



#### HISTORICAL BACKGROUND

- According to Galvin Austin, concept of FR was implicit in formation of INC in 1885, in which Indians wanted the same rights & privileges enjoyed by British.
- Similar rights were incorporated in Constitution of India bill 1895 - right to free speech, imprisonment only by competent authority & free state education
- The Commonwealth Bill of India 1925 drafted by Annie Besant, Nehru Report 1928, Sapru Report 1945 & Sub committee of Constituent assembly of FR
- Commonwealth bill 1925 demanded seven FRs - individual liberty, freedom of conscience, free expression of opinion, free assembly, equality before law, right to free elementary education, equal right to use roads, court of justice, business places and public places
- In response to the Simon commission, Congress passed resolution in its 43rd annual session of Madras, to set up a committee, for the purpose of making of 'Swaraj Constitution of India'
- FRs in the Nehru report were reiteration of rights mentioned in Commonwealth bill, protecting the minority rights
- INC Karachi resolution of 1931, highlighted the need to stop exploitation of masses and to make economic & political freedom
- Sapru committee made distinction between justiciable & non-justiciable rights - it also mentioned about minority rights
- Sub committee on FRs headed by J.B.Kripalani - had women members Amrit Kaur & Hansa Mehta - it made the rights as justiciable rights.

#### WHAT ARE RIGHTS

- Rights are rules of interaction between people. They place constraints & obligations upon the actions of the state & individuals or groups.
- They are defined as claims of an individual that are essential for the development of his or her own self and that are recognized by society or State.
- These are legal, social, or ethical principles of freedom or entitlement & are the fundamental normative rules about what is allowed to people or owed to people, according to some legal system, social convention, or ethical theory.
- A right comes with an obligation to show respect for the rights of others.
- Rights are what we want others to do for us whereas the duties are those acts which we should perform for others. Thus, a right comes with an obligation to show respect for the rights of others.

- The obligations that accompany rights are in the form of duties.
- If we have the right to enjoy public facilities like transport or health services, it becomes our duty to allow others to avail the same.
- If we have the right to freedom, it becomes our duty not to misuse this and harm others.
- According to Dr. B.R. Ambedkar, fundamental rights must also "eliminate the possibility of the more powerful having the power to impose arbitrary restraints, on the less powerful by withdrawing from the control he has over the economic life of the people"

#### SCHEMES OF RIGHTS

- According to Motilal Nehru, Political power, can be justified only by institutionalisation of scheme of rights, including social & economic rights
- The welfare legislation in post-Second World War Europe- Scandinavia, recognised significance of a rights-based approach, because it grants status to citizens.
- Belief in intrinsic & inalienable rights to social goods, & its obligation on governments to provide access to these goods, ruled out paternalistic & charity approaches
- Art. 12-35 - inspired by Bill of rights of American constitution
- Part III- scheme of rights is more elaborated than any constitution — named as Magna Carta
- Promoting political democracy - against arbitrary governance of state
- Govt of law & not of men – i.e. Rule of law is the goal of FR
- Scheme of rights can be classified as follows:  
1) Right to equality (art. 14-18) – 2) Right to freedom (art. 19-22) – 3) Rt. against exploitation (art. 23-24) – 4) Rt. to freedom of religion (Art 25-28) – 5) Cultural & educational rights (Art. 29-30) – 6) Rt. to constitutional remedies (Art 32).
- Rt. to property deleted from list of FR by 44<sup>th</sup> constitutional amendment 1978- now legal right under art 300-A - part XII - left 6 FR only
- Not absolute - qualified - can impose reasonable restrictions
- Strike a balance between rights of individuals & those of society- balance between individual liberty & social control .
- Most of them are against arbitrary actions of state- few against private individual.
- Rt against state are violated by private individuals then no constitutional remedies but only ordinary legal remedies.

- Some negative -limitations on authority of state- some positive conferring privileges on persons.
- Justiciable
- Not sacrosanct nor permanent- parliament can curtail or repeal by amendment - without affecting basic structure of constitution

#### ARTICLE 31 & FR

- Art. 31-A, inserted by First Amendment Act, 1951 - provides for acquisition of estates of the nature referred to in various clauses, declaring that such laws shall not be deemed void on the ground that they take away any of the rights given by Article 14 or 19 of the Constitution
- 31-B – none of the laws specified in the Ninth Schedule shall be deemed to be void on the ground that it was inconsistent with any of the Fundamental Rights, notwithstanding any judgments, decree or order of any court or tribunal to the contrary.
- 31C - Saving of laws giving effect to certain directive principles – No law giving effect to the DPSP, shall be deemed to be void on the ground that it is inconsistent with, the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy
- The Supreme Court, in a landmark ruling on 11 January 2007 ruled that all laws (including those in the Ninth Schedule) would be open to Judicial Review if they violated the basic structure of the constitution.
- SC noted, "If laws put in the Ninth Schedule abridge or abrogate fundamental rights resulting in violation of the basic structure of the constitution, such laws need to be invalidated."
- The Schedule was not envisaged by our founding fathers at all. In fact, it owes its birth to ideological battles in the nascent republic between the progressive executive & legislature on the one hand and the conservative judiciary on the other.
- Application of FRs to members of armed forces , paramilitary, police , intelligence & analogous services can be restricted ( art 33)
- Martial law- military rule - imposed under abnormal circumstances to restore order (art 34) - FR restricted.
- Most are self-executory - few can be enforceable by law passed by parliament - to maintain uniformity throughout country (art 35)

#### WHAT IS STATE & ITS LAW

- Art 12 - Govt & Parliament i.e. Executive & legislative organs + gov & legislature of state & legislative organs + local authorities + statutory & non- statutory authorities ( LIC etc) - Forms the state.
- According to SC → Private body or agency working as an instrument of state falls within meaning of state.

- Art 13 - all laws inconsistent with or in derogation of any of FR shall be void i.e. Expressively provides for doctrine of judicial review. ( art 32 & 226)
- The Delhi High Court has ruled that the United Nations is not a State under Article 12 of the Constitution of India & is not amenable to its jurisdiction under Article 226 of the Constitution.
- Law word used in art 13 denotes → Permanent laws, ordinances issued by president & governor , delegated legislation, order, by- law , rule , regulations or notification, custom or usage having force of law
- Art 13 → Constitutional amendment is not a law so cant be challenged → SC ( keshva bharti case) → Amendment can be challenged on ground of violation of FR that forms basic structure of constitution

#### EQUALITY

- According to Human Development Report 2016 (& 2019) India's HDI score shrank by 27% due to rise in different forms of inequality.
- Every state action must be fair, failing which, it will fall foul of the mandate of Article 14.
- The protection of Article 14 applies equally to both citizens & foreigners
- Equality before law - British concept- absence of special privileges .
- Equal subjugation of all persons to ordinary laws - no person is above law — negative concept
- Equal protection of laws, is a principle of American constitution.
- Equality of treatment under equal circumstances both in privileges & liabilities - like should be treated alike without any discrimination- positive concept.
- SC → where equals & unequals treated differently art. 14 does not apply
- SC- art 14 forbids class legislation - permits reasonable classifications of persons, objects, transactions by law- classification should be based on intelligible differential & substantial distinction.
- The understanding of "reasonableness" has evolved significantly in the Supreme Court jurisprudence over the last few years
- According to Supreme Court (State of MP v. Pramod Bhartiya) → doctrine of "equal pay for equal work" is implicit in doctrine of equality enshrined in art 14 & flows from it- rule is as much a part of art 14 as it is of art 16 (1).
- We can never guarantee our own security, if we cannot assure that of others- Bertrand Russell.
- Article 14, with its majestic promise of equality before the law to all persons, is about much more than formal legal doctrine.
- Equality before law- element of "rule of law" ( A.V. Dicey )- (1)Absence of arbitrary law.(2) Equality before law-subjugation of all citizens to law of land.(3)Primacy of individual rights- constitution is

result of rights of individual rather than constitution is a source of rights(not Indian constitution).

- Rule of law- basic feature –SC
- The performance of India in enforcement of contracts is also seen in its ranking in World Rule of Law Index for 2022, where India ranks 77th out of 140 countries. - released by world justice project( USA)
- Need for developing a culture among law enforcement officials of respecting human rights.
- There should be space provided for democratic dissent & resistance to intrusions on human rights.
- It should be an autonomous space for citizens to take upon themselves.
- People's resistance & movements empower judiciary in performing its constitutional obligation of protecting rights & freedoms.
- For human rights to become part of civil culture in India, awareness needs to be inculcated within social & political psyche of people.
- People of India are increasingly seeking accountability from govt for all its actions.
- Michael Ignatieff has observed, "Human rights activism means taking sides, mobilising constituencies powerful enough to force abusers to stop.
- India's legal & human rights frameworks are created by rights guaranteed under Constitution & their enforcement by courts & government processes.
- Impact of international human rights on NGOs & transnational civil society
- Rule of equality - not absolute - President & Governor -immunities - art 361-not answerable to court- no criminal or civil proceedings during term of office- no arrest or imprisonment.
- No civil or criminal proceedings in respect of publication of substantially true report of parliamentary proceedings in newspapers.( art 361-A)
- No MP liable to proceedings in any court -for saying or voting in parliament or committee thereof (art 105)
- For MLA - No proceedings for said & voted in assembly (art 194)
- Art 31-C exception to art 14- laws made by states to implement DPs contained in clause (b)&(c) of art 39 cannot challenged for violation of art 14- where art 31-C comes in art 14 goes out
- Art 39 - b) the ownership & control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
- Foreign sovereigns, diplomats & ambassadors immunity from proceedings
- UNO & its agencies -diplomatic immunity

- Art.15 -state shall not discriminate on grounds of religion, race, caste, sex, place of birth- 2 imp words " discrimination & only"
- Art 15(b): adverse discrimination prohibited both by state & private individuals while 15(a) prohibits discrimination only by state
- Art 15 Clause (3), (4) and (5) itself stands as an exception to Article 15 Clause (1) and (2). Article 15 Clause (3), (4)& (5) states that the legislature is free to formulate special provisions in following cases.
  - Special provisions for women & children , Socially & educationally backward classes.
  - Educational concessions in admission to such backward classes -including private institutions (aided/ unaided),except minority educational institutions.
  - Central Educational institutions (reservation in admission)act 2006- 93<sup>rd</sup> amendment act of 2005 – 27% reservation to OBCs to all central institutions- apex court upheld validity but asked to exclude creamy layer.
- In the case of Kathi Raning Rawat v. State of Saurashtra, the state of Saurashtra set up special courts under Saurashtra State Public Safety Measures Ordinance 1949 - court stated that all kinds of legislative differentiation are not discriminatory
- Gives scope for reservation - compensatory discrimination
- Art 16- state can't discriminate in the matters of public employment on the grounds of only religion, race ,caste ,sex ,descent ,place of birth or residence.
- 3 Exceptions -1) Parliament can prescribe residence as a condition for certain employment - Public employment (recruitment as to residence) act of 1957-expired in 1974 except Andhra Pradesh (2) State has discretionary power in providing reservation to a backward class.(3) Law can provide -incumbent of an office related to religious or denominational institute should belong to same religion or denomination. E.g. WAQF board
- Through the 77th, 81st, 82nd & 85th Constitution Amendment Acts (between 1995 & 2001), Article 16(4A) was inserted & amended to give the state power to provide quotas in promotions with consequential seniority.
- The terms "proportionate equality" & "substantive equality" have been used to show that the equality norm acquires completion only when the marginalised are given a legal leg-up.

#### MANDAL COMMISSION & AFTERMATH

- 1979 Morarji Desai govt - second backward class commission - B.P.Mandal - art 340- to investigate conditions of BC & suggest measures- report submitted in 1980 -identified 3743 castes as backward - 52% excluding SC & STs - recommended 27% reservation - OBC , SC ,ST total 50% reservation

- First such backward class commission was – Kalelkar commission 1953
- 1990 V.P. Singh govt -27% reservation for OBCs in public employment
- 1991 N. Rao govt - 1) Adoption of economic criteria in granting reservation. 2) 10% reservation to economically backward sections in higher caste.
- Mandal case ( 1992) scope & extent of art 16(4) provides for jobs in favour of BC - examined & upheld by apex court - while rejected 10% reservations to economically backward higher caste sections – Excluded creamy layer, no reservations in promotions, 50% limits on total quota , Carry forward rule for backlog vacancies, permanent statutory body to examine under or over inclusion
- Ram Nandan committee -to identify creamy layer among OBCs - reported in 1993- accepted.
- National commission for backward classes -1993
- 77<sup>th</sup> amendment act of 1995- added new provision to art 16- empowered the state to provide reservation to SCs & STs in promotion in state services
- 85<sup>th</sup> amendment act 2001-consequential seniority in promotion for SCs & STs- with retrospective effect from 1995.
- 81<sup>st</sup> amendment act of 2000 - added provision in art 16 empowering state to consider unfilled reserved vacancies of a year as separate class of vacancies to be filled up in any succeeding year-means it ended 50% ceiling on reservation in backlog vacancies.
- 76<sup>th</sup> amendment act of 1994 placed Tamil Nadu reservation act 1994 in 9<sup>th</sup> schedule to protect from judicial review.

#### UNTOUCHABILITY

- Art 17 forbids practice of untouchability in any form - enforcement of disability arising out of untouchability is an offence
- 1976 ,the untouchability act 1955 amended & renamed Protection of civil rights act 1955- more stringent - Untouchability has not defined by constitution
- Article 17 is inserted to specifically acknowledge and remove the social stigma associated with certain castes – to eradicate historical inequality.
- The only Constitution in the world that declares discrimination-based disability an offence.
- The entire federal scheme is suspended by Article 35, which endows Parliament alone with the power, coupled with a duty, to make a law for constitutional offences (including rights under Articles 23 and 24 against exploitation).
- The freedom of religion under Article 25 is not affected by the commandment of equality in Article 17.
- According to Mysore HC- Untouchability in art 17 - practice as it had developed historically in country -

refers to social disabilities imposed on certain classes by reason of birth in certain caste- so social boycott on few individuals or exclusion from religious services

- Person convicted for offence of untouchability- disqualified for election to parliament & state legislature.
- Art 17 available against private individuals & as a constitutional obligation of state .
- Social & emotional boycott largely go unnoticed
- Certain jobs are still reserved to depressed sections- that hurt dignity — manual scavenging, sweeping, cremation, & grave digging.
- Twin-tumbler system, Fetching of water , Discrimination in Schools , Forced Services, Denial of services ,Interdining , Procession
- SC—appointment of archakas in Tamil Nadu case(2016) → exclusive right given to a particular group or denomination to enter sanctum sanctorum of a temple & perform rituals could not be construed as a practice of untouchability.

#### ABOLITION OF TITLES

- Art 18- prohibits
  - State from conferring any title -except military or academic distinction.
  - Accepting any title from foreign state.
  - foreigner- holding office of profit or trust- from accepting any title from foreign state
  - Citizen/ foreigner(holding office of profit)from acceptance of emoluments from foreign state.
- According to Supreme Court, (1996) - National awards do not amount to titles - so not violative of art 18 - should not use as suffixes or prefixes
- National awards instituted in 1954 - Janta party govt under Morarji Desai discontinued in 1977- revived by congress govt in 1980

#### RIGHT TO FREEDOM OF EXPRESSION

- Rt. To freedom 6 rights - of speech & expression - assembly peaceably without arms - to form association or unions- to move freely throughout territory - to reside & settle in any part- to practice any profession or occupation ,trade , business.
- Originally 7 rights- right to acquire , hold , dispose of property- deleted by 44<sup>th</sup> amendment act of 1978
- Human right to freely express oneself is not limited to free speech.
- Acc to SC - Right to propagate one's views & others- freedom of press- freedom of commercial advertisement -against tapping of telephonic conversation - right to telecast- right against bundh - right to know about govt activities- freedom of silence- rt. against imposition of pre- censorship on newspaper- rt. to demonstration or picketing but not the right to strike
- Reasonable restrictions -grounds of sovereignty , integrity , security of India, friendly relations with foreign state, public order, decency, morality,

contempt of court, defamation, incitement to an offence.

- FREEDOM OF ASSEMBLY - peaceably & without arms -rt. to hold public meetings, demonstrations, take out processions -only on public land- not include rt. to strike.
- Reasonable restriction on assembly -grounds - integrity & sovereignty, public order- maintenance of traffic
- Sec 144 CrPC (1973)- Magistrate can restrain assembly.
- Sec 141 IPC- assembly of more than 5 people unlawful if objective is
  - 1) To resist execution of any law.
  - 2) Forcibly occupy the property of someone
  - 3) To commit any mischief or criminal trespass
  - 4) Force someone to do illegal act.
  - 5) To threaten govt or officials on exercising lawful powers
- Freedom of Association- rt. to form political parties, companies, partnership firms, societies, clubs, organisations, trade unions - covers negative rt. not to join an association
- Reasonable restriction
- SC → Trade unions have no guaranteed right to effective bargaining / rt. to strike/ declare a lock-out.
- Rt to strike can controlled by appropriate industrial law
- Freedom of movement - rt of citizen to move freely throughout territory - promotes national feelings.
- Reasonable restriction - entry of outsiders in tribal areas restricted to protect distinctive culture, language, customs, manners of STs & to safeguard their traditional vocation & properties against exploitation.
- SC → Freedom of movement of sex workers can be restricted on grounds of public health & public morals.
- Bombay HC → restrictions on movement of persons affected by AIDS is effective.
- 2 dimension - rt to move inside country(art 19)→ rt to move outside country & rt to come back (art 21)
- Article 19(1)(g) makes carrying on any trade, business or profession a FR, unless a trade is prohibited by law or taken over by state
- Freedom of Residence - 1) rt to reside temporarily,(2) rt to settle in any part of country -to set up home- permanently
- SC→ certain areas can be banned for certain kinds of persons like sex workers & habitual offenders
- Rt to residence & rt to movement -overlapping to some extent - complementary to each other
- Freedom of Expression : — Very wide rt – Covers all means of earnings of livelihood.
- Restrictions on freedom of expression - 1) technical qualifications necessary for practicing any

profession 2) If state carry on by itself any trade, business, industry, services whether to the exclusion of citizens or otherwise.

- State doesn't need to justify its monopoly to exclusion of citizen or in competition with any citizen.
- The right to participate in democratic politics is not restricted to just elections.

#### PROTECTION IN RESPECT OF CONVICTION

- Protection in Respect of Conviction for Offence - Art 20 - against arbitrary & excessive punishment
  - No ex- facto law( retrospective) - no person shall convicted of any offence except for violation of a law in force nor subjected to penalty greater than prescribed by law- only criminal law
  - No double jeopardy - no prosecution & punishment for same offence more than once.
  - No self incrimination - cant compel anyone to witness against himself.
  - Protection under art 20 cannot be claimed against preventive detention
- Available only in proceedings before court or judicial tribunal
- Not available in proceedings before departmental or administrative authorities
- Protection against self incrimination extends to oral & documentary evidences - not extended to 1) compulsory production of material object 2) compulsion to give thumb impression, specimen signature, blood specimen 3) compulsory exhibition of body - extends to criminal & not for civil proceedings.

#### RIGHT TO LIFE

- Protection of Life & Personal Liberty - art 21- available to foreigners & citizens.
- Art 21 is a repository for residual personal liberty rights, having scope of future reading of such rights
- Supreme Court in Gopalan case (1950) , gave a narrow interpretation, saying, art 21 is available only against arbitrary executive action & not from arbitrary legislative actions- means state can deprive rt to life based on law- because of expression ' procedure established by law'
- Validity of law that has prescribed a procedure cannot be questioned on ground that law is unreasonable ,unfair,unjust
- According to Supreme Court, personal liberty is liberty relating to person or body of individual
- Supreme Court, in Maneka case(1978), overruled judgments in Gopalan case- rt to life can be deprived by law provided the procedure prescribed by law is reasonable, fair & just - This is “due process of law”.
- Art 21 is against arbitrary executive & legislative actions.
- Right to life is not merely confined to animal existence - includes rt to live with full human dignity.

## RIGHT TO PRIVACY

- Different elements of privacy rights have been read into our right to life & our right to free expression.
- We have a right against untrammelled interception of our communication, & against doctors divulging personal medical information.
- In M.P. Sharma case → “When Constitution makers have thought fit not to subject such regulation to Constitutional limitations by recognition of fundamental right to privacy, analogous to American 4<sup>th</sup> Amendment, we have no justification to import it into a totally different fundamental right by some process of strained construction.”
- India has ratified International Covenant on Civil & Political Rights, which unequivocally supports existence of right to privacy.
- According to Supreme Court, Not every aspect of privacy is a FR & it “depends on a case-by-case basis.” i.e. It is not absolute but qualified.
- Sub-species of FR, right to personal liberty & consists of diverse aspects.
- Some aspects of privacy were expressly defined in Constitution, while some were not
- Informational privacy cannot be a FR (SC)
- Supreme court in 2017 interpreted: rt. to privacy is an intrinsic to rt. To life – so is a fundamental right
- Srikrishna committee is associated with data protection on Social media & Aadhar
- Proper institutional mechanisms are needed to establish to protect the privacy in terms of data
- Need to define two important terms – data & privacy
- Difficult to maintain the privacy due high degree of digital penetration in terms of data
- Corporate earning in data economy is based on the sharing of data so it is difficult to monitor the data sharing by the govt institutions

## RIGHT TO EDUCATION

- Art 21 A - elementary education a fundamental right - 86th amendment 2002
- Art 45- state shall endeavour to provide early childhood care & education for all children till 6 yrs of age.
- Art 51 A- duty of citizen to provide opportunity for education to their child or ward between 6-14 yrs of age.
- According to Supreme court (1992) → right to education ( professional education)
- In 1993 Supreme Court said that, FR to primary education is right to life under art 21.

## PROTECTION AGAINST DETENTION

- PROTECTION AGAINST ARREST & DETENTION - art 22 - 1 st part- rt to 1) inform grounds of arrest 2) consult & defended by a legal practitioner 3) produce before magistrate within 24 hrs. 4) to be released after 24 hrs.
- According to ,Supreme Court :- detention under art 22 do not cover arrest under orders of court, civil

arrest, income tax related arrests- applicable to only act of criminal or quasi- criminal, prejudicial to public interest.

- Second part of art 22- protection to person in preventive detention - for citizens & aliens –
  - 1) Detention cannot exceed 3 months unless advisory board reports for sufficient causes
  - 2) Ground should be communicated to detenu but if against public interest then cannot disclosed
  - 3) Detenu should get opportunity to make representation against detention order.
- 44<sup>TH</sup> amendment 1978 reduced period of detention to 2 months - not followed yet
- Laws related to PD can be amended by parliament & State legislature – on the grounds of defence, foreign affairs, public order, supplies of essential services & security of India.
- PD act 1950- expired in 1969
- Following laws had a clause of PD
  - Maintenance of internal security act (MISA) 1971, Repealed in 1978
  - National security act ( NASA) 1980
  - Terrorist & disruptive activities (prevention) act ( TADA) 1985 repealed in 1995
  - Prevention of terrorism act ( POTA) 2002, repealed 2004
  - Bengal state prisoners regulation of 1818 & defence of India act 1939
- No democratic country have made PD as an integral part-
- USA has no PD

## RIGHT AGAINST EXPLOITATION

- Prohibition of traffic in human beings & forced labour
- Art 23 -citizens & non-citizens - against state & private individuals
- Human trafficking -1) selling & buying of men women & children like goods 2) immoral traffic in women & children ; prostitution. 3) devadasis 4) slavery - immoral traffic(prevention) act 1956
- Beggar - compulsory work without remuneration - Indian system - zamindars forced for free labour- bonded labour- forces used → physical, legal, economic.
- Bonded labour system (abolition) act 1976 ; minimum wages act 1948; Contract labour act 1970; equal remuneration act 1976
- Art 23 provides exception- can impose compulsory service for public purposes- military /social service - not bound to pay-
- While imposing services state can't discriminate on the grounds of religion, race ,caste or class.
- Article 24 - prohibits employment of children below age of 14 in factories, mines, & other hazardous employment.
- As the topic of trafficking gained the international prominence , the govt understood trafficking to be equivalent to sex trafficking & sex work

- Current definition of trafficking in sec 370 of IPC is not limited to sex work – Trafficking of Persons (Prevention , Protection & Rehabilitation) Bill 2016 pursue the classic Raid-rescue & rehabilitation model with stringent penalties.
- Migrant workers issue – Gujarat -one of the states receiving large numbers of migrant workers , largely temporary & seasonal on large scale – works in unskilled / semiskilled jobs
- Gujarat govt passed a rule in 1990s , making mandatory for industries & employers to give 85% jobs to local people.
- Govt should form a multifaceted legal & economic strategy , robust implementation of labour laws , a universal social protection floor , self organisation of workers , improved labour inspection, corporate accountability for decent work conditions
- The Trafficking of Persons (Prevention , Protection & Rehabilitation )Bill 2018 – addresses ,
  - Forced labour, begging, trafficking of a woman or a child for the purpose of marriage
  - Trafficking by administering chemical substances or hormones
  - Punishment for promotion or facilitation of human trafficking
  - Bill ensures confidentiality of victims & witnesses , a time bound trial & repatriation of victims.
  - Creation of rehabilitation fund
  - Institutional mechanisms at central , state & district level
  - National investigation agency will perform tasks of anti-trafficking bureau at national level under ministry of home affairs
- Voluntary adult sex work is not illegal in India under certain circumstances , such as when a woman provides the service in her own home without any solicitation.

#### PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES

- Child labour(prohibition & regulation)act 1986, employment of children act 1938, the factories act 1948, the mines act 1952, the merchant shipping act 1958, the plantation labour act 1961, Bidi & Cigar workers act 1966 - prohibited child labour system.
- Child labour ( prohibition & regulation)amendment act 2016- prohibits “the engagement of children in all occupations & of adolescents in hazardous occupations & processes” adolescents refers to those under 18 years; children to those under 14- imposes a fine on anyone who employs or permits adolescents to work.
- 1996 - Supreme Court directed for establishment of child labour rehabilitation welfare fund - improvement of education, nutrition & health of children
- -2006 - banned employment of children as domestic servants (below 14 yrs)

- Commission for protection of child rights act 2005 : – national & state commission for protection of child rights & child's court against violation of child rights.
- Controversial provision : – that condones employment of children below 14 yrs under rubric of family enterprises & the declassification of several industries as hazardous occupations.
- According to Section 4 :- Ones listed as hazardous can be removed, not by Parliament but by government authorities at their own discretion.
- Section 3 in Clause 5 allows child labour in “family or family enterprises” or allows the child to be “an artist in an audio-visual entertainment industry”.
- Most of India’s child labour is caste-based work, with poor families trapped in intergenerational debt bondage, this refers to most of the country’s child labourers.
- Does not define the hours of work; it states that children may work after school hours or during vacations.
- The National Policy on Child Labour of 1987- development programmes to address root causes like caste & poverty- rehabilitation of children working in hazardous occupations
- Frequent budget cuts in education & women and children , leading to the the closure of 42,000 schools.
- Increased trafficking of tribal and minority girls from Odisha & Jharkhand.
- Amendments reverse gains of 1986 Act- contradicts Juvenile Justice (Care & Protection) of Children Act 2000 that makes it punishable for anyone to procure or employ a child in a hazardous occupation : – Also contravene International Labour Organisation’s (ILO) Minimum Age Convention & UNICEF’s Convention on Rights of Child, to which India is a signatory.
- Traditional skills to pass from parents on to their children should be done through reform & investment in education.
- Artisans should be hired as teachers for traditional knowledge
- 33 million child labourers in India,( UNICEF) As per the 2011 census, 80 % of them are from Depressed castes, 20 % are from the Backward Classes.
- Mid-day meals should re-instituted; & secure housing should be provided through the Sarva Shiksha Abhiyan boarding schools to homeless children
- Roughly 90% of the workforce continuing to remain outside the ambit of the organised sector, protecting vulnerable children from exploitation is difficult
- In domestic enterprises only for 3 hrs after school, & not between 7 p.m. & 8 a.m-- restrictions intended to ensure attendance at school.

- The new law linked age of employment for children to age of compulsory education under Rt. to Education Act (RTE), 2009.
- Girls - worst sufferers once dropout of school- face pressure from family to marry or to get a job.
- Child Labour Tracking System (CLTS)- Bihar ( post rehab)
- Exempt from ban employment in family enterprises- suggested that poverty & socio-economic conditions in India justify children helping their families
- Family enterprises fall in unorganised sector
- Ratification of the 2 core ILO conventions, India ratified 6 out of 8 core ILO conventions.
- 4 other conventions → abolition of forced labour, equal remuneration & no discrimination between men & women in employment & occupation.
- GOI decided to ratify ILO convention 182 on the worst forms of child labour & convention 138 on Minimum Age of Employment
- Child labour perpetuates illiteracy & poverty – root cause of organised crimes such as human trafficking , terror & drug Mafia

#### FREEDOM OF RELIGION

- Art. 25 –
- a) freedom of conscience
- (b) Right to profess — declaration of one's religious belief & faith openly , freely
- (c) rt to practice- performance
- (d) rt to propagate - transmission & dissemination of one's religious beliefs to others- no rt to convert another person to one's own religion
- Art 25 covers - religious practices & beliefs.
- Subject to public order, morality, health & other provisions of FR
- State permitted — to regulate /restrict any economic ,financial, political or other secular activity associated with religious practices.
- It provide for social welfare & reform / throw open Hindu religious institutions of a public character to all classes & sections of Hindus.
- Can bear sectarian marks- e.g. kirpans (sikh)
- Art 26 — rt to
  - (a) establish, maintain religious denomination for charitable purposes.
  - (b) manage its own affairs in matters of religion.
  - (c) own & acquire movable & immovable property.
  - (d) administer such property in acc with law.
- Art 25 guarantees individual rights.
- Art 26 – guarantees rights of religious denominations & their sections i.e. collective freedom of religion.
- Subject to public order, morality , health & not to FR related provisions
- According to Supreme Court, a denomination Should be a) collection of individuals who have a system of beliefs– regarded as conducive to their spiritual well being (b) have a common organisation (c) designated by distinctive name.
- According to Supreme Court — Ramkrishna mission, Ananda marga are religious denomination in Hindu . But aurobindo society not a religious denomination.
- Art 27 -no person shall be compelled to pay any taxes for promotion /maintenance of any religion /religious denomination i.e. state cant patronise economically to any religion i.e. Taxes can used for promotion /maintenance of all religion.
- Art 28 - No religious instruction shall be provided in any educational institution wholly maintained out of state fund - art not applicable to educational institutions administered by state - in case of minor - consent of his guardian needed – prohibits levy of tax & not the fees - fee can levied on pilgrims to provide services - also on religious endowments
- Art 28 — 4 types of institutions - (a) wholly maintained by state {religious instruction completely prohibited} (b)administered by state established under endowment or trust {permitted} (c) recognised by state{permitted on voluntary basis} (d) receiving aid from state {permitted on voluntary basis}
- Cultural & Educational rights – protection of interests of minorities - art 29- rt to conserve the language, script or culture — protects the rt of group – state aided or state maintained institution should not deny admission on grounds of religion, race, caste, language - protects rt of individual - protection of religious & linguistic minorities.
- Art 29- According to SC, — Scope not restricted to minorities only - According to SC — Rt to conserve language also includes rt to agitate for protection of language so political speeches or promises regarding conservation for language does not amount to corrupt practice acc to sec 123 (3) of RPA 1951.
- Art 30 -( a ) Rt to establish & administer educational institutions of their choice- (b) Compensation amount fixed by state for compulsory acquisition of any property of minority educational institution shall not abrogate the rt guaranteed to them - Clause added by 44th amendment 1978 & deleted rt to property as FR (c) in granting aid-shall not discriminate to minority edu institution
- Art 30 - confined to minorities while art 29 is for both.
- Minority term is not defined in constitution.
- Art 30 - rt of minority to impart education to its children in its own language.
- 3 types of minority institution - 1) Seeking recognition & aid from state 2) Seeking only



recognition 3) Neither seek recognition nor aid from state- free to administer own affairs.

- 1<sup>st</sup> & 2<sup>nd</sup> type -subject to regulatory power regarding syllabus prescription, academic standards, discipline, sanitation, employment of teaching staff

#### RIGHT TO CONSTITUTIONAL REMEDIES

- Art 32 — rt to get FR is itself embedded in FR - According to B.R.Ambedkar, article without which this constitution would be nullity.
- According to Supreme Court, art 32 is the basic structure of the constitution
- a) Rt to move to Supreme Court b)Supreme Court shall have power to issue directions /orders/writs

for enforcement of FR(c)Parliament can empower any court other than HC to issue writs(d) During national emergency, President can suspend rt to move to court for enforcement of FR (art 359)

- Supreme court is the defender & guarantor of FR
- In M. Nagaraj (2006) case- SC → Art 14 , 19 & 21 stand at pinnacle of hierarchy of constitutional values,- court recognised that human dignity, equality & freedom were “conjoined, reciprocal & covalent values.
- Writs are a written order from the Supreme Court or High Court that commands constitutional remedies for Indian Citizens against the violation of their fundamental rights.



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