

Lesson # 4: FRs and DPs

The underlying philosophy of our Constitution is reflected in the Fundamental Rights and the Directive Principles of State Policy. This important part of the constitution will be covered in three lessons (L # 4, 5 and 6).

Our aim is to explain the subject matter (provisions contained in the constitution) in a simple language and analyse the issues emanating from them in an objective and logical manner. This approach will help the candidates gain sufficient theoretical knowledge and also the analytical skill to tackle any related question.

Constitution of India

(In the end, we have presented a few sample questions and their suggested answers)

Lesson # 4: Fundamental Rights and DPs - I

Fundamental Rights

Contents:

Article Subject	Articles
Definition of State	12
Inconsistency of Laws	13
Right to Equality	14-18
Right to Freedom	19-22
Right against Exploitation	23-24
Right to Freedom of Religion	25-28
Cultural and Educational Rights	29-30
Right to Constitutional Remedies etc.	32-35

We will now present the second part of the Unit 1 topics, i.e., Fundamental Rights and Directive Principles of State Policy.

Introduction to Fundamental Rights and Directive Principles

Preamble of the constitution espouses the ideals and goals that the constitution aspires to achieve. Therefore, it is considered as the soul of the constitution. The true reflection of this soul is found in the fundamental rights enshrined in the constitution.

Philosophically, some rights are fundamental because they are inherently available from nature to people, such as freedom and equality. All people are made free and equal by nature. Therefore, no one has a right to govern others. However, if an individual alone tries

Lesson # 4: FRs and DPs**Fundamental Rights****• Introduction**

- Definition of State
- Inconsistency of Laws
- Right to Equality
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

to lead his life according to his will and protect his property, others might harm him. Therefore, all individuals have to come together in order to protect their freedom and equality. This coming together is called a social contract. People establish a Government out of the social contract. However, it is possible that the persons running the Government may go against the will of the people and abuse the authority given to them. Therefore, some control is required over them. This control is provided by incorporating the Fundamental Rights into the Constitution. The fundamental rights place negative obligations on the State not to interfere with the liberty of the individual and the operation of the rule of law. There cannot be another subordinate law that violates these fundamental rights. Nonetheless, the fundamental rights are not absolute and the State may place reasonable restrictions on them on the grounds of security, public order and morality.

A fundamental right without a remedy to address its violation is worthless. Our constitution not only provides this remedy in the form of an independent judiciary whom the citizens can approach but also makes this remedy a fundamental right that cannot be taken away by the State.

The Directive Principles of State Policy or DPs in short are a distinct feature of our constitution in the sense that it recognised the state of affairs and ground realities that existed at the time of independence and moulded the constitution accordingly. A nation aspires for great ideals but it also needs the resources which it may not have or a particular mind-set of people to accept certain principles and norms which may be lacking. In that situation, the constitution has to prescribe what is possible immediately and list all the other matters for the guidance of future legislatures and executives. Our constitution did precisely that by incorporating the fundamental rights as enforceable and the Directive Principles as non-enforceable guidelines for the future. The Directive Principles set the goals to be pursued in future by the governments such as the establishment of a uniform civil code or a provision for adequate means of livelihood. The DPs can be regarded as the positive obligations of the State to take steps for the welfare of the individual and society.

Lesson # 4: FRs and DPs

Fundamental Rights

- Introduction
- Definition of State
- Inconsistency of Laws
- Right to Equality
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

We will first discuss the fundamental rights embodied in the constitution along with the important court cases associated with them. We will then explain the distinctive features of the fundamental rights and look into their criticism. Thereafter, we will take up the directive principles of state policy for discussion and evaluate their merits and demerits. This will be followed by the presentation of past questions and their answers.

Fundamental Rights

Articles 12 to 35 of the constitution are devoted to the subject 'Fundamental Rights'. There are six fundamental rights as on date. The details with the related articles are shown in a table below.

Article Subject	Articles
Definition of State	12
Inconsistency of Laws	13
Right to Equality	14-18
Right to Freedom	19-22
Right against Exploitation	23-24
Right to Freedom of Religion	25-28
Cultural and Educational Rights	29-30
Right to Constitutional Remedies etc.	32-35

The Right to Property available under Article 31 was repealed from the fundamental rights and included under a new Article 300A by the 44th amendment carried out in 1978. Thus, it is a legal right now and not a fundamental right.

Let's discuss these Articles one-by-one.

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- Right to Equality
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Inconsistency of Laws

- No such law is to be passed
- SC & HCs empowered to conduct judicial reviews to determine inconsistency (Doctrine of direct & inevitable effect)
- An amendment to the Constitution is not a law, but it must not violate basic structure (Kesavananda Bharati vs State of Kerala)

Definition of State (Article 12)

The State has been defined as the Government and Parliament of India, the Government and the Legislature of each State and all local and other authorities. The term 'other authorities' includes other juristic entities such as Government companies and Statutory Corporations. These entities discharge the functions of the State. As a corollary, a private entity entrusted with the task of discharging a State function, such as toll collection on the highway, also falls under the definition of the State. But the fundamental rights have a limited application in respect of a private agency. A Government organisation has to observe equality of employment opportunity before recruiting its staff, but a private agency doing a toll collection on behalf of the Government is not covered by this stipulation. A private agency is bound only by the contractual conditions entered into with the Government.

Laws Inconsistent with the Fundamental Rights (Article 13)

- Article 13 prohibits the State from making any law which takes away or abridges the rights conferred by the Fundamental Rights. If such a law is made, it shall become void to the extent of its contravention. Thus, Article 13 has expressly laid down the supremacy of the fundamental rights over any other law. The matter has not been left to imagination or speculation.
- The term 'law' includes laws in force, ordinances and all other rules, bye-laws, customs, orders, etc. having a force of law.
- The Supreme Court under Article 32 and the High Courts under Article 226 are empowered to conduct judicial reviews to determine the inconsistency of any law. The entire law is not to be declared void but only that part which contravenes the fundamental rights. What is the test of infringement of the fundamental rights? In Maneka Gandhi vs Union of India, Justice Bhagwati laid down the doctrine of direct and inevitable effect. When the effect of the State action is direct and inevitable, the infringement occurs. But there are no court cases that amplify as to when the effect is to be considered direct or otherwise. If a State action prohibits or restricts a

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- Right to Equality
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Inconsistency of Laws

- No such law is to be passed
- SC & HCs empowered to conduct judicial reviews to determine inconsistency (Doctrine of direct & inevitable effect)
- An amendment to the Constitution is not a law, but it must not violate basic structure (Kesavananda Bharati vs State of Kerala)

fundamental right, the effect can be considered direct. If it prohibits or restricts an activity which is not a fundamental right, then any effect it has on any fundamental right could be regarded as indirect. These tests are in the nature of guidelines and not legal case laws.

- The 24th Amendment to the constitution carried out in 1971 prescribed that any amendment made to the constitution under Article 368 is not a law and hence not within the purview of this Article. This position was upheld in the Kesavananda Bharati vs State of Kerala case. Simultaneously it was also ruled that any amendment under Article 368 must not violate the basic structure or framework of the Constitution. If it does, it would be subject to invalidation.

Lesson # 4: FRs and DP**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Equality before Law (A-14)

- Art 14 Provision
- Concept of Equality Revisited
- Dealing with Positive Discrimination
- Intelligible Differentia
- Rational Relationship with Object
- Provisions should not be Arbitrary
- Other Issues

Right to Equality (Articles 14-18)

This fundamental right contains **five articles** that specify the scope:

- Equality before Law (Article 14)
- Prohibition of Discrimination (Article 15)
- Equality of Opportunity (Article 16)
- Abolition of Untouchability (Article 17), and
- Abolition of Titles (Article 18)

Let's study them one-by-one.

Equality before Law (Article 14)**Article 14**

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

There are two key phrases in the Article: equality before the law and the equal protection of the laws. Equality before the law relates to the rule of law implying absence of any special privileges to any individual and subjecting every person to the jurisdiction of the ordinary courts. Thus, all are equal and given an equal treatment.

The second phrase, the Equal protection of the laws, gives a guarantee that the citizens would be protected against discrimination so that they enjoy their rights. This part casts a duty on the State to ensure that if some are practising any prohibited discrimination, action is taken against them. For example, if a restaurant owner practices untouchability and does not allow entry to some people, the State has to intervene to prevent this.

The constitution in some other articles has expressly provided certain exceptions to this Article since such exceptions are required to be given to the top-level functionaries to enable them to discharge their duties without any distraction. No criminal or civil proceedings can be instituted

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Equality before Law (A-14)

- Art 14 Provision
- Concept of Equality Revisited
- Dealing with Positive Discrimination
- Intelligible Differentia
- Rational Relationship with Object
- Provisions should not be Arbitrary
- Other Issues

against the President of India or the Governors. These exceptions extend to the sovereign diplomats and UN staff.

The Concept 'Equality' Revisited

The plain interpretation of Article 14 tells us that the concept of equality is related to the rule of law. Thus, it may be inferred that it does not include an aspect of a positive discrimination. However, this view is not correct as the subsequent court judgements have held (Subsequent Article 15 provision permits positive discrimination). Therefore, it is important to have a clear understanding of the concept 'equality' which has a comprehensive meaning and intent. Such a clarity will be useful in answering any question on the topic logically and unambiguously.

In the previous lesson, we have studied the literal meaning of the term 'equality', i.e., equal treatment to all or equality before the law; and also its wider meaning or the spirit which implies treating people placed in different circumstances differently. We have also studied the rationale behind this wider meaning or the spirit. We have also seen how the courts have embraced this wider interpretation through their judgements.

Let's recall the definition of the term 'equality'.

Equality refers to treating equals equally and unequals unequally vis-à-vis other equals.

Equals are those who are placed in equal circumstances. Treating all such equals equally amounts to equality. When you jump a red signal, you are fined irrespective of your status. For the traffic police, you are a driver and all drivers are required to observe the traffic rules. This is also called the rule of law where no one has any special privileges and everyone is subjected to the same law. When a voting right is based on one's income, the principle of equality is violated. The Government belongs to the people and is also elected by the people. Therefore, every citizen must have a right to vote irrespective of her financial standing. The income criterion takes away that right from some and hence does

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Equality before Law (A-14)

- Art 14 Provision
- Concept of Equality Revisited
- Dealing with Positive Discrimination
- Intelligible Differentia
- Rational Relationship with Object
- Provisions should not be Arbitrary
- Other Issues

not treat all citizens equally. Equality requires that no restriction based on one's income be applied.

Let's turn to the other dimensions of equality, i.e., treating unequals unequally vis-à-vis other equals. This means that those who are placed in a disadvantageous position must be helped by treating them unequally or differently. Job reservations for the SC/STs are an example of this unequal treatment or positive discrimination. In a few rare cases, the discrimination becomes negative because the persons or things are placed in a more advantageous position than others and hence are expected to contribute more to the cost of helping the disadvantaged. As a corollary of this, we have a progressive taxation system in which the rich are taxed at a higher rate than the remaining taxpayers. Nonetheless, in the common parlance, the term equality implies equal treatment in equal circumstances, i.e., the rule of law and also positive discrimination to help the disadvantaged. It does not refer to the negative discrimination though according to us it constitutes a valid argument for the State's intervention. Considering the common usage, we suggest that you also stick to only two dimensions while writing answers on this subject.

Dealing with Positive Discrimination

While treating equals placed in equal circumstances is a black and white matter and easy to determine, the difficulty arises when some are to be treated unequally. The task then is to determine who the unequals are and whether they deserve to be treated unequally. The position regarding the legislative classification of unequals is well settled by various judgements of the Supreme Court. In the case of State of West Bengal vs Anwar Ali Sarkar, the Supreme Court in 1952 laid down the test of permissible classification that must satisfy two conditions – intelligible differentia and a rational relationship of the differentia with the object of the statute. Let's understand these two conditions.

- The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Equality before Law (A-14)

- Art 14 Provision
- Concept of Equality Revisited
- Dealing with Positive Discrimination
- Intelligible Differentia
- Rational Relationship with Object
- Provisions should not be Arbitrary
- Other Issues

- The differentia must have a rational relation with the object sought to be achieved by the statute.

Intelligible Differentia

A class of persons or things should be clearly distinguishable, for example OBCs, i.e., persons belonging to the castes notified as OBCs. Thus, the class definition should not be ambiguous or amenable to multiple interpretations, such as a scheme to help the poor. Here, since the term 'poor' has not been defined, it is open to multiple interpretations. But when we define poor as a person with an annual income of less than Rs one lakh, it becomes distinguished and meets the condition of identifying a definite group.

The grouping needn't be mathematically perfect. For example, reservation of seats for the women in the local bodies need not be 50% because women constitute 50% of the total population. Mathematical perfection is not a requirement to satisfy this condition.

Rational Relationship with the Object

The distinguishable group to be given a different treatment must have a rational relationship or nexus with the object sought to be achieved. The provisions in the statute must have a nexus with the object of law. Madhya Pradesh had levied higher charges on the cattle grazers from other states than on those from Madhya Pradesh. The objective was to recover some cost of damage to the environment caused by the cattle grazers. Here, differentiating between the two groups of the cattle grazers had no rational relationship with the object as both the groups were causing equal damage to the environment and hence were placed in equal circumstances. There was no justification in charging them differently. The Supreme Court in the Lakshman vs State of Madhya Pradesh case invalidated the notification of the MP Government in 1983. The second requirement is that the object should be reasonable, i.e., warranted by the given circumstances. We can consider two parameters for the test of reasonableness: the public interest and the principle of fairness and justice. Juvenile offenders are classified separately from

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Equality before Law (A-14)

- Art 14 Provision
- Concept of Equality Revisited
- Dealing with Positive Discrimination
- Intelligible Differentia
- Rational Relationship with Object
- Provisions should not be Arbitrary
- Other Issues

adult offenders; the offence may be the same but the punishment may differ on the grounds of fairness and justice.

Provisions should not be arbitrary

Thirdly, the provisions in the statute should not be arbitrary. It is on this ground that the Supreme Court in various cases has held the weightage of higher marks for the interview and charging of capitation fee by the State recognised educational institutions to be arbitrary.

We would like to present the case of P. Rajendran vs State of Madras (1968) decided by the Supreme Court to show how the dynamics of reasonableness of the object can change. The State of Madras had prescribed district-wise distribution of seats in the State medical colleges on the basis of the proportion of population of a district to the total population of the State. The Supreme Court, however, invalidated this provision. The Court held that there was no nexus between the provision and the object of selecting the best available talent for admission to the medical colleges.

Let's analyse this case critically. If the object is a merit-based selection, even the normal reservations may not be possible. Thus, it depends how an object is perceived or construed. Let's view this case from another perspective. Let's presume that the doctors are not willing to go to the backward districts and work there; they would like to settle down in the cities. As a result, the backward districts starve of medical facilities. If the object is re-packaged as 'to increase the number of doctors in the backward districts', it would make sense to admit the candidates from the backward districts as they are more likely to go back and work there. So far as the merit is concerned, the issue could be addressed by providing some concession in the qualifying marks – say 3 to 5%. This case shows how important it is for the policymakers to have clarity about the object of a statute.

Other Issues

There are several other issues that have surfaced through the Court judgements or are otherwise valid.

Lesson # 4: FRs and DPs

Fundamental Rights

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Equality before Law (A-14)

- Art 14 Provision
- Concept of Equality Revisited
- Dealing with Positive Discrimination
- Intelligible Differentia
- Rational Relationship with Object
- Provisions should not be Arbitrary
- Other Issues

- The statute provides an operational part or provisions and need not specify an object. If a statute starts specifying an object, it may lead to playing with words to construe different meanings. It should be sensed in a general manner from the debate in the legislature.
- The validity of an object is to be judged by assessing its overall effect and not by picking up exceptional cases. Thus, in an SC community, you may find a few successful candidates coming from families that are well-off and possessing prominent social status. These are exceptional isolated cases and cannot be used to conclude that there is no rational relationship between the group and the object of helping the SC community which is in a disadvantaged position.
- Administrative discretion may not be used arbitrarily. It should be based on some reasoning. Administrative discretion cannot be avoided as everything cannot be codified into the law and rules. But it must be used fairly.
- While determining the distinguishable groups, i.e., intelligible differentia, the State should consider administrative feasibility and convenience.
- Classification may be geographical. This is because different conditions exist in different places. Two states may have different laws or provisions.
- Different factors may be used for classification or grouping. They should have a rational relationship with the object. Time is also a factor. A Government decides to increase the retirement age from a particular date, say from 1st January 2020. Thus, those retiring after this date will have an advantage vis-à-vis those retiring before 1st January 2020. This is unavoidable and hence acceptable.
- Tax statutes are attacked under Article 14 for being discriminatory as they levy higher rates for the rich. The courts have ruled these to be non-discriminatory. If you recall our explanation on the definition of equality, you would know that we had pointed out a possibility of a negative discrimination in certain cases.

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Equality before Law (A-14)

- Art 14 Provision
- Concept of Equality Revisited
- Dealing with Positive Discrimination
- Intelligible Differentia
- Rational Relationship with Object
- Provisions should not be Arbitrary
- Other Issues

- Equality is a dynamic concept. Reserved seats were provided in the Lok Sabha by the Constitution for the Anglo-Indian community to allay the fears of their discrimination. As the Anglo-Indian community has not been discriminated against in the present times, the need to continue with such a reservation has also ceased.
- If a statute violates Article 14, should it be declared unconstitutional or the unconstitutionality be set right? Let's consider a hypothetical example: A particular caste, going by the criterion, falls under the OBC category but has not been notified as such by the Government. The matter goes to the court. The court finds the arguments of the petitioner acceptable. What should be the further course of action? Should the law be declared unconstitutional because the intelligible differentia is faulty or the Government be directed to include the caste in the OBC list? In our view, the test of justice should apply. If the law is declared unconstitutional, it would deprive the other OBCs of the benefits. This would not serve the cause of justice. If the left out caste is included, then justice would be enhanced. Thus, the test of justice requires a decision that would enhance justice, and not diminish it.

The concept of 'equality' in Article 14 is unambiguous and generally no further specific provisions against the discrimination are required. However, considering the wide-spread social and economic inequalities, our constitution makers have made certain additional provisions to specifically address the existing issues of discrimination, untouchability, etc. We will take up the remaining four articles for discussion now.

Lesson # 4: FRs and DPs

Fundamental Rights

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Prohibition of Discrimination (A-15)

- Art 15 Provisions
- Three Specific Exceptions
- Creamy Layer Principle for OBCs
- What the Article implies?

Prohibition of Discrimination (Article 15)

The provisions contained in this Article are discussed below.

- The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Since the word 'against' is used after the word 'discrimination', it denotes unfavourable treatment. The discrimination on the grounds other than those explicitly stated is permissible but will be subject to the classification conditions discussed under 'equality'.
- Similarly, there cannot be any discrimination on the grounds mentioned above with regard to access to shops, restaurants, public places, roads, etc.
- There are three specific exceptions provided in the article itself which permit such a discrimination:
 - (a) Special provision for women and children
 - (b) Special provision for advancement of socially and economically backward classes or SC/STs, and
 - (c) Special provisions for them relating to admission to educational institutions including private institutions. This amendment was enacted in 2005. The Central Educational Institutions (Reservation in Admissions) Act, 2006 of the Parliament has provided 15, 7.5 and 27% reservations to SCs, STs and Socially and Economically Backward Classes respectively in the Central Institutions of higher education and research like IITs and IIMs. The Supreme Court has upheld the validity of the constitutional amendment in Ashok Kumar Thakur vs Union of India (2006) but asked the Government to apply the principle of creamy layer to the socially and economically backward classes but not to the SC/STs. Presently in 2020, a person having an income in excess of Rs 6 lakh p.a. falls in the creamy layer category. The threshold may change in future. Therefore, the candidates need to be acquainted with the latest threshold before quoting the same in the answer. There are other criteria as well, like professionals and persons holding agricultural land above a certain limit who form a part of the creamy layer.

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Prohibition of Discrimination (A-15)

- Art 15 Provisions
- Three Specific Exceptions
- Creamy Layer Principle for OBCs
- What the Article implies?

What the Article implies?

What this Article implies is that there would be no negative discrimination but the State can make laws in a spirit of positive discrimination. The intelligible differentia, i.e., women, children, SC/STs, etc., is present in the constitution itself. The only condition that should be fulfilled by these laws is the reasonableness of the object.

UNIQUE ACADEMY

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Equality of Opportunity (A-16)

- Art 16 Provisions
- Specific Exceptions
- Mandal Commission Case & Latest
- Rationale behind 50% cap on reservation

Equality of Opportunity (Article 16)

The provisions contained in this Article are these:

- There shall be equality of opportunity for all citizens in employment under the State.
- No citizen shall be discriminated on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them and made ineligible for employment.
- There are exceptions provided to the provisions mentioned above in the constitution itself. The State is allowed to prescribe the requirement of residence within the State and reservations in posts, i.e., jobs for any backward class or SC/STs not adequately represented in the services. In respect of SC/STs, the constitutional amendment of 1995 also prescribes for reservations in promotions.

The Governments have used the exceptions to make laws for the reservations in jobs. This was done in a follow-up of the Mandal Commission Report of 1980 that identified 52% of India's population, other than SC/STs, as socially and economically backward. It recommended 27% reservation in government jobs for these socially and economically backward classes which are also known as Other Backward Classes (OBCs), i.e., other than SC/STs.

By 1991, the position stood at 27% reservation in government jobs for the OBCs on the basis of economic criteria and 10% for the poorer sections of the higher castes.

Mandal Commission Case and the Latest Status

As expected, the matter went to the court. The case of Indra Sawhney vs. Union of India, decided by the Supreme Court in 1993, is popularly known as the Mandal Commission Case. The key features of the judgement in this case are:

Lesson # 4: FRs and DP

Fundamental Rights

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Equality of Opportunity (A-16)

- Art 16 Provisions
- Specific Exceptions
- Mandal Commission Case & Latest
- Rationale behind 50% cap on reservation

- 27% reservation in government jobs for the OBCs is constitutionally valid. However, the creamy layer has to be excluded. The Government has accepted the ruling. The criterion for the creamy layer has also been prescribed as discussed by us a short while ago.
- The total reserved quota should not exceed 50% except in some extraordinary situations. This was, by and large, followed but the scenario has changed as explained later. There is a case of the Tamil Nadu Reservation Act of 1994 which provided for 69% reservation. This Act was included in the Ninth Schedule of the constitution to protect it from judicial review. Article 31B, inserted by the very first amendment to the constitution in 1951, categorically specifies that an Act included in the Ninth Schedule is not to become void as a result of any judgement or because it violates any rights. Thus, a way is available to short-circuit the judicial pronouncement of 50% cap on the reservation. The Supreme Court later in 2010 allowed the states to exceed the 50% reservation limit in the event of inadequacy of representation of the included class. The inadequacy argument has to be backed by scientific data.
- There should be no reservations in promotion. However, this ruling has been nullified in respect of SC/STs by the constitutional amendment of 1995 which allowed the States to make reservations in promotions for the SC/STs. Thus, the State is free to provide for the reservations in promotions to SC/STs but cannot be forced to do so as this is an exception and not a fundamental right. It must be balanced against the right to equality guaranteed under Article 14.
- 10% reservation for the poorer sections of higher castes was invalidated. If you recall our discussion on the classification of the group or intelligible differentia, you would find that giving the reservation to this section amounted to discrimination of the poor or economically backward persons from the non-higher castes who were not given any reservation. Thus, it defeated the object to help the economically backward classes as it did not benefit all general category castes placed in similar circumstances. This anomaly was corrected by the 103rd amendment to the Constitution enacted in

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Equality of Opportunity (A-16)

- Art 16 Provisions
- Specific Exceptions
- Mandal Commission Case & Latest
- Rationale behind 50% cap on reservation

2019 to reserve 10% seats in educational institutions and government jobs for the economically weaker sections of the general category, i.e., those having gross annual family income within Rs 8 lakh (for OBCs, it is Rs 6 lakh). Thus, the left out economically weaker sections have been fully covered now, not just the higher castes and hence there is no discrimination. But this has also exceeded the 50% limit on the overall reservation which now stands at 59.5%. Many states, for instance, Gujarat, Goa, UP, Himachal Pradesh, have implemented the 10% reservation for the economically weaker sections.

Rationale behind 50% cap on reservations

Before concluding this discussion, we would like to analyse the rationale behind the 50% reservations. We have seen earlier that the grouping or classification must have a rational relationship with the object. We have two competing principles so far as the object is concerned: one, to get talented persons to run the administration and two, to help persons from the socially and economically backward classes and the economically weaker sections of the general category. Both the objectives must be met, i.e., merit and positive discrimination. In the Mandal Commission Case of 1993, the Supreme Court had pronounced a golden mean to balance these two competing principles by capping the reservations at 50%. In our view, that pronouncement represented the spirit of the ideals of 'equality' and 'positive discrimination'.

Lesson # 4: FRs and DPs**Fundamental Rights**

- Introduction
- Definition of State
- Inconsistency of Laws
- **Right to Equality**
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

Right to Equality

- Equality before Law (A-14)
- Prohibition of Discrimination (A-15)
- Equality of Opportunity (A-16)
- Abolition of Untouchability (A-17)
- Abolition of Titles (A-18)

Abolition of Untouchability (A-17)

- Abolished – even from private places of worship
- Non-compoundable offence
- Collective fines may be imposed

Abolition of Titles (A-18)**Abolition of Untouchability (Article 17)**

This Article abolished 'untouchability' – a social disability practice developed historically – and made it a punishable offence. The Protection of Civil Rights Act, 1955 has stringent provisions to discourage untouchability. The offences are treated as non-compoundable and punishable up to three months of imprisonment. The privately owned places of worship have been brought under the purview of this Act. Preaching of untouchability or its justification is also an offence. The state governments have been empowered to impose collective fines on the inhabitants involved in practising or abetting untouchability.

Abolition of Titles (Article 18)

The State shall not confer any title except military or academic distinction. Further, no citizen is to accept any title from any foreign state. The awards, such as Padma Bhushan, are not titles. The awardees are prohibited from using them in their names.

With this, we conclude our Lesson # 4 of Unit # 1.

(A few questions from the past examinations have been discussed in the subsequent pages)

Question: 2015

Does the right to clean environment entail legal regulation on burning crackers during Diwali? Discuss in the light of Article 21 of Indian Constitution and judgements of the apex court in this regard.

Understanding the Question

Citizens have the right to clean environment. Does that mean bursting of fire-crackers can be justifiably banned? This aspect is to be discussed in the light of Article 21 and the judgement of the apex court. Thus, we need to touch upon the provision of Article 21 and the facts of the court case and analyse them to answer the question.

Setting the Context

State the basic facts of the court case.

Main Body

This will contain the following:

- Basic facts of the court case and the verdict; our stand on the judgement
- Other side of the story – double standards practiced by urbanites
- What the State needs to do to ensure fairness

Value Addition

Our recommendation for the State to gather details to assess the impact and then take the suitable measures is a value addition.

(We will set the context by narrating the facts of the court case and linking them with Article 21. The question is asking us to state whether it would be right to regulate the bursting of crackers. Our view is that nothing is absolute and necessary restrictions may be placed and are also permitted by the constitution in Article 21 itself. Therefore, we take this line and provide the rationale for why the State has to intervene. It will curb the liberty of those wanting to burst fire crackers. But it can be considered as a reasonable restriction in Delhi.

However, this question deals with only one aspect of the environment protection – bursting of fire crackers. The subject matter has several issues and the urbanites raise the issues that are convenient for them and not others such as running of an AC which consumes 50 times the electricity than fans and leads to burning of coal in huge quantities. We will put the subject matter of environment protection in perspective, point out the double standards being practiced and conclude by stating what the State needs to do to ensure fairness.)

Answer

In 2015, three children had moved the Supreme Court, through their parents, seeking a ban on fire crackers. They argued that the bursting leads to extreme noise and air pollution and be banned in view of their right to clean air guaranteed under Article 21.

Whenever Article 21 is compromised, it would be the State's duty to regulate those activities as the State has to ensure that its citizens enjoy the fundamental rights. Subsequently, the Court banned the fire crackers in Delhi. As Delhi presents an extreme case of pollution, the ban is justified even though it curtails the liberty available under Article 21 to burn crackers.

However, the protection of environment is a complex issue and approach to it has to be fair. Coal is burnt to generate power. Air-conditioners consume about 50 times more electricity than ceiling fans. Thus, people using ACs are actually causing more damage to the environment than the cracker bursting. It is significant to note that the petitions in the courts do not seek the ban on ACs. The cause of environment protection teaches us that truth is multi-dimensional. Urbanites want to stop stubble burning but not coal burning. These are double standards. Fairness demands that the State gather the data on all pollutants, assess their overall impact and regulate all those activities to moderation.

(221 Words)

Question: 2017

Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy.

Understanding the Question

The question refers to the Supreme Court's judgement on biometric identity and consequent right to privacy. We have to critically examine how the right to privacy will impact the enjoyment of other fundamental rights.

Setting the Context

State the basic facts of the court case.

Main Body

This will contain the following:

- Basic facts of the court case and the verdict; our stand on the judgement
- Situations where the right to privacy will come in conflict with the other fundamental rights
- State that the rights are not absolute and the reasonable restrictions on them may be necessary

Value Addition

Our concluding remark is our value addition.

(We will begin our answer by stating the facts of the case and the court's judgement. The next task is to explain how the right to privacy would impact the scope of fundamental rights. Other rights stand on their own and we do not see any significant impact of this judgement except in case of three articles. It may create problems in parting with the census data and during exercise of cultural and religious freedoms. Probably we may see a few more cases in future. We will highlight this position and conclude by reaffirming that the rights are not absolute and reasonable restrictions are in order.)

Answer

The Supreme Court decided the *KS Puttaswamy vs Union of India* case in 2017 and expanded the scope of Article 21 to include the right to privacy. The court held that privacy is a necessary condition for a meaningful exercise of the right to liberty under Article 21 and other freedoms.

The petitioner had challenged the validity of biometric identity scheme Aadhaar. The Government's original justification was that it is required to efficiently manage various schemes and eliminate fake and duplicate benefit cases. The State also requires to collect certain information from the security angle. Every advanced nation does it in one form or the other.

The Court upheld the validity of Aadhaar for obtaining the Government benefits and cell phone numbers but declined to make it mandatory in other matters.

Various freedoms would continue to operate irrespective of the right to privacy except Articles 21, 25 and 29. The scope of Article 21 has been amplified and the private and public institutions cannot ask the information from the citizens unless they justify the demand. It may create issues during census surveys. Cultural and Religious Freedoms may come in conflict with the right to privacy as some citizens may ask to stop all those activities (particularly performed at shrines/prayer places and public places) on the plea that they disturb the privacy of nearby residents. We may see several court cases in future before a clear position emerges in this regard. The underlying principle should be that the rights are not absolute and reasonable restrictions may be necessary.

(257Words)

Question: 2020

“Once a speaker, Always a speaker’! Do you think the practice should be adopted to impart objectivity to the office of the Speaker of Lok Sabha? What could be its implications for the robust functioning of parliamentary business in India. (Answer in 150 words)

Answer

In the UK, the speaker of the House of Commons resigns from the party. The principle is that the speaker should not only be impartial but must appear to be impartial. Such a speaker is expected to treat the opposition fairly and provide adequate time to them to express their viewpoints.

A speaker may continue to behave partially even after resigning from the party whereas another one may not resign but would provide adequate support and time to the opposition. Therefore, the UK system appears to be more about the form rather than the substance and may not change the matters significantly in India if adopted.

When people give a mandate to the majority party to rule, the minority parties have no veto to stall the proceedings. At the same time, the opposing view is to be heard and considered by the majority. The Parliament, therefore, needs to prescribe a guideline for the speaker regarding allowing adequate time to the opposition. Resigning from the party without any concrete guideline for the fair conduct of business would be cosmetics and is not likely to work.

(184 Words)

The practice of the speaker resigning from the party is mere cosmetics or form over substance and would not make a significant difference. The reason is simple. A speaker may continue to behave in a partisan manner even after he resigns from the party. On the other hand, an upright speaker may not leave the party but would still be conducting himself in a fair and unpartisan manner. Thus, resigning from a party is no guarantee of impartiality. The matter of substance is the prescription of guidelines for the speaker to conduct the affairs. These

guidelines would be binding on the speaker and would treat the opposition in a fair manner. Ignoring what is really required (the matter of substance) and focusing on the non-essentials (the form) would not achieve anything. We will take this line in our answer.

Let's now turn to our '**Answer Evaluation Matrix**' (Substance Part).

Whether the context was set at the beginning?	<ul style="list-style-type: none"> State the position in the UK
Main body of the answer contains: <ul style="list-style-type: none"> Narration of what is asked (includes analysis) Only important & relevant points Suitable examples, if necessary 	<ul style="list-style-type: none"> Explain the pitfalls of the suggestion. It is a matter of form and not substance State the need for a guideline for the speaker
Whether the answer adds value? (Conclusion, suggested remedy or comments)	<ul style="list-style-type: none"> Conclusion against the suggestion

Substance

Let's discuss the substance part of the answer which has three components: setting the context, main body of the answer and value addition.

- **Setting the context:** Explain the position in the UK.
- **Main body of the answer:** Explain why the suggestion has no substance in it and is a meaningless exercise. State what is required in reality – a guideline that would be binding on the speaker and would treat the opposition fairly.
- **Value Addition:** Taking an opposing stand and arguing out is our value addition.

Evaluate your answer with reference to our evaluation matrix and introspect where you could have performed better.

With this, we conclude our sample lesson and discussion on a few sample questions chosen from the past examinations.