

Fundamental Rights

PART-III A.12 – A.35

Rights are legal & moral entitlements which are ensured by the State for betterment of their citizens.

Types of rights:

- Natural Rights -> Universal Rights inherent in every individual human being. Not based on laws, customs, and beliefs of any particular authority.
- Human Rights -> rights one gets by virtue of being a human. Universal
- Civil Rights -> conferred by the Constitution or the law of Country
- Constitutional Rights -> rights enshrined in the Constitution.
- Statutory Rights -> right backed by law.
- Fundamental Rights -> branch of civil rights, guaranteed and protected by the Constitution.

Features of FRs

- Essential for full intellectual, moral & spiritual status of individual.
- Negation -> moral and spiritual life stunted & potentials underdeveloped.
- Justiciable
- Suspended during National Emergency (except A.20 & A. 21)
- Not sacrosanct, repeal by Constitutional amendment
- Guarantee against State action & also private action (Vertical and horizontal application of FRs)

Nature of these rights

- Most elaborate
- Special enforcement provision
- Not Absolute in nature but Qualified (because state can put reasonable restriction)
- Few rights are applicable to non-citizens also.
- Egalitarian in nature.

A.12 defines State –

Includes

- Government & Parliament of India.
- Government & Legislature of each state.
- All local or other authorities within territory of India.
- All local & other authorities under control of Govt. of India.
- Other authorities -> instrumentality of State -> subject to same constitutional or public law limitation like Government.

To test 'instrumentality' -> R.D Shetty vs Airport Authority of India -> 5 points test by Justice PN Bhagwati

- State – main funding source
- Deep & pervasive control by State
- Functional character is governmental
- Government department transferred to Corporation
- Monopoly status conferred/protected by Government.

Article 13 Judicial Review & IX Schedule

- A.13(1) - All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
- A.13(2) - The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

Judicial Review-

- Judicial innovation, not implicit but explicit in A. 13.
- Marbury vs Madison was the 1st case in USA (1803), Supreme Court asserted -> to review constitutionality of Congress's Acts.

Doctrine of Eclipse-

- Pre constitutional law -> inconsistent with FRs -> not wiped out altogether
- Can exist for rights & liabilities -> before the Constitution
- Law eclipsed -> by relevant FR -> law in dormant condition -> not dead for all purposes.

Doctrine of Severability-

- Law is void -> to extent of inconsistency
- Act not void as whole -> part of it is void -> that part severable from remaining valid statute -> remaining statute valid.

Shankari Prasad case 1951-

- Challenged 1st amendment that inserted A. 31-A & A.31-B
- A. 31-A insulated land reforms from Judiciary & A.31-B created IX Schedule.
- Zamindars challenged 1st amendment.
- Expression 'law' under A.13 (2) includes amendments?
- Supreme Court said no.

Sajjan Singh vs State of Rajasthan 1965-

- 17th Amendment puts 44 statutes in IX Schedule, it was challenged.
- Supreme Court upheld 17th amendment.
- Justice Mudholkar & Justice Hidayatullah doubted correctness of Court in Shankari Prasad case.

Golaknath vs State of Punjab 1967-

- Landowners deprived of their landholdings under state land reform laws.
- Supreme Court ruled that an amendment is same as 'law' under A. 13(2).
- FRs -> sacrosanct.
- Parliament passed 24th amendment - inserted A.13 (4) & A. 368(3).
- A.13(4) - excluded amendments from JR
- Parliament passed 25th amendment - inserted A. 31-C.
- A.31-C -> laws implementing A.39(b) & .39(c) -> shall not be void because they violate A.14, A.19 & A.31.

Keshvanand Bharti vs State of Kerala 1973 -

- 29th amendment 1972 -> two land reform laws in IX Schedule.
- Petitioners challenged -> 24th, 25th & 29th amendment.
- 24th, 25th & 29th amendments are valid, except clause that curtailed Court's jurisdiction.
- Nullified Golaknath judgement

- No implied limitations on Parliament's power to amend the Constitution.
- Parliament can't alter the 'basic structure' of the Constitution.

Parliament passed 42nd amendment and inserted A. 368(4) & A. 368(5).

Minerva Mill vs UOI 1980- this was the last attempt to establish Parliamentary supremacy over Constitution. A.368(4) & A.368(5) are invalid

Waman Rao vs UOI, 1981- amendments after Keshavanad Bharti ->open to challenge even if put in IX Schedule.

IR Coelho vs State of Tamil Nadu 2007- any law even if put in IX Schedule violates the golden triangle then it will be void.

Article 13 Laws inconsistent with or in derogation of the fundamental rights

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

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

(3) In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368 Right of Equality.

Article 14

- Equality before law : The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- Available to all, Citizens and Friendly Aliens

Equality Before Law	Equal protection of law
Equal in the eyes of law	Like Should be treated alike
Negative in nature	Positive discrimination
British concept	Adopted from USA
It's a conservative approach	Progressive in nature
Absence of Privileges	To accommodate diversity

Reasonable Classification and Class legislation:

Here the doctrine of reasonable classification applies.

- The legislature can treat two sets of person differently.
- A reasonable classification must be based upon intelligible differential (intelligent method) and substantial distinction.
- Reasonable classification should be applied to attain equity.

Exceptions to A. 14

- Emergency - A-359 - suspends A-14
- A-361 - Criminal immunity to governor & President.

iii) A-105/195 Parliamentary privileges

A. 15

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition 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 out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30. **[93rd Amendment, 2019]**

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

Interpretation:

- State shall not discriminate any citizen on grounds only of
 - Religion
 - Caste
 - Gender
 - Creed
 - Place of birth
- Rationale behind this article
 - Socio economic conditions
 - Rampant Caste practice
 - Inequality.
- Negative connotation – to be treated equally [15(1) & 15(2)]

- Positive connotation – Concept of reservation 15 (3) (4) (5) (6).
- Art. 15 guarantees right to equality only to the citizens of the country.
- It says that the state shall not to discriminate on the five ground.
 - Any law discriminating on one or more than one ground shall be held void.
 - But any discrimination which does not fall under these five grounds shall not be held void.
 - Like reservation/special benefits can be given on the grounds of Domicile and Place of residence

Article 16

- **Article 16 (1)**– Equality of opportunity (irrespective of any in Public employment for every citizens religion, caste, creed, gender, place of birth, residents, descents) [employment or appointment in any office under the state]
- Rationale – to create job opportunity
- To alienate poverty
- A.16 (2) says no citizens shall be discriminated only on the grounds of religion, caste, creed, gender, place of birth, descent, residence.

Provides equal employment opportunities to all sections of society. It deals with

- i. Access to job
- ii. Condition of employment
- iii. Workplace environment
- iv. Performance evaluation
- v. Career development

India Sawhney Case (1993) - 27% OBC (Socially, Education & Economic backward Classes)

- Court upheld reservation of OBCs.
- Excluded creamy layer of OBCs i.e. creamy layer concept was introduced
- Capped reservation to 50% [Present – 60%]
- EWS reservation was held invalid
- No reservation in promotions
- 'Carry forward rule' in case of unfilled vacancies (backlog vacancies)

103rd amendment : A-15(6) & 16(6)

- In 2019, Parliament enacted 103rd Amendment 2019 which enabled the State to make reservations in higher education and matters of public employment on the basis of economic criteria alone.
- It amended Articles 15 and 16 of the Constitution by inserting 15(6) and 16(6)
- The Amendment under Article 15(6) enables the State to make special provisions for the advancement of any economically weaker section of citizens, including reservations in educational institutions.
- It states that such reservations can be made in any educational institution, including both aided and unaided private institutions, except minority educational institutions covered under Article 30(1).
- The upper limit of EWS reservations will be 10% (meaning upto 10% of seats can be reserved for citizens falling in the EWS category). This 10% ceiling is independent of ceilings on existing reservations.
- Article 16(6) enables the State to make provisions for reservation in appointments. Again, these provisions will be subject to a 10% ceiling, in addition to the existing reservations.

Article 17 -> Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

- It talks about abolition of untouchability
- Constitution of India does not define untouchability but forbids to practice any form of untouchability
- It forbids to practice any form of untouchability and enforces it as a punishable offence.
- Article 17 has no definition of untouchability.
- It draws power from protection of civil rights Act, 1955 and it protects citizen and non-citizens.

Article 18 Abolition of titles

- (1) No title, not being a military or academic distinction, shall be conferred by the State
 - (2) No citizen of India shall accept any title from any foreign State
 - (3) 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
 - (4) 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
- Right to Freedom Abolition of titles.**
- No titles except military and academic shall be conferred by the state. (to promote equality)
 - 1977s privy purses were removed
 - No Indian citizen shall accept any title from foreign state.
 - No foreign citizen working under govt. of India shall accept any title from foreign country.
 - No person holding any govt. office or office of profit under govt. will accept any title without permission of president.
 - Balaji Raghvan Case: Bharat Ratna and Padma awards were mere national awards
 - The Bharat Ratna and Padma awards are not titles and cannot be used as prefix or suffix to names and they can be withdrawn in case of misuse

Article 19

Protection of certain rights regarding freedom of speech etc

All citizens shall have the right

- to freedom of speech and expression;
- to assemble peaceably and without arms
- to form associations or unions, co-operative societies [97th amendment 2011]
- to move freely throughout the territory of India
- to reside and settle in any part of the territory of India;
- omitted
- to practise any profession, or to carry on any occupation, trade or business

A. 20 Protection in respect of conviction for offences

Article 20(1) -

- Ex post facto laws (after the fact) can either label an act as an offense with retrospective effect; or increase the punishment that is prescribed for an act committed in the past.

- It is important to protect the citizens of India from being punished for an act done, which was legal when it was done but was criminalized or the punishment for that act has been enhanced by any act that was formulated later on.
- **The prohibitions under Article 20(1) is only for a conviction or sentence, but not trial procedure.**
- This particular phenomenon only applies to criminal offences.

Article 20(2)

- The Doctrine of Double Jeopardy, means that 'no person can be prosecuted and punished twice for the same offence in subsequent proceedings'

In the case of Venkataraman v. Union of India, the Supreme Court of India established that this provision deals exclusively with Judicial punishments and provides that no person is prosecuted twice by the judicial authorities.

Only against Judicial Trials and not departmental trials

Article 20(3)

Prohibition against self-incrimination:

- It describes that no one could be forced to utter and provide such information or evidence orally or by documentary means which could be used against himself during the further trial procedure.
- Also, the term 'Witness' includes both, Oral and documentary evidence
- however, there is no restriction where a search for document or seizures is being done by the authorities. However, the information and evidence produced voluntarily by the accused is permissible.
- Accused person has right of legal counsel or legal recourse
- Women should not be summoned to police station for questioning.

Exceptions:

- Giving thumb impressions, specimens, writings, or any kind of identification are not covered under Art 20(3)
- In Selvi vs State of Karnataka, Supreme Court observed that the compulsory administration of the techniques like narco analysis tests constitutes 'cruel, inhuman or degrading treatment' in the context of Article 21.

Article 21

Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law.

- Applicable to citizen & alien.
- Procedure established by law
- Art 21 draws its existence from Magna Carta (1215) and 5th Amendment act of US constitution. It embodies constitutional values or supreme importance in democratic society. It has been held the most organic right in our constitution.
- 'Procedure established by law' is the duly enacted law by the legislature which is valid when it complies with the constitution

Nexus of Article 14, 19 and 21 with respect to broad Principles of Natural Justice and Rule of Law

- IN Maneka Gandhi Case: It was held that Article 21 must be fair, just, and reasonable and not fanciful, oppressive and arbitrary
- The American standard of 'procedural due process' took a backdoor entry and established links between Article 14, Article 19, and Article 21.

- Justice Krishna Iyer made the 'procedure established by law' synonymous with the American concept of 'procedural due process' and held that procedure in Article 21

Article 21 (A) 86th Amendment 2002

- State shall provide free & compulsory education to every children of 6 – 14 yrs of age
- 51(A) (k) was also added which directed the parents / guardian to send their children to school

Right to Education Act, 2009-

Features-

- 6-14 yrs has right to free and compulsory education.
- Private school to reserve 25% seats for EWS.
- No detention policy was removed Parliament recently passed right of children Education Amendment bill, 2019.

Article 22

- Protection against arrest and detention.
- This article says that no person shall be kept in arrest without any information.
- The person arrested shall not be denied any legal constitution.
- Any person who is arrested and is in the custody of police shall be produced to nearest magistrate with in 24 hrs of arrest.
- This article does not apply to any alien to any person arrested under detention law.

Article 23:

Prohibition of traffic in human beings and forced labour

- Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law
- Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them
- It takes about prohibition of human traffic and forced labour.
- 23(2) says compulsory service for armed forces – Public purpose shall not be treated as forced labour

Article 24

- This article talks about prohibition of Children in factories or hazardous enterprises. Those Children should be below 14 yrs.
- 1986 – Child Labour Prohibition act.
- 2016 – Amendment was passed

Article 25:

Article 25 of the Constitution guarantees freedom of religion to all persons in India. It provides that all persons in India, subject to public order, morality, health, and other provisions:

- Are equally entitled to freedom of conscience, and
- Have the right to freely profess, practice and propagate religion.

Doctrine of Essential Religious Practice:

- The constitution of India under Article 25(2) guarantees to its citizens the right to freely practice any religion subject to the limitations of public order, health, and morality.

- The Indian constitution not only guarantees the right to freely practice a religion but it also makes provision for intervention by state thereby paving a path for a diversified establishment.
- Therefore, it does not provide protection to any economic, financial, political or other secular activity which may be affiliated to some with any religious practice but is not an indispensable religious practice.
- It has always been a complicated task to compartmentalize if a particular issue falls under essential religious function or if it is a secular activity only associated with religion.
- In order to demonstrate the predicament in classifying the same one may look into some foreign judgments.

Cases:

- In the Shirur Mutt case (1954), it was held that the term “religion” will cover all rituals and practices “integral” to a religion.
- Anand Margi Case: Tandav: Court relied on the doctrine of precedent to hold that tandava dance was not an essential practice of the Ananda Margi faith.
- Ismail Farooqi Case 1994: ruled that while praying is an essential practice, the offering of such prayers in a mosque is not, unless the place has a particular religious significance in itself
- Animal Slaughter as ERP: the Supreme Court in 2014 banned animal sacrifice during the festival of Kulu Dushara and in other religious rituals of the Kulu region of the state
- Haji Ali and Sabrimala: Court decided on equality and discrimination principle and allowed women entry
- Nikhil Soni Case 2015: Santhara Case: While suicide is the unnatural and untimely termination of life, Santhara is the peaceful and gradual path to the extinguishing of life. It is not unnatural or sudden.
- Azaan case & Church of God Case: Use of Loudspeakers in not essential religious practice
- In Amnah Bint Basheer the Kerala High Court held that the CBSE dress code proscribing hijabs was unconstitutional as wearing of hijab by Muslim women is an ‘essential part’ of their religion.
- Indian Young Lawyers Association -> The Supreme Court made it clear in its judgement that considering women impure comes within the ambit of Article 17.
- However, Sabrimala case has been referred to a larger bench of SC

Article 26

- Gives citizen right to manage religious affairs. It says subject to public order morality and health, every religious denomination shall have right to
 - Established and maintain institutions for religious & charitable purpose
 - To manage its own affairs in the matter of religion.
 - To own and acquire movable and immovable property.

Article – 27

- It gives freedom of payment of taxes.
- No person shall be compelled to pay any tax from the payments or proceeds received upon religious activities.

State should mountain district from religious affairs allowing tax, state will start interfering in the religious affairs, out may impose tax on any other religion which may become difficult from the particular religion to sustain.

A-28 Freedom as to attendance at religious instruction or religious worship in certain educational institutions

- No religion instruction shall be provided in any educational institution wholly maintained out of State funds
- Educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution
- No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto.

A.29 Protection of interest of minorities

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

Article - 30

- All minorities based upon religion and language shall have right to establish and administer educational institutions of their choice.

Azeez Basha Case

- Court held that if the educational just, is not established by them then no right to administer it.

St. Stephen Case

- The colleges established under A-30 (1) of the constitution.
- Hence it's not build to follow university's rule, Court held the word 'administer' includes selection of student as well.
- 50% seats has to be reserved for minority in 30(1), other in 50% seats there will not be any SC, ST, OBC seats.
- Interview is conducted to make sure 50% of the seat is filled by minorities.

Article 32: Remedies for enforcement of rights conferred by this Part

- The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
- The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part
- Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

- The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution
- Article 32 of the Indian Constitution gives the right to individuals to move to the Supreme Court to seek justice when they feel that their right has been 'unduly deprived'.

Habeas Corpus: May we have the body

- To have the body.
- The main purpose of this writ is to seek relief from unlawful detention of an individual.
- It usually comes into action when article 19, 21 & 22 is infringed.
- This writ is issued both against public and private individuals.

When this writ can't be issued-

1. Detention is legal
2. Detention is due to contempt of court

Quo Warranto – by what authority

- This writ is invoked in case of public offices and it is issued to restrain persons from acting in public office which he is not entitled to. The court issues the writ in following cases-
- When the public office is in question is of substantive nature (permanent existence)
- Office is created by state or constitution (Public office)
- The claim should be ascertained by a public servant only.
- Quo warranto cannot lie against office of private nature.

Mandamus (means 'We Command')

- The writ is issued for performance of public duties by a govt. officials.
- This writ cannot be issued against President and governor.
- The main purpose of the writ is to ensure that the powers are not misused by public servant.
- SP Gupta Case: Court held writ cannot be issued against the president for filling vacancies of court.
- CG Govindan Case: Court held writ can't be issued against governor.

Certiorari: It means 'to certify or quash'.

- This writ is issued when there is wrongful exercise of jurisdiction of court. There are several grounds for issuance of writ-
- Either without jurisdiction or excess of jurisdiction.
- In violation of natural justice
- Opposition of Procedure established by law.
- Error in judgement.
- This writ only be issued against judicial & quasi-judicial bodies.

Prohibition: (To Prohibit)

- In this writ the lower court is directed not to do the particular duty.
- It's on the principle of prevention is better than cure.