

Right to Freedom of Religion

- 1) Freedom of conscience and free profession, practice and propagation of religion (Article 25)
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- 2) Freedom to manage religious affairs (Article 26)
 -
- 3) Freedom as to payment of taxes for promotion of any particular religion (Article 27)
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- 4) Freedom as to attendance at religious instruction or religious worship in certain educational institutions (Article 28)

What is Religion ?

- The term religion has not been defined in the constitution.
- Religion has no precious definition.
- **Religion is a matter of Faith** but belief in God is not essential to constitute Religion.
- Doctrines of each religion constitute its essential part, but the court is competent to examine them.
- Philosophy is different from religion.

What is a Secular State?

- A secular state is said to be the one where there is no official religion followed.
- To understand it more clearly, secularism is defined in the case of [S.R. Bommai v. Union of India \[AIR 1958 SC 731\]](#), where it was held that “Secularism is the basic feature of the Indian Constitution. The State, in the interest of public order can impose certain restrictions on the freedom of religion”.
- Religion is a matter of individual faith and cannot be mixed with secular activities.

- Secularism means in India, state shall observe neutrality & impartiality to all religions.
- All religions are respected and all beliefs & methods of worship are accepted.
- All minority religions enjoy full freedom and in certain cases protected.
- This is opposite in some neighbouring countries such as Pakistan and Bangladesh which were part of India but later became Islamic countries.

- Before the Constitution 42nd amendment Bill added the word “secular” in the constitution of India, the word “secular” appeared only in “Article 25”.
- India is a secular country and there is no state religion.
- India also does not patronizes any religion.
- The Constitution 42nd amendment Act made the above thought “explicit” in the constitution.

Analysis

- Article 25 of the Constitution guarantees freedom of religion to all persons in India. It provides that all persons in India, subject to public order, morality, health, and other provisions:
 - (i) Are equally entitled to freedom of conscience, and
 - (ii) Have the right to freely profess, practice and propagate religion.

Meaning of Public order, morality and health

- This means that Article 25 & 26 are not absolute. No person can do such religious things which affect the public order, morality and health.
- For example no one has right to conduct human sacrifice.
- No one can perform worship on busy highway or other public places which disturb the community.
- System of Devadasi etc.

- Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers.
- In this context, **cracking of fireworks** on Diwali & **using loudspeakers for *Ajan*** in the morning had also come under Supreme Court's scrutiny.
- The Court **restricted the time of bursting the firecrackers**, and it does not in any way violate the religious rights of any person as enshrined under Article 25 of the Constitution.

- **Judicial Decisions:**
- Appointment of Non-Brahmins as Pujari
- Triple Talaq
- Acquisition of place of worship by State
- Resham vs State of Karnataka – Hijab Issue -Full Bench of Karnataka High Court presided by Chief Justice has upheld the Hijab Ban GO of 5th February 2022. High Court pronounced that Hijab is not essential religious practice in Islam and the school uniform is not violative of fundamental rights and held it to be reasonable restriction.

- **ARTICLE 29 & 30**
Cultural & Educational Rights
Rights Of Minorities

- Cultural and Educational Rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture.

Protection of interests of minorities

- Article 29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them

Right of minorities to establish and administer educational institutions

- Article 30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language

- **Article 32 of the Indian Constitution**

Introduction

Declaration of fundamental rights is meaningless unless there is an effective machinery for the enforcement of the rights.

- It is the remedy which makes the right real.
- If there is no remedy there is no right at all.
- It was, therefore, our Constitutional-makers while having incorporated a long list of fundamental rights have also provided for an effective remedy for the enforcement of these rights

Article 32

- Article 32 confers one of the “highly cherished rights”.
- It confers the right to move the Supreme Court for the enforcement of the Fundamental Rights.
- Article 32 provides for the last of the fundamental rights.
- Unlike other rights, it is remedial and not substantive in nature.
- So, if and when a person feels that he is unduly deprived of any of the fundamental rights, he can, under Article 32 of our Constitution, move the Supreme Court for a legal remedy.
- **Article 32 is itself a fundamental right.**

- The apex court is given the authority to issue directions or orders for the execution of any of the rights conferred by the constitution as it is considered ‘the protector and guarantor of Fundamental Rights’.
- Note:
 - *Article 226 also empowers all the High Courts to issue the writs for the enforcement of fundamental rights.*

- Article 32: In the words of Dr. B.R.Ambedkar:
 - *“If I was asked to name any particular Article in this Constitution as the most important - an Article without which this Constitution would be a nullity- I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it.”*
- Article 32 has contain 4 sub-clauses.

Kinds:

- Habeas Corpus
- Mandamus
- Prohibition
- Quo-warranto and
- certiorari

WRIT OF HABEAS CORPUS

- It is one of the important writs for personal liberty
- Meaning *'you may have the body'* or produce the body.
- it is an order issued to set free a person who is, in the opinion of the court, arbitrarily arrested or detained by the executive authority.
- It is a process by which a person who is confined without legal justification may secure a release from his confinement.

When the writ can be Issued?

- Writ of Habeas Corpus is issued if an individual is kept in jail or under a private care without any authority of law.
- A criminal who is convicted has the right to seek the assistance of the court by filing an application for “writ of Habeas Corpus” if he believes that he has been wrongfully imprisoned and the conditions in which he has been held falls below minimum legal standards for human treatment.

2. writ of Mandamus

- The Latin word 'Mandamus' means 'we order'.
- It is issued against a public authority who is under a legal duty to do or forbear to do something, in the performance of which the petitioner has a legal right.
- The Supreme Court can issue this writ for the reason of directing an inferior court or department to do the needful for protecting or maintaining a Fundamental Right.
- It is normally used for public purposes to enforce performance of public duties.

Conditions for issue of Mandamus

- ❖ There must rest a legal right of the applicant for the performance of the legal duty.
- ❖ The nature of the duty must be public.
- ❖ On the date of the petition, the right which is sought to be enforced must be subsisting.
- ❖ The writ of Mandamus is not issued for anticipatory injury.

The writ of 'prohibition'

- It is issued for preventing an inferior court from doing something which it is not legally competent to do.
- Its main purpose is to prevent an inferior court from exceeding its jurisdiction or from acting contrary to the rules of Natural Justice.
- It prevents a tribunal possessing judicial or quasi-judicial powers from assuming or threatening to assume jurisdiction which it does not possess.

Writ of Prohibition when issued?

- It is usually issued when the lower courts act in excess of their jurisdiction. Also, it can be issued if the court acts outside its jurisdiction. And after the writ is issued, the lower court is bound to stop its proceedings and should be issued before the lower court passes an order.
- Prohibition is a writ of preventive nature. The principle of this is ‘Prevention is better than cure’.

Writ of 'certiorari'

- literally means “to certify”.
- It is a remedial writ and is issued to quash an order or decision which has been made without jurisdiction or in violation of the principles of natural justice.
- It is issued when there is a wrongful exercise of the jurisdiction and the decision of the case is based on it. The writ can be moved to higher courts like the High Court or the Supreme Court by the affected parties.

- With the weapon of Certiorari, the Supreme Court has the power to remove a case from an inferior court to a superior court in order to protect a Fundamental Right.
- Both certiorari and prohibition have much in common, both in their scope and in rules by which they are governed.
- Both these writs lie against a judicial or quasi-judicial body but not against an executive body.

Example

- When an inferior Court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior Court **for a writ of prohibition**, and on that, an order will issue forbidding the inferior Court from continuing the proceedings.
- On the other hand, if the Court hears that case or matter and gives a decision, the party aggrieved will have to move the superior Court for a **writ of certiorari**, and on that, an order will be made quashing the decision on the ground of want of jurisdiction. Sometimes, the two writs may overlap.

WRIT OF 'QUO WARRANTO',

- With the help of 'quo warranto', the Supreme Court can protect a Fundamental Right from being violated **by a government order based upon favouritism.**
 - The object of this writ is **to prevent a person who has wrongfully usurped an office** from continuing in that office – See: **University of Mysore vs. Govinda Rao, AIR 1965 SC 491.**
- “Quo Warranto” means “By what means” or “by what authority”.**

For Instance

- If a person is unduly promoted by superseding his seniors, the Supreme Court can, by such writ, quash the order of such appointment for protecting the Right to Equality as guaranteed by Article 14 and Article 16.
- The aggrieved person, may, however, seek a particular writ to be issued, but it is the Supreme Court which will decide what writ will be appropriate in a particular case.
- In other words, it is the judges, and not the petitioner, who will actually determine the nature of the writs to be issued in a particular case.

Features of FR

- Some rights are available to citizens and some are available to all.
- They are not absolute. The government can impose reasonable restrictions
- It is negative in character because it places a limitation on the authority of State.
- They are justiciable.

Rights applicable to all

- **Fundamental rights available to both citizens and foreigners except enemy aliens**
- **Article 14** – Equality before the law and equal protection of laws.
- **Article 20** – Protection in respect of conviction for offences.
- **Article 21** – Protection of life and personal liberty.
- **Article 21A** – Right to elementary education.
- **Article 22** – Protection against arrest and detention in certain cases.
- **Article 23** – Prohibition of traffic in human beings and forced labour.
- **Article 24** – Prohibition of employment of children in factories etc.
- **Article 25** – Freedom of conscience and free profession, practice and propagation of religion.
- **Article 26** – Freedom to manage religious affairs.
- **Article 27** – Freedom from payment of taxes for promotion of any religion.
- **Article 28** – Freedom from attending religious instruction or worship in certain educational institutions.

Fundamental Rights applicable only to Citizens

- **Fundamental Rights Available Only to Citizens of India**
- **Article 15** – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- **Article 16** – Equality of opportunity in matters of public employment.
- **Article 19** – Protection of six rights related to freedom – (a) of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (f) to practice any profession, or to carry on any occupation, trade or business.
- **Article 29** – Protection of language, script and culture of minorities.
- **Article 30** – Right of minorities to establish and administer educational institutions.

Fundamental Duties

- Article 51A was added by **42nd Amendment Act, 1976**
- 11 duties under **Part IV A** of Constitution.
- 11th duty was added by **86th Amendment Act, 2002.**
- **51A. Fundamental duties.**—It shall be the duty of every citizen of India—
 - (a) to **abide by the Constitution** and respect its ideals and institutions, the National Flag and the National Anthem;
 - (b) to **cherish and follow the noble ideals** which inspired our national struggle for freedom;
 - (c) to **uphold and protect the sovereignty, unity and integrity of India;**

- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;

- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

- Cases:

1. AIIMS Students Union vs AIIMS

2. Sarbananda Sonowal vs Union of India