

## Fundamental Rights ( PART III of Constitution)






### Article 19:

#### 1. Office of CJI under RTI

1. **In Supreme Court of India vs Subhash Chandra Agarwal** case , Supreme Court declared that the Office of the Chief Justice of India (CJI) is a **‘public authority’** under the Right to Information (RTI) Act.
2. It upheld the Delhi High Court judgment of 2010 that the CJI does not hold information on the personal assets of judges in a fiduciary capacity. Thus, disclosure of details of serving judges’ personal assets was not a violation of their right to privacy. The information about assets of judges does not constitute personal information and thus cannot be exempted from RTI.
3. **Public authority under RTI:** Section 2(h) of the RTI Act states that “public authority” means any authority or body or institution of self-government established or constituted
  - By or under the Constitution;
  - By any other law made by Parliament/State legislature
  - By notification issued or order made by the appropriate Government, and includes any:
    - Body owned, controlled or substantially financed
    - Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

#### 2. NGO under RTI

## WHAT DOES THE ORDER SAY

-  Trusts and NGOs “substantially funded” by the government will be considered “public authorities” under the RTI Act
-  Whether an NGO/trust enjoys “substantial government financing” will be examined on a case-to-case basis
-  Substantial funding can be in both direct and indirect ways
-  Substantial funding does not necessarily have to be in the form of financial aid or be more than 50 per cent of funding
-  While determining substantial funding, the current value of land will also have to be evaluated.

1. **SC:** Non-governmental organisations (NGOs) “substantially” financed by the government fall within the ambit of the Right to Information Act.
2. This ruling would mean that NGOs will have to maintain records as provided under the RTI Act, and every citizen will have the right to get information from them.
3. NGOs which receive considerable finances from the government or are essentially dependent on the government fall under the category of “public authority” defined in Section 2(h) of the RTI Act of 2005.

NGOs are also regulated under the provisions of Foreign Contribution Regulation Act (**FCRA**) and Foreign Exchange Management Act (**FEMA Act**).

### **3. Right to Information Amendment Act 2019**

**Table 1: Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Bill, 2019**

Provision	RTI Act, 2005	RTI (Amendment) Bill, 2019
<b>Term</b>	The Chief Information Commissioner (CIC) and Information Commissioners (ICs) (at the central and state level) will hold office for a term of five years.	The Bill removes this provision and states that the central government will notify the term of office for the CIC and the ICs.
<b>Quantum of Salary</b>	The salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively.  Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.	The Bill removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government.
<b>Deductions in Salary</b>	The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension.  Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government.	The Bill removes these provisions.

**Internet Shutdowns:** India tops the world in number of Internet shutdowns.

**Legal Framework for Internet shutdowns:**

- i) The Information Technology Act, 2000, the Criminal Procedure Code (CrPC), 1973 and the Telegraph Act, 1885 are the three laws that deal with suspension of Internet services.
- ii) Before 2017, Internet suspension orders were issued under section 144 of the CrPC.
- iii) In 2017, the central government notified the **Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules under the Telegraph Act** to govern suspension of Internet. These rules derive their powers from Section 5(2) of the Indian Telegraph Act, which talks about interception of messages in the “**interests of the**

**sovereignty and integrity of India**". However, despite the 2017 rules, the government has often used the broad powers under Section 144.

**Temporary Suspension of Telecom Services [Public Emergency or Public Service] Rules, 2017:**

- i) According to these rules, only the Home Secretary of the country and a Secretary of a state's home department can pass such an order.
- ii) These also state that any such order should be taken up by a review committee within five days.

**NOTE:**

- i) Indian Telegraph Act, 1885, deals with interception of calls, and the Information Technology (IT) Act, 2000, deals with interception of data by the Government.
- ii) Section 69(A) of the IT (Amendment) Act, 2008 gives the government powers to block particular websites, not the Internet as a whole. (**Context:** The Indian government and law enforcement agencies between June and December 2018 made 657 legal demands for content removal, apart from 10 court orders)

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**Article 22:** Protection against arrest and detention in certain cases.

1. Preventive detention involves the detainment (confinement) of a person in order to keep them from committing future crimes and/or from escaping future prosecution.
2. When a person is arrested he/she has to be produced before a magistrate within the next 24 hours. However, in the case of 'preventive detention', a person can be detained for three months.
3. Article 22(4) states that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless:
  - i) an Advisory Board reports sufficient cause for extended detention.
  - ii) such a person is detained in accordance with the provisions of any law made by the Parliament.
  - iii) Preventive detention laws can be made by both Parliament and State Legislatures.
4. What is the **Public Safety Act**?
  - i) The Jammu & Kashmir Public Safety Act, 1978 is a preventive detention law, under which a person is taken into custody to prevent him or her from acting in any manner that is prejudicial to "the security of the state or the maintenance of the public order". It is very similar to the National Security Act that is used by other state governments for preventive detention.
  - ii) Detention can be for upto 2 years.

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**Article 25-28:** Right to freedom of religion in India.

### **Sabarimala judgement:**

1. The judgment remarked that ban on the entry of women in Sabarimala is a kind of untouchability, and thus violative of Article 17.
2. **Doctrine of essentiality:** The doctrine of “essentiality” was invented by a seven-judge Bench of the Supreme Court in the ‘Shirur Mutt’ case in 1954 in which the court held that the term “religion” will cover all rituals and practices “integral” to a religion, and took upon itself the responsibility of determining the essential and non-essential practices of a religion.
3. **Constitutional Morality:** The term ‘morality’ or ‘constitutional morality’ has not been defined in the Constitution. As per the Supreme Court, the magnitude and sweep of constitutional morality is not confined to the provisions and literal text which a Constitution contains, rather it embraces within itself virtues of a wide magnitude such as that of ushering a pluralistic and inclusive society, while adhering to the other principles of constitutionalism.

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### **Article 29-30:** Protection of interests of Minorities (lingual + religious)

1. SC has rejected PIL seeking minority status for Hindus in some states.
2. Currently, the linguistic minorities are identified on a state-wise basis and thus determined by the state government whereas religious minorities are determined by the Central Government at the national level.
3. The term "Minority" is NOT defined in the Indian Constitution. The **National Commission for Minority Educational Institutions (NCMEI) Act defines minority** means a community notified as such by the Central Government:
  - a. As per notification of the Government of India, there are **6 notified religious minority communities** - Muslim, Sikh, Christian, Buddhist, Parsis and Jain.
  - b. **No linguistic minority** has been notified by the Central Government till date. Thus, **linguistic minorities are outside the purview of the NCMEI.**
4. Constitution recognises **only** religious and linguistic minorities.

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### **Union Executive:**

#### **Impeachment of President:** Difference with Impeachment of US President.

- i) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by **either** House of Parliament. The motion for

removal of US President is tabled and first passed in Congress after which the Senate holds the trial.

- ii) The president may also be removed before the expiry of the term through impeachment for **violating the Constitution of India** unlike US president who can be impeached because of "Treason, Bribery, or other high Crimes and Misdemeanour"

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## Parliament:

1. **Cabinet Committees reconstituted:** The central government has reconstituted eight key cabinet committees including creation of two new committees-
  - i) Investment and Growth
  - ii) Employment and Skill Development.
2. **Cabinet Committees:**
  - i) They are **extra-constitutional bodies**, which are provided by the Governments of India Transaction of Business Rules, 1961.
  - ii) They are set up by the Prime Minister.
  - iii) Composition- They usually includes only Cabinet Ministers. However, the non-cabinet Ministers are not debarred from their membership. They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.
3. **Privilege Motion :**
  - i) It is concerned with the breach of parliamentary privileges. It is moved when someone has committed a breach of privilege of House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts.
  - ii) A notice is moved in the form of a motion by **any member of either House** (Hence applicable to both the Houses of the Parliament) against those being held guilty of breach of privilege.
  - iii) The Speaker/RS chairperson is the first level of scrutiny of a privilege motion. The Speaker/Chair can decide on the privilege motion himself or herself or refer it to the Privileges Committee of Parliament( Both LS and RS have a Privilege Committee) . If the Speaker/Chair gives consent the member concerned is given an opportunity to make a short statement.
4. **Composite Floor Test:**
  - i) Composite Floor Test is conducted only when more than one person stakes claim to form the government. When the majority is not clear, the governor might call for a special session to see who has the majority. The majority is counted based on those present and voting. This can also be done through a voice vote where the member can respond orally or through division voting.

5. **Anti-Defection Law:**

- i) **Kihoto Hollohan vs Zachillhu and Others (1992).** While the SC upheld the Speaker’s discretionary power, it underscored that the Speaker functioned as a tribunal under the anti-defection law, thereby making her/his decisions subject to judicial review.
- ii) This judgment enabled judiciary to become the watchdog of the anti-defection law, instead of the Speaker, who increasingly had become a political character contrary to the expected neutral constitutional role.
- iii) In **Shrimanth Balasaheb Patel & Ors vs Speaker Karnataka Legislative Assembly & Ors (2019)**, SC upheld the then Karnataka Speaker’s decision of disqualification of the 17 rebel MLAs of Congress-JDS.
  - i. However, SC held that in exercise of his powers under 10<sup>th</sup> Schedule, Speaker does NOT have power to either indicate the period for which a person is disqualified NOR to bar someone from contesting elections.
  - ii. Speaker shall decide on the disqualifications within reasonable period of time. (3 months).

**NOTE:** The Supreme Court has recently also held that disqualification petitions under the tenth schedule should be adjudicated by a mechanism outside Parliament or Legislative Assemblies.

What has the court suggested?

The Court has suggested a **permanent tribunal** headed by a retired Supreme Court judge or a former High Court Chief Justice as a new mechanism. This would require an amendment to the Constitution.

**Related Information: Interpretation of various aspects of the Anti-defection law by the Supreme Courts**

<b>Interpretation of the phrase ‘Voluntarily gives up his membership’</b>	The phrase has a wider connotation than resignation. The Supreme Court has interpreted that in the absence of a formal resignation by the member, the giving up of membership can be inferred by his conduct. Members who have publicly expressed opposition to their party or support for another party should be deemed to have resigned.
<b>Decision of the Presiding Officer is subject to judicial review</b>	The law initially stated that the decision of the Presiding Officer is not subject to judicial review. <b>This condition was struck down by the Supreme Court in 1992</b> , thereby allowing appeals against the Presiding Officer’s decision in the High Court and Supreme Court. However, it held that there may not be any judicial intervention <b>until the Presiding Officer gives his order.</b>

<b>Time limit within which the Presiding Officer has to decide on anti-defection cases</b>	The law does not specify a time-period for the Presiding Officer to decide on a disqualification plea. Court has expressed concerns and had ruled that the <b>High Court can direct Speakers</b> to rule on disqualification petitions if they do not do this within reasonable time.
<b>Anti-defection law affecting the ability of legislators to make decisions</b>	Often the law has restricted a legislator from voting in line with his conscience, judgement and interests of his electorate. Political parties issue a direction to MPs on how to vote on most issues, irrespective of the nature of the issue. Several experts have suggested that <b>the law should be valid only for those votes that determine the stability of the government</b> (passage of the annual budget or no-confidence motions).