

## POLITICAL SCIENCE NOTES - PART II

### 10. FUNDAMENTAL RIGHTS

#### The Constitution guarantees Six Fundamental Rights to Indian Citizens

ARTICLE 14-18.	Right to Equality
ARTICLE 19-22.	Right to Freedom
ARTICLE. 23-24.	Right against Exploitation
ARTICLE 25-28	Right to Freedom of Religion
ARTICLE. 29-30.	Cultural & Education Rights
ARTICLE 32-35.	Right to Constitutional Remedies

Fundamental Rights are strictly speaking constraints and obligations upon the actions of the State and other individuals.

Fundamental Rights are rights essential for existence and development of an individual. These are fundamental to civilization.

Originally there were 7 rights.

Right to Property was deleted by 44<sup>th</sup> Amendment of the constitution in 1978.

Now Right to Property is a Legal Right and not a Fundamental Right.

#### ***Right to Equality***

##### **Article 14: Equality before law & equal protection of laws**

- Equality before law No person is above law irrespective of his rank or position
- Equal protection of law - Among equals, law should be equal & equally administered. Same law for all.
- Exception: Provided in the Constitution -President, Governor, Ambassadors, Foreign diplomats

##### **Article 15: Right against Discrimination**

- No discrimination on the basis of cast, race, religion, sex or place of birth only
- No discrimination - access of shops, hotels & public places including bathing Ghats
- Empowers state to make special provisions for the advancement of SC & ST (including their admission in educational institutions)
- Empowers state to make special provisions for women & children

##### **Article 16: Equality of opportunity**

- No discrimination against employment under state office on grounds only of religion, sex, caste, descent, place of birth or residence . Equality of opportunity to all citizens for employment under state office

##### **Article 17: Abolition of untouchability**

- Untouchability offence act, 1955 prescribes punishment for practice of untouchability Act was further amended & renamed as Civil Rights Protection Act in 1976.
- Under civil rights protection act laws were made more stringent & scope enlarged to include “Insulting a member of SC on grounds of untouchability, Preaching or justifying untouchability on historical, philosophical or religious grounds”.
- 1 or 2 years imprisonment & disqualification for election to any legislature

### **Article 18: Abolition of titles**

- Prohibits the state to confer titles to anyone citizen or non-citizen Exception : Military & Academic distinction
- Prohibits a citizen of India from accepting any titles from any foreign states
- A foreigner holding any office of profit or trust under the state is not to accept any titles from foreign states without consent of the president
- No person holding any office of profit or trust under the state is to accept any gift, emolument or office from foreign state without consent of the president

### ***Right to Freedom***

### **Article 19: Right to 6 democratic freedoms**

#### **Article 19-1-A: Freedom of speech & expression with no geographical limitations**

- Right to express convictions or ideas by words, printing, picture, banners etc.
- Right to publish & propagate views of others
- Freedom of silence
- Right against tapping of telephonic conversation
- Freedom of press
- Right to know about government activities

#### **Article 19-1-B: Freedom of Assembly**

Guarantees all citizens of India to right to assemble peacefully & without arms but subjected to following restrictions:

- Assembly must be peaceful
- Must be unarmed
- Further reasonable restrictions can be imposed

#### **Article 19-1-C: Freedom to form associations / Unions / Co-operative societies**

- Guarantees all citizens of India (Except Armed forces, Police force, Military etc.) freedom to form associations or unions or co-operative societies but subjected to certain restrictions in interest of sovereignty & integrity of public & state
- Does not confer the right to strike or declare a lock out Means does not confer the right to bargain

#### **Article 19-1-D: Freedom of Movement**

- Right to move freely throughout India (Subjected to certain restrictions)

#### **Article 19-1-E: Freedom of Residence**

- Right to reside or settle in any part of the country temporary or permanent (Subjected to certain restrictions)

#### **Article 19-1-G: Right to Trade & Occupation**

- Right to practice any profession, trade or business subjected to certain restrictions (Professions requiring specific professional & technical qualifications)

### **Article 20: Protection in respect of conviction for offences**

- No person shall be convicted of any offence except for “violation of law in force at the time of commission of act charged as offence, nor to be subjected to a penalty greater than that which might have been inflicted under law in force, at the time of commission of offence”

### **Double Jeopardy**

- No person shall be prosecuted & punished for the same offence more than once but only in respect of punishment inflicted by court of law or judicial tribunal
- Does not immunize person from proceedings not before court of law means can be punished under departmental proceedings for the same offence & then may be prosecuted in court of law, can also be inflicted for contempt of court along with criminal proceedings

No person accused of any offence shall be compelled to be witness against himself

### **Article 21: Protection of Life & Personal Liberty**

No person shall be deprived of his life/personal liberty except acc. to procedure made by law

Article 21 put limitation upon powers of executive as well as legislature & conferred to both citizen & non-citizen.

### **Article 21 – A: Right to education (Added by 86th amendment) Absolute right**

- State shall pass free & compulsory education to all children of age 6 to 14 years
- Only elementary education not higher education

### **Article 22: Protection against arrest & detention**

- No person who is arrested shall be detained in custody without being informed on which grounds
- Person arrested shall be brought before magistrate within 24 hours of arrest
- Without authority of magistrate no person shall be detained in custody more than said 24 hours
- Exception: Alien enemy & person arrested under preventive detention

### **Preventive detention (Detention without trial)**

- Not to detain a person for what he has done but to intercept him before he does it & prevent him from doing it
- No offence is proved nor a charge is formulated but such a detention is purely on the basis of suspicion or reasonable probability of impending commission
- Max detention can be only for 3 months; for more than 3 months it must obtain a report from advisory board ( Advisory board shall examine the statements & papers from government & accused and will formulate whether detention is justified or not
- Accused must have the earliest opportunity of making representation against detention order
- Accused must be told grounds for his arrest except the facts which are against public interest to disclose

### ***Right against Exploitation***

#### **Article 23: Prohibition of human trafficking & forced labour**

Traffic in human beings and 'Begar' (Working for some body and not getting paid for the work) and other forms of forced labour are prohibited.

Traffic in human beings means selling and buying of human beings as material good. Trafficking of young girls and boys is still continuing as an illegal trade.

#### **Article 24: Prohibition of employment of children in factories, mines or any other hazardous environment under 14 years of age**

## ***Right to freedom of Religion***

The Constitution declares India as a 'secular state'.

### **Article 25: Freedom of conscience & free propagation, practice & profession of religion**

All persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion freely.

Further state is empowered by law to regulate or restrict any economic, financial, political or other secular activity which may be associated with religion practice. The State can also impose restrictions on this right on the grounds of public order, morality and health.

### **Article 26: Freedom to manage religious affairs**

Subjects to public order, morality & health, every religious denomination shall have the following rights:

- To establish & maintain institutions for religious & charitable purposes
- To manage its own affairs in matters of religion
- To own & acquire movable or immovable property
- To administer such property in accordance with the law

(Limited right Subjected to regulatory power of the state)

### **Article 27: Freedom from taxes for promotion of any particular religion**

No person shall be compelled to pay any tax, the proceeds of which are specifically used in payment of expenses the incurred on the promotion or maintenance of any particular religion or religious sect.

### **Article 28: Freedom from attending religious instructions**

- No religious instructions to be imparted in institutions wholly maintained by the state
- No restrictions on religious instructions in institutions established under any trust or endowment
- Religious instructions may be imparted in institutions recognized by the state or receiving funds aid from the state but an individual is not liable to attend such forcefully.

## ***Cultural & Educational Rights***

India is the largest democracy in the world. We have diversity in culture, languages and religions. Though the democracy is a rule of the majority but the minorities are also equally important for success of Democracy. Therefore protection to minorities becomes essential so that minorities feel safe under the majority rule.

### **Article 29: Protection of interest of minorities**

- Minorities & everyone have right to conserve his culture, script & language and can establish educational institutions for the same
- No citizen can be denied admission to any educational institution maintained by the state or receiving aid out of state fund on grounds of religion, race, cast or language only (No place)

### **Article 30: Right of minorities to establish & administer educational institutions**

- All minorities whether based on religion or language shall have the right to establish & administer educational institutions of their choice
- States in granting aid to educational institutions shall not discriminate against any educational institution on grounds of management under minority (based on religion or language)

### ***Right to constitutional Remedies***

Since Fundamental rights are justiciable, they are just like guarantees. These rights are enforceable. Even an individual has the right to seek the help from courts for enforcing of the rights granted under the Constitution of India.

- Supreme Court is a guarantor & protector of all Fundamental Rights
- Guarantees an individual a right to move to supreme court by appropriate proceedings for enforcement of FRs conferred under part 3 of the constitution
- SC is endowed with power to issue directions, orders or writs, whichever is appropriate for enforcement of any of the rights conferred by part 3 of the constitution

### ***Fundamental Rights with respect to - Armed Forces***

- Under article 33, Parliament by law can restrict Fundamental Rights available to member of armed forces or forces charged with maintenance of public order to ensure they discharge their duty properly in the interest of Nation.
- Any law made under article 33 by Parliament cannot be challenged in court of law

### ***Fundamental Rights & Martial Law***

- Article 34 put restrictions on Fundamental Rights when martial law is in force
- Article 19 is automatically gets suspended
- Judgement passed by highest officer as validated by martial law is supreme

### ***Right to Education (RTE)***

The Right to Education is added by introducing a new Article 21A in the Chapter on Fundamental Rights in 2002 by the 86<sup>th</sup> Constitutional Amendment.

It was a major step towards making India Literate.

But this right could not be enforced until 2009. Parliament passed the Right to Education Act, 2009. In the Act, it is ensured that every child who is between 6-14 years of age and is out of the school in India, goes to school and receives quality education which is his/her Fundamental Right.

## **11. FUNDAMENTAL DUTIES**

**Fundamental Duties were added to Indian Constitution by 42<sup>nd</sup> amendment in 1976 on recommendations of Swarn Singh committee.**

Ten Fundamental Duties were added in Part-IV of the Constitution under Article 51-A in the year 1976 through the 42<sup>nd</sup> Constitutional Amendment.

11<sup>th</sup> Fundamental Duty was added in 2002

Fundamental Duties are basically statutory duties & are enforceable by law (Means violation of these duties can attract punishment as prescribed by legislature)

- a)** To abide by the Constitution and respect the National Flag and the National Anthem;
- b)** to cherish and follow the noble ideals which inspired our national struggle for freedom;
- c)** to uphold and protect the sovereignty, unity and integrity of India;
- d)** to defend the country and render national service when called upon to do so;
- e)** to promote harmony and the spirit of common brotherhood amongst all people of India, transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
- f)** to value and preserve the rich heritage of our composite culture;
- g)** to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures;
- h)** to develop the scientific temper, humanism and the spirit of inquiry and reform;
- i)** to safeguard public property and to abjure violence;
- j)** to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.“
- k)** Every citizen ‘who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years’ was added by 86<sup>th</sup> Constitutional Amendment in 2002.

**Note:**

Proper upbringing of the children and maintenance of the parents in their old age were included in the list of Fundamental Duties in the Soviet Constitution in 1977.

To educate the children, not to interfere with public welfare, to pay the taxes and the right to work have been included in the Constitution of Japan.

\*\*\*\*\*