

## Annex II

### 1. EQUALITY RIGHTS (ARTICLES 14–18)

1.1 Article 14 of the Constitution of India reads as under:

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

1.2 The said Article is clearly in two parts – while it commands the State not to deny to any person ‘equality before law’, it also commands the State not to deny the ‘equal protection of the laws’. Equality before law prohibits discrimination. It is a negative concept. The concept of ‘equal protection of the laws’ requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally

Article 15 secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them. However, this Article does not prevent the State from making any special provisions for women or children. Further, it also allows the State to extend special provisions for socially and economically backward classes for their advancement. It applies to the Scheduled Castes (SC) and Scheduled Tribes (ST) as well.

Article 16 assures equality of opportunity in matters of public employment and prevents the State from any sort of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. This Article also provides the autonomy to the State to grant special provisions for the backward classes, under-represented States, SC & ST for posts under the State. Local candidates may also be given preference in certain posts. Reservation of posts for people of a certain religion or denomination in a religious or denominational institution will not be deemed illegal.

1.3 Articles 14, 15 and 16 form part of a scheme of the Constitutional Right to Equality. Article 15 and 16 are incidents of guarantees of Equality, and give effect to Article 14. However, initially, Articles 15(4) and 16(4) were considered *exceptions* to Articles 15(1) and 16(1).

1.4 The Hon’ble Supreme Court, in **G.M. Southern Railways v. Rangachari, AIR 1962 SC 36** held Article 15(4) of the Constitution of India to be an exception to Article 15(1). The relevant portion is reproduced hereunder:

“Article 15(4) which provides, inter alia, for an exception to the prohibition of discrimination on grounds specified in Article 15(1) lays down that nothing contained in the said Article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes”

1.5 It was further held that Article 16(4) is an exception to Article 16(1):

“I have already said that it is implicit in the Article that reservation cannot be of all appointments or even of a majority of them, for that would completely destroy the fundamental right enshrined in Article 16(1) to which Article 16(4) is in the nature of a proviso or an exception or at any rate make it practically illusory.”

1.6 In **M.R. Balaji v. State of Mysore, AIR 1963 SC 649**, this view was followed, and it was held that:

“Thus, there is no doubt that Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2).”

1.7 This view, that Articles 15(4) and 16(4) were exceptions to Articles 15(1) and 16(1), was again reiterated in **Triloki Nath v. State of Jammu and Kashmir**, AIR 1969 SC 1, and in **State of A.P. v. U.S.V. Balram**, (1972) 1 SCC 660.

1.8 The majority of a 7-Judge Bench of the Hon'ble Supreme Court, in **State of Kerala v. N.M. Thomas**, (1976) 2 SCC 310, introduced a change in the concept of equality. It held that Articles 14, 15, and 16 are all equality rights, and that the scheme of equality sought to achieve real equality. It was held that Articles 15(4) and Article 16(4) are not exceptions to Articles 15(1) and 16(1) respectively. The relevant portions of the majority judgments are reproduced hereunder:

**Ray, C.J.**

37. Article 16(4) clarifies and explains that classification on the basis of backwardness does not fall within Article 16(2) and is legitimate for the purposes of Article 16(1). If preference shall be given to a particular under-represented community other than a backward class or under-represented State in an all-India service such a rule will contravene Article 16(2). A similar rule giving preference to an under-represented backward community is valid and will not contravene Articles 14, 16(1) and 16(2). Article 16(4) removes any doubt in this respect.

**Mathew, J**

78. I agree that Article 16(4) is capable of being interpreted as an exception to Article 16(1) if the equality of opportunity visualized in Article 16(1) is a sterile one, geared to the concept of numerical equality which takes no account of the social, economic, educational background of the members of Scheduled Castes and scheduled tribes. If equality of opportunity guaranteed under Article 16(1) means effective material equality, then Article 16(4) is not an exception to Article 16(1). It is only an emphatic way of putting the extent to which equality of opportunity could be carried viz., even up to the point of making reservation.

**Krishna Iyer, J**

“136. The next hurdle in the appellant's path relates to Article 16(4). To my mind, this sub-article serves not as an exception but as an emphatic statement, one mode of reconciling the claims of backward people and the opportunity for free competition the forward sections are ordinarily entitled to...

**Fazal Ali, J**

184. ... Clause (4) of Article 16 of the Constitution cannot be read in isolation but has to be read as part and parcel of Article 16(1) and (2).

...That is to say clause (4) of Article 16 is not an exception to Article 14 in the sense that whatever classification can be made can be done only through clause (4) of Article 16. Clause (4) of Article 16, however, is an explanation containing an exhaustive and exclusive provision regarding reservation which is one of the forms of classification.

...It is true that there are some authorities of this Court that clause (4) is an exception to Article 16(1) but with due respect I am not in a position to subscribe to this view for the reasons that I shall give hereafter.

1.9 A 9-Judge Bench of the Hon'ble Supreme Court settled this issue in **Indra Sawhney v. Union of India**, 1992 (Supp) 3 SCC 217, where the majority upheld the principle laid down in **Thomas'** case that Articles 15(4) and 16(4) were not exceptions to Articles 15(1) and 16(1), but were an emphatic statement of equality.

1.10 Therefore, equality, as guaranteed in our Constitution, not only conceives of providing formal equality but also to provide for real and absolute equality. Articles 14 and 15(1) enable and contemplate classification to achieve the Constitutional Objective of real equality. Articles 15(4) and 16(4) flow out of Articles 15(1) and 16(1) respectively, and can never be considered as exceptions to Article 15(1) and Article 16(1).

1.11 Once this is established, that Article 15(4) and 16(4) are not exceptions to the mandate of equality but are concrete measures to bring about the mandate of equality enshrined in Article 14, the effect of this is that the State is obliged to remove inequalities and backwardness. This obligation of the State has its source in the mandate of equality itself under Article 14.

1.12 In **Thomas'** case, it was held that Government has an *affirmative duty* to eliminate inequalities and to provide opportunities for the exercise of human rights and claims Fundamental rights as enacted in Part III of the Constitution are, by and large, essentially negative in character. In **Indira Sawhney's** case, Sawant, J concurring with the majority observed that to bring about equality between the unequals, it was necessary to adopt *positive measures* to abolish inequality. The equalising measures would have to use the same tools by which inequality was introduced and perpetuated. Otherwise, equalisation will not be of the unequals. These equalising measures would be validated by Article 14 which guarantees equality before law.

1.13 **Article 15** is an instance and particular application of the right of equality provided for in Article 14. While Article 14 guarantees the general right, Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. (*Dasaratha v. State of A.P.*, AIR 1961 SC 564).

1.14 Therefore, the equality contemplated by Article 14 and other cognate Articles like 15(1), 16(1), 29(2), and 38(2) are secured not only by treating equals equally, but also by treating un-equals unequally. This empowers positive discrimination in favour of the disadvantaged, particularly the SCs and STs.

1.15 In **E.V. Chinnaiah v. State of A.P.**, (2005) 1 SCC 394, it was held that a legislation may not be amenable to challenge on the ground of violation of Article 14 if its intention is to give effect to Articles 15 and 16 or when the differentiation is not unreasonable or arbitrary.

1.16 Articles 15 and 16 prohibit discriminatory treatment, but not preferential treatment of women, which is a positive measure in their favour. Affirmative action including by way of reservation is enabled by the equality clause in the Constitution.

1.17 In *Preeti Srivastava (Dr) v. State of M.P.*, (1999) 7 SCC 120, it was observed as under:

**“12.** Article 15(4), which was added by the Constitution First Amendment of 1951, enables the State to make special provisions for the advancement, inter alia, of Scheduled Castes and Scheduled Tribes, notwithstanding Articles 15(1) and 29(2). The wording of Article 15(4) is similar to that of Article 15(3). Article 15(3) was there from the inception. It enables special provisions being made for women and children notwithstanding Article 15(1) which imposes the mandate of non-discrimination on the ground (among others) of sex. This was envisaged as a method of protective discrimination. This same protective discrimination was extended by Article 15(4) to (among others) Scheduled Castes and Scheduled Tribes. **As a result of the combined operation of these articles, an array of programmes of compensatory or protective discrimination have been pursued by the various States and the Union Government...**”

**13. Since every such policy makes a departure from the equality norm, though in a permissible manner, for the benefit of the backward, it has to be designed and worked in a manner conducive to the ultimate building up of an egalitarian non-discriminating society. That is its final constitutional justification.**

Therefore, programmes and policies of compensatory discrimination under Article 15(4) have to be designed and pursued to achieve this ultimate national interest. At the same time, the programmes and policies cannot be unreasonable or arbitrary, nor can they be executed in a manner which undermines other vital public interests or the general good of all. All public policies, therefore, in this area have to be tested on the anvil of reasonableness and ultimate public good. In the case of Article 16(4) the Constitution-makers explicitly spelt out in Article 335 one such public good which cannot be sacrificed, namely, the necessity of maintaining efficiency in administration. Article 15(4) also must be used and policies under it framed in a reasonable manner consistently with the ultimate public interests.

1.18 It has been held, in *Govt. of A.P. v. P.B. Vijayakumar*, (1995) 4 SCC 520, that:

**8.** What then is meant by “any special provision for women” in Article 15(3)? This “**special provision**”, which the State may make to improve women's participation in all activities under the supervision and control of the State **can be in the form of either affirmative action or reservation.**

1.19 In the **Thomas** case, it was held:

**74.** The concept of equality of opportunity in matters of employment is wide enough to include within it compensatory measures to put the members of the Scheduled Castes and scheduled tribes on par with the members of other communities which would enable them to get their share of representation in public service. How can any member of the so-called forward communities complain of a compensatory measure made by the Government to ensure the members of Scheduled Castes and scheduled tribes their due share of representation in public services?

**75.** It is said that Article 16(4) specifically provides for reservation of posts in favour of Backward Classes which according to the decision of this Court would include the power of the State to make reservation at the stage of promotion also and therefore Article 16(1) cannot include within its compass the power to give any adventitious aids by legislation or otherwise to the Backward Classes which would derogate from strict numerical equality. If reservation is necessary either at the initial stage or at the stage of promotion or at both to ensure for the members of the Scheduled Castes and scheduled tribes equality of opportunity in the matter of employment, I see no reason why that is not permissible under Article 16(1) as that alone might put them on a parity with the forward communities in the matter of achieving the result which equality of opportunity would produce. Whether there is equality of opportunity can be gauged only by the equality attained in the result. **Formal equality of opportunity simply enables people with more education and intelligence to capture all the posts and to win over the less fortunate in education and talent even when the competition is fair. Equality of result is the test of equality of opportunity.**

1.20 **Article 17** of the Constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law. The Untouchability Offences Act of 1955 (renamed the Protection of Civil Rights Act in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well.

1.21 This is a self-operating Article, and read with Article 39(a)(ii), it becomes clear that untouchability has been abolished and its practice forbidden.

1.22 This Article is levelled more against private conduct, than against conduct of the State. The chances of the State promoting or supporting untouchability is rare.

## 2. FREEDOM RIGHTS (ARTICLES 19–22)

2.1 Article 19(1) of the Constitution reads as under:

### “19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) omitted
- (g) to practise any profession, or to carry on any occupation, trade or business “

2.2 Articles 19(2) to 19(6) contain reasonable restrictions on the rights enshrined under Article 19(1).

2.3 The inter-relationship between Articles 14, 19, and 21 was carefully examined in **Maneka Gandhi v. Union of India, (1978) 1 SCC 248**. Discussing this relationship, it was observed that:

“6. The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of “personal liberty” and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decisions in *R.C. Cooper case*, *Shambhu Nath Sarkar case* and *Haradhan Saha case* Now, if a law depriving a person of “personal liberty” and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex-hypothesi it must also be liable to be tested with reference to Article 14.“

2.4 In **Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625**, Chandrachud, C.J., as he then was, observed:

“74. Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21.”

2.5 This was the first mention of what was later to be termed as the Golden Triangle, i.e. Articles 14, 19, and 21. As observed in **Bachan Singh v. State of Punjab, (1982) 3 SCC 24**:

“11. There are three Fundamental Rights in the Constitution which are of prime importance and which breathe vitality in the concept of the rule of law. They are Articles 14, 19 and 21 which, in the words of Chandrachud,

C.J. in *Minerva Mills case* constitute a golden triangle. “

2.6 Hansaria, J. very aptly observed in **T.R. Kothandaraman v. T.N. Water Supply & Drainage Board, (1994) 6 SCC 282** that, “*The golden triangle of our Constitution is composed of Articles 14, 19 and 21. Incorporation of such a trinity in our paramount parchment is for the purpose of paving such a path for the people of India which may see them close to the trinity of liberty, equality and fraternity.*”

2.7 It is apparent that **the right to information** was not spelt out as a separate right under Article 19. However, it is now well-settled in a catena of cases that the right to freedom of speech and expression enshrined in Article 19(1)(a) includes the right to information.

2.8 In **State of U.P. v. Raj Narain, (1975) 4 SCC 428**, it was observed that the right to know is derived from the concept of freedom of speech. It was held that:

“74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. 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. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.”

2.9 This was further confirmed in **S.P. Gupta v. Union of India, 1981 Supp SCC 87**, where it was held that:

“The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands.”

2.10 The law in this regard has been developed over the years, in **Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294** and in **PUCL v. Union of India, (2003) 4 SCC 399**.

2.11 In consonance with its duty, Parliament enacted the Right to Information Act in 2005. The Preamble of the Act reads as under:

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.”

2.22 **Article 20** of the Constitution is with respect to protection in respect of conviction of an offence. It imposes limitations on the powers of the State, which it otherwise possesses under Article 21, to enact and enforce criminal laws.

2.23 The case of **Kalpna Rai v. State, (1997) 8 SCC 732** discussed Article 20(1) with respect to the Terrorist and Disruptive Activities Prevention Act, 1987, which was amended in 1993. By the said amendment, all ingredients would have to be satisfied against the accused for being convicted as a terrorist under Section 3(5) of the Act. It was held that:

“34. Sub-section 3(5) was inserted in TADA by Act 43 of 1993 which came into force on 23-5-1993. Under Article 20(1) of the Constitution “no person shall be convicted of any offence except for violation of a law in force at the time of the

commission of the act charged as an offence”. So it is not enough that one was member of a terrorists' gang before 23-5-1993.”

2.24 Article 20(2) is aimed at protecting an individual from being subjected to prosecution and conviction for the same offence more than once. (See *Maqbool Hussain v. State of Bombay*, AIR 1953 SC 325)

2.25 Article 20(3), which protects an individual against self-incrimination, has been termed a ‘humane’ Article. It gives protection to a person accused of an offence against compulsion to be a witness against himself. This is in consonance with the expression ‘according to procedure established by law’, enshrined in Article 21, within the ambit of which just and fair trials lie.

2.27 **Article 21** of the Constitution reads as under:

“21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law “

2.28 From the wording of the Article, it is obvious that the language is negative. However, Article 21 confers on every person the fundamental right to life and personal liberty. It is the most fundamental of human rights, and recognizes the sanctity of human life.

2.29 Initially, the approach to Article 21, as in **A.K. Gopalan v. State of Madras**, AIR 1950 SC 27 was restricted to a rather literal interpretation of the Article. It was a circumscribed approach. The majority held that Article 22 was a self-contained code, and that the law of preventive detention did not have to satisfy the requirements of Articles 14, 19, and 21. A narrow interpretation was placed on the words “personal liberty”, to confine the protection of Article 21 to freedom of the person against unlawful detention. This judgment led to a theory wherein the freedoms under Articles 19, 21, 22, and 31 were considered to be exclusive. The basis for this was the thought process that certain Articles in the Constitution exclusively deal with specific matters and in determining if an infringement of fundamental rights had occurred, the object and form of State action alone needed to be considered, and the effect of the law on the fundamental rights of the individuals in general would be ignored.

2.30 This was overruled in, **R.C. Cooper v. Union of India**, (1970), where it was held that even where a person is detained in accordance with the procedure prescribed by law, as mandated by Article 21, the protection conferred by the various clauses of Article 19(1) does not cease to be available to him and the law authorising such detention has to satisfy the test of the applicable freedoms under Article 19(1).

2.31 The concept of “personal liberty” gradually began to be liberally interpreted by the judiciary. The Hon’ble Supreme Court of India, in **Kharak Singh v. State of UP**, AIR 1963 SC 1295, held, with respect to ‘personal liberty’, that “*We feel unable to hold that the term was intended to bear only this narrow interpretation but on the other hand consider that “personal liberty” is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the “personal liberties” of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, “personal liberty” in Article 21 takes in and comprises the residue.*”

2.32 In the case of **Maneka Gandhi v. Union of India**, (1978) 1 SCC 248, the Court examined the judgments in A.K. Gopalan’s case, R.C. Cooper’s case, and Kharak Singh’s case in detail. It was observed that:

“The expression “personal liberty” in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19.”

2.33 It was further observed that any law interfering with personal liberty of a person must satisfy a triple test: (i) it must prescribe a procedure; (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorising interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21.

2.34 In today’s world, new needs of a person for liberty in different spheres of life can now be claimed as a part of “personal liberty”, and these cannot be restricted, apart from satisfying Articles 14 and 19.

2.35 Some of the rights which could fall under the ambit of Article 21 have been clearly spelt out by the judiciary in various judgments, to be a part of Article 21:

- (i) Right to counsel [M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544]
- (ii) Right of a person to not be subjected to bonded labour [PUCL v. Union of India, (1982) 3 SCC 235]
- (iii) Right to livelihood [Olga Tellis v. Bombay Municipal Corpn, (1985) 3 SCC 545 – also see DTC v. DTC Mazdoor Congress, AIR 1991 SC 101]
- (iv) Right to immediate medical aid [Parmanand Katara v. Union of India, (1989) 4 SCC 286]
- (v) Right to free legal aid [State of Maharashtra v. MP Vashi, AIR 1996 SC 1]

2.36 The right to education has also been held to be a part of Article 21. A series of decisions, including **Mohini Jain v. State of Karnataka, (1992) 3 SCC 666**, **Unnikrishnan J.P. v. State of A.P., AIR 1993 SC 2178**, etc. culminated in an amendment to the Constitution being moved in 1997, leading to the incorporation of **Article 21-A**, which reads as under:

“The State shall provide free and compulsory education to all children of 6 to 14 years in such manner as the State, may by law determine”

2.37 Following this, the Right of Children to Free and Compulsory Education Act, 2009 was enacted.

2.38 **Article 22** provides for protection against arrest and detention in certain cases. It is not a complete code of constitutional safeguards with respect to preventive detention. Points which are expressly or implicitly not dealt with by Article 22, are covered under Article 21.

2.39 The reasoning behind the inclusion of Article 22 in Part III of the Constitution was discussed in **Pankaj Kumar Chakrabarty v. State of W.B., (1969) 3 SCC 400**, where it was held that:

“8. Article 21 guarantees protection against deprivation of personal liberty save that in accordance with the procedure established by law. At first sight it would appear somewhat strange that the Constitution should make provisions relating to preventive detention immediately next after Article 21. That appears to have been

done because the Constitution recognises the necessity of preventive detention on extraordinary occasions when control over public order, security of the country etc. are in danger of a breakdown. But while recognising the need of preventive detention without recourse to the normal procedure according to law, it provides at the same time certain restrictions on the power of detention both legislative and executive which it considers as minimum safeguards to ensure that the power of such detention is not illegitimately or arbitrarily used. **The power of preventive detention is thus acquiesced in by the Constitution as a necessary evil and is, therefore, hedged in by diverse procedural safeguards to minimise as much as possible the danger of its misuse. It is for this reason that Article 22 has been given a place in the Chapter on guaranteed rights.**

2.40 Sawant, J. in **Addl. Secy. to the Govt. of India v. Alka Subhash Gadia (Smt), 1992 Supp (1) SCC 496** made it clear that Article 22 had to be tested on the anvil of Articles 14, 19, and 21. It was stated as under:

**“8. ...After the decision of this Court in *Rustom Cavasjee Cooper v. Union of India* which is otherwise known as the *Bank Nationalisation case* and in *Maneka Gandhi v. Union of India*, it is now well settled (if ever there was any doubt) that the fundamental rights under Chapter III of the Constitution are to be read as a part of an integrated scheme. They are not exclusive of each other but operate, and are, subject to each other. The action complained of must satisfy the tests of all the said rights so far as they are applicable to individual cases. It is not enough, that it satisfies the requirements of any one of them. **In particular, it is well settled that Article 22(5) is not the sole repository of the detenu's rights. His rights are also governed by the other fundamental rights particularly those enshrined in Articles 14, 19 and 21.** Article 14 guarantees to all persons equality before the law and equal protection of the laws. Articles 19, 20, 21 and 22 are grouped under the broad heading “Right to Freedom”. Article 19 is breached if any citizen is deprived whether, temporarily or permanently, of any of the rights which are mentioned therein. Although Article 19 confers freedoms mentioned therein only on citizens, neither Article 14 nor Articles 20, 21 and 22 are confined to the protection of freedoms of citizens only. They extend the relevant freedoms even to non-citizens. **The freedoms given to the citizen by Article 19 are, as if, further sought to be guaranteed by Articles 20, 21 and 22 in particular.** Hence while examining action resulting in the deprivation of the liberty of any person, the limitations on such action imposed by the other fundamental rights where and to the extent applicable have to be borne in mind.”**

It was further observed that:

**“11.** The provisions of Articles 21 and 22 read together, therefore, make it clear that a person can be deprived of his life or personal liberty according to procedure established by law, and if the law made for the purpose is valid, the person who is deprived of his life or liberty has to challenge his arrest or detention, as the case may be, according to the provisions of the law under which he is arrested or detained. This proposition is valid both for punitive and preventive detention. The difference between them is made by the limitations placed by sub-clauses (1) and (2) on the one hand and sub-clauses (4) to (7) on the other of Article 22, to which we have already referred above. What is necessary to remember for our purpose is that the Constitution permits both punitive and preventive detention provided it is according to procedure established by law made for the purpose and if both the law and the procedure laid down by it, are valid.”

### 3. RIGHTS AGAINST EXPLOITATION (ARTICLES 23–24)

3.1 **Article 23** enacts a very important fundamental right in the following terms:

**“23. Prohibition of traffic in human beings and forced labour.—**

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

3.2 This Article has been clearly designed to protect the individual not only against the State, but also against private individuals. It prohibits not only forced labour, but also ‘traffic in human beings’, which includes trafficking women for immoral or other purposes.

3.3 The reasoning behind the inclusion of this Article in Part III is examined in **People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235**

**12. ...The reason for enacting this provision in the Chapter on Fundamental Rights is to be found in the socio-economic condition of the people at the time when the Constitution came to be enacted.** The Constitution-makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to reaching social and economic justice to the common man. Large masses of people, bled white by wellnigh two centuries of foreign rule, were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status-oriented hierarchical society with little respect for the dignity of the individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and it had succeeded in bringing freedom to the country but freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to higher levels of achievement and bringing about their total advancement and welfare. Political freedom had no meaning unless it was accompanied by social and economic freedom and **it was therefore necessary to carry forward the social and economic revolution with a view to creating socio-economic conditions in which every one would be able to enjoy basic human rights and participate in the fruits of freedom and liberty in an egalitarian social and economic framework.** It was with this end in view that the Constitution-makers enacted the directive principles of state policy in Part IV of the Constitution setting out the constitutional goal of a new socio-economic order. Now there was one feature of our national life which was ugly and shameful and which cried for urgent attention and that was the existence of bonded or forced labour in large parts of the country. This evil was the relic of a feudal exploitative society and it was totally incompatible with the new egalitarian socio-economic order which “we the people of India” were determined to build and constituted a gross and most revolting denial of basic human dignity. It was therefore **necessary to eradicate this pernicious practice** and wipe it out altogether from the national scene and this had to be done immediately because with the advent of freedom, such practice could not be allowed to continue to blight the national life any longer. Obviously, it would not have been enough merely to include abolition of forced labour in the directive principles of state policy, because then the outlawing of this practice would not have been legally enforceable and it would have continued to plague our national life in violation of

the basic constitutional norms and values until some appropriate legislation could be brought by the legislature forbidding such practice. The Constitution-makers therefore decided to give teeth to their resolve to obliterate and wipe out this evil practice by enacting constitutional prohibition against it in the Chapter on Fundamental Rights, so that the abolition of such practice may become enforceable and effective as soon as the Constitution came into force. This is the reason why the provision enacted in Article 23 was included in the Chapter on Fundamental Rights. The prohibition against “traffic in human beings and begar and other similar forms of forced labour” is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but also against any other person indulging in any such practice.

3.4 The Court further went on to elaborate on ‘forced labour’, and stated that:

“14. ...Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as “force” and if labour or service is compelled as a result of such “force”, it would be “forced labour”.

3.5 The rights of the ‘fallen women and their children’ were very succinctly traced in **Gaurav Jain v. Union of India, (1997) 8 SCC 114** as under:

“4. Let us, therefore, first consider the rights of the fallen women and their children given by the Constitution and the Directive Principles, the Human Rights and the Convention on the Right of Child, before considering the social ignominy attached to them and before looking for the remedy to relieve them from the agony and make them equal participants in a normal social order. **Article 14** provides for equality in general. **Article 21** guarantees right to life and liberty. **Article 15** prohibits discrimination on the grounds of religion, race, caste, sex or place of birth, or of any of them. **Article 15(3)** provides for special protective discrimination in favour of women and child relieving them from the moribund of formal equality. It states that “nothing in this article shall prevent the State from making any special provision for women and children”. Article 16(1) covers equality of opportunity in matters of public employment. **Article 23** prohibits traffic in human beings and forced labour and makes it punishable under **Suppression of Immoral Traffic in Women and Girls Act, 1956** which was renamed in 1990 as the **Immoral Traffic (Prevention) Act** (for short the “ITP Act”). **Article 24** prohibits employment of children in any hazardous employment or in any factory or mine unsuited to their age.

**5. Article 38** enjoins the State to secure and protect, as effectively as it may, a social order in which justice — social, economic and political, shall inform all the institutions of national life. It enjoins, by appropriate statutory or administrative actions, that the State should minimise the inequalities in status and provide facilities and opportunities to make equal results. **Article 39(f)** provides that children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment. **Article 46** directs the State to promote the educational and economic interests of the women and weaker sections of the people and to protect them from social injustice and all forms of exploitation. **Article 45** makes provision for free and compulsory education for children, which is now well settled as a fundamental right to children up to the age of 14 years; it also mandates that facilities and opportunities for higher educational avenues be provided to them. Social justice and economic empowerment are firmly held as fundamental rights of every citizen.

3.6 **Article 24** prohibits the employment of children in factories, etc., and reads as follows:

“No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”

3.7 In the case of **M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756**, the Hon’ble Supreme Court took judicial notice of child labour in Sivakasi, where the provisions of Article 24 were being violated. It was held that abolition of child labour is definitely a matter of great public concern and importance. Poverty was held to be the driving force behind the evil of child labour.

3.8 This was affirmed in **Bandhua Mukti Morcha v. Union of India, (1997) 10 SCC 549**. Certain directions were given in this case to ameliorate the problems faced by children, and to eradicate child labour:

13. We are of the view that a direction needs to be given that the Government of India should convene a meeting of the Ministers concerned of the respective State Governments and their Principal Secretaries holding Departments concerned, to evolve the principles of policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in *M.C. Mehta case*; to evolve such steps consistent with the scheme laid down in *M.C. Mehta case*, to provide (1) compulsory education to all children either by the industries themselves or in coordination with it by the State Government to the children employed in the factories, mine or any other industry, organised or unorganised labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of this Court. The Central Government is directed to convene the meeting within two months from the date of receipt of the order. After evolving the principles, a copy thereof is directed to be forwarded to the Registry of this Court.

3.9 Article 21-A, providing for free and compulsory education to children, was introduced into the Constitution as a fundamental right vide the 86<sup>th</sup> Amendment Act, 2002.

#### 4. **FREEDOM OF RELIGION (ARTICLES 25–28)**

4.1 Right to freedom of religion, covered in Articles 25, 26, 27 and 28, provides religious freedom to all citizens of India. The objective of this right is to sustain the principle of secularism in India. According to the Constitution, all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.

4.2 It has repeatedly been held that the constitutional scheme guarantees equality in the matter of religion. The majority of a 5-Judge Bench in the case of **M. Ismail Faruqui (Dr) v. Union of India, (1994) 6 SCC 360** held that:

“37. It is clear from the constitutional scheme that it **guarantees equality in the matter of religion to all individuals and groups** irrespective of their faith emphasising that there is no religion of the State itself. The **Preamble of the Constitution read in particular with Articles 25 to 28 emphasises this aspect** and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touchstone of

the Constitution. The **concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.**”

4.3 The Hon’ble Supreme Court, in **Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770**, has extensively examined the scope and ambit of Articles 25 and 26.

4.4 In **Acharya’s** case, the Court also touched upon the freedom of religion with respect to Article 14, and held that:

“**49.** ...If one religious denomination is allowed to carry on its religious practice but another religious denomination is restrained from carrying on religious practice and almost similar religious practices, the same makes out a clear case of discrimination in violation of the principles of Article 14 of the Constitution.”

4.5 A very interesting question of law arose in **Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255** as to whether the right of a religious denomination to manage its own affairs in matters of religion guaranteed under Article 26(b) is subject to, and can be controlled by, a law protected by Article 25(2)(b), by throwing open a Hindu public temple to all classes and sections of Hindus.

4.5 The Hon’ble Court observed that the two provisions were of equal authority. Following the rule of harmonious construction, it was held that Article 26(b) must be read subject to Article 25(2)(b). The relevant portion of the judgment reads as under:

“**29.** The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Article 26(b) in all matters of religion, subject only to this that as regards one aspect of them, entry into a temple for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put wholly out of operation, in the latter, effect can be given to both that provision and Article 26(b). **We must accordingly hold that Article 26(b) must be read subject to Article 25(2)(b).**”

4.6 The reason behind the enactment of Articles 25 to 30 of the Constitution was discussed at length in the case of **Bal Patil v. Union of India, (2005) 6 SCC 690**. Dharmadhikari, J. speaking for the Court, observed:

**24.** It is against this background of partition that at the time of giving final shape to the Constitution of India, it was felt necessary to allay the apprehensions and fears in the minds of Muslims and other religious communities by providing to them a special guarantee and protection of their religious, cultural and educational rights. Such protection was found necessary to maintain the unity and integrity of free India because even after partition of India communities like Muslims and Christians in greater numbers living in different parts of India opted to continue to live in India as children of its soil.

**25.** It is with the **above aim in view that the framers of the Constitution engrafted group of Articles 25 to 30** in the Constitution of India. The minorities

initially recognised were based on religion and on a national level e.g. Muslims, Christians, Anglo-Indians and Parsis. Muslims constituted the largest religious minority because the Mughal period of rule in India was the longest followed by the British Rule during which many Indians had adopted Muslim and Christian religions.

**33.** ... India is a world in miniature. The group of Articles 25 to 30 of the Constitution, as the historical background of partition of India shows, was only **to give a guarantee of security to the identified minorities and thus to maintain the integrity of the country.** It was not in the contemplation of the framers of the Constitution to add to the list of religious minorities. **The Constitution through all its organs is committed to protect religious, cultural and educational rights of all.** **Articles 25 to 30 guarantee cultural and religious freedoms to both majority and minority groups.** Ideal of a democratic society, which has adopted right to equality as its fundamental creed, should be elimination of majority and minority and so-called forward and backward classes.

## **5. CULTURAL RIGHTS (ARTICLES 29–30)**

**Article 29. Protection of interests of minorities.**—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

(ii) **Article 30. Right of minorities to establish and administer educational institutions.**—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) Article 30 (2) is another prohibition against discrimination by the State. In granting aid to educational institutions, the State shall not discriminate against institutions managed by any minority-religious or linguistic. Hence, minority institutions will be entitled to State aid in the same way as other institutions. Where aid is denied on the ground that the educational institution is under the management of a minority, then such a denial would be invalid. Also, the receipt of aid cannot be a reason for altering the nature or character of the recipient institution. Article 30(2) recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid

5.1 In **Sidhajbhai Sabbai v. State of Gujarat, (1963) 3 SCR 837**, the Court considered the validity of an order issued by the Government of Bombay whereby from the academic year 1955-56, 80% of the seats in the training colleges for teachers in non-government training colleges were to be reserved for the teachers nominated by the Government. The petitioners, who belonged to the minority community, were, *inter alia*, running a training college for teachers, as also primary schools. The said primary schools and college were conducted for the benefit of the religious denomination of the United Church of Northern India and Indian Christians generally, though admission was not denied to students belonging to other communities. The petitioners challenged the government order requiring 80% of the seats to be filled by nominees of the Government, *inter alia*, on the ground that the petitioners were members of a religious denomination and that they constituted a

religious minority, and that the educational institutions had been established primarily for the benefit of the Christian community. It was the case of the petitioners that the decision of the Government violated their fundamental rights guaranteed by Articles 30(1), 26(a), (b), (c) and (d), and 19(1)(f) and (g). While interpreting Article 30, it was observed by the Court as under:

“All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions: it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational.”

5.2 It was further held:

“The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole”

5.3 In **State of Kerala v. Very Rev. Mother Provincial, (1970) 2 SCC 417**, the Court held that the minority institutions could not be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of the exclusive right of management, allowed to decline to follow the general pattern. The Court stated that while the management must be left to the minority, they may be compelled to keep in step with others. It was pointed out that an exception to the right under Article 30 was the power with the State to regulate education, educational standards and allied matters.

5.4 The Hon'ble Supreme Court, in **Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717**, considered the scope and ambit of the rights of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice under Article 30(1) of the Constitution. In dealing with this aspect, Ray, C.J., observed as follows:

“9. Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality.”

5.5 Elaborating on the meaning and intent of Article 30, the learned Chief Justice further observed as follows:

“12. The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete

men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.”

5.6 While advocating that provisions of the Constitution should be construed according to the liberal, generous and sympathetic approach, and after considering the principles which could be discerned by him from the earlier decisions of the Court, Khanna, J., observed as follows:

**“89... The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution.** The same generous, liberal and sympathetic approach should weigh with the courts in construing Articles 29 and 30 as marked the deliberations of the Constitution-makers in drafting those articles and making them part of the fundamental rights. The safeguarding of the interest of the minorities amongst sections of population is as important as the protection of the interest amongst individuals of persons who are below the age of majority or are otherwise suffering from some kind of infirmity. The Constitution and the laws made by civilized nations, therefore, generally contain provisions for the protection of those interests. It can, indeed, be said to be an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression.”

5.7 In **St. Stephen’s College v. University of Delhi, (1992) 1 SCC 558**, the right of minorities to administer educational institutions and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable came up for consideration. The Court referred to the earlier decisions, and with regard to Article 30(1), observed as follows:

**“54.** The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means ‘management of the affairs of the institution’. This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standards of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State, therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others.”

5.8 According to the learned Judges, the question of the interplay of Article 29(2) with Article 30(1) had arisen in that case for the first time, and had not been considered by the

Court earlier; they observed that “*we are on virgin soil, not on trodden ground*”. Dealing with the interplay of these two articles, it was observed, as follows:

“**96.** The collective minority right is required to be made functional and is not to be reduced to useless lumber. A meaningful right must be shaped, moulded and created under Article 30(1), while at the same time affirming the right of individuals under Article 29(2). There is need to strike a balance between the two competing rights. It is necessary to mediate between Article 29(2) and Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society’s need for stability and its need for change.”

5.9 It was further noticed that the right under Article 30(1) had to be read subject to the power of the State to regulate education, educational standards and allied matters. In this connection, , it was observed as follows:

“**59.** The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1).”

5.10 In **T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481**, an 11-Judge Bench of the Supreme Court considered the entire scope of Articles 25 to 30 of the Constitution:

“**82.** Article 25 gives to all persons the freedom of conscience and the right to freely profess, practise and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality and health, and also to the other provisions of Part III of the Constitution. This would mean that the right given to a person under Article 25(1) can be curtailed or regulated if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise thereof is not in consonance with public order, morality and health....

**83.** Article 25(2) gives specific power to the State to make any law regulating or restricting any economic, financial, political or other secular activity, which may be associated with religious practice as provided by sub-clause (a) of Article 25(2). This is a further curtailment of the right to profess, practise and propagate religion conferred on the persons under Article 25(1). Article 25(2)(a) covers only a limited area associated with religious practice, in respect of which a law can be made....

**84.** The freedom to manage religious affairs is provided by Article 26. This article gives the right to every religious denomination, or any section thereof, to exercise the rights that it stipulates. However, this right has to be exercised in a manner that is in conformity with public order, morality and health. .... Therefore, while Article 25(1) grants the freedom of conscience and the right to profess, practise and propagate religion, Article 26 can be said to be complementary to it, and provides

for every religious denomination, or any section thereof, to exercise the rights mentioned therein. This is because Article 26 does not deal with the right of an individual, but is confined to a religious denomination. Article 26 refers to a denomination of any religion, whether it is a majority or a minority religion, just as Article 25 refers to all persons, whether they belong to the majority or a minority religion. Article 26 gives the right to majority religious denominations, as well as to minority religious denominations, to exercise the rights contained therein.

**85.** Secularism being one of the important basic features of our Constitution, Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for the payment of expenses for the promotion and maintenance of any particular religion or religious denomination. The manner in which the article has been framed does not prohibit the State from enacting a law to incur expenses for the promotion or maintenance of any particular religion or religious denomination, but specifies that by that law, no person can be compelled to pay any tax, the proceeds of which are to be so utilized. In other words, if there is a tax for the promotion or maintenance of any particular religion or religious denomination, no person can be compelled to pay any such tax.

**86.** Article 28(1) prohibits any educational institution, which is wholly maintained out of State funds, to provide for religious instruction. Moral education dissociated from any denominational doctrine is not prohibited; but, as the State is intended to be secular, an educational institution wholly maintained out of State funds cannot impart or provide for any religious instruction.

**87.** The exception to Article 28(1) is contained in Article 28(2). Article 28(2) deals with cases where, by an endowment or trust, an institution is established, and the terms of the endowment or the trust require the imparting of religious instruction, and where that institution is administered by the State. In such a case, the prohibition contained in Article 28(1) does not apply. If the administration of such an institution is voluntarily given to the Government, or the Government, for a good reason and in accordance with law, assumes or takes over the management of that institution, say on account of maladministration, then the Government, on assuming the administration of the institution, would be obliged to continue with the imparting of religious instruction as provided by the endowment or the trust.

**88.** While Article 28(1) and Article 28(2) relate to institutions that are wholly maintained out of State funds, Article 28(3) deals with an educational institution that is recognized by the State or receives aid out of State funds. Article 28(3) gives the person attending any educational institution the right not to take part in any religious instruction, which may be imparted by an institution recognized by the State, or receiving aid from the State. Such a person also has the right not to attend any religious worship that may be conducted in such an institution, or in any premises attached thereto, unless such a person, or if he/she is a minor, his/her guardian, has given his/her consent. The reading of Article 28(3) clearly shows that no person attending an educational institution can be required to take part in any religious instruction or any religious worship, unless the person or his/her guardian has given his/her consent thereto, in a case where the educational institution has been recognized by the State or receives aid out of its funds. ....

**89.** Articles 29 and 30 are a group of articles relating to cultural and educational rights. Article 29(1) gives the right to any section of the citizens residing in India or any part thereof, and having a distinct language, script or culture of its own, to conserve the same. Article 29(1) does not refer to any religion, even though the marginal note of the article mentions the interests of minorities. Article 29(1) essentially refers to sections of citizens who have a distinct language, script or

culture, even though their religion may not be the same. The common thread that runs through Article 29(1) is language, script or culture, and not religion. For example, if in any part of the country, there is a section of society that has a distinct language, they are entitled to conserve the same, even though the persons having that language may profess different religions. Article 29(1) gives the right to all sections of citizens, whether they are in a minority or the majority religion, to conserve their language, script or culture.

**90.** In the exercise of this right to conserve the language, script or culture, that section of the society can set up educational institutions. The right to establish and maintain educational institutions of its choice is a necessary concomitant to the right conferred by Article 30. The right under Article 30 is not absolute. Article 29(2) provides that, where any educational institution is maintained by the State or receives aid out of State funds, no citizen shall be denied admission on the grounds only of religion, race, caste, language or any of them. The use of the expression “any educational institution” in Article 29(2) would (*sic* not) refer to any educational institution established by anyone, but which is maintained by the State or receives aid out of State funds. In other words, on a plain reading, State-maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the grounds only of religion, race, caste or language.

**91.** The right of the minorities to establish and administer educational institutions is provided for by Article 30(1). To some extent, Article 26(1)(a) and Article 30(1) overlap, insofar as they relate to the establishment of educational institutions; but whereas Article 26 gives the right both to the majority as well as minority communities to establish and maintain institutions for charitable purposes, which would, *inter alia*, include educational institutions, Article 30(1) refers to the right of minorities to establish and maintain educational institutions of their choice. Another difference between Article 26 and Article 30 is that whereas Article 26 refers only to religious denominations, Article 30 contains the right of religious as well as linguistic minorities to establish and administer educational institutions of their choice”

5.11 After tracing the evolution of Articles 25 to 28, and after considering the entire case-law on the subject, it was observed:

**“138.** As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. **Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country.** Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination.

**148.** Both Articles 29 and 30 form a part of the fundamental rights chapter in Part III of the Constitution. Article 30 is confined to minorities, be it religious or linguistic, and unlike Article 29(1), the right available under the said article cannot be availed by any section of citizens. **The main distinction between Article 29(1) and Article 30(1) is that in the former, the right is confined to conservation of language, script or culture.** As was observed in *Father W. Proost case* the right given by

Article 29(1) is fortified by Article 30(1), insofar as minorities are concerned. In *St. Xavier's College case* it was held that the right to establish an educational institution is not confined to conservation of language, script or culture. When constitutional provisions are interpreted, it has to be borne in mind that the interpretation should be such as to further the object of their incorporation. They cannot be read in isolation and have to be read harmoniously to provide meaning and purpose. They cannot be interpreted in a manner that renders another provision redundant. If necessary, a purposive and harmonious interpretation should be given.”

5.12 The issues of equality and secularism were discussed in the judgment from para 156, and the Court observed:

**“159.** Each of the people of India has an important place in the formation of the nation. Each piece has to retain its own colour. By itself, it may be an insignificant stone, but when placed in a proper manner, goes into the making of a full picture of India in all its different colours and hues.

**160.** A citizen of India stands in a similar position. The Constitution recognizes the differences among the people of India, but it gives equal importance to each of them, their differences notwithstanding, for only then can there be a unified secular nation. Recognizing the need for the preservation and retention of different pieces that go into the making of a whole nation, the Constitution, while maintaining, *inter alia*, the basic principle of equality, contains adequate provisions that ensure the preservation of these different pieces.

**161.** The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation.”

5.13 The Supreme Court, in **P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537**, considered the inter-relationship between Articles 19(1)(g), 29(2) and 30(1) of the Constitution. It was observed that the right to establish an educational institution, for charity or for profit, being an occupation, was protected by Article 19(1)(g). Notwithstanding the fact that the right of a minority to establish and administer an educational institution would be protected by Article 19(1)(g) yet the founding fathers of the Constitution felt the need of enacting Article 30, which was intended to instill confidence in minorities against executive/legislative encroachment.

5.14 An important distinction was drawn between elementary and higher education, and the Court observed that:

**107.** Educational institutions imparting higher education i.e. graduate level and above and in particular specialised education such as technical or professional, constitute a separate class. While embarking upon resolving issues of constitutional significance, where the letter of the Constitution is not clear, we have to keep in view the spirit of the Constitution, as spelt out by its entire scheme. Education aimed at imparting professional or technical qualifications stands on a different footing from other educational instruction. Apart from other provisions, Article 19(6) is a clear indicator and so are clauses (h) and (j) of Article 51-A. Education up to the undergraduate level aims at imparting knowledge just to enrich the mind and shape the personality of a student. Graduate-level study is a doorway to admissions in educational institutions imparting professional or technical or other higher education and, therefore, at that level, the considerations akin to those relevant for professional or technical educational institutions step in and become relevant. This is in the national interest and strengthening the national wealth, education included.

5.15 This Court recognized that Articles 29 and 30 confer absolutely unfettered rights to minorities to determine the manner of instruction and administration in their educational institutions.

“119. A minority educational institution may choose not to take any aid from the State and may also not seek any recognition or affiliation. It may be imparting such instructions and may have students learning such knowledge that do not stand in need of any recognition. Such institutions would be those where instructions are imparted for the sake of instructions and learning is only for the sake of learning and acquiring knowledge. Obviously, such institutions would fall in the category of those who would exercise their right under the protection and privilege conferred by Article 30(1) “to their hearts' content” unhampered by any restrictions excepting those which are in national interest based on considerations such as public safety, national security and national integrity or are aimed at preventing exploitation of students or the teaching community. Such institutions cannot indulge in any activity which is violative of any law of the land.”

## 6. Right to Constitutional Remedies (Articles 32–35)

### (i) Article 32. Remedies for enforcement of rights conferred by this Part.—

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

### (ii) Article 226. Power of High Courts to issue certain writs.—

(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III (Fundamental Rights) and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

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