

Period 1 time 09.30 am constitution date 16.9.25

Test

Q. What is Preamble? How is it significant? Is Preamble part of the Constitution?

1. Definition of the Preamble

The Preamble is an introductory statement of the Constitution that sets out its philosophy, objectives, and guiding principles. It reflects the **source of authority** (the people of India), the **nature of the state**, and the **ultimate aims** of the Constitution. It is rightly called the “identity card of the Constitution.”

2. Explanation of Words in the Preamble

The Preamble of the Indian Constitution reads:

“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, Liberty, Equality, and to promote Fraternity...”

- **Sovereign:** India is independent, not subject to any external authority.
 - **Socialist:** Commitment to social and economic justice, reducing inequalities.
 - **Secular:** No state religion; equal respect for all faiths.
 - **Democratic:** Government elected by the people, accountable to them.
 - **Republic:** Head of the state is elected, not hereditary.
 - **Justice (Social, Economic, Political):** Ensures fairness in all spheres of life.
 - **Liberty (Thought, Expression, Belief, Faith, Worship):** Freedom to individuals within legal limits.
 - **Equality:** Equal status and opportunity before the law.
 - **Fraternity:** Promotes brotherhood and unity, ensuring dignity of the individual and unity of the nation.
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3. Is Preamble part of the Constitution? – Case Laws

- **Re Berubari Union Case (1960):** The Supreme Court held that the Preamble is not an enforceable part of the Constitution but only a key to interpretation.
- **Kesavananda Bharati v. State of Kerala (1973):** This landmark judgment overruled Berubari and held that the Preamble **is part of the Constitution**. It embodies the basic structure, which cannot be amended to alter its fundamental features.
- **S.R. Bommai v. Union of India (1994):** The Supreme Court held that the Preamble is the guiding spirit of the Constitution and a yardstick to judge constitutional validity of laws.

Thus, the Preamble is a **part of the Constitution** and has **legal significance** in constitutional interpretation, though it is **not justiciable** (i.e., it cannot be enforced in a court of law independently).

4. Significance of the Preamble

1. **Philosophical Key:** It embodies the ideals of justice, liberty, equality, and fraternity.
 2. **Source of Authority:** Declares that power rests with “We, the people of India.”
 3. **Guiding Spirit:** Assists in interpretation of ambiguous provisions of the Constitution.
 4. **Basic Structure Doctrine:** Ensures that core features like secularism, democracy, and republic cannot be destroyed.
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Conclusion

The Preamble is not merely ornamental; it is the **soul of the Constitution**. While it does not confer enforceable rights, it provides the **guiding principles** and serves as the **touchstone** for judicial interpretation. The Supreme Court has clearly established that the Preamble is **a part of the Constitution** and represents its **basic structure** which cannot be altered.

Great 👍 Here's a **short, exam-friendly version (2–3 pages)** of the same answer. This one is crisp but still covers **definition, words, case laws, and significance** — perfect when you have less time in exam.

Q. What is Preamble? How is it significant? Is Preamble part of the Constitution?

1. Definition

The Preamble is the **introductory part of the Constitution**, stating its ideals, objectives, and guiding principles. It declares that the **sovereignty lies with the people of India** and sets out the aims of justice, liberty, equality, and fraternity. Dr. B.R. Ambedkar called it the **“horoscope of the Constitution.”**

2. Explanation of Words in the Preamble

- **Sovereign:** India is fully independent.
- **Socialist:** Commitment to socio-economic justice.
- **Secular:** Equal respect for all religions.
- **Democratic:** Government by the people.
- **Republic:** Elected head of state, not hereditary.
- **Justice:** Social, economic, and political justice to all.

- **Liberty:** Freedom of thought, expression, faith, and worship.
 - **Equality:** Equal status and opportunity for all.
 - **Fraternity:** Promotes unity and dignity of the individual.
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3. Is Preamble Part of the Constitution? – Case Laws

- **Berubari Union Case (1960):** Preamble not part of the Constitution.
 - **Kesavananda Bharati v. State of Kerala (1973):** Overruled Berubari; held that Preamble is **part of the Constitution** and expresses its basic structure.
 - **S.R. Bommai v. Union of India (1994):** Preamble is the **guiding spirit** in constitutional interpretation.
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4. Significance of the Preamble

1. Declares **source of authority**: “We, the people of India.”
 2. Provides **philosophy**: Justice, Liberty, Equality, Fraternity.
 3. Serves as a **guide for courts** in interpretation.
 4. Reflects the **basic structure** which cannot be destroyed.
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Conclusion

The Preamble is both **philosophical and legal**. It is now firmly settled that the Preamble is **part of the Constitution** and embodies its **basic structure**. Though it is not directly enforceable in courts, it is the **soul and guiding light** of the Constitution.

Q. Article 14 talks about equality. Are there any exceptions to this rule? Support your answer with case references.

1. Introduction

Article 14 of the Constitution of India provides:

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

It embodies the general principle of equality and prohibits discrimination. However, it does **not mean absolute equality**; reasonable classifications and certain exceptions are allowed.

2. Two Concepts in Article 14

1. **Equality before Law:** No one is above the law; all are equal before ordinary law (Rule of Law).

2. **Equal Protection of Laws:** Equal treatment under equal circumstances; likes should be treated alike.
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3. Exceptions to Article 14

1. Reasonable Classification

- The State can classify persons, objects, or transactions for the purpose of legislation, provided:
 - (i) The classification is based on intelligible differentia.
 - (ii) It has a rational nexus with the object of the law.
- **Case Law:** *State of West Bengal v. Anwar Ali Sarkar (1952)* – classification must not be arbitrary.
- **Case Law:** *Ram Krishna Dalmia v. Justice Tendolkar (1958)* – laid down tests of reasonable classification.

2. Special Privileges and Protective Discrimination

- Reservation for socially and educationally backward classes, SCs, STs, women, and children.
- **Case Law:** *Indra Sawhney v. Union of India (1992)* – upheld 27% OBC reservation, subject to the “creamy layer” principle.

3. Legislative Privileges

- Members of Parliament and State Legislatures enjoy certain immunities (Articles 105 & 194).

4. Immunities to the President and Governors

- Under **Article 361**, President and Governors are not answerable to any court for acts done in exercise of their official powers.

5. Foreign Sovereigns and Ambassadors

- Enjoy diplomatic immunity under international law (codified in Indian law).

6. Special Laws for Certain Classes

- e.g., Preventive detention laws, service laws for armed forces, etc., are treated as valid exceptions.
 - **Case Law:** *A.K. Gopalan v. State of Madras (1950)* – preventive detention upheld though subject to Article 21 later.
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4. Judicial Innovations under Article 14

- **E.P. Royappa v. State of Tamil Nadu (1974):** Equality is antithesis of arbitrariness; arbitrariness violates Article 14.

- **Maneka Gandhi v. Union of India (1978):** Article 14, 19, and 21 are interconnected; any law violating fairness is unconstitutional.
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5. Conclusion

Article 14 does not guarantee absolute equality; it guarantees **equality among equals**. Reasonable classification and protective discrimination are permitted to achieve real and substantive equality. The judiciary has consistently held that **arbitrariness is the enemy of equality** and only just, fair, and reasonable classifications are valid exceptions.

Q. Article 14 talks about equality. Are there any exceptions to this rule? Support your answer with case references.

1. Introduction

Article 14 of the Indian Constitution provides that **“the State shall not deny to any person equality before the law or the equal protection of the laws.”**

It ensures the **Rule of Law** and prohibits discrimination, but it does **not mean absolute equality**. Certain exceptions are permitted to achieve substantive justice.

2. Exceptions to Article 14

1. Reasonable Classification

- The State can classify persons or objects if:
 - (i) It is based on **intelligible differentia**, and
 - (ii) It has a **rational nexus** with the law’s objective.
- *Ram Krishna Dalmia v. Justice Tendolkar (1958)*: Laid down tests of reasonable classification.
- *State of West Bengal v. Anwar Ali Sarkar (1952)*: Classification must not be arbitrary.

2. Protective Discrimination (Reservations)

- SCs, STs, OBCs, women, and children can be given special provisions.
- *Indra Sawhney v. Union of India (1992)*: Upheld OBC reservations with “creamy layer” principle.

3. Constitutional Immunities

- **President & Governors** enjoy immunity under Article 361.
- **MPs and MLAs** enjoy privileges under Articles 105 & 194.
- **Foreign ambassadors and sovereigns** enjoy diplomatic immunity.

4. Special Laws for Certain Classes

- Preventive detention, service laws for armed forces, etc.

- *A.K. Gopalan v. State of Madras (1950)*: Preventive detention law upheld.

3. Judicial Expansion

- *E.P. Royappa v. State of Tamil Nadu (1974)*: Arbitrariness violates Article 14.
- *Maneka Gandhi v. Union of India (1978)*: Article 14, 19, and 21 are interconnected; fairness is essential.

4. Conclusion

Article 14 guarantees **equality among equals, not absolute equality**.

Exceptions like reasonable classification, reservations, and immunities are allowed to promote justice and effective governance. Courts have made it clear that **arbitrariness is the enemy of equality**, and only fair, just, and reasonable laws fall within its scope.

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Date 17.9.25 period 1 time 9.35 am

Article 15

Article 15 talks about not discrimination the ground of religion, place, cast, sex and place of birth. Article 15(1) cast a duty on the state government to prohibit discrimination on the above five mention ground. Whereas article 15(2) is a duty impose on the citizen not to discriminate on the ground of religion, place, cast, sex and place of birth.

Article 15(3) empower the state to make a special provision for the protection and welfare of women and children. But article 15(3) is related to article 14 which means that state is not authorized to make law on any subject which is arbitrary and in violation of article 14.

Case young Indian lawyers association vs state of kerla air 2018 (subrimala case) temple

In this case hon'ble supreme court held that prohibition on the entry of women between the age group of 10-50 years is violating of article 15 and article 14.

Because the ban is without inteligible difrencia hence there is not retaional nexus between the two.

Article 14 important

Reasonable classification

Rational nexus

Golden trangle 14-19-21

Article 15(4) was inserted by the first constitution amendment which empower the state to provide reservation for the upliftment of socially and educationally backward classes, s.cast and s. tribes.

Case

s.o.madras vs chempakam deorirajan air 1951

in this case first amendment was challenged.

In this case hon'ble supreme court up held the validity of first constitution amendment is valid as the object is upliftment of the down proddel people. Who have been Harras for centuries. In order to bring them in to the main stream education is the only ways through which this social gap can be reduce.

■ State of Madras v. Champakam Dorairajan (1951)

Facts (तथ्य)

- मद्रास सरकार ने एक **Communal G.O. (Government Order)** जारी किया था, जिसके तहत **शैक्षणिक संस्थानों में प्रवेश (admission in educational institutions)** विभिन्न जातियों और समुदायों के आधार पर आरक्षित (reservation) किया गया था।
- इस आदेश के अनुसार, **ब्रह्मण समुदाय** के लिए बहुत ही सीमित सीटें थीं।
- श्रीमती चम्पकम दोरैराजन (Brahmin woman) को इस आधार पर मेडिकल कॉलेज में प्रवेश नहीं मिला, जबकि उनका मेरिट काफी अच्छा था।
- उन्होंने इसे सुप्रीम कोर्ट में चुनौती दी।

Issue (प्रश्न)

- क्या **जाति/समुदाय के आधार पर आरक्षण (reservation on caste basis)** Fundamental Right **Article 15(1) & Article 29(2)** का उल्लंघन करता है?

Judgment (निर्णय)

- सुप्रीम कोर्ट ने कहा कि –
 - Communal G.O. **असंवैधानिक (Unconstitutional)** है।
 - यह **Article 15(1)** (Equality before law and prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth) का उल्लंघन करता है।
 - **Article 29(2)** (Right of admission in educational institutions maintained by State) का भी उल्लंघन हुआ।
- इसलिए Communal G.O. को **अमान्य (Invalid)** घोषित कर दिया गया।

Significance (महत्त्व)

- इस निर्णय से स्पष्ट हुआ कि **State cannot discriminate only on the basis of caste, religion, or community.**
- लेकिन इसके कारण **सामाजिक न्याय और upliftment of backward classes** की योजनाएँ प्रभावित होने लगीं।

- अनुच्छेद 16(3) संसद को कुछ नौकरियों के लिए निवास संबंधी आवश्यकताएँ लागू करने की अनुमति देता है।
- अनुच्छेद 16(4) पिछड़े वर्गों के लिए आरक्षण का प्रावधान करता है यदि उनका प्रतिनिधित्व अपर्याप्त है।
- अनुच्छेद 16(4ए) एससी और एसटी के लिए पदोन्नति में आरक्षण की अनुमति देता है।
- अनुच्छेद 16(4बी) unfilled आरक्षित सीटों को आगे बढ़ाने का प्रावधान करता है।
- अनुच्छेद 16(6) आर्थिक रूप से कमजोर वर्गों (ईडब्ल्यूएस) के लिए अतिरिक्त 10% आरक्षण (103वें संशोधन द्वारा जोड़ा गया) का प्रावधान करता है।

महत्वपूर्ण पहलू

अनुच्छेद 16 सकारात्मक कार्रवाई की अनुमति देता है और इसका उद्देश्य सामाजिक न्याय और कमजोर वर्गों का एकीकरण है। सुप्रीम कोर्ट ने विभिन्न निर्णयों, जैसे *इंदिरा साहनी मामले*, के माध्यम से आरक्षण नीतियों को परिभाषित किया है, जिसमें 'क्रीमी लेयर' और 50% आरक्षण की सीमा शामिल है।

First case

Balaji vs state of tamil nadu 6 judges bench

- Main contents 1 ceiling limit 50% maximum
- 2 sub classification is valid
 - 3 cast can't be sole criteria.
 - 4 social, educational and economical.

But after that case one important case came that is

Indira swahney vs union of india 1993 9 judges bench

- 1 that the maximum limit of 50% reservation is right but in exceptional circumstances this 50% ceiling limit can be extended.
- 2 Cast can be the sole basis for reservation.
- 3 Only socially and educationally backward people will be eligible for reservation.
- 4 There is nothing like more backward category among the backwards.

For article 15 the important case is Balaji vs state of tamil nadu 6 judges bench and article 16 important case is Indira swahney vs union of India 1993 9 judges bench

*** in the special circumstances the reservation can be extended more than 50% as decided in Balaji vs state of t n and Indira swahney case. That is why in tamil nadu gives 68% reservation to s.c. s.t. etc.

Case law for article 15

M.R.Balaji vs state of tamil nadu air 1986

In this case the question of reservation was based before the hon'ble supreme court where in the supreme court laid down the following principle to be consider while determining the backward classes and reservation.

- 1 the maximum limit has been fix to be 50% for OBC, SC, ST.
- 2 cast can't be the sole criteria for determining the reservation.
- 3 The concept of more backward is valid.
- 4 Not only the social and educational backwardness but economical backwardness should be considered while determining to OBC category.
- 5 But the decision of m.r.bala ji case was reverse in the Indira Sawhney vs union of india 1993. In this case 9 judges bench of the hon'ble supreme court laid down the following guidelines.

A Indira swahney vs union of india 1993 9 judges banch

- 1 that the maximum limit of 50% reservation is right but in exceptional circumstances this 50% cealing limit can be extended.
 - 2 Cast can be the sole basis for reservation.
 - 3 Only socially and educationally backward people will be eligible for reservation.
 - 4 There is nothing like more backward category among the backwards.
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The most relevant clause to your query is **Article 15(5)**, which addresses special provisions for admissions to educational institutions for certain backward classes. "Resident" and "decent" are not among the grounds for discrimination listed in Article 15.

अनुच्छेद 15 में "निवास" (resident) या "वंश" (decent) के आधार पर भेदभाव का कोई उल्लेख नहीं है। अनुच्छेद 15 का पाँचवाँ खंड, जिसे अनुच्छेद 15(5) भी कहते हैं, शैक्षिक संस्थानों में प्रवेश से संबंधित है, जिसमें कुछ पिछड़े वर्गों के लिए विशेष प्रावधान किए गए हैं।

यहाँ अनुच्छेद 15(5) के पाँच मुख्य बिंदु हिंदी में दिए गए हैं:

1. **सामाजिक और शैक्षणिक रूप से पिछड़े वर्गों के लिए प्रावधान:** यह खंड राज्य को नागरिकों के सामाजिक और शैक्षणिक रूप से पिछड़े वर्गों, या अनुसूचित जाति (SC) और अनुसूचित जनजाति (ST) की उन्नति के लिए विशेष प्रावधान करने का अधिकार देता है।
2. **शैक्षणिक संस्थानों में आरक्षण:** अनुच्छेद 15(5) सरकार को शैक्षणिक संस्थानों में प्रवेश के संबंध में पिछड़े वर्गों, SC और ST के लिए सीटें आरक्षित करने का अधिकार देता है।
3. **निजी संस्थानों पर भी लागू:** यह प्रावधान निजी शैक्षणिक संस्थानों (राज्य से सहायता प्राप्त या बिना सहायता प्राप्त दोनों) पर भी लागू होता है।
4. **अल्पसंख्यक संस्थानों के लिए अपवाद:** यह प्रावधान अल्पसंख्यक शैक्षणिक संस्थानों पर लागू नहीं होता है, जिनका जिक्र अनुच्छेद 30(1) में किया गया है।

5. **संविधान में संशोधन करके जोड़ा गया:** अनुच्छेद 15(5) को 93वें संविधान संशोधन अधिनियम, 2005 के माध्यम से भारतीय संविधान में जोड़ा गया था। यह संशोधन शिक्षा के क्षेत्र में वंचित वर्गों को समान अवसर प्रदान करने के लिए लाया गया था।

And

Article 16 talk about the reservation for job only.

***article 14 for everybody

Article 15 for citizen of india only talk about the reservation in education.

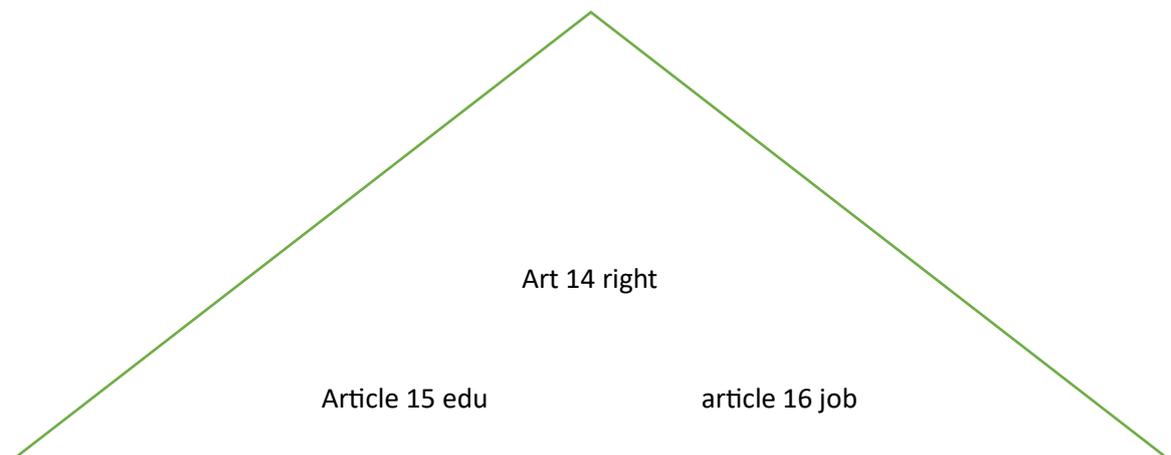
Article 15 for citizen of india only talk about the reservation in job.

Article 15 talk about 5 points for reservation like religion, race, caste, sex, place of birth.

Another way

Article 16 talk about 7 points that is 5 old from article 15 and add new two. Resident and decent. Article 16(2) explicitly states that no citizen shall be discriminated against, or be made ineligible for, any employment or office under the state on grounds *only* of:

- Religion
 - Race
 - Caste
 - Sex
 - Descent
 - Place of birth
 - Residence
-
-



Main point of art 16 sect(3) with ref case t. devadasan vs union of india decided that the backlog vacancy cannot exceed ceiling 50%.

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Case indra swahni **reservation up to 50% maximum.

- No classification according to economical.
- That is why amendment apply 103.

For SC and ST. creamy layer concept will be allow.

** in sc and st. promotion available in job also.

** article 4 & 4(b) add for political reasons only.

Case Mukesh vs s o uttrakhand.

- Court's Ruling: The Supreme Court, referencing Articles 16(4) and 16(4-A) of the Constitution, upheld the state government's discretion in the matter. It ruled that:
 - Not a fundamental right: The right to reservation in promotion is not a fundamental right. Therefore, a citizen cannot ask for a writ of mandamus (a court order) to direct the state to provide reservations.
 - Enabling provisions: Articles 16(4) and 16(4-A) are merely "enabling provisions" that give the state the power to consider providing reservations, but do not compel it to do so.
 - Data not required for denial: The state is not required to collect quantifiable data showing the inadequate representation of a community to justify *not* providing reservations. This data is only necessary if the state chooses to implement reservations and needs to justify its decision.
 - Significance: The judgment reinforced the discretionary power of state governments in implementing reservation policies. It clarified that while the state can provide reservations, it is not obligated to do so, and its decision is subject to judicial review.
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Article 16

Provide reservation in the employment and appointment in the state employment. Article 14, article 15 and article 16 are providing equality in the opportunity in government employments. Which means equality under article 14 provides strength to article 15 and 16. Article 16(3) is an exception where in the state government empowers to provide reservation on the basis of resident in particular state.

With the guidance of "intelligible differentia

And

Reasonable nexus.

Article 16(3) empowers state government to provide reservation on the basis of resident. This reservation is justified under article 14 which means there is intelligible differncia that is reasonable classification and the relational nexus is without arbitrariness.

Case

T devdasan vs u o India.

In this case the hon'ble supreme court held the validity of reservation on resident basis.

Case for article 16(4) is Indira swahny

That is reservation in reservation.

In the case of Mukesh kumar vs state of uttrakhand 2019 is was held by the hon'ble supreme court that it is not obligatory on the state government to provide reservation in promotion which means promotion is not a fundamental right. But own statutory right.

Difference between fundamental right and statutory right. >

In fundamental right violation any one can directly go to hon'ble supreme court, but the violation of statutory right you must to via lower court only.

The State of Punjab v. Davinder Singh (2020)

This five-judge bench decision directly addressed a policy of the State of Punjab regarding reservation, making it a highly relevant constitutional case.

- **Background:** The case concerned the Punjab government's policy of creating sub-classifications within the Scheduled Castes (SC) category to grant "first preference" to certain communities, such as Balmikis and Mazhabi Sikhs, for reservation in services. This policy was challenged and eventually reached the Supreme Court.
 - **Holding:** The five-judge bench referred the matter to a **larger bench** for reconsideration. The bench questioned the **correctness of the earlier 2004 E.V. Chinnaiiah v. State of Andhra Pradesh judgment**, which had held that Scheduled Castes are a homogenous group and cannot be sub-classified.
 - **Significance:** The decision opened the door for a re-evaluation of reservation policy and the state's power to create internal classifications within the SC category. The outcome of the larger bench's hearing will have major implications for reservation policies nationwide.
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Both *ratio decidendi* and *obiter dicta* are Latin legal terms that refer to different parts of a judge's written opinion. **The primary difference is that the *ratio decidendi* is the legally binding and essential reason for the decision**, while *obiter dicta* are non-binding, non-essential remarks made in passing.

Ratio Decidendi "निर्णय का कारण" या "निर्णय का औचित्य"

रेशियो डिसीडेन्डी की मुख्य विशेषताएं

- **बाध्यकारी प्रकृति:** यह निचली अदालतों के लिए बाध्यकारी होता है। इसका मतलब है कि भविष्य में, यदि कोई समान मामला आता है, तो निचली अदालतों को इसी सिद्धांत का पालन करना

होगा। यह *स्टेयर डिसीसिस* (पूर्व-निर्णय का पालन करने का सिद्धांत) के सिद्धांत के तहत काम करता है।

- कानूनी मिसाल (प्रेसीडेंट) का निर्माण: रेशियो डिसीडेन्डी ही वह तत्व है जो किसी न्यायिक निर्णय को एक कानूनी मिसाल बनाता है। इसका रिकॉर्ड विधि रिपोर्टों में किया जाता है।
- ओबिटर डिक्टा से भिन्न: यह *ओबिटर डिक्टा* (आनुषंगिक टिप्पणियों) से अलग होता है, जो कि न्यायाधीश द्वारा दिए गए गैर-बाध्यकारी और अनावश्यक विचार होते हैं।
- **Meaning:** Latin for "the reason for the decision".
- **Definition:** The legal principle or rule upon which a court's judgment is based. It is the essential reasoning that directly led to the court's final decision in a specific case.
- **Authority:** It is legally binding on lower courts in future cases with similar facts, under the doctrine of *stare decisis* (the principle of following legal precedent).
- **Purpose:** The *ratio decidendi* is what creates legal precedent. It ensures consistency and predictability in the law by requiring courts to follow established legal rules.
- **Example:** In the famous case of *Donoghue v Stevenson*, the *ratio decidendi* established the principle that a manufacturer owes a duty of care to the final consumer of their product, even without a direct contract.
- *Obiter dicta* का हिंदी में अर्थ है "आनुषंगिक उक्ति" या "इतरोक्ति"।
- **गैर-बाध्यकारी:** *ओबिटर डिक्टा* कानूनी रूप से बाध्यकारी नहीं होते हैं। वे किसी कानूनी मिसाल (precedent) का हिस्सा नहीं बनते, जिसका मतलब है कि निचली अदालतों को उनका पालन करना अनिवार्य नहीं होता।
- **प्रेरक महत्व:** हालाँकि, इनका प्रेरक महत्व हो सकता है। यदि ये टिप्पणियां किसी उच्च न्यायालय के अनुभवी न्यायाधीश द्वारा दी गई हों, तो भविष्य के मामलों में अन्य न्यायाधीश इन्हें उद्धृत कर सकते हैं और ये कानूनी सोच को प्रभावित कर सकती हैं।
- **उदाहरण:** मान लीजिए कि कोई न्यायाधीश किसी मामले का फैसला करते हुए यह टिप्पणी करता है कि "यदि मामले के तथ्य अलग होते, तो परिणाम भी अलग हो सकता था।" यह टिप्पणी मामले के निर्णय के लिए आवश्यक नहीं है, इसलिए यह *ओबिटर डिक्टा* है।
- **Meaning:** Latin for "**things said by the way**".
- **Definition:** These are remarks, observations, or opinions made by a judge that are not essential to the outcome of the case. They are incidental comments that do not form part of the binding legal reasoning.
- **Authority:** *Obiter dicta* are not legally binding on later courts. However, especially if they come from a higher court, they can have significant persuasive authority and may be used to influence or guide future legal thought.
- **Purpose:** A judge might use *obiter dicta* to provide context, make a broader philosophical point about the law, or suggest how the ruling might have differed under different hypothetical facts.

- **Example:** In the Indian Supreme Court case of *Kesavananda Bharati v. State of Kerala*, the observations on the scope of Parliament's amending power were considered *obiter dicta*. In the case of *Brown v. Board of Education*, the Supreme Court's ruling explicitly applied only to public schools, but the reasoning and broader commentary were interpreted as *obiter dicta* regarding segregation in other public facilities

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-
- ***Vishaka and others v. State of Rajasthan* (1997) Filing the PIL:** In response, several women's organizations and activists filed a PIL in the Supreme Court to seek a remedy for working women against sexual harassment. The petition argued that sexual harassment violated fundamental constitutional rights, including the right to gender equality (Article 14), the right against discrimination (Article 15), and the right to life with dignity (Article 21)
-
-

The legal position on the creamy layer for SCs

- **Initial exclusion:** The Supreme Court, in its landmark 1992 *Indra Sawhney v. Union of India* judgment (the "Mandal Commission case"), introduced the creamy layer concept for OBCs but explicitly excluded SCs and STs. The rationale was that the social and historical discrimination faced by SCs and STs was distinct and persisted regardless of economic status.
- **Shift in promotions:** This position began to shift in 2006 with the *M. Nagaraj v. Union of India* case, where the court indicated that the creamy layer could be applied to SCs and STs in promotion-related reservations.
- **Confirmation in *Jarnail Singh*:** The 2018 *Jarnail Singh v. Lachhmi Narain Gupta* judgment reaffirmed that the creamy layer can be applied to SCs and STs for promotions. The court noted that it was necessary to ensure that reservation benefits reached the "truly disadvantaged" and were not monopolized by the economically advanced within the community.

***** ***** ***** ***** *****

Date 23.09.2025 time 09.30 am period 1

Discuss about article 16(4)(a) which add in the constitution via 77th amendment in 1995.

Case

M Nagaraj vs U O INDIA 2006

The Supreme Court of India's landmark decision in

M. Nagaraj v. Union of India (2006) upheld the constitutional validity of several amendments related to reservations in promotions for Scheduled Castes (SCs) and Scheduled Tribes (STs) in public employment. However, the court also imposed important conditions that states must fulfil to implement such reservations legally.

Main rules established in the judgment

The Supreme Court delivered a nuanced judgment, affirming the state's power to provide reservation in promotions while simultaneously laying down strict conditions to prevent its misuse.

The main rules established by the judgment are:

- **Validity of amendments:** The Court upheld the constitutional validity of the amendments related to reservation in promotions, holding they did not violate the basic structure of the Constitution.
- **Enabling, not mandatory:** The Court clarified that the amendments were "enabling provisions" and did not compel the state to grant reservations in promotions. Instead, they give the state the discretion to do so if it meets certain criteria.
- **Three controlling conditions (the "Nagraj conditions"):** For any state to implement reservation in promotions, it must provide quantifiable data to prove three compelling reasons:
 1. **Backwardness of the class:** The state must demonstrate the continued backwardness of the Scheduled Caste or Scheduled Tribe for which the reservation is being provided.
 2. **Inadequate representation: (quantifiable data)** The state must show that the class is inadequately represented in the specific grade or category of posts for which reservation is being considered.
 3. **Administrative efficiency:** The state must prove that the reservation will not adversely affect the overall administrative efficiency of public services, as per Article 335 of the Constitution.

Reservation in promotion article 16(4)(a)

Article 16 (4) (a) was inserted in the constitution of India by 77th amendment which state that state government may provide reservation in promotion to the schedule cast as well as schedule tribes community by following the three criteria given by hon'ble supreme court in the case of M Nagraj vs U O I AIR (2006) by supreme court.

The hon'ble supreme court laid down the following principle.

A whether that particular cast is really very backwards?

B the quantifiable data regarding the number of people belonging to that particular cast are working in the government organization.

C Efficiency of the work should be maintained after providing reservation in promotion.

For this article the given 2 case is very important.

M Nagrajan vs U O I 2006

AND

Jarnail Singh VS U O I 2020

Got it 👍 You want a **comparison table** for *M. Nagaraj v. Union of India (2006)* and *Jarnail Singh v. Union of India (2020)*.

Here's a clear table with **key points, issues, judgments, and significance**:

Comparison Table

Case	Year	Issue	Judgment	Significance
M. Nagaraj v. Union of India	2006	Challenge to constitutional validity of the 77th, 81st, 82nd, and 85th Amendments, which allowed reservation in promotions for SCs/STs in government jobs.	SC upheld amendments but imposed conditions: the State must prove (i) backwardness of class, (ii) inadequate representation, (iii) administrative efficiency before granting reservation in promotion.	Introduced the “quantifiable data” test ; State’s duty to collect evidence before providing promotion-based reservation.
Jarnail Singh v. Union of India	2020 (follow-up of 2018 ruling)	Re-examined <i>M. Nagaraj</i> principles regarding reservation in promotions. Issue: whether backwardness of SC/STs needs to be proved again by the State .	SC held that States need not prove backwardness of SC/STs (since they are already recognized as backward by Constitution). But, States must still show inadequate representation + administrative efficiency with	Relaxed <i>M. Nagaraj</i> conditions. Made it easier for SC/ST employees to claim promotion reservation, while keeping the balance with efficiency of administration.

Case	Year	Issue	Judgment	Significance
			quantifiable data.	

✔ **Key Takeaway:**

- *M. Nagaraj (2006)* imposed strict conditions on States before granting reservation in promotions.
 - *Jarnail Singh (2020)* diluted those conditions by removing the need to prove backwardness again, but still required quantifiable data for representation and administrative efficiency.
-

In the case of jarnail singh 2020 the hon'ble supreme court held that backwardness class which has already been based by the hon'ble supreme court in the case of

Indra swahny vs U O I AIR 1993

Where in the question of backwardness was raised and the same has been decided in that case.

There for the criteria of backwardness is not relevant and only tow criteria are to be followed that is

- 1 quantifiable data
 - 2 efficiency of the work
-
-

article 17 is talk about the untouchability.

For that in 1985 schedule cast SC AND ST act

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Objective:

- To prevent atrocities and hate crimes against **Scheduled Castes (SCs)** and **Scheduled Tribes (STs)**.
 - To provide **special courts** for speedy trial.
 - To ensure **rehabilitation and protection** of victims and witnesses.
-

Key Provisions:

Section	Provision	Explanation
Sec. 2	Definitions	Defines SC, ST, atrocity, victim, etc.
Sec. 3	Offences of Atrocities	Lists specific offences: social boycotts, humiliation, forcing to eat inedible substances, sexual violence,

Section	Provision	Explanation
		land grabbing, preventing from using public places, etc.
Sec. 4	Negligence by Public Servants	Punishment for government servants who fail to protect SC/ST persons.
Sec. 5–7	Rights of Victims	Ensures protection, free legal aid, and immediate relief.
Sec. 14	Special Courts	Establishment of Special Courts for speedy trial.
Sec. 15A	Rights of Victims & Witnesses	Protection of identity, participation in trial, and safety measures.

Article 19 total 6 point

19(1) (a) provide freedom of speech to individual as well as press.

Article 19 (2) restriction for speech control article 19(1) (a)

Date 24.09.2025 time 09.30 am period 1

Article 19(1)(a)

Freedom of speech and expression

By express > by conduct > by silence

These given 3 cases is very important for article 19 (1) (a)

Case no 1 ***homosexual in ipc it was in 377 ***Navtej Singh Johar v. Union of India***,

The query refers to the landmark case ***Navtej Singh Johar v. Union of India***, which was decided by the Supreme Court of India in 2018, not 2019. The case is famous for decriminalizing consensual homosexual relations between adults.

Key facts of the case

- **The petitioners:** The case was filed by **five petitioners**, including dancer Navtej Singh Johar, journalist Sunil Mehra, chef Ritu Dalmia, hotelier Aman Nath, and businesswoman Ayesha Kapur.
- **The challenge:** The petitioners challenged Section 377 of the Indian Penal Code, a colonial-era law that criminalized "carnal intercourse against the order of nature".
- **Legal arguments:** The petitioners argued that Section 377 violated several fundamental rights guaranteed by the Indian Constitution, including:
 - **Right to equality (Article 14):** By arbitrarily punishing individuals based on their sexual orientation.

- **Right to non-discrimination (Article 15):** By discriminating on the basis of sex and sexual orientation.
- **Right to freedom of expression (Article 19):** By inhibiting the expression of one's sexual identity.
- **Right to life and personal liberty (Article 21):** By violating an individual's dignity, privacy, and autonomy in making personal choices.

The Supreme Court's verdict

On September 6, 2018, the Supreme Court of India issued a unanimous decision in the *Navtej Singh Johar* case.

- The court decriminalized consensual sexual acts between adults of the same sex by reading down Section 377 of the Indian Penal Code.
- The ruling emphasized that discrimination based on sexual orientation is a violation of the right to equality and that individuals have autonomy and self-determination in choosing their partners.
- The judgment overturned the Supreme Court's previous decision in the *Suresh Kumar Koushal v. Naz Foundation* case from 2013, which had upheld Section 377.
- The court also affirmed the right to privacy, stating that the state should not interfere in the private, consensual sexual lives of adults.

Legacy of the judgment

The *Navtej Singh Johar* case is considered a significant victory for **LGBTQ+** rights in India, recognizing sexual orientation as a fundamental aspect of identity and affirming the community's right to equal constitutional protection.

Case no 2 *Bijoe Emmanuel v. State of Kerala*

The 1986 Supreme Court case of *Bijoe Emmanuel v. State of Kerala* is a landmark judgment that affirmed the constitutional rights to freedom of speech, expression, and religion. It is also known as the "National Anthem Case"

Facts of the case

Three children belonging to the Jehovah's Witnesses faith were expelled from their school in Kerala for refusing to sing the National Anthem during the morning assembly. While they stood respectfully, they did not sing based on their religious belief that their faith prohibits them from participating in rituals offering veneration to anything other than their God. The school's action was based on the premise that not singing was disrespectful and breached discipline. The Kerala High Court dismissed the family's petition, upholding the school's decision.

Supreme Court's judgment (August 11, 1986)

The Supreme Court of India, upon appeal, ruled in favor of the Emmanuel family. The court held that the children's right to freedom of speech and expression under Article 19(1)(a) included the right to remain silent, and their respectful silence did not cause any disturbance. **The court also found that compelling them to sing against their sincerely**

held religious beliefs violated their right to freedom of religion under Article 25(1). The court clarified that fundamental duties under Article 51A cannot override fundamental rights. The executive instructions used by the school were deemed to lack statutory basis and could not be used to violate fundamental rights. The Supreme Court directed the school to readmit the children, allowing them to attend without being forced to sing the National Anthem. The court concluded by emphasizing the importance of tolerance in Indian tradition, philosophy, and the constitution.

Case 3

The case of *Sakal Papers (P) Ltd. v. The Union of India (AIR 1962 SC 305)* is a landmark judgment by the Supreme Court of India that addressed the constitutional validity of government regulations on the newspaper industry. The court's decision was a significant victory for the freedom of the press, establishing that restrictions on a newspaper's pricing, pages, or circulation violate the right to freedom of speech and expression.

Facts of the case

In 1956, the Parliament enacted the Newspaper (Price and Page) Act, allowing the government to regulate newspaper prices based on the number of pages. The Daily Newspapers (Price and Page) Order, 1960, further implemented these rules, requiring newspapers with more pages to increase their price and regulating advertising space. Sakal Papers Ltd. challenged these regulations as violations of fundamental rights.

The legal issue

The central legal question was whether the Act and Order **infringed upon the rights** to freedom of speech and expression (Article 19(1)(a)) and the right to carry on any trade or business (Article 19(1)(g)).

** article 19 (1) (a) only for citizen of india.

** article 19 (1) (a) freedom of speech and article 19 (3) restriction

** article 19 (1) (c) freedom of association and article 19 (4) restriction

** article 19 (1) (d)(e) freedom of movement and article 19 (5) restriction

** article 19 (1) (g) freedom of trade

Date 29.09.2025 period 1 time 09.30 am

Work for 28.09.2025

Article 20(1) protection in respect of conviction for offences.

The term **“Ex post facto law”** comes from Latin and literally means **“from a thing done afterward.”**

In legal sense:

👉 An **ex post facto law** is a law that **retroactively changes the legal consequences** of an act that was committed before the law was passed.

This can mean:

1. **Making an act punishable which was not an offence when committed.**
2. **Increasing the punishment** for an act after it was committed.
3. **Changing the rules of evidence** to make conviction easier for an act that took place in the past.

Example:

If in 2025 a government passes a law declaring that smoking in public in 2020 was a crime and punishes people for that past act, this would be an **ex post facto law**.

In India:

- **Article 20(1) of the Indian Constitution** prohibits ex post facto criminal laws.
- That means **no person can be convicted for an offence except for violation of a law in force at the time of the act, and no greater penalty can be imposed than what was applicable at that time.**
- However, **beneficial ex post facto laws** (which reduce punishment) **are allowed.**

*** if the punishment will increase than it will be affected on old accused. But if punishment will decrease it will go to benefit of old accused.

📌 **Article 20(2) – Double Jeopardy**

It states:

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

This embodies the principle of **Double Jeopardy**.

✅ **Meaning**

- A person **cannot be tried and punished twice for the same offence.**
 - Once a court has convicted or acquitted a person, the State cannot put them on trial again for the **same facts and offence.**
-

⚖️ **Related Legal Principles**

1. **Autrefois Convict** – If a person has already been convicted, they cannot be tried again for the same offence.
 2. **Autrefois Acquit** – If a person has been acquitted, they cannot be tried again for the same offence.
-

✘ Limitations in India

- Applies **only to judicial punishment** (not departmental/administrative proceedings).
- Applies **only when the person is prosecuted and punished under criminal law**.
- Doesn't bar prosecution under **two different laws** if the same act amounts to two distinct offences.

📖 Example

- If a person is punished for theft under the Indian Penal Code, they cannot be prosecuted and punished again for the same theft.
- But, if the same act violates two different laws (say, a tax law + IPC), then prosecution under both may be possible.

Case Brief – *Maqbool Hussain v. State of Bombay (1953)*

✅ Facts

- Maqbool Hussain, an Indian citizen, arrived at Bombay airport from abroad.
- He did **not declare gold** he brought with him to customs authorities.
- The gold was seized by Customs officials under the **Sea Customs Act**.
- Later, he was **prosecuted under the Foreign Exchange Regulation Act (FERA)**.
- He claimed that this prosecution violated **Article 20(2) (Double Jeopardy)** since his gold had already been confiscated by Customs.

🔗 Issue

- Does confiscation of gold by Customs amount to "prosecution and punishment" under **Article 20(2)**?

📖 Judgment (Supreme Court)

- **Confiscation by Customs is not a judicial punishment** — it is only a departmental/administrative penalty.
- Hence, later criminal prosecution under FERA is **not barred by Article 20(2)**.
- **Double Jeopardy applies only when a person has been prosecuted and punished in a court of law, not by departmental/administrative authorities.**

📄 Principle Laid Down

- “Prosecution and punishment” in Article 20(2) means proceedings before a judicial tribunal, not departmental or executive authorities.
-
-

📌 Article 20(3) – Protection against Self-Incrimination

It says:

“No person accused of any offence shall be compelled to be a witness against himself.”

✅ Meaning

- A person who is **accused of an offence** cannot be **forced to give testimony** that may prove him guilty.
 - **It gives the right to silence and protects against coercion or torture by authorities.**
-

🏠 Scope

1. **Available only to accused persons** (not to witnesses or general public).
 2. Protection is **against compulsion** — voluntary statements are admissible.
 3. Extends to both **oral testimony** and **written documents** compelled from the accused.
 4. But it **does not protect physical/material evidence** like:
 - Fingerprints
 - Blood samples
 - DNA test
 - Voice samples
-

📖 Example

- If police force an accused person to confess, it violates **Article 20(3)**.
 - But if the police take his **fingerprints** or **blood test**, it does **not** violate Article 20(3).
-

🚩 Landmark Case

- **State of Bombay vs. Kathi Kalu Oghad (1961)** – Supreme Court held that compelling an accused to give fingerprints or handwriting samples is **not** self-incrimination.
-
-

Case Brief – State of Bombay vs. Kathi Kalu Oghad (1961)

✅ Facts

- Several accused persons (including Kathi Kalu Oghad) were being tried for serious offences.
 - The police collected evidence like **fingerprints, handwriting samples, thumb impressions, specimen signatures** from the accused.
 - The accused argued that taking such evidence violated their **fundamental right under Article 20(3)**, i.e., they were being forced to be witnesses against themselves.
-

🔍 Issue

- Does compelling an accused to provide **fingerprints, handwriting, or other physical evidence** amount to *self-incrimination* under **Article 20(3)**?
-

📖 Judgment (Supreme Court)

- **Self-incrimination means conveying personal knowledge of facts** through *oral or written statements* that incriminate the person.
 - Giving **fingerprints, handwriting, signatures, or physical evidence** is not **“to be a witness”** under Article 20(3).
 - Thus, collecting such evidence **does not violate the Constitution**.
-

📄 Principle Laid Down

1. **“To be a witness” = to furnish evidence based on personal knowledge** (statements, confessions).
 2. **Physical evidence (like fingerprints, blood, DNA, handwriting) ≠ self-incrimination.**
 3. Protection under Article 20(3) applies **only to testimony, not to physical/material evidence.**
-

✅ So, **Article 20(1), 20(2), 20(3)** together form the **“Right of Protection in respect of conviction for offences”** ensuring fairness in criminal law.

Important article 21 right of life.

Case

📌 **Case Brief – A.K. Gopalan vs. State of Madras (1950)**

✅ Background

- **A.K. Gopalan, a communist leader, was detained under the Preventive Detention Act, 1950 in Madras (now Tamil Nadu).**
- **He challenged his detention, arguing that it violated his Fundamental Rights under:**
 - **Article 19 (Freedom of movement, speech, etc.)**
 - **Article 21 (Right to life and personal liberty)**

○ **Article 22 (Protection in cases of preventive detention)**

Issues Before the Court

1. Does “**personal liberty**” under Article 21 mean only freedom from physical restraint or a broader concept including freedoms under Article 19?

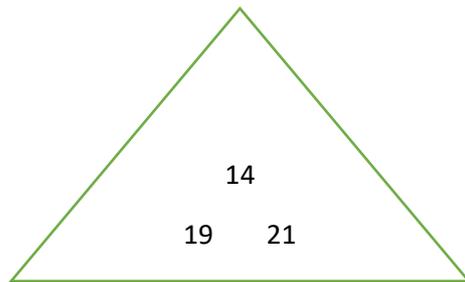
Principle Laid Down

1. **Narrow interpretation of Article 21** – “Procedure established by law” did not include fairness or reasonableness; it only meant a procedure laid down by legislation.
2. **Isolation of Fundamental Rights** – Articles 19, 21, and 22 were treated separately, not interconnected.

Later Developments

- This **narrow view** in *A.K. Gopalan* was **overruled in *Maneka Gandhi vs. Union of India (1978)***.
 - *Maneka Gandhi* held that **Articles 14, 19, and 21 are interlinked**, and “procedure established by law” must be **fair, just, and reasonable**. Now court includes mental restraint also in art 21.
-

The golden tragal rule create in maneka gandi case like that



✦ **Rights included under Article 21**

1. **Right against solitary confinement & inhuman treatment** – *Sunil Batra vs. Delhi Administration (1978)*
2. **Right to free legal aid** – *Hussainara Khatoon vs. State of Bihar (1979)*
3. **Right to speedy trial** – *Hussainara Khatoon case (1979)*
 - Filed as a **Public Interest Litigation (PIL)** by a journalist (Kapila Hingorani) on behalf of undertrial prisoners in Bihar.
 - It was revealed that **thousands of prisoners were languishing in jails for years** awaiting trial — in many cases, the trial period exceeded the maximum punishment for their alleged offence.
 - This was a **serious violation of Fundamental Rights** under Article 21 (Right to life and personal liberty).
 - Right to Speedy Trial** is a **fundamental right** under Article 21.
 - Legal aid** must be provided to poor and indigent accused persons by the State.

□ Detention of prisoners for periods longer than the maximum sentence prescribed for the offence is **unconstitutional**.

4. **Right to live with dignity** – *Francis Coralie Mullin vs. Union Territory of Delhi (1981)*
5. **Right to livelihood** – *Olga Tellis vs. Bombay Municipal Corporation (1985)* Became a foundation for later rulings on **Right to Shelter** (*Chameli Singh vs. State of U.P., 1996*).
6. **Right to shelter** – *Chameli Singh vs. State of U.P. (1996)*
7. **Right to privacy** – case *Kharak Singh vs. State of Uttar Pradesh (1963)* Importantly, the majority held that **Right to Privacy is not a guaranteed fundamental right** under the Constitution. But in *Justice K.S. Puttaswamy vs. Union of India (2017)* **Later Development**
The dissenting view of Justice Subba Rao in Kharak Singh became the foundation for future cases.
Finally, in Justice K.S. Puttaswamy vs. Union of India (2017), the Supreme Court overruled Kharak Singh majority view and declared Right to Privacy as a Fundamental Right under Article 21.
8. **Right to a healthy environment / pollution-free air & water** – Case Brief – *RLEK vs. State of Uttar Pradesh (later Uttarakhand)*

(Also called the **Dehradun Quarrying Case**)

RLEK, an NGO in Dehradun, filed a PIL in the Supreme Court during the 1980s.

Issue: **Limestone mining in the Mussoorie-Dehradun belt** was causing:

Environmental degradation, Deforestation and soil erosion, Water shortages, Health problems in nearby villages. Judgment Directed the government to take steps for **reforestation and ecological balance. (this is the First environmental PIL in India.)**

M.C. Mehta cases (taj mahal case) □ **Industries in TTZ must switch to cleaner fuels like Compressed Natural Gas (CNG) instead of coke/coal.** □ **Industries failing to do so must relocate outside the TTZ.**
9. **Right to education (up to 14 years)** – *Unni Krishnan vs. State of A.P. (1993)* → later inserted as **Article 21-A** by 86th Amendment (2002).
10. **Right to marry and family life** – *Iata Singh vs. State of U.P. (2006)*.
11. **Right to die with dignity (passive euthanasia)** – *Common Cause vs. Union of India (2018)*.
12. **Right to travel abroad** – *Satwant Singh Sawhney vs. D. Ramarathnam (1967)*.
13. **Right to reputation** – *Subramanian Swamy vs. Union of India (2016)* (defamation law upheld).
14. **Right to health and medical care** – *Parmanand Katara vs. Union of India (1989)*.
15. **Right to emergency medical aid** – same case, hospitals must treat accident victims.
16. **Right to fair trial and free legal representation** – *Maneka Gandhi (1978)* + later cases.

17. **Right against handcuffing and bar fetters** – *Prem Shankar Shukla vs. Delhi Administration (1980)*.
 18. **Right to compensation for wrongful arrest or death in custody** – *Rudal Shah vs. State of Bihar (1983)*.
 19. **Right to information** (later separately legislated in RTI Act, 2005 but rooted in Article 21 + 19).
 20. **Right to sleep peacefully** – *Ramlila Maidan Incident case (2012)*.
-
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Date 30-09-2025 time 09.30 am period 1

** Hussainara Khatoon vs u o I (bihar) case pil for right of speedy trial.

Supreme Court's decision and impact

- **The Supreme Court was shocked by the inhuman conditions** and injustice faced by the prisoners. It observed that a speedy trial is an essential part of the fundamental right to life and personal liberty under Article 21 of the Indian Constitution.
 - The court passed multiple orders, directing the immediate release of thousands of prisoners who had been held for longer than the potential maximum sentence. The decision ultimately led to the **release of over 40,000 undertrial prisoners across India**.
 - This landmark judgment had several key implications for the Indian justice system:
 - **Right to a speedy trial:** It definitively established the right to a speedy trial as a fundamental constitutional right.
 - **Right to free legal aid:** The court emphasized that the state has a constitutional obligation to provide free legal aid to impoverished prisoners, ensuring that lack of money does not prevent access to justice.
 - **Expansion of PIL:** The case played a pivotal role in strengthening the concept of Public Interest Litigation in India, allowing citizens to bring matters of public importance before the courts.
 - **Systemic reforms:** It prompted judicial and government scrutiny of systemic delays and called for reforms in the criminal justice system.
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Article 22

Clause 1 and 2 provides protection against the preventive detention to the persons who are arrested under the ordinary law.

- 1 right to be inform of the ground of the arrest.
- 2 Right to concern lawyer of his choice.
- 3 Right to be produce before the magistrate within 24 hours.
- 4 No detention beyond 24 hours except by the order of magistrate. Case (d.k.basu vs w.bangal) 1997 The landmark case of **D.K. Basu vs. State of West Bengal (1997)** was a Public Interest Litigation (PIL) that led to the Supreme Court of India establishing mandatory guidelines for police conduct during arrest and detention. The case was a

direct response to increasing incidents of **custodial violence and deaths in police lock-ups** across the country.

Article 22(3) exceptions

Provides exception to clause (1)(2) of article 22. It states that the protection under clause (1)(2) are not available.

- 1 Enemy alien.
- 2 A person detained under preventive detention laws.
TADA, MOCA, NSA. ETC.

Article 22(4)(7) preventive detention.

Preventive Detention and Advisory Board

The Constitution of India provides for **preventive detention**, under which a person can be detained in anticipation of a potential threat to public order or national security, even before committing an offense.

A person arrested under preventive detention laws must be placed before an **Advisory Board**, consisting of judges of a High Court, within **three months** of detention. The Advisory Board will examine the grounds of detention and decide whether there is sufficient cause to justify its continuation.

- If the Board concludes that the detention is justified, the person may be detained **beyond the initial three-month period** (up to the maximum prescribed by law).
- If the Board finds no sufficient cause, the detainee must be released immediately.

Thus, the safeguard of judicial review by the Advisory Board ensures a balance between state security and individual liberty.

Case The landmark 1982 Supreme Court case **A.K. Roy vs. Union of India** addressed the constitutionality of the National Security Act (NSA), 1980, and the validity of the executive's power to issue ordinances under Article 123 of the Constitution. The court upheld the legality of both the NSA and the ordinance-making power, finding them to be valid under the Constitution.

In this case NSA challenged.

The hon'ble supreme court held that constitution validity of NSA and held that a person detained under the preventive act are not entitled of any right provided under article 22(1)(2).

Case for article 22(1)(2).

Joginder Singh vs State of Uttar Pradesh 1994.

The 1994 Supreme Court case,

Joginder Kumar vs. State of Uttar Pradesh, established a crucial precedent regarding the powers of arrest and the rights of an arrested person. The court ruled that an arrest cannot be made merely

because it is lawful to do so and stressed that police officers must have a reasonable justification before depriving an individual of their liberty.

Facts of the case

- Joginder Kumar, a young lawyer, was called to the office of the Senior Superintendent of Police (SSP) in Ghaziabad for an inquiry in an unspecified case.
- He appeared at the police station with his brothers, but was detained by the police.
- Despite repeated inquiries, he was held in illegal police custody for five days without being produced before a magistrate or being informed of the grounds for his arrest.
- Fearing for his safety, his family filed a habeas corpus petition with the Supreme Court, leading the court to take up the matter.

The Latin term habeas corpus means "you may have the body," referring to the court's command to the detaining authority to produce the person and justify their confinement.
