



Fundamental Rights III

(मौलिक अधिकार)

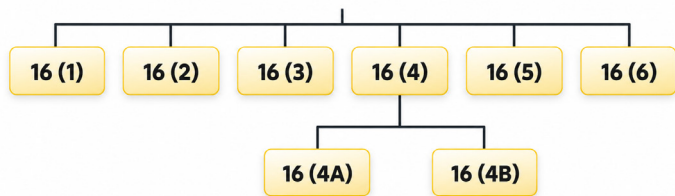


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Article 16 Equality of opportunity in matters of public employment



16 (1)

- ❖ Government jobs and conditions of service ⇒ Equality of opportunity

16 (2)

- ❖ Discrimination in government employment NOT permitted ONLY on the following grounds:
 - Religion
 - Race
 - Caste
 - Sex
 - Descent
 - Place of birth
 - Residence

16 (3)

- ❖ Parliament
 - May prescribe residence as a condition for government jobs.
 - Public Employment (Requirement as to Residence) Act, 1957
 - Currently, special residence provisions apply only to Andhra Pradesh and Telangana — but under Article 371(D), not Article 16(3).
 - Parliament may impose a condition based on "Residence" but NOT on "Place of Birth."

16 (4)

- ❖ State ⇒ Government services ⇒ Reservation for socially and educationally backward classes
- ❖ Event
 - Article 340 — President
 - ◆ Kaka Kalelkar Commission (1953)
 - ◆ B. P. Mandal Commission (1979)
 - V. P. Singh (1990) → OBC → 27% reservation
 - P. V. Narasimha Rao (1991) → EWS → 10% reservation
- ❖ Case ⇒ Indra Sawhney (November 16, 1992 → 9-judge Constitutional Bench)
 - 10% reservation solely for economically weaker sections → held invalid
 - 27% OBC reservation → constitutionally valid
 - Total reservation must not exceed 50% of total vacancies under any circumstances
 - No reservation in promotions
 - Principle of 'Creamy Layer'
 - The backwardness of SC/ST is treated as historically established. No separate quantitative data needs to prove their backwardness.
 - Establishment of National Commission for Backward Classes (NCBC)

Ram Nandan Committee (1993)

- Creamy Layer: applicable to OBC
- In matters of promotion, the 'Creamy Layer' principle shall also apply to SC and ST.
- In 1993 the income limit was ₹1 lakh, revised upward to ₹8 lakh in 2017

16(4)(A)

- 77th Constitutional Amendment 1995
- Reservation in promotions for SC/ST

16(4)(B)

- 81st Constitutional Amendment 2000
- "Carry Forward Rule" in reservation
- The 50% ceiling on reservation does not apply to backlog/unfilled reserved posts
- ❖ Case
- ❖ M. Nagaraj (2006)
 - Articles 16(4A) and 16(4B) → valid
 - Basis for reservation
 - 'Creamy Layer' → should apply to SC/ST as well.
- ❖ Jarnail Singh v. Lachmi Narain Gupta (2018)
 - Creamy Layer applies to SC and ST as well
 - 'Backwardness' → data requirement removed
 - Inadequate representation and efficiency → data requirements remain

SC Before granting reservation in promotions to SC/ST, quantitative data must be collected to establish the following three points :

- Backwardness
- Inadequate representation
- Administrative efficiency: Article 335

State of Punjab v. Davinder Singh (2024) → State governments may sub-classify within the SC/ST list so that reservation benefits reach the most deserving/needed

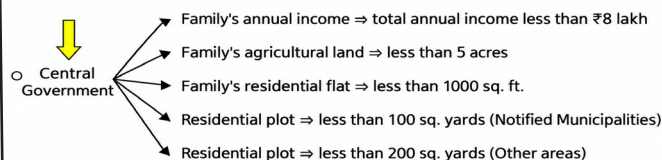
Justice G. Rohini Commission (October 2017) — constituted for sub-classification within OBC

16 (5)

Appointment of a person of the same religion is permitted for management posts in religious institutions

16(6)

- S. R. Sinho Commission (2006) → 103rd Constitutional Amendment Act, 2019
- Reservation for Economically Weaker Sections (EWS) → 10% reservation



Category	Reservation
(SC)	15%
(ST)	7.5%
(OBC)	27%
EWS	10%
Total	59.5%

→ Janhit Abhiyan v. Union of India (2022) ⇒ 103rd Amendment upheld as valid by a 3:2 majority

- Poverty is itself a cause of backwardness. It is the duty of the State to bring the weakest sections of society into the mainstream.
- Court held: The 50% ceiling is not an "inflexible or rigid rule."

Article 17 → Provision for complete abolition of untouchability

1. Abolition of untouchability
2. Untouchability → a punishable offence
3. Absolute Right: it is absolute in nature. There are no exceptions.
4. Also enforceable against private individuals: even an ordinary citizen practising untouchability is liable for punishment.
5. 'Untouchability' is not defined in the Constitution
6. Legislations giving effect to Article 17
 - Untouchability (Offences) Act, 1955 → renamed (2 September 1976) → Protection of Civil Rights Act, 1955
 - SC/ST (Prevention of Atrocities) Act, 1989
7. Mysore High Court: Devarajaiah v. B. Padmanna (1958) :-
 - A social evil by which certain castes or classes are regarded as inferior or untouchable by reason of their birth.
 - Exclusion of a person from society on account of bad conduct or a contagious disease will NOT be treated as 'untouchability' punishable under Article 17.

Article 18 → Abolition of Titles

18 (1)

The State shall not confer any title except military and academic distinctions.

18 (2)

No Indian citizen shall accept any title from a foreign state.

18 (3)

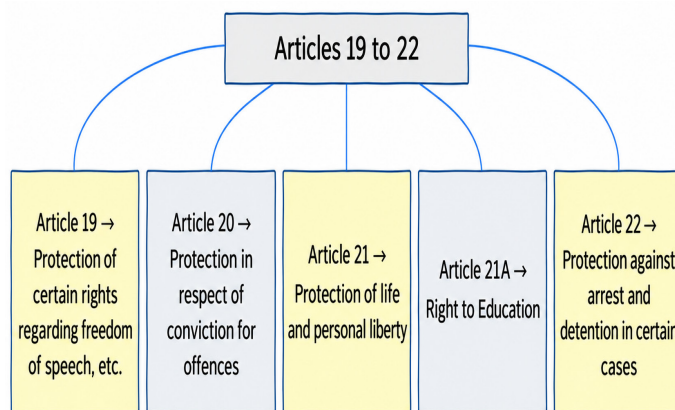
No foreign national holding office under the State shall accept any title from a foreign state without the prior consent of the President.

18 (4)

Any person holding a government office (Indian or foreign) shall not accept any present, emolument, or office from a foreign state without the

- ❖ Unlike Article 17 (untouchability), violation of Article 18 is currently not a punishable offence.
- ❖ Awards from foreign bodies (such as the Nobel Prize, Ramon Magsaysay, etc.) do not fall within the category of titles.
- ❖ Balaji Raghavan v. Union of India (1996) ☐ National awards (Bharat Ratna, Padma awards) do not fall within the scope of 'titles' under Article 18.
- ❖ Award recipients cannot use these names as a prefix or suffix to their names.
- ❖ Article 18 prohibits only those 'titles' which are hereditary or which were conferred by the British to create feudal and artificial distinctions (such as Maharaja, Rai Bahadur, Diwan).

Right to Freedom



Articles 19 → Protection of certain rights regarding freedom of speech, etc



1. Deletion of the Right to Property

- Seven rights under Article 19 Initially, but the right to property removed from fundamental rights so now there are six.
- Articles 19(1)(f) → Right to acquire property'
- 44th Constitutional Amendment Act, 1978 → made it a legal right (Article 300A))

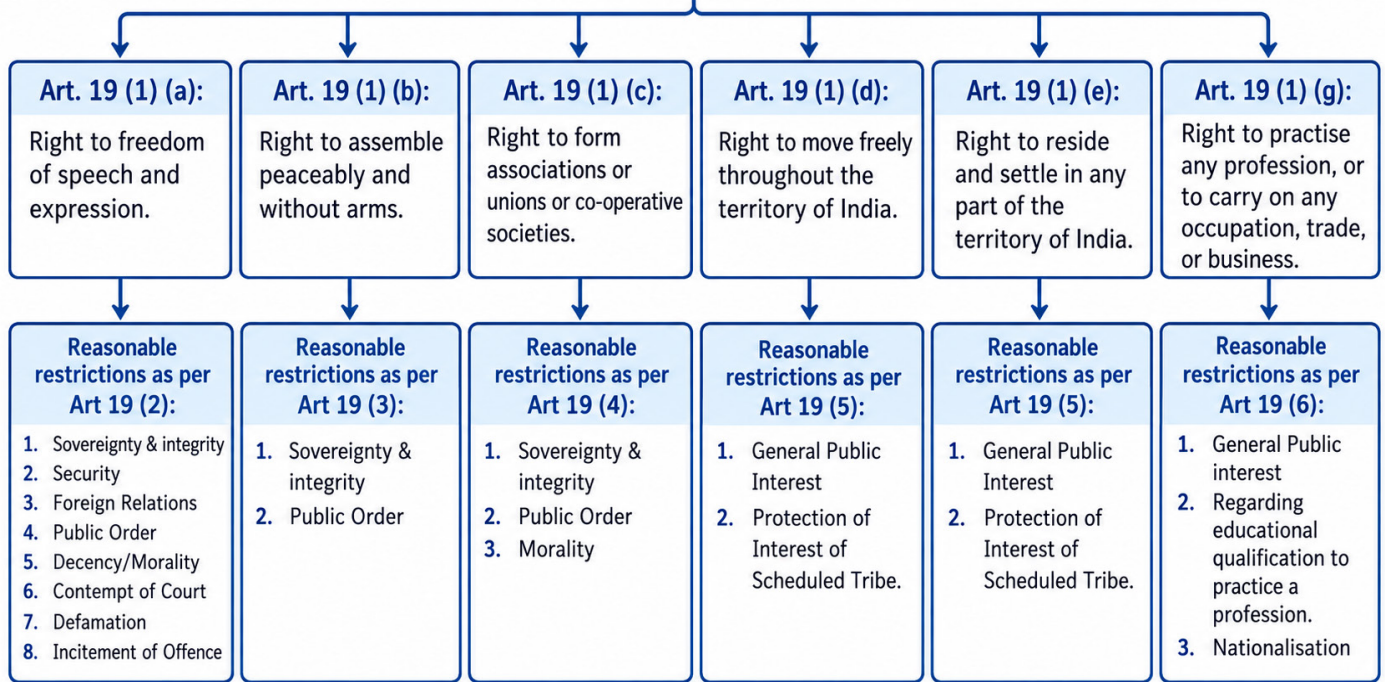
2. Applicability of Rights

- Available only to Indian citizens and shareholders of companies.
- Not available to foreign nationals
- These rights under Article 19 are protected only against actions of the State, not against private individuals
- Article 358 → When a National Emergency is declared, Article 19 is automatically suspended. This provision applies only during war or external aggression, not during armed rebellion

3. Reasonable Restrictions

- These rights are not absolute
- The State can impose 'reasonable restrictions' on these rights on specific grounds mentioned in Articles 19(2) to 19(6)

Article 19: Protection of certain rights regarding freedom of speech, etc.



19(1)(a) → Freedom of Speech and Expression

Freedom to express one's own or others' views through any medium — speaking, writing, or printing

- Press and commercial advertisements
- Right against imposition of pre-censorship.
- Right to information
- Right to access social media and the Internet
- Right to exhibit films
- Right to silence — right to remain silent
- Right against phone tapping

- Right to choose the medium of instruction at the primary school level
- Right to express one's gender identity.
- Right to respond to allegations or criticism made against oneself
- Background (antecedents) of election candidates
- Right to demonstrate and protest (does not include the right to strike)
- Right against a forced 'bandh' (shutdown) called by any organization
- Right to hoist the national flag

19(2) → Grounds for restriction on Freedom of Speech and Expression

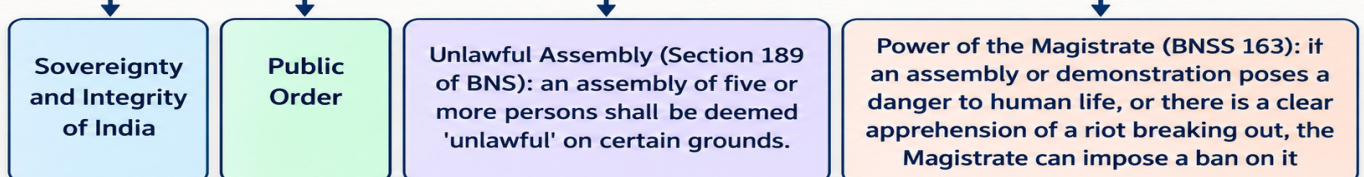
- Sovereignty and integrity of India (16th Amendment, 1963)
- Friendly relations with foreign States (1st Amendment, 1951)
- Public order (1st Amendment Act, 1951)

- Decency or morality
- Contempt of court and defamation
- Incitement to an offence (1st Amendment Act, 1951)

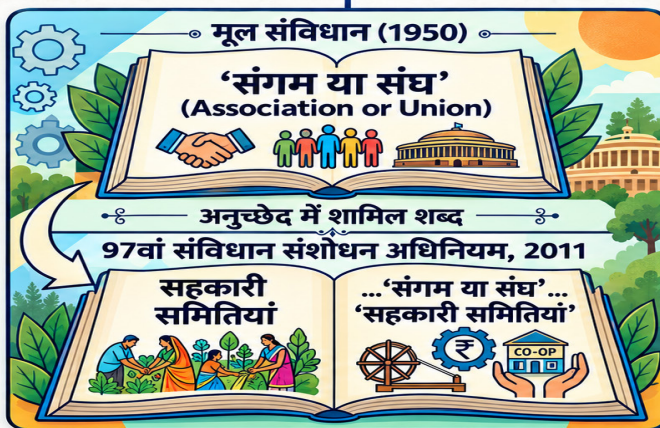
19(1)(b) → Freedom of Peaceful Assembly

Peacefully → public meetings, demonstrations, and processions

19(3) → Reasonable Restrictions



- BNS (Bharatiya Nyaya Sanhita) and BNSS (Bharatiya Nagarik Suraksha Sanhita)
- The right to go on a hunger strike has also been held to be included under Article 19(1)(b).

19(1)(c) → Right to form Associations, Unions or Co-operative Societies**Right to form associations, unions, or cooperative societies in a peaceful manner****19(4) → Reasonable Restrictions**

- ☐ Sovereignty and integrity of India
- ☐ Public Order
- ☐ Morality
- ☐ The right to strike is not a fundamental right
- ☐ Article 33 → special restrictions on armed forces
- ☐ No fundamental right for an association or organization to obtain 'recognition' from the government

19(1)(d) → Right to Free Movement

Every citizen has "the right to move freely (without any obstruction) throughout the territory of India"

19(5) → Reasonable Restrictions

- ☐ In the interest of the general public → public health, public safety and order, road safety rules
- ☐ Protection of interests of Scheduled Tribes (ST) → Inner Line Permit (ILP) in Arunachal Pradesh, Nagaland, Mizoram and Manipur

- The Supreme Court clarified in 'Maneka Gandhi v. Union of India' (1978) that the right to travel abroad is protected under Article 21 (Protection of life and personal liberty)
- Kaushalya v. Uttar Pradesh (1964): restricting prostitutes from moving in a specific area and restricting their residence was held constitutional.
- Kharak Singh v. State of Uttar Pradesh (1963): repeated domiciliary visits by police to a suspect's home at night violate a person's right to free movement and right to privacy

19(1)(e) → Right to Reside and Settle

All citizens of the country have "the right to reside and settle in any part of the territory of India"

To reside → to live temporarily

19(5) → Reasonable Restrictions

To settle: to build a home and live there permanently.

- ☐ In the interest of the general public → public health, public safety and order, road safety rules
- ☐ Protection of interests of Scheduled Tribes (ST) → Inner Line Permit (ILP) in Arunachal Pradesh, Nagaland, Mizoram and Manipur

- Article 19(1)(d) and Article 19(1)(e) are twin provisions. According to the Supreme Court, both are 'two facets of the same right', since wherever a person moves, they will eventually stop or settle there. This is why the grounds for restricting both rights [Article 19(5)] are exactly the same
- 'Settling' in a place does not mean you have acquired a fundamental right to 'purchase' property there
- Before the abrogation of Articles 370 and 35A in August 2019, people were deprived of the right to permanently settle or purchase immovable property in Jammu and Kashmir. But now this constitutional barrier has been removed, and Article 19(1)(e) applies there fully as well

19(1)(g) – Right to practise any profession, occupation, trade or business

All citizens of the country have the fundamental right to practise any profession, occupation, trade or business of their choice

19(6) → Reasonable Restrictions

- ☐ In the interest of the general public → illegal, immoral or dangerous trade (smuggling, dangerous drugs or explosives)
- ☐ The State can prescribe the necessary qualifications required to practise a particular profession or trade

- The 'right to close a business' is not a completely fundamental right. It is regulated by labour laws
- The Supreme Court has clarified that trading in liquor or intoxicants is not a fundamental right of any citizen
- This right covers everything from a citizen setting up a roadside hawking stall to establishing a large company

KEY SUPREME COURT CASES ON FREEDOM OF EXPRESSION**1. Freedom of Press & Media Cases**● **Romesh Thapar v. State of Madras (1950):**

Ruling: SC clarified that 'Freedom of Speech & Expression' [19(1)(a)] inherently includes 'Freedom of the Press' and 'Right to Circulation'.

- **Significance:** Expression cannot be restricted solely on 'Public Safety' unless there's a direct threat to National Security.

● **Brij Bhushan v. State of Delhi (1950):**

Ruling: Court held imposing 'Pre-ई-सर censorship' on a newspaper is a violation of Article 19(1)(a).

● **Bennett Coleman v. Union of India (1972):**

Ruling: Challenged Newsprint Control Order. Court ruled that limiting the number of newspaper pages is a violation of Press Freedom.

2. Modern Cases on Internet & Digital Rights● **Shreya Singhal v. Union of India (2015):**

Ruling: A landmark decision where SC declared IT Act 'Section 66A' unconstitutional and struck it down.

- **Significance:** Section was too vague, creating a 'Chilling Effect' on internet freedom of speech.

● **Anuradha Bhasin v. Union of India (2020):**

Ruling: Decision in the context of internet shutdown in Jammu and Kashmir.

- **Significance:** SC declared that Right to Free Speech via Internet [Art 19(1)(a)] and to conduct Business [Art 19(1)(g)] are Indefinite internet shutdowns are unconstitutional.

3. Cases on Sedition, Criticism, & Dissent● **Kedar Nath Singh v. State of Bihar (1962):**

Ruling: Court upheld the validity of Sedition (IPC 124A) but gave strict guidelines to prevent its misuse.

- **Significance:** Criticizing the government is not sedition unless it incites violence or public disorder.

4. Other Important Rights (Strikes, Protests, etc.)● **T.K. Rangarajan v. Govt of Tamil Nadu (2003):**

Ruling: Court clarified that gov employees have no fundamental, statutory, or moral 'right to strike'. (Art 19 gives right to protest, not strike).

● **Navin Jindal v. Union of India (2004):**

Ruling: Flying the national flag respectfully at home or office is a fundamental right under Art 19(1)(a).

● **PUCI v. Union of India (2003):**

Ruling: Voters have a fundamental right under 19(1)(a) to know candidates' criminal records, assets, and education.

Article 20 → Protection in respect of conviction for offences**20 (1)****Protection against Ex-Post-Facto Laws****20 (2)****Protection against Double Jeopardy****20 (3)****Protection against Self-Incrimination****20 (1)**

No person can be convicted of an offence unless they committed an act that violated a law in force at the time the act was committed.

No person can be given a penalty greater than that prescribed under the law in force at the time the offence was committed.

- ✓ Applies only to criminal laws → not to retrospective civil legislation.
- ✓ If a new law reduces the punishment for an offence, the offender can claim the benefit of that new law.
- ✓ If the government makes a change to trial procedure or court jurisdiction, it can be applied retrospectively.

**ARTICLE 20(2) & 20(3) — CONSTITUTIONAL PROTECTIONS****20 (2)****Protection against Double Jeopardy**

- No person shall be prosecuted and punished more than once for the same offence.
- Based on the well-known jurisprudential principle: "Nemo debet bis vexari"

**20 (3)****Protection against Self-Incrimination**

- A person accused of an offence cannot be compelled to be a witness against themselves.

**VODAFONE TAX CASE (2012)****A Famous Example of Retrospective Taxation****Controversy**

The Income Tax Department imposed tax on Vodafone, a foreign company, for acquiring assets in India.

**Supreme Court Decision (2012)**

The Court held that the Income Tax Act, 1961 did not cover such transactions. Tax could not be imposed, and Vodafone won.

**Government Action**

The Finance Act, 2012 amended the Income Tax Act retrospectively from 1962—about 50 years earlier—so older transactions could also be taxed.

✓ ADDITIONAL IMPORTANT POINTS

- ✓ This protection applies only to proceedings before courts or judicial tribunals.
- ✓ After a government employee is punished by a court, their department can also dismiss them from service. This is not considered double punishment. (Maqbool Hussain v. State of Bombay)
- ✓ If a single act constitutes two different offences, separate trials can be conducted for both.
- ✓ If a person was prosecuted but acquitted (not punished), the Constitution does not directly protect them from being prosecuted again for the same offence.
- ✓ 44th Constitutional Amendment Act (1978) → Articles 20 and 21 cannot be suspended.