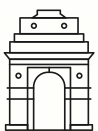


QUICK REVISION MODULE (UPSC PRELIMS 2021)

POLITY

FUNDAMENTAL RIGHTS PART-1



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FUNDAMENTAL RIGHTS

RIGHTS

Rights are entitlements to perform or not to perform certain actions, OR to be or not to be in-certain states.

Categories of Rights

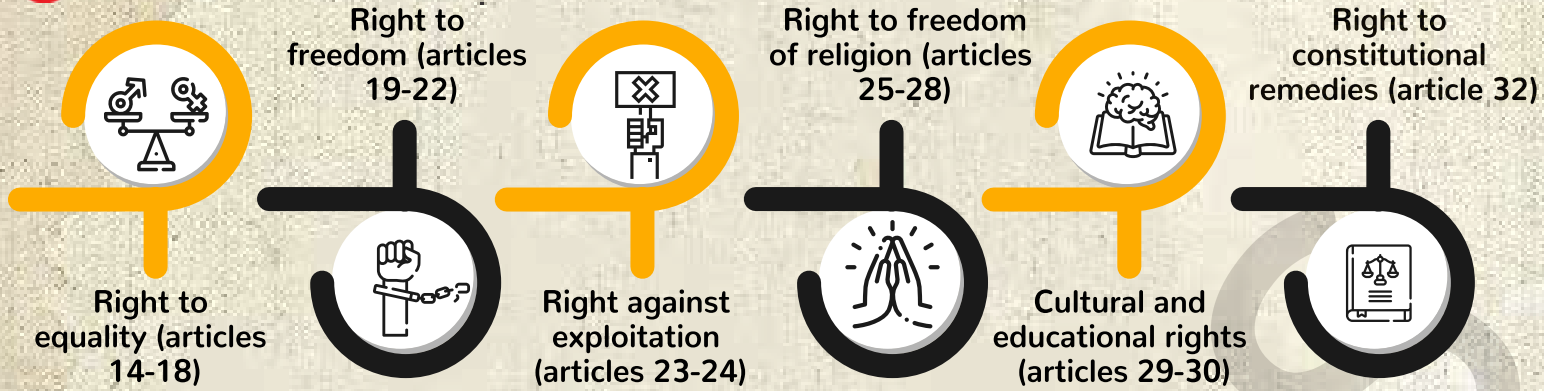
- **Natural Rights** - Become available to the individuals by virtue of their birth as human beings, for example, **Right to Life and Liberty**.
- **Human Rights** - Rights considered as fundamental to human dignity and well-being. E.g. **Right to freedom of religion, the Right to a fair trial** when charged with a crime etc.
- **Legal Rights** - Rights which are conferred by the statutes enacted by the legislature. E.g. **Right to strike, Patent Right**.
- **Constitutional Rights** - Rights enshrined in the constitution. **Include Fundamental Rights and other Constitutional Rights**.
- **Civil and Political Rights** - Political Rights are concerned with the structures of government and the institutions of public power. E.g. **Right to Vote** or to hold public office. Civil Rights are connected to the concept of real citizenship and participation in the political process. E.g. **Right to Freedom**.

FUNDAMENTAL RIGHTS

- They are called Fundamental Rights because of two reasons. **First**, these are mentioned in the Constitution which guarantees them and the **second**, these are **justiciable** i.e. enforceable through courts.
- Enshrined in **Part III** of the Constitution (Art 12 to 35).

Influence:

- ▶ Freedom struggle (**Nehru Report**, resolution of **1931 Karachi Session**)
- ▶ The **Constitution of USA** (i.e. **Bill of Rights**)

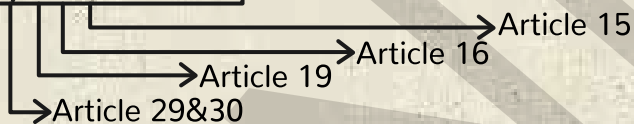


Originally, the Constitution provided for 7 types of Fundamental Rights (**Now 6 FR's**). The **right to property** was **deleted** from the list of Fundamental Rights by the **44th Amendment Act, 1978**. It is made a legal right under **Article 300-A** in Part XII of the Constitution.

FEATURES OF FRs

Available to:

Some FRs are available **only to the citizens** while others are available to all persons whether citizens, foreigners or legal entities.



Available against:

Most of them are available against the arbitrary action of the State, with a few exceptions (Art 17, 15(2)). When the rights that are available against the State's action only are violated by the private individuals, there are no constitutional remedies but only ordinary legal remedies.

Nature of FRs:

Some FRs place limitations on the authority of the State i.e. negative in character such as Art 14, 15(1), 16(2) etc. Some confer certain privileges on the persons i.e. positive in nature such as Art 25, 29(1), 30(1) etc.

Amendability:

The Parliament can curtail or repeal them by a constitutional amendment act, without altering the 'basic structure' of the constitution.

Justiciable:

The aggrieved person can directly go to the Supreme Court in case of violation of their FRs.

Restrictions on FRs:

They are not absolute, but instead subject to reasonable restrictions by state. The scope of these rights is also limited by Articles 31A, 31B, 31C, 33, 34 and 35.

Suspension of FRs:

They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. The six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression and not on the ground of armed rebellion.

ARTICLE 12 – DEFINITION OF STATE

- State has been defined in a wider sense and includes all its agencies - executive and legislative organs of Union, states and local authorities, along with other statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.
- The courts fall within the definition of the 'State', only while they perform their non-judicial functions.
- Even a private body/agency working as an instrument of the State falls within the meaning of the 'State' under Article 12.



WHAT IS INCLUDED IN ARTICLE 13 ?

Article 13 : Laws inconsistent with or in derogation of the fundamental rights-

- All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
- 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 requires,
 - ▶ "Law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
 - ▶ "Law 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 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.

ARTICLE 13 RELATED DOCTRINES



1

Doctrine of Eclipse:

If a FR, which 'eclipses' the pre-constitutional law, is amended to the extent that the pre-constitutional law is no more inconsistent with the amended FR, then such a law becomes valid again.



2

Doctrine of Severability:

When a law violates any provision of the Constitution, then instead of declaring the entire law as illegal, only that portion of the law may be removed, which is inconsistent.



3

Doctrine of Waiver:

When a person intentionally chooses not to exercise a right, he is precluded from challenging the constitutionality of law for the benefit of which, the right is waived. In India, a person can waive statutory rights but cannot waive constitutional rights.



4

Doctrine of Prospective Over-Ruling:

The SC can overrule its earlier judgment, but the impact will apply from the prospective effect and not retrospectively.



AMENDABILITY OF FUNDAMENTAL RIGHTS

Sankari Prasad Case (1951)

Parliament has the power to amend FRs.

Golaknath Case (1967)

FRs given a transcendental position in constitution; cannot be amended

Keshavananda Bharati Case (1973)

The doctrine of the 'Basic Structure of the Constitution'.

Minerva Mills Case (1980)

SC invalidated Art 368(4) and 368(5) as they curtailed judicial review.

IR Coelho Case (2007)

Laws placed in the 9th schedule from the date of Keshavananda Bharati verdict subject to judicial review.



RIGHT TO EQUALITY



Equality before the law

Inspired from the British tradition

Negative in its orientation i.e. the State is restricted from making any discrimination between two citizens

Equal protection of the laws

Borrowed from the American Constitution

Positive concept i.e. the equality of treatment under equal circumstances, allows protective discrimination

- SC - '**Rule of Law**' (Absence of Arbitrary Power & Equality before law) as embodied in Article 14 is a part of the 'basic structure' of the constitution.

Note: Indira Sawhney case, 1992: Rule of Law mentioned as part of basic Structure.

◦ Exceptions to Equality:

- For implementing certain DPSPs.
- Immunities available to the President of India and Governors of States, the MPs and MLAs, the foreign diplomats.

ARTICLE 15 - PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH

- Art 15(1) **prohibits the state** from discriminating against any citizen on grounds only of **religion, race, caste, sex, place of birth** or any of them.
- Art 15(2) **prevents private citizens** from discriminating against other citizens on the same grounds.
- **Exceptions:** The state can make special provisions for
 - women and children
 - SCs and STs- **added as Article 15(4) by 1st Constitutional amendment act, 1951.**
 - socially and educationally backward classes of citizens - **added as Article 15(5) by 93rd Constitutional amendment act, 2006.**
 - economically weaker section of citizens-added as **Article 15(6) by 103rd Constitutional amendment act, 2019.**

ARTICLE 16 – EQUALITY OF OPPORTUNITY IN PUBLIC EMPLOYMENT

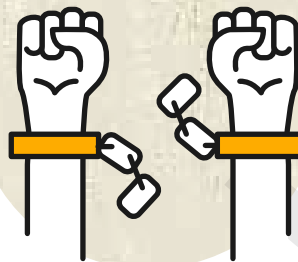
- Prohibits discrimination against citizens in respect of employment under the state on grounds only of **religion, race, caste, sex, descent, place of birth, residence** or any of them.
- **Exceptions:** The state can
 - prescribe residence as a condition for certain employment or appointment in a state/UT.
 - provide for reservation of appointments or posts in favour of any backward class, or any economically weaker sections of citizens.

ARTICLE 17 - ABOLITION OF UNTOUCHABILITY

- Abolishes untouchability & empowers Parliament to make it a punishable offence.
- Parliament made 2 enabling Acts to enforce this provision :
 - The **Protection of Civil Rights Act, 1955** (initially the Untouchabilities (Offences) Act, 1955), and
 - The **Scheduled Castes and Tribes (prevention of atrocities) act, 1989.**
- The right under Article 17 is **available against private individual as well.**

ARTICLE 18 - ABOLITION OF TITLES

- Prohibits state from conferring any title, other than military or academic distinction.
- Places limitation upon any citizen or a non-citizen, who holds any office of profit under the State, in respect of accepting any title, present or emolument from any foreign State, without the consent of the President.



RIGHT TO FREEDOM

Article 19 – Protection of certain rights regarding freedom of speech, etc.

- Guarantees to all citizens the six rights.
- The State can impose 'reasonable' restrictions on the enjoyment of these 6 rights only on the grounds mentioned in the Art 19 itself and not on any other grounds.

RIGHT TO

GROUND FOR REASONABLE RESTRICTION

(a) Freedom of speech and expression

- Freedom of Press
- Propagate one's views
- Rights against tapping telephonic conversation
- Right against bundh
- Right to demonstration but not strike
- Freedom of Silence
- Note:** Right to Strike is a statutory right and not Constitutional right.



Sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.

(b) Assemble peacefully and without arms

- Right to hold public meetings, demonstrations (not right to strike)
- Exercised only on Public land.



Sovereignty and integrity of India and public order.

(c) Form associations or unions or co-operative societies

- Right to form Political parties, companies, organisations.
- Even right to not join any organisation.
- Note:** Right to obtain recognition of an association is not FR.



Sovereignty and integrity of India, public order and morality.

**(d) Move freely throughout the territory of India**

Note: Right to move out of country comes under Article 21.



Interests of general public and the protection of interests of any scheduled tribe (The court held that movement of prostitutes or persons affected by AIDS can be restricted in the interest of general public and public morals).

(e) Reside and settle in any part of the territory of India

Interest of general public and the protection of interests of any scheduled tribes.

(f) Practise any profession, or to carry on any occupation, trade or business

Interest of the general public; the state may also restrict activity which is immoral (E.g. trafficking in women or children) or dangerous (E.g. harmful drugs or explosives, etc.). Also, prescribe professional or technical qualifications.

Note: The State is empowered to carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or otherwise.

ARTICLE 20 – PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES.

It grants protection against arbitrary and excessive punishment to an accused person. It provides that there be:

**No ex-post-facto law:**

- ▶ The limitation on enactment of an ex-post facto law is imposed only on criminal laws and not on civil laws or tax laws.

**No double jeopardy:**

- ▶ Departmental inquiries are however not treated as violation of this principle.

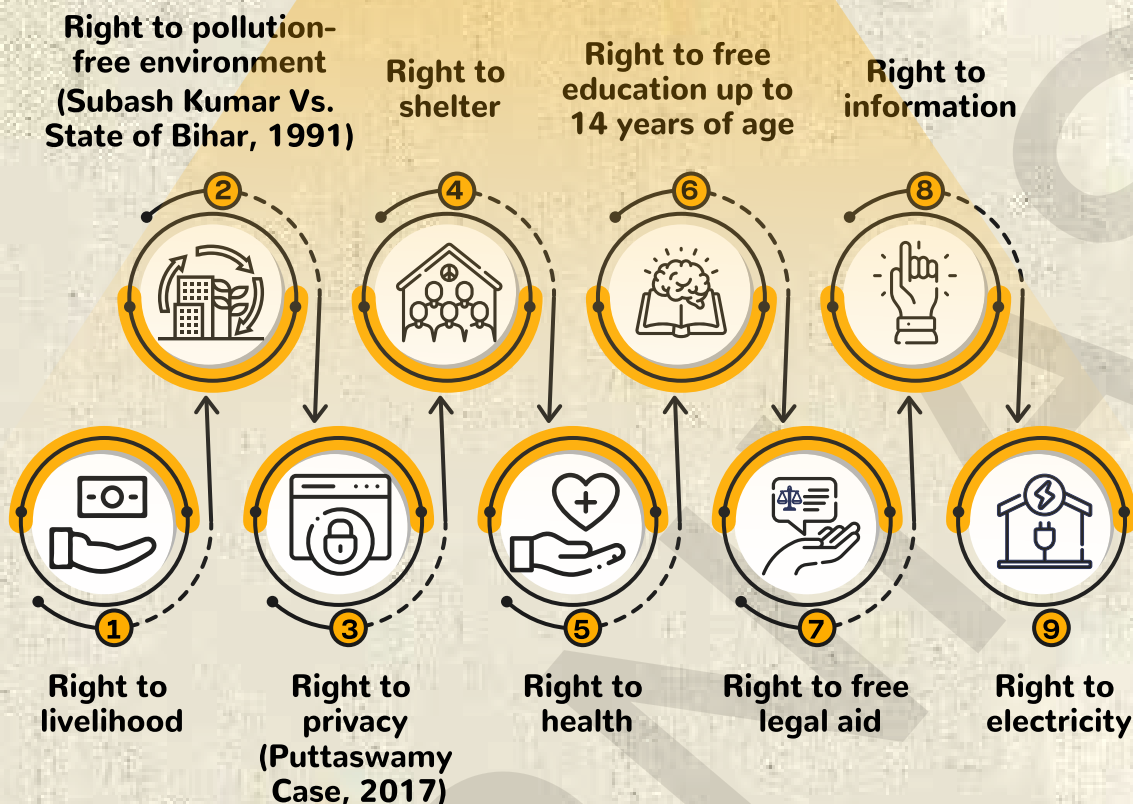
**No self-incrimination:**

- ▶ The protection does not extend to compulsory production of material objects, thumb impression, specimen signature, blood specimens etc.

ARTICLE 21 – PROTECTION OF LIFE AND PERSONAL LIBERTY.

- No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Gopalan case (1950) - SC held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action.
- Menaka case (1978) – SC took a wider interpretation and held that the protection is available not only against arbitrary executive action but also against arbitrary legislative action.
- Broadening the scope of Right to life and personal liberty by SC:

ARTICLE 21



ARTICLE 21A - RIGHT TO EDUCATION.

- It mandates the state to provide free and compulsory education to all children of the age of six to fourteen years.
- Added by the 86th Constitutional Amendment Act of 2002.
- In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009.



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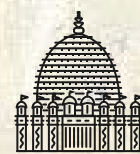
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