



KTU NOTES

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MODULE II

Definition of State

The term 'State' has been used in different provisions concerning the fundamental rights. Hence, Article 12 has defined the term for the purposes of Part III. According to it, the State includes the following:

- (a) Government and Parliament of India, that is, executive and legislative organs of the Union government.
- (b) Government and legislature of states, that is, executive and legislative organs of state government.
- (c) All local authorities that is, municipalities, panchayats, district boards, improvement trusts, etc.
- (d) All other authorities, that is, statutory or non-statutory authorities.

Thus, State has been defined in a wider sense so as to include all its agencies. It is the actions of these agencies that can be challenged in the courts as violating the Fundamental Rights. According to the Supreme Court, even a private body or an agency working as an instrument of the State falls within the meaning of the 'State' under Article 12

Fundamental Rights

Fundamental Rights - Articles 12 - 35 (Part III of Indian Constitution)

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, fundamental rights are enforceable by the courts, subject to certain conditions.

Why are they called Fundamental Rights?

These rights are called fundamental rights because of two reasons:

1. They are enshrined in the Constitution which guarantees them
2. They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

List of Fundamental Rights

There are six fundamental rights of Indian Constitution along with the constitutional articles related to them are mentioned below:

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)

1. Right to Equality (Article 14, 15, 16, 17 and 18):

Equality Before Law: Article 14 says that no person shall be denied treatment of equality before the law or the equal protection of the laws within the territory of India.

The right is extended to all persons whether citizens or foreigners, statutory corporations, companies, registered societies or any other type of legal person.

Prohibition of Discrimination: Article 15 provides that no citizen shall be discriminated on grounds only of religion, race, caste, sex or place of birth.

Exception: Certain provisions can be made for the women, children, citizens from any socially or educationally backward class for their upliftment (such as reservation and access to free education).

Equality of Opportunity in Public Employment: Article 16 of the Indian constitution provides for equality of opportunity for all citizens in matters of employment or appointment to any public office.

Exceptions: There are provisions for reservation in appointments or posts for any backward class that is not adequately represented in the state services.

Also, an incumbent of a religious or denominational institution may belong to the particular religion or denomination.

Abolition of Untouchability: Article 17 abolishes 'untouchability' and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

A person convicted of the offence of 'untouchability' is disqualified for election to the Parliament or state legislature. **The acts of offences include:**

- Preaching untouchability directly or indirectly.
- Preventing any person from entering any shop, hotel, public place of worship and place of public entertainment.
- Refusing to admit persons in hospitals, educational institutions or hostels established for public benefit.
- Justifying untouchability on traditional, religious, philosophical or other grounds.
- Insulting a person belonging to scheduled caste on the ground of untouchability.

Abolition of Titles: Article 18 of the constitution of India abolishes titles and makes four provisions in that regard:

- It prohibits the state from conferring any title on any citizen or a foreigner (except a military or academic distinction).
- It prohibits a citizen of India from accepting any title from any foreign state.
- A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the President of India.
- No citizen or foreigner holding any office of profit or trust within the territory of India can accept any present, emolument or office from or under any foreign State without the consent of the president.

2. Right to Freedom (Article 19, 20, 21 and 22):

Protection of 6 Rights: Article 19 guarantees to all citizens the six rights of freedom including:

Right to freedom of speech and expression.

Expressing one's own views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner.

Right to assemble peaceably and without arms.

Includes the right to hold public meetings, demonstrations and take out processions which can be exercised only on public land.

It does not protect violent, disorderly and riotous assemblies or strike.

Right to form associations or unions or co-operative societies.

It includes the right to form (and not to form) political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of persons.

Right to move freely throughout the territory of India.

The freedom of movement has two dimensions, viz, internal (right to move inside the country) (article 19) and external (right to move out of the country and right to come back to the country) (article 21).

Right to reside and settle in any part of the territory of India.

The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture and customs of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

Right to practice any profession or to carry on any occupation, trade or business.

It doesn't include the right to carry on a profession that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc.).

Protection in Respect of Conviction for Offences: Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It provides that:

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act or subjected to a penalty greater than that prescribed by the law.

No person shall be prosecuted and punished for the same offence more than once.

No person accused of any offence shall be compelled to be a witness against himself.

Protection of Life and Personal Liberty: Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens.

The right to life is not merely confined to animal existence or survival but also includes the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living.

Right to Education: Article 21 (A) declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years.

This provision makes only elementary education a Fundamental Right and not higher or professional education.

This provision was added by the **86th Constitutional Amendment Act of 2002**.

Before the 86th amendment, the Constitution contained a provision for free and compulsory education for children under Article 45 in Part IV of the constitution.

Protection Against Arrest and Detention: Article 22 grants protection to persons who are arrested or detained.

Detention is of two types, namely, **punitive** (punishment after trial and conviction) and **preventive** (punishment without trial and conviction).

The first part of Article 22 deals with the ordinary law and includes:

- Right to be informed of the grounds of arrest.
- Right to consult and be defended by a legal practitioner.
- Right to be produced before a magistrate within 24 hours, excluding the journey time.
- Right to be released after 24 hours unless the magistrate authorises further detention.

The second part of Article 22 deals with preventive detention law. Protection under this article is available to both citizens as well as aliens and includes the following:

The detention of a person **cannot exceed three months** unless an advisory board (judges of high court) reports sufficient cause for extended detention.

The grounds of detention should be communicated to the detenu.

The detenu should be afforded an opportunity to make a representation against the detention order.

3. Right Against Exploitation (Article 23 and 24)

Prohibition of Human Trafficking and Forced Labour: Forced labour in India was imposed by landlords, moneylenders and other wealthy persons in the past.

- The **Article 23** of the Indian Constitution prohibits human trafficking and begar (forced labour without payment) to protect the millions of underprivileged and deprived people of the country.
- The right is available to **citizens** of India as well as to **non-citizens**.
- The right provides against human trafficking in the form of:
 - Selling and buying of men, women and children.
 - Prostitution
 - Devadasis
 - Slavery.

The **Immoral Traffic (Prevention) Act 13, 1956** has been enacted to deal with violations of this fundamental right.

Prohibition of Child Labour: Article 24 of the Indian Constitution forbids employment of children below the age of 14 years in dangerous jobs like factories and mines.

However, it did not prohibit their employment in any harmless or innocent work.

The **Child Labour (Prohibition and Regulation) Act, 1986** (renamed as **Child & Adolescent Labour (Prohibition and Regulation) Act, 1986** in 2016) specifically deals with the violations of related to this right.

The **2016 amendment** of this act completely prohibited employment of children below 14 years of age in all occupations and processes.

It also prohibited the employment of adolescents (14-18 years of age) in hazardous occupations or processes.

4. Right to Freedom of Religion (Article 25-28)

Freedom of Conscience, Profession, Practice and Propagation: **Article 25** of the Constitution of India provides the freedom of conscience, to profess, to practice and to propagate any religion. These rights are **available to citizens as well as non-citizens**.

Conscience: person may or may not choose to follow any religion.

Right to Profess: One can declare his/her religious beliefs and faith openly and freely.

Right to Practice: Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.

Right to Propagate: Persuading people to convert from one religion to another. However, the Constitution does not allow forcible conversions.

It only gives us the right to spread information about our religion and thus attract others to it.

Limitations: The government can impose restrictions on the practice of freedom of religion in order to protect public order, morality and health.

The government can interfere in religious matters for rooting out certain social evils. For example: banning practices like sati, bigamy or human sacrifice.

Such restrictions cannot be opposed in the name of interference in the right to freedom of religion.

Freedom to Manage Religious Affairs: The **Article 26** of the Indian Constitution provides every religious denomination (or any section of it) the **right to establish and maintain institutions for religious and charitable purposes**.

It also empowers the religious denominations to manage their own affairs in matters of religion.

Moreover, the right to own and acquire movable and immovable property and the right to administer such property is also provided to every religious denomination.

The rights provided under Article 26 are also **subjected to public order, morality and health**.

Freedom from Taxation for Promotion of a Religion:

The Indian Constitution under **Article 27** lays down that **no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion** or religious denomination.

It says that no public money, collected through taxes, shall be spent for the promotion or maintenance of any particular religion.

Favouring, patronising or supporting any religion over the other is prohibited.

It prohibits only levy of a tax and not a fee.

The purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion.

Freedom from Attending Religious Instruction: **Article 28** states that no religious instruction shall be provided in any educational institution wholly maintained out of State (the territory of India) funds.

However, the provision is not applicable to educational institutions administered by the State or established under any endowment or trust.

Moreover, no person is required to attend any religious instructions or worship without his consent in any educational institution recognised by the State or receiving aid out of State funds.

In case of a minor, the consent of his guardian is needed.

5. Cultural and Educational Rights (Article 29 and 30)

Protection of Interests of Minorities: **Article 29** provides that every section of citizens residing in any part of the country have the right to protect and conserve its own distinct language, script or culture (it provides the right to a group/section/community of people).

Further, it says that **no citizen shall be denied admission into any educational institution on grounds only of religion, race, caste, or language** (it provides the rights to an individual citizen).

Article 29 grants protection to both religious, linguistic as well as cultural minorities.

However, the rights are **not necessarily restricted to minorities only**, as it is commonly assumed to be. It includes minorities as well as the majority.

Right of Minorities to Establish and Administer Educational Institutions: **Article 30** grants all the minorities the following rights:

The right to establish and administer educational institutions of their choice.

The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them.

This provision was added by the **44th Amendment Act, 1978** to protect the right of minorities in this regard.

The State shall not discriminate against any educational institution managed by a minority.

Thus, the protection under Article 30 is confined only to minorities (religious, cultural or linguistic) and does not extend to any other section of citizens (as under Article 29).

Article 31

Originally, the **right to property was one of the seven fundamental rights** and provided that **no person shall be deprived of his property except by authority of law.**

However, being one the most controversial rights, the **44th Amendment Act of 1978** abolished the right to property as a Fundamental Right and made it a legal right (constitutional right) under **Article 300A in Part XII** of the Constitution.

6. Right to Constitutional Remedies (Article 32)

Article 32 is considered the most important article of the Constitution as it provides that the **right to get Fundamental Rights protected is itself a fundamental right.**

It confers the **right to remedies for the enforcement of the fundamental rights** of an aggrieved citizen.

The Supreme Court has ruled that Article 32 is a basic feature of the Constitution. Hence, it **cannot be abridged or taken away even by way of an amendment** to the Constitution.

It contains the following four provisions:

The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights.

The Supreme Court shall have power to issue directions or orders or **writs** for the enforcement of any of the fundamental rights.

- Parliament can empower any other court to issue directions, orders and writs in the form of Habeas Corpus, Mandamus, Quo Warranto, Certiorari, Prohibition

Habeas Corpus

‘Habeas Corpus’ literally means “to have a body of”. This writ is used to release a person who has been unlawfully detained or imprisoned. By virtue of this writ, the Court directs the person so detained to be brought before it to examine the legality of his detention. If the Court concludes that the detention was unlawful, then it directs the person to be released immediately.

Mandamus

Mandamus’ means ‘we command’. It is issued by the Court to direct a public authority to perform the legal duties which it has not or refused to perform. It can be issued by the Court against a public official, public corporation, tribunal, inferior court or the government. It cannot be issued against a private individual or body, the President or Governors of States or against a working Chief Justices.

Quo Warranto

‘Quo Warranto’ means ‘by what warrant’. Through this writ, the Court calls upon a person holding a public office to show under what authority he holds that office. If it is found that the person is not entitled to hold that office, he may be ousted from it. Its objective is to prevent a person from holding an office he is not entitled to, therefore preventing usurpation of any public office. It cannot be issued with respect to a private office.

Certiorari

‘Certiorari’ means to ‘certify’. Certiorari is a curative writ. When the Court is of the opinion that a lower court or a tribunal has passed an order which is beyond its powers or committed an error of law then, through the writ of certiorari, it may transfer the case to itself or quash the order passed by the lower court or tribunal.

Any other court here does not include high courts because **(Article 226)** has already conferred these powers on the high courts.

The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution.

In the case of national emergency, the right can be suspended by the President **(Article 359)**.

Only the Fundamental Rights guaranteed by the Constitution can be enforced under Article 32 and not any other right like non-fundamental constitutional rights, statutory rights, customary rights etc.

The violation of a fundamental right is the *sine qua non* (absolutely necessary condition) for the exercise of the right conferred by Article 32.

Conclusion

The Fundamental Rights, despite having a lot of exceptions & restrictions and lack of permanency, are a crucial part of the Constitution of India as:

- They provide necessary conditions for the material and moral protection of man and ensure the liberty of every individual.
- These rights protect the interests of minorities and weaker sections of society and also strengthen the notion of India as a secular State.
- They ensure the dignity and respect of individuals by laying down the foundation of social equality and justice.

Directive Principles of State Policy (DPSP).

Articles 36-51 under Part-IV of Indian Constitution deal with Directive Principles of State Policy (DPSP). They are borrowed from the Constitution of Ireland, which had copied it from the Spanish Constitution.

The Sapru Committee in 1945 suggested two categories of individual rights. One being justiciable and the other being non-justiciable rights. The justiciable rights, as we know, are the Fundamental rights, whereas the non-justiciable ones are the Directive Principles of State Policy.

DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. There are various definitions to Directive Principles of State which are given below:

- They are an ‘instrument of instructions’ which are enumerated in the Government of India Act, 1935.
- They seek to establish economic and social democracy in the country.
- DPSPs are ideals which are not legally enforceable by the courts for their violation.

Directive Principles of State Policy – Classification

Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-

- **Socialistic Principles,**
- **Gandhian Principles and,**
- **Liberal-Intellectual Principles.**

DPSP – Socialistic Principles

They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:

Article 38

Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities

Article 39

Secure citizens:

- Right to adequate means of livelihood for all citizens
- Equitable distribution of material resources of the community for the common good
- Prevention of concentration of wealth and means of production
- Equal pay for equal work for men and women
- Preservation of the health and strength of workers and children against forcible abuse
- Opportunities for the healthy development of children

Article 39A

Promote equal justice and free legal aid to the poor

Article 41

In cases of unemployment, old age, sickness and disablement, secure citizens:

- Right to work
- Right to education
- Right to public assistance,

Article 42

Make provision for just and humane conditions of work and maternity relief

Article 43

Secure a living wage, a decent standard of living and social and cultural opportunities for all workers

Article 43A

Take steps to secure the participation of workers in the management of industries

Article 47

Raise the level of nutrition and the standard of living of people and to improve public health

DPSP – Gandhian Principles

Definition: These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state to:

Article 40

Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government

Article 43

Promote cottage industries on an individual or co-operation basis in rural areas

Article 43B

Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies

Article 46

Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation

Article 47

Prohibit the consumption of intoxicating drinks and drugs which are injurious to health

Article 48

Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

DPSP – Liberal-Intellectual Principles

Definition:

These principles reflect the ideology of liberalism. Under various articles, they direct the state to:

Article 44

Secure for all citizens a [uniform civil code](https://www.ktunotes.in) throughout the country

Article 45

Provide early childhood care and education for all children until they complete the age of six years
Article 48

Organise agriculture and animal husbandry on modern and scientific lines

Article 49

Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance

Article 50

Separate the judiciary from the executive in the public services of the State

Article 51

- Promote international peace and security and maintain just and honourable relations between nations
- Foster respect for international law and treaty obligations
- Encourage settlement of international disputes by arbitration

42nd Amendment Act, 1976 added four new Directive Principles in the list:

Article 39

To secure opportunities for the healthy development of children

Article 39A

To promote equal justice and to provide free legal aid to the poor

Article 43A

To take steps to secure the participation of workers in the management of industries

Article 48A

To protect and improve the environment and to safeguard forests and wildlife

. The Fundamental Duties

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