



Fundamental Rights (Part-2)

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Fundamental Rights (Part-1)

Right Against Exploitation (Article 23 and 24)

- **Prohibition of Human Trafficking and Forced Labour: Forced labour in India** was imposed by landlords, moneylenders and other wealthy persons in the past.
 - The **Article 23** of the Indian Constitution prohibits human trafficking and begar (forced labour without payment) to protect the millions of underprivileged and deprived people of the country.
 - The right is available to **citizens** of India as well as to **non-citizens**.
 - The right provides against human trafficking in the form of:
 - Selling and buying of men, women and children.
 - Prostitution
 - **Devadasis**
 - Slavery.
 - The **Immoral Traffic (Prevention) Act 13, 1956** has been enacted to deal with violations of this fundamental right.
- **Prohibition of Child Labour: Article 24** of the Indian Constitution forbids employment of children below the age of 14 years in dangerous jobs like factories and mines.
 - However, it did not prohibit their employment in any harmless or innocent work.
 - The **Child Labour (Prohibition and Regulation) Act, 1986** (renamed as **Child & Adolescent Labour** (Prohibition and Regulation) Act, 1986 in 2016) specifically deals with the violations of related to this right.
 - The **2016 amendment** of this act completely prohibited employment or of children below 14 years of age in all occupations and processes.
 - It also prohibited the employment of adolescents (14-18 years of age) in hazardous occupations or processes.

Right to Freedom of Religion (Article 25-28)

- **Freedom of Conscience, Profession, Practice and Propagation: Article 25** of the Constitution of India provides the freedom of conscience, to profess, to practice and to propagate any religion. These rights are **available to citizens as well as non-citizens.**
 - **Conscience:** A person may or may not choose to follow any religion.
 - **Right to Profess:** One can declare his/her religious beliefs and faith openly and freely.
 - **Right to Practice:** Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.
 - **Right to Propagate:** Persuading people to convert from one religion to another. However, the Constitution does not allow forcible conversions.
 - It only gives us the right to spread information about our religion and thus attract others to it.
 - **Limitations:** The government can impose restrictions on the practice of freedom of religion in order to protect public order, morality and health.
 - The government can interfere in religious matters for rooting out certain social evils. For example: banning practices like sati, bigamy or human sacrifice.
 - Such restrictions cannot be opposed in the name of interference in the right to freedom of religion.
- **Freedom to Manage Religious Affairs:** The Article 26 of the Indian Constitution provides every religious denomination (or any section of it) the **right to establish and maintain institutions for religious and charitable purposes.**
 - It also empowers the religious denominations to manage their own affairs in matters of religion.
 - Moreover, the right to own and acquire movable and immovable property and the right to administer such property is also provided to every religious denomination.
 - The rights provided under Article 26 are also **subjected to public order, morality and health.**
- **Freedom from Taxation for Promotion of a Religion:** The Indian Constitution under 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.
 - It says that no public money, collected through taxes, shall be spent for the promotion or maintenance of any particular religion.
 - Favouring, patronising or supporting any religion over the other is prohibited.
 - It prohibits only levy of a tax and not a fee.
 - The purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion.

- **Freedom from Attending Religious Instruction: Article 28** states that no religious instruction shall be provided in any educational institution wholly maintained out of State (the territory of India) funds.
 - However, the provision is not applicable to educational institutions administered by the State or established under any endowment or trust.
 - Moreover, no person is required to attend any religious instructions or worship without his consent in any educational institution recognised by the State or receiving aid out of State funds.
 - In case of a minor, the consent of his guardian is needed.

Cultural and Educational Rights (Article 29 and 30)

- **Protection of Interests of Minorities: Article 29** provides that every section of citizens residing in any part of the country have the right to protect and conserve its own distinct language, script or culture (it provides the right to a group/section/community of people).
 - Further, it says that **no citizen shall be denied admission into any educational institution on grounds only of religion, race, caste, or language** (it provides the rights to an individual citizen).
 - Article 29 grants protection to both religious, linguistic as well as cultural minorities.
 - However, the rights are **not necessarily restricted to minorities only**, as it is commonly assumed to be. It includes minorities as well as the majority.
- **Right of Minorities to Establish and Administer Educational Institutions: Article 30** grants all the minorities the following rights:
 - The right to establish and administer educational institutions of their choice.
 - 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 **44th Amendment Act, 1978** to protect the right of minorities in this regard.
 - The State shall not discriminate against any educational institution managed by a minority.
 - Thus, the protection under Article 30 is confined only to minorities (religious, cultural or linguistic) and does not extend to any other section of citizens (as under Article 29).

Article 31, 31A, 31B and 31C

- Originally, the **right to property was one of the seven fundamental rights** and provided that **no person shall be deprived of his property except by authority of law.**

However, being one the most controversial rights, the **44th Amendment Act of 1978** abolished the right to property as a Fundamental Right and made it a legal right (constitutional right) under **Article 300A in Part XII** of the Constitution.

- Article 31 led to a number of Constitutional amendments; 1st, 4th, 7th, 25th, 39th, 40th and 42nd Amendments.

The **First Amendment Act, 1951** inserted Articles 31A and 31B to the Constitution.

Article 31C was inserted in the Constitution by 25th Amendment Act, 1971.

- **Article 31A:** It saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 and Article 19.

- It includes:

- Acquisition of estates and related rights by the State;
- Taking over the management of properties by the State;
- Amalgamation of corporations;
- Extinguishment or modification of rights of directors or shareholders of corporations
- Extinguishment or modification of mining leases.

- It also provides the guaranteed right to compensation in case of acquisition or requisition of the private property by the state.

- **Article 31B:** It **protects the acts and regulations included in the Ninth Schedule** from being challenged and invalidated on the ground of contravention of any of the fundamental rights.

- The **scope of Article 31B is wider than Article 31A** as it immunises any law included in the Ninth Schedule from the Fundamental Rights (unlike article 31A that protects only five categories).

- However, the Supreme Court in its judgement in the **I.R. Coelho case (2007)** ruled that **even laws under the Ninth Schedule would be open to scrutiny** if they violated Fundamental Rights or the basic structure of the Constitution.

The Supreme Court first propounded the doctrine of 'basic structure' of the constitution in the Kesavananda Bharati on April 24, 1973.

- **Article 31C:** It contained two provisions:
 - It says that **no law that seeks to implement socialistic directive principles specified in Articles 39 (b) and (c), shall be declared void** on the grounds of contravention of the fundamental rights conferred by Article 14 or Article 19.
 - Moreover, 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.

Articles 31A, 31B and 31C have been retained as exceptions to the fundamental rights.

Right to Constitutional Remedies (Article 32)

- **Article 32** is considered the most important article of the Constitution as it provides that the **right to get Fundamental Rights protected is itself a fundamental right**.
 - It confers the **right to remedies for the enforcement of the fundamental rights** of an aggrieved citizen.
- 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:
 - The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights.
 - The Supreme Court shall have power to issue directions or orders or **writs** for the enforcement of any of the fundamental rights.
 - Parliament can empower any other court to issue directions, orders and writs of all kinds.
 - Any other court here does not include high courts because (**Article 226**) has already conferred these powers on the high courts.
 - The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution.
 - In the case of national emergency, the right can be suspended by the President (**Article 359**).
- Only the Fundamental Rights guaranteed by the Constitution can be enforced under Article 32 and not any other right like non-fundamental constitutional rights, statutory rights, customary rights etc.
 - The violation of a fundamental right is the **sine qua non** (absolutely necessary condition) for the exercise of the right conferred by Article 32.

Article 33, 34 and 35

- **Article 33:** It empowers the **Parliament to restrict or abrogate the fundamental rights of the ‘Members of the Armed Forces’, paramilitary forces, police forces, intelligence agencies and analogous forces.**
 - The objective of this provision is to **ensure the proper discharge of their duties** and the maintenance of discipline among them.
 - The **power to make laws under Article 33 is conferred only on Parliament** and not on state legislatures.
 - Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.
 - The ‘members of the armed forces’ also covers non-combatant employees of the armed forces such as barbers, carpenters, mechanics, cooks, chowkidars, bootmakers and tailors.
- **Article 34:** It provides for the **restrictions on fundamental rights while martial law is in force** in any area within the territory of India. The expression ‘martial law’ has not been defined anywhere in the Constitution but literally, it means ‘military rule’.
 - The martial law is **imposed under extraordinary circumstances** like war, invasion, insurrection, rebellion, riot or any violent resistance to law.
 - Article 34 **empowers the Parliament to indemnify (compensate) any government servant** or any other person for any act done by him in connection with the maintenance or **restoration of order in any area where martial law was in force.**
 - The Act of Indemnity made by the Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

- **Article 35:** Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures.
 - **Powers of Parliament (only) to Make Laws:**
 - Prescribing residence as a condition for certain employment or appointments in a state/UT/local or any other authority.
 - Empowering courts other than the Supreme Court and the high courts to issue directions, orders and writs for the enforcement of fundamental rights.
 - 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.
 - The Parliament has powers to make laws prescribing punishment for offences such as untouchability and traffic in human beings and forced labour.
 - Article 35 extends the competence of the Parliament to make a law on the specified matters even those matters which may fall within the sphere of the state legislatures (i.e., State List).

Conclusion

The Fundamental Rights, despite having a lot of exceptions & restrictions and lack of permanency, are a crucial part of the Constitution of India as:

- They provide necessary conditions for the material and moral protection of man and ensure the liberty of every individual.
- These rights protect the interests of minorities and weaker sections of society and also strengthen the notion of India as a secular State.
- They ensure the dignity and respect of individuals by laying down the foundation of social equality and justice.