

# Fundamental Rights and Duties

# FUNDAMENTAL RIGHTS

- Part III of the Constitution of India
- Art 12- 35

Why are rights important in a society?

- The concept of human rights represents an attempt to protect the individual from oppression and injustice.
- Right to liberty is the very essence of a free society and it must be safeguarded at all times.

## History:

- **US** - First modern Constitution to give concrete shape to the concept of human rights from its document **Bill of Rights**.
- **UK** – There is no formal declaration of people's Fundamental Rights in Britain. The **concept of Rule of Law prevails** there, which imposes a legal restraint on legislative and executive power.

- **India** – The framers derived their inspiration from US Bill of Rights.
  - Part III is the Magna Carta of India.

**What was the reason to incorporate Fundamental Rights in the Constitution of India?**

- Indian society is fragmented into many religious, cultural and linguistic groups, and it is necessary to give the people **a sense of security and confidence.**

- FR in India apart from guaranteeing certain basic civil rights and freedoms to all, also fulfil the important function of giving a few safeguards to minorities, protecting religious freedom and cultural rights.
- It is a part of Basic structure of the Constitution.

## Classified into seven headings:

- Right to Equality (Art 14-18)
- Right to Freedom (Art 19-22)
- Right against exploitation (Art 23-24)
- Right to Freedom of Religion (Art 25-28)
- Cultural and Educational Rights (Art 29-30)
- Right to Property (Art 31)
- Right to Constitutional Remedies (Art 32)

# Art 12

- The term “State” has been defined.
- What is the need for knowing the definition?

It's actions can be challenged if FR is violated.

- The “State” includes
  1. Government and Parliament of India
  2. Government and legislature of state
  3. Local authorities
  4. Other authorities

Within the territory of India or under the control of the Government of India.

## Local Authorities:

“Local authority shall mean a **municipal committee, district board**, body of commissioner or other authority legally entitled to or entrusted by the government within the control or management of a municipal or local fund”.

- Local governments includes municipal corporation, district board, village panchayat etc



- The term “State” has been defined in a wider sense so as to include all its agencies.
- All other authorities includes LIC,ONGC, SAIL etc.
- According to Supreme Court, **even a private body or an agency working as an instrument of the State** falls within Art 12.
- They discharge the functions similar to government.

# Art 13

- Art 13 (1) – Pre- Constitutional Law
- Art 13(2) – Post – Constitutional Law
- Art 13(3) – Definition of Law
- Art 13(3) -“law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.

# Pre- Constitutional laws

- Art 13(1) -All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
- Eg: Before 1950, Indian Penal Code, 1908, Indian Contracts Act, 1872 , Code of Civil Procedure, 1908 etc

- Doctrine of Severability
- Doctrine of Eclipse

Eg: - In one case, The Prize Competitions Act of 1955 as it violated their fundamental right to carry on any business, trade or profession.

- Definition of Competition under Section 2(d) not only included the acts which were gambling in nature but also acts which involved personal skills of a person.
- The court declared Sec 2(d) as void.

- Art 13(2) -The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

## Concept of Judicial Review:

- Power of Supreme Court and High Court to declare the validity of law.
- It has an authority to declare it as unconstitutional or invalid on the ground of violation of FR.

- Power of Judicial Review in India Recently:

Eg: Triple Talaq Judgment

Adultery Judgment – Sec 497 of IPC

Right to Equality (Art 14- Art 18)

# Art 14

- **Article 14 –**

- (i) Equality before law – English origin – Negative concept – Because it promotes no discrimination - based on A.V.Dicey's Rule of Law.
- (ii) Equal protection of laws – US origin - Positive concept – Reasonable classification is permitted.
  - Like should be treated alike- it denotes **equality of treatment in equal circumstances**



- **Exceptions:**

- Article 361 – Special powers to the president and governor.
- Armed forces – Military laws.
- Medical Practitioners – Medical council of India
- Ministers and executives are given wide discretionary powers
- Foreign Sovereigns, Ambassadors, Diplomates enjoy special privilege.

# Reasonable Classification

1. **Geographical basis** – each state may have different laws.
2. **Discrimination by state in its own favour** – Eg: Jallikattu
3. **Taxation laws** –  
“Charging more for the theatres in metro cities is valid under Article 14”
4. **Special Courts and procedure – Article 246(2)** – parliament has power to establish special courts to conduct trial for special offences.