

Review of Previous Comparisons and Exam Question Patterns

Previous comparison-based preparation

- A previous lecture compared the Bill of Rights in the UK with Part III of the Indian Constitution, focusing on similarities and differences.
- The comparison approach was presented as especially useful because UPSC has been favoring comparison-based questions.
- One example already discussed was the comparison between the status of Fundamental Rights in the UK and India.

Exam question patterns highlighted

- UPSC questions have recently included direct comparisons such as:
 - Notification of the right to equality in the Constitutions of the US and India.
 - France and India in relation to the office of the President.
- Another recurring area is legal regulation of burning crackers during Diwali.
 - This was linked to the need to know both the Fundamental Rights angle and any Supreme Court directions or committee-related developments.
- Questions also appear in concept-based form, such as:
 - What is meant by freedom of expression?
 - Whether it includes hate speech and obscenity.
 - Section 66A of the IT Act, especially because of concerns about misuse and later misuse-related news.

Study approach for such questions

- A topic should be studied in depth, so that any question from it can be answered easily.
- Conceptual understanding should be connected with current developments to handle exam questions effectively.
- The transition into the next topic begins with Article 14 under the Right to Equality.

Basic recall point on constitutional remedy

- A question was raised on whether a person can go to the Supreme Court under Article 32 if a private individual infringes Fundamental Rights such as Article 19 or Article 21.
- The clarification given was that the answer is not straightforwardly yes in that form; the key point emphasized was that the relationship between private action and constitutional remedy must be understood carefully.

Fundamental Rights Against State Action and Private Violations

Core rule: Fundamental rights and state action

- Fundamental rights under Articles 19 and 21 are available against State action.
- The constitutional remedy under Article 32 is used when the State violates a fundamental right under

Articles 19 or 21.

- The relevant meaning of State is the one given in Article 12.

What counts as “State” under Article 12

- Union legislature and Union executive, such as Parliament and ministries.
- State legislature and State executive.
- Local government bodies, including municipalities and panchayats.
- Other authorities.

Private body acting like the State

- A private body can also be treated as acting like the State when the Government has bestowed power on it and it exercises authority given by the State.
- In such a situation, the action of that private body can attract the protection of Articles 19 and 21, and the constitutional remedy under Article 32 may apply.

Private violations and exam trap

- A major exam trap is assuming that every violation of a fundamental right automatically gives a remedy under Article 32.
- If a private individual violates a right that is otherwise protected against the State, Article 32 is not automatically available unless the violator falls within the idea of State or is acting with State-conferred authority.
- Examples discussed:
 - If a private individual prevents access to a public park on the basis of caste, it is linked to Article 15-type discrimination, but the remedy depends on whether State action is involved.
 - If a private individual practices untouchability against someone, the question is whether the constitutional remedy route is available.

Practical exam takeaway

- Always ask two questions:
 1. Is the right being discussed one that operates against the State?
 2. Is the violator actually the State under Article 12, or a private person/body acting with State authority?
- If the violation is only by a private neighbor or private individual, the Article 32 route may not be available in the same way as for State action.

Article 13 and Judicial Review of Laws Affecting Rights

Scope of Part III rights

- Fundamental Rights in Part III are available not only against the State but also against private individuals in several situations.
- The practical test is: if the right is being violated by a private person, the affected person can still seek

constitutional protection when the right is meant to restrain private conduct.

Rights discussed as enforceable against private individuals

- Article 15(2): discrimination in access to public places such as ghats, parks, and roads is prohibited.
 - If a resident or committee chairman refuses entry to persons of a specific caste or religion in a public place, it violates Article 15(2).
- Article 17: untouchability is prohibited.
 - The practice is treated as one by private individuals, so the right operates against private conduct.
- Article 18: prohibition of acceptance of foreign titles.
 - The source connects this with social inequality created through discriminatory status.
- Article 23: prohibition of traffic in human beings.
 - Buying and selling humans is prohibited and is enforceable against private individuals.

Article 13 and protection of rights

- Article 13 protects Fundamental Rights.
- If any law, executive action, ordinance, or similar legal instrument takes away or abridges Fundamental Rights, Article 13 is triggered and the law can be invalidated.
- Article 13 operates to protect rights that are expressly written in Part III as well as rights that are implied through interpretation.

Judicial review of laws affecting rights

- Judicial review arises from Article 13 because any law violating Fundamental Rights can be examined by the courts.
- The protection applies to rights that are explicitly mentioned in Part III and also to rights that are implied from those express rights.
- Example: Article 21 expressly protects the right to life and personal liberty, and its interpretation includes dignified life. Article 13 protection extends to both the express right and the implied dimensions arising from interpretation.

Exam-relevant takeaway

- Article 13 is the constitutional safeguard against laws that abridge Fundamental Rights.
- Its protection is not limited to direct text in Part III; it also covers rights developed through interpretation of Part III provisions.

Meaning of Law, Customs, and Rights Protection Under Article 13

Meaning of law under Article 13

- Law under Article 13 includes anything that can affect or infringe Fundamental Rights.
- The discussion emphasizes that the term is broad and can cover more than ordinary legislation.

Customs and Article 13

- Customs are also covered under Article 13.
- If a custom violates Fundamental Rights, it can be challenged and removed through judicial protection.
- The Supreme Court can act under Article 13 to protect Fundamental Rights by striking down such customs.

Personal laws

- Personal laws are religiously specific laws, such as Muslim personal law.
- These are mentioned separately from customs in the context of Article 13.

Exam point

- A direct question can be formed on whether the word law in Article 13 includes customs.
- The answer indicated in the context is: Yes, customs are included.
- For personal laws, the context indicates a different answer from customs, so they should not be treated the same as customs in this discussion.

Article 14: Equality Before Law and Equal Protection of Laws

Article 14 and the Right to Equality

- Article 14 is one of the equality rights articles, along with Articles 15, 16, 17, and 18.
- It has a British origin.
- It is a negative concept: it operates by prohibiting the State from acting in certain ways.

Equality Before Law

- Equality before law means that everyone is equal before law.
- It reflects the rule of law idea.
- The State cannot be arbitrary and cannot give special treatment to one person over another.
- If two people commit the same crime, they are treated equally under the law because both are equal before the law.

Equal Protection of Laws

- Equal protection of laws is a positive concept.
- It requires the State to ensure equal protection of laws.
- The idea is to treat equals equally.
- Equal treatment of unequals is not real equality.
- In some situations, the State may need to make distinctions so that equality is actually achieved.

Equality Does Not Mean Identical Treatment

- Equality does not mean that everyone must be treated in exactly the same way.
- An identical policy for everyone may be incorrect if people are in different situations.
- If one person already has enough and another has nothing, giving the same amount to both may not

create real equality.

- To provide genuine equal protection, inequality must also be identified and addressed.

Reasonable Classification, Access to Justice, and Legal Aid

Reasonable classification under Article 14

- Article 14 is connected to the idea that inequality should be identified and addressed on a rational basis.
- The basis of classification should not be arbitrary; it must be rational and fair.
- A classification can be made on different grounds, but it must support a valid legal purpose.

Bases discussed for special treatment

- Economic basis: Poverty or lack of money can justify special support. If a person has no money to go to court or pay a lawyer, access to justice should still be available.
- Caste basis: Social groups may face discrimination simply because of caste, so special treatment may be justified for those groups.
- Geographical basis: Certain areas may require special treatment if the State identifies them as specific regions needing attention.

Access to justice and legal aid

- Access to justice should not depend only on a person's economic capacity.
- If someone is deficient economically, they should still receive access to justice.
- Free legal aid can be provided to a person who needs a lawyer and cannot afford one.
- National Legal Services Authority (NALSA) is mentioned in connection with this system.
- The need for legal services is very high, while the number of service providers is limited.

Key exam point

- If the State gives special treatment to one section on the basis of caste, geography, or money, the justification must be reasonable classification, not discrimination.
- The core requirement is that the basis should be fair and non-arbitrary, so that the benefit can be shared justly.

Rule of Law, Equality in Practice, and Exceptions for Officials

Rule of Law and Equality Before Law

- Rule of law means that law is supreme and decisions must not be arbitrary.
- It requires equal treatment for all: rich or poor, backward or privileged, everyone should be treated fairly.
- A core idea is that people's faith in the legal system must remain strong; if people think the law protects only the powerful, trust in the system decreases and social stability is affected.
- The principle is linked to the democratic idea that the people of India are the source of power; government is responsible to the people, so equality in treatment is essential.

Equality in Practice

- Equality is not only a constitutional idea; it must work in actual administration.
- A visible inequality arises when the same rule is enforced differently for ordinary people and for leaders or powerful persons.
- Example: during the pandemic, ordinary people could be fined for not wearing a mask, while political rallies appeared to proceed without similar enforcement. Such differences weaken confidence in equal justice.
- The correct approach is that if someone violates the law, that person should accept responsibility, pay the fine, undergo the punishment, or request appropriate legal relief—not escape consequences because of wealth or status.

Access to Justice Measures

- Current efforts to improve access to justice include free legal consultancy through telephones.
- Where legal aid lawyers are unavailable, solutions discussed include:
 - better support for legal aid institutions like NALSA and SALSA
 - encouragement of pro bono legal services
 - possible recognition or incentives for lawyers who help needy persons free of charge
- The focus is on ensuring that legal help is available to those who cannot afford it.

Exceptions for Officials

- Officials such as the President and Governor have special exceptions because of the dignity of their office.
- Three key exceptions were discussed:
 1. Official capacity: acts done in official capacity are protected because they are linked to the dignity of the office.
 2. Criminal acts in personal capacity: if an official commits a criminal act personally, the law applies after the person is outside office; personal criminal liability is not removed.
 3. Civil cases: in certain civil matters, legal action cannot begin immediately; a 2-month notice is required before proceedings can apply.
- Most work of the President and Governor is done on the aid and advice of the Council of Ministers.

MPs and MLAs: Parliamentary Privileges

- MPs and MLAs have privileges connected with legislative functioning.
- For civil-type matters, there is immunity from arrest or court proceedings during the protected period around the session, including 40 days before and 40 days after the session, and also during the session.
- If a statement or action is made within the House, the authority to take action lies with the presiding officer:
 - in Lok Sabha, the Speaker
 - in Rajya Sabha, the Chairman

- These protections exist so representatives can perform their duties during the session.

Diplomats

- Diplomats also have exceptions from ordinary legal action.
- If a diplomat's vehicle is involved in an incident or a legal issue arises, local police do not detain them in the ordinary way; instead, the vehicle number is noted and the relevant embassy is informed.
- The notes also indicate that diplomats are treated as having immunity in both civil and criminal matters.

Article 15: Non-Discrimination, Public Places, and Special Provisions

Core rule under Article 15

- Article 15 directs the State not to discriminate only on the basis of religion, race, caste, sex, or place of birth.
- It applies only to citizens, not to non-citizens.
- The focus is on discrimination by the State and also on discrimination in matters involving public access.

Public places and public access

- Article 15 covers public places, not private spaces.
- Examples of public places mentioned include roads, wells, restaurants, and parks.
- A private restaurant that is open to the public cannot deny entry on the basis of religion, race, caste, sex, or place of birth.
- A public park maintained for a colony cannot exclude people on these grounds.
- A truly private garden inside a house is different and is not treated the same way as a public place.

Special provisions and positive discrimination

- Article 15 allows special provisions for women and children.
- This is treated as positive discrimination and is permitted when there is a logical and rational basis.
- The State can create separate facilities or schemes for women and children, such as women-specific skill centres or girls' schools/colleges.
- Such arrangements do not amount to a violation of Article 15 because they are meant for protection and advancement.

Advancement of backward classes

- Article 15 also allows special provisions for the advancement of backward classes.
- The source emphasizes that the term used is class, not caste, and that the aim is upliftment of disadvantaged groups.
- Reservation or special provision for socially and economically backward classes is presented as valid.
- Communal reservation on a religion-based ground is not permitted.

Illustrative judicial references mentioned

- Champakam Dorairajan case is linked with clarification on reservation and Article 15.
- The source also links Article 15 with the First Constitutional Amendment.
- M. R. Balaji and Indra Sawhney are named as important cases to remember in this context.
- The source also mentions that 73rd and 74th Constitutional Amendment Acts provided special reservation/provisions in related contexts for women and children.

Backward Classes, Reservation, Creamy Layer, and EWS Discussion

Backward Classes and the role of caste

- In the discussion on Backward Classes, caste cannot be treated as the dominant factor while considering social and educational backwardness.
- The constitutional framing emphasized that caste alone should not be the sole basis for identifying backwardness, because that would permanently divide society.
- In the Indian context, caste is closely tied to social discrimination, so the term class was discussed in relation to caste-based inequality.

Balaji case and the criterion issue

- In the Balaji case, the Court held that caste cannot be the dominant factor.
- The reasoning was that reservation policy should identify groups that are socially and economically in need of advancement.
- The point of policy was not simply to label a group, but to ensure development and support for those who had been left behind.

Indira Sawhney case and classification of backwardness

- In Indira Sawhney, the Court accepted that classes can be classified constitutionally as backward and more backward.
- The case supported the idea that some criterion is necessary to group people for reservation purposes.
- The discussion introduced the logic of the creamy layer: within a backward class, some people may no longer need reservation support.

Creamy Layer

- The creamy layer refers to members of backward classes who are considered relatively better placed due to their family, social, educational, or economic status.
- The idea is that not every person in a backward class requires the same level of reservation support.
- For OBC reservation, the focus is on non-creamy layer beneficiaries.

Reservation in educational institutions

- A 1993 Constitutional Amendment Act was mentioned as applying reservation policy to both aided and unaided institutions.
- 27% quota was noted for OBCs, specifically for the non-creamy layer.
- The principle behind this is that reservation should reach those within the backward class who are still

in genuine need.

EWS reservation and the 103rd Constitutional Amendment

- The 103rd Constitutional Amendment Act introduced 10% reservation for EWS.
- The discussion noted that economically weaker people in the general category also face disadvantage and may need support for education and opportunity.
- The constitutional basis was presented as including economic criteria along with social and educational criteria through the amendment.

Connection with earlier judicial discussion

- During the time of the Mandal Commission implementation, there was already a proposal to give 10% reservation to economically disadvantaged people in the general category.
- The objection at that time was that the Constitution mentioned socially and educationally backward classes, not economic criteria.
- The later amendment added economic consideration, which was presented as the legal basis for the EWS certificate and reservation framework.

Exam-focus points

- Caste is not the sole dominant factor for backward class identification.
- Some criterion is necessary to classify backward groups constitutionally.
- Creamy layer excludes relatively advanced members of backward classes from reservation benefits.
- OBC reservation was discussed as 27% for the non-creamy layer.
- EWS reservation was linked to the 103rd Constitutional Amendment and the addition of an economic criterion.