

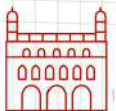
QUICK REVISION MODULE (**UPSC PRELIMS 2021**)

POLITY

FUNDAMENTAL RIGHTS PART - 2



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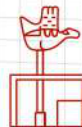
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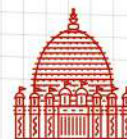
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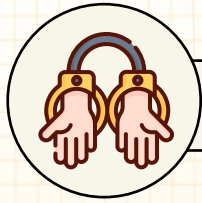


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FUNDAMENTAL RIGHTS



ARTICLE 22 - PROTECTION AGAINST ARREST AND DETENTION

1st Part

The cases of ordinary law

Rights Conferred:

- Right to be informed of the grounds of arrest.
- Right to consult & be defended by a legal practitioner.
- Right to be produced before a magistrate within 24 hours, excluding the journey times.
- Right to be released after 24 hours without the authority of a magistrate.

Applicability of rights

- Rights not available to ENEMY alien.
- Not available to a person arrested or detained under a preventive detention law.

Constitutional division of legislative power w.r.t preventive detention.

2nd Part

The cases of preventive detention law

Rights Conferred:

- Right to be informed of the grounds.
(Exception - Grounds not to be disclosed if that is against public interest).
- Right to make a representation against the detention order.
- Right to be released after three months unless report of advisory board suggests otherwise.

Applicability of rights

- Available to both citizens as well as aliens.

Exclusive authority of parliament.

- Defence.
- Foreign Affairs and.
- Security of India.

Both Parliament and State Legislature.

- Security of a State.
- Maintenance of Public order.
- Maintenance of supplies & services essential to the community.

Right Against Exploitation:



ARTICLE 23

Prohibition of Traffic in Human Beings and forced Labour.



ARTICLE 24

Prohibition of Employment of Children in factories, etc.

Exceptions:

1. Public order, morality, health and other provision relating to fundamental rights.
2. State is permitted to.
 - (a) Regulate or restrict any economic , financial or other secular activity associated with religious practice and,
 - (b) Provide for social welfare and reform or throw open Hindu religious institution of a public character to all classes & sections of Hindus (Sikhs, Jains & Buddhists).



ARTICLE 26 - ENTIRE RELIGIOUS DENOMINATION OR ITS SECTION

Every religious denomination or any of its section shall have the following rights :

- ◇ Right to establish and maintain institutions for religious and charitable purposes.
- ◇ Right to manage its own affairs in matter of religion.
- ◇ Right to own and acquire movable and immovable property.
- ◇ Right to administer such property in accordance with law.

Exception: Public order , morality and health.



ARTICLE 27

- ◇ No person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.
- ◇ The taxes can be used for the promotion or maintenance of all religions and **NOT ANY PARTICULAR RELIGION.**



ARTICLE 28 - FREEDOM FROM ATTENDING RELIGIOUS INSTRUCTION

Types of Educational Institutions	Religious instructions permitted under Article 28 or NOT
1. Institutions wholly maintained by the State.	✗ Completely prohibited.
2. Institutions administered by the State but established under any endowment or trust.	✓ Permitted.
3. Institutions recognised by the State.	Voluntary basis (i.e. consent is required).
4. Institutions receiving aid from the State.	Voluntary basis (i.e. consent is required).

Cultural and Educational rights.

1. Article 29 - Protection of interest of Minorities.
2. Article 30 - Rights of minorities to establish and administer educational institutions.



ARTICLE 29

29 (1) - recognises the right of an Individual to preserve

- Culture
- Language
- Script

29 (2) - prohibits the State from making discrimination while granting access to educational institutions.

- Note**
- 1 - Language is included as a ground of discrimination
 - 2 - Article 29 grants protection to both
 - Linguistic minorities.
 - Religious minorities.
 - 3 - Scope of this article is available to "all sections" including **MAJORITY**.

Applicability To Indian citizens only.



ARTICLE 30

Article 30 grants rights to Minorities (Religious or Linguistic).

Right to establish or administer educational institutions of their choice.

Right to get adequate compensation if property acquired by State.

State shall not discriminate while providing aid to minority institution.

Article -30 confined only to minorities (religious or linguistic) unlike Article 29 which extends to "all sections".

Minority term has not been defined anywhere in the constitution.



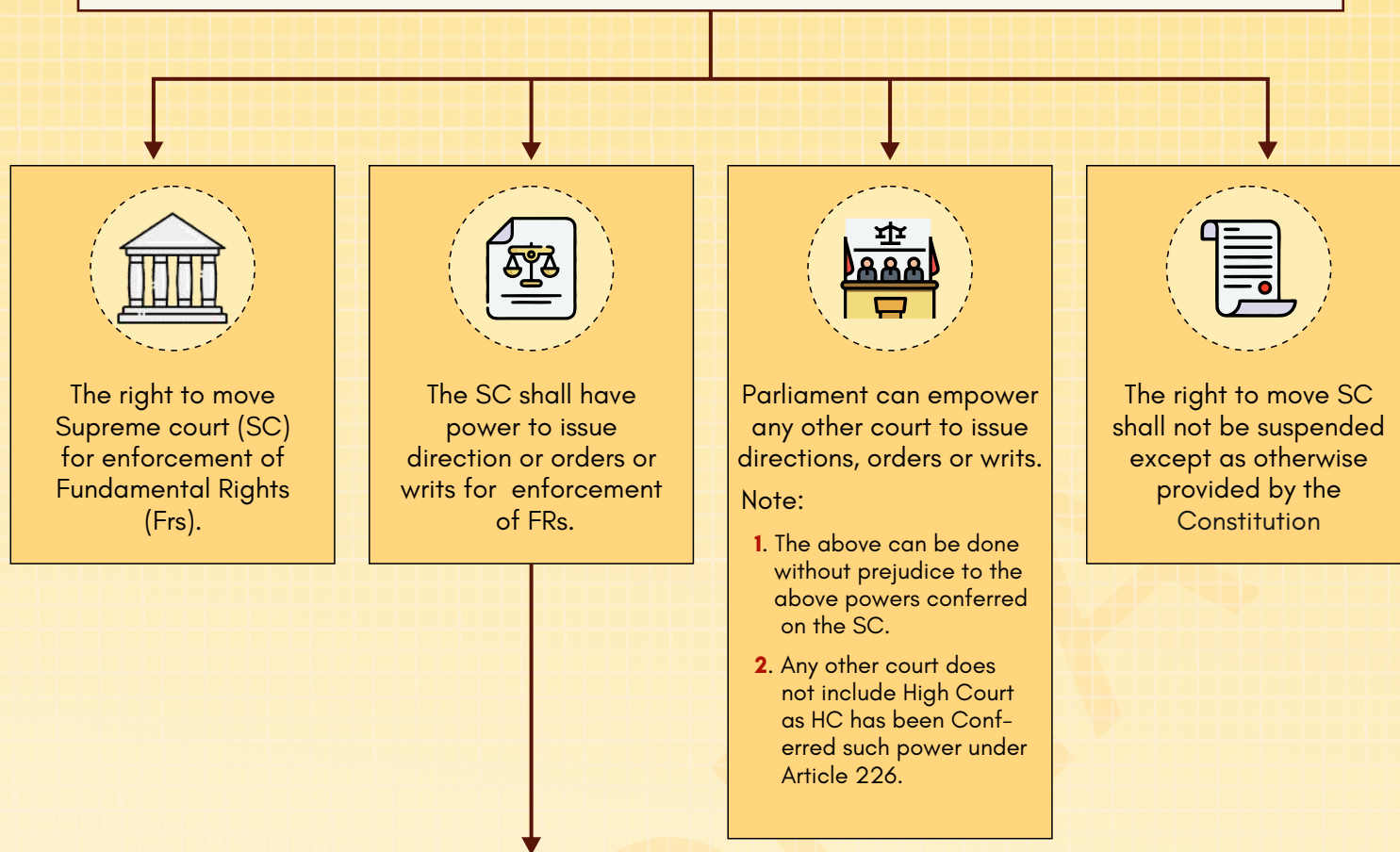
ARTICLE 32 - RIGHT TO CONSTITUTIONAL REMEDIES

Dr-B.R Ambedkar - Heart and Soul of the Constitution.

Supreme Court - A Basic feature of the Constitution
(can not be taken away by way of Constitutional amendment)



It contains the following provisions:



SC & HC can issue various writs under Article 32 & Article 226 respectively.

Habeas Corpus ↓ "To have the body of"	The SC/HC can cause any person who has been detained or imprisoned to be physically brought before the court. The Court then examines the reason for his detention and if there is no legal justification of his detention, he can be set free. Note: It can be issued against both public authorities as well as private individuals.
Mandamus ↓ "We command"	The SC or HC orders to a person, corporation, lower court, public authority or state authority to perform their specific duty. Note: It cannot be issued against a private individual or body; to enforce a contractual obligation; against the President or Governors; and against the Chief Justice of a HC acting in judicial capacity.
Prohibition ↓ "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. Note: It can be issued only against judicial and quasi-judicial authorities.
Certiorari ↓ "To be certified or to be informed"	It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in case. Note: It is not available against legislative bodies and private individuals or bodies.
Quo-Warranto ↓ "By what authority or warrant"	It is issued by a 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. Note: It cannot be issued in cases of ministerial office or private office.



Some important points related to Article 32 or inferred from Article 32

◆ The SC has been constituted as the defender and guarantor of the Fundamental Rights of the citizens.

◆ This power of SC is **Original** & wide but **Not Exclusive**.

→ It is concurrent with the jurisdiction of the High Court under article 226.

→ An aggravated citizen can directly go to the SC & not necessarily by way of appeal.

THE WRIT JURISDICTION OF SC AND HC.

	SC	HC
1. Enforcement of Fundamental Rights.	✓	✓
2. For any other purpose i.e. enforcement of legal rights.	✗	✓
3. Territorial Jurisdiction.	Throughout India.	Within the jurisdiction of the particular HC. Exception - outside jurisdiction only if cause of action arises within its jurisdiction.
4. Exercise of writ power.	Mandatory i.e. can not refuse to exercise.	Discretionary may refuse.



ARTICLE 33

It empowers the parliament to restrict or abrogate the FR's of the members of armed forces, paramilitary forces, police forces, intelligence agencies & analogous forces.



ARTICLE 34

Restriction of Fundamental Rights while Martial law is in force in any area within the territory of India.



ARTICLE 35

Only the parliament can make laws to give effect to certain specified Fundamental rights eg. Prescribing Residence as a condition- (Article 16), Prescribing punishment for untouchability (Article-17).

RIGHTS OUTSIDE PART III

Note: (known as constitutional rights or legal rights or Non fundamental rights).



ARTICLE 265

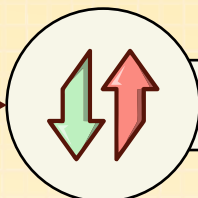
No tax shall be levied or collected except by authority of law.



ARTICLE 300 - A

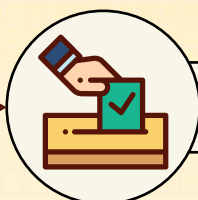
No person shall be deprived of his property save by authority of law.

44th constitutional Amendment Act abolished, the Right to property as a Fundamental Right by repealing Article 19 (1) (f) and Article 31 & Instead inserted Article 300 A- Right to property as a legal right.



ARTICLE 301

Trade, Commerce and intercourse throughout the territory of India shall be free.



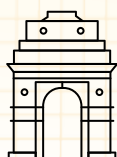
ARTICLE 326

The election to the Lok Sabha and the state Legislative Assembly shall be on the basis of Adult Suffrage.

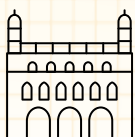
In case of rights outside part III, An aggrieved person can not go to the SC directly. He can go to the High court by an ordinary suit or under Article 226.

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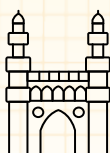
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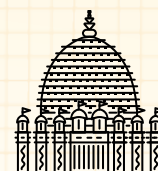
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