

1

INTRODUCTION TO LAW AND LEGAL SYSTEM IN INDIA

THIS CHAPTER INCLUDES

- | | |
|--|---|
| <ul style="list-style-type: none">• Introduction to The Constitution of India• Fundamental Rights• Sources of Law• Primary and Subordinate Legislations | <ul style="list-style-type: none">• Legislatives Processes in India• Legal Methods including Judicial Alternative Dispute Resolution (ADR) Process in India• Legal Terminology and Maxims |
|--|---|

CHAPTER AT A GLANCE

Fundamental Rights	Fundamental Rights is that certain elementary rights such as right to life, liberty, freedom of speech and freedom of faith and so on should be regarded as inviolable under all circumstances and that the shifting majority in legislatures of the country should not have a free hand in interfering with fundamental rights. Fundamental right is called the Magna Carta of India.
Prohibition of discrimination on certain grounds	Article 15(1) provides that the state shall not discriminate against any citizen on grounds only of:- <ul style="list-style-type: none">• Religion• Race• Caste• Sex• Place of birth or• Any of them

Ex-post facto law	No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
Customs	A custom, to be valid, must be observed continuously for a very long time without any interruption. Further, a practice must be supported not only for a very long time, but it must also be supported by the opinion of the general public and morality. However, every custom need not become law.
Kinds of Customs	<ul style="list-style-type: none"> • General Customs: These types of customs prevail throughout the territory of the State. • Local Customs: Local customs are applicable to a part of the State, or a particular region of the country. • Conventional Customs: Conventional customs are binding on the parties to an agreement.
Judicial decisions can be divided into following two parts	<ol style="list-style-type: none"> 1. Ratio decidendi: 'Ratio decidendi' refers to the binding part of a judgment. 'Ratio decidendi' literally means reasons for the decision. It is considered as the general principle which is deduced by the courts from the facts of a particular case. It becomes generally binding on the lower courts in future cases involving similar questions of law. 2. Obiter dicta: An 'obiter dictum' refers to parts of judicial decisions which are general observations of the judge and do not have any binding authority. However, obiter of a higher judiciary is given due

	<p>consideration by lower courts and has persuasive value. Having considered the various aspects of the precedent i.e. ratio and obiter, it is clear that the system of precedent is based on the hierarchy of courts.</p>
<p>The kinds of legislation can be explained as follows</p>	<p>(i) Primary Legislation: When the laws are directly enacted by the sovereign, it is considered as supreme legislation. One of the features of Supreme legislation is that, no other authority except the sovereign itself can control or check it. The laws enacted by the British Parliament fall in this category, as the British Parliament is considered as sovereign. The law enacted by the Indian Parliament also falls in the same category. However in India, powers of the Parliament are regulated and controlled by the Constitution, through the laws enacted by it are not under the control of any other legislative body.</p> <p>(ii) Subordinate Legislation: Subordinate legislation is a legislation which is made by any authority which is subordinate to the supreme or sovereign authority. It is enacted under the delegated authority of the sovereign. The origin, validity, existence and continuance of such legislation totally depends on the will of the sovereign authority. Subordinate legislation further can be classified into the following types:-</p> <p>(a) Local laws: In some countries, local bodies are recognized and conferred with the law-making powers. They are entitled to make bye-laws in their respective jurisdictions. In India, local bodies like Panchayats and Municipal Corporations have been recognized</p>

	<p>by the Constitution through the 73rd and 74th Constitutional amendments. The rules and bye-laws enacted by them are examples of local laws.</p> <p>(b) Laws made by the Executive: Laws are supposed to be enacted by the sovereign and the sovereignty may be vested in one authority or it may be distributed among the various organs of the State. In most of the modern States, sovereignty is generally divided among the three organs of the State.</p>
--	--

DISTINGUISH BETWEEN

2018 - Dec [2] (a) Distinguish between 'Ratio Decidendi' and 'Obiter Dicta' in a judgement by a Court. **(4 marks) [CSEP M-I]**

Answer:

Ratio Decidendi: These are the principles derived from a particular case, which underlie any judicial decision. These principles act as guidelines for future similar cases and are extremely helpful to judges. Moreover, the *ratio decidendi* carry authoritative weightage. The ratio is the extraction of law derived from the decision or judgment. Such extractions or principles can be applied to other similar cases, thus saving on judicial time and ensuring uniformity. The judge has the right to decide upon the *ratio decidendi* and to apply it on any given case.

Obiter Dicta:

Literally it means that which is "said by the way". It covers within its ambit all that the judges have said while delivering a particular judgment. These statements might not be critical to the judgment or decision of the particular issue raised, as they usually go above and beyond the requirement of a particular case. Thus, they just carry the force of persuasive precedents and

do not bind the judges. They are however, free to take them as an aid to decision making. It sometimes becomes difficult for lawyers and the Court to determine whether something said by the judges is *obiter dicta* or *ratio decidendi*. Hence, judges have the authority to go against such *obiter dicta*.

Their differences are as follows:

Basis	Ratio decidendi	Obiter dicta
1. Meaning	Extracts or principles derived from a particular case.	Everything said by the Judges during the course of the discussion of the case.
2. Weightage	Authoritative weightage	Persuasive but not authoritative
3. Binding factor	Bind the judges	Do not bind the judges
4. Critical element	Critical as central to the case.	Not critical as they are more in the nature of discussions.

DESCRIPTIVE QUESTIONS

2013 - June [1] {C} (b) Describe the right of minorities to establish and administer educational institutions as enshrined in the Constitution of India.

(6 marks) [CSEP M-I]

Answer:

Article 30 of the Constitution of India enshrines minority rights. As per the Constitution, minorities include both religious and linguistic minorities. This Article gives the following rights to minorities:

- Right to setup and run educational institutions.
- Right to be duly compensated in case of compulsory acquisition of property of such minority institutions.
- Right against discrimination by the State in giving aid to educational institutions, on the grounds of an institution being governed by a minority faction.

Case: *T.M.A. Pai Foundation v. State of Karnataka.*

2018 - Dec [2A] (Or) (iv) “Article 20 of the Constitution of India guarantees protection against self-incrimination”. Explain briefly. **(4 marks) [CSEP M-I]**

Answer:

According to Article 20(3), “no person accused of any offence shall be compelled to be a witness against himself.” It means that no one can be forced to testify against himself or to incriminate himself. However, this protection is available to the accused only when the following conditions are fulfilled:

1. He must be accused of an offence;
2. He is compelled to be a witness; and
3. Such a compulsion would cause or force him to give evidence against himself.

So, as per the corollary to this rule, if a person is not an accused or is not in the capacity of a witness when he makes the statement or if the statement is made by him without any compulsion of any sort and also does not result in his making a statement against himself, then he cannot avail of the protection afforded by this rule.

Moreover, such protection is available when the person has been formally accused or is examined as a suspect in a criminal case. It also includes within its ambit witnesses who believe that their statements could expose them to criminal charges. This is true not only for an ongoing investigation, but also if he fears apprehension in cases other than the one being investigated. **[Selvi vs State of Karnataka].**

— Space to write important points for revision —

2018 - Dec [3] (b) What are the restrictions on right to freedom of speech and expression under Article 19 of the Constitution of India?

(4 marks) [CSEP M-I]

Answer:

Article 19 of the Constitution of India guaranteed to the citizens the following six freedoms:

- (a) Freedom of speech and expression.

- (b) Freedom of assemble peaceably and without arms.
- (c) Freedom of associations and unions.
- (d) Freedom to move freely throughout the territory of India.
- (e) Freedom to reside and settle in any part of the territory of India.
- (f) Freedom to practice any profession, or to carry on any occupation, trade or business.

Restrictions: These freedoms are not absolute and are subject to reasonable restrictions. The State has the power, to make laws imposing reasonable restrictions on the exercise of the above rights in the interest of the following:

- (a) The Sovereignty and Integrity of India.
- (b) The Security of the State.
- (c) Friendly relations with Foreign States.
- (d) Public order.
- (e) Decency or Morality.
- (f) Contempt of Court.
- (g) Defamation.
- (h) Incitement to an offence.
- (i) Prescribing professional and technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business.

Hence, the freedom of speech and of the expression does not bestow an absolute right to express without any responsibility. The restriction to this is placed by Article 19, Clause (2), of the Indian Constitution that enables the legislature to impose reasonable restrictions on free speech to ensure the following:

- **Security of the State** – actions intended to overthrow the government, waging of war and rebellion against the government, external aggression or war, etc., may be restrained.
- **Friendly relations with Foreign States** – to stop the friendly relations of India with other States from being jeopardized.
- **Public order** – for general peace, safety and tranquility.
- **Decency and morality** – to stop obscenity and indecency from spreading.
- **Prevention of Contempt of Court** – includes both civil contempt or criminal contempt.

- **Prevention against defamation** – any statement that injures the reputation of another is to be stopped.
- Discouraging incitement to commit an offence, and maintaining sovereignty and integrity of India.

This can, however, be done by a duly enacted law and not by mere executive action. The Constitution, hence, allows reasonable restrictions to be placed on the rights of speech and expression. The Supreme Court in ***A K Gopalan vs State of Madras, 1950*** has also held that Fundamental Rights are not absolute.

— Space to write important points for revision —

2018 - Dec [5] (b) Discuss ‘the procedure established by law’ under Article 21 of the Constitution of India with decided case laws.

(8 marks) [CSEP M-I]

Answer:

The main aim of Article 21 is to ensure personal liberty except according to procedure established by law. This implies that if it is an action initiated by the State only then will the right be available. Hence, this right works to the exclusion of actions initiated by private individuals, in which case the aggrieved would have to take refuge under Article 226 of the constitution or under general law. However, where the act of a private individual supported by the state infringes the personal liberty or life of another person, the aggrieved will certainly receive the protection of Article 21.

‘State’ includes government departments, legislature, administration, and local authorities exercising statutory powers etc., but it does not include non-statutory or private bodies having no statutory powers. Therefore, the fundamental right guaranteed under Article 21 relates only to the acts of State or acts under the authority of the State that are not according to procedure established by law. ‘Right to Life’ relates to the dignity of life, and includes all things that add meaning and dignity to the life of an individual.

In the case of ***Francis Coralie Mullin vs The Administrator, Union Territory of Delhi and Others*** it was said that:

Article 21 requires that no one shall be deprived of his life or personal liberty

except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful.

In another case of ***Olga Tellis and others vs Bombay Municipal Corporation and others***, it was further observed : Just as a ***malafide*** act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must conform the norms of justice and fair play. Procedure, which is not just or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it.

The expanded scope of Article 21 has been explained by the Apex Court in the case of ***Unni Krishnan vs State of A.P. and the Apex Court*** itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncements and some of them are listed below:

1. The right to go abroad.
2. The right to privacy.
3. The right against solitary confinement.
4. The right against hand cuffing.
5. The right against delayed execution.
6. The right to shelter.
7. The right against custodial death.
8. The right against public hanging.
9. Doctors assistance.

[Discuss also the cases of:

- **A K Gopalan v. State of Madras:** Procedure made by law means a procedure enacted by the law of a state.
- **Bachan Singh v State of Punjab:** The makers of the Constitution recognized that a person can only be deprived of his life or his personal liberty through a just, fair and reasonable procedure that is duly established by law.]

— Space to write important points for revision —

Ex-post facto laws:

These are laws which punish what had been lawful when done. The Constitution protects anyone who had committed an act earlier when the act was not punishable from being punished with retrospective effect. If a particular act was not an offence according to the law at the time when the person did that act, then he cannot be convicted under a law which with retrospective declares that act as an offence. For example, something done in 2000 which was not an offence then under any law cannot be declared as an offence under a law made in 2018 giving retrospective validity and adding applicability to it from a back date, say from 2000.

Similarly, the penalties for an offence too, cannot be enhanced with retrospective effect, so as to bring more punishment to bear upon someone who had committed an act against that law.

Shiv Bahadur Singh v. State of Vindhya Pradesh - In this case, it was clarified that Article 20 (1) prohibited the conviction under an ex-post facto law, and that too the substantive law. This protection is not available with respect to procedural law. Thus, no one has a vested right in procedure.

Hence, Vijay cannot be punished with life imprisonment as that penalty was introduced in 2016, whereas the offence took place in 2015. So for him, the penalty would be ten years.

_____ Space to write important points for revision _____

2021 - Aug [4] (b) What are the essential conditions of a valid custom? Discuss. Explain any four. **(4 marks) [CSEP M-I]**

Answer:

Requisites of a Valid Custom For any custom to be valid and binding, it has to satisfy the following criteria:

- (i) **Historical or Immemorial:** It must have continued from ancient times, for example, the Hindu marriage rights are said to have continued from the earlier times, and have hence acquired the status of custom.
- (ii) **Certainty:** There must not be any ambiguity in the custom or its application.

- (iii) **Reasonableness:** Besides fulfilling a purpose, the custom must not be something as to cause unnecessary hardship to the people following it. It will be followed and upheld only till the point it has usefulness to society. It will likely be dropped if it is opposed to the general principles of equity, justice and prudence.
- (iv) **Compulsory Observance:** In order to be universally acceptable, a custom has to have been observed or followed for a long time. It should, in fact, have become more like a rule of conduct or behaviour or a way of life.
- (v) **Compliance with Law and Public Morality:** It should be compliant with the general ideas of public morality and policy, as anything against that would not only be unconstitutional, but also unacceptable to the people.
- (vi) **Generally acceptable:** Anything applicable universally can be said to be a custom; if left to personal choice, it loses that status.
- (vii) **Quiet Enjoyment:** There should not be a court dispute or a contradiction that hampers the enjoyment of the custom.
- (viii) **Consistency:** There should not be a hindrance caused to other laws, and this custom should be followed consistently down the times, and by all people.

— Space to write important points for revision —

2021 - Dec [1] (a) Briefly describe the Fundamental Rights against exploitation under Constitution of India. **(5 marks) [CSEP M-I]**

Answer:

The Right against Exploitation is contained in Articles 23 and 24, which provide for rights against exploitation of citizens as well as non-citizens. The rights are ensured by way of certain restrictions, against the State as well as against private persons.

(a) Prohibition of traffic in human beings and forced labour:

Article 23 bans human trafficking, beggar and other similar forms of forced labour, seen in rural and interior parts of the country mostly. These articles term these practices unconstitutional and any person forced to suffer these practices can complain against the violation of his

fundamental right under this article. The exceptions here are the State which can impose compulsory services for public purposes such as for defence or for social service etc. However, in so doing, the State cannot discriminate on grounds of religion, race, caste or class.

(b) Prohibition of employment of children:

Article 24 bans the employment of children below the age of fourteen in any factory or mine. Guidelines for this were given by the Supreme Court in the landmark case of M.C. Mehta v. State of T.N. The topic is also detailed in various other acts that protect the rights of children, viz. the Employment of Children Act, 1938; The Factories Act, 1948; The Mines Act, 1952; The Apprentices' Act, 1961; and the Child Labour (Prohibition and Regulation) Act, 1986.