

INTRODUCTION

Constructed to give effect to transformative vision of Constitution

Applies to both the state and private persons

Range of rights are protected (post-liberal text aimed at facilitating social + economic transformation of SA 🇿🇦)

Structure of litigation differs from other branches of law

PRELIMINARY QUESTIONS ❓

👉 Is the person/ organisation who claim their rights have been infringed entitled to protection by BOR?	Most cases, everyone (excluding fetuses) present in SA and non-citizens in SA can claim rights.	Some rights benefit smaller category like if the right specifically says "children" or "workers"
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👉 Does the person/ organisation have standing to bring the case?

👉 Will the BOR apply indirectly or directly to the dispute?

👉 Are the alleged party bound by the BOR?
BOR **always** binds the state and, in some circumstances, private parties

👉 If rights are infringed, is the infringement justifiable i.t.o Limitation Clause s36?
Enables constitutional rights to be limited for a certain limited + democratically justifiable purpose

LIMITATIONS CLAUSE s36

<p>👉 Proportionality test applied to determine whether limitation is reasonable + justifiable → balance b/t NB limitation objective + extent which right is limited</p>	<p>👉 Must consider relevant factors: Relation b/t limitation + purpose, Importance + purpose of limitation, Nature of right, Nature + extent of limitation</p> <p>👉 Legitimate objectives for limiting rights: Protecting rights of others, Public Health, Public Morals, Promoting social justice, National Security</p>
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- Only deals with BOR. Some rights may not be limited, even in S.O.E (absolute/ non-derogable rights)

- **Relationships b/t rights** might imply limitation on one of them
e.g right to life vs right to bodily + psychology integrity

- **formulation of right** might imply limitation on one of them
e.g no unfair discrimination vs fair discrimination (u18 can't vote)

- Many rights can be limited/ narrowed in order to prevent conflicts with other right/ or certain general interests

STRUCTURE OF BOR LITIGATION 🏛️

1) Application/ Procedural Stage

👉 Can X go to court to claim their right is infringed?

👉 Is alleged person bound by the duties imposed BOR?

👉 Does BOR apply indirectly or directly to dispute?

2) Limitation/ Substantive Stage

👉 What is the scope of the right and does law/ conduct infringe on right?

👉 If infringement occurs, is it justifiable i.t.o Limitation Clause s36

STRUCTURE OF BOR LITIGATION 🧑

(cont)

3) 🗑️ Court decides appt.

Remedies remedies only if law unjust-

Stage iably infringes right OR

doesn't promote values of BOR

3 stages set out in the operational provisions of BOR and regulates the questions courts need to consider. They are:

- State's duty to respect, protect, promote, + fulfill BOR [s7]
- Suspension of rights in S.O.E [s37]
 - Who is bound by BOR [s8]
- Who has standings to enforce rights [s38]
 - Interpretation of rights [s39]
 - Limitations of rights [s36]

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