

FUNDAMENTAL RIGHTS

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RIGHTS

Rights are the basic facilities which we need for our growth. These are the claims of individual recognised by the society and enforced by the State. The existence of Democracy can't be imagined without Fundamental Rights in India because Rights are the pillars of Democracy

FUNDAMENTAL RIGHTS

- Part III of the Indian Constitution and article 12 to 35 deals with the fundamental rights of the Indian citizens.
- Article 12 define the term STATE
- *"the State" includes the Governmental and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.*

Article 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.

In this article, unless the context otherwise required, -

"law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

"laws in force" includes laws passed or made by a 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or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Nothing in this article shall apply to any amendment of this Constitution made under article 368.

Characteristics of Fundamental Rights

- Equal rights for all.
- Rights are justiciable.
- Rights are not absolute.
- Can be suspended during emergency.
- Fundamental rights distinguish between citizens and foreign nationals.
- They limit the authority of the central and state governments.(Article 13(2))
- Parliament can amend Fundamental rights.

FUNDAMENTAL RIGHTS

- Right to **Equality** (Art.-14-18)
- Right to **Freedom** (Art.-19-22)
- Right **Against Exploitation** (Art.-23-24)
- Right to **Religious Freedom** (Art.-25-28)
- **Cultural and Educational Rights** (Art.-29-30)
- Right to **Constitution Remedies** (Art.-32)

RIGHT TO EQUALITY, ARTICLE-14 to 18

- Equality before law (Article-14) provides that the state shall not deny to any person equality before law or the equal protection of law within the territory of India.
- Prohibition of Discrimination, (Article-15): The state shall not discriminate against any citizen on ground only of religion, race, caste , sex, place of birth or any of them.
- *Nothing in this article shall prevent the state from making any special provision for women and children.
- Equality of opportunity (Article-16): there shall be equality of opportunity for all citizen in matter relating to employment or appointment to any office under the state.
- *Government has the right to fix residential qualification, domicile for the special post.
- * Reservation for schedule caste, tribe, OBC.

➤ Abolition of untouchability Article-17: Untouchability is abolished and its practice in any form is forbidden shall be an offence punishable in accordance with the law.

*Parliament has enacted The Untouchability Act 1955 (amended and renamed in 1976 as – the protection of the civil rights act 1955)

➤ Abolition of titles Article-18: no citizen of India shall accept any title from any foreign state Except with the consent of the President of India .

*This article however does not prevent the grant of the military decorations, in 1954 govt. of India also accepted that the title like Bharat Ratan, Padma Vibhushan, Padma Shree could also be conferred.

*In 1977 Janta party govt abolished this system, but in 1980 the Congress govt. started it again.

RIGHT TO FREEDOM

ARTICLE -19 to 22

In democracy right to freedom is the backbone of the system . Constitution of India originally provided us seven freedom but by 44th ammendemnt 1978 right to acquire, hold and dispose off property has been ommitted from the list.

➤ **FREEDOM OF SPEECH AND EXPRESSION ARTICLE-19**

- ❖ Freedom of Press – is also included in this article.
 - ❖ Freedom to assemble peacefully without Arms.
 - ❖ Freedom to form associations and unions: formation of political parties is also included in this article.
 - ❖ Freedom to move freely throughout the territory of India.
 - ❖ Freedom to reside and settle in any part of the territory of India.
 - ❖ Freedom to practise any profession or to carry on any occupation, trade or business.
- ** all these freedoms are not absolute in the nature. Our constitution itself imposes by its law reasonable restrictions.

➤ **Article-20 :**

- Article 20 of the Constitution
- provides for the protection in respect of conviction for offences. No one can be convicted for an act that was not an offence at the time of its commission, and no one can be given punishment greater than what was provided in the law prevalent at the time of its commission. Also, no one can be prosecuted and punished for the same offence more than once and can be forced to give witness against his or her own self.
- **Protection of life and personal liberty Article-21:** no one can be deprived of his or her life or personal liberty except according to the procedure established by law.
- ** **By 44th amendment 1978 this right is inviolable even during emergency under article 359.**
- ** **by 59th amendment ,it has been laid down that this right can be suspended by the president during the emergency.**
- **Right to education Article-21 A: By 86th amendement 2002 right to education for the children (6-14 years) was added to the fundamental rights and made formal education compulsory.**
- **Protection against arrest and detention against certain cases Article-22:** whenever a person is arrested, he or she should be informed, as soon as it is possible, of the grounds for arrest and should be allowed to consult and to be defended by a legal practitioner of his or her choice.
- ** person must be produced before the nearest magistrate within 24 hours.....excepting a person who has been arrested under preventive or detention law.

RIGHT AGAINST EXPLOITATION

ARTICLE -23 to 24

➤ **Prohibition Of Traffic In Human Beings And Forced Labour (Article 23):**

This article prohibits the traffic in human beings and forced labour and other similliar forms are prohibited.....shall be an offence punishable.....

** nothing in this article shall prevent the state from imposing compulsary service for the public purpose and the state shall not make any discrimination.

➤ **Prohibition of Child Labour (Article 24):**

Children below the age of fourteen years will not be allowed to work in factories, mines or in other dangerous places so that their health is not adversely affected.

RIGHT TO RELIGIOUS FREEDOM, ARTICLE-25 to 28

- **Article-25** : Freedom to profess and propagate any religion,
 - **Article-26** : Freedom to manage religious affairs,
 - **Article-27**: Freedom not to pay taxes for the promotion of any particular religion,
 - **Article-28(1)**: No religious instructions in government educational institutions.
- ** Educational institution which has been established under any trust which requires that religious instruction shall be imparted in such an institution. But no person attending such an institution shall be compelled to take part in any religious instruction that may be imparted there or attend any religious worship that may be conducted there. In case of a minor, the consent of his/her guardian is essential for attending such activities.

CULTURAL AND EDUCATIONAL RIGHTS

ARTICLE – 29 to 30

- **Article-29(1)** : Protection against interest of minorities: 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, language or any of them.
- **Article-30(1)** : Right to minorities to establish educational institutions.
- ** all the minorities wether based on religion or language shall have the right to establish and administer educational institution of their own choice.
- **Article-30(2)** : shall have the right to admit the student to the institutionto have their own governing body and adopt their own respective instructions.
- ** The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

RIGHT TO PROPERTY

Article 31

- Article 19 (1) (f) and Article 31 has been deleted from the list of fundamental rights by 44th amendment 1978 and made it a legal/constitutional right under 300 (A).
- ** under the provision 300 A right to property cannot be taken away without the due process of the law.

RIGHT TO CONSTITUTIONAL REMEDIES,

ARTICLE-32

- Since Fundamental Rights are justiciable, they are just like guarantees. They are enforceable, as every individual has the right to seek the help from courts, if they are violated.
- **Article-32(2):** The Supreme court of India has the right to issue writs in the nature of the Habeas Corpus, Mandamus, Prohibition, etc.
- ** Article 226 High Court shall have the power to issue theorder or the writs including the nature of the Habeas Corpus, Mandamus, Prohibition, etc.
- **Writ of Habeas Corpus : is a court order to a person or an agency holding someone in custody to deliver the imprisoned individual in the court.
- **Writ of Mandamus (we command) : is an order from a court to an inferior government official ordering the govt. Official to properly fulfill their official duties or correct an abuse of discretion.
- **Writ of Prohibition: means a superior may prohibit the lower court or other judicial officers who are not doing something which exceed to their jurisdiction.
- ** Writ of Quo Warranto: It restrains the person or authority to act in the office which he or she is not entitled to ; and thus stops usurpation of public office.

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THANKING
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