

Fundamental Rights(Part-III)

Article 12-35

- Source is Bill of Rights of USA
- Justiciable in Court
- Prevent Despotic Rule in the Country
- 7 fundamental Rights at the time of Constitution formation later 1 is removed

1)Right to Equality(14-18)

2)Right to Freedom(19-22)

3)Right against Exploitation(23,24)

4)Right to freedom of religion(25-28)

5)Cultural and educational Rights(29,30)

6)Right to property(31)

7)Right to constitutional remedies(32)

Note:By 44th CAA 1978 Right to property was removed and shifted to Arc-300A(Legal Right)

- These rights are not absolute completely.They have restrictions(qualified)
- Protected by SC
- They can be curtailed and Repealed by CA.But Basic Structure can not be affected
- Arc 20 & 21 can't be suspended even under emergency
- FR can be restricted by Parliament for member of armed forces,police and paramilitary(Under Arc-33)
- When Martial law is enforced then these rights can be restricted(Arc-34)
- Most of the FR are directly enforced but other can only be

enforced by the Parliament only not by state
Legislature(Arc-35) eg:Abolition of Untouchability was made
enforceable by Govt with the help of law Untouchability
offences act -1955

Article-12:Definition of state

State means Executive and legislative organ of Union
Government,State govt and local authority,other authorities like
LIC,ONGC etc.

Even Private bodies can be considered under state but it will be
decided by SC on case to case basis

*(It is written that if FR is violated by State then court has to be
involved)*

Article-13:Declare that the laws that are inconsistent i.e violating FR
will be considered Null & Void-Doctrine Of Judicial Review

"Judiciary can judge and involve in this case"

Arc-32:Writs by SC

Arc-226:Writs by HC

Right to Equality(14-18)

Article-14(Rule of Law)

- No men can be punished except breach of law
- Equality before law:All men are equal in front of law

Supreme court said that Rule of Law is basic structure which can't
be amended

Exceptions:

1)President and Governor

- No Criminal Proceeding
- No Civil Proceeding(2 months notice)
- No arrest
- Not answerable to any court

2)No Criminal or civil proceedings can be done against any person publishing Newspaper/Magazine on reports related to Parliament

3)No proceedings against MP/MLA/MLC for his speech in Parliament

4)Diplomat immunity

Article-15

Prohibition on Discrimination on certain Grounds

State should not discriminate Citizens only on
Religion,Race,Cast,Sex and POB

Notice:Concept:Can discriminate with 2 grounds not on one.

Exceptions in this:

- 1)Women Reservation
- 2)Free Education for Children
- 3)Advancement of SC/ST
- 4)Socially & Educationally backward classes(OBC)

Article-16

Equality of opportunity in Public Employment to all
Citizens(Foreigners can be discriminated) on
Religion,cast,race,sex,descent,Place of Birth

#Exception:

- 1)Reservations can be provided to Backward Classes
- 2)Religious Institutes

Article-17

Abolition of Untouchability

“This word is not defined in the constitution not even in the Act”
It should not be mistaken by its literal Meaning(Example given in class)

- This article forbids the practice of Untouchability in any form
- Act For this:Untouchability offences act-1955*
name changed to protection of Civil Rights act-1955 in 1976

Article-18

Abolition of titles (Raja,Maharaja etc)

It prohibits the states for conferring any Title except Military and Academic titles

- It prohibits Citizens even for taking any titles from any other foreign country
- if any Govt servant have to take title than he has to take recommendation from President first.

Exception:Bharat Ratna etc titles can be given by the government but those can't be used before name by anybody prefix/suffix

Article 19-22(Right to Freedom)

Article-19:6 Rights under this

- 19(1)(a):Freedom of speech & Expression(not absolute)
- 19(1)(b):Assemble peacefully without arms

- 19(1)(c):To form associations
- 19(1)(d):Move freely throughout the country
- 19(1)(e):Reside and settle in any part of country
- 19(1)(f):Related to property(removed by 44th CA ~~1976~~ 1978)
- 19(1)(g):Practise any profession in India

All these above Rights are protected only against State action not on private. State is already described in article-12 and on case to case basis will be identified by S.C/H.C

Article-20(Not suspended in National Emergency also)

Protection in respect of Conviction of Offence(अपराध)

Protection against arbitrary and excessive punishment to an accused person(Citizen or Foreigners)

- **No Ex-Post Facto:**person will be given punishment depending upon the law prevailing at that time of conviction only on violation of law
- **Double Jeopardy:**No person can be prosecuted and punished for the same offence two times
- **Self Incrimination:** No person can be forced to be witness against himself

Note:

1)Retrospective Effect:*Pehle se kisi cheez ko laagu karna*

- *This cant be against Criminal cases(Aj crime kroge to aj ka he law lagega)*
- *Applicable to civil laws(Tax law)*

2)No forceful conviction(Oral or written) or Blood test or thumb impression

Article-21

Protection of life and personal Liberty: No person (C&F) shall be deprived of life and liberty except according to procedure established by law.

Menaka Gandhi Case-1980: Right to life was expanded to :

- Right to Privacy
- Right to Shelter
- Right to health
- Right to livelihood

Article-21(A): Right to Education-

Added by 86th CAA-2002

State shall provide free & compulsory education to all the children of age 6-14 years (Elementary Education)

- Later Right to Education Act was also made in 2009
- SC 1993 Judgement Right to Education lead to Right to Life

Right to Education

- The first official document on the Right to Education was Ramamurti Committee Report in 1990.
- In 1993, the Supreme Court's landmark judgment in the Unnikrishnan JP vs State of Andhra Pradesh & Others held that Education is a Fundamental right flowing from Article 21.
- Tapas Majumdar Committee (1999) was set up, which encompassed insertion of Article 21A.
- The 86th amendment to the constitution of India in 2002, provided Right to Education as a fundamental right in part-III of the Constitution.

- The same amendment inserted Article 21A which made Right to Education a fundamental right for children between 6-14 years.
- The 86th amendment provided for a follow-up legislation for Right to Education Bill 2008 and finally Right to Education Act 2009.

Feature of Right to Education (RTE) Act, 2009

- The RTE Act aims to provide primary education to all children aged 6 to 14 years.
- It enforces Education as a Fundamental Right (Article 21).
- The act mandates 25% reservation for disadvantaged sections of the society where disadvantaged groups include:
 - SCs and STs
 - Socially Backward Class
 - Differently abled
- It also makes provisions for a non-admitted child to be admitted to an age appropriate class.
- It also states that sharing of financial and other responsibilities between the Central and State Governments.
- It lays down the norms and standards related to:
 - Pupil Teacher Ratios (PTRs)
 - Buildings and infrastructure
 - School-working days
 - Teacher-working hours.
- It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It provides for the appointment of teachers with the requisite entry and academic qualifications.
- It prohibits

- Physical punishment and mental harassment
- Screening procedures for admission of children
- Capitation fee
- Private tuition by teachers
- Running of schools without recognition
- It focuses on making the child free of fear, trauma and anxiety through a system of child friendly and child centred learning.

Article-22

Protection against arrest and detention

Detention is of two types:

Punitive: After trial and Conviction

Preventive: Before trial and Conviction(शक पर)

if you are detained(Punitive) under ordinary law then:

- Right to inform grounds
- Right to Consult counsel
- 24 Hours to be presented before Magistrate(Excluding Journey time)

If you are detained under Preventive:

- It can't exceed 3 months(44th amendment 1978-2 Months)
- Grounds Must be Told
- Opportunity to speak against order

Right to Freedom over by Article-22

next is right against Exploitation

Right Against Exploitation

Article-23:

Prohibition of Traffic in human Beings and Forced Labour(लोगों को बेचना या जबरन काम करवाना बिना पैसे दिए)

This is punishable and Here it is for Person.It is valid against State as well as against Private

Exceptions:

- State can make you do compulsory service (Military service in Disasters)

Article-24:

- Prohibition of Employment of children in Factories below the age of 14 Years. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- The Child Labour (Prohibition & Regulation) Act, 1986 aims at prohibiting engagement of children aged below 14 in certain hazardous Occupations and Processes as well as regulating the conditions of services of such children engaged in non-hazardous Occupations and Processes.
- in 2006 ban on Children working in hotels
- 2016 Amendment:Child:Age less than 14 years,Adult:18 or more than 18,Age between 14 to 18 are adolescent .
- According to this amendment in act,child is prohibited to work anywhere except family business,Adolescent can't work in hazardous industries

Freedom of Religion(Article 25-28)

This is for Indian citizens as well as foreigners means this is for Persons

Article-25:Freedom of conscience and free profession,practise & propagation of Religion

- Freedom of Conscience:Inner Freedom(relation with GOD)
- Freedom of Profession:Belief or Faith can freely profess(Eg:Sikhs kirpan)
- Freedom of Practise:Rituals,worship etc
- Freedom to propagate:Transmit your belief freely

Note: Hindus:Sikh,Jains and Buddhists

Article-26:Freedom to manage religious affairs means

- *Right to establish & Maintain institutions for religious and charitable purpose*
- *Right to manage its own affairs without interference of state*
- *Right to acquire immovable & movable property(Temple or Masjid)*
- *Right to administer that property under law*

Note:Article 25 was related to Religious rights of Individuals whereas Article 26 is dealing with the Rights of whole Religion

Article-27:Freedom from tax on promotion of Religion(On Taxes not on fees)

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

28(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

Educational Institutes can be of 4 Types here:

- Full Maintained by State ❌
- Admin by state by Established by Trust ✅
- Recognised by state (Partially)
- Receiving aids by state(Partially)

Cultural and Educational Rights(29 & 30)

Only given to Indian CITIZENS

Article-29:Protection of Interests of Minorities

- 29(1):Citizen residing in any part of India having Distinct Language,Culture & Script have the Right to Conserve it(*Right of Group*)
- 29(2):No citizen can be denied admission in any educational Institution maintained by State on the grounds of Religion,Race,Cast and Language(*Rights of Individuals*)

Notes:

- 1)This Protection is for both Religious and Linguistic Minorities
- 2)It is also extended to Majorities

Article-30:Right of Minorities to establish and administer Educational Institutions

- (1)All minorities (religion or language) shall have the right to administer and establish educational institutions of their choice in the country
- (1A) While making any law providing for the compulsory acquisition of any property of an educational institution

established and administered by a minority, the State shall ensure that the amount fixed (Compensation) for the acquisition of such property under such law would not restrict or abrogate the right guaranteed to them.

- (2) The State shall not discriminate against any educational institution managed by a minority in granting aid.

There are three types of Minority educational institutions;

- (a) Institutions that demand recognition as well as aid from the State;
- (b) Institutions that demand only recognition from the State and not aid; and
- (c) Institutions that neither demand recognition nor aid from the State.

The institutions of a and b type are bound to follow the rules made by the states. These regulations are related to academic standards, syllabus, employment of teaching staff, discipline, and sanitation etc.

On the other hand, the third types of institutions are free to administer their rules but they also have to follow general laws like labour law, contract law, industrial law, tax law, economic regulations, and so on.

It does not mean that the third type/unaided of minority institutions will not follow the eligibility criteria/qualifications prescribed by the State. These institutions will have the freedom to appoint teachers/lecturers only by adopting a rational procedure.

Article-31: Right to Property is deleted

Article-32:Right to constitutional Remedies

It Helps in the enforcement of Fundamental Rights as well as it Provide Remedy in case of Its Violation (Supreme Court)

- This Article was called as Soul of the Constitution by Dr B.R Ambedkar
- This is basic structure of Constitution
- Supreme Court Issues Writs for the Enforcement and protection of Fundamental Rights

WRITS BY SUPREME COURT

1) Habeas Corpus is a Latin term, which literally means "*You should have the body*". The writ is issued by SC to a person to produce a person before a Court who has been detained or imprisoned and not produced before the magistrate within 24 hours whether in prison or private custody and would release the person if such detention is found illegal. The purpose of the writ is not to punish the wrong doer but merely to release the person unlawfully detained.

This detention can be Public also and Private also(Home detention)

2) Mandamus is a Latin word, which means "to command". Issued by the court for Public Official, Command Issued by Court against Public official asking him to perform his official duties that he had failed or refused to perform

- It can be issues against any public body, corporation, Inferior court, Tribunal or Govt(Not Private)

3) Prohibition means to Forbid. Can be issued by Higher court to

lower court on exceeding its jurisdiction .

- Can be issued against Judicial bodies and Quasi-judicial bodies.

Note: Mandamus is asking official to work and Prohibition is asking Inferior court not to work

4) Certiorari

Can be issued by Higher court to lower court to transfer the case pending or to Squash the order/judgement of lower court.

- Can be issued if court crosses its jurisdiction (Excess) or is not working properly under its jurisdiction (Lack)
- prohibition was preventive but this is punitive also i.e it can even cancel the order of Lower court
- Can be issued against constitutional bodies, statutory bodies like corporation, non statutory bodies like companies and cooperative societies and private bodies and person requiring the records of any action to be certified by the court and dealt with according to the law.

5) Quo warranto is a Latin term, which means "by what warrant" means by what warrant The writ is issued to restrain a person from holding a public office to which he is not entitled.

- Example: Can be issued against the Person holding the office even after Retirement.
- It can be issued against offices created by the constitution such as the Advocate-General, the speaker of legislative assembly, officers under the municipal act, members of a local government board, University officials and teachers, but it will not issue against the private bodies.

Article-33: Restrict the fundamental rights of armed forces.

- It empowers the parliament(not state legislature) to restrict or abrogate the fundamental rights of the members of armed forces, paramilitary forces & analogous forces.
- Main aim for this provision is to ensure the proper discharge of their duties and to maintain discipline amongst them.
- The expression "members of armed forces" also covers such employees of the armed forces as barbers, carpenters,cooks,tailors,chowkidars who are non-combatants.

○ Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to, –

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Example:Army personal can be posted to Border(You can't say my Right to Life is on risk)

•No writs can be issued in Case of Military laws

Article-34

Restrictions on FRs while martial law is imposed in any area within the territory of India

- Martial law is not defined in the constitution
- It can be applied in certain area ,Govt can be suspended and even ordinary law court can be suspended.

Article-35

The Parliament shall have (and the legislature of a state shall not have) power to make laws to enforce Fundamental Rights



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