state laws.

Issue- Is it a violation of Article 25 – “Right to religion” and Article 19(1)(g) – “Right to carry on a profession or trade”?

Judgment- The Supreme Court upheld the ban and gave a decision in consonance with Article 51 (g).

¹³⁰⁸ Dr. Vandita Chahar & Somya Singh, "Law as a Tool for Conservation: A Study of Protected Areas and National Parks in India", 4 J. Legal Rsch. & Jurid. Sci, (2023).

¹³⁰⁹ Adrija Datta, "Imbibing Fundamental Duties among Indian Citizens", 17 *Supremo Amicus* (2020).

¹³¹⁰ *M.C. Mehta v. Union of India*, (1988) 1 SCC 471.

¹³¹¹ *Mohd. Hanif Qureshi v. State of Bihar*, AIR 1958 SC 731.

Relevance- One should not impact any living creature and damage the ecosystem in the name of their “Rights”.

LEGISLATION- To make this duty enforceable in the court of law, there are various legislation. These legislations are the Wildlife (Protection) Act¹³¹², the National Green Tribunal Act¹³¹³ and Prevention of Cruelty to Animals Act¹³¹⁴. India has also signed various international treaties to protect the environment such as the Paris treaty. The constitution also provides “Right to clean and healthy Environment (Article 21)” and “State should protect and improve the environment (Article 48A)”

CLAUSE (h)- *“To develop scientific temper, humanism and the spirit of inquiry and reform”*

MOTIVE: To push scientific reasoning and curiosity among citizens so that India can compete in international forums in every aspect.

PM Bhargava v. University Grants Commission¹³¹⁵-

In this case it was held that – “The decision of UGC to introduce Vedic Astrology as a part of graduation, PG and PhD does not conflict with this clause”.

CLAUSE (i)- *“To safeguard public property and to abjure violence”*

MOTIVE: In India, everyone has the right to peacefully enjoy public property without causing any destruction. It is the responsibility of people as well as the government to protect and safeguard public property.

Re Ramlila Maidan Incident vs Home Secretary¹³¹⁶-

Facts- In this case, the protestors were evicted from the public place as the permission was taken for a yoga camp, but instead, an ‘Anti-corruption Rally’ was organised.

Issue- Was the eviction reasonable?

¹³¹² *The Wildlife (Protection) Act, 1972* (Act No. 53 of 1972).

¹³¹³ *The National Green Tribunal Act, 2010* (Act No. 19 of 2010).

¹³¹⁴ *The Prevention of Cruelty to Animals Act, 1960* (Act No. 59 of 1960).

¹³¹⁵ *P.M. Bhargava v. University Grants Commission*, (2015) 15 SCC 1.

¹³¹⁶ *Re: Ramlila Maidan Incident v. Home Secretary, Union of India*, (2012) 5 SCC 1.

Judgment- The court held that- “the eviction was not reasonable as police should have provided sufficient notice to the public before eviction”

Relevance- In this case, they also held that the organisers were liable to protect public property and abjure violence.

LEGISLATION- The parliament enacted the “Prevention of Damage to Public Property Act¹³¹⁷” to safeguard public property.

CLAUSE (j)- “*To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement*”

MOTIVE- A citizen's fundamental duty is to excel in his field as we represent India at global level, and when we do our job responsibly, it will contribute to India's growth.

Balaji Raghavan vs Union of India¹³¹⁸

Facts- The case revolves around the constitutionality of the National prestigious Awards like Bharat Ratna, Padma Bhushan, etc.

Issue- Is this award violative of the principle of equality?

Judgment- The court held that these awards push citizens to work better in their field and recognise merits. The awards do not violate the principle of equality in any sense.

Relevancy- The awards encourage – “To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement”.

CLAUSE (k)- “*Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years*”

MOTIVE- To make India a literate nation and to make the future of the younger generation brighter.

Avinash Mehrotra v. Union of India¹³¹⁹

In this case, the court held that the responsibilities also squarely fall on parents as the state in Article 21 A.

¹³¹⁷ *The Prevention of Damage to Public Property Act*, 1984 (Act No. 3 of 1984).

¹³¹⁸ *Balaji Raghavan v. Union of India*, (1996) 1 SCC 361.

¹³¹⁹ *Avinash Mehrotra v. Union of India*, (2009) 6 SCC 398.

LEGISLATION- The *Right to Education (RTE) Act*, 2009 ¹³²⁰provides the right to free and mandatory education to children.

ENFORCEABILITY, COMMITTEES' RECOMMENDATIONS AND CURRENT STANDS

The Supreme Court in the landmark case of *Minerva Mills v. Union of India* ¹³²¹said- “Merely because a rule is not backed by a sanction for disobedience, that does not change the fact that it is a rule that is meant to be followed, and it carries equal importance”. But the question arises if the fundamental duties are so important for our country, why is it not enforceable by the court, even after the Swaran Singh Committee recommended it to be made enforceable?

To tackle this question in 1999, the Justice Verma Committee¹³²² was formed. The committee regarding enforceability said, many duties are enforceable through many Acts introduced by the parliament. For example, the duty specified in Article 51 A(a) is enforceable through Prevention of Insults to National Honour Act, 1971, and Article 51 A(g) is enforceable by Acts like the Wildlife Protection Act. The Justice Verma committee also recommended setting up an autonomous body to act as an Ombudsman on citizenship values and to make Fundamental duties more prevalent. It recommended declaring 3rd January as Fundamental Duty Day. The impact of this committee is the policy and curriculum change to integrate fundamental duties into the school curriculum.

In 2002, the National Commission to review the working of the Constitution ¹³²³suggested making the Fundamental Duties enforceable. But the government sidelined this suggestion, and till date, fundamental duties are non-justiciable.

¹³²⁰ *The Right of Children to Free and Compulsory Education Act*, 2009 (Act No. 35 of 2009).

¹³²¹ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625

¹³²² *Justice J.S. Verma Committee, Report on Operationalization of Fundamental Duties of Citizens*, Government of India, 1999

¹³²³ *National Commission to Review the Working of the Constitution, Report of the National Commission to Review the Working of the Constitution*, Government of India, 2002.

WHAT'S WRONG AND WHAT NEEDS TO BE CHANGED? CRITICISM AND WAY FORWARD

During the Emergency, in 1976, the government felt the dire need to include fundamental duties in the constitution. To date, this decision has not been taken back by any government and is considered an important addition as it has many significances, like-

- It serves as a reminder to citizens to fulfil their responsibility towards the nation.
- It serves as a source of inspiration.
- It helps the Court in examining and determining Constitutional Validity as held in the case of *State of Gujarat V. Mirzapur*¹³²⁴.

With this Significance, there come certain shortfalls which were pointed out by critics over time. The criticism of these Fundamental duties are following–

- Non-Exhaustive List: It does not include many important duties like duty to pay taxes, the duty to vote in elections and family planning. Some of these duties were also suggested by the Swaran Singh Committee but were not included by the Central Government.
- Difficult for a Layman: The terms like composite culture, scientific temper used in the Article are a little complicated to be understood by the Layman. The duties are made to be followed by the citizens; thus, simple terms should be used.
- Non-Justiciable- It is considered just a moral precept as it cannot be enforced in the court. The Citizens of the country will take these duties more seriously only when a sanction is attached for non-compliance.
- Fundamental Right- Fundamental rights and Fundamental duties are regarded as complementary and supplementary to each other as held in the case of “*Chandra*

¹³²⁴ *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534.

Bhyavan Boarding and Lodging, Bangalore vs The State of Mysore”¹³²⁵. Therefore, it should be a part of Part III alongside the Fundamental Rights.

Thus, to make fundamental duties more effective, the Central government can include this criticism. The addition of duties like paying Taxes, voting in elections will take India a step further as the Government will have more funds to spend on development, and when voting becomes a fundamental right, it will increase inclusivity while electing a government. The Central government can also consider making the language easier, and should also run an awareness drive in schools and through social media among citizens to educate them regarding their responsibilities.

CONCLUSION

*“ The court assigned paramount significance to Fundamental Duties owing to people at large above Fundamental Rights of few individuals.”*¹³²⁶

Fundamental duties, even though non-justiciable, are considered to be as paramount as Fundamental Rights. It is important to balance both the rights and fundamental rights as ‘right of one is the duty to another’. It is important for the nation as it is the guiding principles which inculcate a sense of pride, patriotism and morals in the mind of the citizens of the country. There are various legislations enacted by the parliament which make these duties enforceable; therefore, we cannot say it is a forgotten chapter, but maybe an ignored chapter in the Constitution, due to the importance that citizens give to their rights is far more than their attention towards their duties. The citizens should also strive for a balance between their rights and duties and ask themselves the question that President John F. Kennedy said that- “whether they ask themselves what they do for the country in place demanding things from their nation”.

¹³²⁵ *Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore*, (1969) 3 SCC 84.

¹³²⁶ *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*, 1985 Supp SCC 79.

CHAPTER 34

Harmonisation of Fundamental Rights and Directive Principles

By Sakkcham Singh Parmaar

INTRODUCTION

The Constitution, for the first time, enshrined a system where rights were complemented by obligations. What the Constitution did was to combine individual liberty, dealt with in Part III, with social justice that would be detailed in Part IV.¹³²⁷ Such dualism reflected the aspirations of the framers; they wanted to set up both a liberal democratic state and a welfare state. They inherited the mix of justiciable civil-political rights from the British crown-colony experience. Besides these, they introduced a whole new range of non-justiciable "Directive Principles". The Irish experience had inspired them in this respect.¹³²⁸ From the very beginning, something that leaders such as B.R. Ambedkar argued that the Directive Principles were "instructions to the future legislature" or "the moral core of governance," but not enforceable by courts. The Constituent Assembly explicitly provided (Article 37) for the Principles to be very "fundamental in the governance of the country" but "not enforceable by any court."¹³²⁹ In his keynote role, Dr. Ambedkar insisted that both adjectives "Fundamental" and "Directive" be preserved, stressing that these guidelines must remain binding directions for state policy even if they are not judicially enforceable. The Principles were to be the very "soul of the Constitution," Ambedkar declared, and would guide all future legislation.¹³³⁰ Granville Austin was cited by constitutional scholars who echoed this vision: he famously called the DPSPs the "conscience of the

¹³²⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, London, 1966).

¹³²⁸ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, London, 1966).

¹³²⁹ *The Constitution of India*, Art. 37 (Government of India)

¹³³⁰ B.R. Ambedkar, *Constituent Assembly Debates*, Vol. VII (Government of India, New Delhi, 1948-1950).

Constitution."¹³³¹ H.M. Seervai noted that the Directive Principles were woven into the Preamble's promise of an equitable social order.¹³³²

The Part III-Part IV dichotomy was, of course, an intentional synthesis. The Preamble itself pledged to establish in the world's most surprising democracy governance wherein social, secular, as well as democratic, would be placed. In concrete terms, the Fundamental Rights (FRs) guaranteed an individualistic, negative-rights framework relating to equality, speech and personal liberty, on which the state would have to refrain from imposing restrictions.¹³³³ The Directive Principles, on the other hand, were concerned with positive socio-economic goals: getting people out of poverty, free schooling, promoting workers' welfare, protecting the environment, gender equality and others. Part III was completed by these Principles in such a way that founding voices, like K.M. Munshi acknowledged them.¹³³⁴ For instance, in the debates on the Uniform Civil Code, he argued that it would not be possible to achieve the promise of equality of the sexes in Article 15 in the absence of necessary legislative reform (a DPSP commitment). Others like Prof. K.T. Shah cautioned, however, that non-justiciable "pious wishes" would mean little unless transformed into enforceable obligations, a plea that the Assembly ultimately rejected.¹³³⁵ Thus, the Constitution deliberately left open the question of enforcement, creating a constitutional mandate for harmony between negative rights and positive goals. Enshrined in Articles 36-51 and 37 were agreements made by the framers that Directive Principles were there to inform and animate laws and policies, but not directly enforced, with a hope that political processes and future courts would eventually have a balanced approach.¹³³⁶

THEORETICAL AND LEGAL FRAMEWORK

¹³³¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, London, 1966).

¹³³² H.M. Seervai, *Constitutional Law of India* (N.M. Tripathi, Bombay, 4th edn., 1991).

¹³³³ H.M. Seervai, *Constitutional Law of India* (N.M. Tripathi, Bombay, 4th edn., 1991).

¹³³⁴ K.T. Shah & K.M. Munshi, *Constituent Assembly Debates* (Government of India, New Delhi, 1948).

¹³³⁵ K.T. Shah & K.M. Munshi, *Constituent Assembly Debates* (Government of India, New Delhi, 1948).

¹³³⁶ Granville Austin, *Working a Democratic Constitution* (Oxford University Press, New Delhi, 1999).

The crucial theoretical issues stem from the delicate balance between Part III and Part IV, are rights and directive goals in opposition to each other, or do they support one another.¹³³⁷ Harmonisation was the general understanding of them by Indian jurisprudence in its nascent stages.¹³³⁸ Directive Principles may be non-justiciable; however, Article 37 implicitly commands judges to "apply" them while interpreting provisions other than those mentioned.¹³³⁹ Judges and theorists alike have long observed that the Constitution's "basic structure" has within its designated bounds both the FRs and the underpinnings of the DPSPs.¹³⁴⁰ The theory of constitutionalism that emerges from this: rights are available to individuals, and principles steer governments toward welfare. It is not a static "suicide pact," but rather a dynamic living document that requires the courts to read rights in light of social goals and guiding the legislators to adapt those key freedoms with a high degree of respect.¹³⁴¹

The legal community has articulated this in the form of a doctrine of harmonious construction.¹³⁴² Both Austin and Seervai declare that the Constitution never says one Part supersedes the other; their architecture makes assumptions of equilibrium between them.¹³⁴³ Directive Principles may not bind in a strict sense but have a persuasive effect of turning broad writs of liberty into a "licence to legislate for social justice."¹³⁴⁴ True human dignity in India, to reiterate the work Upendra Baxi did, cannot be founded on civil liberties alone but on socio-economic directives as normative promises that enliven rights with substance.¹³⁴⁵ The same activist judiciary, viewing the Constitution as the living charter of India, has equally argued that DPSPs would be more than token "pious expressions" but incremental sparks to trigger progressive jurisprudence. On the other hand, more formalistic theorists stress that justiciability is a constitutional choice: it does not lead to enforceable rights.¹³⁴⁶ Thus, the Indian framework positions itself between classical liberal constitutions wherein only rights are given precedence and transformative ones, such as South Africa, which embrace social rights as justiciable.¹³⁴⁷

¹³³⁷ S.P. Sathe, *Judicial Activism in India* (Oxford University Press, New Delhi, 2002).

¹³³⁸ Sudhir Krishnaswamy, *Democracy and Constitutionalism in India* (Oxford University Press, New Delhi, 2009).

¹³³⁹ *The Constitution of India*, Art. 37

¹³⁴⁰ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

¹³⁴¹ Upendra Baxi, *The Right to be Human* (Lancer International, New Delhi, 1987).

¹³⁴² *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

¹³⁴³ Granville Austin, *Working a Democratic Constitution* (Oxford University Press, New Delhi, 1999).

¹³⁴⁴ H.M. Seervai, *Constitutional Law of India* (N.M. Tripathi, Bombay, 4th edn., 1991).

¹³⁴⁵ Upendra Baxi, *The Right to be Human* (Lancer International, New Delhi, 1987).

¹³⁴⁶ T.M. Cooley, *Constitutional Limitations* (Little, Brown & Co., Boston, 1868).

¹³⁴⁷ Sudhir Krishnaswamy, *Democracy and Constitutionalism in India* (Oxford University Press, New Delhi, 2009).

Most legally explicit convergence between the two occurred in Article 31C (inserted in 1951), which permitted certain statutes on the basis of DPSPs to override certain FRs. This legislative experiment testifies to the enduring tension, the First Amendment protected land reform (DPSP) even if it impinged on property rights (then an FR).¹³⁴⁸ However, at the end, the Supreme Court was unwilling to consider it overriding Part III. The famous jurist H.M. Seervai lamented the "threat of conflict" in pushing the state too far toward Part IV at the expense of Part III, while Upendra Baxi would argue that such conflicts must be resolved in favour of the Constitution's deep humanistic goals. Comparative constitutional design offers insights here: South Africa's model, for instance, makes social rights justiciable (with resource caveats), leading to a rich jurisprudence of minimum standards. The model adopted in Ireland served as an inspiration to India, as it kept DPSPs non-justiciable in a strict manner; in reality, most scholars would note that those Irish directives have rarely been relied upon in court cases or legislation. Thus, aspirational text does not ensure realisation: it throws some light on the wisdom of the mechanism. Middle paths were thus, hence, evolving in theory: rights and directives supplement and reinforce each other, neither completely subordinating the other. That approach effectively views Part III and Part IV as different sides of the same constitutional promise-promising individual liberty in the first and projecting social justice as a constitutional commitment in the second.¹³⁴⁹

JURISPRUDENTIAL EVIDENCE

Since the Supreme Court began embarking upon the right versus directive doctrine only in 1950, the Court was initially measured in its approach during the early decades. *A.K. Gopalan* (1950) heavily stressed individual liberty and hardly mentioned any socio-economic rights.¹³⁵⁰ In proposals made in the sixties, *Chintaman Rao*¹³⁵¹ and *Sajjan Singh*¹³⁵² et al., though indirectly concerned with DPSPs, established the tenor that Directive Principles were not justiciable

¹³⁴⁸ *The Constitution First Amendment Act, 1950*

¹³⁴⁹ S.P. Sathe, *Judicial Activism in India* (Oxford University Press, New Delhi, 2002).

¹³⁵⁰ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

¹³⁵¹ *Chintaman Rao v. State of Madhya Pradesh*, 1950 AIR 118

¹³⁵² *Sajjan Singh v. State of Rajasthan*, 1965 AIR 845

constraints against statutes. The *Golaknath v. State of Punjab* (1967) decision was an epoch-making one, where a split majority ruled out the possibility of amending fundamental rights out of existence.¹³⁵³ The Golaknath judgment implicitly undercut the standing of DPSPs: it suggested that laws impinging based on fundamental rights could not be justified even on the grounds of Directive Principles, as these principles lacked any enforceable status. In this respect, this early period left fundamental rights in a commanding position.

Thereafter, the balance began to tip following the emergence of the 1971 amendment. The brilliant 13-judge bench of Kesavananda Bharati (1973) produced the "basic structure" theory. In the majority opinion, the main voices, being Justice Sikri, Justice Beg, and Justice Ray, went further in expressly recognising the Directive Principles as a part of the constitutional core.¹³⁵⁴ The Court stated that those ideals in Part IV are intimately bound up with the harmony of the foundations of the Constitution. It declared famously that Parts III and IV are not antagonistic, a guarantee of "fundamental rights" is to be interpreted in harmony with the welfare goals of the DPSPs. Kesavananda failed to make the DPSPs enforceable, but it rendered them "fundamental in the governance of the country", quoting Article 37, thus constituting them as part of the "Conscience of the Constitution". The proposition, therefore, rejected any constitutional amendment capable of nullifying core DPSPs in favour of one ideological skew, presumably reinforcing the theory in which FRs and DPSPs are supposed to strike a balance with one another.

The struggle was thus institutionalised in the 1970s. While amendments were proposed by Parliament to weigh the scale in its favour, such as by the 24th Amendment, which overturned the principle outlined in Golaknath and allowed amendments of the FRs, the 25th Amendment protected the basic structure.^{1355,1356} The 42nd Amendment in 1976 sought to give even stronger ratification to Article 31C during the Emergency, wanting to place all the DPSPs above rights.¹³⁵⁷ Then, the 42nd Amendment was struck down by the *Minerva Mills* (1980), which upheld the balance achieved through Kesavananda. The Court, under the leadership of Chief Justice Y.V. Chandrachud and Justice Krishna Iyer, declared in strong terms that Parts III and IV "supplement

¹³⁵³ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

¹³⁵⁴ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

¹³⁵⁵ The Constitution (Twenty-fourth Amendment) Act, 1971

¹³⁵⁶ The Constitution (Twenty-fifth Amendment) Act, 1971

¹³⁵⁷ The Constitution (Forty-second Amendment) Act, 1976

and complement" each other and cannot be wielded against each other. It has been stated that harmony between fundamental rights and directive principles is "the soul of our Constitution's philosophy", again invoking the mandate within the Preamble. *Minerva Mills*, so to speak, revived that balance: it stated that the state cannot deviate from fundamental rights to fulfil directive principles, but nor can fundamental rights stray from the demands of social justice.

After *Minerva*, the courts in India entered a phase of pro-active interpretations. Under the name "judicial activism (a term articulated and analysed by S.P. Sathe)", the Supreme Court attempted to further the constitutional vision.¹³⁵⁸ The courts also began to enforce rights under Article IV. The late 1980s and a major part of the 1990s constituted the phase of expansion, chiefly under Article 21 (life and liberty),¹³⁵⁹ But with social aims as the guiding principle. The judges invoked DPSPs in cases, especially for environmental issues, welfare matters, and equality, consistently referring to the spirit of Article 21, broadened by Part IV to represent dignity. For instance, Articles 48A (DPSP on the environment) and 51A(g) (fundamental duty to protect nature) inform many decisions in environmental rights.¹³⁶⁰

Over time, even those cases that seem to have nothing to do with the social aspect, such as the right to privacy, have been interpreted as having implications for collective welfare and human dignity.¹³⁶¹ Such developments cohere with what legal theorists refer to as "transformative constitutionalism", actively interpreting rights to transform society according to the Constitution's highest values, as propounded by thinkers like Baxi and Bhatia.¹³⁶² There has been subtle legislative harmonisation in recent years. The 86th Amendment (2002) did include Article 21A (right to education as a fundamental right) in express response to the goal for free education of DPSP 45.¹³⁶³ The Right to Information Act (2005) reflects DPSP themes of democratic participation. Overall, jurisprudence has moved from the standpoint of strict separation of FR and DPSP to one of a vigorous dialectic in which both Parts guide constitutional change. Presently, scholars aver that Indian law regards DPSPs as non-judicially enforceable, but more often than not as obligatory moral norms, which bestow legitimacy on socio-economic

¹³⁵⁸ S.P. Sathe, *Judicial Activism in India* (Oxford University Press, New Delhi, 2002).

¹³⁵⁹ *The Constitution of India*, Art. 21

¹³⁶⁰ *Subhash Kumar v. State of Bihar & Ors.*, AIR 1991 SC 420

¹³⁶¹ *Justice K.S. Puttaswamy (Retd.) v. Union of India & Ors.*, AIR 2017 SC 4161

¹³⁶² Gautam Bhatia, *The Transformative Constitution* (HarperCollins Publishers India, Noida, 2019).

¹³⁶³ The Constitution (Eighty-sixth Amendment) Act, 2002

legislation. The Supreme Court's motto, "*Let Justice Extend unto All*," speaks of a living Constitution that never tires of seeking the balance.

CASE LAW SYNTHESIS

An evolution in the Indian judiciary's approach to harmonise, balance, and define the interactions between Fundamental Rights and Directive Principles of State Policy is traced back to the early days when the two were treated entirely separately and, upon realisation, reconciled in a mutually complementary manner. A critical reading of landmark cases gives scope for the evolutionary changes of court jurisprudence, whereby DPSPs have extensively come to be seen as interpretative aids, normative goals, and, to an extent, substantive sources of enforceable obligations under Part III.

Champakam Dorairajan v. State of Madras (1951) witnessed the first collision in the Court's terminology between Fundamental Rights and Directive Principles. The Court invalidated a state order reserving seats in educational institutions to promote social justice (Article 46) because it violated the guarantee of non-discrimination in Article 15(1). The Supreme Court presided over Article 37's non-justiciability and postulated, "Fundamental Rights must prevail in case of a conflict." The case, thus by way of precedence, gave birth to the notion of individual liberty's supremacy over social objectives and delineated a clear doctrinal boundary: DPSPs were, in essence, only morally binding and could not encroach upon enforceable rights.¹³⁶⁴

The *Golak Nath v. State of Punjab (1967)* reaffirmed the already-existing discord, if any, between Parts III and IV. The Court held that Parliament could not amend Fundamental Rights so as to give effect to the Directive Principles, which, in effect, would freeze the amendment of the Fundamental Rights. The opinion emphasised that even for this noble enterprise, any erosion of rights would be a wilful violation of the basic structure of the Constitution. The judgment was heavily criticised by H.M. Seervai, who termed it an extreme case of rigid interpretation of the Constitution that subordinated the transformative aspirations that existed in the DPSPs. The

¹³⁶⁴ *Champakam Dorairajan v. State of Madras*, AIR 1951 SC 226.

Golak Nath case would prompt Parliament to invoke the 24th and 25th Amendments to restore its amending power.¹³⁶⁵

Another watershed moment arrived with the judgment in *Kesavananda Bharati v. State of Kerala* (1973), which enunciated the proposition of the Basic Structure Doctrine. The Court, while reaffirming Parliament's unlimited power to amend the Constitution, limited it by stating that certain basic features, including democracy, the rule of law, and the balance of FRs with DPSPs, could never be transgressed. The Doctrine then elevated the DPSPs beyond mere policy preferences: it entrenched them as constitutional ideals within the basic structure. Justice Mathew laid substantial emphasis on the goal of the Constitution as the establishment of a humane society, with rights being due for interpretation in tandem with social objectives. This was the high point of another mutation regarding where the earlier binary could be redefined: FRs and DPSPs are now means of complementary aid to constitutional governance.¹³⁶⁶

The 'balance and harmony' doctrine between the two Parts was, in concrete terms, avowed in *Minerva Mills v. Union of India* (1980). It struck down provisions of the 42nd Amendment that purported to confer absolute primacy to the DPSPs over FRs, especially the widened application of Article 31C. The Court yet again said that neither Part has primacy, and both are vital to the Constitution's identity. Justice Chandrachud maintained, "To destroy the guarantees given by Part III to achieve the goals of Part IV is plainly to subvert the Constitution." The ruling presented an ethic of constitutional mutual restraint where the FRs check abuses of state power while the DPSPs guarantee that the state goes to governments with a mind on justice and welfare.¹³⁶⁷

D. S. Nakara v. Union of India (1983) stands paradigmatic of a case where the judiciary activated the DPSPs to broaden equality rights under Article 14. The discrimination between old and new employees under the pension scheme was struck down by the Court as socially unjust; it found merit in invoking Articles 39(e) and (f) as social welfare obligations of constitutional relevance. Justice D. A. Desai stated that the state shall act by social justice and will not arbitrarily discriminate. A landmark statement was put forward here, which changed the judicial perception:

¹³⁶⁵ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

¹³⁶⁶ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

¹³⁶⁷ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

the means of attaining socioeconomic objectives became more than mere guiding principles and assumed an active role in interpreting FRs.¹³⁶⁸

The Court in *Olga Tellis v. Bombay Municipal Corporation (1985)* declared that the right to a livelihood is an integral part of the right to life under Article 21, in harmony with Articles 39(a) and 41. Concerning the cases of evicting pavement dwellers, the Court rejected the argument that the right to life bears no socio-economic content. In this piece, the view expressed by Justice Chandrachud established how heavily the DPSPs weigh in that, bereft of sustenance, a life is no life. This judgment proved a great asset toward embedding socio-economic entitlements within the procedural and substantive protection of Part III. Although it does not directly centre upon the DPSPs.¹³⁶⁹

Maneka Gandhi v. Union of India would fundamentally alter the conception of Article 21 and broaden Article 21's very scope. The Court has correlated the "procedure established by law" to substantive due process; thus, it opened the door for the Court to interpret rights against the value of the DPSPs. The ruling mentioned the Preamble and the larger constitutional objectives, leading to subsequent rulings which treated the concepts of life and liberty in a manner that embraced welfare rights, dignity, and fair play. Thus, this case became a testament to the way the DPSPs became the contextual bridging wheel for judicial interpretation of rights.¹³⁷⁰

The Right to Education, as laid out under Article 45, became enshrined into the category of a Fundamental Right under Article 21 by the Apex Court in the case of *Unni Krishnan v. State of Andhra Pradesh (1993)*. The Court considered the age limit of 14 to be part of life, which would base the insertion of Article 21A through the 86th Amendment to the Constitution. This judgment is important because it demonstrates how DPSPs could be treated as foundations for justiciable rights, with the Court contributing to the metamorphosis of these from mere guidelines to justiciable entitlements.¹³⁷¹

In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996)*, the Court stated that the denial of emergency health services was infringing the right to life under Article 21, and read Article 47 as an additional context by imposing a duty upon the State in respect of public health.

¹³⁶⁸ *D.S. Nakara v. Union of India*, AIR 1983 SC 130.

¹³⁶⁹ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

¹³⁷⁰ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

¹³⁷¹ *Unni Krishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178.

This hence gave constitutional emphasis on the minimum health services that the State was duty-bound to provide and, thus, enforced yet another Directive Principle through the lens of Fundamental Rights. The judgment further consolidated the forthcoming trend in judicial jurisprudence of incorporating socio-economic rights within the very definition of life and dignity.¹³⁷²

The *Vishaka v. State of Rajasthan (1997)* award really is the hallucination of the constitutional principles into a situation that has come about as a result of the absence of legislation on one of the most vital subjects, really a very sensitive issue, such as sexual harassment in the workplace. It laid down the foundation of binding guidelines of jurisprudence on Articles 15, 21, 39(d), and India's resolve to give honour to international obligations, especially for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This gives an example of how, in the judicial history, one synthesises this domestic pursuit of DPSPs with the global vision of human rights, and how it is putting forward directive principles into the advancement of rights when there is legislative inaction.¹³⁷³

The environment will be healthy, and thus Article 21 grants it right to this healthy environment as the Court inferred in the *M.C. Mehta v. Union of India (1987-97)*. It relied heavily upon Articles 48-A (DPSP of environmental protection) and 51A(g) (duty of the citizen to protect nature). In all aspects of the Oleum gas leakage, pollution of rivers, and vehicular pollution, the Court pointed out these principles in the name of ecological justice. This jurisprudence works in the reverse manner; it has transformed non-justiciable norms to enforceable environmental rights, thereby fortifying the constitution's commitment towards sustainable development.¹³⁷⁴

These decisions taken together imply that jurisprudence has shifted from rigid textualism to purposive and transformative constitutionalism. The Indian Supreme Court now treats Fundamental Rights and Directive Principles not as structurally opposed but as dialogic and mutually enriching. While the earlier case like *Champakam Dorairajan* cited supremacy of Fundamental Rights, later decisions embraced a constitutional ethics of harmonisation that went beyond DPSPs to guide, inform, and expand the scope of rights.

¹³⁷² *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, AIR 1996 SC 2426.

¹³⁷³ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

¹³⁷⁴ *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

Critics such as H.M. Seervai has warned that the process is a manifestation of judicial overreach, while luminaries like Upendra Baxi and Gautam Bhatia have contended that such creative harmonisation is the transformative promise of the Constitution. In this jurisprudence, rights become constraints on state power while directive principles are jointly normative directions in an enterprise constructed to provide a moral and democratic constitutional order that exists for purposes beyond achieving liberty and for conferring justice.

CONTEMPORARY REFLECTIONS

This was trained up with data that went in until October in the year of 2023. For the early 2020s, the tensions and synergies between Part III and IV developed into constitutional practices. Practically, ordinary India lives today under an industry canopy of rights-the rights to privacy, environment, education, and livelihood-drenched in the spirit of egalitarianism of the DPSPs.¹³⁷⁵ Courts constantly cite the Directive Principles for interpretative guidance purposes: the latest judgments on rights for gender justice and disability refer to DPSPs' promises on equality, women's welfare, and the safety of the vulnerable population.¹³⁷⁶ Democratic branches resort to this Part IV to enact welfare legislation or to uncast populist measures, for instance, rural employment guarantees under Article 41, health models at the national level reflecting Article 47 of the Indian Constitution, but many challenges and concerns continue to persist. The economic gap, universal basic services, and environmental crises reflect the diverging realities between lofty constitutional goals and reality. Scholars note that even in many creative jurisdictions, most of the DPSPs remain aspirational; real enforcement will always depend, as it has historically in all countries, on political will and resources.

Today, the crucial debate is about how best to use Part IV without violating Part III. Some demand the judicial justiciability of more DPSPs as the model of South Africa prescribes that state action could be enforced through courts (e.g., a "minimum core" of housing or

¹³⁷⁵ Marc Galanter, *Competing Equalities* (Oxford University Press, New Delhi, 1984).

¹³⁷⁶ Nivedita Menon, *Seeing Like a Feminist* (Penguin Books, New Delhi, 2012).

healthcare).¹³⁷⁷ Others warn against the absence of institutional capacity-the outcome, they note, would be either too much litigation in the courts or the courts' avoidance of disagreeable decisions in favour of a highly meddling court.¹³⁷⁸ One, perhaps more prudent option could be enhancing the legislative and executive accountability to the DPSPs, for instance, by instituting constitutional schemes for progressive realisation (like with India's Right to Education Act that operationalises DPSP 45). Deepening the public-interest jurisprudence is a suggestion proposed, encouraging civil society to form constitutional, not just private, grievances currently understood.¹³⁷⁹

Transformative constitutionalism is a guiding normative idea for Gautam Bhatia; the constitution should be conceived as an engine for socio-political transformation.¹³⁸⁰ Harmonising on this perspective would entail applying fundamental rights as levers towards the social democracy envisaged in the DPSPs. While he would applaud the court's broadening of Article 21, Bhatia would also seek recognition that true dignity for India's poor may demand legally enforceable positive entitlements (in this reference, a right to health or food). Likewise important is the remembrance that Upendra Baxi's work must take rights meaningfully in real-world India; he would exhort courts and policymakers not to shrink from owning the emancipatory mission of the Directive Principles.

Madhav Khosla's recounting of the foundational vision of India has a tinge of caution.¹³⁸¹ Societal change was expected to be gradual, taking place through political activity and judicial interpretation. "founding moment," according to Khosla, was incomplete in 1950 itself; rather, it invited continued participation in showing how social values were rendered real. All in that frame of mind is where the future lies for harmonisation, with a culture of constitutionality: as much in the courts as in the legislature and civil society, fundamental rights and directive aims constitute one constitutional project. That is, neither side has absolute veto over the Part: it calls for dialogue: if a social welfare legislature were challenged, courts should examine it against the basic rights with an eye towards the constitutional purpose, thereby. Of course, if the government

¹³⁷⁷ *Government of the Republic of South Africa v. Grootboom*, [2000] ZACC 19 (South African Constitutional Court).

¹³⁷⁸ *Ryan v. Attorney General*, [1965] IR 294 (Irish Supreme Court).

¹³⁷⁹ Arun Thiruvengadam, *The Constitution of India* (Hart Publishing, Oxford, 2017).

¹³⁸⁰ Gautam Bhatia, *The Transformative Constitution* (HarperCollins Publishers India, Noida, 2019).

¹³⁸¹ Madhav Khosla, *India's Founding Moment* (Harvard University Press, Cambridge, MA, 2020).

places limitations on rights in the name of Part IV, there must be strong proof that those constraints are necessary, fair, and bounded in time.

In a few practical steps, the judiciary may keep going with the slow case-by-case direction with more and more emphasis on public accountability, i.e., public hearings or independent reviews for policies that touch DPSPs. It could lay out statutory schedules that would phase in the goals of Directive Principles more easily (as has occurred with education and adult literacy campaigns). Most significantly, the evolving discussion between rights and goals must recognise the dual promise of individual dignity and collective welfare as promised in the Constitution. Transformative constitutionalism makes this clear connection, as Bhatia puts it, to the formal liberty of the Constitution vis-a-vis the real uplift of society; this, Khosla reminds us, also becomes a living memorial toward aspirations yet to be fully realised.

In short, it remains the greatest mission to harmonise Part III with Part IV. Such understanding has come to mean both securing constitutional basics (absolute core rights) and deepening constitutional purposes (actual ameliorations of social conditions). By and large, this is the track taken by the Supreme Court when there are issues with which it can pursue the accommodation. These debates will, of course, continue about how the balance will be struck. The future probably lies in continuing this synthesis: in treating Fundamental Rights and Directive Principles not as rivals but as two wheels of the constitutional vehicle. Only by keeping that vehicle on course with vigilant courts, responsive laws, and an informed citizenry, can India realise the promise of its founding vision through its Constitution in the years to come.

CHAPTER 35

Constitutional Morality, Civic Duties, and Democratic Values

By Saksham Adlakha

INTRODUCTION

In democratic nations, discussions often focus on rights with little or no mention of responsibilities. A healthy democracy requires a great deal more than guaranteed rights; it is dependent upon a strong ethical foundation derived from constitutional values, civic responsibilities, and democratic values. All these elements are the basic building blocks which govern India's constitution and foster an active and informed citizenry.

As enacted in 1950, the Indian Constitution operates legally as a document and morally as a guide for the nation. The Constitution defines the framework of governance while interspersing norms that facilitate principles of justice and social welfare. While Parts III's fundamental rights do receive attention, constitutional morality, civic responsibilities, and democracy as integral components are sadly neglected. All these elements help maintain the constitutionally guaranteed continuity or wholeness in its constitutionalism.

BR Ambedkar gave emphasis to constitutional morality during debates in the Constituent Assembly. He explained, with reference from George Grote's fidelity to the standards of the constitution, that democracy can only function successfully if there is a principle of upholding constitutional norms. This ethics requires both government authority and citizens to stay within some moral limits which includes justice, freedom, equality and brotherhood.¹³⁸²

¹³⁸² Constituent Assembly Debates, Vol. VII, 4 November 1948, p. 38.

Civil responsibilities defined under Article 51A part IVA¹³⁸³ of the constitution added by 42nd Amendment of 1976¹³⁸⁴ represent some form of balance between duties and entitlement. Informed by Swaran Singh Committee's recommendations¹³⁸⁵, they require citizens to aid in fostering national integration while acting as stewards of environmental protection.

HISTORICAL AND CONSTITUTIONAL BACKGROUND

Origins and Evolution of the Concepts

Constitutional morality has its roots in the writings of 19th-century historian George Grote¹³⁸⁶, who treated it as a commitment to the principles and framework of constitutional government. This notion was revived in India by Dr. B.R. Ambedkar during the Constituent Assembly debates.¹³⁸⁷ Ambedkar argued that Indian democracy must transcend mere institutional structures and must be adopted as a way of life—founded upon the veneration of constitutional values and processes, even when these come into conflict with public opinion or political convenience. What started as an ethical norm, constitutional morality, has now evolved into a critical judicial principle. The Supreme Court applied this doctrine in *Navtej Singh Johar v. Union of India* (2018)¹³⁸⁸ to repeal Section 377 of the IPC¹³⁸⁹ and emphasized that constitutional norms should supersede sociological bias.

Civic duties were constitutionally acknowledged with the 42nd Amendment in 1976 due to recommendations from the Swaran Singh Committee. These responsibilities are preventative measures towards fostering national integration, environmental protection, and embracing tolerance along with various values, despite not legally enforced. Adapted from the 1977 USSR Constitution, it aimed at achieving equilibrium between rights and responsibilities of citizens.

¹³⁸³ Art. 51A, Constitution of India, 1950 (Part IVA – Fundamental Duties, inserted by the Constitution (Forty-second Amendment) Act, 1976).

¹³⁸⁴ The Constitution (Forty-second Amendment) Act, 1976.

¹³⁸⁵ Swaran Singh Committee Report, 1976 (Committee on Constitutional Amendments, Government of India).

¹³⁸⁶ George Grote, *History of Greece*, Vol. IV (London: John Murray, 1846), p. 91.

¹³⁸⁷ Constituent Assembly Debates, Vol. VII, 4 November 1948, p. 38 (Speech by B.R. Ambedkar).

¹³⁸⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 : AIR 2018 SC 4321.

¹³⁸⁹ S. 377, Indian Penal Code, 1860 (struck down in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1).

But where does the civic duty ethic come from? The civic duty perspective is primarily derived from Indian tradition. The classics of Indian literature, such as the Mahabharata and the Arthashastra, placed dharma - duty - at the centre of social order. In the Indian independence movement, Mahatma Gandhi contended that swadharma or self-directed moral action was vital to contribute a civic virtue based on active citizenship.

The debates in the Constituent Assembly remained focused upon values associated with democracy. The Preamble of the Constitution¹³⁹⁰ specifies the India objectives of justice, peace, equality and fraternity in terms of basic principles which are mentioned in Nehru's Objectives Resolution¹³⁹¹. These concepts were not intended to be theoretical; they were made practical through constitutional rights and principles that could be enforced and directives. Ambedkar, Nehru¹³⁹², Patel, Munshi and other prominent leaders saw the democracy envisioned as political with added socio-economic elements.

Internationally specific the Universal Declaration of Human Rights 1948¹³⁹³ as well anti-colonial movements in India greatly influenced these policies. The Non Co-operation and Civil Disobedience Movements¹³⁹⁴ promoted active citizenship framed around law abiding ethics infused with moral boldness all instilling democratic traits aimed for by the constitution values.

DEBATES OF THE CONSTITUENT ASSEMBLY (DCA)

On Constitutional Morality

Dr. B.R. Ambedkar strongly argued that democracy cannot be present in institutions alone and must be built on a collective moral commitment to constitutional values. In Constituent

¹³⁹⁰ Preamble, Constitution of India, 1950.

¹³⁹¹ Objectives Resolution, Constituent Assembly Debates, Vol. I, 13 December 1946.

¹³⁹² Constituent Assembly Debates, Vol. I, 13 December 1946 (Objectives Resolution introduced by Jawaharlal Nehru).

¹³⁹³ Universal Declaration of Human Rights, 1948, adopted by UN General Assembly Resolution 217 A (III), 10 December 1948.

¹³⁹⁴ The Non-Cooperation Movement (1920–22), led by M.K. Gandhi, The Collected Works of Mahatma Gandhi, Vols. 19–65 (Publications Division, Government of India).

Assembly Debates, he stated that constitutional morality is not instinctual; it needs to be educated and cultivated. He warned that success for democracy in India depended on the people embracing this moral framework. Others echoed his concerns, agreeing that in the lack of constitutional ethics among citizens and leaders, democratic institutions would be superficial. On Civic Responsibilities:

Whereas the initial Constitution did not have a specific section on responsibilities, the importance of obligations of citizens was widely recognized in the Assembly. Various debates on fundamental rights and basic principles emphasized that rights alone are not sufficient; they must be balanced with civic obligations. The later addition of Article 51A through the 42nd Amendment legally established what had been a moral duty for so long.

Regarding Democratic Principles

The framers sought to incorporate democratic values—justice, equality, and secularism—into the foundation of the Constitution. Preamble and Directive Principles discussions invariably showed this commitment. Ambedkar emphasized fraternity very strongly, believing that this was necessary to ensure that liberty and equality remained meaningful. The Preamble was designed to become the lodestar of the Constitution, setting forth the aspirations of an equitable and just Indian society.

Colonial and Pre-Constitutional Influences

The British were not without their faults while ruling India. They established courts, equality before the law as well as early forms of representative institutions. In 1919 and 1935, they passed some regressive acts but to be fair, they brought with them the idea of federalism along with some basic human rights and a responsible government. Despite these half-hearted attempts to provide legislation for democracy, parallel attempts towards Colonial rule bred hope among its nationals.

Equally important is India's age-old traditions of duty and ethics. Gandhian ideals influenced self-ruling motives in Indian Citizenship. Participatory nation-building was further cemented by incorporating non-violence, social education through active community engagement alongside civic responsibility.

Post-independence, India was set on drafting its Constitution which blended ancient Eastern political philosophies with Western legal frameworks resulting in one of the world's most extraordinary constitutions. It aimed to legally enforce democratic principles while ensuring citizens had concrete responsibilities anchored in his unique fusion through vital duties thus embracing its paradoxes.

LITERATURE ANALYSIS/ ACADEMIC DISCOURSE

The academic discourse around constitutional morality, civic responsibilities and democratic values varies in its substance, based on constitutional law, political theory and judicial analysis. This discussion on constitutional morality

Constitutional Morality

Granville Austin's seminal *The Indian Constitution: Cornerstone of a Nation* noted a broad "moral consensus" among the Constituent Assembly in relation to justice, liberty, equality, and fraternity. Austin conceptualized constitutional morality as its critical tie that binds the plural society of India. In the Constituent Assembly debates Dr. B.R. Ambedkar stated democracies are possible under a rigid legal understanding and the firm commitment to the substance of the Constitution. Constitutional scholar Upendra Baxi views constitutional morality as an emergent and forward- looking notion that permits us to revisit the scope of rights at all times in invented democratic and democratic arguments. But scholars, such as Gautam Bhatia and Anuj Bhunia, are ambivalent because of the increasing reliance of the judiciary on constitutional identity. They fear a world of no boundaries, which would fast become an unmoored judicial activism vehicle.

Civic Duties

Discussions around civic duties in an academic context tend to focus on enforceability of the duties or their connection to Fundamental Rights.¹³⁹⁵ Legal scholars like M.P. Jain and H.M.

¹³⁹⁵ *H. M. Seervai – His Life, Book & Legacy* (Constitutional Law Society, NALSAR, lecture delivered May 2009), available at https://www.michaelkirby.com.au/images/stories/speeches/2000s/2009%2B/2358.H.M.Seervai_-_Constitutional_Law_Society%2C_Nalsar_-_May_2009.pdf (last visited on 28/06/2025).

Seervai has indicated that while the duties outlined in Article 51A of the Constitution may not be legally enforceable, there is considerable moral weight and educational significance to those duties. After his retirement, Justice J.S. Verma discussed the historical and continuing vital responsibilities that create and maintain democratic institutions, and highlighted civic responsibilities as being crucial to everything from the environment to gender equality, to preservation of public morality. Some scholars also view a more significant role of civic responsibilities in public affairs, and suggest that civic education, institutional ethical responsibility, and instilling public service values can promote responsibility amongst citizens.

In the case of *AIIMS Students' Union v. AIIMS* (2001), the Supreme Court confirmed that civic duties are complementary to rights and that the promotion of civic duties is an essential aspect of the cultivation of national character.

In *M.C. Mehta v. Union of India*, the Court employed Article 51A(g)—the duty to protect the environment—in a bold manner to develop the area of environmental law. This was also observed in *Rural Litigation and Entitlement Kendra v. State of U.P.*, whereby the courts discussed the obligation of citizens in addition to the obligation of the state to protect the environment. The courts have also indicated the responsibility to promote education (Article 51A(k)) and have urged parents and educational institutions to take active and responsible roles in the upbringing and development of children.

Democratic Principles

Democratic principles—the principles articulated in the Preamble, in particular—are undoubtedly the primary concern of serious legal scholarship. The Basic Structure doctrine first articulated in *Kesavananda Bharati v. State of Kerala* (1973), is perceived by legally-trained scholars such as M. Seervai as essential protection against autocracy.

Legal scholars have warned against the threats to democratic principles stemming from populism, reduced institutional safeguards, and a contracting space for dissent. The *Indian Journal of Constitutional Law* argued for the need for both an engaged citizenship and a robust civil society, to protect democracy.

The decision in *Kesavananda Bharati* affirmed that democracy, secularism, the rule of law, and separation of powers were each necessary components of the basic structure of the Constitution. The Court's subsequent decisions, such as *S.R. Bommai v. Union of India* (1994) re-affirmed secularism as a necessary component taking away some of the president's power of improperly imposing President's Rule.

In the case of *Indira Gandhi v. Raj Narain* (1975), the Supreme Court of India reminded us that free and fair elections are often considered requirements of democracy. Other decisions, such as *Maneka Gandhi v. Union of India* (1978), went further, found an even more extensive interpretation of the procedural prohibitions in paragraph 21 of the Constitution when it recognized that due process was also an essential democratic commitment.

CONSTITUTIONAL DOCUMENT AND RATIONALES

Discussions of this nature have a constitutional basis, mostly contained within the three central sections of the constitution: the Preamble, Part III (dealing with Fundamental Rights), and Part IVA (dealing with Fundamental Duties).

While legal obligations are not here, courts have frequently used Article 51A to interpret rights and other provisions of the constitution.

Principles of Governance and Fundamental Rights

The Directive Principles of the State Policy encourage social justice (Article 39) as well as the Fundamental Rights of free speech (Article 19) and freedom of life and dignity (Article 21) to form the good governance context by which democratic values in India can survive and thrive. The courts have necessarily extended the interpretation of these provisions along with the Preamble to call for constitutional morality.¹³⁹⁶

¹³⁹⁶ *M. P. Jain, Indian Constitutional Law* (title inferred), available at <https://www.scribd.com/document/487582321/Mp-Jain-Indian-Constitutional-Law> (last visited on 28/06/2025).

What was the goal of the Constituent Assembly?: Nehru's Objectives Resolution provided the philosophical basis of the Constitution, but Dr. Ambedkar noted the value of fraternity is an important democratic value that is often squandered, while K.M. Munshi stressed the ethical responsibilities of citizens. Although Article 51A, Fundamental Duties was later added, the content of the duties was readily observable from the deliberations of the Constituent Assembly.

UNDERSTANDING JUDICIAL INTERPRETATIONS & EXPANDED MEANING

Constitutional Morality

The 2018 case of *Navtej Singh Johar v. Union of India* is a significant one in which the Supreme Court of India struck down Section 377 of the IPC, decriminalizing consensual same-sex relationships. The Court ruled that constitutional morality takes precedence over popular sentiments.¹³⁹⁷ In this regard, the Court said that protecting minority rights is a Daedalian duty of the courts, however unpopular it may be, as per Justice Chandrachud. In the *Sabrimala* case, 2018 regarding the entry of women of menstruating age to the Sabrimala temple, the Supreme Court said that constitutional morality requires gender equality and the Equality Doctrine overrules centuries-old religious practices requiring the exclusion of women. Similarly, in *K.S. Puttaswamy v. Union of India* in 2017, the court claimed that constitutional morality was the basis of protection of privacy as a right in Article 21, and that privacy is a part of dignity and liberty.

CASE LAW ANALYSIS

Navtej Singh Johar v. Union of India (2018)

¹³⁹⁷ Granville Austin, *"The Indian Constitution: Cornerstone of a Nation"* (University lecture notes, Babasaheb Bhimrao Ambedkar University), available at <https://www.bbau.ac.in/Docs/FoundationCourse/TM/MPDC405/GRANVILLECONSTITU.pdf> (last visited on 28/06/2025).

Issue: Challenge to Section 377 IPC criminalizing consensual same-gender sexual acts.

Holding: The Supreme Court unanimously struck it down, stating that constitutional morality outweighs societal prejudice and upholding the rights to dignity, privacy, and equality for LGBTQ+ individuals.¹³⁹⁸

Significance: A watershed ruling that decriminalized homosexuality and affirmed the judiciary's role in protecting minority rights.

Indian Young Lawyers Association v. State of Kerala (Sabarimala, 2018)¹³⁹⁹

Issue: Exclusion of women aged 10–50 from entering Sabarimala Temple.

Holding: In a 4:1 verdict, the Court ruled the ban violated Articles 14, 25, and the right to dignity. The religious custom could not override constitutional morality.

Significance: Reinforced gender equality within religious practices, prioritizing fundamental rights over customary exclusion.

Justice K.S. Puttaswamy (Retd.) v. Union of India¹⁴⁰⁰

Issue: Whether the right to privacy is constitutionally protected, esp. concerning Aadhaar.

Holding: A nine-judge bench declared privacy a fundamental right under Articles 14, 19, and 21, essential to dignity and autonomy, and introduced a standard for lawful privacy restrictions.

Significance: Established privacy's constitutional footing, crucial for data protection and limits on surveillance.

M.C. Mehta v. Union of India (1986 - onwards)¹⁴⁰¹

Issue: Environmental depredation in different contexts—from the Ganga to pollution from industries. **Holding:** The Court engaged Article 51A(g)—the duty to protect the environment—over and over again, articulating elements of law, such as: "polluter pays,"

¹³⁹⁸ **Navtej Singh Johar v. Union of India**, (2018) 10 SCC 1

<https://privacylibrary.ccgslud.org/case/navtej-singh-johar-and-ors-vs-union-of-india-uo-i-and-ors>

¹³⁹⁹ **Indian Young Lawyers Association v. State of Kerala**, (2019) 11 SCC 1

<https://privacylibrary.ccgslud.org/case/indian-young-lawyers-association-and-ors-vs-the-state-of-kerala-and-ors>

¹⁴⁰⁰ **Justice K.S. Puttaswamy (Retd.) v. Union of India**, MANU/SC/1044/2017

<https://www.manupatracademy.com/legalpost/manu-sc-1044-2017>

¹⁴⁰¹ **M.C. Mehta v. Union of India**, 1987(1) SCC 395

precautionary principle, absolute liability; issuing various environment related judgments.

Holding: Established a new framework for India's law on the environment, empowering legal responsibility through rights and duties.

Significance: Revolutionized India's environmental law, strengthening legal accountability through rights and duties.

Rural Litigation & Entitlement Kendra v. State of U.P. (1985) ¹⁴⁰²

Issue: Ecological harm from limestone quarrying in the Mussoorie hills.

Holding: For the first time, the Court recognized a “right to a healthy environment” under Article 21, stressing that safeguarding nature takes precedence over private mining ventures.

Significance: Marked a turning point in Indian environmental jurisprudence, extending Article 21 to include ecological protection.

Maneka Gandhi v. Union of India (1978) ¹⁴⁰³

Issue: The ambit of personal liberty under Article 21 and the doctrine of due process.

Holding: The Court held that Articles 14, 19, and 21 are part of an integrated bundle of rights, which entailed the use of fair, just, and reasonable procedures for any deprivation of liberty. Also included the right to travel abroad as part of personal liberty.

Significance: recognition of the expansive character of personal liberty and improvements in procedural fairness.

Shreya Singhal v. Union of India (2015) ¹⁴⁰⁴

Issue: The constitutionality of Section 66A of the IT Act, which made online content that made "offensive" content or was "annoying content" subject to punishment.

Holding: The Court struck it down for vagueness and overbreadth, which chilled free speech. The court was clear that limitations must constrain expression in a clear, reasonable, and

¹⁴⁰² Rural Litigation & Entitlement Kendra v. State of U.P., 1985 (2) SCC 431

¹⁴⁰³ Maneka Gandhi v. Union of India, 1978 (1) SCC 248

¹⁴⁰⁴ Shreya Singhal v. Union of India, 2015 (5) SCC 1

proportionate manner, following and protecting that which is lawful and clearly defined as opposed to that which is unlawful.

Significance: A landmark digital era decision that protected freedom of expression from arbitrary censorship.

Indira Gandhi v. Raj Narain (1975)¹⁴⁰⁵

Issue: Validity of declaring the Prime Minister's election beyond judicial review through the 39th Amendment.

Holding: The Court invalidated this provision, asserting it violated the Basic Structure—including judicial review, separation of powers, and fair elections.

Significance: Reaffirmed the judiciary's role during the Emergency era and protected

CONCLUSION

Constitutional morality, civic duties, and democratic values together form the foundation of a just and inclusive society. While constitutional morality safeguards the principles of equality, liberty, and justice against social prejudices, civic duties remind citizens that rights are balanced by responsibilities toward the community and the nation. Democratic values, in turn, ensure that governance remains participatory, accountable, and respectful of diversity. The synergy of these three elements is essential for nurturing a culture of trust, dignity, and harmony, enabling the Constitution to function not merely as a legal text but as a living document guiding India's democratic journey.

¹⁴⁰⁵ Indira Gandhi v. Raj Narain, 1975 SCC (2) 159

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