

VIDYAVARDHAKA LAW COLLEGE

Sheshadri Iyer Road, Mysuru

Subject: Constitutional Law – I

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1. Definition and kinds of constitution

A constitution means a document having a special legal sanctity which sets out the frame work and the principal functions of the organs of the government of a state & declares the principles governing the operation of those organs.

Constitutional law: there is no hard & fast definition of constitutional law. In the generally accepted use of the term it means the rule which regulates the structure of the principal organs of the government and their relationship to one another and determines their principal functions. The rules consist both of legal rules in the strict sense and of usages, commonly called conventions, which without being enacted are accepted as binding by all who are concerned in the government. Many of the rules and practices under which our system of government is worked are not part of the law in the sense that their violation may lead directly to proceedings in a court of law.

Which outlines the framework & procedure of government, defines its power & functions, provides how constitutional changes may be made in a democracy usually guarantees the citizens certain protection against arbitrary governmental action.

Wade & Phillips: By a constitution is normally meant a document having a special legal sanctity which sets out the frame work and the principal functions of the organs of government or a state and declares the principles governing the operation of those organs. Such a document is implemented by decisions of the particular organ normally the Highest court or the state which has power to interpret its contents.

Patrick Henry:

The constitution is an instrument for the government to restrain the people. It is an instrument for the people to restrain the government •

Kinds of constitution:

- 1) Written & unwritten constitution
- 2) Rigid & flexible constitution
- 3) Federal & unitary constitution:
 - a) System of double government
 - b) Distribution of powers
 - c) Rigidity
 - d) Written
 - e) Independent judiciary
 - f) Supremacy of constitution.

2. Salient features of the Indian Constitution

1) Parliamentary Government

2) Provision of Preamble

3) Written, Enacted and Detailed constitution: The Indian Constitution has a distinction of being the most lengthy and detailed constitutional document. When it was adopted, it has 395 Articles and 8 Schedules now after 104th Amendment (January 25th 2020)it contains 470 Articles and 12 Schedules.

4) Emergency Provisions:

5) Universal Adult Franchise:

6) A Secular state

7) Single citizenship: federal government

8) Fundamental Rights

9) Directive Principles of state policy

10) Fundamental Duties

11) An Independent judiciary:

12) Borrowed constitution:

a) UK: parliamentary govt, rule of law single citizenship, role of speaker.

b)USA : fundamental rights, dual govt

c) Irish: Directive principles of state policy

d) Canada: quasi federal

e) Australia: concurrent list, freedom of trade, commerce in intercourse.

13. Unique blend of rigidity & flexible

- 14 .Separation of power
15. Rule of law.
16. Judicial review
17. A federation with strong centralizing tendency.

3. Preamble of the constitution of India.

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

JUSTICE, social, economic and political;

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

EQUALITY of status and of opportunity; and to promote among them all

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

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

Meaning, object, scope and Importance of Preamble:

The world preamble has been defined as an introduction paragraph or part in a statute deed or other document, setting forth the grounds and intention of it. It is introduction of preliminary statement especially to a legal document setting forth its ground and intention. The preamble to an Act sets out the main objectives which the legislation is intended to achieve. It contains in a nutshell the ideals and aspirations of the Act & the mischief which they intend to redress.

Preamble is very useful to understand the intention of the makers of the Act & the general purpose behind the provisions of the Act. The preamble to the constitution

indicates the types of government which the constitution is intended to establish and rights & freedoms which the constitution is intended to provide to the citizens. The preamble of the Indian constitution makes it clear that the people of India have adopted and given to themselves the constitution. It indicates that the ultimate source for the validity of, & the sanction behind the constitution is the will of the people.

The preamble is very useful in the interpretation of the constitution. In case the word used in a particular statute is capable of being both the narrower and the liberal interpretation and a doubt arises as to whether the narrower or the more liberal interpretation should be adopted, the court may look into the object and policy of the statute as recited in the preamble.

According to the **chief Justice Sikari** the constitution should be read & interpretation in the light of the ground & Nobel vision expressed in their preamble.

Meaning of expression occurring in the preamble:

- We, the people of India
- Sovereign
- Socialist
- Secular
- Democratic, Republic
- Justice, Liberty, Equality ,Fraternity, Unity & integrity of Nation.

Preamble – whether part of the constitution:

- The preamble being part of the Constitution is discussed several times in the Supreme Court. It can be understood by reading the following two cases.

In Re Berubari Case: It was used as a reference under Article 143(1) of the Constitution which was on the implementation of the Indo-Pakistan Agreement related to the Berubari Union and in exchanging the enclaves which were decided for consideration by the bench consisting of eight judges.

- Through the Berubari case, the Court stated that ‘Preamble is the key to open the mind of the makers’ but it can not be considered as part of the Constitution. Therefore it is not enforceable in a court of law.

Keshavananda Bharti V/S State of Kerala: In this case, for the first time, a bench of 13 judges was assembled to hear a writ petition. The Court held that: The Preamble of the Constitution will now be considered as part of the Constitution.

The Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution. So, it can be concluded that preamble is part of the introductory part of the Constitution.

In the 1995 case of **Union Government Vs LIC of India** also, the Supreme Court has once again held that Preamble is the integral part of the Constitution but is not directly enforceable in a court of justice in India.

Can preamble be amended:

- **Re BERUBARI UNION CASE** is related to the exchange of territories between India and Pakistan as per the Nehru-Noon Agreement of 1958. According to the Indian Independence Act, 1947, the boundaries of India and Pakistan were to be assessed by the 'award' of a boundary commission chosen by the Governor-General. The word 'award' denotes the decision of the chairman of the commission contained in his final report submitted to the Governor-General. Consequently, the Governor-General appointed a commission under the chairmanship of Sir Cyril Radcliffe. But the 'award' determined by the Radcliffe committee was not accepted by India and Pakistan. Consequently, there arose boundary disputes between the two nations. To resolve these boundary disputes the then Indian Prime Minister Shri Jawaharlal Nehru and Prime Minister of Pakistan Mr. Feroze Khan Noon signed an agreement in 1958. Among other things, the agreement provided for the division of the Berubari Union No. 12 and the exchange of enclaves between the two nations. The exchange was based upon the concept of 'enclaves for enclaves' without any consideration of territorial loss or gain. The dimensions of the Berubari was 8.75 square miles. It had a population of nearly 12000 people. It is located in the District of Jalpaiguri, West Bengal. As laid down by the agreement, 'Berubari Union No. 12' was to be divided horizontally, in such a way that half the area would be given to Pakistan and the other half would be retained by India.

Does the implementation of the agreement regarding the Berubari Union require legislative action?

If so, will a law enacted by Parliament under Article 3 of our Constitution be sufficient for the execution of the agreement regarding the Berubari Union or an amendment to the Constitution under Article 368 of our Constitution

required? And if necessary should it be considered in addition or as an alternative?

The Supreme Court answered the questions referred to it –

Legislative action is necessary for the execution of the Agreement.

A law of Parliament under Article 3 of our Constitution would be unqualified, and law under Article 368 of the Constitution will be qualified and necessary.

For the exchange of enclaves too, the same procedure as to be followed.

The Supreme Court in the Berubari Union case concluded that:

- The preamble is not a part of our Constitution.
- The Parliament has the power to amend our Constitution [including Article 1].
- A cession of a part of the territory of India would lead to the diminution of the territory of India. Such an amendment can be made under Article 368 of our Constitution.

In Keshvananda Bharati v/s State of Kerala: Keshavanda Bharathi was the chief of Edneer Mutt which is a religious sect in Kasaragod district of Kerala. Keshvananda Bharti had certain pieces of land in the sect which were owned by him in his name. The state government of Kerala introduced the Land Reforms Amendment Act, 1969. According to the act, the government was entitled to acquire some of the sect's land of which Keshvananda Bharti was the chief. On 21st March 1970, Keshvananda Bharti moved to Supreme Court under Article 32 of the Indian Constitution

for enforcement of his rights which guaranteed under Article 25 (Right to practice and propagate religion), Article 26(Right to manage religious affairs), Article 14 (Right to equality), Article 19(1)(f) (freedom to acquire property), Article 31 (Compulsory Acquisition of Property). When the petition was still under consideration by the court, the Kerala Government another act i.e. Kerala Land Reforms (Amendment) Act, 1971.

It was held by the apex court by a majority of 7:6 that Parliament can amend any provision of the Constitution to fulfill its socio-economic obligations guaranteed to the citizens under the Preamble subject to the condition that such amendment won't change the basic structure of the Indian Constitution.

It may be concluded that the preamble is the part of the constitution & therefore it can be amended by the parliament under Article 368 but the BASIC STRUCTURE in the preamble cannot be amended. Preamble has been amended by the constitution (forty second Amendment) Act, 1976. By this Act the words "socialist, secular, Unity & integrity have been inserted in the preamble.

4. Citizenship: Article 5 to 11

- **Meaning of citizenship:**

The population of state is divided into two classes - Citizen and alien.

A citizen of a state is a person who enjoys full civil ,political and fundamental rights .

- **Constitutional provisions:** part II of the constitution simply describes classes of persons who would be deemed to be the citizen of India at the commencement of the constitution.

*** Citizenship at the commencement of the constitution, i.e, January 26, 1950-**

The following persons under Articles 5 to 8 of the Constitution of India shall become citizens of India at the commencement of the Constitution:

1. Citizenship by domicile – (Article 5)
2. Citizenship of emigrants from Pakistan – (Article 6)
3. Citizenship of migrants to Pakistan – (Article 7)
4. Citizenship of Indian abroad – (Article 8)

1. Citizenship by domicile – Article 5: Conditions

1) He must, at the commencement of the constitution, have his domicile in the territory of India.

2) Such person must fulfill any one of the 3 conditions

A) He was born in India

B) Either of his parents was born in India

C) He must have been ordinarily resident in the territory of India for not less than five years immediately before the commencement of the constitution.

- **There are 2 main classes of domicile**

1) Domicile by origin - birth

2) Domicile by choice – residence

Two elements are necessary for the existence of domicile –

- 1) A residence of a particular kind, and
- 2) An intention of a particular kind.

- **Mohammad Raza V/S State of Bombay**

Article 6 – citizenship of migrants to India from Pakistan

- 1) Those who came to India before July 19,1948
- 2) Those who came on or after July 19,1948.

Article 7: citizenship of migrants to Pakistan:

If he has migrated to Pakistan after March 1,1947.

Article 8: citizenship of persons of Indian origin outside India.

Article 9: provides that if a person voluntarily acquires the citizenship of any foreign state he shall not be able to claim citizenship under Articles 5,6,8.

Article 10: provides that every person who is or is deemed to be a citizen of India under any of the foregoing provisions shall continue to be citizen of India subject to the law made by the parliament.

Article 11- Citizenship under the Citizenship Act, 1955: parliament, in exercise of the power given to it under Article 11 of the Constitution, has passed **the Citizenship Act 1955**, making the provisions for acquisition & termination of citizenship.

Mode of Acquisition & termination of citizenship:

Acquisition:

- 1) By birth
- 2) By descent
- 3) By registration
- 4) By naturalization
- 5) By incorporation of territory.

Termination: 1) Renunciation

2) Termination

3) Deprivation

The provisions in the Citizenship (Amendment) Act, 2019

The Act provide that the Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who entered India on or before December 31, 2014, will not be treated as illegal migrants. In order to get this benefit, they must have also been exempted from the **Foreigners Act, 1946** and the **Passport (Entry into India) Act, 1920** by the central government. The 1920 Act mandates foreigners to carry passport, while the 1946 Act regulates the entry and departure of foreigners in India.

Applicability of the Amended Act

- These provisions on citizenship for illegal migrants will not apply to the tribal areas of Assam, Meghalaya, Mizoram, and Tripura, included in the

Sixth Schedule to the Constitution. These tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District.

Further, it will not apply to the “Inner Line” areas notified under the Bengal Eastern Frontier Regulation, 1873. In these areas, visits by Indians are regulated through the Inner Line Permit.

Currently, this permit system is applicable to Arunachal Pradesh, Mizoram, and Nagaland. Manipur has also been brought under the Inner Line Permit (ILP) regime through a Gazette Notification on the same day the bill was passed in the parliament.

5. Concept of State: Article 12 defines the term State as used in

different Articles of part III of the Constitution. It says that unless the context otherwise requires the term “State” includes the following:

- a) Government & parliament of India: Indian Government Indian Parliament
– Lok Sabha, Rajya Sabha
- b) Government & legislature of the each state: State Governments
State Legislature – Legislative Assembly, Legislative Council of State.
- c) All local and other authorities within the territory of India
- d) All local & other authorities under the control of government of India.

The term “state” includes executive as well as legislative organs of the union & the states. It is, therefore, the actions of these bodies that can be challenged before the courts as violating fundamental rights.

a) **Authorities:** According to Webster's dictionary "Authority" means a person or body exercising power to command. In the context of Article 12 the word authority means the power to make laws, orders, regulations, byelaws, notifications etc. which have the force of law and power to enforce those laws.

b) **Local authorities:** Defined in Section 3(31) of the General clause Act refers to authorities like Municipalities, District Boards, Panchayats, improvement Trust & Mining settlement Boards.

Mohammed Yasin V/S Town area committee

c) **Other Authorities:** other authorities are used after mentioning a few of them, such as, the government, parliament of India, the government & legislature of each of the states and all local authorities.

- **The University Of Madras V/S Shantha Bai**

ejusdem generis

- **Ujjammabai v. State of U.P.** The Court rejected this restrictive interpretation of the expression 'other authorities' given by the Madras High Court and held that the **ejusdem generis** rule could not be resorted to in interpreting its expression. In Article 12 the bodies specifically named are the Government of Union and the States, the Legislature of the Union and States and local authorities. There is no common genus running through these named bodies nor can these bodies so placed in one single category on any rational basis.

- **Rajasthan Electricity Board v Mohanlal**

The Supreme Court held that 'other authorities' would include all authorities created by **the constitution or statute** on which powers are conferred by law. It was not necessary that the statutory authority should be engaged in performing government or sovereign functions.

- **Sukhdev Singh v. Bhagatram - Agency or Instrumentality of State**
- **R.D. Shetty v. International Airport Authority**

What is the test whether a body is an agency or instrumentality? The court laid down the following tests for determining whether a body is an agency or instrumentality of the government:-

- 1) Financial resources of the state is the chief funding source ie , the entire share capital of the corporation is held by government.
- 2) Existence of deep & pervasive state control
- 3) Functional character being governmental in essence.
- 4) If a department of government is transferred to a corporation
- 5) Whether the corporation, enjoys monopoly status which is state conferred or state protected.

Central Inland Water Transport Corpn. V. Brojo Nath Ganguly (1986) Under Article 12 the following are held to the State: -Project and Equipment Corpn. Of India.(1984) - Hindustan Steel Ltd., (1984) - Indian Council of Agricultural Research (1984) - State Financial Corpn. (1983) - Bharat Petroleum Corpn. Ltd. (1981) - coffee Board (1980) - Steel Authority of India Ltd. (1985) - Council of Scientific and Indian Research (2002) - International Airport Authority of India (1979) - Children's Aid Society (1987) - Indian Oil Corpn. (1990), Food Corpn. Of India 1985

- **Ajay Hasia v. Khalid Mujib**
- **Tekraj Vasandi v. U.O.I:** 'Institute of Constitutional and Parliamentary Studies', a society registered under the Societies Registration Act, 1860, as not being an 'authority' under Article 12.

- **IS JUDICIARY INCLUDED IN THE WORD ‘STATE’?**

Depends upon the distinction between the judicial and non-judicial functions of the courts. In the exercise of the non-judicial functions, the courts fall within the definition of the ‘State.

* Naresh v. Maharashtra

* A.R.Antulay V/S R.S.Nayak

6 . Laws inconsistent with fundamental rights – Article 13

Power of judicial Review: Article 13 in fact provides for the judicial Review of all legislations in India, past as well as future. This power has been conferred on the High courts and the Supreme Court of India which can declare a law unconstitutional if it it’s inconsistent with any of the provisions of Part III of the constitution.

Meaning and basis of Judicial Review:

Keshavananda Bharathi V/S State of Kerala

13(1) Pre constitutional law:Art 13(1) all laws in force in the territory of India immediately before the commencement of this constitution shall be void to the extent to which they are inconsistent with the provisions of part III of the constitution.

13 (1)not retrospective in effect.

Keshava Madava Menon V/S State of Bombay

Doctrine of severability:

R.M.D.C V/S UOI

Kihota Hollohan V/S Zachithu:

A.KState of Bombay V/S Balsara.

Gopalan V/S State of Madras

Doctrine of Eclipse: The doctrine of eclipse is based on the principle that a law which violated Fundamental Rights is not nullity or void ab initio but becomes only unenforceable i.e., remains in a moribund condition. It is over shadowed by the fundamental rights and remains dormant; but it is not dead. Such laws are not wiped out entirely from the statute book. They exist for all past transactions, & for the enforcement of rights acquired and liabilities incurred before the present constitution came into force and for determination of right of persons who have not been given fundamental rights by the constitution e.g non-citizens. It is only as against the citizens that they remain in a dormant or moribund condition but they remain in operation as against non-citizens who are not entitled to fundamental rights.

- Art 13(2) the state shall not make any law takes away or abridges the fundamental rights conferred by part III of the constitution.
- Doctrine of Ultra vires
- Does the doctrine of Eclipse apply to a post constitutional law?

Deep Chand V/S State of UP: not apply

Mahendra Lal Jain V/S state of UP

Doctrine of Waive: Can a citizen waive his fundamental right?

Bheshwar Nath V/s Income tax commissioner;

Muthaiah V/S ITC

Art 13(3) law includes any ordinance, order, by law, rule, regulation, notification, custom or usage having the force of law.

Shankari Prasad V/S UOI: did not include law made by parliament U/Article 368. Article 13 must take to mean rules or regulations made in exercise of ordinary legislative power & not amendments to the constitution made in exercise of constitutional power.

Sajjan Singh V/S State of Rajasthan

Golak Nath V/S State of Punjab.

7. Right to equality: Article 14

Equality before law: the state shall not deny to any person equality before the law or equal protection of the law within the territory of India.

- Aim at establishing the equality of status.

Equality before the law - negative

Equal protection of the law – positive.

Equality before the law: Dr. Jennings: equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue & be sued, to prosecute & be prosecuted for the same kind of action should be same for all citizens of full age & understanding without distinctions of race, religion wealth, social status or political influence.

- **Rule of law;** Dicey gave three meanings of the rule of law
 - 1) Absence of arbitrary power or supremacy of the law.
 - 2) Equality before the law.

- 3) The constitution is the result of the ordinary law of the land: rights of the individual not written in the constitution but defined & enforced by the courts.

Equal protection of the law; Like should be treated alike & not that unlike should be treated alike. All persons similar circumstanced shall be treated alike both in the privileges conferred & liabilities imposed by the laws.

Permits classification but prohibits class legislations:

Test of reasonable classification:

- 1) The classification must be founded on an **intelligible differentia** which distinguishes persons or things that are grouped together from others left out of the group
- 2) The differentia must have a rational relation to **the object sought to be achieved** by the Act.

K.A.Abbas V/S UOI: Cinematograph Act 1952.

Mithu V/S State of Punjab :

Ajay Hasia V/S Khalid Mujib

Maneka Gandhi V/S UOI

Javed V/s State of Haryana

Air India V/s Nargesh Meerza.

Vishaka V/S State of Rajasthan

New concept of equality: **E.P.Royappa V/S State of Tamil Nadu:** Equality is a dynamic concept with many aspects and dimensions & it can't be cribbed, cabined & confined within traditional & doctrinaire limits. Equality is antithesis to arbitrariness.

Basis of classification:

a) Geographical basis:

Krishna Singh V/S State of Rajasthan – Marwar land Revenue Act, 1949.

b) Tax

c) Age

d) Special courts & special procedure: **State of West Bengal V/S Anwar Ali**

Kanthi Ranning V/S State of Saurashtra

8. Article 15: No discrimination on grounds of Religion, race, caste etc.

- Article 15(1): the state is prohibited to discriminate between citizens on grounds of religion, race, caste, etc.

Discrimination:

D.P. Joshi V/S State of M.B: Capitation fee

* Article 15(2) is a specific application of the general prohibition contained in Article 15(1): No citizen shall be subjected to any disability, restriction or condition on grounds only of religion, race, caste, place of birth or any of them with regard to

A) access to shops, public restaurants, hotels & place of public entertainment or

B) The use of wells, tanks, baths, roads & place of public resort, maintained wholly or partly out of state funds or dedicated to the use of the general public.

Object: eradicate the abuse of Hindu social evils

* Article 15(3) special provisions for women & children

Reason: women is physical structure & the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-

being becomes an object of public interest and care in order to preserve the strength & vigour of the race.

- Article 42

*Article 15(4) special provision for advancement of backward classes

- **State of Madras V/S Champakam Dorairajan**

- 15(4) two things are to be determined

1) Who are socially & educationally backward class?

2) What is the limit of reservation?

- Backward & more backward: **Balaji V/s State of Mysore**

- BC 28%,MBC 20%,SC& ST 18%

K.S.Jayashree V/S State of Kerala

- **State of UP V/S Pradeep Tandon**

- **UOI V. Rakesh Kumar** : Proportionate Representation- Reservation of seats under Article 15(4) & 16(4) for socially and educationally backward classes is an example of “Proportionate representation”. Principle of “adequate representation” is adopted when it is found that a particular community is under-represented and measures are taken to achieve desired level of representation.

- **. Ashoka Kumar Thakur V.UOI**

- **Arun Kumar Agarwal V. National Insurance Co. Ltd** - Gender based discrimination- Categorisation of women doing household duties as non-

workers clubbing them with beggars, prostitutes and prisoners betrays a totally insensitive and callous approach towards the dignity of labour of women. Census definition of work reflects gender discrimination.

- **Dr. Neelima V/S Dean of P.G. Studies A.P. Agriculture University**
- **Meera Kanwar V/S Sunitha.**
- SC & STs candidates entitled to reservation benefit only in the state of his origin & not in other states where he migrates to.
- **Mandal Commission case**

Article 15(5) 93rd – 2006: provisions for reservation of backward & SC & ST class including private educational institution.

Equality of opportunity in public employment

9. Equal opportunity in the matter of public employment

Art: 16(1) equality of opportunity for all citizens in matters of employment or appointment to any post under the state.

- **Prescription of qualification & selective tests.**

Pandurangarao V/S APPSC

- Equality between the same classes of employment.

All India Station Masters Association V/S General Manager, Central

Railway: 1) Guards – higher grade station master

2) Road side station master

Kishori V/S UOI

Income tax officers of class I – AC

Income tax officers of class II..

C.B.Muthamma V/S UOI: service rules requiring a female employee to obtain the permission of the govt in writing before her marriage is solemnized.

*** Air India V/S Nargesh meerza**

- **Equal pay of equal work:** Art 39(c)
- **Seniority:** on the basis of date when actual appointment is made.
- **Compulsory retirement: PNJ**
- **Abolition of post**

Art: 16(2) Decent and residence

- Art16(3) residence can be ground for reservation of post.

Public employment(Requirement as to Residence) Act 1957

- 16(4): reservation for backward classes:
 - 1) the class of citizens is backward
 - 2) the said class is not adequately represented in the services of the state

Balaji case.

Indra Sawhney V/S UOI:

After Mandal case

- Article 16(4 A) 77th amendment

make any provision for reservation in matters of promotion to any class or classes of posts... in favour of the Scheduled Castes or Scheduled Tribes.”

T.Devadasan vs The Union Of India . Unfilled vacancies of reserved posts for the year to be carried forward to subsequent year--"Carry forward rule"--Constitutional validity-Constitution of India, Arts. 14, 16(1), 16(4), 46, 335.

State of Kerala V/S N.M Thomas

Akhil Bharatiya Shoshit Karmachari snagh (Railway) v/s UOI

K.C.Vasanth Kumar v/S state of Karnataka

Ashok Kumar Thakur V/S state of Bihar

M.Nagaraju V/S UOI

* **Vertical Reservation and Horizontal Reservation**

Vertical Reservation: The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [(under Article 16(4)] may be called vertical reservations.

- a) SC
- b) ST
- c) OBC

The Total percentage of Reservation for the above three categories should not exceed 50% at any point of Time.

what is Horizontal Reservation...?

The Reservation in favour of Ex-servicemen, Person with Disability, Sportsmen, Minorities etc may be called Horizontal reservation.

Horizontal reservations cut across the vertical reservations – what is called interlocking reservations. The percentage of reservation allotted to Horizontal reservation categories should be adjusted against percentage of SC/ST/ OBC and General categories in vertical reservation. Even after providing for these horizontal reservations, the percentage of reservations in SC /ST and OBC should remain the same. It should not exceed the limit prescribed for these categories.

10: Freedom of speech & expression 19(1)(a)

F&E and press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.

The main elements of right to freedom of speech and expression are as under,

1. This right is available only to a citizen of India and not to foreign nationals.
 2. the freedoms of speech under article 19(1)(a) includes the right to express one views and opinions at any issue through any medium, eg.. By words of oral, writing, printing, picture, film, movie etc.
 3. This right is not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence..
- It is not absolute right, so that it can be deprived from reasonable restriction.

Meaning & scope:

Purposes:1) it helps an individual, to attain self fulfillment.

2) it assists in the discovery of truth

3) it strengthens the capacity of an individual in participation in decision making

4)it provides a mechanism by which it would be possible to establish a reasonable balance between stability & social change.

Territorial Extent of freedom:

Right to Information Act,2005

UOI V/S Association for democratic reforms: right to vote- voters have right to know about their candidates.

- Calling for & holding Bundh illegal
- Film censorship – **K.A.Abbas V/s UOI**
- Telephone tapping: **people's union for civil liberties V/S UOI – S 5(2)**

Indian telegraph Act: Occurrence of any public emergency or in the interest of public safety.

Rajagopal V/S state of T.N: Government can not impose prior restraint on publication of defamatory material against its officials.

Freedom of speech and expression includes freedom of silence:-

Bijoe Emmaanues V/S State of Kerala: (National anthem

case):Jehovah's:prevention of Insults to National Honour Act 1971.

Freedom of Speech and expression includes Freedom of Press:It's a essential for political liberty & proper functioning of democracy.American

press commission said , freedom of press is essential to political liberty when man can not freely convey their thoughts to one another, no freedom is secured ,where freedom of expression exists the beginning of a free society & means for every retention of liberty are already present. Free expression is therefore unique among liberties.

Freedom of press is a part of the freedom of speech and expression. The freedom of press have a variety of rights it includes the right to publish pamphlets, right to circulate newspapers, right to receive information, right to advertise etc

Lord Mansfield: Liberty to print & publish what one pleases, without previous permission. The freedom of press is not confined to news papers & periodicals. It includes pamphlets & circular & every sort of publication which affords a vehicle of information & opinion.

Ramesh Thapper V/S state of Madras: Cross Road – printed & published in Bombay. The government of Madras, in exercise of their powers under section 9(1-A) of the Maintenance of public Order Act, 1949 issued an order prohibiting the entry into or the circulation of the journal in that state.

Fixation of maximum pages:- Government cannot a restriction for printing of pages for newspaper or magazines. It is against freedom of press. Newspapers control order 1962 was challenged.

BANNET COLEMEN CO. V/S UNION OF INDIA: In this case Supreme Court has made it clear that the fixation of maximum of number of pages of newspaper by the Government is against the freedom of press guaranteed by article 19(1)(a). In this case the validity of the *Newsprint Control Order 1962 was challenged*. This order fixed the *maximum number of pages of a*

newspaper . The Government tried to justify it on the ground that due to short supply of the newsprint, it was necessary to restrict and regulated its distribution and use. So, court held that, this *order was unconstitutional has being in violation of freedom o press guaranteed by article 19(1)(a)*.

Sakal Papers Ltd. V/S Union of India:

In this case, A private company that published newspapers, its shareholders, and two readers(Sakal) filed petitions against the state. The publishing company challenged the constitutional validity of the *Newspaper (price and Page) Act, 1956* which empowered the central government to regulate the price of newspapers in relation to their pages and the allocation of space for advertising matter. The publishing company also challenged the *Daily Newspapers (Price and Page) order ,1960* which was passed by the Government under the Newspaper Act to put in place such regulations.. The petitioners argues that the Newspapers Act and Newspapers Order violated the freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution The court held it as invalid on the ground that its object is to reduce Circulation of some newspaper by making their price high. And the court found that the laws in question would either increase prices or reduce the number of pages, both of which inhibit the dissemination of ideas, a fundamental aspect of the right to free speech.

Impose a duty of tax on newspaper industry:- The S/C has held that the newspaper has no immunity from general law like taxation or labour laws.

Indian Express Newspapers Ltd. V/S U.O.I: In this case, the petitioner were companies, employees, and shareholders thereof, as well as trusts engaged in

the publication of newspaper. They challenged the import duty on newsprint under the Customs Tariff Act 1975 and the auxiliary duty under the Finance Act 1981, as modified by notification under the Customs Act 1962. Prior to this notification, news print had enjoyed exemption from customs duty. The S/C of India directed the central Government to re examine its taxation policy by evaluating whether it constituted an excessive burden on newspaper. The petitioners, including newspapers companies and employees, argued that an import duty led to an increased cost of newspapers and a drop of circulation, thereby adversely affecting freedom of S and E. The court reasoned that a government can impose taxes on the publication of newspapers. So, court allowed that the classification into small, medium, and large based on economic considerations had a rational nexus with the objective of taxation and could not be considered arbitrary. Based on newspapers circulations, and income state can impose a tax. So that its not violated article 19(1)(a) of the Indian Constitution.

Right to press includes rights to commercial advertisement?

Tata press ltd. V/s Mahanagar telephone Nigam Ltd:The mahanagar telepho ne niga m ltd is a Government company and control by the Government of India, the Nigam is a licensee under the act and as such is required to establish, maintain and control the telecommunication service within the territorial jurisdiction of Delhi and Municipal corporation of Bombay. Till 1987, the Nigam uses to publish and distribute the telephone directory itself. It consisting of white pages only. But from 1987 , the Nigam started to interest the publication of its telephone directory to outside contractors. The niga m permitted such contractors to raise revenue for themselves. By procuring advertisement and publishing the same as yellow

pages appended to the telephone directory. Those the telephone directory published and distributed by the nigram consisted of the white pages, which contain list of telephone subscribers and also yellow pages consisting of the advertisement procured by the contractor to meet the expenses incurred by the contractor in publishing and distributing the directory. Tata press ltd. Were engaged in publishing of tata press yellow pages the nigram and UOI Tata press yellow pages the nigram and UOI file a civil suit before the civil Court at Bombay for a declaration that they alone have the right to print and publish without its permission as it was violation of telegraphic Act and they should be restrained by permanent injunction from, publishing the yellow pages. The city civil court dismissed the suit but, judge of Bombay high Court allowed the appeal High Court said that it is not violation of 19(1)(a) and UOI and Nigram they cannot impose a restriction to print and publish the telephone directory. Its not an absolute right of union Government and Nigram.

- **Odyssey communication Pvt V/S Lokvidayan Sanghatana:** The respondents, a registered social organization of Pune, filed a PIL U/Article 226 to restrain the UOI, Ministry of Information & broadcasting & the state of Maharashtra from telecasting the serial HONY ANHONI. It was likely to spread false or blind beliefs & superstition amongst the members of the public. Held that the rights of citizen to exhibit films on the Doordarshan, on the terms & conditions..... Any other media such as newspapers, magazines, advertisement hoarding etc subject to terms & conditions.....

11: Explain the reasonable restrictions on freedom of speech and expression under Article 19(2) of the Indian Constituion:

No fundamental freedom is absolute hence the following are the grounds of reasonable restrictions of freedom of speech and expression;

- 1) Security of the state
- 2) Friendly relations with foreign states
- 3) Public order
- 4) Decency or morality
- 5) Contempt of court
- 6) Defamation
- 7) Incitement of an offence
- 8) Sovereignty & integrity of India.

12.Freedom of Assembly :Article 19(1)(b) & 19(3)

Article 19 (1)(b) guarantees to all citizens of India rights “*to assemble peaceably and without arms*”. This right includes the rights to hold meetings and to take out processions. However this right is not absolute

The right is however subject to the following restrictions. :-

- 1) The assembly must be peaceful and harmonious;
- 2) It must be unarmed and not threatening the safety of the people;
- 3) Reasonable restrictions can be imposed under article 19(3)

Grounds of restrictions imposed on freedom of assembly under article 19(3) of the Indian constitution

a) sovereignty & integrity of India

B)Public order.

When lawful assembly becomes unlawful:

Section 141 of IPC

a)To commit any mischief or criminal trespass

b) To resist the execution of any law or legal process

c) Obtaining possession of any property by force

d) To compel a person to do what he is not legally bound to do or omit which he is legally entitled to do.

Other provisions:

- Section 129 of Crpc such an assembly may be ordered to be dispersed if the disturbance of public peace.
 - Section 151 of IPC it an offence not to disperse.
 - Section 107 of Crpc empowers Magistrate to obtain security for keeping the peace from any person who is likely to commit a breach of peace.
 - Section 144 of crpc the Magistrate to restrain an assembly, meeting or procession if there is a risk of obstruction , annoyance.....
 - The police Act ,1861 empowers a public officer to direct the conduct & prescribe the route & the time of all assemblies & procession in the interest of public.
 - U S 30 , prior licence has to be taken by member of the public to take out a procession.
 - Arms Act prohibits possession & carrying of unlicensed offensive weapons.
 - The prevention of Seditious Meeting Act, 1911, prohibits public meeting likely to promote sedition or to cause disturbance of public tranquility.

Can the state restrict a person's right to protest?

The question that arises in most of the cases relating to Article 19(1)(b) is that can the state restrict a person's right to protest? In a landmark judgment given

by the Supreme Court on the incident that took place on the midnight of 4-5th June, 2011 at Ramlili Maidan, Delhi where Baba Ramdev and his supporters were carrying on a protest against corruption and black money. Their protest was against the government who failed in taking effective steps to curb the menace of black money and corruption in India. The apex court has held that the protest was peaceful. *Satyagraha* which is beyond the concept of 'passive resistance' forms the essence of democracy. Saytagraha is not aggression but non-violence and its force lay in truth and the ability to struggle for it. Supreme Court in this judgment has upheld the right to peaceful protest.

Holding of assembly on private property – not permissible.

Railway Board v/s Niranjan singh

Kishan Chandra V/S State of M.P: Section 107, 127,144 of Cr.P.C have been upheld and declared Constitutional on the ground of public order.

Babu Lal Parante V/S State of Maharashtra: The S/C has held that section 144 of the Cr.P.C in so far as it prohibits holding of meetings is not violation of the freedom of assembly. Similarly, section 141 and 152 of the IPC have been upheld as reasonable restrictions because of being in the interest of public order.

13:Freedom to form a Association :Article 19(1)(c) & 19(4)

The right to freedom of association in the right to associate with others for purpose of protecting common interest. The interest may be economic, political, cultural. The right to freedom of association also includes the right not to join an association.

- 1.It is a fundamental Right given in the Constitution of India under Article 19(1)(c).
- 2.It Proclaims that all citizens shall have the freedom to form associations or unions for a lawful purpose.
- 3.The right to form associations indicates that several individuals get together and form voluntarily an association with a common aim, legitimate purpose and having a community of interest.
- 4.It is not an absolute Right rather it has certain Reasonable Restrictions.

Freedom to form associations and unions includes, right to form Companies, societies, Partnership , trade union and political parties.Once membership is done, no body can compile to withdraw membership. But it does not includes right to strike and lockout.

Right to continue to be associated with those whom they voluntarily admitted. The right to form association or unions does not includes merely the right to form or start association but also the right to continue it. This right implies that the persons forming the association have right to continue to be associated with only those whom they voluntarily admit in the association.

Damayanthi V/S UOI In this case, an Act was passed by Parliament in order to create a statutory body to take over the asset of the society, Hindu Sahitya Sammelan. The Act provided that all the members of the old society would be members of the new body. Some new members were also added. The new members were added without the consent of the members of the old society. The introduction of the new members in the new body was not at the choice of the members of the old society. The Act, thus , not only regulated the

affairs of the society but also changed its composition. The Court held it violation of the freedom of association guaranteed by Article 19(1)(C).

So, in the case S/C made it clear that the right to form association implies that the persons forming the association shall have also the right to continue to be associated with only those whom they voluntarily admit in the association.

Right not to be compelled to withdraw membership:- It is to be also noted that the state cannot impose a condition as compels the members of the association to withdraw their membership. Thus, the right to form association implies right not to be compelled to withdraw from an association. However, S/C has made it clear that the provisions for the compulsory affiliation of a college established by a society with particular university is not violation of the freedom of association or union guaranteed by article 19(1)(c).

Workmen's right to form union:- Every workman under an employer has right to form association or union of his own choice.

Whether this right included right to strike or lockout:-It has been well established that the right to form associations or unions guaranteed by Article 19(1)(c) does not include the right to strike or the right to declare lock-out. The right to strike thus, is not fundamental right, and therefore, the legislation regulating strike and lockout is not controlled by Article 19(1)(c) . The right to strike or the right to declare a lockout may be controlled or restricted by appropriate industrial legislation.

Grounds of restriction on freedom to form association under article 19(4):-

1. Sovereignty and integrity of India
2. In the interest of public order or morality.

14:Freedom of movement:Article 19(1)(d) & 19(5)

All citizens shall have the right to move freely throughout the territory of India. Article 19(1)(d) , thus , guarantees all Indian citizens the freedom of movement throughout the territory of India.

Kharak Singh V/S State of UP: In this case, S/C held that the right to move freely throughout the territory of India means the right of locomotion which connotes the right to move wherever one likes, and however one likes.

- **Scheduled tribes** : original tribes which are mostly settled in Assam. These tribes have their own language , culture , customs & manners.

Ajay Canu V/S UOI:Rule 498-A of Andhra Pradesh Motor Vehicles Rules.

Grounds of restriction on Freedom of Movement under Art.19(5):-

1. In the interest of general Public.
2. For the protection of the interests of Scheduled tribes.

15:Freedom of Residency:Article 19(1) (e) & 19 (5)

Article 19(1)(e):- guarantees to the Indian citizens the right to reside and settle in any part of India. The freedom of residence guaranteed by Article 19(1)(e) are available only to the citizens of India.

The citizens can move freely from one place to another within a state and also from one State to another State. And every citizens has right to move or to reside and settle anywhere within the territory of India.

- **State of Uttar Pradesh V/S Kaushalya**, SC has held that the right of movement of prostitutes may be restricted on ground of public health & in the interest of public morals.

Where prostitute, under the suppression of Immoral Traffic in women and Girls Act, 1956, was ordered to remove herself form the limits of a busy city or the restriction was placed on her movement & residence, it was held to be a reasonable restriction.

Grounds of restriction on Freedom of Movement under Art.19(5):-

1. In the interest of general Public.
2. For the protection of the interests of Scheduled tribes.

16:Freedom of profession, occupation , trade or business Under Article 19(1)(g)

- Article 19(1) (g): all citizens shall have the right to practise any profession or to carry on any occupation, trade or business.

Right to close: Excel wear V/S UOI

Hawkers Right to trade on pavement on Roads: Sodan Singh V/S New Delhi Municipal committee.

Sale of Lotteries not trade or business, but gambling: B.R.Enterprises V/S State of UP :S 5 of the Lotteries (Regulation) Act ,1998

Dr. Haniraj L.Chuhani V/S Bar Council of Maharashtra & Goa.

MRE Ltd V/S Inspector , Kerala government: Kerala Industrial Establishment (National & festival Holidays) Amendment Act ,1990

- Ban on pan Masala & Gutkha
- Prohibition on sale of eggs with municipal limits of Rishikesh is reasonable restrictions.
- Grounds of restriction on Freedom of profession, occupation , trade or business Under Article 19(6):

Article 19(6) : in the interest of general public.

Law prescribing professional or technical qualification necessary for profession or carrying on any occupation, trade or business.

Instances of reasonable restrictions

- There is no right to carry on business at a particular place.
- The Minimum wages Act.
- Imposition of licence fee.
- Creation of monopoly right in a few persons.
- Taxation.
- Professional & technical qualifications: The Advocates Act, the Bar councils Act, the legal practitioners Act, Indian medical degree Act, Indian Medical council Act.

- **Minerva Talkies Bangalore V/s State of Karnataka:** The government has power to regulate hours during which films may be exhibited, seating arrangements in cinema house & others matter pertaining to public safety, health, sanitation etc.
- **Municipal corporation, Ahmedabad V/S Jan Mohd. Usmanbhai:** standing order issued by municipal commissioner U/S 466(1)(d)(b) of Bombay provincial municipal corporation Act, directing closure of municipal slaughter houses on 7 days in a year.

17. Protection in respect of conviction for offences

- **Article 20(1) Ex post facto law:** 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 as an offence.

Subject to a penalty greater than which might have been inflicted under the law in force at the time of commission of the offence.

Kedar Nath V/S State of West Bengal

T. Baral V/S Henry An Hoe

Article 20(2) Double Jeopardy: Nemo debet bis vexari – which means that no man should be put twice in peril for the same offence.

No person shall be prosecuted and punished for the same offence more than once.

- **Conditions:** 1) the person must be accused of an offence.

2) Proceeding or the prosecution must have taken place before a court or judicial tribunal.

3) The person must have been prosecuted and punished in the previous proceedings.

4) The offence must be the same for which he was prosecuted & punished in the previous proceedings.

Maqbool Husain V/S State of Bombay

- Venkataraman V/S UOI: Public service enquiry Act 1960

Article 20(3) Prohibition against self incrimination: no person accused of any offence shall be compelled to be a witness against himself.

- M.P Sharma V/S Sathish Chandra: SC observed that this right embodies the following essentials:

- 1) It is a right pertaining to a person who is accused of an offence.
- 2) It is a protection against compulsion to be a witness
- 3) It is a protection against such compulsion relating to his giving evidence against himself.

1) Accused of an offence: It is not necessary that the actual trial or inquiry should have prosecution and conviction.

- **M.P.Sharma V/S Satish Chandra:** whose name was mentioned as an accused in the first information report by the police and investigation was ordered by the magistrate could claim the protection of his guarantee.
- **Delhi Judicial service association V/S State of Gujarat:** mere issue of notice or pendency of contempt proceedings do not attract Article 20(3).

2) To be a witness: Oral, documentary.

- The compulsory taking of finger impression or specimen handwriting of an accused would not come within the mischief of Art 20(3).
- State of Bombay V/S Kanthikalu: to be a witness is not equivalent to furnishing evidence.

3) Compulsion to give evidence against himself

Nandini Satpathy V/S P.L Dani

Yesufali V/S State of Maharashtra.

Narcoanalysis, polygraph & brain fingerprinting tests of accused violate Article 20(3).

18: Right to life and personal liberty: No person shall be deprived of his life and personal liberty except according to procedure established by law.

Prior to Maneka Gandhi's decision

- 1) A.K. Gopalan V/S State of Madras: Procedure established by law
- 2) Right to have fair procedure: Maneka Gandhi V/S UOI
- 3) Right to free legal aid and Right to appeal : Art 39(A)- M.H. Hoskot V/S State of Maharashtra
- 4) Right to speedy trial : Hussainara V/S Home sec, Bihar
- 5) Right to abroad- Satwant Singh Sawhney v/s Assistant passport officer, New Delhi, Maneka Gandhi V/S UOI

6) Right to privacy- Kharak singh V/S state of UP

- Right to privacy and Virginitly test: Surjit Singh Thind V/S Kanwaljit Kaur, P& H High court held that medical examination of women for her virginitly would amount to violation of Art 21.
- Right to privacy and surveillance : it is the duty of the police officers to keep surveillance over bad character,& habitual offenders for the purposed of preventing crimes.
- Telephone tapping: an invasion on Right to Privacy: In People's union for civil liberties V/S UOI. (Telephone tapping case)
- Right to privacy and Aadhaar Card: In justice k.S.Puttaswamy V/S UOI
- Right to privacy not an absolute right: In Mr.X V/S Hospital Z.

7) Right against solitary confinement -Sunil Batra V/S Delhi Administration: Solitary confinement imposed upon prisoners who were under sentence of death was violative of Articles 14,19,20,21 of IC.

- Validity of sections 30 and 56 of Prisons Act

8) Right against handcuffing – Prem Shankar V/S UOI :clear and present danger of escape.

9) Right to health and Medical Assistance -Paramanda Katara V/S Union of India, Consumer education and research centre V/S UOI

Vincent Parikurlangara V/S Union of India: Healthy body is the very foundation of all human activities.

Paschim Bang Khet Mazdoor samiti V/S State of W.B

- 10) Right to social security and protection of family- LIC of India V/S Consumer education and research centre
- 11) Right to shelter – Chameli Singh v/s State of UP
- 12) Right to Livelihood-Olga Tellis V/S Bombay Municipal Corporation
Sodan Singh V/S New Delhi Municipal Committee
D.K. Yadav V/S J.M.A. Industries
- 14) Right to Reputation – D.F. Marion V/S Minnie Davis
- 15) Right against sexual harassment at workplace- Vishaka v/s State of Rajasthan
- 16) Right to live with human dignity – Maneka Gandhi v/s UOI,
Francis Coralie V/S Union Territory of Delhi
- 17) Right to write a book - State of Maharashtra V/S Prabhakar Pandurang
- 18) Right against delayed execution – Sher Singh v/s State of Punjab
- 19) Right against public hanging – Attorney General of India V/S Lachma Devi
- 20) Death by Hanging not violative of article 21 – Deena V/S UOI
- 21) Right to Bail – Babu Singh V/S State of UP
- 22) Right against illegal Detention – Joginder Kumar v/s State of UP
- 23) Right against Noise pollution – In Re Noise pollution
- 24) Ban of smoking in public places: Murli S. Deora V/S UOI
- 25) Right to food: PUCLV/s UOI
- 26) Right against inhuman treatment by the police: Kishore Singh V/s State of Rajasthan, third degree method by police is violative of Art 21.
Human dignity is a clear value of our constitution not to be bartered away for mere apprehension entertained by jail officials.

27) Right to fair trial: is the heart of criminal jurisprudence and in a way an important facet of democratic policy that is governed by the rule of law. Denial of fair trial is crucifixion of human rights.

- Fair trial includes fair investigation
- Compensation for denial of speedy trial: Hardeep Singh V/S State of M.P
- 28) Right to marry: Mr.X V/S Hospital Z.

29) Right to adopt a child: CARA

30) Right to life does not include right to die: State of Maharashtra V/S Maruty sripati dubal

P.Rathinam V/S Union of India

Gian kaur V/S State of Punjab : justice J.S.Verma observed, any aspect of life which makes it dignified may be read into Art 21 of the constitution but not that which extinguishes it and is, therefore inconsistent with the continued existences of life resulting in effacing the right itself.

- Euthanasia: Aruna Ramchandra Shanbaugh V/S UOI

31) Right to education

Mohini Jain V/S State of Karnataka

Unni Krishnan V/S State of A.P

TMA Pai Foundation V/S State of Karnataka

19.Safeguards against arbitrary arrest and detention : Article

22

- 1)The right to be informed as soon as may be of ground of arrest.
- 2) The right to consult and to be represented by a lawyer of his own choice
- 3) The right to be produced before a magistrate within 24 hours.
- 4) The freedom from detention beyond the said period except by the order of the magistrate.

1)The right to be informed of grounds of arrest-As soon as may be.

Joginder kumar V/S State of UP: guidelines governing arrest of a person during the investigation.

- National police commission in its third report .60%
 - 1) an arrested person being held in custody is entitled, if he so request to have one friend.....
 - 2)police officer shall inform the arrested person when he is brought to police station of this right.
 - 3)an entry shall be required to be made in the police diary as to who was informed of the arrest
- **2)Right to defended by a lawyer of his own choice**
- Before Maneka Gandhi case.
- Hussainara Khatoon V/S Home secretary ,Bihar: unable to engage – duty of the state.

- Protection is not available to a person who has been convicted by a competent court and detained.

3) right to be produced before a magistrate.

- No detention beyond 24 hours except by the order of magistrate
- CBI V/S Anupam J. Kulkarni: SC held that....
- S57 of crpc
- Judicial magistrate – not exceed 15 days
- S 167(2) crpc 90/60 days.

Exceptions: 1) an enemy alien

- 2) a person arrested and detained under a preventive detention law.
- **Prevention Detention Laws**
- Preventive is used in contra distinction to the word punitive. It is not punitive but preventive measure.
- While the object of the punitive detention is to punish a person for what he has already done, the object of preventive detention is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it.
- Preventive detention laws -26th February 1950-MISA 1971
- Prevention of blackmarketing & maintenance of supplies of essential commodities Act.
- TADA: Terrorist & Disruptive activities (prevention)Act,1987.

- COFEPOSA: conservation of foreign exchange , prevention of smuggling activities Act,1974
- Necessity of such provision
- USA- UK(only war time)
- In India- normal times also
- **In A.K Goplan V/S State of Madras:** patanjali Shastri , J explaining the necessity of such provision said ‘ the sinister looking feature, so strangely out of place in democratic constitution, which invests personal liberty with the sacrosanctity of a fundamental right, and so incompatible with the promised of its preamble, is doubtless designed to prevent the abuse of freedom by anti- social and subversive elements which might imperil the national welfare of the infant republic.
- **A.K.Roy V/S UOI(NSA)**-Upheld the validity of ordinance
- Detention of persons on certain grounds, as acting in a manner prejudicial to the defence of India, security of India, security of the state,to relations with foreign power.

Court directed:1) the immediately after detention his kith and kin must be informed in writing about his detention and his place of detention.

2)the detenu must be place where he habitually resides unless exceptional circumstance require to detention at some other place.

3) the detenu is entitled to his book and writing material, his own food, visits from friends and relatives

4) he must be kept separate form those convited

5) no treatment of punitive character should be meted out to him and he should be treated according to the civilised norms of human dignity.

- **CONSTITUTIONAL SAFEGUARDS AGAINST PD LAWS**

1) **Review by advisory board**

2) **Communication of grounds of detention to detenu:** Lallubhai Jogibhai patel V/S UOI

Shibban law V/S state of UP: supplied 2 grounds

3) **Detenu's right of representation.** PNJ

- Check against arbitrary & capricious exercise of power.

Exception: general public

20: Right against exploitation: Art 23&24

Article 23 prohibition of Traffic in human beings, begar, forced labour.

- Suppression of immoral traffic in women and girls Act.

Deena V/S UOI: labour taken from the prisoners without payment .

Bandhu mukti Morcha V/S UOI

Dubar Goala V/S UOI: licensed porters

- Compulsory service for public purpose
- **Article 24** prohibition of employment of children in factories etc.

A- 39 obligation of the state to ensure that the health and strength of workers, men & women.

- The employment of children Act
- Child labour (prohibition & regulation Act
- The factories and Mines Act
- Apprentices Act
- Bidi & cigar workers (condition of employment)Act.

21. Right to freedom of religion

India is a secular state - S.R.Bomma V/S UOI

- Secular means developing ,understanding,& respect for different religions.

What is religion?

25(1)(a) freedom of conscience

- 25(1) (b)Freedom to profess, practice & propagate religion
- National Anthem case

N.Aditya V/S Travancore Dewaswom board- non Brahmins can be appointed as pujari in temple.

Ismail Faruqui V/S UOI

Gualm Kasar Ahmadbhai Menon V/S State Municipal corporation

Moulana Mufti Sayeed Mohd. Noorur Rheman Barkariq V/S State of west Bengal – Azan

- **Noise pollution in the name of religion is not allowed**-Church of god(full Gospel) in India V/S KKRMC welfare association
- RESTRICTION ON FREEDOM OF RELIGION

1) Religion religion subject to public order,morality and health

- S35 of police Act, Devadasi system, forced conversion not allowed.
- Re Stainislaus V/S State of MP:MP Dharma Swantantrya adhiniyam, 1968 and the Orissa freedom of religion Act 1967.
- Acharya Jagdishwaranand Avadhuta V/S Commissioner of police, (Anand Marga case)
- Javed V/S Haryana – two children for elective post.

2) Regulation of economic , financial, political and secular activities associated with religious practices.

Mohd.Hanif Quareshi V/s State of Bihar.

3) Social welfare & social reforms: state of Bombay V/S Varasu Bapamali

Reynolds V/S United states: state law made it a criminal offence to marry with another while having a living spouse.

Legal right to enter the temple , but not to compel the open the temple all the time.

Article 26 : Freedom to manage religion affairs-

- 1)To establish & maintain institution for religious & charitable purposes.
- 2)To manage its own affairs in matters of religion
- 3)To own & acquire movable & immovable property
- 4)To administer such property in accordance with law.

Article 27: Freedom from taxes for promotion of any particular religion.

Article 28 – prohibition of religious instruction in state aided institution

- 1) Institution wholly maintained by the state
- 2) Institution recognized by the state
- 3) Institution that are receiving aid out of the state fund
- 4) Institution that are administered by the state but are established under any trust or endowment.

Religious Freedom and Proselytisation: conversion from one opinion ,
creed or party to another. Lily Thomas V/S UOI.

22. Cultural and educational rights: Articles 29 & 30

Article 29(1) Right to conserve language , script or culture – Jagdev singh
sidahanti V/S partap singh Daulta

DAV college, Jullundur v/S state of Punjab

Article 29(2) Right of a citizen to admission to educational institutions- State
of Bombay V/S Bombay education society

The distinction between Article 29(2) and Article 15(1)

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

A.P.Christian Medical educational society V/S Government of AP

In re Kerala education bill

T.M.A.Pai Foundation V/S state of Karnataka

Bal patil V/S UOI

D.A.V.College T & M .Socy V/S State of Maharashtra

Article 30(1) confers two rights on the minorities

- a) The right to establish an educational institution - T.M.A.Pai Foundation
V/S state of Karnataka
- b) The right to administer the institution so established – St.Xavier’s college
V/S state of Gujarat

DIFFERENT FACETS OF THE RIGHT TO ESTABLISH AND ADMINISTER AN INSTITUTION , THE EXPRESSION EMPLOYED IN ARTICLE 30(1) AS FOLLOWS:-

- 1) Right to choose the principal/ Headmaster
- 2) Right to take disciplinary action – Lily Kurian V/S St. Lewwina
Frank Anthony public school case
- 3) Government policy and article 30 – English Medium students parents
association V/S State of Karnataka
- 4) Right of select students for admission – sudharajbhai v/S State of
Gujarat
- 5) Right to impart religious instructions – Associaion of Teachers of A.I
School V/S association of aids of A.I.School
- 6) Right to have a choice of medium instruction – D.A.V, College ,
Bhatinda V/S State of Punjab
- 7) Statutory measures for maintaining educational standards and
excellence in the educational institutions
- 8) No right to collect capitation fee/ Determination of fee structure –
unni krishan’s case
T.M.A.Pai Foundation V/S State of Karnataka
Islamic academy of education V/S State of Karnataka
Modern school V/S UOI
- 9) No right to recognition or affiliation – All saints High school V/S
Government of AP

10) No right to oppress or exploit the teaching staff – Frank

Anthony public school employees' association V/S UOI

Article 30(1-A) Acquisition of property of minority educational institution.

Article 30(2)No discrimination in granting aid to educational institution: 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 minority, whether based on religion or language.

23.Right to Constitutional Remedies

- Article 32 is known as the “spirit of the constitution and exceptionally heart of it” by Dr. Ambedkar. Preeminent Court has included it in fundamental structure regulation. Further, it is clarified that privilege to move to Supreme Court can't be suspended with the exception of generally given by the Constitution. This suggests this privilege suspended amid a national crisis under article 359.
- Article 32 makes the Supreme Court the safeguard and underwriter of the major rights. Further, the capacity to issue writs goes under the original jurisdiction of the Apex Court. This implies an individual may approach SC straightforwardly for a cure as opposed to by appeal.
- Article 32 can be used only to get a remedy for fundamental rights enshrined in Article 12-35. It isn't there for some other legal right for which diverse laws are accessible.

What is WRIT?

A precept in writing, couched in the form of a letter, running in the name of the king, president, or state, issuing from a court of justice, and sealed with its seal, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done.

Constitutional Philosophy of Writ Jurisdiction

An individual whose privilege (Fundamental Right) is encroached by an arbitrary administrative action may approach the Court for a suitable remedy. Article 32(2) of the Constitution of India gives: “The Supreme Court will have the capacity to issue bearings or requests or writs, incorporating writs in the idea of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever might be suitable, for the requirement of any of rights given by this Part.” Article 32 is a basic Right directly under Part – III of the Constitution. Under this Article, the Supreme Court is enabled to loosen up the customary standard of Locus Standi and permit general society to intrigue case in the name of public interest litigation (PIL).

Comparative Analysis of Article 32 & 226

Article 32 isn't to be conjured for encroachment of an individual right of the agreement (contract), nor is to be summoned for unsettling questions which are fit for transfer under other laws. **Article 226(1)** of the Constitution of India, on the other hand says,” Notwithstanding anything in Article 32, every High Court shall have powers, throughout the territories in relation to

which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of **HABEAS CORPUS, MANDAMUS, PROHIBITIONS, QUO WARRANTO AND CERTIORARI**, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”

As is obvious from the uncovered dialect, this Article ensures a person to move the High Court for implementation of the fundamental rights and also for implementation of some other lawful right. Article 226 gives wide powers on the High Courts. It fills in as a major repository of legal capacity to control organization. Its capacity under Article 226 can't be diminished by enactment. In this manner, forces of High Courts gave under Article 226 are more extensive when contrasted with forces presented on the Supreme Court under Article 32 of the Constitution of India.

Types of WRITS

- **Habeas Corpus:** This writ is in the nature of an order calling upon the person who has detained another to produce the latter before the Court, in order to let the Court, know on what ground he has been confined and to set him free if there is no legal justification for the confinement. In **Rudul Sah v. State of Bihar** added a new dimension to judicial activism and raised a set of vital questions, such as, liability of State to compensate for unlawful detention, feasibility of claiming compensation from the State under Article 32 for wrongful deprivation of fundamental rights, propriety of the Supreme Court passing an order for compensation on a habeas corpus petition for enforcing the right to personal liberty.

- **The General Principle:** The principle on which Habeas Corpus function is that a person illegally detained in confinement without legal proceedings is entitled to seek the remedy of habeas corpus.
- **Nature of Writs:** While deciding whether Habeas Corpus writs are civil or criminal in nature, it was held in **Narayan v. Ishwarlal** that the court would rely on the way of the procedures in which the locale has been executed.

How a Writ of Habeas Corpus is filed?

1. An application for habeas corpus can be made by any person on the behalf of the prisoner/detenu as well as the prisoner/detenu himself.
2. Even a letter to the judge mentioning illegalities committed on prisoners in jail can be admitted. In **Sunil Batra v. Delhi Administration.**, a convict had written a letter to one of the Judges of the Supreme Court alleging inhuman torture to a fellow convict. The late justice Krishna Iyer treated this letter as a petition of habeas corpus and passed appropriate orders.
3. Courts can also act [Suo motu](#) in the interests of justice on any information received by it from any quarter/source.

Habeas Corpus is not issued in certain cases

1. Where the person who is detained or against whom the writ is issued is not within the jurisdiction of the Court.
2. To save the release of a person who has been imprisoned by a Court for a criminal charge.
3. To interfere with a proceeding for contempt by a Court of record or by Parliament.

- **Implication in Emergency:** In the Landmark case of **ADM Jabalpur v. Shivakant Shukla** which is also known as the Habeas Corpus case, it was held that the writ of Habeas Corpus cannot be suspended even during the emergency (**Article 359**).
- **Damages:** The Court may also award exemplary damages. In **Bhim Singh v. State of Jammu & Kashmir**, the Hon'ble Apex Court awarded the exemplary damages of Rs.50,000/- (At that time this was a very significant amount).

Notable Cases for Writ of Habeas Corpus:

- In **Kanu Sanyal v. District Magistrate**, while enunciating the real scope of writ of habeas corpus, the Supreme Court opined that while dealing with a petition for writ of habeas corpus, the court may examine the legality of the detention without requiring the person detained to be produced before it.
- In **Nilabati Behera v. State of Orissa**, the Orissa police took away the son of the petitioner for the purposes of interrogation & he could not be traced. During the pendency of the petition, his dead body was found on railway track [The petitioner](#) was awarded compensation of Rs. 1, 50,000.

II.Mandamus: “A writ issued by a court to compel performance of a particular act by lower court or a governmental officer or body, to correct a prior action or failure to act.” It is used for enforcement of various rights of the public or to compel the public statutory authorities to discharge their duties and to act within the bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties.

- **The rule of Locus Standi:** is strictly followed in while issuing writ of mandamus. The petitioner has to prove that he has a right to enforce public duty in his favour. The *mandamus* is “neither a writ of course nor a writ of right but that it will be granted if the duty is in nature of public duty and it especially affects the right of an individual, provided there is no more appropriate remedy.”

The necessary conditions for the issue of the writ of mandamus are:

1.	Error of jurisdiction	= Lack of jurisdiction/ Excess of jurisdiction.
2.	Jurisdictional facts	
3.	Violation of the principles of natural justice	= Principles of Rule against bias and Rule of Audi alterum partem
4.	Error of law apparent on the face of record	—
5.	Abuse of jurisdiction.	—

- **Conditions for Issue of Writ of Mandamus**

1. Their ought to be a legal right of the applicant for the performance of the legal duty.
2. The nature of the duty must be public. In **The Praga Tools Corporation v. C.V. Imanual**, and **Sohanlal v. Union of India**, the Supreme Court stated

that mandamus might under certain circumstances lie against a private individual if it is established that he has colluded with a public authority.

3. On the date of the petition, the right which is sought to be enforced must be subsisting.
4. The writ of Mandamus is not issued for anticipatory injury. But Anybody who is likely to be affected by the order of a public officer is entitled to bring an application for mandamus if the officer acts in contravention of his statutory duty

- **Exceptions & Limitations (Mandamus)**

In India, mandamus will lie not only against officers who are bound to do a public duty but also against the Government itself as Article 226 and 361 provided that appropriate proceedings may be brought against the Government concerned.

Further, Mandamus will not be granted against the following persons:

1. The President or the Governor of a State, for the exercise and performance of the powers and duties of his Office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. In India, it will not lie upon the President and the Governor of a State in their personal capacities.
2. Mandamus does not lie against a private individual or body whether incorporated or not except where the State is in collusion with such private party, in the matter of contravention of any provision of the Constitution or a Statute or a Statutory Instrument.

3. It will not lie against the State legislature to prevent from considering enacting a law alleged to be violative of constitutional provisions.
 4. It will not lie against an inferior or ministerial officer who is bound to obey the orders of his superiors.
- **Inferior Courts:** This writ is also available against inferior Courts or other Judicial bodies when they have refused to exercise their jurisdiction and thus to perform their duty.
 - **Alternate Remedy:** Mandamus is not refused on the ground that there is an adequate alternative remedy where the petitioner complains that his fundamental right is infringed. In **Rashid Ahmad v. Municipal Board** , it was held that in relation to Fundamental Rights the availability of alternative remedy cannot be an absolute bar for the issue of writ though the fact may be taken into consideration.

Hence the writ of mandamus is to protect the interest of the public from the powers given to them to affect the rights and liabilities of the people. This writ makes sure that the power or the duties are not misused by the executive or administration and are duly fulfilled. It safeguards the public from the misuse of authority by the administrative bodies. Thus, Writ of Mandamus is a general remedy whenever justice has been denied to any person.

Landmark Cases for Writ of Mandamus

- The courts are unwilling to issue writ of mandamus against high dignitaries like the President and the Governors. In the case of **S.P. Gupta v. Union of India**, judges were of the view that writ cannot be issued against the

President of India for fixing the number of judges in High Courts and filling vacancies.

- In **C.G. Govindan v. State of Gujarat**, it was refused by the court to issue the writ of mandamus against the governor to approve the fixation of salaries of the court staff by the Chief Justice of High Court under Article 229. Hence, it is submitted that the Governor or the President means the state or the Union and therefore issuance of mandamus cannot take place.

III.Prohibition: A writ of prohibition, also known as a ‘stay order’, is issued to a lower court or a body to stop acting beyond its powers.

- **The Purpose:** The basic purpose is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdiction which it does not possess. Thus, writ of prohibition is available during the pendency of the proceedings and before the order is made.
- **The Principle:** Prohibition is a writ of preventive nature. The principle of this is ‘Prevention is better than cure’.
- **The writ of prohibition can be issued on the following grounds:**

1.	Absence or Excess of jurisdiction
2.	Violation of the principles of natural justice
3.	Unconstitutionality of a Statute
4.	Infraction of Fundamental Rights.

Landmark Case Laws for Writ of Prohibition

- In the case of **East India Commercial Co. Ltd v. Collector of Customs** a writ of prohibition was passed directing an inferior Tribunal prohibiting it from continuing with the proceeding on the ground that the proceeding is without or in excess of jurisdiction or in contradiction with the laws of the land, statutes or otherwise.
- Also, it was held in the case of **Bengal Immunity Co. Ltd** , the Supreme Court pointed out that where an inferior tribunal is shown to have seized jurisdiction which does not belong to it than that consideration is irrelevant and the writ of Prohibition has to be issued as a right.

IV.Certiorari : The writ of certiorari issued to quash a decision after the decision is taken by a lower tribunal while prohibition is issuable before the proceedings are completed. The law has always been, that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine question affecting the rights of subjects and obliged to act judicially.

- **The Purpose:** of the writ of certiorari is not only negative in the sense that it is used to quash an action but it contains affirmative action as well. It is preventive as well as curative in nature. The power of judicial review is not restricted where glaring injustice demands affirmative action.

Ways in Which a Writ of Certiorari is Issued?

It is not issued against purely administrative or ministerial orders and that it can only be issued against judicial or quasi-judicial orders.

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

The conditions necessary for the issue of the writ of certiorari are:

1.	Anybody of persons.
2.	Having legal authority
3.	To determine questions affecting the rights of subjects
4.	Having the duty to act judicially.
5.	Act in excess of legal authority

The grounds on which the writ of certiorari may be issued are:

1.	Error of Jurisdiction	Lack of jurisdiction.
2.	Excess of jurisdiction.	a) Abuse of jurisdiction.
		b) Error of law apparent on the face of the record.
		c) Violation of principles of natural justice.

Landmark Cases On Writ of Certiorari

- In **Naresh S. Mirajkar v. State of Maharashtra**, it was said that High Court's judicial orders are open to being corrected by certiorari and that writ is not available against the High Court.
- In the case of **T.C. Basappa v. T. Nagappa & Anr.**, it was held by the constitution bench that certiorari maybe and is generally granted when a court has acted (i) without jurisdiction or (ii) in excess of its jurisdiction.
- In **Surya Dev Rai v. Ram Chander Rai & Ors.**, the Supreme Court has explained the meaning, ambit and scope of the writ of Certiorari. It was held that Certiorari is always available against inferior courts and not against equal or higher court.
- In **A.K. Kripak v. Union of India**, it was held that the Supreme Court should issue the writ of certiorari to quash the selection list of the Indian

Forest Service on the ground that one of the selected candidates was the ex-officio member of the selection committee.

V.Quo Warranto: The writ of Quo Warranto (by what warrant) is issued to inquire about the legality of a claim by a person or authority to act in a public office, which he or she is not entitled to. The writ of Quo Warranto is a mode of judicial control in the sense that the proceedings review the actions of the administrative authority which appointed the person.

The writ is **issued to the person** ousting him from holding a public post to which he has no right. It is used to try the civil right to a public post. Accordingly, the use of the writ is made in cases of usurpation of a public office and removal of such usurper. Conversely, it protects citizen from being deprived of public office to which he may have a right. A petition for the writ of Quo Warranto **can be filed by any** person though he is not an aggrieved person.

The conditions necessary for the issue of a writ of Quo Warranto are:

1. The office must be public and it must be created by a statute or by the constitution itself. In the case of **Jamalpur Arya Samaj v. Dr D. Ram** , the writ was denied on the ground that writ of quo warranto cannot lie against an office of a private nature. And also, it is necessary that office must be of substantive character.
2. The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another.
3. There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such person to that office.

4. The claim should be asserted on the office by the public servant i.e. respondent.

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

1. The office must be a public nature
2. It must be a substantive nature
3. It must be statutory
4. The holder must be in actual occupation of the office.

Delay is not apply (de dei in deim)

24. Directive Principles of State Policy

- DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. There are various definitions to Directive Principles of State which are given below:
- They are an ‘instrument of instructions’ which are enumerated in the Government of India Act, 1935.
- They seek to establish economic and social democracy in the country.
- DPSPs are ideals which are not legally enforceable by the courts for their violation.
- Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-
 - 1) **Socialistic Principles,- Definition:** They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to: Articles 38,39,39A,41,42,43,43A,47

2) **Gandhian Principles** These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state in Articles 40,43,43B,46,47,48,

3) **Liberal-Intellectual Principles.** These principles reflect the ideology of liberalism. Under various articles, they direct the state in articles: 44,45,48,48A,49,50,51.

Art 36: gives meaning to the word “**State**” which has the same meaning as in Article 12 of the Constitution.

Art 37:undelines the fundamental nature of these principles. It states “ the directive principles shall not be enforceable by any courts, but nevertheless they are fundamental in the governance of the country and it shall be the duty of state to apply these principles in making laws”

Article: 38: Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities

Article 39: Secure citizens:

- a)Right to adequate means of livelihood for all citizens
- b)Equitable distribution of material resources of the community for the common good
- c) Prevention of concentration of wealth and means of production
- d) Equal pay for equal work for men and women
- e) Preservation of the health and strength of workers and children against forcible abuse
- f) Opportunities for the healthy development of children

Article 39- (A)Promote equal justice and free legal aid to the poor.

Article 40 : organisation of village panchayats.

Article 41:the state has to take effective measures for securing the right to work and education, public assistance in case of unemployment, old age, sickness, disablement and in other cases of undeserved want.

Article 42: Make provision for just and humane conditions of work and maternity relief. MATERNITY BENEFIT ACT 1961 & 2017.

Shakunthala V/S State of Karnataka – 4 months to 6 months

Article 43: Secure a living wage, a decent standard of living and social and cultural opportunities for all workers.

Article 43A: state should take steps to secure the participation of workers in the management of undertakings or other organisation (42nd amendment)

Article 43B: enable the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operatives societies (97th amendment 2011)

Article 44: state shall endeavour to secure for the citizens a uniform civil code in the country.

Article 45: early childhood care and education to children below the age of six years.

Article 46: promotion of educational and economic interest of weaker sections

Article 47: Duty to raise the standard of living and improvement of health.

EX: National rural health mission,
National urban health mission,
Mission of Indradhanush.

* 1947- alcohol prohibition : Bihar, Gujarath, Mizoram, Lakshadweep, Nagaland.

Karnataka?

Dry days

Article 48: : organisation of agriculture and animal husbandry -Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

Major agriculture programme:

Macro management of agricultural scheme

Rastriya Krishi Vikas yojana

Kisan credit card scheme,

Prime Minister Krishi sinchayee yojana – per drop more crop.

Animal Husbandry: The National Dairy plan,

Banning of Cow slaughter

Article 48A: protection and improvement of forests and world life

- The wildlife protection Act 1972
- Forest Conservation Act, 1980
- Environmental protection Act, 1986

Despite these legislative measures and awareness programmes the country is yet to wake up from environmental degradation and massive pollution in metropolitan cities.

Article 49: Protection of monuments and places and objects of national importance.

Ancient and Historical monuments and Archaeological sites and Remains (Declaration of National Importance) Act, 1951.

Article 50: Separation of Judiciary from executive

Article 51: Promote international peace and security and maintain just and honourable relations between nations.

Foster respect for international law and treaty obligations.

Encourage settlement of international disputes by arbitration.

Relationship Between Fundamental rights and Directive principles of state policy:

Case study

- 1) **State of Madras V/S Champakan Dorairajan** – Liberal interpretation
- 2) **State of Bihar V/s Kameshwar singh** – Harmonious construction
- 3) **Golak Nath v. State of Punjab** The SC has said that Fundamental rights cannot be diluted, diminished or taken away and then in response to it by bringing the Amendment Act and inserted Article 31-C in Part III of the Constitution. If any law is framed with effect to DPSP and if it violates Article 14, 19 and 21 then the law should not declare as void merely on this ground.

- 4) **Keshvananda Bharathi V/S State of Kerala** – supplement and complement to each other
 - 5) **Unni Krishnan V/S State of A.P** - supplement and complement to each other
 - 6) **Minerva Mills V/S UOI** – Co equal
 - 7) **Olga Tellis v. Bombay Municipal Corporation**, - the DPSP are fundamentals in the governance of the country. So, equal importance should be given to the meaning and concepts of Fundamental Rights.
 - 8) **In Dalmia Cement v. Union of India**, - Preamble, Fundamental rights and DPSP are trinity of the Indian constitution
 - 9) **Air India statutory corporation V/s United Labour Union** – Directive principles now stand at par with fundamental rights.
 - 10) **In Ashok Kumar Thakur v. Union of India**, The SC said that no difference can be made between these two sets of rights. Fundamental Rights are the rights which deal with the Civil and Political Rights whereas DPSP deals with social and economic rights. DPSP are not enforceable in courts but it doesn't mean it is a subordinate
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