

Indian Polity Notes Part 6 in English

6] Fundamental Rights

- The founding fathers of the Indian Constitution were conscious of the need to recognize the basic rights of the people, and to protect these rights of the people, and to protect these rights from the onslaughts of the transitory aggressions of the executive and legislative wings of the government.
- A Constitutional guarantee to such fundamental right becomes indispensable for keeping the democratic spirit of a state. Hence the makers of the constitution consciously included a separate chapter.
- The '**Fundamental Rights**' under part III.
- In the same way rights if not associated with responsibilities are likely to lead to indiscipline.
- Hence in 1976, through the 42nd amendment, a separate chapter as Part IV A was inserted in the constitution which enumerates the 'Fundamental Duties' of the citizens.
- The constitution Makers also wanted to constitutionally indicated to the ruler, their duties towards their people, by way of enlisting the prospective objectives of their governance.
- Such Constitutionally indicated objectives or directives to the governments are enshrined as "Directive Principles" in Part IV of the constitution.
- These three parts i.e. III, IV and IV A together constitute the basis of a democratic state.
- Part III of the Constitution from Article 12-35 is rightly described as the **Magna Carta of India**. It contains a very long and comprehensive list of 'justiciable' Fundamental Rights.
- In fact, the Fundamental Rights in our Constitution are more elaborate than those found in the Constitution of any other country in the world, including the USA.

Fundamental Rights

- Part III of the Indian constitution (from Article 12 to Article 35) enshrines certain rights known as Fundamental Rights.
- These are classified under the following heads
 - Right to Equality (Art 14 – Art 18)
 - Right to Freedom (Art 19 – Art 22)
 - Right against Exploitation (Art 23 – Art 24)
 - Right to freedom of religion (Art 25 – Art 28)
 - Cultural and Educational Rights (Art 29 – Art 30) and
 - Right to Constitutional Remedies (art 32).
- However, the right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978.
- It is made a legal right under Article 300-A in Part XII of the Constitution. So at present, there are only six Fundamental Rights.

Article 12

Definition of State

- The term 'State' has been used in different provisions concerning the fundamental rights.
- Hence, Article 12 has defined the term for the purposes of Part III.
- According to it, the State includes the following:

(a) Government and Parliament of India, that is, executive and legislative organs of the Union government.

(b) Government and legislature of states, that is, executive and legislative organs of state government.

(c) All local authorities, that is, municipalities, panchayats, district boards, improvement trusts, etc.

(d) All other authorities, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.

Article 13

- Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.
- In other words, it expressly provides for the doctrine of judicial review.
- This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

Article 14

- The State should ensure that every person is equal before law and all are equally protected by law.

In order to establish equality the constitution enshrines the following rights.

- i. Non – discrimination among citizens (**Art 15**)
- ii. Equality of opportunity for all in matters of Public appointment (**Art 16**)
- iii. Abolition of untouchability (**Art 17**) and
- iv. Abolition of all titles except military and academic distinctions (**Art 18**).

Article 19

Right to freedom

- Article 19 of our Constitution guarantees 'Six freedoms' to all its citizens.

- i. Freedom of speech and expression
- ii. Freedom to assemble peacefully without arms.
- iii. Freedom to form associations or unions.
- iv. Freedom of movement throughout the territory of India.
- v. Freedom to reside and settle in any part of the territory of India and
- vi. Freedom to practice any profession or to carry on any occupation, trade or business.

Article 20

- Article 20 of the Constitution prohibits arbitrary imprisonment of any person. No person shall be prosecuted and punished for the same crime more than once.
- No one compelled to give a self incriminating evidence.

Articles 21

- Article 21 of the Constitution establishes the right of life and personal liberty to all people.
- Nobody shall be deprived of his life or personal liberty except according to procedure established by law.

Right education Guaranteed under Art 21 A

- The Right to Education Act of guarantees free and compulsory education to children of the age of 6-14 years.

Articles 22

- Article 22 of the Constitution prohibits the State from arbitrarily arresting any person.
- This article provides safeguards to people from arbitrary arrest. People who are arrested shall have the right to be informed about the reasons for the arrest
 - (i) to consult a legal practitioner.
 - (ii) to be produced before a magistrate within twenty four hours of arrest.

Right against exploitation

Article 23

- Article 23 of the Indian constitution prohibits traffic in human beings and forced labour system.
- This article prohibits slavery, traffic in women of children or crippled persons of immoral purposes like prostitution or begging.

Article 24

- Article 24 prohibits any child below the age of fourteen from working in dangerous and hazardous employment.

Right freedom of religion

- Indian constitution observes an attitude of neutrality and impartiality towards all religions.
- Since India is a secular state, that there is no official religion for the state.

Article 25

- Article 25 of the Constitution ensures freedom of conscience, and freedom to profess, practice and propagate religion of one's choice.

Article 26

- Article 26 of the Constitution guarantees the right to establish and maintain institutions for religious or charitable purposes.

Article 27

- Article 27 of the Constitution guarantees the citizen the freedom from payment of taxes for the promotion or maintenance of any particular religion.

Article 28

- Article 28 of the constitution no religious instruction shall be provided in any educational institution would maintained out of state funds.
- Cultural and educational rights

Article 29

- Article 29 of the Constitution protects the right of minorities to safeguard their distinct language, script and culture.

Article 30

- Article 30 of the Constitution grants the right of minorities to set up their educational institutions.

Article 32

- Article 32 of the constitution grants the right to move the Supreme court by appropriate writ for enforcement of right conferred by the constitution.
- It is the Heart and Soul of the constitution.

- The Supreme Court or High Court has the power to issue writs or orders in, the nature on 'habeas corpus', 'mandamus', 'prohibition', 'certiorari', and 'quo warranto' whichever may be appropriate

Habeas Corpus

- It is a Latin term which literally means **'to have the body of'**.
- It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it.
- The court then examines the cause and legality of detention. It would set the detained person free, if the detention is found to be illegal.
- Thus, this writ is a bulwark of individual liberty against arbitrary detention.
- The writ of habeas corpus can be issued against both public authorities as well as private individuals.
- The writ, on the other hand, is not issued where the (a) detention is lawful, (b) the proceeding is for contempt of a legislature or a court, (c) detention is by a competent court, and (d) detention is outside the jurisdiction of the court.

Mandamus

- It literally means **'we command'**.
- It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform.
- It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.
- The writ of mandamus cannot be issued
 - (a) against a private individual or body
 - (b) to enforce departmental instruction that does not possess statutory force
 - (c) when the duty is discretionary and not mandatory
 - (d) to enforce a contractual obligation
 - (e) against the president of India or the state governors
 - (f) against the chief justice of a high court acting in judicial capacity.

Prohibition

- Literally, it means **'to forbid'**.
- It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
- Thus, unlike mandamus that directs activity, the prohibition directs inactivity.

- The writ of prohibition can be issued only against judicial and quasi- judicial authorities.
- It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

Certiorari

- In the literal sense, it means 'to be certified' or 'to be informed'.
- It is issued by a higher court to a lower court.
- It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law.
- Thus, unlike prohibition, which is only preventive, certiorari is both preventive as well as curative.
- Previously, the writ of certiorari could be issued only against judicial and quasi-judicial authorities and not against administrative authorities.
- However, in 1991, the Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting rights of individuals.
- Like prohibition, certiorari is also not available against legislative bodies and private individuals or bodies.

Quo-Warranto

- In the literal sense, **it means 'by what authority or warrant'**.
- It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.
- The writ can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution.
- It cannot be issued in cases of ministerial office or private office.
- Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

Article 33

- Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military 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.

Article 34

- Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India.

- It empowers the Parliament to indemnify 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 Parliament can also validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

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.
- This provision ensures that there is uniformity throughout India with regard to the nature of those fundamental rights and punishment for their infringement.