

Fundamental Rights

The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA i.e., Bill of Rights).

Part III of the Constitution is rightly described as 'the Magna Carta of India.' It contains a very long and comprehensive list of 'justiciable' Fundamental Rights. In fact, the Fundamental Rights in our Constitution are more elaborate than those found in the Constitution of any other country in the world, including the USA.

The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation.

The Fundamental Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people against the invasion by the State. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. In short, they are not establishing 'a government of laws and not of men'.

The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. They are 'fundamental' also in the sense that they are most essential for the all-round development (material,

Originally, the Constitution provided for seven Fundamental Rights viz,

1. Right to equality (Articles 14-18)
 2. Right to freedom (Articles 19-22)
 3. Right against exploitation (Articles 23-24)
 4. Right to freedom of religion (Articles 25-28)
 5. Cultural and educational rights (Articles 29-30)
 6. Right to property (Article 31)
 7. Right to constitutional remedies (Article 32)
- However, the right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978. It is made a legal right under Article 300-A in Part XII of the Constitution. So at present, there are only six Fundamental Rights.

FEATURES OF FUNDAMENTAL RIGHTS

The Fundamental Rights guaranteed by the Constitution are characterised by the following:

1. Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
2. They are not absolute but qualified. The state can impose reasonable restrictions on them. However, whether such restrictions are reasonable or not is to be decided by the courts. Thus, they strike a balance between the rights of the individual and those of the society as a

whole, between individual liberty and social
ellectual, moral and spiritual) of the individuals. control.

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Table **nai** ^{Nughis} ^{PR)} of ^{loreuners}

^{FR} available only to citizens and not ^o foreigners ^{FR} available to both citizens and foreigners

(except ^{enemy} aliens) · Pohibilim of disenimnation on grounds of race, caste, sex or religion, place of birth

(Article 15). 1. ^{liquality} before law and equal protection 2. (Article 14). ^{la} Equality of opportunity in matters of

publie employ- 2. Protection in respect of Conviction for offences

ment (Article 16).

3. (Article 20). Protetion of sis rights regarding freedom of: **expression**, speech and (i)

(ii) assembly, (iii) association, (iv) movement, (V) residence, and (vi) (Article 19).

profession 3. Protection of life and personal liberty (Article 21) 4. Protection of language,

script and culture of minori- ties (Article 29). 4. Right to elementary education (Article 21A) 5.

Right of minorities to establish and administer edu- cational institutions (Article 30). 5. Protection

against arrest and detention in cases certain (Article 22). 6. Prohibition of traffic in human beings and forced labour (Article 23).

7. Prohibition of employment of children in factories etc., (Article 24).

8. Freedom of conscience and free profession, practice and **propagation** of religion (Article 25). 9.

Freedom to manage religious affairs (Article 26).

10. Freedom from payment of taxes for promotion of any religion (Article 27).

(Article

11. Freedom from attending religious instruction or wor ship in certain educational institutions 281.

RIGHT TO EQUALITY land administered by ordinary law courts, and (e) n

1. **Equality before Law** and **Equal** the territory of India. This provi sion

Protection of Laws Article 14 says that the **confers** rights on all persons whether

State shall not deny to any person equality before or citizens or foreigners. Moreover, the word the law or the equal protection of the laws within

'person' includes legal persons, viz, statutory corporations, companies, registered or any other type of legal person. The concept of 'equality before law' is of British origin while the concept of 'equal protection of laws' has been taken from the American Constitution. The first concept connotes: (a) the absence of any

special privileges in favour of any person, (b) the equal subjection of all persons to the ordinary law of the

person (whether rich or poor, high or low, official or non-official) is above the law.

The second concept, on the other hand, connotes:

(a) the equality of treatment under equal

circumstances, both in the privileges conferred a liabilities imposed by the laws, (b) the similar application of the same laws to all persons who are similarly situated, and (c) the like should be treated alike without any discrimination. Thus, the term is a negative concept while the latter is a positive concept. However, both of them aim at establishing equality of legal status, opportunity and justice.

The Supreme Court held that where equals and unequals are treated differently, Article 14 does not apply. While Article 14 forbids class legislation, it permits reasonable classification of persons, objects and transactions by the law. But the classification

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arbitrary, artificial or evasive. Rather should not be based on an intelligible differential and should be based on a substantial distinction.

The concept of 'equality before law' is the concept of 'Rule of Law'.

Article 14. No person shall be liable to any special disability or restriction.

pronounced by A.V. Dicey, the British jurist. It is

the following three elements or aspects: (i)

Absence of arbitrary power, that is, no man

can be punished except for a breach of law.

(11) Equality before the law, that is, equal

subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts.

(ii) The primacy of the rights of the

individual, that is, the constitution is the result of the rights of the individual as defined and

his term of office in any manner in respect

of any act done by him in his personal capacity, whether before or after he entered upon his office, until the expiration of two months next after his death.

enforced by the courts of law rather than the constitution being the source of the individual rights. The first and the second elements are applicable to the Indian System and not the third one. In the Indian System, the constitution is the source of the individual rights.

The Supreme Court held that the 'Rule of Law' as embodied in Article 14 is a "basic feature" of the constitution. Hence, it cannot be destroyed even by an amendment.

Exceptions to Equality The rule of equality is not absolute and there are exceptions before law is constitutional. It is delivered to him

in any proceedings in any court in respect of the publication in a newspaper (or by radio or television) of a substantially true report of any proceedings

of either House of Parliament or of either House of the Legislature of a State (Article 361-A)

3. No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof (Article 105)

4. No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him and other exceptions to it. These are mentioned below: 14 goes out".

1. The President of India and the Governor of States enjoy the following immunities (Article 361):

(i) The President or the Governor is not answerable to any court for the exercise and performance of the powers and duties

him in the legislature or any committee thereof (Article 194)

5. Article 31-C is an exception to Article 14. It provides that the laws made by the State for implementing the Directive Principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. The Supreme Court held that "where Article 31-C comes in, Article

6. The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.

7. The UNO and its agencies enjoy the diplomatic immunity.

2. Prohibition of Discrimination on Certain Grounds

criminal proceedings shall be instituted

or continued against the President or the Governor in any court during his term of office

(i) No process for the arrest or imprisonment of the President or the Governor shall be issued from any court during his term of office.

(ii) No civil proceedings against the President or the Governor shall

be instituted during

Article 15 provides that the State shall not discriminate against any citizen on grounds only

of religion, race, caste, sex or place of birth. The two crucial words in this provision are 'discrimination' and 'only'. The word 'discrimination' means 'to make an adverse distinction with regard to' or 'to

distinguish unfavourably from others. The use of

the word 'only' connotes that discrimination on other grounds is not prohibited.

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The second provision of Article 15 says that no citizen shall be subjected to any

disability, or liability restriction on grounds only of religion, race, caste, sex, or place of birth 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 by State

funds or dedicated to the use of general public. This provision prohibits discrimination both by the State and private individuals. While the former provision prohibits discrimination only by the State.

There are three exceptions to this general rule of non-discrimination:

(a) The State is permitted to make any special provision for women and children. For example, reservation of seats for women in local bodies or provision of free education for children.

(b) The State is permitted to make any special provision for the advancement of any socially

and educationally backward classes of citizens or for the scheduled castes and scheduled tribes. For example, reservation of seats or fee concessions in public educational institutions.

- (c) The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions. The last provision was added by the 93 Amendment Act of 2005. In order to give effect to this provision, the Centre enacted the Central Educational Institutions (Reservation in Admission) Act, 2006, providing a quota of 27% for candidates belonging to the Other Backward Classes (OBCs) in all central higher educational institutions including the Indian Institutes of Technology (IITs) and the Indian Institutes of Management (IIMs). In April 2008, the Supreme Court upheld the validity of both, the Amendment Act and the OBC Quota Act. But, the Court directed the central government to exclude the 'creamy layer' (advanced sections) among the OBCs while implementing the law.

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Creamy Layer The children of the following different categories of people belong to 'creamy layer'

among OBCs and thus will not get the quota benefit

1. Persons holding constitutional posts like President, Vice-President, Judges of SC and HC, Chairman and Members of UPSC and SPSC, CEC, CAG and so on.
2. Group 'A' Class I and Group 'B' Class I Officers of the All India, Central and State Services and Employees holding equivalent posts in PSUs, Banks, Insurance Organizations, Universities etc., and also in private employment.
3. Persons who are in the rank of colonel and above in the Army and equivalent posts

(b) The State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.

(c) A law can provide that the incumbent of an

in the Navy, the Air Force and the Paramilitary Forces

4. Professionals like doctors, lawyers, engineers, artists, authors, consultants and so on.
5. Persons engaged in trade, business and industry
6. People holding agricultural land above a certain limit and vacant land or buildings in urban areas.
7. Persons having gross annual income of more than 6 lakh or possessing wealth above the exemption limit. In 1993, when the 'creamy layer' ceiling was introduced, it was 1 lakh. It was subsequently revised to 2.5 lakh in 2004, 4.5 lakh in 2008 and 6 lakh in 2013

3. Equality of Opportunity in Public Employment

Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State. No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

There are three exceptions to this general rule of equality of opportunity in public employment

(a) Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority. As the Public Employment (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh and Telangana

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office related to religious or denominational institution or a member of its governing body should belong to the particular religion or existing reservation in promotions can continue for five years only (i.e., upto 1997)

- (c) The total reserved quota should not exceed 50% except in some extraordinary situation. This rule should be applied every year

- (d) The 'carry forward rule' in case of unfilled (backlog) vacancies is valid. But it should not violate 50% rule

denomination. (e) A permanent statutory body should be established confined to initial appointments only. Any

body should be empowered to examine complaints of over

inclusion and under-inclusion in the list of OBCs. With regard to the above rulings of the Supreme Court, the government has taken the following actions:

- Ram Nandan Committee was appointed to identify the creamy layer among the OBCs. It submitted its report in 1993, which was accepted.
- National Commission for Backward Classes was established in 1993 by an act of Parliament. It considers inclusions in and exclusions from the lists of castes notified as backward for the purpose of job reservation.
- In order to nullify the ruling with regard to reservation in promotions, the 77th Amendment Act was enacted in 1995. It added a new provision in Article 16 that empowers the State to provide for reservation in promotions of any services under the State in favour of the SCs and STs that are not adequately represented in the state services. Again, the 85th Amendment Act of 2001 provides for 'consequential seniority' in the case of promotion by virtue of rule of reservation for the government servants belonging to the SCs and STs with retrospective effect from June 1995.

- The ruling with regard to backlog vacancies was nullified by the 81st Amendment Act of 2000. It added another new provision in Article 16 that empowers the State to consider the unfilled reserved vacancies of a year as a separate class of vacancies to be filled in any succeeding year or years. Such class of vacancies are not to be combined with the vacancies of the year in which they are being filled up to determine the ceiling of reservation on total number of vacancies of that year. In brief, it ends the 50% ceiling on reservation in backlog vacancies

Mandal Commission and Aftermath In 1979, the Morarji Desai Government appointed the Second Backward Classes Commission under the chairmanship of B P Mandal, a Member of Parliament, in terms of Article 340 of the Constitution to investigate the conditions of the socially and educationally backward classes and suggest measures for their advancement. The commission submitted its report in 1980 and identified as many as 3743 castes as socially and educationally backward classes. They constitute nearly 52% component of the population, excluding the scheduled castes (SCs) and the scheduled tribes (STs). The commission recommended for reservation of 27% government jobs for the Other Backward Classes (OBCs) so that the total reservation for all (SCs, STs and OBCs) amounts to 50%. It was after ten years in 1990 that the V P Singh Government declared reservation of 27% government jobs for the OBCs. Again in 1991, the Narasimha Rao Government introduced two changes: (a) preference to the poorer sections among the OBCs in the 27% quota, i.e., adoption of the economic criteria in granting reservation, and (b) reservation of another 10% of jobs for poorer (economically backward) sections of higher castes who are not covered by any existing schemes of reservation.

In the famous Mandal case (1992), the scope and extent of Article 16(4), which provides for reservation of jobs in favour of backward classes, has been examined thoroughly by the Supreme Court. Though the Court has rejected the additional reservation of 10% for poorer sections of higher castes, it upheld the constitutional validity of 27% reservation for the OBCs with certain conditions, viz,

- The advanced sections among the OBCs (the Creamy layer) should be excluded from the list of beneficiaries of reservation.

(ii) No reservation in promotions; reservation should be

y (preaching untouchability directly or indirectly) the Tamil Nadu Reservations Act of 1994 in the Ninth Schedule to protect it from judicial review as it provided for 69 per cent of reservation, far exceeding the 50 per cent ceiling.

4. 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.

In 1976, the Untouchability (Offences) Act, 1955 has been comprehensively amended and renamed as the Protection of Civil Rights Act, 1955 to enlarge the scope and make penal provisions more stringent. The act defines civil right as any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution.

The term 'untouchability' has not been defined either in the Constitution or in the Act. However, the Mysore High Court held that the subject matter of Article 17 is not untouchability in its literal or grammatical sense but the 'practice' as it

had developed historically in the country'. It refers to the social disabilities imposed on certain classes of persons by reason of their birth in certain castes. Hence, it does not cover social boycott of a few individuals or their exclusion from religious services, etc.

Under the Protection of Civil Rights Act (1955), the offences committed on the ground of untouchability are punishable either by imprisonment up to six months or by fine upto 500 or both. A person convicted of the offence of 'untouchability' is disqualified for election to the Parliament or state legislature. The act declares the following acts as offences:

(a) preventing any person from entering of any place public worship or from

(e) The 76th Amendment Act of 1994 has placed

(b) worshipping therein; justifying untouchability on traditional, religious, philosophical or other grounds; (c)

to denying access any shop, hotel or places of public entertainment; (d) insulting a person belonging to scheduled caste on

the ground of untouchability; (e)

refusing to admit persons in hospitals, educational institutions or hostels

established for and

(g) refusing to sell goods or render services to an person.

The Supreme Court held that the right under Article 17 is available against private individuals and it is the constitutional obligation of the State to take necessary action to ensure that this right is not violated.

5. Abolition of Titles

Article 18 abolishes titles and makes four provisions in that regard:

(a) It prohibits the state from conferring any title (except a military or academic distinction) on any body, whether a citizen or a foreigner

(b) It prohibits a citizen of India from accepting any title from any foreign state.

(c) 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.

(d) No citizen or foreigner holding any office of profit or trust under the State is to accept any present, emolument or office from or under any foreign State without the consent of the president.

From the above, it is clear that the hereditary titles of nobility like Maharaja, Raj Bahadur, Rai Bahadur, Rai Saheb, Dewan Bahadur, etc, which

were conferred by colonial States are banned by Article 18 as these are against the principle of equal status of all.

In 1996, the Supreme Court upheld the constitutional validity of the National Awards-Bhart Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri. It ruled that these awards do not amount to 'titles' within the meaning of Article 18 that prohibits only

These National Awards were instituted for the

The Janata Party government headed by Morarji De sai discontinued them in 1977. But they were again revived in 1980 by the Indira Gandhi government.

expression on the grounds of sovereignty and integrity of India,

Article 19 guarantees to all citizens the six rights. These are:

security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence

RIGHT TO FREEDOM

1. Protection of Six Rights Fundamental Rights 7.9

The State can impose reasonable restrictions on the exercise of the freedom of speech and

(i) Right to freedom of speech and expression.

i) Right to assemble peaceably and without arms.

Right to form associations or unions or co-operative

societies."a

iv) Right to move freely throughout the territory of India.

(v) Right to reside and settle in any part of the ter

ritory of India. (vi) Right to practice any

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

Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978.

These six rights are protected against only

hereditary titles of nobility. Therefore they are not violative of Article 18 as the theory equality does not mandate that merit should not be recognised. However, it also ruled that

they should not be used as suffixes or prefixes to the names of awardees. Otherwise, they should forfeit the award

Freedom of Assembly Every citizen has the right to assemble peaceably and without arms. Moreover, these rights are available only to the citizens and to share holders of a company but not to foreigners or legal persons like companies or corporations, etc.

The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in the Article 19 itself and not on any

to assemble peaceably and without arms. It includes the right to hold public meetings, demonstrations and take out processions. This freedom can be exercised only on public land and the assembly must be peaceful and unarmed. This provision does not protect violent, disorderly, riotous assemblies, or one that causes breach of public peace or one that involves arms. This

right does not include the right to strike.

reasonable

The State can impose restrictions on the exercise of right of assembly on two grounds. namely, sovereignty and integrity of India and public order including the maintenance of traffic in the area concerned.

Under Section 141 of the Indian Penal Code, ^{as} other grounds.

Freedom of Speech and Expression It implies that every citizen has the right to express his views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner. The Supreme Court held that the freedom of speech and expression includes the following:

18) Right to propagate one's views as well as views of others.

(b) Freedom of the press. e) Freedom of

commercial advertisements. a Right against tapping of telephonic

conversation. e) Right to telecast, that is, government has no monopoly on electronic media.

Right against bundh called by a political party or organisation. Cht to know

about government activities. h)

Freedom of G) Right aga silence. gainst newspaper.

imposition of pre-censorship on a

Right to demonstration or picketing but not right to strike.

assembly of five or more persons becomes unlawful if the

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have complete liberty to form associations or unions for pursuing lawful objectives and purposes.

How ever, the right to obtain recognition of the association is not a fundamental right.

The Supreme Court held that the trade unions have no guaranteed right to effective bargaining or

Under Section 144 of Criminal Procedure Code (1973), a magistrate can restrain an assembly, meet ing or procession if there is a risk of obstruction, annoyance or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or any affray.

object is (a) to resist the execution of any law or legal process; (b) to forcibly occupy the prop erty of some person; (c) to commit any mischief or criminal trespass; (d) to force some person to do an illegal act; and (e) to threaten the government or its officials on exercising lawful powers.

Freedom of Association All citizens have the right to form associations or unions or co-operative societies, It includes the right to form political par ties, companies, partnership firms, societies, clubs.

organisations, trade unions or any body of persons. It not only includes the right to start an association or union but also to continue with the association or union as such. Further, it covers the negative right of not to form or join an association or union.

Reasonable restrictions can be imposed on the exercise of this right by the State on the grounds of sovereignty and integrity of India, public order and morality. Subject to these restrictions, the citizens

right to strike or right to declare a lock-out. The right to strike can be controlled by an appropriate industrial law.

Freedom of Movement This freedom entitles every citizen to move freely throughout the territory of the country. He can move freely from one state to another or from one place to another within a state. This right underline the idea that India is one unit so far as the citizens are concerned. Thus, the purpose is to

promote national feeling and not parochialism.

The grounds of imposing reasonable restrictions on this freedom are two, namely, the interests of general public and the protection of interests of any scheduled tribe. The entry of outsiders in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

The Supreme Court held that the freedom of movement of prostitutes can be restricted on the ground of public health and in the interest of public morals. The Bombay High Court validated the restrictions on the movement of persons affected by AIDS.

The freedom of movement has two dimensions, viz, internal (right to move inside the country) and external (right to move out of the country and right to come back to the country). Article 19 protects only the first dimension. The second dimension is dealt by Article 21 (right to life and personal liberty).

Freedom of Residence Every citizen has the right to reside and settle in any part of the territory of the country. This right has two parts: (a) the right to reside in any part of the country, which means to stay at any place temporarily, and (b) the right to settle in any part of the country, which means to set up a home or domicile at any place permanently.

This right is intended to remove internal barriers within the country or between any of its parts. This promotes nationalism and avoids narrow mindedness.

The State can impose reasonable restrictions on the exercise of this right on two grounds, namely, the interest of general public and the protection of interests of any scheduled tribes. The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation. In many parts of the country, the tribals have been permitted to regulate their property rights accordance with their customary rules and laws.

The Supreme Court held that certain areas can be banned for certain kinds of persons like prostitutes and habitual offenders.

From the above, it is clear that the right to residence and the right to movement are overlapping to some extent. Both are complementary to each other.

Freedom of Profession, etc. All citizens are given the right to practise any profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood.

The State can impose reasonable restrictions on the exercise of this right in the interest of the general public. Further, the State is empowered to:

(a) prescribe professional or technical qualification necessary for practising any profession carrying on any occupation, trade or business, and

(b) carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or otherwise.

Thus, no objection can be made when the State carries on a trade, business, industry or service as a monopoly (complete or partial) to the exclusion of citizens (all or some only) or in competition with any citizen. The State is not required to justify its monopoly. This right does

not include the right to carry on a profession or business or trade or occupation which is immoral (trafficking in women or children), dangerous (harmful drugs or explosives, etc.) State can absolutely prohibit these or regulate them through licencing.

2. Protection in Respect of

Conviction for Offences

Article 20 grants protection against arbitrary excessive punishment to an accused person, ..

citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction:

(a) No ex-post-facto law: No person shall be (i) convicted of any offence except for violation of a law in force at the time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.

(b) No double jeopardy: No person shall be prosecuted and punished for the same offence more than once.

(c) No self-incrimination: No person accused of any offence shall be compelled to be a witness against himself.

An ex-post-facto law is one that imposes penalties retrospectively (retroactively), that is, upon acts already done or which increases the penalties for such acts. The enactment of such a law is prohibited by the first provision of Article 20. However, this limitation is imposed only on criminal laws and not on civil laws or tax laws. In other words, a civil liability or a tax can be imposed retrospectively. Further, this provision prohibits only conviction or sentence under an ex-post-facto criminal law and not the trial thereof. Finally, the protection (immunity) under this provision cannot be claimed in case of preventive detention or demanding security from a person. The protection against

double jeopardy is available only in proceedings before a court of law or a judicial tribunal. In other words, it is not available in proceedings before departmental or administrative authorities as they are not of judicial nature. The protection against self-incrimination extends to both oral evidence and documentary evidence. However, it does not extend to (i) compulsory production of material objects, (ii) compulsion to give thumb impression, specimen signature, blood specimens, and (iii) compulsory exhibition of the body. Further, it extends only to criminal proceedings and not to civil proceedings or proceedings which are not of criminal nature.

procedure established by law. This right is available to both citizens and non-citizens.

(1950).

In the famous *Gopalan case* the Supreme Court has taken a narrow interpretation of the Article 21. It held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. This means

that the State can deprive the right to life and personal liberty of a person based on a law. This is because of the expression "procedure established by law" in Article 21, which is different from the expression 'due process of law' contained in the American Constitution. Hence, the validity of a law that has prescribed a procedure cannot be questioned on the ground that

the law is **unreasonable**, unfair or unjust. Secondly, the Supreme Court held that the 'personal liberty' means only liberty relating to the person or body of the individual. But, in Menaka case (1978), the Supreme Court overruled its judgement in the Gopalan case by taking a wider interpretation of the Article 21. Therefore, it ruled that the right to life and personal liberty of a person can be deprived by a law provided the procedure prescribed by that law is reasonable, fair and just. In other words, it has introduced the American expression "due process of law". In effect, the protection under Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action. Further, the court held that the "right to life as embodied in Article 21 is not merely confined to animal existence or survival but it includes within its ambit 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. It also ruled that the expression 'Personal Liberty' in Article 21 is of the widest amplitude and it covers a variety of rights that go to constitute the personal liberties of a man. The Supreme Court has reaffirmed its judgement in the Menaka case in the subsequent cases. It has declared the following rights as part of Article 21: (1) Right to live with human dignity. (2) Right to decent environment including pollution free water and air and protection against hazardous industries.

3. Protection of Life and Personal Liberty

Article 21 declares that no person shall be deprived of his life or personal liberty except according to

(3) Right to livelihood. (4) Right to privacy (5) Right to shelter. (6) Right to health.

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(7) Right to free education up to 14 years of age. (8) Right to free legal aid.

(9) Right against solitary confinement. (10) Right to speedy trial.

(11) Right against handcuffing

(12) Right against inhuman

treatment. (13) Right against delayed execution.

(14) Right to travel abroad.

(15) Right against bonded labour.

(16) Right against custodial harassment.

(17) Right to emergency medical aid.

(18) Right to timely medical treatment in government hospital.

(19) Right not to be driven out of a state.

(20) Right to fair trial.

(21) Right of prisoner to have necessities of life.

(22) Right of women to be treated with decency and dignity.

(23) Right against public hanging.

(24) Right to hearing.

(25) Right to information.

(26) Right to reputation.

(27) Right of appeal from a judgement of conviction (28) Right to social security and

protection of the family

(29) Right to social and economic justice and empowerment

(30) Right against bar fetters

(31) Right to appropriate life insurance policy

- (32) Right to sleep
- (33) Right to freedom from noise pollution
- (34) Right to electricity

4. 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 in such a manner as the State may determine. Thus, 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. This amendment is a major milestone in the country's aim to achieve Education for All'. The government described this step as 'the dawn of the second revolution in the chapter of citizens' rights'.

Even before this amendment, the Constitution contained a provision for free and compulsory education for children under Article 45 in Part III. However, being a directive principle, it was not enforceable by the courts. Now, there is scope for judicial intervention in this regard.

This amendment changed the subject matter of Article 45 in directive principles. It now reads 'The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.' It also added a new fundamental duty under Article 51A that reads-It shall be the duty of every citizen of India to provide opportunities for education to his child or ward between the age of six and fourteen years'.

In 1993 itself, the Supreme Court recognised Fundamental Right to primary education in the right to life under Article 21. It held that every child or citizen of this country has a right to free education until he completes the age of 14 years. Thereafter his right to

the near future. Thus, preventive detention is only a precautionary measure and based on suspicion. The Article 22 has two parts -the first part deals with the cases of ordinary law and the second part deals with the cases of preventive detention law. (a) The first part of Article 22 confers the following rights on a person who is arrested or detained under an ordinary law:

(i) Right to be informed of the grounds of

Article 22 also authorises the Parliament to prescribe

education is subject to the limits of economic capacity and development of the state. In this judgement, the Court overruled its earlier judgement (1992) which declared that there was a fundamental right to

education up to any level including professional education like medicine and engineering

In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009. This Act seeks to provide

that every child has a right to be provided full time elementary education of satisfactory and

equitable quality in a formal school which satisfies certain essential norms and standards. This

legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved

only through provision of inclusive elementary education to all. 2a

5 Protection Against Arrest and Detention

Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely punitive and preventive.

Punitive detention is

to punish a person for an offence committed by after trial and conviction in a court. Preventive

detention, on the other hand, means

detention of a person without trial and conviction by a court purpose is not to punish a person for a past offence but to prevent him from committing an offence

Fundamental Rights 7.13

(a) the circumstances and the classes of cases in which a person can be detained for more

than three months under a preventive detention law without obtaining the opinion of an advisory board:

(b) the maximum period for which a person can be detained in any classes of cases under a preventive detention law; and (c) the procedure to be followed by an advisory board in an inquiry.

The 44th Amendment Act of 1978 has reduced arrest.

- c) Right to consult and be defended by a legal practitioner.
- (ii) Right to be produced before a magistrate within 24 hours, excluding the journey

the period of detention without obtaining the opinion of continues.

- (iv) Right to be released after 24 hours unless the magistrate authorises further detention.

These safeguards are not available to an enemy alien or a person arrested or detained under a preventive detention law.

The Supreme Court also ruled that the arrest and detention in the first part of Article 22 do not cover arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien. They apply only to an act of a criminal or quasi-criminal nature or some activity prejudicial to public interest.

The Constitution has divided the legislative 1969. (6) The second part of Article 22 grants protection

to persons who are arrested or detained under a preventive detention law. This protection is available to both citizens as well as aliens and

- (b) Maintenance of Internal Security Act (MISA),

POSA), 1974. includes the following:

- i) The detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention. The board is to consist of judges of a high court.
- (i) The grounds of detention should be communicated to the detenu. However, the facts considered to be against the public interest need not be disclosed.
- (ii) The detenu should be afforded an opportunity

- (d) National Security Act (NASA), 1980. (e)

It is unfortunate to know that no democratic country has made preventive detention as an opportunity to make a representation against the detention order.

try in the world has made preventive detention as an

an advisory board from three to two months.

However, this provision has not yet been brought into force, hence, the original period of three months still

power with regard to preventive detention between the Parliament and the state legislatures. The Parliament has exclusive authority to make a law of preventive

detention for reasons connected with defence, foreign affairs and the security of India. Both the Parliament as well as the state legislatures can concurrently make a law of preventive detention for reasons con

nected with the security of a state, the maintenance of public order and the maintenance of supplies and services essential to the community.

The preventive detention laws made by the Parliament are

- (a) Preventive Detention Act, 1950. Expired in

1971. Repealed in 1978.

- (c) Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFE

Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act (PBMSECA), 1980.

(Terrorist and Disruptive Activities (Prevention)

Act (TADA), 1985. Repealed in 1995. (g) Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PITNDP

SA), 1988.

- (h) Prevention of Terrorism Act (POTA), 2002 Repealed in 2004

Fundamental Rights 7.15

imprisonment of 6 months to 2 years, or a fine of

The Amendment Act also introduces more stringent punishment for the offenders. It is an

R20,000 to 50,000, or both. In case of repeated offences, the imprisonment is of 1 year to 3 years.

TO RIGHT FREEDOM OF RELIGION

profession of the Sikh religion; and two, the Hindus. in this context, include Sikhs, Jains and

1. and Propagation of Religion (c) Right to own and acquire Freedom of Conscience and (b) Right to manage its own affairs movable and immovable property; and Free Profession, Practice in matters of religion;

Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.

The implications of these are:

(a) Freedom of conscience: Inner freedom of an individual to mould his relation with God or Creatures in whatever way he desires.

(6) Right to profess: Declaration of one's religious beliefs and faith openly and freely

(c) Right to practice: Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.

(d) Right to propagate: Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion. But, it does not include a right to convert another person to one's own religion. Forcible conversions impinge on the 'freedom of conscience' guaranteed to all the persons alike.

From the above, it is clear that Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals). Moreover, these rights

However, Promotion of a Religion these rights are subject to public order, morality, health and other provisions relating to fundamental rights. Further, the State is

permitted to: a regulate or restrict any economic, financial, political or other secular activity associated with religious practice; and

Buddhists.

2. Freedom to Manage Religious Affairs

According to Article 26, every religious denomination or any of its section shall have the following rights: (a) Right to establish and maintain institutions for religious and charitable purposes;

(b) Right to manage its own affairs movable and immovable property; and

are available to all persons-citizens as well as non-citizens.

(d) Right to administer such property in accordance with law.

Article 25 guarantees rights of individuals, while Article 26 guarantees rights of religious denominations or their sections. In other words, Article 26 protects collective freedom of religion. Like the rights under Article 25, the rights under Article 26 are also subject to public order, morality and health but not subject to other provisions relating to the Fundamental Rights.

The Supreme Court held that a religious denomination must satisfy three conditions:

(a) It should be a collection of individuals who have a system of beliefs (doctrines) which they regard as conducive to their spiritual well-being

(b) It should have a common organisation; and

(c) It should be designated by a distinctive name.

Under the above criteria, the Supreme Court held that the 'Ramakrishna Mission' and 'Ananda Marga' are religious denominations within the Hindu religion. It also held that Aurobindo

Society is not a religious denomination.

3. Freedom from Taxation for

Opportunity for social welfare and reform or throw open Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 25 also contains two explanations: one, wearing and carrying of kirpans is to be

included in the

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. In other words, the State should not spend the public money collected by way of

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This provision prohibits only levy of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion. Thus, a fee can be levied on pilgrims to provide them some special service or safety measures. Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

4. Freedom from Attending Religious Instruction

Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, this provision shall not apply to an educational institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.

Further, no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to attend any religious instruction or worship in that institution without his consent. In case of a minor, the consent of his guardian is needed.

Thus, Article 28 distinguishes between four types of educational institutions:

- (a) Institutions wholly maintained by the State.
 - (b) Institutions administered by the State but established under any endowment or trust.
 - (c) Institutions recognised by the State.
 - (d) Institutions receiving aid from the State.
- In (a) religious instruction is completely prohibited while in (b), religious instruction is permitted. In (c) and (d), religious instruction is permitted on a voluntary basis.

CULTURAL AND EDUCATIONAL RIGHTS

1. Protection of Interests of Minorities

Article 29 provides that any section of the citizens residing in any part of India having a distinct

tax for the promotion or maintenance of any particular religion. This provision prohibits the State from favouring, patronising and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.

language, script or culture of its own, shall have the right to conserve the same. Further, no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State

The first provision protects the right of a group while the second provision guarantees the right of an individual irrespective of the community to which he belongs.

Article 29 grants protection to both religious minorities as well as linguistic minorities. However, the Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as is commonly assumed to be. This is because of the use of words 'section of citizens' in the Article that include minorities as well

The Supreme Court also held as majority that the right to conserve the language includes the right to agitate for the protection of the language. Hence, the political speeches or promises made for the conservation of the language of a section of the citizens does not amount to corrupt practice under the Representation of the People Act, 1951.

2. Right of Minorities to Establish and Administer Educational Institutions

Article 30 grants the following rights to minorities whether religious or linguistic:

- (a) All minorities shall have the right to establish and administer educational institutions of their choice
- (6) 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 Htn Amendment Act of 1978 to protect the right of minorities in this regard. The Act deleteu the right to property as a Fundamental Right (Article 31).

(C) In granting aid, the State shall not

funds on grounds only of religion, race, caste, or language.

Gmts (t indiv'duals) an Hi lu

discriminate against any educational

institution

managed a minority.

Thus, the protection under Article 30 is continue only to minorities (religious or linguistic) and u not extend to any section of citizens (as undct ticle 29). However, the term 'minority' has not oc defined anywhere in the Constitution. The right under Article 30 also includes the m

of a minority to impart its own language.

education to its children

o U) v At 19 aArt. Jo

Fundamental Rights 7.17

Minority educational institutions are of three health, sanitation. taxation etc.. applicable to the following

types

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

The institutions of first and second type are subject to the regulatory power of the state with regard to syllabus prescription, academic standards, discipline, sanitation, employment of teaching staff and so on. The institutions of third type are free to administer their affairs but subject to operation of general laws like contract law, labour law, industrial law, tax law, economic regulations, and so on.

In a judgement delivered in the Secretary of Malankara Syrian Catholic College case (2007), the Supreme Court has summarized the general principles relating to establishment and administration of minority educational institutions in

way

1. The right of minorities to establish and administer educational institutions of their choice comprises the following rights :
 -) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;
 - i) To appoint teaching staff (teachers/lecturers and head-masters/principals) as also non-teaching staff, and to take action if there is dereliction of duty on the part of any of its employees;
 - (iii) To admit eligible students of their choice and to set up a reasonable fee structure; and
 - (iv) To use its properties and assets for the benefit of the institution.
2. The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse

discrimination in favour of minorities. The general laws of the land relating to national interest, national Security, social welfare, public order, morality, all, will equally apply to minority institutions also.

3. The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can

be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution.

Regulations made by the State concerning generally the welfare of students and teachers regulations laying down

eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of

employees, and regulations prescribing syllabus and curriculum

of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/lecturers by adopting any rational procedure of selection.

5. Extension of aid by the State, does not alter the nature and character of the minority educational institutions. The conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).

RIGHT TO CONSTITUTIONAL REMEDIES

A mere declaration of fundamental rights in the Constitution is meaningless, useless and worthless without providing an effective machinery for their enforcement, if and when they are violated. Hence, Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen. In other words, the right to get the Fundamental Rights protected is in itself a fundamental right. This makes the fundamental rights real. That

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is why Dr Ambedkar called Article 32 as the most important article of the Constitution-'an Article without which this constitution would be a nullity. It is the very soul of the Constitution and the very heart of it. 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:

- (a) The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights is guaranteed.
- (b) The Supreme Court shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include habeas corpus, mandamus, prohibition, certiorari and quo-warranto.
- (c) Parliament can empower any other court to issue

directions, orders and writs of all kinds. However, this can be done without prejudice to the above powers conferred on the Supreme Court. Any other court here does not include high courts because Article 226 has already conferred these powers on the high courts.

- (d) The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution. Thus the Constitution provides that the President can suspend the right to move any court for the enforcement of the fundamental rights during a national emergency (Article 359).

It is thus clear that the Supreme Court has been constituted as the defender and guarantor of the fundamental rights of the citizens. It has been vested with the 'original' and 'wide' powers for that purpose. Original, because an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. Wide, because its

power is not restricted to issuing of orders or directions but also writs of all kinds.

The purpose of Article 32 is to provide a guaranteed, effective, expeditious, inexpensive and summary remedy for the protection of the fundamental rights. Only the Fundamental

Rights guaranteed by the Constitution can be enforced under Article 32 and not for the exercise of the right conferred by Article 32. In other words, the Supreme Court, under Article 32, cannot determine a question that does not involve Fundamental Rights. Article 32 cannot be invoked simply to determine the constitutionality of an executive order or a legislation unless it directly infringes any of the fundamental rights.

In case of the enforcement of Fundamental Rights, the jurisdiction of the Supreme Court is original but not exclusive. It is concurrent with the jurisdiction of the high court under Article 226. It vests original powers in the high court to issue directions, orders and writs of all kinds for the enforcement of the Fundamental Rights. It means when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

Since the right guaranteed by Article 32 (i.e. the right to move the Supreme Court where a fundamental right is infringed) is in itself a fundamental right, the availability of alternate remedy is no bar to relief under Article 32. However, the Supreme Court has ruled that where relief through high court is available under Article 226, the aggrieved party should first move the high court.

WRITS-TYPES AND SCOPE

The Supreme Court (under Article 32) and the high courts (under Article 226) can issue the writs of habeas corpus, mandamus, prohibition, certiorari and quo-warranto. Further, the Parliament (under Article 32) can empower any other court to issue these writs. Since no such provision has been made so far, only the Supreme Court and the high courts can issue the

writs and not any other court. Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs. Article - now empowers all the high courts to issue the writs.

These writs are borrowed from English law where they are known as prerogative writs'. They are called in England as they were issued in the exercise of the prerogative of the King who was, and is so described as the 'fountain of justice'. Later, the any other right like non-fundamental constitutional rights, statutory rights, customary rights and so on. The violation of a fundamental right is the sine qua

ar court started issuing these writs as extraordinary remedies to uphold the rights and liberties of British people.