

- ① Right to Equality - ଅଧିକାରୀ ଅଧିକାରୀ (14-18) E+ ⑤
- ② Right to Freedom - ସ୍ଵାଧୀନକୁଳ ଅଧିକାରୀ (19-22) F+ ④
- ③ Right Against Exploitation - ଶୋଷଣକୁଳ ଅଧିକାରୀ (23-34) E- ②
- ④ Right to freedom of Religion - ଧୟେ ଅଧିକାରୀ (25-28) R+ ④
- ⑤ Cultural and Educational Rights - କୌଣସି ଓ ଶାସ୍ତ୍ରୀୟ ଅଧିକାରୀ (29-30) E+ ②
- ⑥ Right to constitutional Remedies - ପରିଚାଲନା ଅଧିକାରୀ (32) ①

Fundamental Rights

The Nehru Report for the first time made the demand for Fundamental Rights in India. The demand for Fundamental Rights was rejected by the Simon Commission and the joint Parliamentary Committee on whose recommendations the Government of India Act, 1935 was formed.

Classification of Fundamental Rights

The Constitution itself classifies the Fundamental Rights under six groups as follows

- (i) Right to Equality
- (ii) Right to Freedom
- (iii) Right Against Exploitation
- (iv) Right to Freedom of Religion
- (v) Cultural and Educational Rights
- (vi) Right to Constitutional Remedies

Part III
Art 12 - 35

Classification on the basis of persons to whom they are available

(i) Some of the Fundamental Rights are granted only to citizens. These are

- Protection from discrimination on grounds only of religion, race, caste, sex or place of birth (Article 15).
- Equality of Opportunity in matters of public employment (Article 16).
- Freedom of Speech, assembly association, movement, residence and profession (Article 19).
- Cultural and Educational Rights of Minorities (Article 30).

(ii) Some Fundamental Rights, on the other hand, are available to any person on the Territory of Indian Citizen or Foreigner. These are

- Equality before the law and equal protection of the laws (Article 14).
- Protection in respect of conviction against exposed facto laws, double punishment and self-incrimination (Article 20).
- Protection of life and personal liberty against action without authority of law, (Article 21).
- Right against Exploitation (Article 23).
- Freedom of Religion (Article 25).
- Freedom as to payment of taxes for the promotion of any particular religion (Article 27).
- Freedom to attendance at religious instruction or worship in state educational institutions (Article 28).

(iii) Some of the Fundamental Rights are negatively worded to imply prohibitions to the state. According to Article 14, "The state shall not deny to any person equality before the Law. Similar are the provisions of Article 15 (1), 16(2), 18(1), 20, 22(1), 28(1). Some Fundamental Rights positively confer some benefits upon the individuals the right to religious freedom under Article 25 and the Cultural and Educational Rights under Article 29(1), 30(1).

Right to Equality (Articles 14-18)

Article 14

- The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- The President or the Governor of a state shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.

• No criminal proceeding shall be instituted or continued against the President or a Governor in any court during his term of office.

- No civil proceeding in which relief is claimed against the President or the Governor of a state shall be instituted in any court. This is applicable during his term of office and until the expiration of two months next after notice in writing has been delivered to the President or Governor in which the name and description of party by whom such proceedings are to be instituted, are given.
- The above immunities, however shall not bar
 - impeachment proceeding against the President.
 - suits or other appropriate proceeding against the Government or the Government of a State.
- Exceptions will be acknowledged in favour of foreign sovereigns and ambassadors. To ensure equal treatment in similar circumstances both in the privileges, conferred and in the liabilities imposed by the laws, Legislature would be entitled to make a different treatment on the basis of reasonable classification.

Article 15

- The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to
 - access to shops, public restaurants, hotels and places of public entertainment; or
 - the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.
- Nothing in this article shall prevent the state from making any special provision for women and children.
- Nothing in this article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- State can make special provision by law for the advancement of socially and educationally backward class of citizens including SCs and STs for admission to educational institutions including private institutions whether aided or unaided other than minority educational institutions.
- The clause (1) of the Article levelled prohibition against state action while the prohibition in clause (2) is levelled against individuals as well.

Special provision
can be made
for women
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- The word 'Only' in clause (1) signify that if there is any other ground or consideration for the differential treatment besides those prohibited by this article, the discrimination will not be unconstitutional.
- The public places specified in clause (2) signify that the protection is available even against discriminatory acts by private individuals.
- However, the prohibitions in clauses (1) and (2) do not prevent the state from making special provisions for women and children and for the advancement of any socially and educationally backward classes of citizens or for the Schedule castes and Scheduled tribes.
- Article 15(4) envisages the policy of compensatory or protective discrimination but it should be reasonable and consistent with the ultimate public interest.

Article 16

- There shall be equality of opportunity for all citizens in matters related to employment or appointment to any office under the state.
- No citizen shall, on the grounds of religion, race, caste, sex, descent place of birth or any of them, be eligible for any office under the state.
- Residence within the state may be laid down by Parliament as a condition for particular classes of employment or appointment under any state or other local authority.
- The state may reserve any post or appointment in favour of any backward class of citizens, who in the opinion of the state, are not adequately represented in the service under that state.
- Office connected with religious or denomination institutions may be reserved for members professing the particular religion or belonging to the particular denomination to which the institution relates.
- Article 16 seeks to provide equality of opportunity in matters of government employment. The equality of opportunity is to be secured as between the members of the same class of employees and not between that of separate independent classes.
- It bars discrimination not only in the matter of initial appointment but also of promotion and termination of the service itself as 'employment' includes promotion.

Article 17

- Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability, shall be an offence punishable in accordance with law.

- Parliament is authorised to make a law prescribing the punishment for this offence and in exercise of this power, parliament has enacted the untouchability (Offences) Act, 1955, which has been amended and renamed in 1976, as the Protection of Civil Rights Act, 1955.
- Certain acts are identified as offences according to the act, when done on the grounds of 'untouchability' and prescribes the punishments therefore. *These are*
 - Refusing admission to any person to public institutions such as hospital, dispensary, educational institutions.
 - Preventing any person from worshipping or offering prayers in any place of public worship;
 - Subjecting any person to any disability with regard to access to any shop, public restaurant, hotel or public entertainment or with required to the use of any reservoir, tap or other source of water, road, cremation ground or any other place where 'services are rendered to the public.
- After amendment being enlarged in 1976, *the following have been included as the offence of practicing untouchability*
 - Insulting a member of Scheduled Caste on the ground of untouchability;
 - Preaching untouchability directly or indirectly.
 - Instilling untouchability on historical philosophical or religious grounds or on the ground of tradition of the caste system.
 - On violation of the act, following sanction may be imposed.
 - In the case of subsequent convictions, the punishment may range from one to two years' imprisonment.
 - A person convicted of the offence of untouchability shall be disqualified for election to the Union or a State Legislature.

Article 18

- Titles not to be used as prefixes and suffixes to the name, to prevent social discrimination. *However, certain exceptions are allowed in this regard*
 - The ban operates only against the state. It does not prevent other public institutions, such as universities, to confer titles or honours by way of honouring their leaders or men of merit.
 - The state is not debarred from awarding military or academic distinctions, even though they may be used as titles.
 - The state is not prevented from conferring any distinction or award, e.g., social service, which cannot be used as a title i.e., as an appendage to one's name.

Right to Freedom (Article 19-22)

Article 19

All citizens shall have the right

- To freedom of speech and expression.
- To assemble peaceably and without arms.
- To form association or unions or cooperative societies.
- To move freely throughout the territory of India.
- To reside and settle in any part of the territory of India.
- To practice any profession or to carry on any occupation, trade or business.

These freedoms are guaranteed subject to some permissible reasonable restrictions to be imposed by the state. The provision of permissible restrictions has been taken from the US Constitution. The state here mean not only the legislative authorities of the union and the statutory, but also other local or statutory authorities e.g., municipalities, local boards etc, within the territory of India or under the control of the Government of India.

However, a law which may be made by the state under any of the specified grounds such as public order, deformation, contempt of court cannot be challenged as unconstitutional or inconsistent with the guarantee of freedom of expression except where the restrictions imposed by the law can be held to be unreasonable by a court of law.

Thus, the Supreme Court in *Gopalan vs State of Madras* decided that limitations imposed on the freedom guaranteed by Article 19 strike a balance between individual rights and social control, but restrictions shall not hinder public welfare.

Article 20

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

No person shall be prosecuted and punished for the same offence more than once.

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

The clause (1) of Article 20, which guarantees against ex post facto legislation, is a limitation upon the law-making power of the legislatures in India. Though the legislature can act on prospective as well as retrospective laws, but the legislature shall not be competent to make a criminal law retrospective i.e., the legislature declares an act to be an offence or provides, penalty for an offence. It cannot make the law retrospective, so as to prejudicially affect the persons who have committed such acts prior to the enactment of that law.

- The clause (2) prohibits double jeopardy. The concept of double jeopardy has been taken from the US Constitution. The Supreme Court of India in *Venkataraman vs Union of India* laid down that Article 20 (2) refers to judicial punishment and gives immunity to a person from being prosecuted and punished for the same offence. It does not give immunity from proceeding other than judicial i.e., a Government employee may be subjected to departmental proceeding for the same offence.
- With regard to clause (3) of Article 20, which provides immunity from self incrimination, the Supreme Court interpret the word 'witness' to comprise both oral and documentary evidence, so that person cannot be compelled to furnish any kind of evidence, which is reasonably likely to support a prosecution against the accused.

The immunity is provided only in case of criminal proceedings. No immunity may be claimed against sound general inquiry or investigation on the grounds that the statement given by the person may at some later stage lead to an accusation.

Article 21

- No person shall be deprived of his life or personal liberty except according to the procedure established by law.
- The theory of the procedure established by law was adopted from the English Constitution. To this the Supreme Court has however infused judicial review by holding that 'procedure' inherently meant a fair procedure, so that Article 21 has been turned into a safeguard against arbitrary legislation.
- The Supreme Court of India in *Menka Gandhi vs Union of India* pointed out that personal liberty in Article 21 is of the widest amplitude, covering a variety of rights of which same have been included in Article 19 and given additional protection.

There may be some overlapping between Article 19 and 21. The test of reasonableness justifies whether, the law deprives a person of his liberty. It follows that such law shall be invalid, if it violates the principles of natural justice.

C Right to Education (86th Amendment Act)

It was introduced by the Constitutional Amendment Act 2002. It applies to all individuals. Under the article 21 A the right to primary education or a fundamental right has been provided for all in the age group of 6-14 years. The state shall provide free and compulsory education for all children of age group 6-14 years or may be provided by law. The state has the obligation to provide free education and parents may be compelled to provide education upto the age of 14 years.

Article 22

- No person who is arrested shall be detained in custody without being informed as soon as may be, on the grounds for such arrest.
- No such person shall be denied the right to consult and to be defended by, a legal practitioner of his choice.
- Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
- However, these safeguards are not however available to*
 - an enemy alien
 - A person arrested or detained under a law providing for preventive detention.

The legislature is authorised by the Constitution to make laws providing for preventive detention for reasons connected with the security of a state, the maintenance of public order or the maintenance of supplies and service essential to the community or for reasons connected with Defence, Foreign Affairs or the Security of India.

The Constitution, however imposes certain safeguards against abuse of the above power in Articles 22 (4)-(7). Under the Constitution, preventive detention can subsist only so long as the legislature permits.

Right Against Exploitation (Article 23-24)**Article 23**

- Traffic in human beings, begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- Nothing in this article shall prevent the state from imposing compulsory service for public purposes and in imposing such service the state shall not make any discrimination on grounds of religion, race, castes or class or any of them.

Article 24

- No child below the age of 14 years, shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- The prohibition imposed by this Article is absolute and does not admit of any exception for the employment of a child in a factory, mine or in any other hazardous employment.

Right to Freedom of Religion (Articles 25-28)**Article 25**

- All persons are equally entitled to freedom of conscience and free profession, practice and propagate religion. However, these rights are subject to public order, morality, health and other provisions relating to Fundamental Rights.
- Further, the state is permitted to*
 - regulate or restrict any economic, financial, political or other secular activity associated with religious practice.
 - provide for social welfare and reform or throw open Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 26

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 matters of religion.
- Right to own and acquire movable and immovable property.
- Right to administer such property in accordance with law.

Article 27

Freedom from taxation for the promotion of a religion, that means the state should not spend the Public money collected by way of tax for the promotion or maintenance of any particular religion. In other words, the taxes can be used for the promotion or maintenance of all religions.

Article 28

Freedom from attending religious instruction. Article 28 totally ban religious instructions in state owned educational institutions. In other denominational institutions, it is not totally prohibited, but it must not be imposed upon people of other religions without their consent.

Cultural and Educational Rights

(Article 29-30)

Article 29

Article 29 (1) Any section of the citizens residency in any part of India having a distinct language, script or culture of its own shall have the right to conserve the same.

Article 29 (2) It notes that no citizen shall be denied admission into any educational institution maintained by state or receiving aid from state on ground only of race, religion, caste, language or any of them.

Article 30

- All minorities shall have the right to establish and administer educational institutions of their choice and the compensation amount fixed by the state for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them.
- In granting aid, the state shall not discriminate against any educational institution managed by a minority.
- Protection of this Article is confined only to minorities (religious or linguistic) and does not extend to any section of citizens.

Right to Constitutional Remedies

Article 32

The Constitution of India empowers the Judiciary to safeguard Fundamental Rights under Article 32, which itself is a Fundamental Right. Article 32 is aptly regarded by Dr Ambedkar as the cornerstone of the entire edifice set up by the Constitution.

The sole objective of Article 32 is the enforcement of the Fundamental Rights guaranteed by the Constitution. The writs to be resorted under Article 32 are Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto. The concept of issuing writs is taken from the UK.

Limitations on Enforcement of Fundamental Rights (Article 33 and 34)

Parliament shall have the power to modify the application of the Fundamental Rights to the members of the armed forces, police forces or intelligence organisations, so as to ensure proper discharge of their duties and maintenance of discipline amongst them.

During the operation of martial law in any area, Parliament may by law identify any person in the service of the union or a state for any act done by him in connection with the maintenance or restoration of order in such area to validate any sentence passed or act done, while the martial law was in force.

Fundamental Rights

Right to Equality	Right to Freedom	Right against Exploitation	Right to Freedom of Religion	Cultural and Educational Rights	Right to Constitutional Remedies
Equality before law and equal protection before law (Article 14)	Freedom of speech and expression assembly; association, movement, residence and settlement profession (Article 19)	Prohibition of trafficking in human beings and forced labour (Article 23)	Freedom of conscience and free profession (Article 25)	Protection of language script or culture of minorities (Article 29)	Remedies for enforcement of the Fundamental Rights through Writs, Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto (Article 32)
Prohibition of discrimination on grounds of religion etc (Article 15)	Protection in respect of conviction for offences (Article 20)	Prohibition of employment of children in hazardous employment (Article 24)	Freedom to manage religious affairs (Article 26)	Right of minorities to establish and administer educational institutions (Article 30)	
Equality of opportunity in employment (Article 16)	Protection of life and personal liberty (Article 21) Right to elementary education (Article 21 A)		Freedom as to payment of taxes for promotion of any particular religion (Article 27)		
Abolition of untouchability (Article 17)	Protection against arrest and detention in certain cases (Article 22)		Freedom as to attendance at religious instruction in certain educational institutions (Article 28)		
Abolition of titles (Article 18)					

Part III of Constitution // Enforceable by Courts

II—SPECIFIC FUNDAMENTAL RIGHTS (Under the Indian Constitution)

(The fundamental rights, as originally enshrined in the Indian constitution, were grouped under seven broad heads : (i) Right to Equality, (ii) Right to Freedom, (iii) Right against Exploitation, (iv) Right of Religion, (v) Cultural and Educational Rights, (vi) Right to Property, (vii) Right to Constitutional Remedies. The 44th Amendment has excluded the 'Right to Property' from the chapter on Fundamental Rights. It, however, remains a constitutional right.)

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I. RIGHT TO EQUALITY (Arts. 14–18)

The right to equality is a very significant right. It is fundamental to any state organisation and is the bedrock of democracy. Without this right, all other rights are shorn and meaningless. The Indian constitution has assured this right in Arts. 14 to 18 and has also put it forth as the first right to be guaranteed by the state.

Art. 14 guarantees equality before the law to all persons, either and non-citizens. It lays down : "The State shall not deny to any person's equality before the law." 'Equality before the law' is an expression of the English common law, while 'Equal protection of the laws' is an expression of the American constitution. They mean that : (i) in its dealing with the citizens, the state shall not discriminate between different persons similarly situated; (ii) among equals the law should be equal and should be equally administered; the like should be equal without distinction of religion, wealth, social status or political influence; (iii) there should be equal subjection of all persons to the ordinary law of the land administered by the ordinary courts.

(It would not be out of place to add that the right to equality does not prohibit the state from making discrimination. Nor does it prohibit the state from making discrimination in any way, reasonable classification made by the state violate, in any way, the right to equality. For example, a law, which discriminates between the rich and the poor in matter of taxation, does not violate the right to equality. Similarly, the exclusion of the aliens and infants from the list of voters is not inconsistent with this right.)

Another thing to be noted in the context this right is that Art. 14 prevents discrimination only by the state and not by the individual. If the owner of a private business concern discriminates, the selection of his employees or treats his employees unequally, the person discriminated against has no judicial remedy. There are, however, a few exceptions to the principle of equality before the law. Art. 361 lays down that the President and the Governors of India are exempted from any criminal proceedings during the tenure of their offices.

office.) Under international law, foreign sovereigns and ambassadors enjoy full immunity from any process. This immunity extends also to enemy aliens for acts of war. The Supreme Court judgement in *Maneka Gandhi case* has broadened the scope of Article 14. It has held that any administrative and executive action would be tested on the touchstone, namely whether 'it was just, fair and reasonable' in a given case, or whether 'it was capricious or arbitrary'.

(Article 15 prohibits discrimination on grounds of religion, race, caste, sex, place of birth or any of them. It lays down that no citizen shall on the same grounds be denied access to shops, hotels, public restaurants or places of public entertainment or the use of wells, tanks, bawali ghatas, roads, places of public resort, maintained wholly or partly by the state funds or dedicated to the use of general public. Further, 'nothing' in the article shall prevent the state from making any special provisions for women and children even though discrimination on grounds of sex is prohibited. Clause (4), inserted into this article by the Constitution (First Amendment) Act, 1951, empowers the state to make special provisions for the advancement of socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes.)

Art. 15 prohibits discrimination only on certain grounds, namely religion, race, caste, sex etc. There is no mention of grounds such as residence, language, health, morality, indecency, colour etc. Obviously, it means that the discrimination on any of the grounds mentioned in Art. 15, cannot be challenged in a court of law if it is not inconsistent with the other provisions of the constitution. As such, the manager of a hotel cannot be held guilty if he refuses admission to a person on the ground that he or she is suffering from an infectious disease. However, if he refuses to admit a citizen on the ground that his or her colour is black, he will be guilty of offending against Art. 15, because the differentiation made by him is invidious in character.)

(Art. 16 provides equality of opportunity for all citizens in matters of employment or appointment to any office under the state. To that end, it states that 'no citizen shall, on grounds only of religion, race, caste, descent, place of birth, residence or any of them, be ineligible to any post or office under the state, or discriminated against, in respect of any employment or occupation'. However, this article does not debar the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the state, is inadequately represented in the services under the state. The state can also make residence in a particular region, a necessary qualification for public employment. Positive discrimination is a legitimate means of promoting equality of opportunity. But excessive reservations in favour of backward classes is hardly desirable. It is not appreciated even by the Supreme Court has been unsparingly critical in

cases where the governments made rules which in effect amounted to denial of justice to other classes.

(Ironically, despite the constitutional guarantees of equal right and privileges in existence over the past three decades, discrimination against women in matters of marriage, divorce, inheritance, property, ownership and child custody is still prevalent at large.)

The reason being that Indians in their family life are governed by personal and religious laws based on ancient principles which are not only outmoded but also positively antithetical to modern ideas of progress. The essential feature common in all personal laws, be it Hindu, Muslim and Christian, is the assertion of male domination over woman.⁸

Art. 17 abolishes unmerited punishment under the law. It is true that it does not form an offence punishable for any one. Yet it was hailed as a great create any special privilege for one-sixth of the Indian fundamental right, a charter of deliverance to one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace! In their effort to eradicate the evil of untouchability, the Congress government supplemented this constitutional provision with legislative enactments. It passed "The Provincial Offences Act in 1925, to be amended into 'The Prohibition of Civil Rights Act' in 1976." The Janata government proclaimed to eradicate untouchability within five years. It also appointed a commission to provide ready redress to the aggrieved untouchables. The problem of untouchables has changed during

The nature of the problem of untouchability has practically disappeared in trains, buses, offices, schools, factories and other such public places. The traditional rigidity with which it was practised in day-to-day life has declined considerably not only in towns and cities but even in many villages. According to A.M. Shah, "A major reason behind the growing resentment of the urban youth towards the scheduled castes is the fact that these young people do not see the scheduled castes as a threat to their special privileges for the scheduled castes and do not practice untouchability and do not practice untouchability from them."¹⁰

Art. 18 prohibits the state from conferring any title except military or academic distinction. It also forbids Indian citizens from accepting any title from a foreign state. Under clause (3) of this Article, a non-citizen of India, who holds an office of profit or trust under the state, is also prohibited from accepting without the consent of the President any title from any foreign state. This ban against acceptance of titles from a foreign state is extended to the receipt of present or emoluments etc. also. The Constitution of India, however, does not prohibit recognition of service rendered by the citizens of the uplift of the society. It also allows honouring of men in consideration for acts of bravery. As a result, such distinctions or awards

Economy (1947-57), p. 356.

Mahavir Chakra, Param Vir Chakra, Bharat Ratna, Padma Shri
And the title are allowed to be conferred on citizens. These distinctions do not carry with them any special privilege for those on whom they are conferred. They are mere recognition to encourage people to make their maximum contribution towards the betterment of their society. But the way, in which governments (both central and state) pick up persons of their choice for these awards, does not suggest that the criterion adopted by them is consistent with the spirit of the constitution.

II. RIGHT TO FREEDOM (A)

(Arts. 19 to 22 of the Indian constitution guarantee to the citizens of India a set of rights collectively described as the 'right to freedom'. Taken together, these four articles form a charter of liberties which provides the backbone of the chapter on fundamental rights.

Article 19, which may aptly be called the key-article, guarantees six freedoms, viz., freedom of speech and expression; freedom to assemble peaceably and without arms; freedom to form associations or unions; freedom to move freely throughout the territory of India; freedom to reside and settle in any part of the territory of India; freedom to practise any profession or to carry on any occupation, trade or business. The freedom of expression includes the freedom of Press.

(The right to freedom of speech and expression, Art. 19 (i), is a valued right of the citizens and is an absolute necessity in a free society. The scope of this right was exceptionally wide under the original provision of the constitution. It was interpreted by the Supreme Court in *Romesh Thapar Vs. State of Madras* that even intent to individual murder or promoting disaffection among classes could not be restricted under the permissive limits set in the article. The High Courts also pointed out this drawback in their decisions. Hence the scope of this right was considerably reduced by the Constitution (First Amendment) Act, 1951. Now the state can invoke any law imposing reasonable restrictions on the exercise of this right in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.) Highly critical of these restrictions, Mr. Ram Gopal wrote a few years ago : 'The conditions appended to the article virtually negative them. The phrase "reasonable restriction", conveys no clear meaning ; "public order" is rather a vague and wide term ; "friendly relations" with foreign states is also not comprehensible ; "incitement to an offence" is a notorious sh

8. Francine R. Frankel : India's Children

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The Bombay High Court in a recent judgement has declared that freedom of expression is a part of the basic structure of the Indian institution and, therefore, absolutely inviolate and beyond executive and even legislative assault. This is, in a way, an historic judgement though the *Keshavananda Bharati* decision had held that the basic structure or basic features of the constitution could not be tampered with, there had been no clear judicial characterisation of what constitutes the totality of the basic structure. There had been only illustrative examples. It was for the first time that in a question directly rising on the subject, a court declared that freedom of expression and freedom of press are a part of the basic structure of the institution.¹²

Art. 19 (2) recognises the right to assembly. It is, however, subject to two limitations: First, it is to be exercised peaceably and, secondly, without arms. Art. 19 (3) guarantees freedom to form associations or unions. This right, like others of its kind, is also subject to such restrictions as are necessary in the interest of sovereignty and integrity of India or public order and morality. The right to form an association or a union is, however, not available to every citizen in the same measure. Being a government servant, a member of the public service cannot claim the right to the extent that a private citizen can.

Under the sub-clause (4) of Art. 19, all citizens have the right (i) to move freely throughout the territory of India, (ii) to reside and settle in any part of it, subject to the power of the state to make any law imposing reasonable restrictions in the interest of general public or for the protection of the interests of the scheduled tribes. The freedom to practise any profession or to carry on any occupation, trade or business is guaranteed under sub-clause (7) of Art. (19). This right is also subject to such restrictions as are imposed (i) on the imports and exports for maintaining the economic stability of the country or to protect national industries, (ii) on the sale of essential commodities to ensure their equitable distribution and availability at fair prices, (iii) on the conditions of work and hours of employment in shops and commercial establishments. The state can prescribe professional or technical qualifications also. It also reserves to itself the right to carry on any trade, business, industry or service, either directly or through state controlled corporations, to the complete exclusion of private citizens.

Article 20 grants protection against arbitrary and excessive punishment to any person who commits an offence. It lays down that no person shall be convicted of an offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which

have been inflicted under the law in force at the time of the commission of the offence.¹³ The article further states that no person shall be prosecuted and punished for the same offence more than once, nor a person accused of an offence shall be compelled to be a witness against himself. Thus this article furnishes guarantees of great importance. It offers protection against *ex-post facto* laws, double jeopardy and self-incrimination. To put in other words, it prevents a person being punished for an act or omission which was not an offence at the time it was committed; it also prohibits the infliction of a punishment greater than that which might have been inflicted under the law in force at the time of the commission of the offence. In addition, the article prohibits double prosecution and punishment. (It has been laid down in the 44th Amendment that the executive will have no power under Art. 359 to suspend Article 20 even during the emergency.)

Article 21 deals with right to life and liberty. It enacts that no person shall be deprived of his life and liberty except according to the procedure established by law. It ensures that no person can be punished or imprisoned merely at the will of an authority or person, however high, important and influential in the state. The Constituent Assembly, by accepting the phrase 'procedure established by law', in preference to the phrase 'due process of law', has given the Supreme Court of India very limited powers in examining legislation affecting deprivation of life or personal liberty. Speaking on this subject in *A.K. Gopalan Vs. The State of Madras*, the Chief Justice observed: '(By adopting the phrase 'procedure established by law', the constitution has given the legislature the final word to determine the law. If a competent legislature makes a law providing that a person may lose his liberty in certain circumstances and in a certain manner, the validity of the laws cannot be challenged in a court of law on the ground that it is unreasonable, unfair or unjust.)'

It was unfortunate that the Supreme Court made a disastrous start by placing an unduly restrictive interpretation in the *Case of A.K. Gopalan*. Now it has amply atoned for this lapse by revolutionising the concept of *locus standi* (right to interfere) and providing easy access to justice for downtrodden and the needy. In its laudable judgement in *Francis Corallin Mullin*, the Supreme Court declared that life in Article 21 does not merely connote physical or animal existence. The right to life includes the right to live with human dignity and all that goes with it, viz. the right to basic necessities of life and to carry on such functions and activities as constitute a basic minimum expression of the human self. This unique contribution of the Supreme Court in the development of human rights jurisprudence has transcendental significance.¹⁴

12. Rudolph and Rudolph: 'Parliamentary Sovereignty vs. Judicial Review: Struggle over stateness in India'. (*Journal of Commonwealth and Comparative Politics* NN. 1981).

13. S. Sahay : Basic Structure Again (*The Statesman*, Oct. 7, 1986).

(The 4th Amendment had declared the right to life and liberty inviolate. Emergency or no emergency, the fundamental rights and liberty must continue in all circumstances.) Art. 21 was thus made an exception to the general rule laid down in Art. 359—that the fundamental rights during an emergency. But now, after the Constitution (59th Amendment) Bill has been passed, Article 21 can be suspended by the President. Obviously, this amendment deprives the citizens of their right to life under Article 21 which the Janata regime had sought to keep sacred even during an emergency. Mr. Soli Sorabjee described the 59th Amendment as 'constitutional legitimacy to governmental lawlessness.' Indeed, with the 59th Amendment, the centre has armed itself with quite fearful legal ammunition to subvert the democratic process in the entire country.¹⁴ It is certain that sooner or later this piece of legislation will go before the Supreme Court for its scrutiny. And considering the series of blow liberty, it looks reasonably certain that it will find the legislation violative of the basic structure of the constitution.

Article 22 provides for protection against arbitrary arrest and detention. It has two parts : the first part, comprising its clauses (1) and (2), deals with persons who are arrested under ordinary criminal law and the rights they are entitled to ; the second part, covering clauses 4 to 7, deals with persons detained under a law of preventive detention. As provided in its clauses (1) and (2), a person, who is arrested for any offence, has the right to be informed of the grounds for such arrest, to consult and defend himself by a lawyer of his choice, to be produced before the nearest magistrate within 24 hours of arrest. The fundamental rights guaranteed by clauses (1) and (2) of Article 22 are not available to two classes of persons : (i) enemy aliens, and (ii) persons detained under preventive detention (clause 3).

Article 22 in its part II (covering clauses 4 to 7) authorizes preventive detention which involves imprisonment without trial and before any crime has actually been committed. Both the Parliament and the State Legislatures are empowered to pass a law providing for preventive detention. The most significant thing about the preventive detention in India is that this power can be exercised not merely during war or emergency but also in peace time. At present we have three statutes in force under which a person can be put under preventive detention : the National Security Act of 1980, the Prevention of Blackmarketing and Essential Supplies Act, 1980 and COFEPOSA of 1974. They enable the police to arrest anyone regardless of whether he is threat to the nation's security or not. They are also not used 'sparingly'. The government deserves all powers it needs to fight terrorism and restore peace and harmony in

the country. But its pathetic reliance on legislation as a solution to highly emotive issues is an indirect admission of its failure to ensure law and order in the country. The Home Minister's assurance that this would be no misuse of law, sounds hollow. To quote the government's own statistics, 1130 persons were arrested under the NSA in the country in 1987. According to Madhu Dandavate, the NSA was used against political activists, trade unionists and farm leaders and even for breaking strikes in private sector firms.

Preventive detention is of two types : (a) for a period of less than two months, and (b) for a period of more than two months. As provided for in the Indian constitution, there are two safeguards in every case of preventive detention. First, the grounds of detention and the material on the basis of which these (grounds) are formulated must be communicated to the detenu. Second, the detenu must be provided with an opportunity to make a representation against his detention. Under the existing statutes, the detaining authority must ordinarily within five days and in exceptional cases within ten days furnish the grounds to the detenu.

The Government can detain a person in custody for three months in the first instance. For extending the period, it has to refer every case of detention to an advisory board. The advisory board must consist of three members. Headed by a sitting judge of the High Court of the concerned state, the board must have sitting or retired judges of the High Court as its members. These two are appointed on the recommendation of the Chief Justice of the High Court of the state concerned. Once the advisory board declares the detention to be not justified, the government is bound to revoke the order. Thus detention beyond three months can only be on the recommendation of the board. However, it has no power to recommend the period of detention. It is for the government to do so. Under the National Security Act, detention cannot be for more than one year. A detenee may seek temporary release because of marriage, death or serious ailment in his family.¹⁵ In the light of these provisions, the issue of Jodhpur detainees assumed a special significance. Even granting that the 352 persons detained in Jodhpur jail might have been guilty of crimes they were suspected to have committed, detention without trial for more than 3 years goes against the grain of democracy.

The authority making an order of detention is required to communicate to the person detained the grounds on which the order has been made, and also to afford him the earliest opportunity of making a representation against the order. The authority is, however, not bound to disclose facts which it considers against the public interest to disclose.

To sum up, even after the 44th amendment (a) the prevent detention stays; (b) a law of preventive detention can be imposed during peace time; (c) the provision of Article 22, requiring furnishing of grounds to a detenu and submitting his case to the Advisory Board, can be suspended during an emergency period. loophole for arbitrary rule, thus, remains¹⁶.

III. RIGHT AGAINST EXPLOITATION (Articles 23—24)

Articles 23 and 24 deal with the right against exploitation. Article 23 prohibits all forms of forced labour, begar (unpaid labour and traffic in human beings). The provision, however, does not prevent the state from imposing compulsory service for public purposes, though in imposing such services on citizens the state cannot discriminate among them, on the grounds of religion, race, class or any of them. (Article 24 prohibits the employment of children below the age of fourteen years to work in any factory or mine or in any other hazardous employment.) According to Justice H.R. Khanna, "there is a close nexus between these two articles and clauses (e) and (f) of Article 39 of the Directive Principles, according to which the state is required to direct its policy towards securing : (a) that the health and strength of workers, men and women, and the tender age of children are not abused, (b) that the citizens are not forced by economic necessity to enter avocation unsuited to their age or strength, (c) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, (d) that childhood and youth are protected against moral and material abandonment."¹⁷

There have been countless moves by official as well as non-toiling men, women and children from bondage. Still, as admitted by the Union Labour Minister in Parliament, there were more than 2 lakh persons working as bonded labourers. It is indeed unfortunate that even after 40 years of independence, a large number of these instruments of greater production and productivity are living a life of unrelieved gloom.

IV. RIGHT TO FREEDOM OF RELIGION (Articles 25—28)

Articles 25 to 28 of our constitution deal with the right to freedom of religion. The articles highlight the importance which the framers of the constitution attached to the secular character of the state. They also reflect the concern which the founding-fathers had for protecting the interests of the minorities.

16. S. Sahay : Bench-Bar Controversy (The Tribune, Dec. 8, 1987).

17. H.R. Khanna : *Ibid*, p. 27.

VI. RIGHT TO CONSTITUTIONAL REMEDIES (Article 32)

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A right, without a remedy for its enforcement, is of little avail. The framers of our constitution have, therefore, guaranteed not only fundamental rights but also remedies for their enforcement. These remedies are provided in Articles 32 and 226. The Constituent Assembly laid great emphasis on Article 32 (Draft Article 25). Dr. Ambedkar considered it as an article without which the constitution would be a nullity. Mr. Shiban Lal Saxena considered it the soul of democracy.

Article 32 comes under the original jurisdiction of the Supreme Court. It entitles the citizens of India to move the highest court of

Art. 25 guarantees to all persons freedom of conscience and the freedom of profession, practise and public order, morality and health and to prohibit any law : (a) to the norms of Part III of the Constitution, any law : (a) or provisions of Part III of the Constitution may pass any specific limitations. The state may pass any other secular provisions or restricting any economic, financial or other providing or associating with religious practice; (b) providing for social welfare and reform.

Article 26 of the constitution guarantees to every religious community which may be associated with religious practice to manage its own affairs in matter of religion, inter alia, to manage its own affairs in matter of religion. Article 27 lays down that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for the promotion or maintenance of any particular religion or religious denomination. Article 28 forbids the payment of expenses for the promotion of educational institutions wholly or partially maintained out of state funds. This prohibition, however, does not apply to such educational institutions (even if they are administered by the state) as are established under any endowment or trust which runs the religious instruction to be imparted in them.

V. CULTURAL AND EDUCATIONAL RIGHTS (Articles 29—30)

Our constitution makes special provision for protecting the interests of the minorities as regard their language, script and culture. Article 29 provides that any section of the citizens, residing in the territory of India or any part thereof and having a distinct language, script or culture of its own, shall have the right to conserve the same. Under Article 30 of the constitution, all minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice. It is also provided in its clause (2) that such institutions shall not be discriminated against by the state in so far as grants-in-aid are concerned. The provisions under Articles 29 and 30 are unique in their thoroughness. They are in conformity with the right to religious freedom.

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the country by appropriate proceedings for the enforcement of their fundamental rights. Article 226 gives the High Courts the same power plus some more in the sense that a High Court can not only issue the writ for the enforcement of fundamental rights but also for any other purpose. The said courts, in the exercise of their power can issue orders, directions, writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari, whichever may be appropriate.¹⁸

The relationship between Article 226 and Article 32 is by no means hierarchical, although an appeal against a High Court judgement under Article 226 can be made to the Supreme Court. Another point to note is that the two powers are concurrent, but the Supreme Court itself has held, and by large Benches, that for a citizen to invoke the Supreme Court's original jurisdiction under Article 32, it is not necessary for him to first exhaust the remedy available to him under Article 226.

In the case of P.N. Kumar Vs. Delhi Municipal Corporation, the two judges ruled that violation of fundamental rights should be referred for adjudication to the High Court under Article 226 instead of being taken straight to the Supreme Court under Article 32. Some members of the Supreme Court Bar Association misinterpreted the ruling as a calculated move to whittle down the right to seek redress from the Supreme Court and, worse, made the Association pass a resolution containing some words derogatory to the dignity of the Supreme Court.¹⁹

In the Bench-Bar controversy, one of the reasons given by the two judges for their order was that the scope of Article 226 was wider than that of Article 32. Second, the relief prayed for was such as a High Court could grant. If the petitioners were dissatisfied with the High Court's judgment, they could always go to the Supreme Court.

18. Habeas Corpus : It is an order by a court to the detaining authority to produce the arrested person before it so that it may examine whether the person has been lawfully detained or not. If the court is convinced that the person is illegally detained, it can issue order for release.
Mandamus : It is an order from a superior court to a lower court or tribunal or public authority to perform an act which falls within its duty. It is issued to secure the performance of public duties and to enforce private rights withheld by public authorities.
Prohibition : It is a writ issued by a superior court to a lower court or a tribunal forbidding it to perform any act outside its jurisdiction. Certiorari : It is a writ which differs from Prohibition in that it is issued after rather than before the act is performed. It requires that the matter in a lower court be brought before the superior court so that the latter may deal with it.

Ques 1 marks in - It means by what authority or
Warrant does a person holds a public office.

the country by appropriate proceedings for the enforcement of their fundamental rights. Article 226 gives the High Courts the same power plus some more in the sense that a High Court can not only issue the writ for the enforcement of fundamental rights but also for any other purpose. The said courts, in the exercise of their power can issue orders, directions, writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari, whichever may be appropriate.¹⁸

Court in appeal. The fact that some cases involving the same points of law were pending before the Supreme Court was no ground for bypassing a High Court. Third, if the parties got relief at the High Court level they need not go to the Supreme Court and that would save the apex court's valuable time. Fourth, a hearing at the High Court level would be convenient to the clients and also cheaper. Fifth, the High Courts had judges of eminence and their capacity should be fully used. Sixth, the High Courts had eminent lawyers too. Their services too should be made available to the litigants in the states.

Seventh, the Supreme Court had no time even to decide the cases it alone should decide. Cases had been pending with it for 10 to 15 years. Even if no new cases were filed, the present number of judges would take 15 years to dispose of the cases. Eighth, if a writ petition were filed in the High Court, not only would the Supreme Court be spared the exercise of its original jurisdiction but would also have the benefit, in appeal, of having the views of the High Court. Ninth, it was for the Supreme Court to preserve the dignity, majesty and efficiency of the High Courts. The assumption by the Supreme Court of the functions which a High Court could easily perform would undermine the High Courts. And, lastly, the time thus saved by the Supreme Court could be fruitfully utilised by it in disposing of old cases.¹⁹ Any judgement, even of the Supreme Court, can be trifled and with impunity at that. But to impute motive to the judges delivering it is to strike at the roots of the independence of judiciary.²⁰

The Shriram Judgement of the Supreme Court gives wider scope to fundamental rights under Article 32 of the Constitution of India. The judgement not only confirms the citizen's right to knock at the doors of the court for justice (when there is a violation of fundamental rights) but also casts a responsibility and duty on the judges to protect the fundamental rights of the citizen. The Supreme Court has laid down that a letter could be treated as a writ petition and that all procedure could be given go-by so as to expedite justice.

However, the most important aspect of the judgement is that the constitutional rights under Article 32 can be invoked not only against the government or an authority under Article 2 but also against any person, if there is a case of infringement of fundamental rights. This is a complete departure from the earlier stand of the Supreme Court in a large number of cases.

This approach of the Supreme Court is welcome from the angle of social justice, but there is every danger of this right being misused. It is heartening that the Supreme Court has not found

19. S. Sahay : Bench-Bar Controversy (The Tribune, Dec. 8, 1987).

20. Article of Faith 1 Editorial (The Tribune, Nov. 26, 1986).

itself fettered by the rules of procedure and formalities. It has even treated an ordinary letter as a writ petition. The burden of proving that detention of the detenu is in accordance with the law is on the Government. Whenever a writ petition is filed by a detenu, it is now a well established practice that the Court issues a rule (order) to the examining authority calling upon it to justify the detention and then obviously observed. This is to ensure that the constitutional safeguards have been met. liberty other than in accordance with law.

ASSESSMENT OF FUNDAMENTAL RIGHTS

The chapter on fundamental rights has met with a wide and varied criticism. While some have hailed it as a 'formidable bulwark of individual liberty', others have taken pains to highlight its defects in superlatives. There are critics who believe that constituting a large section of the people in our country simply do not mean anything steeped in abject poverty and ignorance. For the majority, seeking legal redress for their legitimate grievances, they are unable to go to court is like playing against a loaded dice, loaded in favour of the rich and the powerful.²¹

No provision for Economic and Social Rights

It has been asserted by the critics that the Indian constitution does not embody fundamental rights in the real sense of the term. It makes no provision for such social and economic rights as are pre-requisite to liberty and security of a person. The constitution of both the USSR and the People's Republic of China provide for right to work, to rest and leisure, and to education. No such provision exists in the Indian Constitution. The idea of having such economic and social rights in the constitution, is not doubt, laudable, but it is not feasible. Their implementation calls for much more positive action on the part of the Government. Besides, a developing country like India does not have the capability—however well-intentioned the governors—however eager the governed—for providing such rights as right to work and right to education etc. etc. The Indian response to this problem is, however, instructive. In its part IV, it lists a variety of social and economic rights, such as adequate pay for equal work etc. etc. The government is directed to promote these rights, but failure to secure them immediately is not a justifiable issue.²²

Rights—Excessively Limited

Another criticism of the fundamental rights is that they are excessively limited. Rather, they are hedged in with so many exceptions, qualifications and explanations that it is difficult

21. Rani Kothari : The hijacking of the Indian State. (Express Magazine, August 14, 1988)

22. Irish/Frank : Introduction to Comparative Politics, p. 278.

to understand what exactly is available to the Indian citizens by way of fundamental rights. Unfavourably impressed with the excessive limitations on the fundamental rights, a member of the Constituent Assembly had suggested that the chapter in question should be renamed as 'Limitations on Fundamental Rights'. After a critical study of the fundamental rights guaranteed to the Indian citizens of free India, Mr. Ram Gopal concludes that 'these rights, in effect, are what they were during the British Rule'. Not a few jurists of eminence have complained that the fundamental rights have been swallowed by the exceptions and qualifications.

Preventive Detention—Extra-ordinary Provision

The provisions with regard to the preventive detention are extra-ordinary. They are harder to justify, because both the spirit and substance of the chapter on fundamental rights are taken away by them. Preventive detention amounts to punishment without trial. It confers arbitrary power on the executive which is liable to be abused. The country has had a very bitter experience of arbitrary detentions during the emergency (1975-77). Whatever the justification for their inclusion in the constitution, they are a serious encroachment on personal liberty. For those, who believe that a law of preventive detention should be confined to emergency periods, its imposition during the peace time is all the more disappointing.

Emergency Suspension of Fundamental Rights

The provision with regard to emergency suspension of the fundamental rights by the union executive (with subsequent approval of Parliament) is another controversial feature of the Indian Constitution. This provision has been invoked on numerous occasions because of internal disturbances and threats of external aggression. As a result of the 44th Amendment, the right to life and liberty has been declared inviolate. Emergency or no emergency the fundamental right to life and liberty must continue in all circumstances. Art. 21 is thus made an exception to the general rule laid down in Article 359 (that the President has the power to suspend the enforcement of any or all of the fundamental right during an emergency). Mr. V. M. Tarakunde, a champion of the enlargement of rights and liberty of the Indian people, holds the view that Art. 22 should also be made incapable of being suspended at all even during emergency.

Lack of clarity in many provisions Another criticism against the fundamental rights is that many important phrases and words used in the chapter lack clarity, while some of its provisions either overlap or clash with each other.

According to Ram Gopal, "the conditions appended to the articles embodying the fundamental rights virtually negative them. The phrase 'reasonable restriction' conveys no clear meaning; 'public order' is a rather vague and wide term; friendly relation with foreign state is also not comprehensible."

Fundamental Rights

The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA (i.e., Bill of Rights).

Part III of the Constitution is rightly described as the *Magna Carta* of India.¹ 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.

The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation.

The Fundamental Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people against the invasion by the State. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. In short, they aim at establishing 'a government of laws and not of men'.

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, intellectual, moral and spiritual) of the individuals.

Originally, the Constitution provided for seven Fundamental Rights viz,

1. Right to equality (Articles 14–18)
2. Right to freedom (Articles 19–22)
3. Right against exploitation (Articles 23–24)
4. Right to freedom of religion (Articles 25–28)
5. Cultural and educational rights (Articles 29–30)
6. Right to property (Article 31)
7. Right to constitutional remedies (Article 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.

FEATURES OF FUNDAMENTAL RIGHTS

The Fundamental Rights guaranteed by the Constitution are characterised by the following:

1. Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
2. They are not absolute but qualified. The state can impose reasonable restrictions on them. However, whether such restrictions are reasonable or not is to be decided by the courts. Thus, they strike a balance between the rights of

- the individual and those of the society as a whole, between individual liberty and social control.
3. All of them are available against the arbitrary action of the state. However, some of them are also available against the action of private individuals.
 4. Some of them are negative in character, that is, place limitations on the authority of the State, while others are positive in nature, conferring certain privileges on the persons.
 5. They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.
 6. They are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgement of the high courts.
 7. They are not sacrosanct or permanent. The Parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act. Moreover, this can be done without affecting the 'basic structure' of the Constitution. (The amenability of fundamental rights is explained in detail in Chapter 11).
 8. They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Further, the six rights guaranteed by Article 19 can be suspended only when 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). (The suspension of fundamental rights during a national Emergency is explained in detail in Chapter 16).
 9. Their scope of operation is limited by Article 31A (saving of laws providing for acquisition of estates, etc.), Article 31B (validation of certain acts and regulations included in the 9th Schedule) and Article 31C (saving of laws giving effect to certain directive principles).
 10. 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).
 11. Their application can be restricted while martial law is in force in any area. Martial law means 'military rule' imposed under abnormal circumstances to restore order (Article 34). It is different from the imposition of national emergency.
 12. 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 (Article 35).

Table 7.1 Fundamental Rights at a Glance

Category	Consists of
1. Right to equality (Articles 14–18)	(a) Equality before law and equal protection of laws (Article 14). (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15). (c) Equality of opportunity in matters of public employment (Article 16). (d) Abolition of untouchability and prohibition of its practice (Article 17). (e) Abolition of titles except military and academic (Article 18).
2. Right to freedom (Articles 19–22)	(a) Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19). (b) Protection in respect of conviction for offences (Article 20). (c) Protection of life and personal liberty (Article 21). (d) Right to elementary education (Article 21A). (e) Protection against arrest and detention in certain cases (Article 22).
3. Right against exploitation (Articles 23–24)	(a) Prohibition of traffic in human beings and forced labour (Article 23). (b) Prohibition of employment of children in factories, etc. (Article 24).
4. Right to freedom of religion (Article 25–28)	(a) Freedom of conscience and free profession, practice and propagation of religion (Article 25). (b) Freedom to manage religious affairs (Article 26). (c) Freedom from payment of taxes for promotion of any religion (Article 27). (d) Freedom from attending religious instruction or worship in certain educational institutions (Article 28).
5. Cultural and educational rights (Articles 29–30)	(a) Protection of language, script and culture of minorities (Article 29). (b) Right of minorities to establish and administer educational institutions (Article 30).
6. Right to constitutional remedies (Article 32)	Right to move the Supreme Court for the enforcement of fundamental rights including the writs of (i) <i>habeas corpus</i> , (ii) <i>mandamus</i> , (iii) prohibition, (iv) <i>certiorari</i> , and (v) <i>quo war-rento</i> (Article 32).