

Fundamental Rights

- Part - III of the Constitution Article 12 to 35
- Fundamental Rights of the constitution has been described as the “**Magna Carta**” of India.
- The most striking difference between the Government of India Act, 1935 and the present constitution is the presence of the fundamental rights in the later.
- Part III of the constitution is called the corner stone of the constitution, and together with Part IV (Directive Principle of State Policy) constitutes the “conscience” of the constitution.
- The Fundamental Rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their government.
- It limits the power of Government, legislative as well as executive.
- These rights are regarded as fundamental because they are most essential for the attainment by the individual his / her full intellectual, moral and spiritual status.
- Unlike USA, where Fundamental Rights are absolute, in India, we have Restricted Rights.

The constitution itself classified the Fundamental Rights under 7 groups as follows:

- Right to equality (Article 14- 18)
- Right to particular Freedom (Article 19-22)
- Right against exploitation (Article 23- 24)
- Right to Freedom of Religion (Article 25- 28)
- Cultural and Educational Rights (Article 29- 30)
- Right to property (**omitted**) by 44th Constitutional Amendment Act 1978 (Article. 31)
- Right to constitutional remedies.

Thus at present there is only 6 groups of rights.

- **Article 12** has defined the term for the purposes of Part III. According to it, the State includes the following:
 - Government and Parliament of India, that is, executive and legislative organs of the Union government.
 - Government and legislature of states, that is, executive and legislative organs of state government.
 - All local authorities, that is, municipalities, panchayats, district boards, improvement trusts, etc.
 - All other authorities, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.
- **Article 13** declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.
 - Permanent laws enacted by the Parliament or the state legislatures;
 - Temporary laws like ordinances issued by the president or the state governors;
 - Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification; and
 - Non-legislative sources of law, that is, custom or usage having the force of law.
- The Supreme Court in the *Bikaji Narain Vs State of Madhya Pradesh (1955)* case propounded Doctrine of eclipse and classified that any such law is not dead altogether.
 - It is in fact, overshadowed by the Fundamental Rights and remains dormant.
 - It is a good law when a question arises for the determination of rights and obligation incurred before the commencement of the constitution, and also for the determination of the rights of persons who have not been given FR under the constitution.
 - When the shadow cast by the FR is removed by a subsequent amendment the eclipsed parts of such law get revised and become effective once again.
 - Earlier Supreme Court stated that the doctrine of eclipse was applicable to pre constitutional laws only.

- However, in the *State of Gujarat Vs Ambika Mills (1974)*, the Government stated that the doctrine can be extended to the post constitutional laws as well.

Amenability of Fundamental Rights:

- The Supreme Court in the number of cases, from *Shankari Prasad Vs Union of India (1952)* to *Sajjan Singh Vs State of Rajasthan (1965)*, held that by exercising its amending power Under Article 368, the Parliament can amend even Part III of the constitution.
- In *Golkhath Vs State of Punjab (1967)* case, the Supreme Court, overruled its earlier decision and held that the Fundamental Rights embodied in Part III has been given a “Transcendental Position” by the constitution and no authority including the Parliament, through its amending power Under Article 368, has competent to amend the Fundamental Rights.
- By the 24th Amendment Act 1971, the Parliament suitably amended Article 13 and Article 368 to empower itself to amend Part III of the constitution.
- The Amendment was challenged before the Supreme Court in a landmark, case, *Keshavananda Bharati Vs State of Kerala, (1973)*.
- The court in this case held that the Parliament can amend any of the provision of the constitution including Fundamental Rights, by its amending power Under Article 368, provided such amendments do not infringe the **basic structure** of the constitution.

Suspension of Fundamental Rights:

The constitution of India contains provisions for automatic suspension of the FR under certain conditions,

- During National emergency under Article 352 (i.e.,) war or external aggression.
- The constitution empowers the President under Article 359, to suspend any or all the FR by issuing a separate proclamation during a National Emergency.

- The 44th Amendment Act, 1978 prohibits the suspension of Article 20 and 21 (protection in respect of conviction of offence and protection of life and Personal;
- liberty respectively) even during National emergency.

Right to Equality (Article 14-18):

- **Article 14:** The state shall not deny to any person equality before law and equal protection of the laws with in the territory of India.
- This concept borrowed from British Constitution.
- **Equality before law is a negative concept** – It means “no man is above law” and every person, whatever be his / her social status, is subject to the jurisdiction of the courts.
- The rule of equality before law is how ever not an absolute rule and they are number of exceptions to if, they are,
 - Under Article 361, the President and the Governors are exempted from any criminal proceeding during tenure of their offices, in case of civil proceeding in which relief is claimed can be initiated only after serving two months’ notice.
 - Under the International law, foreign sovereign, Ambassadors and diplomats enjoys full immunity from any judicial process.
- Equal protection of law is positive concept, this concept is borrowed from the US constitution.
- It means that all persons in similar conditions/ circumstances shall be treated alike.
- There can be discrimination between the groups but not with in the groups.
- Since the state stands for welfare of all sections of the society, it can make certain discriminations in favour of those who are less privileged.
- The word “any person” in Article 14 of the constitution denotes that the guarantee of the equal protection of law is available to any person which includes any association, company or body of individuals.
- **Article 15:** Article 15 of constitution provides for the prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.

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- Thus, state should not to discriminate only on above grounds.
- The word “only” indicates that the discrimination cannot be made merely on the ground that one belongs to particular caste, religion, race etc.
- The guarantee under **Article 15** is available to citizens only.
- Under Article 15(2), regarding use of public places, the protection is available even against private individuals.
- Clause (2) provides that so far as places of public entertainment is concerned, no person shall be subject to discrimination on grounds only of religion, race, caste, sex, place of birth or any of them, whether such discrimination is the result of an act of the state or of any individual.
- Even wells, tanks, bathing ghats, roads and places of public resort which are owned by private individuals are subject to this prohibition provided they are maintained wholly or partly out of state funds or they have been dedicated to use of the general public.
- The above prohibition against discrimination however, would not precludes the state from –
 - Making special provision for women and children.
 - Making special provision for the advancement of any society, and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.
- **Article 16:** Equality of opportunity in matters of public employment.
- No citizens shall on grounds only of religion, race, caste sex, descent, place of birth or residence be ineligible for, or discriminated against in respect of, any employment or office under state.
- The true meaning of equal opportunities is not simply a matter of legal equalities, Its existence depends not merely in the absence of disabilities but on the presence of abilities and opportunity of excellence in each cadre/grade as equality of opportunity means equality as between the members of the same class of employees and not between that of separate independent classes.

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- This equality is to be observed by the state not only in the matter of appointments to the public services, but also in the matter of any other public employments, where the relationship of master and servant exists between the state and the employee.
- It bars discrimination not only in the matter of initial appointments but also of promotion and termination of the service itself as employment includes “promotion”.

The exemptions are:

- Residence within the state may be laid by parliament as a condition for particular classes of employment of appointment under any state or local authority.
- Article 16(3), Article 16(4), To provide socio-economic equality to disadvantaged (Positive discrimination)
- Article 16(5) offices connected with religious or denominational institutions may be reserved for members professing particular religion or belonging to particular denomination to which the institution relates.

The Mandal Commission Case:

- A nine-judge bench of Supreme Court has in *Indra Sawhney's case* (Popularly known as Mandal case) laid down the following important points which summarize the law on the issue of reservation in Government employment
 - Article 16(4) is exhaustive of the provisions that can be made in favour of the backward classes in matter of employment.
 - Backward class contemplated under Article 16(4) is only social.
 - It needs to be both social and economical, thus “means test” signifies imposition of an income limit for the purpose of identifying creamy layer.
 - The reservation should not exceed 50%.
 - Reservation of posts under Article 16(4) should be confined to initial appointments only and cannot extend to providing reservation in matter of promotion.

- By the constitution 77th AA 1995, this limitation is removed by inserting clause 4A, to enable it to continue reservation in promotion for Scheduled Castes and Scheduled tribes.
- The vacancies identified can be carried forward for a maximum period of 3 yrs, if candidates from Backward classes not available after which they were to lapse, by inserting clause (4B), in Article 16, by the constitution 81st Amendment Act 2000, the state has been empowered to consider such unfilled vacancies as a separate class to be filled up in any succeeding year or years.
- **Article 17: Abolish untouchability:** it can be challenged both against state as well as individuals.
- The untouchability offences Act 1955 which is later renamed as civil right provision act 1976.
- **Art 18: Abolition of Titles:** No title can be conferred by the state.
- This is to prohibit the creation artificial distinction in society.
- In case of national awards which are instituted Jan 1954.
- Which are conferred by President on the Republic Day.
- It was awarded to recognize meritorious distingue service of individuals to the country.
- If also conferred to not citizens and individuals can also be conferred by this title posthumously.
- The recognized person cannot supposed to use this award of his/her name, this title was abolished by Janata Government.
- It was revived 1980 in Balaji Ragavan Vs Union of India 1946 the Supreme Court held that the conferment of national award is not violation Art 18(1) and it advice the centre to conferred award to meritorious persons only.
- It prohibits Indian citizen from accepting titles from foreign countries.
- A Foreigner under Government of Indian services is also be prohibited from accepting a title from a foreign country without the permission of the President.

Right to Freedom (Article 19-22):

- There are certain positive rights that are conferred by the constitution in order to promote the ideals of liberty held out by the preamble.
- The foremost among these are the six Fundamental Rights in nature of “freedom” which are guaranteed to the citizens by the constitution of India (Article 19).
- These were popularly known as 7 freedoms under the constitution, but the right to acquire, hold and dispose of property has been omitted by the constitution (44th Amendment Act, 1978), leaving only 6 freedom in this Article 19 They are,
 - Freedom of speech expression
 - To assemble peaceably and without arms.
 - To form association or union
 - To move freely throughout the territory of India.
 - To reside and settle in any part of the territory of India.
 - (Right to Property omitted)
 - To practice any profession or to carry on any occupation, trade or business.
- The Indian constitution does not provide for freedom of press separately, it is implicit in Article 19, which grants freedom of speech and expression.
- **Article 19(1)(a)** Guarantees all citizens right to freedom of speech and expression.
- Second most important FR. Supreme court liberally interpreting act
- **Art 19(1)(a)** and expanding the scope of this Article as and when necessary.
- Freedom of thought is inherently included under Article 19(1)(a).
- In National anthem case supreme court held that silence is also the form of freedom of speech and expression.
- **Art 19(1)(b)** Right to freedom of assembly regarded as corollary of Right to freedom of speech and expression.

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- **Art 19(1)(c)** Guarantees all Citizens the right to form association (political, social, cultural etc.) The right to form association is also includes right to join or not to join in an association.
- From political association – formation of Trade union assumes its rights.
- In *Bank employees' association* case, 1962 Supreme Court held that the right to form trade union, does not confer Fundamental Right to strike.
- But it may be an ordinary / statutory right.
- They may go on strike only the redressal of grievances mechanism failed and only after notice they can go for strike, But in *T.K. Rangarajan Vs Government of Tamil Nadu & others*, a two member bench of the Supreme court ruled on 07.08.2003 that the Government employees do not have “a fundamental, statutory or equitable moral right to strike “whatever the cause just or un just”
- **Article 19(1)(d)**: It confers the right to freedom of movement, right to move freely throughout the territory of India, The constituent assembly debated between “throughout” and “within”, the term throughout included at last, because any single part can also be declared as within India and any person can be restricted to move out of there, so throughout is used instead of within.
- **Article 19(1)(e)**: It guarantees right to reside and settle down in any part of country.
- It is also corollary of Article 19(1)(d).
- **Article 19(1)(g)**: Right to choose a profession, trade, business etc. of his choice. State can impose certain qualification to confer certain profession and certain physical characters.

Exemption (Article 19(2) -19(6)):

- The guarantee of each of the above rights is limited by our constitution itself by conferring upon the “state” a power to impose by its laws by reasonable restrictions as may be necessary in the larger interest of the community.
- This is what is meant by saying that the Indian constitution attempts to strike a balance between individual liberty and social control.

- The reasonable restrictions related to
 - Defamation
 - Contempt of court
 - Decency or morality
 - Security of the state
 - Friendly relations with foreign countries
 - Incitement of offence
 - Public order
- Maintaining of the sovereignty and integrity of India and in public interest, the state can take over a business partially or fully and can regulate / prevent citizens from doing certain business.

Article 20:

- **Protection in respect of conviction for offences:** The protection is available against the following three types of convictions.
- **EX-Post facto legislation:** This means enacting a law and giving it a retrospective (i.e from a previous date or year) effect.
- This power has been conferred to the Parliament by the constitution.
- This is applicable only for civil legislation while criminal legislations cannot be given retrospective effect.
- **Double Jeopardy:** This means that an individual can be punished for a crime only once and also not beyond the period prescribed by the authority. i.e, “No person shall be prosecuted and punished for the same offence more than once”
- The Article however does not give immunity from proceedings other than before a court of law or a judicial tribunal.
- Hence, a government servant who has been punished for an offence in a court of law may get subjected to departmental proceedings for the same offence, or conversely.
- **Prohibition against self incrimination:** No person, accused of an offence, shall be compelled to be a witness against himself.

- The cardinal principle of criminal law is, an accused should be presumed to be innocent till the contrary is proved.
- It is the duty of prosecution to prove the offence.

Article 21:

- **Protection of Life and Personal liberty:** No person shall be deprived of his / her life and personal liberty except according to the procedure established by law.
- Over the period, this Article has undergone a sea change and has become the most important fundamental right.
- The Supreme Court, through a liberal interpretation of the Article, has derived a number of inferred rights.
- The Article stands out not merely for the right to life and personal liberty, but also for the right to dignity and all other attributes of human personality that is essential for full development of a person.
- Article 21 has become “foundation stone of Part III” of the constitution.

Inferred Rights are:

- Right to health of the workers
- Right to shelter
- Right against cruel punishment
- Right to live with dignity
- Right to Privacy
- Right to speedy trials
- Right to against denial of wages and arbitrary dismissed of workers.
- Right to get pollution free water & air
- Right to free legal aid and speedy trial
- The Principle of Natural Justice also included in Article 21, thus Article 21, makes a difference between a police state and a democratic state.

Principle of Natural Justice: States that,

- 1) No man can be punished unheard.
- 2) No man shall be a Judge of his own case.
- 3) An authority should act bonafide without any bias.

- Therefore the Principle of Natural Justice seems to exclude chances of arbitrariness and assure a degree of fairness in the process of decision making.
- They emphasize that the action must be supported by reasons and logic.
- According to Supreme Court, they are not incorporated rules but inherent rules of the constitution.

Due Process of Law and Procedure established by law:

- According to Article 21, no man can be punished except according to procedure established by law, which is based on the relevant British concept.
- This concept given protection only against the arbitrary action of executive and does not give protection against arbitrary action of legislature.
- In the *Gopalan Vs State of Madras* case Supreme Court held that there was no safeguard for personal liberty Under Article 21, and a competence legislature can deprive a person of his liberty, and affected person with not have remedy however oppressive / unjust / unreasonable the law may be.
- But in *Maneka Gandhi Vs Union of India* 1978, case Supreme Court held that the American concept of due process of law is inherently included Under Article 21, as it includes the Principle of Natural Justice.
- The due process of law provides protection for individual in safeguarding his life and liberty both against the arbitrary actions of the executive and legislature.
- Any law that provides deprivation of life and personal liberty cannot be unfair, unreasonable & arbitrary.
- **Article 21A: Right to Education:** The state shall provide free and compulsory education to all children of the age of 6 to 14 in such manner as the state may, by law determine. (Inserted by constitution 86th Constitutional Amendment Act, 2002).
- **Article 22: Protection against arbitrary arrest and detention:** Rights enjoyed by individual Art. 22(1) – No person who is arrested shall be detained, without informing the reason.

- He shall be produced before nearest magistrate with in 24 hours, excluding the time necessary for the journey from the place of arrest and intervening holiday.
- The period of detention cannot be extended beyond what is authorized by the magistrate.

Exception:**Article 22:**

- a) It won't apply to enemy alien or
- b) To any person who is arrested or detained under any law providing for prevention detention.

Types of Detention:

Punitive Detention: Detention after trial, Detention after conviction.

Prevention Detention: Detention without trial, detained on ground of suspicion.

Right against Exploitation:

Article 23: Prohibition of traffic in human beings and forced labour.

- Traffic in human beings and began and other similar forms of forced labour are prohibited
- Any contravention of this provision shall be as offence punishable in accordance with law.
- However, Government can impose compulsory service for public purposes.

Article 24:

- Prohibition of employment of children in factories.
- No child below the age of 14 years shall be employed to work in any factory or mine engaged in any other hazardous employment.
- In October 10,2006, Government of Indian based on the recommendation of Technical advisory committee on Child labour, headed by Direct General of ICMR, amended Child Labour (Protection and Regulation Act 1986) banned, employment of children below age 14 as domestic help or servants at the road side kiosks, clubs, span, and recreation centres.

Right to Freedom of Religion(Article 25 – 28):

- **Article 25:** India is a secular state and protects all the religions; But interferes with none. It believes in the ancient Indian Doctrine of “Sarva Dharma Sambhava”
- **Article 25:** Freedom of conscience, profession, practice and propagation of religion.
- **Conscience:** Absolute inner freedom of the citizen to mould his/her own relation with God in whatever manner he/she likes.
- **Profess:** To declare freely and openly ones faith and belief.
- **Practice:** To perform the prescribed religious duties, rites and rituals and to exhibit his religious beliefs.
- **Propagate:** Spread and publicize his/her religious views for the edification of others. It only indicates persuasion and exposition without any element of coercion.
- The above freedom is Subject to public order, morality and health, and to the other provisions of this Part, The right to propagate does not mean allowing a person to join any religion.
- A constitution Bench of the Supreme court in a group of related cases in 1977 called the *Rev. Stanislaus Vs State of Madhya Pradesh and others* case, ruled that Article 25(1) does not give the right to convert, but only the right to spread the tenets of ones own religion
- **Article 26:** Freedom to manage religious affairs subject to public order, morality and health, every religious denomination or any section thereof shall have the right to
 - Establish and maintain institutions for religious and charitable purposes.
 - To manage its over affairs in the matters of religion
 - To own and acquire movable and immovable property and
 - To administer such property in accordance with law.

Article 27: Freedom as to payment of takes for promotion of any particular religion.

- No person shall be compelled to pay any tax for religious purposes

- If the Government has done any services for a particular religious denomination, the Government is free to charge fees from the devotees.

Article 28: Freedom as to attendance at religious instructions or religious worship in certain educational institutions.

Article 28 divides educational institutions in to four categories:

- 1) Wholly maintained by the state
- 2) Recognized by the state
- 3) Receive aids out of the state funds
- 4) Administrated by state, trust established under a religious endowment.
 - In the first case, there can be no religious instruction what so ever.
 - In the second and third category, religious instructions can be imparted but the pupils cannot be compelled to attend such instructions.
 - In the Fourth category, there is no restriction what so ever as far as religious instructions are concerned.

Cultural and Educational Rights Article 29-30:

- **Article 29:** Protection of interest of minorities.
- Any section of the citizens, residing in the territory of India or any part there of, having a distinct language, script or cultural of its own, shall have the rights to conserve the same.
- **Article 29(2):** No citizen shall be denied admission in to any education institution maintained by or receiving aid out of State fund only on the ground of caste, creed, sex and Religion.
- **Article 30:** Right of Minorities to establish and administer educational institutions
 - All minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice.
 - It provides to religious, educational and cultural institutions, the right to own, possess and dispose immovable property.
 - State shall give due compensation in case of acquisition of such property.

- The right to preserve language, culture or script can be implemented through educational institutions. Supreme Court held that right to administer is not right to mal administration.

Right to Constitutional Remedies:

- **Article 32:** It provides institutional framework for the enforcement of the Fundamental Rights by the Supreme Court.
- Dr. B.R. Ambedkar called this Article as “The Fundamental of the fundamental rights” and “the heart and soul of the constitution” without which the constitution become nullity.
- To enforce the Fundamental Rights, the Supreme Court is empowered, under Article 32, to issue writs of various forms.
- The concept of issuing writs is taken from the U.K.

The Five forms of writs are as follows:

1) Habeas Corpus:

- It literally means “to have a body” i.e., to be produced before the courts.
- This kind of writ is issued to protect personal liberty of an individual against the arbitrary action of both the state and private individuals.
- The aggrieved person can even claim for compensation against such action.

2) Mandamus: It literally means “command”

- This kind of writ is issued against a public authority or an officer and inferior courts for purpose of enforcing legal rights only.
- This writ cannot be issued against the President and the Governors.
- Private rights cannot be enforced by the writ of the Mandamus.

3) Prohibition: “To restrain”

- This kind of writ is issued by the higher courts to the lower courts or the quasi judicial bodies when the latter exceed their judicial authority.
- The objective is to keep the inferior courts or the quasi judicial bodies within the limits of their respective jurisdiction.
- The difference between “Mandamus and Prohibition is that while the former can be issued against judicial as well as administrative authorities.

- The latter is issued only against the judicial or quasi judicial authorities.

5) **Certiorari:**

- It is similar to prohibition.
- This writ is issued to quash the order of a lower court or the decision of a tribunal in excess of its jurisdiction.
- The purpose of this writ is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdiction it does not possess.

6) **Quo warrant:**

- It literally means “what is your authority” This kind of writ is issued to ensure that the person holding a public office is qualified to hold the office.
- **Article 33** empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces.
- The objective of this provision is to ensure the proper discharge of their duties and the maintenance of discipline among them.
- **Article 34** provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India.
- It empowers the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force.
- The Parliament can also validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.
- **Article 35** lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures.
- This provision ensures that there is uniformity throughout India with regard to the nature of those fundamental rights and punishment for their infringement.

Fundamental Rights available to citizens and non – citizens:

- **Article 31A:** It saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 and Article 19
- They are related to agricultural land reforms, industry and commerce and include the following:
 - Acquisition of estates and related rights by the State;
 - Taking over the management of properties by the State;
 - Amalgamation of corporations;
 - Extinguishment or modification of rights of directors or shareholders of corporations; and
 - Extinguishment or modification of mining leases.
- **Article 31B:** It protects the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the fundamental rights.
 - The scope of Article 31B is wider than Article 31A as it immunises any law included in the Ninth Schedule from the Fundamental Rights.
 - However, the Supreme Court in its judgement in the I.R. Coelho case (2007) ruled that even laws under the Ninth Schedule would be open to scrutiny if they violated Fundamental Rights or the basic structure of the Constitution.
 - The Supreme Court first propounded the doctrine of ‘basic structure’ of the constitution in the Kesavananda Bharati on April 24, 1973.
- **Article 31C:** It contained two provisions:
 - It says that no law that seeks to implement socialistic directive principles specified in Articles 39 (b) and (c), shall be declared void on the grounds of contravention of the fundamental rights conferred by Article 14 or Article 19.
 - Moreover, no law containing a declaration that it is for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.