

# **Fundamental Rights: Part III, Art 12 to 35 – Inspiration from USA**

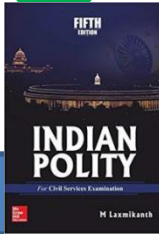
- **Meant for promoting ideal of political democracy – preventing authoritarianism**
- **Named so because,**
  - ✓ **Guaranteed & protected by constitution**
  - ✓ **Essential for all-round development**

**Originally 7, however, RIGHT TO PROPERTY deleted by**

**44<sup>th</sup> A. Act and now only Legal Right under Art. 300-A, Now**

**FRs**

**6**

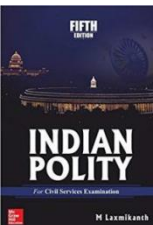


## **Art 12 to 35: Fundamental Rights**

- **Part III, Inspiration from USA, Ideal of Political Democracy, Prevents authoritarian rule, Named – Guaranteed & Protected by Constitution**

### **Features/ Characteristics**

- **Some available to Citizens only and some to All**
- **Not Absolute**
- **Most available against state, few against private individuals**
- **Some Negative i.e. limit the State actions**
- **Some Positive i.e. confer privileges on individuals**
- **Justiciable – defended & guaranteed by Supreme Court (directly approach) & High Courts**
- **Not Sacrosanct/Permanent – Constitutional Amendment**
- **Suspended – National Emergency[Except – 19 {on War & external aggression not armed rebellion} , 20 & 21]**
- **Scope of operation limited by**
  - ✓ **Art 31A – saving of laws providing for acquisition of estates...**
  - ✓ **Art 31 B – 9<sup>th</sup> Schedule...**
  - ✓ **Art 31C – Effect to Directive Principles**
- **Restricted to Armed forces etc., or in Martial Law areas**
- **Directly enforceable or law need to give effect**



## **Features of FRs**

- ✓ **Some only to Citizens...some to all Citizens/Foreigners/legal persons like corporation or companies**
- ✓ **Not absolute but qualified – state can impose reasonable restriction on them...Courts can verify restrictions**
- ✓ **Most of them against state but, few against private individuals**
- ✓ **State only case violations by private individual will be treated as legal not as constitutional**
- ✓ **Negative in character – place limitation on state**
- ✓ **Positive on character – confer privileges on persons**
- ✓ **Justiciable – defended and guaranteed by S.Court – directly**
- ✓ **Not sacrosanct or permanent but, curtail or repeal through constitutional amendment**



## **Definition of State (Art.12)**

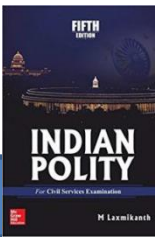
**Government & Parliament of India+ Govt & Legislature of states+ Local authorities + statutory authorities + bodies LIC, ONGC, SAIL+ Private body working an instrument of State**

**Laws inconsistent/derogation with/of FRs – VOID (Art.13)**

**Judicial Review – S. Court (Art.32) & H. Courts (Art.226)**

### **Law- ?**

- ✓ **Laws enacted by Parliament & State Legislatures**
- ✓ **Ordinances**
- ✓ **Statutory instruments like order, bye-law, rule, regulation, notification**
- ✓ **Custom or Usage having the force of law**
- ✓ **Constitutional Amendment (Keshavananda Bharathi case-1973) –S.C**



**A prison in India is installing cable connections to allow prisoners to watch the Cricket World Cup after they argued it was a fundamental right...Gauhati High Court directed...**

**not allowing Indians who accept Trafficking (T) visas issued by the United States to fly there is against fundamental rights, says the Kerala High Court...**

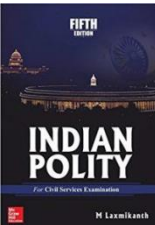
**India's Supreme Court has ruled out the practice of having multiple wives for Muslims arguing that it is not a fundamental right for those who practice Islam...**

# **RIGHT TO EQUALITY – ART 14 – A BASIC FEATURE**

**Equality before Law [British] & Equal protection of Law [American] – applicable for all, including legal persons**

**Equality before Law – No person above Law - Rule of Law i.e. Absence of arbitrary power, equal subjection of all citizens & primacy of individual rights [3<sup>rd</sup> NOT applicable in Indian system]**

**Equal protection of Law – equal treatment under equal circumstance, Privileges & Liabilities of Law**



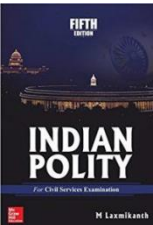
## **Exceptions to Equality**

### **President of India & Governors**

- ✓ **President of India & Governors not answerable to court performing duties**
- ✓ **NO criminal proceedings initiated/continued during term of office**
- ✓ **No arrest/imprisonment during term of office**
- ✓ **Civil proceedings shall be instituted - 2 months after notice**

=====

- ✓ **Art – 361-A person free to publish proceedings without malice**
- ✓ **MPs/MLAs in Parliament/Legislature**
- ✓ **Art.31-C to implement DPSP**
- ✓ **Foreign Ambassadors/diplomats & UNO agencies immune from criminal & civil proceedings**



# **PROHIBITION OF DISCRIMINATION ON CERTAIN GROUNDS – ART 15 - RRCSP**

- **State - no discrimination on grounds ONLY of religion, race, caste, sex or place of birth**
- **No citizen shall be subjected to any disability, liability, restriction or condition on grounds ONLY of religion, race, caste, sex or place of birth with regard to public spaces- state/private individuals**
  - **exceptions to non-discrimination [Special provisions ]**
    - ✓ **for Women & Children**
    - ✓ **Socially & educationally backward classes citizens, SCs & STs – including private education {except minority}**
    - ✓ **Non-creamy OBCs**

# **Creamy Layer for OBCs**

## **Constitutional Posts**

**Group I/ Class I, Group B/Class B officers of Central & States and equivalent in Banks, PSUs, Universities, Insurance etc.,**

## **Professionals**

**Rank of colonel and above & its equivalent**

**Holding Agri lands above certain limit**

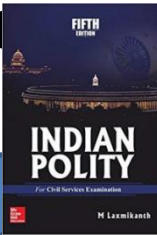
**Annual income more than 6.00 lakhs lakhs**

➤ **Only parents income be considered for deciding creamy layer: SC**



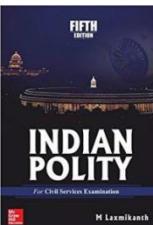
# **EQUALITY OF OPPORTUNITY IN PUBLIC EMPLOYMENT - ART 16**

- **No discrimination by state on grounds ONLY of religion, race, caste, sex DESCENT or place of birth or RESIDENCE**
- **exceptions to non-discrimination in Public Employment [Special provisions ]**
  - ✓ **Parliament can prescribe RESIDENCE for appointment in state/UT/local authority/Authority- at present NO except for AP**
  - ✓ **For Non-represented backward class**
  - ✓ **Office related to religious/denominational institutions**



# **Mandal Commission**

- **2<sup>nd</sup> Backward Classes Commission – Art 340**
- **1979 – M. Desai Gov. appointed**
- **1980 – Report Recommended 27% reservation for OBCs**
- **1990 - VP Singh Gov. declared 27% reservation OBCs**
- **1991 – N. Rao Gov. introduced changes**
- **1992 – Mandal case S. Court upheld constitutional validity of OBC reservations only with certain conditions**



# **Certain Conditions – Govts reactions**

**Creamy layer exclusion → Ram Nandan Committee**

**No reservation in promotions → 77<sup>th</sup> & 85<sup>th</sup> A.Acts in favour of SCs & STs promotion**

**Reservation should not exceed 50% - this apply every year- 76<sup>th</sup> A.Act TN reservation 69% in 9<sup>th</sup> Schedule**

**Carry forward rule [Backlog] valid, should not exceed 50% rule → 81<sup>st</sup> A.Act backlog as separate vacancies**

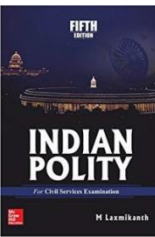
# **ABOLITION OF UNTOUCHABILITY – ART 17**

**Right available against private  
individuals**

**Protection of civil rights Act, 1955 -  
acts of offences**

**Untouchability NOT defined in  
constitution or in 1955 Act**

**Convicted NOT eligible to become MP  
or MLA/MLC**

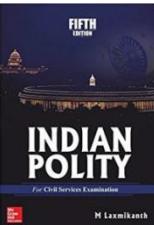


## **Abolition of Titles – Art 18**

- **Prohibition state to confer title[Except Military or Academic]**
- **Prohibition – citizen to accept any title from foreign**
- **Foreigner working for Govt take consent from President to accept title from foreign**
- **Citizen/Foreigner working for Govt take consent from President to accept present/emolument/office from foreign**
- **1977 – M. Desai Gov. discontinued but 1980 I. Gandhi Gov. Revived**
- **In 1996, S. Court upheld the validity of National Awards like Bharat Ratna but, NOT to be used as suffixes or prefixes**

# **RIGHT TO FREEDOM – ART.19 – PROTECTION OF SIX RIGHTS**

- **Originally 7 rights-right to acquire, hold and dispose property was deleted by 44<sup>th</sup> Amendment Act 1978.**
- **Against state ONLY, NOT private**
- **ONLY to citizens & shareholders of company**
- **NOT to foreigners/legal persons**
- **State can impose reasonable restrictions**



# **Freedom of Speech & Expression**

- ✓ **Right to propagate one's views as well as views of others**
- ✓ **Right against Bundh**
- ✓ **Freedom of Silence**
- ✓ **Right to demonstration/picketing but NOT right to strike**

**Restricted**  
**Sovereignty & Integrity of India**  
**Security of state**  
**Friendly relations with foreign states**  
**Public order**  
**Decency or morality**  
**Contempt of court**  
**Defamation**  
**Incitement to offend**

# **Freedom of Assembly**

- ✓ **Including procession**
- ✓ **ONLY on public land**
- ✓ **Peaceful & Unarmed**

**Restricted  
Sovereignty & Integrity of India  
Public order including traffic  
maintenance**

**Sec144 Cr. P. Code Magistrate can  
restrain**

**Sec 141 IPC 5 or more assembly  
prohibited under certain conditions**

# **Freedom of Association/Unions/ Co-operative societies**

**It also covers NOT to form/join  
association/union**

**Restricted  
Sovereignty & Integrity of India  
Public Order  
Morality**

- **To obtain recognition NOT a  
fundamental right**
- **No guaranteed right to effective  
bargaining**

# **Freedom of Movement**

## **Throughout the territory of India**

**Restricted**  
**Interest of general public**  
**Protection of interest of STs**  
**Public health**  
**Public morals**

- **Art .19 right to move inside the country ONLY**
- **Art.21 right to move out of country and return**

# **Freedom of residence**

- **Right to reside and settle in any part of the country**

**Restricted**

**Interest of general public**

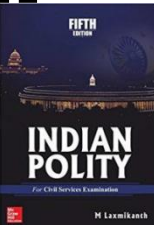
**Protection of interest of STs**

**Freedom of Profession – means of earning**

**Restricted**

**Interest of general public**

- **State can prescribe qualification & State carry on by itself any trade, business...State can regulate through licensing**



- **PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES – Art.20**

**Protection against arbitrary and excessive punishment – citizen/foreigner/legal person**

**3 provisions**

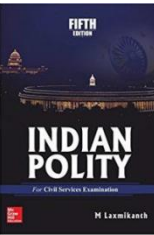
✓ **No ex-post-facto law – No Punishment if NO law, penalty not more than by law (Only Criminal Conviction/Sentence)**

**But, Civil liability/Tax, trial on criminal case – retrospective effect**

✓ **No double jeopardy – No prosecution/punishment for the same offence more than once (ONLY in court of law/Judicial tribunal)**

**NOT available in departmental/administrative proceedings**

✓ **No self-incrimination – No one compelled to be a witness against him/herself (Only Criminal Proceedings)**



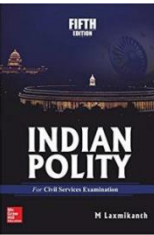
# **PROTECTION OF LIFE & PERSONAL LIBERTY – Art.21**

**No deprivation of life & liberty except Procedure established by Law, Citizens/Non-citizens**

**1950- Gopalan case – Narrow View – ONLY against arbitrary executive action**

**1978 – Menaka case – wider – including legislative action**

**Right includes life with dignity, privacy, shelter, health, free education, legal aid, against solitary confinement, speedy trial, delayed execution, timely medical, reputation etc**



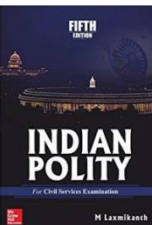
# **RIGHT TO EDUCATION- ART. 21A**

**State to provide free & compulsory education – children 6 to 14**

**1993 S. Court recognized**

**2002 86<sup>th</sup> A. Act**

**2009 RTE Act**



# **PROTECTION AGAINST ARREST AND DETENTION – Art. 22**

## **Two parts**

### **1<sup>st</sup> part: rights of detained under ordinary law**

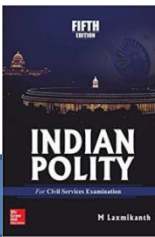
#### **✓ Grounds of detention**

#### **✓ Consult & defended by legal practitioner**

#### **✓ Before magistrate 24 hours (excluding journey)**

#### **✓ To be released after 24 hours unless magistrate authorizes**

#### **➤ These safeguards NOT available to alien/preventive detention detainee/ arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax**



- **Art.22, 2<sup>nd</sup> Part: protection to preventive detention detainee**
- ✓ **Available to both citizens/aliens**
- ✓ **Detention period not more than 3 months – after that advisory board [high court judges] – Parliament can prescribe more than 3 by law**
- ✓ **Grounds of detention informed**
- ✓ **An opportunity to make representation**
- ✓ **44<sup>th</sup> A. Act, 1978 reduced detention period to 2 months – not yet brought into force so 3 months**

- **Constitution divided preventive detention legislative power between center & states**

## **Parliament**

**Defense**

**Foreign  
Affairs**

**Security  
of India**

## **Concurrent**

**Security of  
state**

**Maintenance  
of Public  
Order**

**Maintenance  
of supplies &  
services  
essential to  
the  
community**

# **VALID PREVENTIVE DETENTION LAWS**

**Conservation of Foreign Exchange &  
Prevention of Smuggling Act, 1974  
[COFEPOSA]**

**National Security Act [NSA], 1980**

**Prevention of Blackmarketing and  
Maintenance of Supplies of Essential  
Commodities Act [PBMSECA], 1980**

**Prevention of Illicit Traffic in Narcotic  
Drugs & Psychotropic Substances Act  
[PITNDP], 1988**

=====

**1818, 1939 Laws provided Preventive  
detention**



**Only democratic  
country with  
preventive  
detention part of  
Constitution**

# RIGHT AGAINST EXPLOITATION ART.23 & ART.24

Prohibition of Traffic in Human Beings and Forced Labour/beggar – Art.23

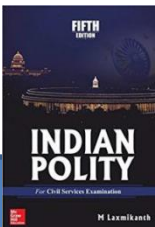
**Available to citizens/non-citizens**

**Not only against state against private persons**

**Immoral Traffic (Prevention) Act**

**Force in 'Forced Labour' includes physical, economic compulsion**

**State can impose compulsory service/without pay but not discrimination on Religion, Race, Caste or Class**



# **Prohibition of Employment of Children in Factories, etc. – Art. 24**

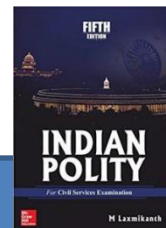
Below **14**

**NOT prohibit in harmless or innocent work – merely regulated**

**1996-S.Court-offending employer fine 20,000**

**2005-Commission of Protection of Child Rights Act-N/SCPCR**

**2006-Gov. banned employment of children in domestic servants/dhabas...**



# **RIGHT TO FREEDOM OF RELIGION**

**Freedom of Conscience and Free Profession,  
practice and Propagation of Religion-Art.25  
[Individual]**

- ✓ **Conscience – Inner Freedom**
- ✓ **Profess – declare freely & openly**
  - ✓ **Practice – exhibit**
- ✓ **Propagate – transmission & dissemination –  
NOT include right to convert**
- ✓ **Citizens/non-citizens**

**Subject to**  
**Public Order**  
**Morality**  
**Health**

**Other provisions related to FRs**

- **State is permitted to regulate/restrict economic, financial, political or other secular activity associated with religious practice**
  - **Hindu religious institutions for all Hindus**
  - **Hindus include Sikhs, Jains & Buddhists**
- 

## **FREEDOM TO MANAGE RELIGIOUS AFFAIRS – Art. 26 [Institution/Group]**

- ✓ **Every religious denomination or any of its section**
- ✓ **Establish, Maintain & Manage its own affairs**
- ✓ **Own, acquire, administer movable & immovable property**

**Subject to**  
**Public Order**  
**Morality**  
**Health**

# **3 conditions being religious denomination**

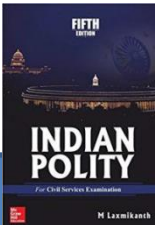
- **Collection of individuals having a system of beliefs/doctrines**
- **A common organisation**
  - **A distinctive name**

## **FREEDOM FROM TAXATION FOR PROMOTION OF A RELIGION- Art. 27**

- **No person compelled to pay tax for promotion of religion...State can use taxes for promotion of all religion but not specific religion**
- **NO tax, but fee YES for providing service**

# **Freedom from attending religious instruction- Art. 28**

- | <b>Institution</b>  | <b>Religious Instruction</b> |
|---|------------------------------|
| <ul style="list-style-type: none"><li>• <b>Wholly maintained by state -&gt; Completely prohibited</b></li></ul> |                              |
| <b>Administered by state but established under any endowment or trust -----&gt; Permitted</b>                   |                              |
| <b>Recognised/Receiving aid by state → Voluntary basis</b>  |                              |



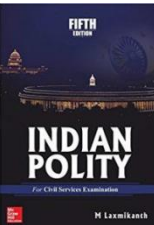
# **CULTURAL & EDUCATIONAL RIGHTS – Art 29 & Art 30**

## **Protection of interests of Minorities [ONLY?] – Art. 29 – Religion & Linguistic**

**‘Section of Citizens’ can conserve language, script, or culture**

**NO denial of permission on Religion, Race, Caste & Language – to educational institution maintained / aided by state**

**S. Court → minorities as well as majority**



# **RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS – Art. 30 - Religion & Linguistic Only**

**State compulsory acquisition of property not restrict or abrogate their rights (44<sup>th</sup> A.Act)**

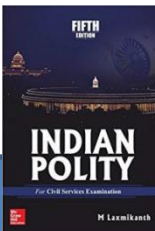
- **Term Minority NOT defined in the constitution**
  - **3 types of MINORITIES EDUCATIONAL INSTITUTIONS**

**Subject** to regulation by state

**1.Recognition & Aid from state**

**2.Only recognition**

- **3. Neither Recognition nor aid – Subject to general laws NOT regulation**



# **‘Soul & Heart- Dr. Ambedkar’: RIGHT TO CONSTITUTIONAL REMEDIES – Art. 32 – A FUNDAMENTAL RIGHT & BASIC FEATURE**

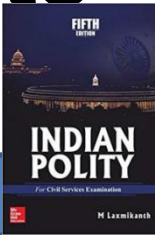
**Machinery for enforcement of FRs when they get violated**

## **4 Provisions**

**1. To Move the Supreme Court – 2. NOT to be suspended except National Emergency**

**3. S. Court having power to issue directions/orders/writs**

**4. Parliament can empower ANY other court these powers without prejudice to S. Court**



# **S. Court & FRs**

- **Defender & Guarantor**
- **Vested with Original [aggrieved directly approach] & Wide [issue directions/writs/orders] powers**
- **NOT exclusive, but concurrent with High Courts**
- **High Courts can issue writs for FRs/Legal Rights but, S. Court only for FRs**
- **S. Court territorial jurisdiction- India**
- **S. Court may not refuse to exercise writ jurisdiction, but for High Courts it is discretionary**

# **Writs – Type & Scope**

**Borrowed from English Law**

**HABEAS CORPUS – to have the body of**

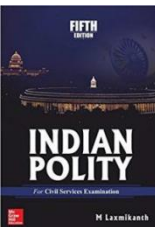
**Order to a person who detained another illegally**

**Bulwark of individual liberty**

**Issued against both i.e. public authorities & private individual**

**Not Issued when detention is legal**

**Habeas corpus not meant for missing person cases, says - Kerala High Court**

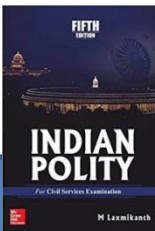


# **MANDAMUS – We Command**

- **To a public official to perform his/her duties**
- **Issued against any public body, a corporation, an inferior court, a tribunal & a government**

**Cannot issued against**

- **a private individual/body**
- **Departmental instruction not having statutory force**
- **Duty is discretionary NOT mandatory**
  - **To enforce a contractual obligation**
  - **President of India/State Governors**
  - **CJ of HCs acting in judicial capacity**



**PROHIBITION – to forbid/inactivity - Preventive**  
**Issued to Lower Court/ Tribunal to prevent exceeding**  
**jurisdiction/usurping jurisdiction**  
**against judicial & quasi-judicial authorities**

**NOT available against**

**Administrative authorities**

**Legislative bodies**

**Private individuals/bodies**

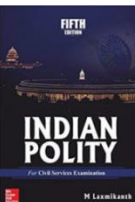
**CERTIORARI – to be certified/to be informed – Preventive &**  
**Curative**

**Issued to Lower Court/ Tribunal to transfer/quash the order**  
**on the grounds of excess/lack of jurisdiction or error of law**  
**Available against Administrative authorities**

**NOT available against**

**Legislative bodies**

**Private individuals/bodies**



# **QUO-WARRANTO – ‘BY WHAT AUTHORITY OR WARRANT’**

**Issued to enquire the legality of claim of a person to public office**

**It prevents illegal usurpation of public office by a person**

**Issued only in the case of public office of permanent character created by a statute /constitution**

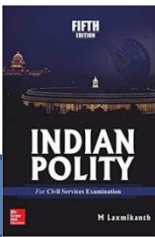
**Cannot be issued in cases of ministerial/private office**

➤ **Can be sought by any interested and not necessarily by aggrieved person**



# **ARMED FORCES & FRs – ART.33**

- ❑ Restriction/abrogation of FRs for Armed forces including Police**
- ❑ Parliament ONLY make laws in Art. 33**
- ❑ Cannot be challenged on court**
- ❑ Parliament enacted laws**
- ❑ Writ jurisdiction of courts excluded from court martials about FRs**



# **MARTIAL LAW [Military rule] & FRs – ART.34**

## **➤ Restriction on FRs**

- ❑ Parliament can indemnify/protect acts done by any government servant - Cannot be challenged on court**

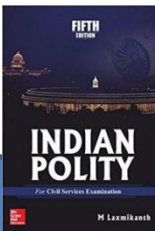
**Martial Law NOT defined in constitution**

**NO specific/express provision to declare martial law**

**In Art.34 it is implicit – circumstances like war, invasion, insurrection, rebellion, riot or violent resistance to law**

**S.Court : martial law does not ipso facto result in suspension of Habeas Corpus**

**Martial Law different from National Emergency**



## **Declaration of Disturbed Area**

The Armed Forces (Special Powers) Act, 1958 and the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 are Union enactments which primarily relate to Entries 2 and 2A of List I, as well as to Entry 2, List III. The former Act applies in a few parts of the seven states in the north-eastern region and the latter in certain territories of Jammu and Kashmir. These Acts confer on the Governor of the particular state and on the President the power to declare an area in any of these states as a “disturbed area” if, in the opinion of that authority, the area is in such a disturbed or dangerous condition that it is necessary to use the armed forces of the Union in aid of the civil power. Specified categories of officers in the Union armed forces who are deployed in an area declared as a ‘disturbed area’ can exercise, by virtue of the provisions of these Acts, certain enhanced powers, e.g., to fire upon or otherwise use force even to the extent of causing death and to destroy arms dumps. The power to declare an area as a disturbed area has been used by the Union Government in a state troubled by insurgency or violent public disturbances. The provisions of

- There were questions about the constitutionality of AFSPA, given that law and order is a state subject. The Supreme Court has upheld the constitutionality of AFSPA in a 1998 judgement (Naga People's Movement of Human Rights v. Union of India).

## Martial Law

In conditions of extreme disorder, when the civil authorities, even with the aid of the armed forces, are unable to bring the situation under control, 'martial law'<sup>53</sup> may be imposed in a disturbed area by a military commander. Martial law may also be imposed by a military commander when there is a complete breakdown of civil administration, e.g., during an insurrection against the government. Martial law is thus, the exercise of the right of private defence by repelling force by force. <sup>54</sup>

Martial law is not statutory in character. It is the law of emergencies and arises out of strict military necessity. Martial law means the suppression of the civil authority, by military authority, and its sole object is to restore conditions, as expeditiously as possible, to enable the civil authority to resume charge.

Martial law has never been imposed in independent India.



# Armed Forces Special Powers Act A Draconian Law?

Wg Cdr (Dr) U C Jha (Retd)

## **EFFECTING CERTAIN FUNDAMENTAL RIGHTS – ART.35**

**Parliament make laws to give effect to certain FRs – Art 16, Art 32, Art 33 & Art 34**

**Parliament make laws to punish effect offences under FRs – Art 17, Art 23**

- **this extends even some places to the sphere of state legislatures**

## **PRESENT POSITION TO RIGHT TO PROPERTY**

**Right to property created series of Amendments related to compensation for acquisition/requisition of private property**

**1<sup>st</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 25<sup>th</sup>, 39<sup>th</sup>, 40<sup>th</sup>, & 42<sup>th</sup>**

**So 44<sup>th</sup> A.Act abolished RIGHT TO PROPERTY as FR and inserted as Art. 300 A in Part XII – still, it is legal/constitutional right and NOT basic structure, No guaranteed right to compensation**



# LEGAL RIGHTS

- **Regulated i.e. curtailed, abridged or modified without constitutional amendment**
- **Protection from executive action but NOT from legislative action**
- **Aggrieved person NOT move the supreme court directly**
- **No guaranteed right to compensation in case of Property acquisition**

# FUNDAMENTAL RIGHTS

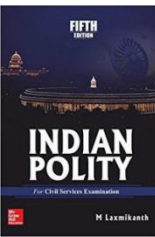
- **constitutional amendment**
- **Protection from executive action & from legislative action**
- **Aggrieved person move the supreme court directly**
- **guaranteed right to compensation in case of Property acquisition (Art.30 – 44<sup>th</sup> A.Act, 31A – 17<sup>th</sup> A. Act)**

# **EXCEPTIONS TO FUNDAMENTAL RIGHTS**

## **1. Saving of Laws – Art.31A (1<sup>st</sup> A.Act), if violation of Art.14 & Art.19 – 5 categories**

- **Acquisition of estates,**
- **taking over property management,**
- **Amalgamation of corporation,**
- **extinguishment/modification of rights of directors/shareholders of corporation,**
- **extinguishment/modification of mining leases**

**Does NOT immunise a state law from judicial review if it received President's assent**



## **2. Validation of Certain Acts and Regulations (included in the 9<sup>th</sup> Schedule)– Art. 31B (1<sup>st</sup> A. Act)- Wider Contravention of any of the FRs**

**A**

**R**

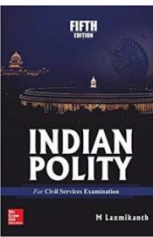
- **Judicial Review APPLICABLE if violation of Art. 14, 19 & 21 – S. Court in 2007, *I.R. Coelho vs State of Tamil Nadu and Others.***

## **3. Saving of Laws Giving Effect to Certain Direct Principles – Art. 31C, 25<sup>th</sup> A. Act**

**To implement socialistic directive principles in Art. 39(b) & 39(c) – if violation of Art. 14 or Art. 19**

**~~42<sup>nd</sup> A. Act tried any DPSP can implemented but S. Court Minerva Mills made invalid~~**

- **CRITICISM OF FUNDAMENTAL RIGHTS**
- **Excessive Limitations**
- **Not comprehensive Socio- economic rights**
- **A: Paradise for lawyers**  
**R: No Clarity**
- **A: A play tool in the hands of politician**  
**R: No Permanency – Not Sacrosanct**
- **A: No Permanency**  
**R: Suspension during emergency [Except Art. 20 & Art. 21]**
- **Expensive remedy**
- **Preventive detention – Rights more for state than individual**
- **No consistent philosophy**



- **Rights Outside Part III [Constitutional/Legal Rights but not FRs]**
  - ✓ **Art. 265 – Part XII - No tax without Law**
  - ✓ **Art. 300A – Part XII - Property Rights**
  - ✓ **Art.301 – Part XIII – Free Trade, Commerce & Intercourse**
  - ✓ **Art. 326 – Part XV – Elections based on Adult Suffrage**
- **In case of violation - Approachable H.Court [Art.226] writ jurisdiction**
  
- **a golden triangle of Articles 14, 19 and 21...these Articles would form the touchstone of the basic or essential features in Part III of the Constitution, dealing with fundamental rights... I.R. Coelho case (2007)**

# ***Landmark judicial decisions***

**Visit:**

<http://indiatoday.intoday.in/story/30-landmark-judgements-in-india/1/181044.html>

### **Champakam Dorairajan Vs State of Madras 1951**

Well before Arjun Singh, this case concerning admissions of backward classes to educational institutions led B.R. Ambedkar, then the law minister, to pilot the first-ever amendment to the Constitution.

### **K.M. Nanavati Vs State of Maharashtra 1960**

The crime of passion, where Commander Kavas Maneckshaw Nanavati murdered his wife's lover, marked the end of jury trials in India when the officer was let off.

### **Golaknath Vs State of Punjab 1967**

The Supreme Court made fundamental rights immune from amendment until Parliament reasserted its authority in 1971 by amending Articles 13 and 368 of the Constitution.

### **Madhav Jiwaji Rao Scindia Vs Union of India 1970**

The Supreme Court rejected a 1970 presidential order abolishing titles, privileges and privy purses of India's erstwhile princely rulers.

### **Kesavananda Bharati Vs State of Kerala 1973**

In 1971, Parliament empowered itself to amend any part of the Constitution. However, the Supreme Court laid down that such amendments could not destroy the 'basic structure' of the Constitution -fundamental rights are part of the 'basic structure'.

### **Himmat Lal Shah Vs Commissioner of Police 1973**

It dealt with a common citizen's right to hold public meetings on streets and the extent to which the state could regulate this right.

### **A.D.M. Jabalpur Vs S. Shukla 1976**

The Supreme Court declared the right to move court under Articles 14, 21 and 22 would remain suspended during the Emergency.

### **Maneka Gandhi Vs Union of India 1978**

The case caused a huge uproar over the definition of freedom of speech. The court ruled that the procedure must be fair and the law must not violate other fundamental rights.

### **Minerva Mills Vs Union of India 1980**

The Supreme Court again applied the 'basic structure' theory, saying that social welfare laws could not curb fundamental rights.

**Rajan Case 1981**

Involving the torture and death of a final year engineering student in custody in Kerala, the case led to the resignation of K. Karunakaran, then the home minister, and imprisonment of the officers accused.

**Kehar Singh Vs Delhi Administration 1984**

Kehar Singh was accused of taking part in the murder of Indira Gandhi. Though the death sentence was upheld by the Supreme Court, its accuracy has often been questioned.

**Shah Bano Case 1985**

The case, related to the issue of Muslim personal law, caused a furore as the court awarded Shah Bano a maintenance allowance after divorce.

**Ramesh Dalal Vs Union of India 1988**

The case dealt with the subject of pre-Partition communal violence, and how its depiction was not in violation of Constitutional articles.

### **Indira Sawhney Vs Union of India 1992**

The Supreme Court upheld the implementation of recommendations made by the Mandal Commission. It also defined the "creamy layer" criteria and reiterated that the quota could not exceed 50 per cent.

### **St. Stephen's College Vs University of Delhi 1992**

The identity of St. Stephen's College as a minority-run institution was put under the scanner as it was receiving grant-in-aid from the Government. The court ruled that grants could not change the minority character of an institution.

### **S.R. Bommai Vs Union of India 1994**

The case laid down the guidelines in proving a majority under Article 356. The recent Arjun Munda case judgement was also passed with reference to the Bommai case.

### **R. Rajagopal Vs State of Tamil Nadu 1994**

The case decided that the right to privacy subsisted even if a matter became one of public record. The right to be let alone is part of personal liberty.

### **Sarla Mudgal Vs Union of India 1995**

The Supreme Court held that a second marriage solemnised while the first existed was a punishable offence, though it did not become null and void.

### **Jamaat-e-Islami Hind Vs Union of India 1995**

The association was banned for unlawful activities. But the decision was reversed due to lack of evidence.

### **Ministry of I&B Vs Cricket Association of Bengal 1995**

The case, which dealt with the broadcast of the Hero Cup, was the first tussle involving the telecast of an international event by a private broadcaster.

### **Vishaka Vs State of Rajasthan 1997**

For the first time, sexual harassment, including sexually coloured remarks and physical contact, was explicitly and legally defined as an unwelcome sexual gesture. It stated that every instance of sexual harassment is a violation of fundamental rights.

### **Samatha Vs State of AP 1997**

The Supreme Court said government land, tribal land, and forest land in scheduled areas could not be leased to non-tribals or private companies for mining or industrial operations. Such activity can only be done by tribal people or by a government undertaking.

### **UNION OF INDIA Vs. Association for Democratic Reforms 2002**

The judgement of a three-member Bench ordered candidates contesting elections to declare their assets and all criminal cases pending against them at the time of filing of nominations.

### **P.A. Inamdar Vs State of Maharashtra 2005**

The Supreme Court stated that "neither the policy of reservation can be enforced by the state nor any quota of admissions be carved out in private educational institutions".

### **Best Bakery Case 2006**

The controversial trial came to an end with the conviction of nine people. The case related to 14 deaths in an arson attack on the Best Bakery in Vadodara in 2002. A retrial was ordered in 2004 after a local court acquitted all 21 accused.

### **Tamil Nadu Vs Suhas Katti 2004**

The first case involving conviction under the Information Technology Act, 2000, related to the posting of obscene messages on the Internet.

### **Om Prakash Vs Dil Bahar 2006**

In a severe deterrent to incidents of rape, the Supreme Court held that a rape accused could be convicted on the sole evidence of the victim, even if medical evidence did not prove rape.

- **A case in point is the landmark 1976 judgment in ADM Jabalpur vs Shivkant Shukla, popularly known as the habeas corpus case. Justices P N Bhagwati, A N Ray, Y V Chandrachud and M H Beg agreed with the then Indira Gandhi government that even the right to life stood abrogated during the Emergency. The majority opinion was that a person can't move court seeking personal liberty against the law of preventive detention (MISA) when the President had declared Emergency. Justice Hans Raj Khanna gave a dissenting judgment by holding that Clause(8) Article 226, under which the high courts can issue writs of habeas corpus, is an integral part of the Constitution. Later, the dissent of Justice Khanna became law of the land when, by virtue of 44th Constitutional Amendment, Articles 20 and 21 (personal liberty) were excluded from purview of suspension during Emergency.**

**Orders under the Goondas Act, National Security Act and Cofeposa for the preventive detention of a person for one year are passed either by commissioners of police or district collectors. Detenues have to approach the advisory board or file habeas corpus petitions in the high court for quashing the detention orders, as there is no bail provision available to them. About 96% of such detention orders are quashed by courts.**

**Chhattisgarh high court has freed a man, who was detained [by district magistrate] under National Security Act (NSA) after he allegedly posted communally inflammable material on Facebook...Hearing a petition for writ of habeas corpus for quashing an order ...a bench...quashed the detention order**

## **Rule of Law :** *Rule according to law; rule under law; or rule according to a higher law.*

- <http://legal-dictionary.thefreedictionary.com/rule+of+law>

- The rule of law is an ambiguous term that can mean different things in different contexts.
- In one context the term means rule according to law. No individual can be ordered by the government to pay civil damages or suffer criminal punishment except in strict accordance with well-established and clearly defined laws and procedures.
- In a second context the term means rule under law. No branch of government is above the law, and no public official may act arbitrarily or unilaterally outside the law.
- In a third context the term means rule according to a higher law. No written law may be enforced by the government unless it conforms with certain unwritten, universal principles of fairness, morality, and justice that transcend human legal systems.

# JUDICIAL INDEPENDENCE AND THE RULE OF LAW IN HONG KONG

*Edited by Steve Tsang*

While it is not easy to define precisely what the rule of law means, it embodies, at the very least, the fundamental notions of equality before the law, the right to the due process of law,<sup>1</sup> and non-retrospective application of legislation.

# Due Process of Law

- *A fundamental, constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property. Also, a constitutional guarantee that a law shall not be unreasonable, Arbitrary, or capricious.*

# **The difference between the doctrines of substantive and procedural due process**

**- <http://www.lincoln.edu/criminaljustice/hr/Dueprocess.htm>**

## **Procedural Due Process**

At a minimum, due process means that a citizen who will be affected by a government decision must be given notice of what government plans to do and have a chance to comment on the action. (citizens life, liberty, or property )

## **Substantive Due Process**

Substantive due process refers to the Supreme Court's examination of the reasons why the government passed a law or otherwise acted in a manner denying a citizen or a group of citizens life, liberty, or property (regardless of the procedure the law provides).

