PARMAR SSC

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Topic:

Fundamental Rights



PART III: FUNDAMENTAL RIGHTS [Article 12-35]

Fundamental rights are a set of legally enforceable rights.

Salient Features of Fundamental Rights

- They are not absolute. (but have limits)
- They are not 'Sacrosanct' or Permanent.
- They can be curtailed during emergency (but Article 20 and 21 can never be suspended).
- They are justiciable in nature.

Six Fundamental Rights given in the constitution are:

1.  Right to Equality: Article 14-18
2.  Right to Freedom: Article 19-22
3.  Right against Exploitation: Article 23-24
4.  Right to Freedom of Religion: Article 25-28
5.  Cultural and Educational Rights: Article 29-30
6.  Right to Constitutional Remedies: Article 32

Basic Pointers

- They are borrowed from the Constitution of USA. (Bill of Rights).
- They are contained in Part III of the Constitution : Article (12-35)
- They are termed as "Conscience of Constitution"
- They seek to implement political democracy.
- They are referred to as the "Magna Carta of India"
- Originally there were 7 fundamental rights, currently there are 6 Fundamental Rights (Right to property was removed from Part III in 1978 by 44th CA, It is now a legal right under Article 300-A, part XII is legal right related to Finance, Property and Contracts)

Article 12:

Definition of State

It defines the term "State" which includes the Government, Union executive, the Parliament of India, the Legislature of each of the states, and all local or other authorities within the territory of India.

Ex: PSU's, Municipalities, Legislative bodies, LIC, ONGC etc.





Article 13

Laws Inconsistent with or in Derogation of the Fundamental Rights

- Any law made before the commencement of constitution shall be declared null and void by judiciary if it violates Fundamental Rights.
- Law includes any ordinance, order, by-law, rule, regulation, notification, in the territory of India.
- This article shall not apply to any amendment made under Article 368.



Article 14-18: Right to Equality

Article 14

Equality before Law and Equal Protection of laws

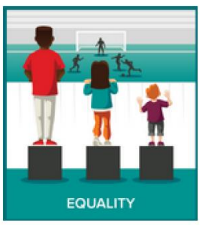
- Exception: President, MLAs/MPs, governor, foreigner dignitaries cannot be arrested in civil/criminal matters.

Equality Before law

- It is Negative in nature (British Concept)
- No One is above the law.
- No special Privilege.
- Rule of Law : Concept given by A.V Dicey (A British Jurist)

Equal Protection of Law

- It is Positive in nature (American Concept)
- Equal treatment under equal circumstances





Article 15

Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth

Article 15 (1) :

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth.

Article 15 (2) :

No citizen shall, on these grounds, be subject to any disability, liability, restriction or condition with regard to-

(a). Access to shops, public restaurants, hotels and places of public entertainment; or

(b). The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds.

Article 15 (3) :

The State can make special provisions for women and children, e.g. A few Metro seats are reserved for women.

Article 15 (4) :

The State can make special provision for the advancement of Scheduled Castes and the Scheduled Tribes.

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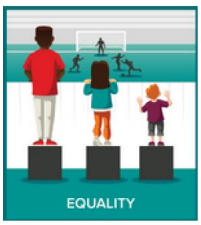
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Champakam Dorairajan Case

- Champakam Dorairajan, a woman from Madras, challenged the order in the Madras High Court citing a violation of her right to equality (Article 14)
- **Supreme Court Verdict, 1951**: A five-judge Supreme Court bench upheld the Madras HC ruling, declaring the Communal General Order unconstitutional.
- The judgment stated that it violated fundamental rights under Article 14 (Right to Equality) and Article 15(1) (Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex, or Place of Birth).
- The SC ruled that FRs prevail over DPSPs and established that Parliament can amend FRs through constitutional amendments.

Article 16

Equality of Opportunity in Matters of Public Employment

(1) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence, be ineligible for, or discriminated against in respect of, any employment or office under the state.

(3) State can set rule that gives preference to people who are residents of the area when it comes to local employment or appointments.

(4) State can make rules to reserve jobs or positions for "backward classes" who are underrepresented in the state services.

Cases/Commission subjective to article 16(4):

Kalelkar Commission (1953):

- 1st Backward Class commission
- Chairman: Kaka Kalelkar

Mandal Commission (1979)

- 2nd Backward Class commission (Chairman: BP Mandal)
- Recommended 27% reservation to OBCs
- Implemented by Prime Minister V.P. Singh in 1990.

Indra Sawhney Case (1992)

- It is also known as Mandal case.
- Public Interest Litigation by advocate Indira Sawhney.
- The Supreme Court upheld the 27% reservation for OBCs in government job, but also set a 50% cap on total reservations.
- Creamy-layer is to be identified in OBC are not entitled to reservation.

DID YOU KNOW?

Public Interest Litigation(PIL) is taken from USA's constitution.

Article 17

Abolition of Untouchability

- The state and any private individual are prohibited from practicing untouchability.
- The term 'Untouchability' has nowhere been defined in the constitution.

Article 18

Abolition of Titles

- No title, other than being a military or academic distinction, shall be conferred by the State.
- No citizen of India shall accept any title from any foreign state.
- No person, holding any office of profit shall receive "Title" from any foreign state without the consent of the President.
- Eg:- Maharaja, Rai Bahadur, etc.

Article 19-22: Right to Freedom

Article 19

Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right-

S (a) to freedom of speech and expression
A (b) to assemble peacefully and without arms;
A (c) to form associations or unions or cooperative societies;
M (d) to move freely throughout the territory of India.
R (e) to reside and settle in any part of the territory of India;
O (g) to practise any profession, or to carry on any occupation, trade or business.

- 97th Amendment added Right to form Cooperative societies under Article 19(1)(c).
- Article 19(f), Right to Property, has been omitted by 44th CA, 1978.

(2): Reasonable restriction

Reasonable restriction can be imposed in interest of Public order, decency, morality, sovereignty, integrity, defamation, contempt of court etc.

Hidden Rights under Article 19:

- Right to Internet (Anuradha Bhasin vs Union of India case, 2020)
- Right to Information (Raj Narayan vs State of UP, 1975)

Romesh Thappar Vs State of Madras Case: 1950

- Freedom of Press is integral part of Right to Speech and Expression.

Shreya Singhal Vs Union of India Case, 2015

- Section 66-A of IT Act is repealed by Supreme Court.

Reasonable Restrictions

Fundamental Right	Restriction Article	Grounds
Speech & Expression	19 (2)	Sovereignty, security, foreign relations, public order, decency, morality, contempt, defamation, incitement
Assembly	19 (3)	Sovereignty, public order
Association	19 (4)	Sovereignty, public order, morality
Movement / Residence	19 (5)	Public interest, ST protection
Profession / Trade	19 (6)	Public interest, qualifications, State monopol

Article 20

Protection in respect of conviction for Offences

(1) No ex-post-facto law: No person shall be subject to a penalty greater than that prescribed by law in force when the crime was committed.

(2) No double jeopardy: A person must not be punished twice for the same offence.

3) No self-incrimination: A person cannot be compelled to provide information or testify against oneself. But have to submit blood specimen or thumb impressions, if asked.

Article 21

Protection of Life and Personal Liberty

- No person shall be deprived of his life except according to the procedure established by law. (Borrowed from the Japanese constitution)
- The foremost right among right to freedom is Right to life and Personal Liberty.

Article 20 and 21 can never be suspended.

Landmark Cases & Interpretations-

A. K. Gopalan Case: 1950

- The Supreme Court of India took a narrow view of Article 21 and ruled that it does not guarantees "Due process of law."

Olga Tellis Vs Bombay Municiple Corporation Case, 1985

- Eviction of pavement dwellers using unreasonable force, without giving them a chance to explain is unconstitutional and violation of right to livelihood.

- KS Puttaswamy case affirmed that the Right to Privacy is an intrinsic part of right to life and personal liberty.

Due Process of Law': ensures fair and just legal proceedings. It is not mentioned in Constitution and is an American concept.

Maneka Gandhi Case: 1978

- The Supreme Court overturned the Gopalan case ruling.
- Took a wide stance on Article 21 and introduced the "Due Process of Law."
- It expanded the interpretation of Article 21 and made Right to Travel abroad- a Fundamental Right to personal liberty.
- Included some rights under Article 21 namely Right to Health, Shelter, Speedy trial, Information, Sleep, Electricity, Privacy

Hussainara Khatoon Vs State of Bihar Case, 1979

- The case concerns the need for a 'reasonable, fair and just' procedure, including free legal services for the poor, and the right to speedy trial.

Bachan Singh Vs. State of Punjab Case

- The judgment introduced the principle that the death penalty should be applied only in the "rarest of rare" cases.

Aruna Shanbaug Vs. Union of India

- The Supreme Court, in a 2011 judgment, legalized passive euthanasia under strict conditions. The court did not authorize active euthanasia but laid down guidelines for withholding or withdrawing life support in specific circumstances.

Article 21(A):

Right to Education

- Added by 86th Constitutional Amendment Act, 2002
- It guarantees the right to free and compulsory education for children between the ages of 6 and 14.

Punitive detention

- Occurs after a crime has been committed.

Preventive detention

- To prevent a possible future offence.
- This detention cannot exceed 3 months, unless an Advisory Board of High Court judges approves an extension.
- Must be informed of Grounds of Detention
- Should be given opportunity to represent him/herself.

Article 22:

Protection against Arrest & Detention in certain cases

A person being arrested under ordinary law has:

- Right to be informed on ground of arrest.
- Right to be defended by a legal practitioner.
- Right to be produced before a magistrate within 24 hrs.
- Right to be released after 24 hours unless the magistrate authorises for their detention.

Article 23-24: Right against Exploitation

Article 23

- Prohibition of trafficking in Human Beings and Forced Labour (Begar)
- Exception: State can force people to do compulsory services, for e.g. during War.

Article 24

- Prohibition of Employment of Children in Hazardous Places
- No child below the age of 14 years shall be employed in Factories, Mines or any other hazardous occupations.
- They can however work at safe places during non-school hours.

Article 25-28: Right to freedom of Religion

Article 25

Freedom of Conscience and Free Profession, Practice and Propagation of Religion

- Prohibits forcible conversion.



Article 27

Freedom as to Payment of Taxes for Promotion of Any Particular Religion

- This provision prohibits only the levy of taxes and not fee.

Article 26

Freedom to Manage Religious Affairs

Every religious institution or section shall have the right to:

(a) Establish and maintain religious institutions.
(b) Manage their own religious affairs.
(c) Own and acquire movable and immovable property.
(d) Administer property in accordance with law.

Article 28

Freedom from attending Religious Instruction

- No religious instruction shall be provided in any educational institution wholly funded by the State.

(a) Completely maintained by state : Prohibited
(b) Administered by state but established under any Trust : Permitted
(c) Recognised by state : Permitted on voluntary basis
(d) Receiving aid from state : Permitted on Voluntary Basis

Article 29-30: Cultural and Educational Rights

Article 29

Protection of Interest of Minorities

- Any section of citizens with a distinct language, script, or culture has the right to conserve it.

Article 30

Rights of Minorities to establish and administer educational Institutions

- The state cannot discriminate based on religion or language while providing aid.

DID YOU KNOW?

- Article 29 is not solely specific to minorities whereas Article 30 is specifically for minorities.
- Term 'Minority' is nowhere defined in constitution.

Article 32-35: Right to Constitutional Remedies

Article 32 (Known as 'Heart & Soul' of Constitution)

Remedies for enforcement of rights conferred by this part

1. Right to approach the Supreme Court for the enforcement of Fundamental Rights.
2. Supreme Court's powers: The Supreme Court can issue orders, directions, or writs to enforce fundamental rights.

These writs include :

1. Habeas corpus,
2. Mandamus,
3. Prohibition,
4. Certiorari, and
5. Quo-warranto.

Habeas Corpus

- Meaning : "to have the body of"
- It ensures individual liberty against unlawful detention.
- ADM Jabalpur case is also known as Habeas Corpus case, it is related to 'Personal Liberty.'

Mandamus

- Meaning : "We command"
- Orders a public official or authority to perform a duty they failed to do.
- It cannot be issued against: a private individual, President, Governor, or when the duty is not mandatory.

Prohibition

- Meaning : "To forbid"
- It is Preventive in nature
- Issued by a superior court to a lower court to prevent the latter from exceeding its jurisdiction.
- Not available against administrative, legislative and Private Individuals.

Certiorari

- Meaning : "To be certified"
- It is Curative in Nature
- Issued by a higher court to transfer a case pending in the lower court to itself or nullifies the lower court's order if it acted beyond jurisdiction.
- Exception : Legislative Bodies, Private Individuals

Quo Warranto

- Meaning : "By what authority"
- Challenges a person's right to hold a public office.

- Dr. B. R. Ambedkar mentioned Article 32 as "Heart and Soul" of Indian Constitution.
- Parliament can authorise any other court other than SC & HC to issue writs

Supreme Court (Article 32)

- The SC cannot refuse to issue writ.
- It can only issue writs when there is violation of Fundamental Rights only.
- Jurisdiction: Throughout the territory of India.

High Court (Article 226)

- The HC can refuse to issue writ.
- It can issue writs when there is violation of Fundamental Rights + Legal Rights (hence, writ jurisdiction of HC is wider).
- Jurisdiction: Throughout the state

Article 33

It empowers the parliament to restrict the Fundamental Rights fo the members of Armed Forces, Police and Intelligence Agencies to ensure proper discipline and duty. (50th amendment, 1984)

Article 34

It provides for the restrictions on Fundamental Rights while Martial Law is enforced in an area.

Article 35

It vests exclusive powers in parliament to make laws relating to enforcement of certain fundamental rights.

- Martial Law borrowed from: UK
- Rights that are available only to the citizens of India and not to Foreigners - Article 15, 16, 19, 29, 30