

MODULE - 2

Aspects of the Constitution of India



Notes



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FUNDAMENTAL RIGHTS

People in democratic countries enjoy certain rights, which are protected by judicial system of the country concerned. Their violation, even by the State, is not allowed by the courts. India respects the rights of the people, which are listed in our Constitution, under the heading “Fundamental Rights”. In lesson, a mention has been made of the Fundamental Rights as one of the salient features of the Constitution. In this lesson, we will discuss in detail various Fundamental Rights which are incorporated in chapter III of the Constitution.



Objectives

After studying this lesson you will be able to

- explain the meaning and importance of Fundamental Rights;
- highlight that the dignity of an individual is protected and safe guarded through Fundamental Rights;
- recognise that the enforcement of Fundamental Rights is ensured through High Courts and the Supreme Court;
- explain the Right to Equality;
- recognise the rationale behind protective discrimination in favour of Scheduled Castes and Scheduled Tribes and other backward classes(OBCs);
- describe as well as appreciate the Right to Freedom;
- recall the safeguards against deprivation of life and personal liberty except according to the procedure established by law;
- explain the Right against Exploitation;
- appreciate the Right to Freedom of Religion;
- explain Cultural and Educational Rights;
- identify the right to Constitutional Remedies;
- recall the value of writs that may be issued for the protection of Fundamental Rights; and



- appreciate the Constitutional limitations on the enjoyment of Fundamental Rights.

6.1 Meaning And Importance Of Fundamental Rights

The rights, which are enshrined in the Constitution, are called 'Fundamental Rights'. These rights ensure the fullest physical, mental and moral development of every citizen. They include those basic freedoms and conditions which alone can make life worth living. Fundamental Rights generate a feeling of security amongst the minorities in the country. They establish the framework of 'democratic legitimacy' for the rule of the majority. No democracy can function in the absence of basic rights such as freedom of speech and expression.

Fundamental Rights provide standards of conduct, citizenship, justice and fair play. They serve as a check on the government. Various social, religious, economic and political problems in our country make Fundamental Rights important. In our Constitution, Fundamental Rights are enumerated in Part III from Article 14 to 32. These rights are justiciable.

Justiciable: Justiciable means that if these rights are violated by the government or anyone else, the individual has the right to approach the Supreme Court or High Courts for the protection of his/her Fundamental Rights.

Our Constitution does not permit the legislature and the executive to curb these rights either by law or by an executive order. The Supreme Court or the High Courts can set aside any law that is found to be infringing or abridging the Fundamental Rights. You will read about it in detail in the lesson on 'Judiciary'. Some of the Fundamental Rights are also enjoyed by foreigners, for example, the Right to Equality before Law and Right to Freedom of Religion are enjoyed by both i.e. citizens as well as foreigners. The Fundamental Rights though justiciable are not absolute. The Constitution empowers the government to impose certain restrictions on the enjoyment of our rights in the interest of public good.

Seven Fundamental Rights were enshrined in the Constitution of India. However the Right to Property was removed from the list of Fundamental Rights by the 44th Amendment Act of the Constitution in the year 1976. Since then, it has been made a legal right. There are now six Fundamental Rights.

The Fundamental Rights are: -

1. Right to Equality
2. Right to Freedom
3. Right against Exploitation
4. Right to Freedom of Religion
5. Cultural and Educational Rights, and
6. Right to Constitutional Remedies.

Recently by the 86th Amendment Act, the Right to Education has been included in the list of Fundamental Rights as part of the Right to Freedom by adding Article 21(A).

We will now study these rights one by one.



Intext Questions 6.1

Fill in the blanks selecting appropriate words/figures given in the brackets.

1. Right to Property was removed from the list of Fundamental Rights by _____ Amendment Act of the Constitution (42nd/43rd/44th).
2. The Rights are given in Part III of the Constitution and are termed as _____ Rights (Legal/Economic/Fundamental).

6.2 Right To Equality

Right to Equality means that all citizens enjoy equal privileges and opportunities. It protects the citizens against any discrimination by the State on the basis of religion, caste, race, sex, or place of birth. Right to Equality includes five types of equalities.

6.2.1 Equality Before Law

According to the Constitution, “The State shall not deny to any person equality before law or equal protection of laws within the territory of India”.

‘Equality before law’ means that no person is above law and all are equal before law, every individual has equal access to the courts. ‘Equal protection of laws’ means that if two persons belonging to two different communities commit the same crime, both of them will get the same punishment.

6.2.2 No Discrimination on Grounds of Religion, Race, Caste, Sex, Place of Birth or any of them

No citizen shall be denied access to shops, restaurants and places of public entertainment. Neither shall any one be denied the use of wells, tanks, bathing ghats, roads etc. maintained wholly or partly out of State funds. However, the State is empowered to make special provisions for women, children and for the uplift of Scheduled Castes, Scheduled Tribes and other backward classes (OBC’s). The State can reserve seats for these categories in educational institutions, grant fee concessions or arrange special coaching classes.

6.2.3 Equality Of Opportunity In Matters Of Public Employment

Our Constitution guarantees equality of opportunity in matters relating to employment or appointment to public services to all citizens. There shall be no discrimination on the basis of religion, race, caste, sex, place of birth or residence in matters relating to employment in public services. Merit will be the basis of employment. However, certain limitations have been provided to the enjoyment of these rights.

6.2.4 Abolition of Untouchability

The Constitution abolishes untouchability and its practice in any form is forbidden.

Action in the box are considered as offences when committed on the grounds of untouchability.



refusing admission to any person to the public institutions;
preventing any person from worshipping in place of public worship;
insulting a member of Scheduled Caste on the grounds of untouchability;
preaching untouchability directly or indirectly.

6.2.5 Abolition of Titles

All titles national or foreign which create artificial distinctions in social status amongst the people have been abolished.

This provision has been included in the Constitution to do away with the titles like 'Rai Sahib', 'Rai Bahadur' have been conferred by the British on a few Indians as a reward for their effective co-operation to the colonial regime. The practice of conferring titles like this is against the doctrine of equality before law. To recognise the meritorious service rendered by individual citizens to the country or mankind, the President of India can confer civil and military awards on those individuals for their services and achievements such as; Bharat Ratna, Padma Vibhushan, Padam Sri, Param Veer Chakra, Veer Chakra etc., but these cannot be used on 'titles'.



Intext Questions 6.2

Fill in the blanks:

1. Right to Equality aims at an end to.....discrimination (moral/social/political).
2. Right to Equality has.....kinds of equalities (3/4/5).
3. Right to.....provides for the abolition of untouchability (equality / freedom / religion).
4. State can make..... provisions for women and children against exploitation (general/special/ordinary).
5. Right to Equality aims at establishing.....equality. (social/moral/political)

6.3 Right To Freedom

Freedom is the basic characteristic of a true democracy. Our Constitution guarantees to the citizens of India a set of six freedoms described as the "Right to Freedom".

6.3.1 Six Fundamental Freedoms

The Constitution guarantees the following six Fundamental Freedoms:

- (i) Freedom of speech and expression.
- (ii) Freedom to assemble peacefully without arms.
- (iii) Freedom to form associations or unions.
- (iv) Freedom to move freely throughout the territory of India.

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- (v) Freedom to reside and settle in any part of the territory of India.
- (vi) Freedom to practise any profession or to carry on any occupation, trade or business.

Let us study these freedoms one by one briefly.

(I) Freedom of Speech And Expression

It is an important freedom. This freedom ensures free and frank speech, discussion and exchange of opinions. It includes the freedom of the press. However these freedom like freedom of speech and expression are not absolute. The state is empowered to impose reasonable restrictions on the exercise of this right in the interest of security of the state, public order, morality etc.

These freedoms can be suspended during the State of National Emergency. As soon as the State of National Emergency is declared under Article 352, the above-mentioned freedoms except the right to life and liberty, automatically remain suspended as long as the State of National Emergency continues. All these freedoms get restored as soon as the proclamation of National Emergency is lifted.

6.3.2 Protection in Respect of Conviction for An Offence

This Constitutional provision assures protection against arbitrary arrest and excessive punishment to any person who is alleged to have committed an offence. No person shall be punished except for the violation of law which is in force when the crime was committed. An accused cannot be compelled to be a witness against himself/herself.

No person shall be punished for the same offence more than once.

6.3.3 Protection of Life and Personal Liberty

The Constitution lays down that no person shall be deprived of his/her life or personal liberty except according to the procedure established by law. It guarantees that life or personal liberty shall not be taken away without the sanction of law. It ensures that no person can be punished or imprisoned merely at the whims of some authority. He/she may be punished only for the violation of the law.

6.3.4 Prevention against Arbitrary Arrest and Detention

Our Constitution guarantees certain rights to the arrested person. As per the provision, no person can be arrested and/or be detained in custody without being informed of the grounds for detention. He /she has the right to consult and be defended by a lawyer of his/her choice. The accused has to be produced before the nearest magistrate within a period of twenty-four hours of arrest.

These safeguards however are not available to foreigners as well as to those citizens detained under Preventive Detention Act.

Preventive Detention: When the State feels that a person is likely to commit crime or is a threat to the security of the State, he/she may be detained without trial for a limited period. However, no person can be kept under detention for more than three months until permitted by an Advisory Board consisting of persons who are qualified to be appointed as judges of the High Courts. Such a board is presided over by a sitting judge of a High Court.



6.3.5 Right to Education

By the 86th Amendment Act of the Constitution a new article 21-A has been added after Article 21. By this Amendment Act, Right to Education has been made a Fundamental Right and has been deleted from the list of Directive Principles of State Policy. According to it, “The State shall provide free and compulsory education to all children of the age of six to fourteen in such a manner as the State may by law determine”. It further states that it is the responsibility of the parent or guardian to provide opportunities for education to their child or ward between the age of six to fourteen years.



Intext Questions 6.3

Each question has four options. Select the correct option by putting a tick (✓) against one of the options:

1. The number of freedoms guaranteed under the Right to Freedom is :
 - a) 5
 - b) 6
 - c) 7
 - d) 8
2. Any person arrested by the police shall have to be produced before the nearest magistrate within a period of :
 - a) 12 hours
 - b) 24 hours
 - c) 36 hours
 - d) 48 hours
3. A person arrested under Preventive Detention can be kept in Jail without trial for a maximum period of :
 - a) three months
 - b) six months
 - c) twelve months
 - d) eighteen months
4. Right to education has been made a Fundamental Right byAmendment Act of the Constitution (84th /86th/ 88th)

6.4 Right against Exploitation

The people of India were exploited not only by the British but also by the money lenders and zamindars. This system was called forced labour. Right against exploitation prohibits

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all forms of forced labour as well as traffic in human beings . The violation of this provision is an offence punishable under law. The state require citizens services in times of major calamities such as floods, forestfire, foreign aggression etc.

Our Constitution also provides safeguards for children. It bans the employment of children below the age of fourteen years in any factory , mine or hazardous occupations.

Traffic in human beings means sale and purchase of human beings as goods and commodities for immoral purposes such as slavery and prostitution



Intext Question 6.4

Fill in the blanks selecting appropriate words/figures given in the brackets:

1. Employment of children in factories below the age of _____ is prohibited by law (14/16/18)

Right to Freedom of Religion

India is a multireligious state. Besides Hindus, there are Muslims, Sikhs, Christians and many others residing in our country. The Constitution guarantees to every person freedom of conscience and the right to practice and propagate any religion.

It also permits every religious group, the right to manage its own affairs in matters of religion. Every religious sect has the right to establish and maintain institutions for religious and charitable purposes. Each religious group is also free to purchase and manage its movable and immovable property in accordance with law, for the propagation of its religion.

Our Constitution lays down that no religious education can be imparted in any educational institution which is wholly maintained out of the state funds. This restriction does not apply to those educational institutions which are not wholly maintained out of State funds. But, even in those institutions, no child can be compelled to receive religious instructions against his /her wishes.

Right to Freedom of Religion is not absolute. It can be restricted on the grounds of public order, morality and health. The state shall not impose restrictions arbitrarily .



Intext Questions 6.5

Fill in the blanks with the suitable words/figures given in brackets:

1. Religion is the concern of the _____ in a secular state. (Individual /Society/ State)
2. No _____ education can be imparted in any educational institution wholly maintained out of state funds. (moral/religious/none of the two)



6.6 Cultural and Educational Rights

India is a vast country with diversity of culture, Script and languages. People take pride in their own language and culture.

Our constitution provides necessary guarantees to preserve maintain and promote their culture and language. The Constitution allows minorities to establish and maintains educational institutions of their own. It also provides that the state shall not discriminate against any educational institution while granting financial aid on the grounds that it is being run by a minority community.

These rights ensure that minorities will be given assistance by the state in the preservation of their language and culture. The Ideal before the state is to preserve and propagate the composite culture of the country.

6.7 Right To Constitutional Remedies

After reading about all the Fundamental Rights, a question may arise in your mind : what can an individual do if one or more of his or her Fundamental Rights are encroached upon by the State?

Part III of our Constitution provides for legal remedies for the protection of these rights against their violation by the State or other institutions/individuals. It entitles the citizens of India to move the Supreme Court or High Courts for the enforcement of these rights. The State is forbidden from making any law that may be in conflict with the Fundamentals Rights.

The Constitution empowers the Supreme Court and High Courts to issue orders or writs as mentioned in the box given below.

HABEAS CORPUS; (Latin term) It is an order by the court to the state to produce the person physically before it justify the confinement or release of the person.

MANDAMUS: (Latin term) It is a command or an order from a superior court to a subordinate court or tribunal or public authority to perform its duty in case it is not doing it.

PROHIBITION: It is an order issued by the Superior Court to forbid a subordinate court or tribunal from proceeding with a case which is beyond its jurisdiction.

QUO WARRANTO: This writ is issued to restrain a person from acting in a public office to which he /she is not entitled.

CERTIORARI : The term certiorari means “to be informed of what is going”. It is an order to a lower court from a superior court to transfer the matter to it or to any other court for deciding the matter.

These writs go a long way in protecting the rights of the individuals against encroachment by the legislature, the executive or any other authority. If the Fundamental Rights are the cornerstone of our democracy, then the Right to Constitutional Remedies is the soul of the part III of the Constitutions.

You will read more about these writs in the lesson no.12.



Intext Questions 6.6

Fill in the blanks by selecting appropriate words/figures given in the brackets:

1. Religious or linguistic _____ can establish their own educational institutions. (minorities/majority)
2. In India writs are issued by _____ Courts. (lower/subordinate/high)
3. The direction of the court to the detaining authority to produce the _____ person before it is the writ of _____ (Mandamus/prohibition/habeas corpus)
4. The writ to restrain a person from acting in a public office to which he /she is not entitled is known as _____ (quo warrato/Certiorari/Mandamus)
5. An order to a lower court to transfer the case to another court for its proper consideration is called the writ of _____. (Habeas Corpus/Prohibition/Certiorari)



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What You Have Learnt

Fundamental Rights have been incorporated in part III of our Constitution from article 14-32. These rights protect and safeguard the dignity and status of the citizens. These rights are justiciable i.e. are enforceable by the court of law. At present there are six Fundamental Rights. Recently by an Amendment Act of the Constitution, Right to Education has been added.

These Rights are not absolute, reasonable restrictions can be imposed on these rights in the interest of peace, national defence, morality, common good and good relations with other countries. The first right that comes under Fundamental Rights is the Right to Equality. Under the Constitution, all are equal before law and the state can not discriminate between citizens on the basis of religion, race, sex, place of birth or any of them. Untouchability has been abolished and made an offence punishable by law. The state has been forbidden from conferring honorary titles on citizens that create social disparities.

Right to Freedom has been granted for the all round development of the body, mind and spirit of all the citizens. It provides six freedoms to citizens. This Right helps protection of life and personal liberty. It also protects the individual from arbitrary arrest and detention.

Our Constitution prohibits traffic in human beings and forced labour. Employment of children below the age of fourteen years in mines, factories and hazardous jobs is banned.

India is a multi religious country. Our Constitution neither promotes nor interferes in their religious affairs. India believes in secularism. Every religious community is free to establish, maintain and run its own religious institutions. Every citizen has been granted freedom to profess and propagate his/her religion.

Cultural and Educational rights provide the right to conserve our culture. Educational institutions maintained by the state on getting financial aid from the state cannot refuse



admission to children on the grounds of religion, race, caste, language or any of them. The minorities have been given the right to establish and manage institutions of their own for the preservation and propagation of their language and culture. While giving financial aid to any institution, the state will not discriminate on the basis of religion or language.

Lastly the Constitution guarantees enjoyment of Fundamental Rights by citizens under the Right to Constitutional Remedies. The Supreme Court and High Courts have been given powers to issue orders, directions and writs for the enforcement of Fundamental Rights. Dr. B.R Ambedkar has rightly called the writs as the “Soul of the part III of the Constitution”:

**Terminal Exercises**

1. Explain the importance of Fundamental Rights as provided in the Constitution.
2. Mention any three aspects of right to equality.
3. Describe six Fundamental Freedoms granted under the Right to Freedom.
4. Explain the Right against Exploitation.
5. How does the Right to Freedom of Religion help in establishing a secular polity in India? Explain.
6. What is writ? Who has the power to issue the writs?
7. Explain the statement that Fundamental Rights are justiciable.
8. Describe all the provisions of Right to Freedom.
9. Mention Right to Education as incorporated in the Constitution by 86th Amendment Act.

**Answers to Intext Questions****6.1**

1. 44th
2. Fundamental

6.2

1. Social
2. 5
3. Equality
4. Special
5. Social

6.3

1. b

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2. b.
3. a
4. 86th

6.4

1. 14.

6.5

1. Individual
2. Religious

6.6

1. Minority
2. High Court
3. Habeas Corpus
4. Quo-Warranto
5. Certiorari

Hints for Terminal Exercises

1. Refer to section 6.1
2. Refer to section 6.2
3. Refer to section 6.3.1
4. Refer to section 6.4
5. Refer to section 6.5
6. Refer to section 6.7
7. Refer to section 6.1
8. Refer to section 6.3
9. Refer to section 6.3.5