



Fundamental Rights IV

(मौलिक अधिकार)



Shubham Gupta Sir

Join SelectionWay GS Channel

Join SelectionWay GS Channel

Article 21 → Protection of life and personal liberty

- No person shall be deprived of their life or personal liberty except according to procedure established by law.
- Available to both citizens and foreigners
- The Maneka Gandhi case (1978) is the most landmark judgment in the history of Article 21.)
- After this judgment, "procedure established by law" began to be interpreted as "due process of law".)
- Since the 44th Constitutional Amendment (1978), Article 21 cannot be suspended even during an Emergency

	A.K. Gopalan (1950)	Maneka Gandhi (1978)
Approach	Narrow interpretation	Broad
Scope of Protection	Only against the Executive	Both Executive and Legislature
Doctrine of Law	Rigidly followed "Procedure Established by Law" (Japanese model). No matter what the law is, if it is passed by Parliament, it is valid.	Indirectly adopted "Due Process of Law" (American model). The law must be fair, just and reasonable.
Meaning of 'Life'	'Life' was interpreted as merely physical existence or animal-like existence.	Basis of Comparison 'Life' was interpreted as "living with human dignity."
Relationship Between Fundamental Rights	Articles were treated as 'water-tight compartments' (separate from each other). Articles 19 and 21 were considered independent of one another.	Principle of the "Golden Triangle": Articles 14, 19 and 21 are interconnected with each other.

Basis of Comparison	Satwant Singh Sawhney Case (1967)	Maneka Gandhi Case (1978)
Main Cause of Dispute	Government ordering surrender of passport without any law.	Passport impounded without giving reasons under the Passport Act, 1967.
Supreme Court's Decision	'Right to travel abroad' is part of Article 21 (personal liberty).	The procedure of law cannot be arbitrary; it must be 'just, fair and reasonable.'
Whose Power Was Restricted?	Only the arbitrariness of the Executive (Government/officials).	Arbitrariness of both the Executive and the Legislature (laws made by Parliament).
Legal Approach	Strict (literal) adherence to "Procedure Established by Law."	Adopted the American Constitution's philosophy of "Due Process of Law."

Natural Justice	No specific discussion on this aspect.	Natural Justice was held to be an essential part of legal procedure.
Immediate Effect / Outcome	Government had to enact the 'Passport Act, 1967' to restrict foreign travel.	A new and biggest era of expansion of Fundamental Rights in India began.

S.No.	Case (Year)	Right Declared as Part of Article 21
1.	Satwant Singh Sawhney vs. D. Ramarathnam (1967)	Right to travel abroad: Passport Act, 1967
2.	M.H. Hoskot vs. State of Maharashtra (1978)	Right to free legal aid
3.	Hussainara Khatoon vs. Home Secretary, Bihar (1979)	Right to speedy trial
4.	Francis Coralie Mullin vs. Administrator, Delhi (1981)	Right of prisoners to basic necessities of life
5.	Sheela Barse vs. State of Maharashtra (1983)	Right against custodial torture
6.	Rural Litigation and Entitlement Kendra vs. State of Uttar Pradesh (1985)	Right to a clean/healthy environment
7.	Olga Tellis vs. Bombay Municipal Corporation (1985)	Right to livelihood
8.	Parmanand Katara vs. Union of India (1989)	Right to emergency medical assistance (right to doctor's aid)
9.	Shantistar Builders vs. N.K. Totame (1990)	Right to shelter
10.	K.S. Puttaswamy vs. Union of India (2017)	Right to privacy
11.	M.C. Mehta vs. Union of India (multiple cases)	Right to a clean environment and pollution-free air and water
12.	D.K. Basu vs. State of West Bengal (1997)	Right against handcuffing and custodial torture
13.	Common Cause vs. Union of India (2018) / Aruna Shanbaug	Right to die with dignity (passive euthanasia)
14.	Attorney General of India vs. Lachhma Devi (1986)	Right against public hanging
15.	Mohini Jain (1992) & Unni Krishnan (1993)	Right to free education (later made Article 21A)



Article 21: Right to Life vs Right to Die

Euthanasia | Attempt to Suicide | MHCA | Landmark Judgments



Life
Dignity
Choice
Justice

1 Does the Right to Life include the Right to Die?

Under Article 21, whether the 'Right to Life' includes the 'Right to Die' has been a long-standing debate in the Indian judiciary.

1987 Maruti Shripati Dubal Case (Bombay High Court):

- Held that the 'right to die' is included within the 'right to life'; declared Section 309 of the IPC unconstitutional.



1994 P. Rathinam v. Union of India:

- The Supreme Court accepted the same view and held that Article 21 includes the Right to Die.



1996 Gian Kaur v. State of Punjab:

- A 5-judge Constitution Bench overruled P. Rathinam and held: 'Right to Life does not include Right to Die.'



★ **Most Important Case for UPSC**

2 Euthanasia

Active Euthanasia

- Ending life through an external means such as a lethal injection.
- Completely illegal in India.**



Passive Euthanasia

- Withdrawing life support, ventilator, or artificial feeding so that the patient is allowed to die naturally.



2011

Aruna Shanbaug Case:

- The Supreme Court permitted passive euthanasia in India with strict guidelines.



2018

Common Cause v. Union of India:

- Granted legal recognition to passive euthanasia and recognised the validity of a Living Will / Advance Medical Directive.

Summary: Active Euthanasia is illegal; Passive Euthanasia is valid subject to limited conditions.

3 Attempt to Suicide, MHCA and BNS



MHCA 2017 (Section 115):

- A person attempting suicide is presumed to be under 'severe stress'.
- The focus is on care, treatment and rehabilitation instead of punishment.



IPC Section 309:

- It was effectively decriminalised in practice.



BNS 2023:

- The general offence corresponding to IPC Section 309 has not been retained.
- However, under Section 226, attempting suicide to compel or restrain a public servant from discharging lawful power remains punishable.

Quick Revision



Right to Die = **Not a Fundamental Right**



Right to Die with Dignity = **Recognised in a Limited Context**



Passive Euthanasia + Living Will = **Valid**



Active Euthanasia = **Illegal**

4 Other Landmark Judgments of 2018

Navtej Singh Johar v. Union of India (2018):

- IPC Section 377 was partially struck down as unconstitutional.
- Consensual homosexual relations between adults are no longer a crime.
- It affirmed dignity and equality under Articles 14 and 21.



Joseph Shine v. Union of India (2018):

- IPC Section 497 (Adultery) was declared unconstitutional.
- Adultery is no longer a criminal offence, though it may remain a civil ground for divorce.
- The judgment protected women's dignity, equality and autonomy.



Suspension of Fundamental Rights During National Emergency



1. Article 358: Automatic Suspension of Article 19

- When a National Emergency under Article 352 is proclaimed on the ground of 'War' or 'External Aggression', the six freedoms guaranteed under Article 19 are automatically suspended.
- No separate Presidential Order is required.
- 44th Constitutional Amendment (1978):** If the Emergency is declared on the ground of 'Armed Rebellion', Article 19 is **NOT suspended**.
- Article 19 automatically revives when the Emergency ends.



2. Article 359: Suspension of Enforcement of Other Fundamental Rights



- Article 359 empowers the President to issue an order during a National Emergency suspending the right to enforce specified Fundamental Rights.
- The rights themselves do not disappear; however, citizens cannot approach the Supreme Court or High Court for their enforcement during the suspension period.
- The Presidential Order specifies which rights are affected and for how long.

3. Biggest Exception: Articles 20 and 21



- The **44th Constitutional Amendment (1978)** introduced this safeguard after the experience of the 1975 Emergency.
- Article 20:** Protection in respect of conviction for offences.
- Article 21:** Right to Life and Personal Liberty.
- Rule:** Articles 20 and 21 can **NEVER** be suspended, irrespective of the type of Emergency.

4. Effect of Other Emergencies



President's Rule / State Emergency (Article 356)
Fundamental Rights of citizens are not affected.



Financial Emergency (Article 360)
Fundamental Rights of citizens are not affected.



Remember:

Under Article 359, rights are **not abolished**; only the legal remedy to enforce specified rights may be temporarily suspended.



Article 21A → Right to Education

- The State shall provide free and compulsory education to all children aged 6 to 14 years, in such manner as the State may, by law, determine.)
- Education was originally mentioned in Article 45 of the Directive Principles of State Policy (DPSP), which stated that the State shall endeavour to provide, within ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of fourteen years.
- Mohini Jain v. State of Karnataka (1992) : the 'right to life' (Article 21) also includes the right to education.
- Unnikrishnan v. State of Andhra Pradesh (1993) : the right to education is a fundamental right only for children aged 6 to 14 years; beyond this, it depends on the economic capacity of the State.
- 86th Constitutional Amendment Act, 2002 → inserted Article 21A into Part III
- Parliament passed the 'Right of Children to Free and Compulsory Education Act, 2009' (RTE Act), which came into effect on 1 April 2010.

Article 22 – Protection against arrest and detention in certain cases



Punitive Detention

- 1 **Articles 22(1) to 22(3) → Punitive detention**
- 2 **Taking a person into custody to punish them for an offence they have committed**
- 3 **Punitive and corrective**
- 4 **Governed by ordinary criminal laws (CrPC, IPC/BNS)**



Punitive = punishment after an offence



Preventive Detention

- 1 **Articles 22(4) to 22(7) → Preventive detention**
- 2 **Taking a person into custody without trial to prevent them from committing an offence in the future**
- 3 **Precautionary and preventive**
- 4 **Governed by specific parliamentary or state laws (such as NSA, PSA)**

Preventive = prevention of a possible future offence

22 (1)

- Right to know the grounds of arrest
- Right of a person to consult and be defended by a legal practitioner of their choice

22 (2)

- Right to be produced before a magistrate within 24 hours
- The time taken in travelling to the court is not included in this 24-hour period

22 (3)

- These safeguards are not available to →
 - Foreigners (enemy aliens)
 - Persons arrested under a preventive detention law
- Supreme Court → this protection does not apply to arrest under a court order, civil arrest, arrest for non-payment of income tax, or the apprehension of a foreigner. It can apply only in matters of criminal acts, offences of a public-wrong nature, and certain adverse public interest matters.

This protection is available to both citizens and foreigners.

22 (4)

- The period of preventive detention shall not exceed 3 months — unless an Advisory Board reports sufficient cause.
- Composition of the Advisory Board: persons who are, have been, or are qualified to be appointed as judges of a High Court.
- If Parliament has enacted a law specifying particular circumstances or classes of cases in which a person may be detained beyond 3 months even without the opinion of an Advisory Board, then the 3-month limit under Article 22(4) shall not apply in such cases.
- The 44th Constitutional Amendment, 1978 provided for reducing this maximum period of preventive detention from 3 months to 2 months. However, this particular provision has still not been officially notified/brought into force.

22 (5)

- Right to be informed of the grounds or reasons for detention
- Right to make a representation: the earliest possible opportunity must be given to present a representation or defence

22 (6)

- If the authority believes that disclosing the facts would be against the "public interest", it may refuse to disclose them.

22 (7)

- Confers special power on Parliament to make laws regarding preventive detention
- (a) Specifying circumstances and classes of cases under which a person may be detained in preventive custody for more than three months without obtaining the approval of an Advisory Board
- (b) The maximum period for which a person may be detained under any law of preventive detention
- (c) The procedure to be followed by an Advisory Board when conducting an inquiry into a case of preventive detention.

The subject of preventive detention falls under the 'Concurrent List' of the Seventh Schedule. However, the power to fix the maximum period under Article 22(7) rests solely with Parliament, not with State legislatures

Right against Exploitation

Articles 23 & 24

Article 23

Prohibition of traffic in human beings and forced labour



Article 24

Prohibition of employment of children in factories, etc.



Article 23 protects **everyone** | Article 24 specifically protects **children below 14 years**

Article 23 → Prohibition of traffic in human beings and forced labour

23 (1)

- ❖ Prohibited, and contravention is an offence punishable in accordance with law
- Traffic in Human Beings
- Begar
- Other forms of Forced Labour

1 Human Trafficking

- Buying and selling human beings like commodities.
- Includes: Slavery System, Devadasi System and Jogini System.



2 Begar

- Forcing labour without paying any wages or remuneration.



3 Forced Labour

- Making a person work against their will.



4 Devadasi / Jogini Practice

- Under this practice, young girls were dedicated for life to a temple, god or goddess.
- It was called 'Devadasi' in South India, and 'Jogini' or 'Matamma' in parts of Andhra Pradesh.



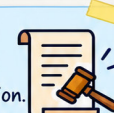
5 Earlier Name

- Bharatanatyam was earlier known as 'Sadir', 'Sadhir Nattiyam', or 'Dasi Attam'.



6 Important Laws

- **Immoral Traffic (Prevention) Act, 1956** – deals with immoral trafficking and prostitution.
- **Bonded Labour System (Abolition) Act, 1976.**



7 Labour Protection Laws

- **Minimum Wages Act, 1948.**
- **Equal Remuneration Act, 1976** – equal pay for men and women for the same work.



23 (2)

- Exception - Public Purpose
 - ("Nothing in this Article shall prevent the State from imposing compulsory service for public purposes
 - In imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class.")
- Public Purpose : government may require compulsory service from citizens in the interest of national security or the welfare of society
- Example: compulsory military conscription during war, or requiring citizens to perform social service during a natural disaster
- Rules may be framed on the basis of gender for compulsory service.

Article 24 : Prohibition of employment of children

- ❖ No child below the age of 14 years shall be employed in any factory, mine, or any other hazardous work
- ❖ Positive Obligation: this places a duty on the State to ensure a safe environment for children
- ❖ Child Labour (Prohibition and Regulation) Act, 1986

Article 24 Cannot Be Read in Isolation

According to the Supreme Court, it should be read together with the following Articles:

1

Article 21A – Right to Education



- Free and compulsory education for children aged **6 to 14 years**.
- When a child is in school, they can stay away from factories.

2

Article 39(e) – DPSP



The State shall ensure that the tender age of children is not abused and that they are not forced by economic necessity to do work unsuited to their age or strength.

3

Article 39(f) – DPSP



Children should be given opportunities to develop in a healthy manner and in an atmosphere of freedom and dignity.

4

Article 45



Early childhood care and education for children below **6 years** of age.

5

Complete Meaning of Article 24



Article 24 must be understood from the broader perspective of **child protection, education and welfare**.

Child Labour Laws in India

Key Provisions and Amendments

1

Constitutional Basis

Article 24: Completely prohibits the employment of children below 14 years of age in any factory, mine, or other hazardous activity.



2

Main Law

Child and Adolescent Labour (Prohibition and Regulation) Act, 1986



3

Evolution and Major Amendments

2006: Ban on the employment of children below 14 years in domestic work, hotels, dhabas, and shops. — **Complete Prohibition**

2016: Complete ban on the employment of children below 14 years in all occupations. Adolescents (14–18 years) were legally recognised and prohibited from hazardous occupations. — **Complete Prohibition**



4

Exception: 'Family Enterprise' Clause

Children below 14 years are allowed, under strict conditions, to help in family-owned non-hazardous enterprises (partial exception).



- 1. Education First:** Help can only be given after school hours or during vacations.
- 2. Time Limit:** Maximum 3 hours per day.
- 3. Restricted Hours:** No work is allowed between 7:00 PM and 8:00 AM.
- 4. Exception for Child Artists:** In the audio-visual entertainment industry, child artists can work up to 5 hours a day.

5

Penalties for Violation

- **Imprisonment:** 6 months to 2 years.
- **Fine:** ₹20,000 to ₹50,000.



6

Main Objective

To ensure education, safety, and a dignified childhood for children.



Right to freedom of religion

Articles 25 to 28

Article 25

Freedom of conscience and free profession, practice, and propagation of religion

Article 26

Freedom to manage religious affairs

Article 27

Freedom as to payment of taxes for promotion of any particular religion

Article 28

Freedom as to attendance at religious instruction or worship in certain educational institutions

Article 25 – Freedom of conscience and free profession, practice, and propagation of religion

25 (1)

❖ Applies to 'all persons' (citizens and non-citizens)

- Freedom of Conscience → You have complete freedom to believe in God in whatever form you choose, or to not believe in God at all.
- Right to Profess → Declaring one's religious beliefs publicly and without fear.
- Right to Practice → Performing religious worship, rituals, and ceremonies.
- Right to Propagate → Does not include the right to convert another person to one's own religion by force or fraud

❖ Reasonable Restrictions

- Public Order
- Morality
- Health
- Other provisions of Part III (Fundamental Rights)

25 (2)

❖ State's Regulatory Power (power of the State to make laws)

- Regulation of any economic, financial, political, or other secular activity associated with religious practice.
- Providing for social welfare and reform, or opening public Hindu religious institutions to all classes and sections of Hindus — this is the constitutional basis for social reform legislation such as temple entry laws.

❖ Important Clarifications

- The wearing and carrying of a kirpan by Sikhs shall be deemed to be included in the profession of the Sikh religion
 - The reference to "Hindus" shall be construed as including persons professing the Sikh, Jain, or Buddhist religion.
- In MCQs, confusion is created by asking 'Are Sikhs, Jains, Buddhists Hindus?' — No,
- these are independent religions, but for the purposes of Article 25(2)(b) (social welfare legislation) and Hindu personal law (Hindu Marriage Act 1955, etc.), they are placed within the category of 'Hindu'.

Article 26: Freedom to manage religious affairs

❖ Every religious denomination or any section thereof shall have the following rights :

- Right to establish and maintain institutions for religious and charitable purposes
- Right to manage its own affairs in matters of religion.
- Right to own and acquire movable and immovable property
- Right to administer such property in accordance with law.

❖ Reasonable Restrictions

- Public Order
- Morality
- Health

Conditions for a Religious Denomination → S.P. Mittal vs Union of India (1983)

- ❖ It must be a collection of individuals having a common system of beliefs.
- ❖ They must have a common organisation.
- ❖ They must have a distinctive name.

➤ Article 25 guarantees 'individual' rights, whereas Article 26 is a 'collective' right — it is available to a religious denomination or its section, not to an individual person.

Article 27 → Freedom as to payment of taxes for promotion of any particular religion

- ❖ The State cannot compel any person to pay any tax whose proceeds are specifically appropriated for the promotion, propagation, or maintenance of any particular religion or religious denomination
- ❖ This provision reinforces the secular character of the Indian Constitution.
- ❖ Article 27 prohibits only the levy of a 'tax', not a 'fee'.
- ❖ Praphull Goradia vs Union of India (2011) → Article 27 is violated when a very substantial part of the tax collected by the government is spent on promoting only one religion.

Article 28 → Freedom as to attendance at religious instruction or religious worship in certain educational institutions

28 (1)

- No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- Meaning → No religion can be taught in a fully government-run school or college.

28 (2)

- Clause (1) shall not apply to an institution administered by the State but established under a trust which requires that religious instruction be imparted in such institution.
- Meaning → If a madrasa, Sanskrit school, or other institution is established by a religious trust but administered by the government, religious instruction may still be given there.

28 (3)

- A person attending an educational institution recognised by the State or receiving aid out of State funds shall not be required -
 - ◆ to take part in any religious instruction imparted in such institution, or
 - ◆ to attend any religious worship conducted in such institution or in any premises attached thereto
- unless that person (or their guardian, if a minor) has given consent thereto.



Classification of Educational Institutions and the Impact of Article 28

To understand this simply, educational institutions can be viewed in four categories:



1. Fully Government Institutions

Religious instruction is completely prohibited.



2. Institutions Administered by the State but Established by a Trust

Religious instruction is permitted.



3. State-Recognized Institutions

Religious instruction may be given, but participation is voluntary.



4. Institutions Receiving Financial Aid from the State

Religious instruction may be given, but participation is voluntary.



Important Judicial Decision

Catholic Bishop Council v. State of Madhya Pradesh (27 January 2012)

- The Madhya Pradesh Government had directed all government schools in the state to include 'Gita Saar' (Essence of the Bhagavad Gita) in the curriculum.
- The Court held that "Gita Saar" should not be viewed only as being linked to one particular religion, but as education that develops a philosophy of life and social values.



Summary:

Under Article 28, the prohibition or permission of religious instruction depends on the nature of the institution.



Available on

Flipkart

