

Constitution of India

→ 395 Articles

↳ prime source of
all laws ⊕

→ 22 parts

all public authorities

→ 12 Schedules

Preamble

↳ sets out aims & aspirations of people of India

↳ Declares India to be Sovereign, Socialist, Secular, Democratic & Republic

⊕ Secures to all citizens justice, liberty, equality & fraternity

↳ COI is given by people to themselves

Sovereign

↳ legal sovereignty (vested with people of India)

↳ political sovereignty (distributed among states) < COI
SQ

Democratic

Adult citizens right to vote → Elected Representatives

Democratic Republic

Govt. is of the people, for the people & by the people

COI → federal vs. unitary?

features of federal polity

- Dual govt.
- Distribution of power
- Supremacy of COI
- Independence of Judiciary
- Written COI
- Rigid procedure of amendment

Particular Features of Indian Federalism

- Mode of formation (Centralised COI + GOI Act, 1935)
- Position of States in federation
- Single citizenship
- Residuary power (with Union)

Fundamental Rights

- Right to property

↓ removed

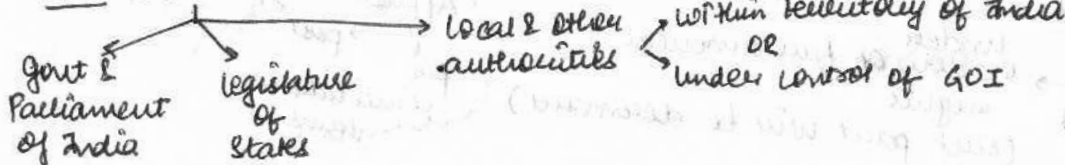
44th COI Amendment (1978)

- No fundamental right is absolute & reasonable restrictions are imposed

• Recommended by Nelson Committee

• Jawahar Lal Nelson moved for protection of certain rights

State includes?



All authorities vested by COI or statute on whom powers are conferred by law ⊕ Not necessary to perform govt. functions

(Electricity Board, Rajasthan Mohanlal)

Electricity Authority included → State ← included University (University of Madras vs. Shanta Bai)

Corporations acting under Agency of govt. (R.D. Shetty vs. International Airport Authority) included → State ← included Statutory & Non Statutory Bodies (funds from govt.)

What is not included in State?

NCERT
Stock Exchange



- BCCI
- (Lee Telefilms vs. Union of India)
- Judiciary (A.R. Antulay vs. R.S. Nayak)

How to test? Instrumentality / Agency hai ya nahi?

(Ajay Hasia vs. Khalid Mujib) (By Supreme Court)

- Entire State Capital Held → Govt.
- Govt. funding to meet almost expenditure
- Corporation enjoys monopoly status ⊕ protected by state
- Extensive of deep and pervasive control of state
- Functions are closely related to govt. functions
- Department of govt. iff → Corporation

Justifiability of fundamental rights

Existing laws

law in force before commencement of COI (pre-constitution laws)

vs. Fundamental Rights

void to the extent inconsistent with fundamental rights

Future laws (After commencement of COI)
State shall not make any law that abridges or take away fundamental rights

Agar bana de aisa law (against fundamental rights)

Doctrine of Severability (A.K. Gopalan vs. State of Madras)

(Act)



Inconsistent with fundamental rights (Severed & declared invalid)

Consistent with fundamental rights (Valid & enforceable)

If separation can not be done, entire law will be declared invalid

Doctrine of Eclipse

(Law)



Under shadow of fundamental rights (Such part will be dormant)

Applies → pre & post constitutional laws

- Jab gharan (eclipse) hat jaega, they will become active again
- jab tak eclipse hai, tab tak dormant

C.P and Beas Motor Vehicles Amendment Act, 1947

Power → Govt. ✓

to regulate, control and take up entire motor transport business

Correct → Applied Doctrine

COI (1950) inconsistent → fundamental rights (freedom to carry business or trade)

Waiver

- ↳ Based on premise "A person is best judge and that he has liberty to waive the enjoyment of such rights"
- ↳ person must have knowledge of rights
- ↳ waiver is voluntary

Bheshwar Nath vs. CIT

It was not open to citizens to waive any of fundamental rights

Charanjit Lal Chowdhary vs. Union of India

Ordinary shareholders may be treated as class

Shropshire Spinning & Weaving Company
(Managed by Directors)

↓
Mismanagement

↓
Closing down of mill

↓
Serious unemployment

CG → Ordinance
Shropshire Weaving & Spinning Company
(Emergency provisions) Act, 1950

After this Act / Ordinance,

CG control

⊕ Shareholders

⊗ Winding up

• Director Appoint
• Assets

⊗ New Director

Shareholders

petition

Infringement of
fundamental
rights

Supreme Court

Legislative (Act)
is valid

Right to Equality (Article 14-18)

Article 14 Equality before law & Equal protection of laws

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

{ Equal protection shall be secured to all persons (in enjoyment of rights) }
without favouritism
without discrimination

- Applies to all citizens ⊕ persons (Natural ⊕ Artificial)

- Right to Equality → basic feature (Indian Sawhney vs. Union of India)

↓ available
corporations also

[Charanjit Lal Chowdhary vs. Union of India]

Legislative Classification

State of Bihar vs. Bihar State 'Plus-2' Lectures Association

- Article 14 guarantees equality before law & equal protection before law
- Equal treatment, provided they are equals & similarly situated (ex. B - Civil Court / Magistrate, CO → ROC / RD / NCLT)
- prohibits discrimination and not classification
 - allowed if $\begin{cases} \text{legal} \\ \text{valid} \\ \text{reasonable} \end{cases}$

valid classification kaise para chalega?

West Bengal vs. Anwar Ali Sarkar

Supreme Court → must satisfy 2 conditions:

(a) Must be founded on Intelligible Differentia

(b) Differentia must have Rational Nexus

- classification on basis of Educational Qualification → valid

Special points on Classification

- Mathematical nicety & perfect equality (Not reqd.)
- May be on diff. basis $\begin{cases} \text{geographical} \\ \text{object} \\ \text{Occupation} \end{cases}$
- Selection by oral interview + written test (valid)
15% marks (extra for interview) → Invalid
- Classification on basis of Higher Qualification for recruitment is valid & non violative of Article -14
(U.P. State Sugar Corporation vs. Sant Raj Singh)

Article 15 Prohibition of Discrimination on grounds of:

access to shops, public restaurants, hotels & places of public entertainment

Religion

Race

Caste

Place of Birth

Sex

with regard to

use of wells, tanks, bathing ghats, roads, places of public resort (Maintained wholly or partially out of state funds) for use of general public

Special provisions can be made for

Socially Backward Class

SC

ST

Educationally Backward class

Chronically weaker section (EWS)

Article 16 Equality of opportunity in terms of public employment

↳ prohibits discrimination

Exceptions

→ parliament can make law for appointment to an office (residence OR essential qualifications) (basis) ↳ govt.
state
UT

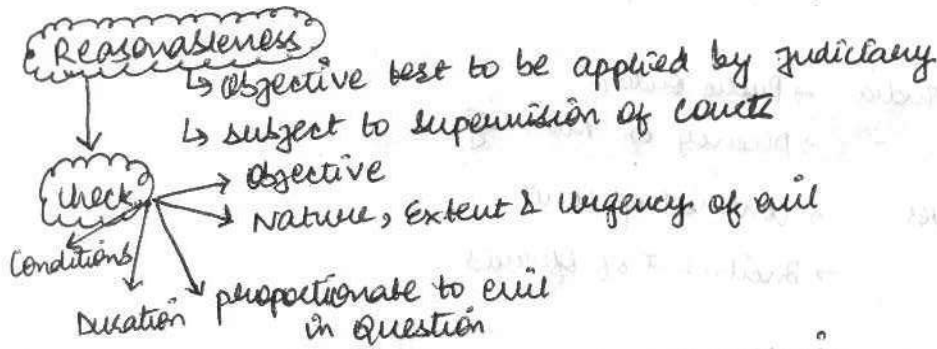
→ Reservation of appointment Reserve SC/ST
OR promotion
OR unfilled vacancies (max-50%)

→ Reservation (particular religion OR community) ↳ for places of religious and denominational purpose (governing body)

→ EWS Reservation (max-10%)

Rights relating to freedom (Article 19-22) ↳ Imposed by law (Not Executive order)

• Restrictions can be imposed on freedom ↳ Reasonable for achieving objective



(a) Right to freedom of speech and expression

↳ very important → serves as basic of democracy

↳ includes right to make good OR bad speech

↳ includes expressing by signs ⊕ freedom of press to publish one's opinion

↳ includes peaceful demonstration, dramatic performance & cinematography

↳ includes right to communicate through media ↳ permit
electronic
audio visual
(wicker association of Bengal vs. Secretary, Ministry of Information & Broadcasting)

↳ Right to express ↳ Mouth
printing OR any other mode ⊕ freedom of press
pictures writing

(Maneka Gandhi vs. Union of India)

Sakal papers vs. Union of India

Govt. Ban

↳ publication

→ violates freedom of speech

⊕ adversely affects circulation of paper

Hamdard Dawakhana vs. Union of India

Advertisements → not covered in freedom of speech & expression
(only for trade purpose)
(Commercial speech)

Baseline

↓
covered under freedom of speech

⊕ restrictions applicable

(Tata press vs. MTNL)

- Right to reply (Agan apke against kisine kuch likh diya to)
- govt. circular compels every person in singing of National Anthem despite his genuine & religious objection (valid)

(Bijoe Emanuel vs. State of Kerala)

- Right to fly national flag freely with respect & dignity
- Dramatic performance included → freedom of speech & expression

Restrictions (permissible)

- | | |
|------------------------------------|--------------------------|
| → Sovereignty & Integrity of India | → Public Order |
| → Security of state | → Decency OR Morality |
| → friendly relations with states | → Contempt of Court |
| → Defamation | → Incitement of Offences |

Sanjay Narayan (Editor), Hindustan vs. High Court of Allahabad

Courts have expressed their views that media can become dangerous, without check & balances

Power of media must be carefully regulated & must reconcile with person's fundamental right to privacy.

(b) Freedom of Assembly

↳ Assembly must be peaceful & without arms
(for religious, social, economic, political) purposes

Restrictions
in interest of

↳ Sovereignty & Integrity of India
↳ Public Order

(c) Freedom of Association

- ↳ freedom to hold meetings
- ↳ Right to form associations / not to form an association

Restrictions

Public Order
Sovereignty & Integrity of India
Morality

Sitharamacharya vs. Senior Deputy Inspector of School
Rule of teachers of elementary school
Compulsory members of Association
(VOI)

(d) Freedom of movement

Right to move freely throughout India (does not extend to travel abroad)

Restrictions → In interest of general public OR
protection of interest of Scheduled Tribe

(e) Freedom of Residence

- ↳ Remove Internal Barriers
- ↳ Right to reside & settle in any part of country ⊕ travel freely

Restrictions (same as above)

(f) Right to acquire, hold & dispose off property (Deleted by 44th Amendment) (1978)

(g) Freedom of trade & occupation

- ↳ All citizens shall have right to practice any profession, occupation, trade & business

State (in interest of general public) impose reasonable restrictions:

professional or technical qualifications necessary
Trade, service or industry
↓ owned / controlled (partial / complete)
State

Chintamani Rao vs. State of MP

State law prohibited → Manufacture of Bidi

Object → to have adequate supply for agricultural purpose
(Bidi manufacture will remain suspended during agricultural season)

Held Prohibition was unreasonable

Assn. of Registration Plates vs. Union of India

State is free to create monopoly in its favour ⊕ this power should not be used as cloak to benefit private people.

Protection in respect of conviction of offences

(i) Protection against ex-post facto laws (Article-20)

No person → shall be convicted except for violation of law
subject to penalty greater
than specified under law

- No person can be punished for an offense with retrospective effect
- ⊕ penalty can not be increased with retrospective effect
- Protection under article 20 is not available under procedural law
(Shiv Bahadur Singh vs. State of U.P.)

(ii) Protection against Double Jeopardy

No person can be prosecuted & punished
↓ more than once
for same offense

Person left after
prosecution, without
being punished
↓
can be prosecuted again

(iii) Protection against self incrimination

No person shall be compelled to be witness against himself.
Person is entitled to this protection?

- (a) Accused of offense &
- (b) Compulsion to be a witness &
- (c) Compulsion should result in giving evidence against himself

All 3 conditions are fulfilled

Provides protection → formally accused
→ Examined as suspect
→ witness
→ one being investigated

(Selvi vs. State of Karnataka)

Protection of life & personal liberty

Article 21 - Right to life and liberty

"No person shall be deprived of his personal life & liberty except as per law"

- Right of a couple to adopt a son is constitutional right
(Philips Alfred Maluin vs. Gonsalves & others) (1999)

• Right to live in freedom from noise pollution is fundamental right
(In re: - Noise pollution)

• Kharak Singh vs. State of U.P.

Question raised → validity of act of police (residential visits) against bad characters & to have surveillance over them.

Held

It is invasion of personal security & right to sleep is violation of personal liberty except by law.

(Valid & allowed → agar law ke hisab se chaloge to)

• Refusal of an application to enter into medical college is not violation of Article 21

(State of A.P. vs. L. Narendramath)

• Right to travel is included in expression "personal liberty" ⊕ passport is essential
Person can not be denied except by law
(Satwant Singh Sawhney vs. A.P.D.)

Procedure established by law?

↳ procedure laid down by statute or procedure prescribed by law

① law justifying interference

② valid law

③ procedure is strictly followed

• Right to life & personal liberty includes right to privacy
(Justice K.S. Puttaswamy vs. Union of India)

• Personal liberty includes:
↳ Right to bail
↳ Right not to be handcuffed
↳ Right to speedy trial
↳ Right to free legal aid

Q. Should proceedings of Supreme Court be live streamed?

Ans. Supreme court proceedings of constitutional importance have impact on public at large ⊕ crucial for dissemination of knowledge to litigant.
Live streaming is important facet of responsive judiciary.
(Swamin Tiwari & Ors vs. Supreme Court of India)

Article 21A Right to Education (86th Amendment) (2002)

↳ provide free & compulsory education to all children (6-14 years)

Environmental & Consumer's Protection Foundation vs. Delhi Administration

↳ Schools must have qualified teachers

State of Tamil Nadu vs. Sivan Sunder

Right of child should not be restricted to free & compulsory education, but extended to quality education & without discrimination

Right to internet becomes part of education → covered under Right to Education & Right to privacy



(Fahima Shameen R-k vs. State of Kerala)

Protection against arrest & detention

Does not apply (Article-22) → Alien enemy (No protection)
person arrested under preventive detention law
other persons

② person arrested Rights → to be informed (grounds of arrest)
→ Right to consult legal practitioner of his choice
→ produced within 24 Hours → Nearest Magistrate
(Excluding time travel)

Preventive Detention?

- Detention of person without trial
- Objective → not to punish
→ prevent person from doing such act
(when person is likely to commit any act)

Safeguards against preventive detention

Ⓚ Detained for max. 3 months

⊕ extend

- In opinion of Advisory Board
- In opinion of parliament → communicate

Person Detained

Ⓚ

Right to be informed

- Time period of detention
- Opportunity of Representation before law