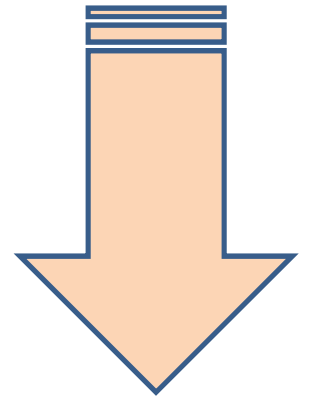


Indian Constitution

MC03 – UNIT IV

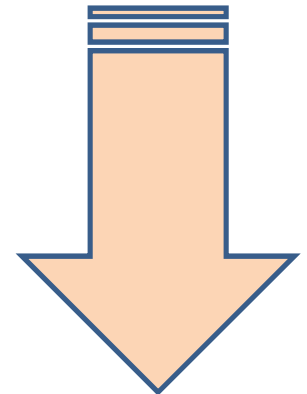
UNIT-IV



UNIT – IV

- ✓ Scheme of Fundamental Right to Equality
- ✓ Scheme of the Fundamental Right to certain Freedom under Article 19
- ✓ Scope of the Right to Life and Personal Liberty under Article 21

Scheme of Fundamental Right to Equality



UNIT-IV

Fundamental Rights:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, **fundamental rights are enforceable by the courts**, subject to certain conditions.

UNIT-IV

1. Right to Equality (Article 14-18)

The right to equality is one of the important fundamental rights of the Indian Constitution that guarantees equal rights for everyone, irrespective of religion, gender, caste, race or place of birth. It ensures equal employment opportunities in the government and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc.

2. Right to Freedom (Article 19-22)

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The freedom right includes many rights such as:

- Freedom of speech
- Freedom of expression
- Freedom of assembly without arms
- Freedom of association
- Freedom to practise any profession
- Freedom to reside in any part of the country

Some of these rights are subject to certain conditions of state security, public morality and decency and friendly relations with foreign countries. This means that the State has the right to impose reasonable restrictions on them.

UNIT-IV

3. Right against Exploitation (Article 23-24)

- This right implies the prohibition of traffic in human beings, *begar*, and other forms of forced labour. It also implies the prohibition of employment of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

4. Right to Freedom of Religion (Article 25-28)

- This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, and establish and maintain religious and charitable institutions.

5. Cultural and Educational Rights (Article 29-30)

- These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

6. Right to Constitutional Remedies (Article 32)

- The Constitution guarantees remedies if citizens' fundamental rights are violated. The government cannot infringe (violate) upon or curb (forcefully stop) anyone's rights. When these rights are violated, the aggrieved (suffered) party can approach the courts. Citizens can even go directly to the [Supreme Court](#) which can issue writs for enforcing fundamental rights.

Scheme of Fundamental Right to Equality

Meaning of Right to Equality

- The **Right to Equality in the Indian Constitution** is a fundamental human right that signifies that all people should be treated equally and without discrimination. This principle is foundational to human rights law and is included in various international treaties and national constitutions around the world. The essence of this right is to ensure that no individual or group is denied societal opportunities or privileges that are available to others based on arbitrary criteria such as race, gender, age, sexual orientation, nationality, religion, or any other status.

Right to Equality in India

- The **Right to Equality** is a Fundamental Right enshrined in the Constitution of India. The detailed provisions related to the Right to Equality contained in **Articles 14 to 18 of the Constitution** form the cornerstone of justice and fairness in society. Together they ensure that everyone is treated equally before the law, given equal opportunities in certain matters, and is not discriminated against on grounds such as religion, race, caste, sex, or place of birth, etc.

Article 14

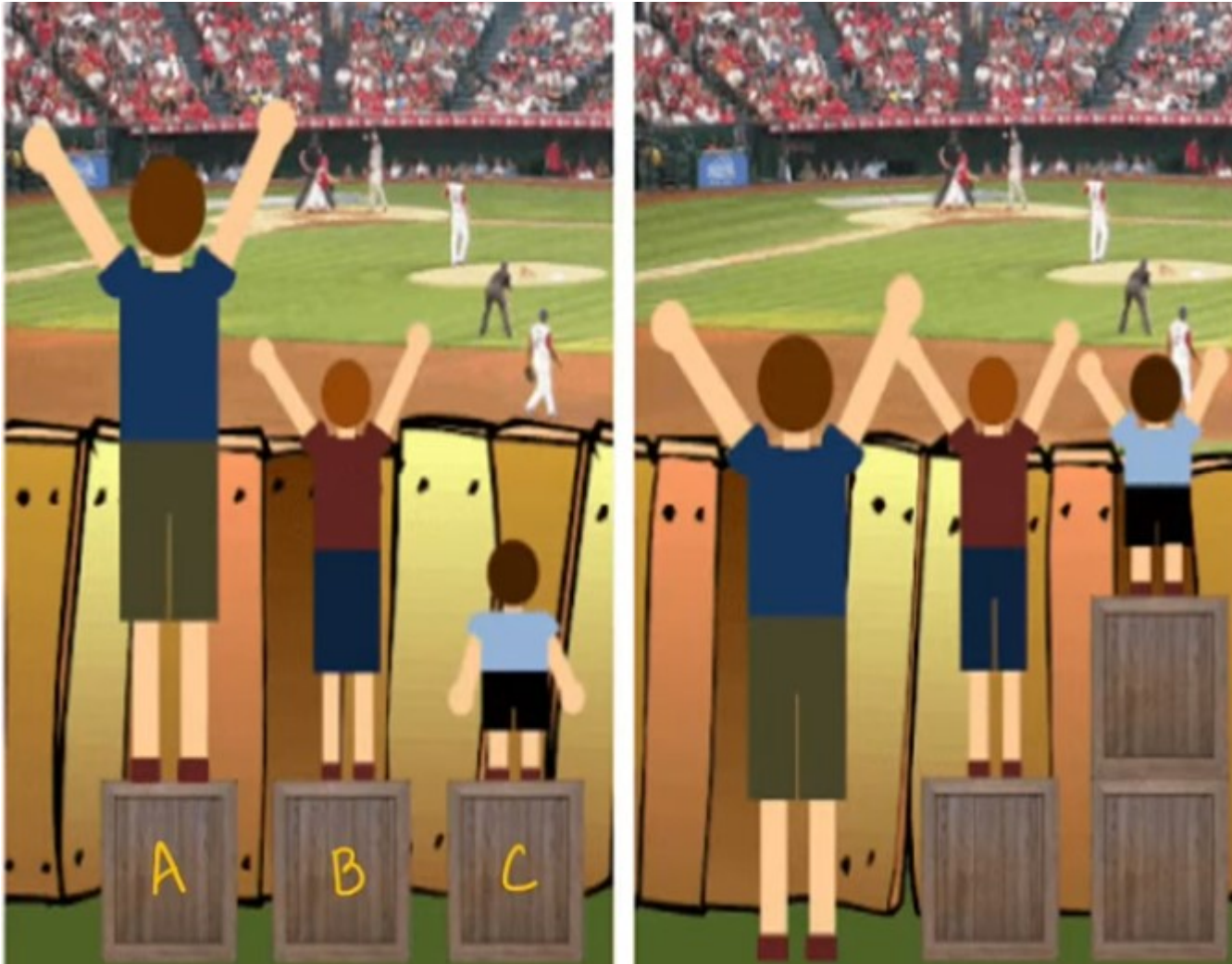
Right to Equality: Provisions Under the Indian Constitution

- **Equality before Law and Equal Protection of Laws (from UK constitution)**
 - This provision mandates that **the State shall not deny to any person (citizen or alien) Equality before the Law or the Equal Protection of the Laws** within the territory of India.
 - This right is extended to citizens, foreigners as well as legal persons such as companies.
- **Equality before Law (from UK, negative)**
- The concept of ‘**Equality before Law**’ is of **British origin**, which connotes-
 - the absence of any special privileges in favor of any person,
 - the equal subjection of all persons to the ordinary law of the land,
 - no person is above the law.
- **Equal Protection of Laws (from US, positive)**
- The concept of ‘**Equal Protection of Laws**’ has been taken from the **American Constitution**. It connotes-
 - equality of treatment under equal circumstances, both in the privileges conferred and liabilities imposed by the laws,
 - the similar application of the same laws to all persons who are similarly situated,
 - *the like should be treated alike without any discrimination*

article 14

Equal Protection of Laws (from US, positive)

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article 14

Equal Protection of Laws (from US, positive)

Equality before law	Equal Protection of laws
1. British origin	1. Borrowed from American Constitution
2. It declares that no one (rich, poor, high, or low) is above the law.	2. It states that similar people should be treated equally.
3. There are no special privileges granted to anyone.	3. Equality of treatment under the same conditions (both in terms of privileges granted and obligations imposed by the laws). As a result, it indicates that the government can take affirmative action (reservation) in favor of society's weaker members.
4. All people are subject to the ordinary law of the nation, which is administered by ordinary law courts.	4. The same laws are applied in the same way to all people who are in the same situation.
5. It is a negative concept since it prohibits the state from discriminating against individuals arbitrarily.	5. It's a beneficial concept because it makes the state responsible for preventing rights violations.

article 14

Equal Protection of Laws (from US, positive)

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UNIT-IV

Exceptions to Equality:

- The rule of equality before the law has certain exceptions. These exceptions are mentioned below:
- As ruled by the Supreme Court, while **Article 14** forbids (wont allow) class legislation, it permits the reasonable classification of persons, objects, and transactions by law. However, the classification should not be arbitrary, artificial, or evasive.
- As per **Article 361**, the President of India and the Governor of States enjoy certain immunities.
- As per **Article 361-A**, no person shall be liable for any proceedings in any court for publication of a true report of any proceedings of Parliament or State Legislature.
- **Article 105** provides that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given in Parliament or any committee thereof. **Article 194** makes a similar provision for members of the State Legislature.
- **Article 31-C** provides that laws made by the state for implementing DPSPs contained in **Article 39 (b) and (c)** cannot be challenged on the grounds of being violative of **Article 14**.
- Immunity to foreign sovereigns (kings), ambassadors, and diplomats from criminal and civil proceedings.
- UNO and its agencies also enjoy diplomatic immunity from certain proceedings.

Article - 15

- Prohibition of Discrimination on Certain Grounds (Article 15)

1. Article 15 provides that:

- The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth.
- No citizen shall be subjected to any disability, liability, restriction, or condition on grounds only of religion, race, case, sex, or place of birth w.r.t. access to public places.

2. Two things are to be noted w.r.t. these provisions:

- The first provision prohibits discrimination **only** by the state, while the second provision prohibits discrimination **both by the state and private individuals**.
- The crucial term here is 'only', which means that discrimination on grounds other than those mentioned in the provisions is not prohibited.

Article - 15

- 3. **There are certain exceptions to this general rule of non-discrimination** as mentioned below: [discrimination examples]
 - The state is authorized to enact special provisions for the benefit of women and children, such as **reserving seats in local bodies or providing free education** for children.
 - The state is empowered to enact special measures for the advancement of socially and educationally backward classes(EBC), as well as scheduled castes(SC) and scheduled tribes(ST) such as **seat reservations or fee concessions in public educational institutions.**
 - The state has the authority to enact special measures for the advancement of socially and educationally backward classes, scheduled castes(SC), or scheduled tribes(ST) in matters of admission to educational institutions, including private ones, whether aided or unaided by the state, **excluding minority educational institutions.**
 - The state is empowered to enact special measures for the advancement of economically weaker sections of society. Additionally, the **state may reserve up to 10% of seats for such sections in educational institutions, excluding minority educational institutions.**
 - A. This reservation is in addition to existing reservations and is determined based on family income and other indicators of economic disadvantage, as notified by the state.

Article - 16

Equality of Opportunity in Public Employment (Article 16)

- This provision provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State.
- The citizens cannot be discriminated against or be ineligible for any employment or office under the State only on the grounds of religion, race, caste, sex, descent, place of birth, or residence.
- There exist **four exceptions** to the overarching(most important) principle of equal opportunity in public employment. These exceptions are as follows:
 - Parliament may prescribe residence as a condition for certain employment positions under the State, Union Territory, Local Authority, or other authority.
 - The State can provide for the reservation of appointments or posts in favor of the backward classes that are inadequately represented in the state services.
 - A law can provide that certain religious institutions or denominations may require officeholders to belong to a particular religion or denomination.
 - The state can reserve up to **10% of appointments for economically weaker sections**, in addition to existing reservations, based on criteria such as **family income or other indicators of economic disadvantage**.
 - A. This reservation has been added by the 103rd Amendment Act of 2019.

Article 17

Abolition of Untouchability (Article 17)

- This **provision has abolished ‘untouchability’** and forbids(refuses) its practice in any form.
- Any act enforcing disability based on untouchability shall be deemed as an offense punishable by law.
- Untouchability refers to **social disabilities** imposed on certain classes of persons because of their birth in certain castes. Hence, it does not cover the social boycott of a few individuals or their exclusions from religious services, etc.
- However, **the term ‘untouchability’ has not been defined in the Constitution or the Protection of Civil Rights Act of 1955 (the act enacted to enforce this provision).**

Article 18

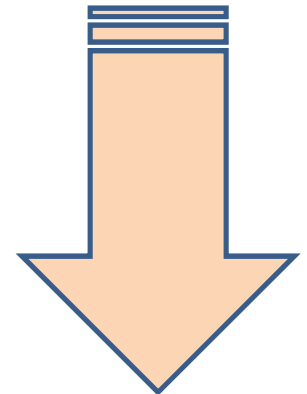
Abolition of Titles (Article 18)

- Article 18 of the Indian Constitution deals with the abolition of titles and distinctions. It consists of four provisions:
 - It prohibits the state from granting any title, except for military or academic distinctions, to any individual, whether a citizen or a foreigner.
 - It prohibits Indian citizens from accepting titles from any foreign state.
 - A foreigner holding any office of profit or trust under the state cannot accept titles from any foreign state without the President's consent.
 - Neither citizens nor foreigners holding any office of profit or trust under the State are allowed to accept any gift, salary, or position from or under any foreign state without the President's consent.

Two things are to be noted w.r.t. these provisions:

- Hereditary titles of nobility e.g. Maharaja, Deewan, etc which were conferred (grant) by colonial states are banned by this Article.
- National Awards e.g. Bharat Ratna, Padma Vibhushan, Padma Bhushan, and Padma Sri are not banned by this Article. However, they should not be used as suffixes or prefixes to the names of awardees. Otherwise, they should forfeit (lose) the awards.

Scheme of the Fundamental Right to certain Freedom under Article 19



Right to Freedom (Article 19 to 22)

- It is the ability to act, speak, think and choose without any external constraints or interference.
- Freedom is essential for the development of one's personality, creativity and potential.
- Freedom is also a prerequisite for democracy, as it enables people to participate in the governance of their country and express their opinions and grievances.
- In India, the right to freedom is a fundamental right guaranteed by the Constitution of India.
- It is added in Part III (Article 19-22) of the Constitution and is considered as the cornerstone of democracy and human dignity.
- The right to freedom includes six freedoms that are subject to reasonable restrictions imposed by law in by central/state, security, public order, morality, etc.
- **6 freedoms under 'right to freedom' are:**
 1. Freedom of speech and expression (article 19(1)(a) and 19(2))
 2. Freedom of assembly (article 19(1)(b) and 19(3))
 3. Freedom of association (article 19(1)(c) and 19(4))
 4. Freedom of movement and residence(article 19(1)(d) , 19(1)(e) and 19(5))
 5. Freedom of profession, occupation, trade and business (article 19(1)(g) and 19(6))

Article 19

- **Freedom of speech and expression:** This freedom allows citizens to express their views, opinions, beliefs and ideas through any medium, such as words, writing, printing, pictures, films, etc. It also includes the freedom of press and media, which play a vital role in informing and educating the public and holding the government accountable. However, this freedom is not absolute and can be restricted on grounds such as defamation, contempt of court, incitement to violence, sedition, etc.
- **Freedom of assembly:** This freedom allows citizens to assemble peacefully without arms for any lawful purpose. It enables people to form **groups, associations, unions, cooperatives, etc.** and participate in social movements, protests, demonstrations, etc. However, this freedom can be restricted on grounds such as public order, security, health, etc.
- **Freedom of association:** This freedom allows citizens to form or join any association or union of their choice. It includes the right **to form political parties, trade unions, NGOs, etc.** and also the right not to join any association or union. However, this freedom can be restricted on grounds such as sovereignty, integrity, morality, etc.
- **Freedom of movement:** This freedom allows citizens to move freely throughout the territory of India. It also includes the right to reside and settle in any part of India. However, this freedom can be restricted on grounds such as public interest, health, security, etc.
- **Freedom of residence:** This freedom allows citizens to reside and settle in any part of India. It also includes the right to own property and carry on any occupation or trade in any part of India. However, this freedom can be restricted on grounds such as public interest, health, security, etc.
- **Freedom of profession:** This freedom allows citizens to **practice any profession or occupation or trade or business of their choice.** It also includes the right to choose one's mode of livelihood and earn a living. However, this freedom can be restricted on grounds such as public interest, health, security, morality, etc.

Article 19 - Freedom of speech and expression: [Article 19(1)(a) and 19(2)]

Freedom of speech and expression: [Article 19(1)(a) and 19(2)]

Article 19(1)(a) guarantees the freedom of speech and expression to all citizens. Freedom of speech and expression is the foundation of a democratic society and is one of the most cherished rights of a citizen. It is the first condition of liberty and plays an important role in forming public opinion.

Meaning of freedom of speech and expression

- Freedom of speech and expression means the right to speak, and the right to express oneself through any medium-by words of mouth, writing, pictures, signs, internet etc.
- Every citizen has a right to hold an opinion and to be able to express it, including the right to receive and impart information.
- The expression 'freedom of speech and expression' has a wide meaning. It includes the freedom of the propagation of ideas, their publication and circulation.

Article 19 - Freedom of speech and expression: [Article 19(1)(a) and 19(2)]

Scope of freedom of speech and expression

- There are various facets of the freedom of speech and expression which have been recognised by the courts. Some of those facets or rights that constitute the freedom of speech and expression are mentioned below:
 1. **Freedom of the press:** Freedom of the press is perhaps the most important freedom under the right to free speech and expression. Freedom of the press does not find an explicit mention in the Constitution. However, it has been indisputably held to be an important aspect of the freedom of speech and expression and is implied under Article 19(1)(a). Freedom of press means:
 - There can be no pre-censorship in the press;
 - No-pre stoppage of publication in newspapers of articles or matters of public importance;
 - Freedom of circulation;
 - No excessive taxes on the press, etc.;
 - However, [restrictions can be imposed in the interests of justice](#), but those restrictions must withstand the test of [Article 19\(2\)](#).
 - In [Bennett Coleman & Co v. Union of India\(1972\)](#), the Hon'ble Supreme Court held that the freedom of the press embodies the right of the people to free speech and expression. It was held that "*Freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in content.*"
 -

Article 19 - Freedom of speech and expression: [Article 19(1)(a) and 19(2)]

- 2. Right to know and to obtain information:** In the *State of U.P. v. Raj Narain (1975)*, the Supreme Court observed that the right to know is derived from the concept of freedom of speech. The Court further held that *the people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries*. It is a basic assumption of a democracy that **every citizen must have a right to know about what the government is doing**.
 - It is only when the public is aware of the acts of government that transparency and accountability in governance can influence. Thus, the right to obtain information and to spread it is an important fundamental right. In India, we have the *Right to Information Act, 2005 (RTI ACT 2005)* which provides for the right of a citizen to secure access to information under the control of public authorities.

- 3. Right to know the antecedents (social background) of the candidates at election:** In *Union of India v. Association For Democratic Reforms (2002)*, the Hon'ble Supreme Court held that the voters have a fundamental right to know the antecedents of the candidate contesting election including his/her criminal past.

- 4. Right to reply:** In *LIC v. Prof. Manubhai D. Shah(1992)*, the Supreme Court ruled that the right to reply, including the right to get that reply published in the same news media in which something was published against or in relation to a citizen, is protected under Article 19(1)(a).

Article 19 - Freedom of speech and expression: [Article 19(1)(a) and 19(2)]

- 5. Right to silence:** Right to speak includes the right to not speak or the right to remain silent. In [*Bijoe Emmanuel v. State of Kerala \(1986\)*](#), the Supreme Court upheld the right to silence of three children who were expelled (officially make a person to leave from school) from school because they refused to sing the National Anthem. The Court held that no person can be compelled (forced) to sing the National Anthem if he has genuine conscientious objections based on his religious belief. Hence, the right to speak and the right to express includes the right not to express and to be silent.

- 6. Right to fly the national flag:** In the case of [*Union of India v. Naveen Jindal \(2004\)*](#), the Supreme Court held that flying the National Flag with respect and dignity is an expression and manifestation of one's allegiance and feelings and sentiments of pride for the nation and therefore, is a fundamental right protected under Article 19(1)(a). However, the flying of the National Flag cannot be for commercial purposes or otherwise and can be subject to reasonable restrictions.

Article 19 - Freedom of speech and expression: [Article 19(1)(a) and 19(2)]

Reasonable restrictions on the right to free speech and expression

- The right to free speech and expression is not an absolute right and is subject to reasonable restrictions. As per Article 19(2), restrictions can be imposed upon the freedom of speech and expression in the interests of:
 - ✓ sovereignty and integrity of India,
 - ✓ the security of the states
 - ✓ friendly relations with foreign states,
 - ✓ public order, decency or morality, or
 - ✓ in relation to contempt(violating court order) of court,
 - ✓ Defamation (abuse attack on a persnoal' s character), or
 - ✓ incitement (encouraging) to an offence.

Article 19 - Freedom of assembly [Article 19(1)(b) and 19(3)]

- The object of holding an assembly or a meeting is the propagation of ideas and to educate the public. Hence, the right to assemble is a necessary corollary (a theorem derived from already proved one) of the right to free speech and expression. [Article 19\(1\)\(b\)](#) provides for the right to assemble peaceably and without arms. This includes the right to **hold public meetings, hunger strikes, and the right to take out processions**. However, the assembly must be peaceful and without arms.
- It is pertinent to note that there is no right to hold an assembly on government premises or private property belonging to others.
- In [Himmat Lal v. Police Commissioner, Bombay \(1972\)](#), the Supreme Court cancelled a rule that empowered the police commissioner to impose a total ban on all public meetings and processions. It was held that the state could only make regulations in aid of the right of assembly of citizens and could impose reasonable restrictions in the interest of public order but no rule could be prescribed prohibiting all meetings or processions altogether.

Reasonable restrictions on right to freedom of assembly

- According to [Clause 3](#) of Article 19, the right to freedom of assembly could be restricted on the following grounds:
- In the interests of the sovereignty and integrity of India, or
- In the interests of public order.

Article 19 - Freedom to form associations, unions or co-operative societies [Article 19(1)(c) and 19(4)]

- Article 19(1)(c) provides for the right to form associations, unions or cooperative societies. An association refers to a group of persons who have come together to achieve a certain objective which may be for the benefit of the members or the welfare of the general public or a scientific, charitable or any other purpose.
- The right to form associations is considered as the lifeblood of democracy, as without such a right, the political parties critical to the functioning of a democracy cannot be formed.
- The right to form associations and unions includes the right to form **companies, societies, trade unions, partnership firms and clubs**, etc. The right is not confined to the mere formation of an association but includes its establishment, administration and functioning as well.

Article 19 - Freedom of assembly [Article 19(1)(b) and 19(3)]

Some of the facets of the right to form associations are as follows:

- The right to form associations means the right to be a member of an association voluntarily. It also includes the right to continue to be or not to continue to be a member of the association.
- In [*Damyanti v. Union of India\(1971\)*](#), the Supreme Court upheld the right of the members of an association to continue the association with its composition as voluntarily agreed upon by the persons forming the association.
- The right to form an association includes the right not to be a member of an association.
- The right under Article 19(1)(c) does not prohibit the state from making reservations or nominating weaker sections into the cooperative societies and their managing committees.
- No prior restraint can be imposed on the right to form an association.
- There is no fundamental right of recognition of the association or union by the government.
- The right to form an association includes no right to achieve the objects of the association.

Reasonable restrictions on right to form association

- According to [Article 19\(4\)](#), reasonable restrictions can be imposed on the right to form associations, unions and co-operative societies, etc. on the following grounds:
 - In the interests of the sovereignty and integrity of India, or
 - In the interests of public order or morality.

Article 19 - Freedom of movement and residence [Article 19(1)(d), 19(1)(e) and 19(5)]

- ✓ [Article 19\(1\)\(d\)](#) and [\(e\)](#) are complementary to each other and confer a right upon the citizens to move freely or/and to reside and settle in any part of the country.

Freedom of movement

- Article 19(1)(d) provides for the right to move freely throughout the territory of India. This means the right to locomotion, i.e., the right to move as per one's own choice. This right includes the right to use roads and highways.
- In [Chambara soy v. Union of India \(2007\)](#), some unscrupulous(not moral) elements had blocked the road due to which the petitioner was delayed in taking his ailing son to the hospital and his son died on arrival at the hospital. The Supreme Court held that the right of the petitioner to move freely under Article 19(1)(d) has been violated due to the road blockage. The Court held that the State is liable to pay the compensation for the death of the petitioner's son due to the inaction on the part of the State authorities in removing the aforesaid blockage.

Freedom of residence

- Article 19(1)(e) states that it is the fundamental right of every citizen to reside and settle in any part of the territory of India.
- In the case of [U.P. Avas Evam Vikas Parishad v. Friends Co-op. Housing Society Ltd.\(1995\)](#), it was held by the Supreme Court that the right to residence under Article 19(1)(e) includes the right to shelter and to construct houses for that purpose.

Article 19 - Freedom of movement and residence [Article 19(1)(d), 19(1)(e) and 19(5)]

Reasonable restrictions on right to freedom of movement and residence

- As per [Article 19\(5\)](#), the right to freedom of movement and residence could be restricted on the following grounds:
- In the interests of the general public, or
- For the protection of the interests of any Scheduled Tribe.

Article 19 - Freedom of profession, occupation, trade or business [Article 19(1)(g) and 19(6)]

- [Article 19\(1\)\(g\)](#) provides for the fundamental right of the citizens to practice any profession or to carry on any occupation, trade or business.

Scope: What's included and what's not

- The right to carry on a business also includes the right to shut down the business.
- In [Excel Wear v. Union of India \(1978\)](#), the Supreme Court declared [Section 25-O](#) of the [Industrial Disputes Act, 1947](#), which required an employer to take prior permission from the government for closure of his industrial undertaking, as unconstitutional and invalid on the ground that it violated Article 19(1)(g).
- There is no right to hold a particular job of one's choice. For example, in the case of closure of an establishment, a man who has lost his job cannot say that his fundamental right to carry on an occupation is violated.
- There is no right to carry on any dangerous activity or any antisocial or criminal activity.
- No one can claim a right to carry on business with the government.
- The right to trade does not include the right of protection from competition in trade. Thus, loss of income on account of competition does not violate the right to trade under Article 19(1)(g).
- The Hon'ble Supreme Court in [Vishaka v. State of Rajasthan \(1997\)](#) has observed that the sexual harassment of working women in workplaces violates the fundamental right under Article 19(1)(g). In this case, comprehensive guidelines and binding directions were issued by the court to prevent the incidents of sexual harassment of women at workplaces in both public and private sectors.

Article 19 - Freedom of profession, occupation, trade or business [Article 19(1)(g) and 19(6)]

Reasonable restrictions on freedom of profession, occupation, trade or business

- [Article 19\(6\)](#) provides that the fundamental right under Article 19(1)(g) can be restricted in the following ways:
- By imposing reasonable restrictions in the interest of the general public.
- By state monopoly: [Sub-clause \(ii\)](#) of Article 19(6) enables the state to make laws for creating state monopolies either partially or completely in respect of any trade or business or industry or service. The right of a citizen to carry on trade is subordinated to the right of the state to create a monopoly in its favour.
- Also, [Sub-clause \(i\)](#) of Article 19(6) empowers the state to lay down, by law, *“the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business”*.
- In [State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamat \(2005\)](#), the Supreme Court has held that the expression ‘in the interest of general public’ in Article 19(6) is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in [Part IV](#) of the Constitution.

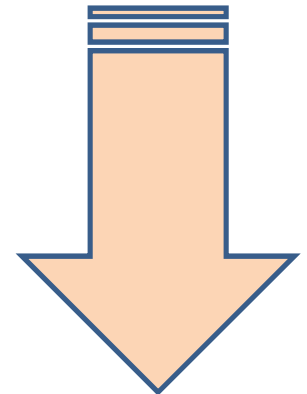
UNIT-IV

Article	Brief description
Article 19	Protection of 6 rights concerning the freedom of: Speech and expression Assembly Association Movement Residence Profession
Article 20	Protection with respect to conviction for offences
Article 21	Right to life and personal liberty
Article 21A	Right to elementary education
Article 22	Protection against arrest and detention in certain cases

Article – 20

- **Article 20** deals with the protection of citizens in respect of conviction for offences. This provides for three types of protection of the individual against the State.
- **Retrospective criminal legislation:** This is also known as ex-post-facto criminal legislation. Under this, a person cannot be convicted for an act that was committed at a time when the act had not been declared by law as an offence.
- This means that criminal legislation cannot be given a retrospective effect.
- This immunity cannot be used against the provision of preventive detention, and also does not cover the trial.
- The law also provides that a person cannot be subject to a punishment greater than what is prescribed by law for the offence committed.
- **Double jeopardy (danger of loss , harm or failure):** This indicates that a person cannot be convicted for the same offence more than once.
- **Prohibition against self-incrimination (self agree of crime):** This implies that no person accused of an offence shall be compelled by the State to bear witness against himself.

Scope of the Right to Life and Personal Liberty under Article 21



Article – 21 (Right to Life and personal liberty)

- [Article 21](#) of the Indian Constitution contains the most important Fundamental Rights available to every person, whether citizen or foreigner.
- Accordingly, it states that no one should be suffered with lack of benefits in his life and [personal liberty](#) except by the procedure specified by the law. Also, the procedure must be just, fair and reasonable.
- Article 21 has two rights:
 - right to life
 - Right to personal liberty
- The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees.
- The [Supreme Court of India](#) has described this right as the ‘**heart of fundamental rights**’.
- The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that **this right has been provided against the State only**. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc.
- Any private individual encroaching on these rights of another individual does not amount to a violation of Article 21. The remedy for the victim, in this case, would be under Article 226 or under general law.

Article - 21

- The right to life is not just about the right to survive. It also entails being able to live a complete life of dignity and meaning.
- The chief goal of Article 21 is that when the right to life or liberty of a person is taken away by the State, it should only be according to the prescribed procedure of law.

Article 19:

- Article 19 of the Constitution of India guarantees six fundamental freedoms to every citizen of India . These freedoms include Freedom of speech and expression
- Freedom to assemble peacefully and without arms
- Freedom to form associations, unions or co-operative societies
- Freedom to move freely throughout the territory of India
- Freedom to reside and settle in any part of India

Interpretation of Article 21

- Judicial intervention has ensured that the scope of Article 21 is not narrow and restricted. It has been widening by several landmark judgements.

A few important cases concerned with Article 21:

1. **AK Gopalan Case (1950):** Until the 1950s, Article 21 had a bit of a narrow scope. In this case, the SC held that the expression 'procedure established by law', the Constitution has embodied the British concept of personal liberty rather than the American 'due process'.

Article - 21

- **Interpretation of Article 21**

A few important cases concerned with Article 21:

1. **AK Gopalan Case (1950):**

A.K Gopalan was a communist leader who was mainly active in Madras Presidency (now called Kerala). He was detained in the jail of Madras, and whenever he came out of the prison, a new detention order was issued against him, and he had to go to jail again. After several years of detention, he challenged his preventive detention. A.K Gopalan argued that this prolonged detention had violated his right to life and [personal liberty](#) guaranteed under [Article 21 of the Indian Constitution](#).

- According to the Preventive Detention Act, 1950, the detainee is not given any reasons for his detention. Therefore, A.K Gopalan argued that this act is unconstitutional as it violates his fundamental rights under [Article 19\(1\)\(d\)](#), that is, the right to freedom of movement and [Article 21](#), that is, the right to life and personal liberty.
- Until the 1950s, Article 21 had a bit of a narrow scope. In this case, the SC held that the expression ‘procedure established by law’, the Constitution has embodied the British concept of personal liberty rather than the American ‘due process’.
- **Maneka Gandhi vs. Union of India Case (1978): (passport seizing)** This case overturned the Gopalan case judgement. Here, the SC said that Articles 19 and 21 are not watertight compartments. The idea of personal liberty in Article 21 has a wide scope including many rights, some of which are embodied under Article 19, thus giving them ‘additional protection’. **The court also held that a law that comes under Article 21 must satisfy the requirements under Article 19 as well.** That means any procedure under law for the deprivation of life or liberty of a person must not be unfair, unreasonable or arbitrary. Read the [Maneka Gandhi case](#) in detail in the linked article.

Article - 21

- **Interpretation of Article 21**

A few important cases concerned with Article 21:

- **Francis Coralie Mullin vs. Union Territory of Delhi (1981):** In this case, the court held that any procedure for the deprivation of life or liberty of a person must be reasonable, fair and just and not arbitrary, whimsical or fanciful.
- **Case:** The petitioner, who is a British national, was arrested and detained in the Central Jail, Tihar under an Order dated 23rd November 1979 issued under **Section 3 of the COFEPOSA Act**^[1]. The Petitioner filed a petition in the Court for a writ of habeas corpus challenging her detention, but by a judgment delivered by the Court on 27th February 1980, her petition was rejected with the result that she continued to remain under detention in the Tihar Central Jail.

Judgement:

- The Court held that the Sub-clause (i) of Clause 3 (b) of COFEPOSA Act which is regulating the right of the petitioner to have an interview with a legal adviser of his choice is violative of Articles 14 and 21 of the Constitution of India and must be held to be unconstitutional and void. The court finds it reasonable that if the Petitioner were to be entitled to have an interview with his legal adviser at any reasonable hour during the day after taking an appointment from the Superintendent of the Jail, which appointment should be given by the Superintendent without any delay.

Article - 21

- **Interpretation of Article 21**
- **Olga Tellis vs. Bombay Municipal Corporation (1985):** This case reiterated the stand taken earlier that any procedure that would deprive a person's fundamental rights should conform to the norms of fair play and justice.
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- **Unni Krishnan vs. State of Andhra Pradesh (1993):** In this case, the SC upheld the expanded interpretation of the right to life.
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UNIT-IV

- The Court gave a list of rights that Article 21 covers based on earlier judgments. Some of them are:
- Right to privacy
- Right to go abroad
- Right to shelter
- Right against solitary confinement (forcefully keeping alone)
- Right to social justice and economic empowerment
- Right against handcuffing
- Right against custodial death
- Right against delayed execution
- Doctors' assistance
- Right against public hanging
- Protection of cultural heritage
- Right to pollution-free water and air
- Right of every child to a full development
- Right to health and medical aid
- Right to education
- Protection of under-trials

UNIT-IV

Right to Life and Suicide

- Section 309 of the Indian Penal Code (IPC) makes attempted suicide a criminal offence which is punishable with imprisonment and fine.
- There were many debates on whether this should continue since mental health experts have argued that people who attempt suicide need adequate counselling and not punishment.
- The Mental Healthcare Act, 2017 was passed by the Parliament and the law came into force in 2018. This Act is meant to provide “for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services.”
- **This law decriminalises (not criiminal) suicide in India.**
- The law states, “*Notwithstanding anything contained in section 309 of the Indian Penal Code, any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code*”.
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UNIT-IV

Arguments against decriminalising suicide:

- No person has a complete autonomy with respect to his/her life. He/she has a duty with respect to his family. In many cases, a person's suicide could lead to a family being destitute.
- Decriminalising suicide might lead to decriminalising the **abetment to suicide**. The counterargument to this point is that suicide alone can be decriminalised by having the necessary amendments or legal provisions to cover abetment to suicide.

Arguments in favour of decriminalising suicide:

- This is the only case where an attempt to a crime is punishable and not the crime itself (because a person becomes beyond the reach of law if suicide is complete).
- Suicide is committed/attempted by people who are depressed and under severe stress. People who attempt suicide need counselling and medical help, not a jail warden's severe authority.
- Decriminalising an attempt to suicide is different from conferring the 'right to die'.
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UNIT-IV

- **Right to Life and Euthanasia**
- There are many debates on whether the right to life also extends to the right to die, especially to die with dignity. Euthanasia is a topic that is frequently seen in the news. Many countries have legalised euthanasia (the Netherlands, Belgium, Colombia, Luxembourg).
- Euthanasia is the practice of intentionally ending life in order to relieve suffering and pain. It is also called ‘mercy killing’.
- There are various types of euthanasia: Passive and Active.
- **Passive Euthanasia:** This is where treatment for the terminally-ill person is withdrawn, i.e., conditions necessary for the continuance of life are withdrawn.
- **Active Euthanasia:** This is where a doctor intentionally intervenes to end someone’s life with the use of lethal substances.
- This is different from **physician-assisted suicide** where the patient himself administers the lethal drugs to himself. In active euthanasia, it is a doctor who administers the drugs.
- **Voluntary euthanasia:** Under this, euthanasia is carried out with the patient’s consent.
- **Non-voluntary euthanasia:** Under this, patients are unable to give consent (coma or severely brain-damaged), and another person takes this decision on behalf of the patient.
- **Involuntary euthanasia:** Euthanasia is done against the will of the patient, and this is considered murder.

UNIT-IV

International Position on Euthanasia:

- In the Netherlands and Belgium, both euthanasia and physician-assisted suicide are legal.
- In Germany, euthanasia is illegal while physician-assisted suicide is legal.
- Both euthanasia and physician-assisted suicide are illegal in India, Australia, Israel, Canada and Italy.
- Euthanasia in India
- Passive euthanasia has been made legal in India.
- In 2018, the SC legalised passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state.
- This decision was made as a part of the verdict in the famous case involving Aruna Shanbaug, who had been living in a vegetative state for more than 4 decades until her death in 2015.
- The court rejected active euthanasia by means of lethal injection. Active euthanasia is illegal in India.
- As there is no law regulating euthanasia in the country, the court stated that its decision becomes the law of the land until the Indian parliament enacts a suitable law.
- Passive euthanasia is legal under strict guidelines.
- For this, patients must give consent through a living will, and should either be in a vegetative state or terminally ill.
- Living Will: It is a legal document in which a person specifies what actions should be taken for their health if they are no longer able to make such decisions for themselves due to illness or incapacity.

UNIT-IV

Euthanasia (painless killing of a patient suffering with painful disorder) in India

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- Passive euthanasia is legal under strict guidelines.
- For this, patients must give consent through a living will, and should either be in a vegetative state or terminally ill.
- **Living Will:** It is a legal document in which a person specifies what actions should be taken for their health if they are no longer able to make such decisions for themselves due to illness or incapacity.
- When the executor (of the living will) becomes terminally ill with no hope of recovery, the doctor will set up a hospital medical board after informing the patient and/or his guardians.

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