

UNIT – IV

Rights of the Accused & Right to Life and Liberty

Articles 20 • 21 • 22 • 23-24 • 25-28

Explanatory Lecture Slides with Landmark Case Laws

Topics Covered in Unit-IV

01

Rights of the Accused (Art. 20)

Ex-post facto • Double Jeopardy • Self-incrimination

02

Arrest & Preventive Detention (Art. 22)

Rights of arrested person • Safeguards against preventive detention

03

Right to Life & Personal Liberty (Art. 21)

Expanded meaning • Various facets • Landmark cases

04

Exploitation & Freedom of Religion

Arts 23-24 • Secularism • Arts 25-28

Protection in respect of conviction for offences

Article 20 provides three important protections to persons accused of offences. These rights are available only against the State and cannot be waived. They form the core of the rights of the accused in the Indian Constitution.

Art. 20(1)

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.

Art. 20(2)

Double Jeopardy – No person shall be prosecuted and punished for the same offence more than once.

Art. 20(3)

Self-incrimination – No person accused of any offence shall be compelled to be a witness against himself.

Key Protections under Article 20(1) & 20(2)

Ex-post facto Law – 20(1)

A person cannot be convicted for an act that was not an offence at the time it was committed.

Also protects against higher penalty than what was prescribed at the time of the offence.

Does not apply to procedural changes or civil liabilities.

Landmark: Rao Shiv Bahadur Singh v. State of Vindhya Pradesh.

Double Jeopardy – 20(2)

No person shall be prosecuted and punished for the same offence more than once.

Requires: (i) previous prosecution, (ii) punishment, (iii) same offence.

Does not bar departmental proceedings after criminal trial.

Landmark: Maqbool Hussain v. State of Bombay (1953) – customs proceedings not “prosecution”.

Article 20(3) – “No person shall be compelled...”

A person accused of an offence cannot be compelled to be a witness against himself. The protection covers both oral and documentary evidence that is testimonial in nature. It does not extend to physical evidence (fingerprints, blood samples, etc.).

Nandini Satpathy (1978)

Right extends to the investigation stage; accused cannot be compelled to answer questions that may incriminate.

Selvi v. State of Karnataka (2010)

Narco-analysis, polygraph and brain-mapping tests without consent violate Art. 20(3) and Art. 21.

Scope

Protection is available only to a person who is “accused”. It does not protect against production of documents under summons in some cases.

Modern Relevance

Important in the context of digital evidence, forced unlocking of phones, and compelled passwords.

Protection against Arrest and Detention

Art. 22(1)

Right to be informed of the grounds of arrest as soon as may be, and right to consult and be defended by a legal practitioner of his choice.

Art. 22(2)

Every arrested person must be produced before the nearest Magistrate within 24 hours (excluding journey time). No detention beyond 24 hours without Magistrate's authority.

Exceptions

These rights do not apply to enemy aliens or persons arrested/detained under preventive detention laws.

D.K. Basu Guidelines

Supreme Court laid down detailed guidelines for arrest and detention to prevent custodial violence (D.K. Basu v. State of West Bengal).

Safeguards under Article 22(4) to 22(7)

Preventive detention is detention without trial to prevent a person from committing a future offence. It is an extraordinary power. Article 22 provides minimum constitutional safeguards.

Maximum Period

No detention beyond 3 months unless Advisory Board approves (Art. 22(4)).

Advisory Board

Must consist of persons who are or have been or are qualified to be High Court Judges.

Communication of Grounds

Authority must communicate grounds of detention as soon as may be (Art. 22(5)).

Right of Representation

Detenu must be given earliest opportunity to make a representation against the order.

Parliament's Power

Parliament can prescribe circumstances for longer detention without Advisory Board (Art. 22(7)).

Important Note

Preventive detention laws (e.g., NSA, COFEPOSA) must still satisfy Art. 21 fairness requirements post-Maneka Gandhi.

Right to Life and Personal Liberty

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Originally interpreted narrowly (A.K. Gopalan). After Maneka Gandhi (1978), the procedure must be fair, just and reasonable – not arbitrary, fanciful or oppressive.

Dignity

Right to live with human dignity
(Francis Coralie Mullin)

Livelihood

Right to livelihood is part of right
to life (Olga Tellis)

Privacy

Right to privacy is a fundamental
right (K.S. Puttaswamy, 2017)

Health & Environment

Clean environment, health,
pollution-free air and water

Education

Right to education (later made Art.
21A)

Speedy Trial

Right to speedy trial is part of Art.
21

How the Court Expanded the Right to Life

Maneka Gandhi (1978)

Procedure established by law must be fair, just and reasonable. Art. 14, 19 and 21 form a golden triangle.

Francis Coralie Mullin (1981)

Right to life includes the right to live with human dignity and all that goes with it.

Olga Tellis (1985)

Right to livelihood is an integral part of the right to life.

Vishaka (1997)

Sexual harassment at workplace violates Art. 21; guidelines laid down until legislation.

K.S. Puttaswamy (2017)

Right to privacy is a fundamental right protected under Art. 21 (and Arts 14 & 19). Overruled earlier contrary views.

Common Cause (2018)

Right to die with dignity – passive euthanasia and living will recognised.

Articles 23 & 24

Article 23

Prohibition of traffic in human beings and forced labour.

Begar (forced labour without payment) and similar forms of forced labour are prohibited.

Exception: Compulsory service for public purposes is allowed if no discrimination on grounds of religion, race, caste or class.

Applies to both State and private persons.

Article 24

Prohibition of employment of children in factories, mines or other hazardous employment.

No child below the age of 14 years shall be employed in any factory or mine or engaged in any other hazardous employment.

Reinforced by Child Labour (Prohibition and Regulation) Act and subsequent amendments.

Articles 25 to 28

India is a secular State. The Preamble (after 42nd Amendment) declares India to be a Secular Republic. Secularism means the State has no official religion and treats all religions equally (positive secularism).

Art. 25: Freedom of conscience and free profession, practice and propagation of religion – subject to public order, morality, health and other provisions of Part III.

Art. 26: Freedom to manage religious affairs – establish and maintain institutions, manage own affairs in matters of religion, own and acquire property.

Art. 27: No person shall be compelled to pay taxes for the promotion or maintenance of any particular religion.

Art. 28: No religious instruction in educational institutions wholly maintained out of State funds.

Essential Practices Doctrine & Restrictions

Essential Practices Doctrine

Courts decide what constitutes an essential part of a religion (Shirur Mutt, 1954). Only essential practices are protected.

Restrictions under Art. 25

Freedom is subject to public order, morality, health and other Fundamental Rights. State can regulate secular activities associated with religion.

S.R. Bommai (1994)

Secularism is a basic feature of the Constitution. State cannot favour or discriminate against any religion.

Recent Trends

Courts have examined issues of triple talaq, entry of women into temples, and religious conversion while balancing freedom and reform.

Positive Secularism

Indian secularism is not wall of separation but equal respect and protection for all religions (Sarva Dharma Sambhava).

Key Balance

Freedom of religion is not absolute; it must yield to constitutional morality, dignity and equality in certain cases.

QUICK RECAP

Key Takeaways from Unit-IV

Article 20

Ex-post facto protection, double jeopardy and right against self-incrimination are absolute safeguards for the accused.

Article 22

Arrested persons have rights to information, lawyer and production before Magistrate. Preventive detention has constitutional safeguards but remains an extraordinary power.

Article 21

Most dynamic Fundamental Right. Expanded to include dignity, privacy, livelihood, health, environment and more after Maneka Gandhi and Puttaswamy.

Religion & Secularism

Freedom of religion is protected but subject to public order, morality and health. Secularism is a basic feature of the Constitution.

Thank You

“The Constitution is not a mere lawyers’ document, it is a vehicle of life, and its spirit is always the spirit of the age.”

— Dr. B.R. Ambedkar
