


























FUNDAMENTAL RIGHTS

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 RIGHT TO EQUALITY RIGHT TO EQUALITY BEFORE THE LAW ARTICLE 14	  PROHIBITION OF DISCRIMINATION GENDER/RELIGION CASTE/BIRTH PLACE ARTICLE 15	 EQUALITY IN MATTERS OF PUBLIC EMPLOYMENT ARTICLE 16	 ABOLISHING UNTOUCHABILITY MAKING IT A PUNISHABLE OFFENCE ARTICLE 17	 ABOLISHMENT OF TITLES OFFICE OF PROFIT OR FROM FOREIGN STATE ARTICLE 18		
 RIGHT TO FREEDOM	 FREEDOM OF SPEECH & EXPRESSION ARTICLE 19	 PROTECTION WITH REGARDS TO CONDITIONS OF OFFENSES COMMITTED ARTICLE 20	 PROTECTION OF LIFE AND PERSONAL LIBERTY ARTICLE 21	 RIGHT OF CHILDREN TO FREE EDUCATION ARTICLE 21A	 PROTECT AGAINST ARRESTS DETENTIONS ARTICLE 22	
 RIGHT AGAINST EXPLOITATION	 PROHIBITION OF HUMAN TRAFFICKING & FORCED LABOUR ARTICLE 23	 NO CHILD BELOW 14 TO BE EMPLOYED ARTICLE 24	 RIGHT TO FREEDOM OF RELIGION	 FREEDOM TO PRACTISE AND PROPAGATE ANY RELIGION ARTICLE 25		
 ESTABLISH RELIGIOUS EDUCATIONAL INSTITUTES ARTICLE 30	 PROTECT INTERESTS OF MINORITIES ARTICLE 29	 CULTURAL & EDUCATIONAL RIGHTS ARTICLE 28		 EDUCATIONAL CAMPUS TO NOT COMPEL RELIGIOUS INSTRUCTIONS ARTICLE 28	 FREEDOM FROM FORCED TAX FOR RELIGIOUS PROMOTIONS ARTICLE 27	 FREEDOM TO MANAGE RELIGIOUS AFFAIRS ARTICLE 26
 PARLIAMENT, NOT STATE LEGISLATURE, TO MAKE LAWS ARTICLE 35	 RESTRICTION OF RIGHTS WHEN MARTIAL LAW IMPOSED ARTICLE 34	 POWER OF PARLIAMENT TO MODIFY RIGHTS ARTICLE 33	 REMEDIES FOR ENFORCEMENT OF RIGHTS ARTICLE 32	 RIGHT TO CONSTITUTIONAL REMEDIES		

Prof. Freddy Singaroi

Part III: Fundamental Rights (FRs)

Art: 12-35

Inspired and borrowed from USA → Bill of Rights

“Magna Carta” of UK The first written document relating to fundamental rights of citizen

Part III: is described as Magna Carta of India

Provisions

- FRs are not absolute but qualified (very limited)
- FRs are not sacrosanct (are not permanent)
- FRs are justiciable in nature

↓
Can be snatched during National Emergency and Martial Law

SIX FUNDAMENTAL RIGHTS IN INDIA



1 RIGHT TO EQUALITY

Right to equality (Article 14 to 18) prohibits the inequality on the basis of caste, religion, place of birth, race and gender. It ensures equal rights for all citizens.

→ Art 14-18



2 RIGHT TO FREEDOM

These rights (Article 19, 20, 21 A, 22) are freedom of speech, freedom of expression, freedom of movement throughout the territory of our country, freedom to practice any profession, freedom to reside in any parts of the country. However, these rights have their own restrictions.

→ Art 19-22



3 RIGHT AGAINST EXPLOITATION

Right against Exploitation (Article 23 and 24) condemns human trafficking, child labor, forced labor making it an offense punishable by law.

→ Art 23-24



4 RIGHT TO FREEDOM OF RELIGION

(Article 25 to 28) it guarantees religious freedom and ensures secular states in India. All people have freedom of conscience and right to preach, practice and propagate any religion of their choice.

→ Art 25-28

→ Art 29-30



5 CULTURAL AND EDUCATIONAL RIGHTS

(Article 29 and 30) Cultural Rights protects the rights of cultural, religious and linguistic minorities by enabling them to conserve their heritage and protecting them against discrimination. Educational rights ensure education for everyone irrespective of their caste, gender, religion, etc.

→ Art 32



6 RIGHT TO CONSTITUTIONAL REMEDIES

Right to constitutional remedies (Articles 32 to 35) empowers the citizens to move to a court of law in case of any denial of the fundamental rights.

• Originally → 7 fundamental rights were present



At present: 6 Fundamental Rights

→ Right to Property has been removed (Art 31 Art 19 f)



Now Art 300 A → A legal right now

Then PM: Morarji Desai

→ Art 12: defines the term "State"

State Govt.

Govt. body

Parliament

Government

Local/other authorities

Within the territory of India

→ Art 13: any law, which is inconsistent or controversial with fundamental rights → court can declare null and void (by judiciary)



Includes ordinance, order, bye-law (temporary law), regulations

* Constitutional Amendment is not a law

→ Exception: Keshavnanda Bharti Case

This is not written in Constitution



Basic structure if destroyed → Treated null and void

→ **Art 14: Right to Equality (Art 14-18)** Also called Rule of Law (by A V Dicey)

→ Equality before law (negative concept) → concept taken from the UK

→ Equal protection of law → Concept taken from the USA

→ Like should be treated alike

Exceptions

Presidents, MLAs/MPs cannot be arrested on civil matters

Ex: subsidy by government to socially backward committee that is not applicable for normal janta

→ **Art 15: Equality to status/Right against discrimination**

Gender/race/caste/sex/religion/place of birth only → Discrimination ✗

→ **Art 16: Equality to public employment**

Gender/race/caste/sex/religion/place of birth only → Discrimination ✗

→ **Art 16 (4): ProMotion and Reservation in appointment (Not a violation of Right to Equality)**

→ Cases:

- Balaji vs State of Mysore
- Devdasan vs Union of India Case
- Indira Sawhney Case (1993)

→ 9 bench judges

6:3 ratio

- Reservation → Social basis not on economic basis
- No reservation in promotion

→ Not exceeding 50%

Mandal Commission 1979 (2nd Backward Class)

Reservations to OBC (27%) during then government → V P Singh

→ Also, gave reservations to economically backward class

Not crossing 50%

→ Art 17: Abolition of untouchability

→ Art 18: Abolition of title

↳ State cannot provide title

ex: Maharaja, Diwaan, etc

Exception: in case of education, military, excellency

→ Art 19-22: Right to Freedom

↳ Under reasonable restriction

a, b, c, d, e, ~~f~~, g

↳ Has been removed under 44th CA
1978

TRICK → SAAMRO

- S: speech and expression (cannot defame anyone)
- A: Assemble without arms (not destroy public public order)
- A: Form association/unions (no Khalistani association)
- M: move freely throughout the territory of India (prostitutes cannot move everywhere)
- R: reside anywhere (cannot reside in tribal areas)
- O: occupation/trade/profession (except drug/children trafficking)

*97 CA → 19 1(c): Right to form cooperative societies

Article 19 in The Constitution Of India 1949

19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) omitted
- (g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

→ **Art 20: Protection in respect of conviction for offences**

- a → No ex-post-facto law
Exception: Criminal law ✓ Civil law ✗
- b → No double-jeopardy
- c → No self-incrimination

→ Olga Tellis vs Bombay Municipal Corporation Case

→ **Art 21: Right to live and personal liberty**

No one shall be deprived from life and personal liberty except by the procedure established by law

Most fundamental

Gopalan Case

- Narrow stance
- Right to life

Menaka Gandhi Case

- Wide stance
- SC overturned Gopalan Case

Meaning: unfair law of to be declared null and void

→ Procedure established by law + due process of law

→ Not in constitution

→ **Art 21 (A):** Right to primary education (6-14 yr)

↳ **86th CA, 2002**

- DPSP, FD changes

→ **Art 22:** Protection against arrest and detention

- a: suchit kiya jayega Kyun arrest kiya hai
- b: 24 granted ke andar Magistrate ke samne prastoot
- c: Legal waqil milega

It feels like crime kar sakte hai
Usi crime ko rokhne ke liye
detention

→ **Art 23-24**

↳ **Art 23:** human trafficking and forced labour → Prohibited

↳ **Art 24:** child labour → prohibited

Can work in safe place but in non-school hours

↳ Below 14 years cannot be employed in hazardous place/
dangerous place

Exception: under this article, state can force people to do compulsory services

Ex: During war

→ **Art 25-28:** Freedom of Religion

Denomination

↳ **Art 25:** Freedom of Conscience

↳ **Art 26:** Collective right of freedom to manage religious affairs

↳ **Art 27:** Freedom of paying tax → Dharm ke naam pe tax

↳ **Art 28:** Dharmic instruction → not allowed in government aided schools

→ **Art 29-30: Cultural and Educational Rights**

→ **Art 29:** Right to protect language, script, culture of every citizen → for any section of society

→ **Art 30:** Establishment of religious educational institutes

↓
Only for minorities (is nowhere defined)

Can provide education to his/her child in native language

→ **Art 32-35: Right to Constitutional Remedies**

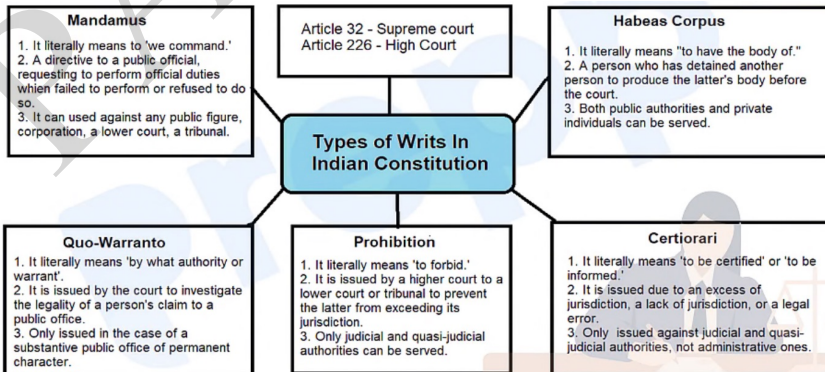
→ **Art 32:** "Heart and Soul of Indian Constitution" by B R Ambedkar

→ **Art 226:** can approach High Court when rights are violated

Writs vs Jurisdiction

- Supreme Court cannot refuse to issue writ but High Court can
- High Court writ jurisdiction is wider than Supreme Court writ jurisdiction

↓
Supreme Court can issue writs for fundamental rights only but High Court can issue writs for both fundamental rights and legal rights





- **Habeas Corpus**: to have the body of (for unlawful detention)
- **Mandamus**: we command
- **Prohibition**: to forbid
- **Certiorari**: to be certified
- **Quo Warranto**: by what authority of?

Art 33: Parliament power to restrict fundamental rights of armed personals

Art 34: restriction on fundamental rights while Martial Law is in force
Only in particular area

Art 35: power to make laws to give effect to fundamental rights (vested only on Parliament)

Rights available to citizens (not to foreigners)

Art 15, 16, 19, 29, 30

* During 42nd CA: Indira Gandhi was PM (1976)

TRICK

LAW CREATES DOUBT SAMRO

- **Law**: Art 14
- **D**: Art 15 (Discrimination)
- **O**: Art 16 (Opportunity)
- **U**: Art 17 (untouchability)
- **T**: Art 18 (titles)
- **SAAMRO** (already discussed)
- **C**: Art 20 (conviction)
- **L**: Art 21 (life)
- **E**: Art 21 A (education)
- **A**: Art 22 (detention)
- **L**: Art 23 and 24 (child labour)