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Fundamental Rights

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Fundamental Rights

Why Fundamental Rights?

During the freedom struggle, different sections of the society had different ambitions. All of them wanted independence in a way that would uplift their position in the society. For ex – Women wanted education and honour, peasants wanted to get rid of usurious interest rates charged by money lender, SCs and tribals wanted equality, students wanted quality education etc.

Hence to preserve human dignity and for developing the personality of every individual, Fundamental Rights are enshrined in the constitution.

History of Fundamental Rights

- The development of fundamental rights in India was inspired by various historical examples like British Bill of rights, France declaration of rights of man, US bill of rights etc.
- In 1928, demand for fundamental rights was put forth through the Nehru report.
- Adoption of Universal Declaration of Human Rights in 1948 by UN General Assembly which called upon all member states to adopt these rights in their respective constitutions.

Constitutional Provisions

Article **12 to 35 in part III** of the constitution of India contains the provisions of fundamental rights.

Part III of the constitution is described as the “**Magna Carta**” of India.

- **Article 12** – Definition of State
 - As per the article 12, state includes the following:
 - Union government and Parliament
 - State governments and State Legislatures
 - Local governments (Panchayats, Municipal bodies etc.)
 - Statutory or Non-Statutory authorities like HPCL, ONGC etc.

- Any agency working as an instrument of the state.
- **Article 13** – Laws inconsistent with or in derogation of fundamental rights
 - According to this article, **all laws which are inconsistent with or in derogation** of any fundamental right shall be void.
 - A law becomes invalid only to the extent up to which it is inconsistent with the fundamental rights, and rest of the law will stand. This is **principle of severability**.
 - The term “law” under article 13 includes the following laws:
 - Permanent laws (enacted by parliament and state legislatures)
 - Constitutional amendment (After the Keshavananda Bharti case)
 - Temporary laws (ordinance etc.)
 - Orders, Bye-laws, rules and regulations etc. which have the nature of delegated legislation.
 - Non-Legislative sources of law (Custom)
- **Article 14 to 18** – Right to equality

Article 14

- The state shall not deny to any person **equality before the law or the equal protection of laws** within the territory of India.
- Equality before law – It means no man is above the law. There is an absolute supremacy of ordinary law of land as opposed to the influence of arbitrary power of the ruler.
- Equal protection of law – This concept connotes equality of treatment under equal circumstances, similar applications of the same laws to all persons and the like should be treated alike without any discrimination.
- This article confers rights on all persons whether **citizens or foreigners**.
- **Exceptions** to the rule of law:
 - **Article 361** – The president of India or the governor of any state is not answerable to a court of law with respect to exercise of his functions.
 - No criminal proceedings can be proceeded against the president or governor of states. He/She should be first impeached to continue the proceedings against him/her.

- **Article 361A** - No criminal proceedings can be instituted against any person involved in publication of any news of a substantially true report of any proceedings of either house of the parliament or either house of a state legislature.
- **Article 105** – In respect of anything said or any vote given by any member of parliament in parliament, He/She shall not be liable to any proceedings in any court.
- **Article 194** – In respect of anything said or any vote given by any member of legislature in state legislature, He/She shall not be liable to any proceedings in any court.
- **Article 31C** – The Supreme court held that where “Article 31 – C comes in, Article 14 goes out”. Any law made by the state for implementing 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.
 - Article 39 (b) – The state shall while designing any policy, shall ensure, that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.
 - Article 39 (c) – The state shall while designing any policy, shall ensure, that the operation of economic system does not result in the concentration of wealth and means of production to the common detriment.
- The UNO and its agencies enjoy the diplomatic immunity.
- The foreign sovereigns, ambassadors and diplomats enjoy immunity from any civil or criminal proceedings.

Article 15

- The state shall **not discriminate against any citizen** on grounds only of religion, race, caste, sex, or place of birth.
- **Exceptions** –
 - The state can make any special provision

- for women and children. For ex – reservation of seats for women in panchayats.
- for the advancement of any socially or educationally backward classes of citizens or for SCs/STs
- for the advancement of any socially and educationally backward classes of citizens or for SCs/STs with respect to their admissions in any institution whether public or private (93rd Amendment act of 2005)
- for the advancement of any economically weaker section of the society (maximum 10% reservation). This exception was added after 103rd amendment act of 2019.

Article 16

- The state shall provide **equal opportunity to all citizens** in matters of employment or appointment to any office under the state.
- No citizen can be discriminated for any employment or office under the state on grounds only of religion, race, caste, sex, descent, place of birth or residence.
- **Exceptions –**
 - The state can provide for reservation of appointments to any backward class which have inadequate representation in the state services.
 - In any religious or denominational institution, a law can provide that the incumbent of such office should belong to a particular religion or denomination.
 - The state is empowered to make any special provision with respect to the advancement of economically weaker sections of society.
 - Parliament can prescribe residence as a condition for certain employment in state. As the public employment act of 1957 had been expired, there is no such provision for any state except Andhra Pradesh and Telangana.

Article 17

- The constitution of India by the virtue of article 17 abolishes **“Untouchability”** and its practice in any form. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law (Protection of civil rights act 1955, SCs/STs prevention of atrocities act 1989)

- The word “**Untouchability**” is not defined in the constitution.
- It does not include social boycott of any particular group of people.

Article 18

- **No title**, not being a military or academic distinction, shall be conferred by the State.
- No citizen of India shall accept any title from any foreign State.
- No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
- No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.
- The Supreme court in 1996 held that the National Awards like Bharat Ratna, Padma Vibhushan etc. do not come under the purview of article 18 and hence are not the violative of article 18.

- **Article 19 to 22 – Right to Freedom**

Article 19

- This article assures all citizens the right to –
 - Freedom of speech and expression
 - Form associations or unions or cooperative societies
 - Move freely throughout the territory of India
 - Assemble peacefully and without arms
 - Reside and settle in any part of India
 - Practice any profession or to carry on any occupation, trade or business
- These rights provide protection against state action only and not against private individuals.
- Originally, there were 7 rights, but the right to acquire, hold and dispose of property was deleted by 44th amendment act 1944.
- The state can impose any reasonable restrictions on these rights only on the grounds mentioned in article 19 itself.

Article 20

- No person **shall be convicted of any offence except for violation of the law in force** at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence
 - This limitation is imposed only on criminal laws which means a civil or tax liability can be imposed retrospectively.
 - Also, the protection cannot be claimed in case of preventive detention or demanding security from a person.
- No person shall be prosecuted and punished for the same offence more than once
 - Not available in case of departmental enquiry.
- No person accused of any offence shall be compelled to be a witness against himself
 - Extends only to criminal proceedings.
 - Does not extend to –
 - Compulsion to give thumb impression, signature etc.
 - Compulsory production of any evidence
 - Compulsory exhibition of any evidence

Article 21

- This article declares that **no person shall be deprived of his life or personal liberty** except according to procedure established by law.
- It is available to both ***citizens and non-citizens***.
- The protection under this article is available against both arbitrary executive action and legislative action. (Held by Supreme court in Menaka case in 1978).
- The meaning of right to life not only adheres to the existence of human being but also to living life with dignity which make a person's life meaningful, complete and worth living.

Article 21- A

- This article added by **86th amendment act of 2002** and it ensures the **right to elementary education** where state shall provide free and compulsory education to all children between 6 and 14 years of age.

- Before this article, constitution contained the provision of free and compulsory education for children under article 45 but being a DPSP, it was not enforceable in courts.
- In accordance with the provision of article 21-A, parliament enacted the Right of children to free and compulsory education act 2009.

Article 22

- The constitution of India through article 22 accords the **protection against arrest and detention.**
- Article 22 has two parts –
 - **Punitive detention** – Detention for committing an offence after trial in a court. This part confers the following rights:
 - (i) Right to be informed about the grounds of arrest.
 - (ii) Consultation and defence by an advocate.
 - (iii) Right to be produced before magistrate within 24 hours, including the journey time.
 - (iv) Right to be released within 24 hours unless the magistrate has ordered further detention.
 - **Preventive detention** – Detention without trial. Its purpose is to prevent a person from committing a crime in near future.
 - (i) A person can be detained for a maximum period of three months unless an extension is advised by an advisory board (High court judges).
 - (ii) The grounds of detention should be communicated.
 - (iii) An opportunity to make representation against detention should be provided.
- Article 22 do not apply on arrest under the court order, civil arrest, arrest on failure to pay the income tax and deportation of an alien.

- **Article 23 to 24** – Right against exploitation

Article 23

- Article 23 **prohibits traffic in human beings** and begar and other similar forms of forced labour.
- Breach of this provision shall be an offence punishable in accordance with law.
- This right is available for both ***citizens and non-citizens***.
- It protects not only against the state but also against the private individuals.
- **Exception** –
 - State is permitted to impose compulsory service for which it is not bound to pay.
 - In doing this, state cannot discriminate on the grounds only of religion, race, caste or class.

Article 24

- The constitution of India through article 24 **prohibits employment of children below 14 years of age in any hazardous place**.
- National commission and state commission for protection of child rights are established in accordance with the commissions of protection of child rights act 2005 for speedy trial of offence against children.
- Government has also banned the involvement of children as domestic servants.

- **Article 25 to 28** – Right to freedom of religion

Article 25

- All persons are equally **entitled to freedom of conscience and right to profess, practice and propagate religion freely**.
- However, it does not mean that a person has a right to convert another person's religion.
- This right is available for citizens and non-citizens.

- The state can impose restrictions on this right on the grounds of morality, public order and health.

Article 26

- Every religious group or any section shall have the right –
 - To establish and maintain institutions for religious and charitable affairs
 - To manage its own affairs in matters of religion
 - To own and acquire movable and immovable property
 - To administer such property in accordance with law
- Rights under article 26 are subjected to morality, public order and health.

Article 27

- No person shall be **compelled to pay any tax for the promotion or maintenance of any particular religion or religious denomination.**
- The state should not spend the public money collected by the way of taxes for promotion of any particular religion.
- A fee can be levied on pilgrims to provide them services at the pilgrimage and also for the maintenance of the pilgrimages.

Article 28

- In any educational institution, wholly maintained by state funds, religious instructions shall not be provided.
- This provision shall not apply to those institutions which are administered by the state but has been established as a trust for imparting religious instructions.

- **Article 29 to 30** – Cultural and Educational rights

Article 29

- Any minority group having a distinct language, script or culture of its own shall have the right to conserve the same.
- 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, or language.

- Right to conserve the language includes the right to agitate for the protection of language. Hence, political promise for conservation of languages is not a corrupt practice under Representation of people act 1952

Article 30

- All Minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice.
- The State shall not, in granting aid to educational institutions, discriminate against any educational institution managed by a minority.

● Article 32 – Right to constitutional Remedies

- Declaration of fundamental rights without their enforceability is like a chair without its legs.
- Hence, constitution via article 32, provides enforceability of fundamental rights on their violation.
- The SC in L. Chandra Kumar vs Union of India declared that this article is the basic feature of the constitution and hence it cannot be abridged or taken away.
- Article 32 contains following four provisions:
 - An aggrieved person can directly move to the SC for enforcement of fundamental rights.
 - The SC can issue writs, directions or orders for enforcement of fundamental rights.
 - Parliament can empower any other court (Not high courts) to issue writs, directions or orders for enforceability of fundamental rights.
 - The right to move the SC cannot be taken away except as otherwise provided in the constitution. (Article 359 – During emergency)
 - In **ADM Jabalpur vs Shivakant Shukhla Case**, the SC ruled that the right to constitutional remedies under article 32 would remain suspended during a national emergency.
 - The 44th constitutional amendment stated that president could also issue orders suspending the article 32 during a national emergency with the exception of article 20 and article 21.

- The jurisdiction of SC to issue writs is not original but exclusive. It is concurrent with the jurisdiction of High Courts under article 226.
- Dr. Ambedkar called the article 32 as the “Heart and soul of the constitution”

Writs issued under Article 32

● **Habeas Corpus – “to have the body of”**

- This writ can be issued against any public authority or against an individual.
- It is a writ issued by a court to a person who has detained another person to bring the latter before the court to examine the legality of detention.
- The court after examining the legality would set the person free if the detention is found to be illegal.
- The writ cannot be issued if -
 - the detention is lawful
 - detention is by a competent court
 - detention is for a contempt of court
 - detention is outside the jurisdiction of court

● **Mandamus – “We command”**

- This writ can be issued against a public office and not a private individual or body.
- This writ is a command issued by a court to a public office asking to perform its duties which it has failed to perform.
- It can be issued against any public body, a corporation, an inferior court, a tribunal or government.

● **Prohibition – “to forbid”**

- This writ can be issued only against judicial and quasi-judicial bodies.
- It is issued when a lower court or tribunal exceeds its jurisdiction.
- It prevents the lower court or tribunal from exceeding its jurisdiction.
- It is not available against administrative authority, legislative bodies and private individuals or bodies.

- **Certiorari – “to be certified”**

- This writ can be issued only against judicial and quasi-judicial bodies.
- It is issued by a higher court on the grounds of excess of jurisdiction or error of law by a lower court or a tribunal.
- It is issued for transferring a case pending before a lower court or a tribunal or to squash the order of a lower court or a tribunal.

- **Quo Warranto – “by what authority of”**

- This writ can be issued against a public office created by a statute or the constitution.
- It is issued by the court to enquire into the legality of claim of a person to a public office. Hence it prevents any illegal usurpation of any public office.

- **Article 33**

- As per this article the parliament can restrict or abrogate the fundamental rights of members of armed forces, police forces, paramilitary forces, intelligence agencies and the like.
- Here, the expression ‘members of armed forces’ also includes barbers, carpenters, cook, chowkidars, tailors etc.
- This is the exclusive power of parliament.
- Any law made by the parliament to restrict the fundamental rights of aforesaid officials cannot be challenged in a court.
- For ex- Army act 1950, Airforce act 1950, Navy act 1950 etc.

- **Article 34**

- According to this article, fundamental rights can be restricted if martial law is in force in any area within the country.

- Here the term martial law means military rule which refers to a situation when civil administration is run by the military authorities. Also, the term Martial law is nowhere mentioned in the constitution of India.
- It empowers the parliament to indemnify any government official or any other person for any act done by him in connection with maintenance of order in any area.
- The declaration of martial law in any area is different from the national emergency

Martial Law	National Emergency
It suspends the government and ordinary courts	Government and ordinary courts are not suspended.
It affects only fundamental rights	It not only affects fundamental rights but also centre-state relations.
It is imposed in some specific area of the country	It is imposed either in the whole country or in any part of it.

- **Article 35**

- The parliament of India shall have the power to make laws with respect to following matters:
 - Empowering courts other than the Supreme Court and the high courts to issue directions, orders and writs.
 - Prescribing residence as a condition for certain employments or appointments in a state.
 - Restricting or abrogating the application of fundamental rights to members of armed forces, police forces etc.
 - Indemnifying any government servant or any other person for any act done during the operation of martial law in any area.
- Parliament shall have powers to make laws for prescribing punishment for those acts that are declared to be offences under the fundamental rights which includes:
 - Untouchability
 - Traffic in human beings and forced labour
- Any law in force at the commencement of the constitution with respect to any of the matters specified above is to continue in force until altered or repealed or amended by the parliament.

- It is a notable fact that article 35 extends the competence of the parliament to make a law on the matters specified above, even though some of those matters may fall within the sphere of state legislatures.

Exceptions to Fundamental Rights

- **Article 31A** protects five categories of laws from being challenged on the ground of contravention of article 14 and article 19. The laws include:
 - Acquisition of estates and related rights by the state.
 - Taking over the management of properties by the state
 - Amalgamation of corporations
 - Modifications of rights of directors of corporations.
 - Modification of mining leases.

Note – Article 31A does not protect the above-mentioned categories of law from judicial review.

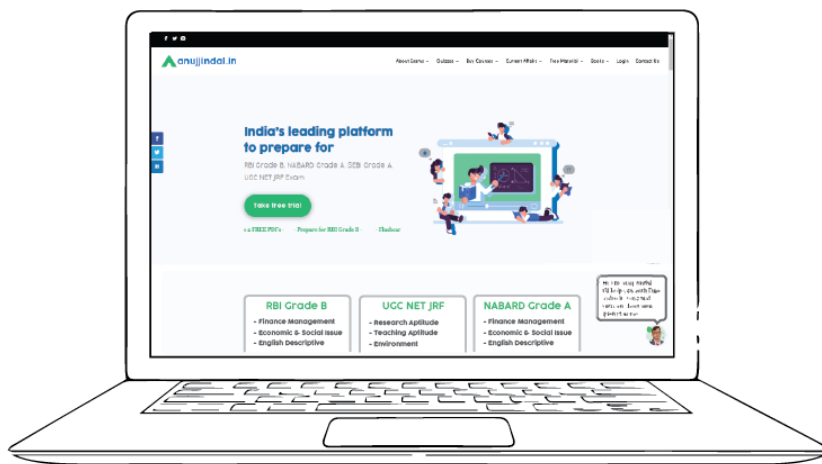
- **Article 31B** protects the acts included in the 9th schedule from being challenged on the grounds of contravention of any fundamental right.
 - However, in IR Coelho case the supreme court held that Judicial review is a basic structure of the constitution and it could not be taken away by putting any law in 9th schedule.
 - It said that laws placed under the 9th schedule after 24th April 1973 are open to challenge in court if they violated fundamental rights guaranteed under article 14, 15, 19 and 21.
- **Article 31C** contained the following provisions:
 - Any law made to implement the directive principles under article 39B and 39C cannot be challenged on the grounds of violation of fundamental rights under article 14 and 19.
 - No law containing a declaration that it is for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.



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