

Chapter – 4

Fundamental rights

4.1 Fundamental Rights

- The Fundamental Rights are defined as the basic human rights of all citizens.
- These rights, defined in part III of the Constitution, applied irrespective of race, place of birth, religion, caste, creed, or gender.
- They are enforceable by the courts, subject to specific restrictions as necessary for the protection of public interest
- Originally the constitution provided for seven Fundamental Rights viz .
 - Right to equality (Article 14-18)
 - Right to freedom (Article 19-22)
 - Right against exploitation (Article 23-24)
 - Right to freedom of religion (Articles 25-30)
 - Cultural & educational rights (Articles 29-30)
 - Right to Property (Article 31) Removed from the constitution
 - Right to constitutional remedies (Article 32)
- But, Right to property was removed from the list of the Fundamental Rights by the 44th constitution Amendment Act, 1978 and after amendment, it was made a legal right.
- At present, there are only six Fundamental Rights. They are described below in brief.

4.2 Right to Equality

- Right to Equality is the first fundamental right, which brought the end of untouchability.
- This right stands for the principle of equality before the law as well as social equality and supports the non-discrimination of people on any basis.
- This right also states that every Indian citizen is equal in front of the law and prohibits discrimination on the grounds only of religion, race, caste, sex, place of birth, or any other grounds.
- Article 14 is available to any person including legal persons viz. statutory corporation, companies, etc.
- Article 14 is taken from the concept of equal protection of laws from the Constitution of the USA.
- Under Article 15 (3) & (4), the Government can make special provisions for women and children and for a group of citizens who are economically and socially backward.
- Article 16 says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- Article 18 says that no title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any Foreign State.
- The awards, Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri, called as the National Awards would not amount to the title within the meaning of Article 18.

4.3 Right to Freedom

- The right to freedom includes Articles on freedom of speech, expression, and assembly and is some of the most important of the Fundamental Rights.
- There are six frames under which freedom is made available to Indian citizens under Article 19. It says that all citizens shall have the right:
 - to freedom of speech and expression.
 - to assemble peacefully and without arms.
 - to form associations or unions.
 - to move freely throughout the territory of India.
 - to practice any profession or to carry on any occupation trade or business.
- In addition to the three main rights of speech, expression, and assembly, this fundamental right also provides freedom of association, profession, movement throughout the territory of our country and freedom to reside and settle in any part of India.
- Article 21A provides that that State shall provide free and compulsory education to all children of the age of 6-14 years.
- Article 22 deals with protection against Arrest and detention in certain cases.

4.4 Right against Exploitation

- Article 23 deals with the prohibition of traffic in human beings and forced labor.
- Article 24 deals with the prohibition of employment of children in factories, etc.
- These rights help to prevent exploitation of the weaker section of different sectors by the state, organizations as well as individuals.
- Forced labor, working without labor, human trafficking, child labor, and other illegal and ethically unjust acts are prohibited by this Fundamental Right.
- The Bonded Labour System (Abolition) Act, 1976 was enacted by the Indian parliament in support of this basic right.

4.5 Right to Freedom of Religion

- India is a secular country and the right to freedom of religion to all its citizens ensures that all states treat all the religions neutrally.
- Every Indian citizen has religious freedom and can follow any religion of their choice.
- Right to freedom of religion also promotes a right to preach, practice and propagate any religion of their choice and guarantees freedom of conscience to all Indian citizens.

4.6 Cultural and Educational Rights

- The cultural and educational rights include the right to education and helps to conserve various heritages of minorities and protect them from discrimination
- This fundamental right safeguards the minorities and prohibits discrimination against any citizen for admission into any educational institutions based on religion, race caste or language, subject to reservations in the State.
- This Fundamental Right also allows minorities to set up and administer educational institutions to preserve their heritage.

4.7 Article-32 Right to Constitutional Remedies

- Right to Constitutional Remedies allows Indian citizens to approach the Supreme Court or High Court to protect their fundamental rights.
- A person has the right to move to the Supreme Court or high court if his fundamental right is violated. For this purpose, application in writing known as the writ is made.
- Writ means a legal document in writing.
- Following are types of the writ:
 - Writ of Habeas Corpus
Habeas corpus means 'to have a body.'
 - Writ of habeas corpus is made when a person is detained or arrested without proper justification.
 - Writ of Mandamus
Mandamus means "command or order".
It is commanded by the Supreme Court or High Court to any person, corporation, inferior court, public authority or Government who has to perform statutory duty but who fails to do so.
 - Writ of Prohibition
Here prohibition command is issued by Supreme Court or High Court to an inferior court or Tribunal to refrain from doing something which it is about to do.
It is based on the principle that prevention is better than cure.
 - Writ of Certiorari
Certiorari means "to be certified" or "to be more fully informed of".
It can be issued by the Supreme Court or High Court to the inferior court or any authority, whenever any authority of the court.
 - Writ of Quo Warranto
Quo-warranto means "what is your authority"?
This writ prevents a person from continuing in public office who has wrongfully usurped the office.
The Supreme Court has rights to protect the fundamental rights of citizens even against private bodies, and can also award compensation to the affected individuals.

4.8 Features of Fundamental Rights

- The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land.
- They are 'fundamental' also in the sense that they are most essential for the all-round development (material, moral, intellectual and spiritual) of the individuals.
- The Fundamental Rights are enshrined in Part III of the constitution from Article 12 to 35.
- The Fundamental Rights are meant for promoting the idea of political democracy.
- Some Fundamental Rights are available only to citizens.
- Others are available to all including foreigners or legal persons like corporations or companies, etc.
- They are not absolute but qualified. The State can impose reasonable restrictions on them (balance between individual liberty and social control). Courts can decide whether such restrictions are reasonable or not.

- Most of them are available against the arbitrary action of the State, with a few exceptions like those against the State's action and against the action of private individuals.
- 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 .
- Some of Fundamental Rights are negative in character as they place limitations on the authority of the State, while others are positive as they confer certain privileges on the persons.
- They are justiciable, allowing persons to move the Courts for their enforcement on the violation .
- They are defended and guaranteed by the Supreme Court.
- They are not permanent and so the Parliament can curtail or repeal them but only by a constitutional amendment act without affecting the 'basic structure' of the Constitution.
- 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 the emergency is declared on the grounds of war or external aggression (i.e. external emergency) and not on the ground of armed rebellion (i.e. internal emergency) .
- Their scope of operation is limited by Article 31A (saving of laws providing for the acquisition of estates, etc.), Article 318 (validation of certain acts and regulations included in the 9th schedule) and Article 31C (saving of laws giving effect to certain directive principles).
- Their application to the members of armed forces, para-military forces, police forces, intelligence agencies, and analogous services can be restricted or abrogated by the Parliament -Article 33.
- Their application can be restricted while martial law is in force in any area - Article 34.
- Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them.
- Such a law can be made only by the Parliament and not by State legislatures so that uniformity throughout the country is maintained.