



CHAPTER 10

FUNDAMENTAL RIGHTS (MEANING, IMPORTANCE AND DESCRIPTION)

FUNDAMENTAL RIGHTS OF THE CITIZENS OF INDIA

Like the constitutions of the USA, France, Japan and several other liberal democratic countries, the Constitution of India contains a detailed Bill of Rights which grants and guarantees fundamental rights and freedoms to the people of India. The decision to include a written Bill of Rights in the Constitution was governed by the desire to provide adequate opportunities for self-development to the people of free India.

The Bill of Rights (Part III) of the Constitution enumerates the Fundamental Rights of the people of India. It has been described by the Supreme Court as a part of the Basic Structure of the Constitution. Scholars highlight its importance as the Indian Magna Carta of rights and freedoms.

NATURE OF THE INDIAN BILL OF RIGHTS

(1) An Elaborate and Comprehensive Bill of Rights. The Indian Bill of Rights is an elaborately detailed and a comprehensive charter of rights and freedoms. Part III, containing 24 Articles (from 12 to 35), enumerates the fundamental rights of the people. Initially, there had been laid down seven fundamental rights but with the deletion of the Right to Property (44th Amendment) from this part, the number came down to six. Each right covers several rights. For example, Right to Equality has 5 parts and Art. 19(1) now enumerates the six fundamental freedoms of the people. While Articles 14 to 32 describe the rights and freedoms, Articles 12, 13, 33, 34 and 35 are governing and explanatory Articles.

(2) No Natural and Unmentioned Rights. Unlike the US Constitution which guarantees the rights mentioned in the constitution as well as all other rights enjoyed by the people, the Constitution of India does not give any recognition to the natural or unremunerated rights. The US Constitution provides for both all rights written as well as all other natural rights of the people. However, the Constitution of India grants only the fundamental rights written in its Part III.

(3) Special Rights and Protections for the Minorities. The Indian Bill of Rights guarantees some special rights to the minorities. Articles 29 and 30 guarantee the cultural and educational rights

of the minorities. The constitution abolishes untouchability and grants special protections to women and children.

(4) Negative and Positive Rights. The Indian Bill of Rights contains both negative and positive rights. Some rights are negative in the sense that these impose restrictions on the state and thereby protect the rights and freedoms of the people. For example Art. 15 prevents the state from making discrimination on the basis of caste, colour, creed, religion, place of birth and sex. Article 17 abolishes untouchability and Article 18 prohibits the grant of any title except for titles in recognition of any military or academic distinction. Hence, these are negative rights. The positive rights are those which permit the citizens to enjoy certain freedoms. For example Art. 19(1) enumerates the six fundamental freedoms enjoyed by the people. Hence the Constitution provides for both negative and positive rights.

(5) Non-inclusion of Social and Economic Rights in Part III. The Constitution does not include social and economic rights in the list of fundamental rights. It grants civil and political rights and freedoms. Social and economic rights like Right to Work, Right to Leisure, Right to Social Security etc., have not been incorporated in Part III of the constitution. These stand included in Part IV—The Directive Principles of State Policy, which is a non-enforceable part of the constitution.

(6) Difference between the Citizens and Aliens. In the grant of rights, the Constitution makes a distinction between the citizens and aliens. While all the rights stand granted and guaranteed to all the citizens, only some rights are available to the aliens. Such rights as equality before law, religious freedom, and some others are available to the citizens and aliens alike, while some other rights as freedom of speech, assembly and organisation are available to the citizens only. These are not available to the aliens.

(7) Rights are not Absolute. The fundamental rights enumerated in Part III of the Constitution are not absolute. These have not been concluded in absolute terms. Many restrictions have been placed on their enjoyment. While describing the nature and content of each right, the Constitution also describes its limitations. The Parliament has also been empowered to impose, by law, reasonable restrictions on the rights. However, the Supreme Court has the power to examine the validity of the restrictions imposed on fundamental rights by the Parliament. It has the power to judge the reasonableness of the restrictions imposed by the laws of the Parliament or by the amendments. Thus, the Constitution strikes a balance between individual liberty and social control by making the fundamental rights subject to reasonable restrictions.

(8) Rights are binding equally upon the Union, the States and other State Authorities. The Constitution makes the rights binding upon all authorities. It stands clearly stated in Article 12 of the Constitution which explains the meaning of the term State, as used in the context of Part III. It affirms that this term covers the Union, the States, the Parliament and all State authorities.

(9) Enforcement of Fundamental Rights. The Constitution not only grants but also guarantees the fundamental rights. The Constitution, in fact the Part III, itself, contains a special constitutional provision, a fundamental right under Art. 32, which provides legal and constitutional protection to the rights. The citizens have been given the right to seek the protection of the Supreme Court for getting their rights enforced. The Supreme Court has been given the power to issue *writs* for protecting the

fundamental rights of the people. It has been constitutionally assigned the duty to act as the guardian protector of fundamental rights. The system of Public Interest Litigation (PIL) and the activities of National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) have given strength to the protection of human rights of the people.

(10) Parliament has the power to amend Fundamental Rights. The fundamental rights contained in the constitution can be amended by the Parliament in accordance with the power and procedure laid down in Article 368 of the Constitution. The Parliament has, in practice, exercised this power on several occasions. In 1967, in the Golak Nath case judgement, the Supreme Court decided that the Parliament has no power to amend fundamental rights as these were sacrosanct. However, the Parliament claimed this power and made the 24th Amendment in the Constitution. Thereafter, the Supreme Court, in its judgement in the Keshvanada Bharati case, ruled that Parliament has the power to amend the constitution, including Part III, which contains the fundamental rights and freedoms of the people, but that it cannot amend the basic structure of the Constitution. This ruling continues to hold till today. Hence the Parliament has the power to amend the fundamental rights but it cannot change the basic structure.

(11) Provision for the Suspension of Rights. The Constitution provides for the suspension of fundamental rights under certain circumstances. For example, Article 358 provides that when a proclamation of emergency is made by the President under Article 352, the fundamental freedoms guaranteed under Article 19(1) get suspended. However, such a suspension gets automatically vacated when the proclamation of emergency ceases to operate. During the period of emergency, the President can also suspend the right of the citizens to move any court for the enforcement of rights conferred by Part III of the Constitution. The 44th Amendment to the Constitution (1978) has laid down several safe-guards for preventing the possible misuse of the emergency powers by the President, who always acts upon the advice of the Prime Minister and the Council of Ministers. It, for example, provides that President can suspend Article 19 during the emergency only if the proclamation of emergency has been made on grounds of war or external aggression and not on the grounds of armed rebellion. Likewise, during an emergency, the President cannot suspend the right to move the court for the enforcement of fundamental rights in respect of right to life and personal liberty. Despite these safeguards, the fact remains that the fundamental rights can be suspended during an emergency proclaimed under Article 352.

(12) Right to Property is now not a Fundamental Right. Initially, under Articles 19(1)f and 31 of the Constitution, the citizens enjoyed the fundamental right to property. However, because of the hindrances posed by these articles in the way of implementation of socio-economic reforms in the society, this right was deleted from Part III and was made a legal right under Article 300A. This was done by the 44th Amendment of the Constitution.

(13) Right to Education of Children. By 86th constitutional amendment Article 21A has been added which grants to the children between the age group of 6—14, the fundamental right to education. It contains provisions for compulsory and free education and therefore, tries to implement the Directive principle contained in Article 45 of the constitution.

(14) Right to Form and Manage Cooperative Societies and Associations. By 97th constitutional Amendment (2012) the citizens have been granted the fundamental right to form and

manage their cooperative societies and Associations. It has been done for strengthening cooperative movement in the country.

Right to Privacy is a part of the right to protection of life and liberty of citizens (Art. 21).

(15) Fundamental Rights are available to citizens of India both when they live in India and when they live abroad. In an historic judgement in the Maneka Gandhi case, the Supreme Court has ruled that fundamental rights are available to the citizens not only when they are in India but also when they are abroad in so far as their own government is concerned. This judgement lays down the principle that fundamental rights know no frontiers.

(16) Parliament can modify the rights in their application to Forces and any identified person. Article 33 empowers the Parliament to determine by law the extent of the fundamental rights to which these will be applicable to the members of the Armed Forces or the Forces charged with the maintenance of public order. Further Art. 34 empowers the Parliament to identify by law any person in the service of the Union or of a State or any other person in respect to any act done by him in connection with the maintenance of order in any way when martial law was in force whose fundamental rights can be limited.

(17) Constitutional Superiority of Fundamental Rights. The fundamental rights incorporated in the Constitution stand at a higher pedestal than ordinary laws and the Directive Principles of State Policy. The laws in existence before the promulgation of the Constitution, and those enacted after the promulgation of the constitution, are considered void if they come into conflict with fundamental rights enshrined in the Constitution (Articles 13).

By 97th Amendment Act 2012, the people of India got the fundamental right and freedom to establish and manage freely their cooperative societies.

These features clearly bring out the nature of Indian Bill of Rights. The constitution grants and guarantees fundamental rights and freedoms to the Indians. These constitute a vital pillar of Indian Democracy. *These are "the shield of Democracy. They protect the individual and specially the minorities against governmental autocracy and against the tyranny of the majority."* (Chief Justice Patanjali Sastri).

FUNDAMENTAL RIGHTS OF THE PEOPLE OF INDIA

Originally, Part III of the constitution described seven fundamental rights of the Indians. But after the 44th Amendment to the Constitution, their number came down to six. Right to Property (Art. 31) got deleted from the list of fundamental rights and became a legal right under Article 300A.

The six fundamental rights of an Indian citizen are :

1. The Right of Equality (Arts. 14 to 18)
2. The Right to Freedom (Arts. 19 to 22)
3. The Right against Exploitation (Art. 23 to 24)
4. The Right to Freedom of Religion (Arts. 25 to 28)
5. Cultural and Educational Rights (Arts. 29 to 30)

6. Right to Property (*Deleted from the list by 44th Amendment and made a legal right under Article 300A*)
7. Right to Constitutional Remedies (Arts. 32)

I. RIGHT TO EQUALITY (ARTS. 14-18)

The description of fundamental rights of an Indian begins by a description of Right to Equality (Arts. 14 to 18). Five rights stand incorporated in it.

(a) Equality Before Law (Art. 14).

Article 14 guarantees to all citizens and others equality before law. All citizens enjoy equal protection of law. "The State shall not deny to any person equality before law or equal protection of the laws within its territory." "Equal subjection of all people to the laws of the land", and "Equal legal protection to all the persons", are the two fundamental rights enshrined in this right.

(a)(i) Exceptions. Equality before law, however, does not mean absolute equality or equality among the unequal. It means equality among the people similarly situated. It does not prohibit the classification of persons into different groups. It also admits the right of the state to establish special courts for trying cases involving specific offences by certain persons.

(b) Prohibition of Discrimination (Art. 15).

Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. No person can, on any of these grounds, be denied access to shops, hotels, public restaurants and places of public entertainment or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly by the state funds or dedicated to the use of general public.

(b)(i) Exceptions. Prohibition of Discrimination, however, stands restricted by the provision that nothing in this article "shall prevent the state from making any special provisions for women and children 15(3), and for the advancement of socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes 15(4), as inserted by First Amendment Act 1951. In other words, protective discrimination in respect of weaker sections of society stands permitted.

(c) Equality of Opportunity (Art. 16).

The Constitution provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. Art. 16 clearly states that no citizen shall on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of any employment or office under the State.

(c)(i) However, the Constitution does not debar the Parliament from making any law prescribing essential qualifications in regard to a class or classes of employment or appointment to any office prior to such employment or appointment. It is also laid down that this right shall not prevent the state from making any provision for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the state, is not adequately represented in the services under the state. The expression 'Backward Classes of Citizens' in this article includes Scheduled Castes,

Scheduled Tribes and other weaker sections of society. However, in the name of backward classes of citizens seats cannot be reserved for various communities and castes (Venkataraman vs. State of Madras). The state can also fix residential qualification as an essential condition for a public employment.

(d) Abolition of Untouchability (Art. 17).

For eradicating the evil practice of untouchability in India, the Constitution under its Article 17, abolishes untouchability in India and makes its practice in any form an offence punishable under the law. The constitutional provision has been the basis of two important legislative enactments : Untouchability (Offences) Act 1955 and The Protection of Civil Rights Act 1977.

(e) Abolition of Titles (Art. 18).

Under this Article, the Constitution prohibits the state from conferring any titles except honours for military or academic distinctions. It also lays down that : No citizen of India shall accept any title from any foreign state. No person who is not a citizen of India shall, while he holds any office of profit or trust under the state, accept any title from any foreign state except with the consent of the President of India ; and that no person holding any office of profit or trust, can accept any present, emoluments or office of any kind from or under any foreign state except with the consent of the President.

This article does not prevent the grant of military decorations such as Param Vir Chakra, Mahavir Chakra, Vir Chakra, Ashok Chakra. In 1954, the government also accepted that titles like Bharat Ratna, Padam Vibhushan, Padma Bhushna and Padam Shri could also be conferred on citizens in recognition of their meritorious services to the state.

Thus, the Constitution, under Articles 14 to 18 grants right to equality to the people of India. However, along with the provisions for equality, it also provides for protective discrimination.

II. RIGHT TO FREEDOM (Arts. 19-22)

Under a set of 4 Articles (19—22), the Constitution grants the Right to Freedom. These articles together constitute the charter of freedoms of the people of India.

(a) Six Fundamental Freedoms (Art. 19).

Article 19 of the Constitution guarantees six (originally seven) fundamental freedoms to the citizens.

It states : All citizens shall have the right to :

- (i) Freedom of speech and expression.
- (ii) Freedom of assembly
- (iii) Freedom to form associations (*including the freedom to form and manage cooperative societies*)
- (iv) Freedom of movement

(v) Freedom to reside and settle

(vi) Freedom of profession, occupation, trade or business.

* By 44th Amendment of the Constitution the freedom of acquiring, holding and disposing of property [Art. 19(1)(f)] was deleted from the list of freedoms.

By 97th Amendment of the Constitution, the citizens of India have been granted the right to freely form and manage their cooperative societies and associations.

These six fundamental freedoms constitute the backbone of the right to freedom as defined by the Constitution. Together these provide a sound foundation for the enjoyment of civil and political liberty by the citizens. Freedom of speech and expression, freedom of assembly and freedom to form associations are the essential freedoms for the working of Indian democracy. Since freedom of speech and expression include publication, the freedom of press, which includes freedom of circulation for propagation of ideas is covered by this right. The Supreme Court of India has now held that right to information is a part of the freedom of speech and expression. In December 2004 the Union Cabinet decided to get enacted Right to Information Act for empowering the people to get all necessary information from public authorities. Each department was to appoint one public information officer for this purpose. It was to be made mandatory for the civil servants to provide necessary and demanded information to the public. The freedom to assemble peaceably without arms and the freedom to form associations or unions, are again the essential requirements of a democratic polity. The freedom to move freely throughout the territory of India, to reside and settle in any part of the territory of India, and to practise any profession or to carry on any occupation, trade or business, are essential civil liberties which testify to the fact of being the free citizens of the motherland.

In January 2004 the Supreme Court of India ruled that under Art 19 [1(a)] the citizens have the fundamental right to hoist the national flag.

(a) (i) Exceptions However, these six fundamental freedoms are not without exceptions/limitations. The Constitution under Articles 19(2), (3), (4), (5) and (6) provides for several limitations upon the exercise of these freedoms. The right to freedom, like the right to equality is also not absolute. It is also subject to reasonable restrictions.

Freedom of speech and expression is, however, subject to reasonable restraints in the interest of "the sovereignty and integrity of India, the security of the state, friendly relations with foreign states ; public order, decency and morality, contempt of court, defamation, or incitement to an offence." The right to assemble is limited in two ways—the assembly has to be peaceful, and without arms. State can place reasonable restrictions on this right in the interest of sovereignty and integrity of India and public order. Similar limitations exist on the right to form associations. The state can make any law regarding the freedom of movement and residence for protecting the interests of any Scheduled Tribe [Art. 9(5)]. Further, in respect of freedom of profession, trade and business, the state can prescribe professional or technical qualification. The State can also nationalise a particular industry or business by creating a monopoly in its favour.

(b) Protection against Arbitrary Conviction (Art. 20).

Under Article 20, the constitution provides protection against arbitrary conviction in respect of offences committed by the people.

It lays down that :

- (i) No person can be convicted of an offence except for the violation of a law in force at the time of the commission of the act charged as an offence. This provision prevents ex-post facto legislation which makes an innocent act an offence, which when committed was not an offence.
- (ii) No person can be subjected to a penalty greater than the one which might have been inflicted under the law in force at the time of commission of offence.
- (iii) No person can be arrested and punished for the same offence more than once.
- (iv) No person accused of any offence can be forced to be a witness against himself.

This article provides protection against arbitrary and excessive punishment, prevents double prosecution and punishment, and it warrants against the forcible securing of statements/confessions from an accused.

44th Amendment to the Constitution has laid down that the executive will have no power under Art. 359 to suspend Art. 20 during the emergency. This provision highlights the importance attached to this right.

(c) Protection of Life and Liberty (Art. 21).

Article 21 provides protection to the life and liberty of citizens as well as non-citizens. It states, "*No person shall be deprived of his life and liberty except according to procedure established by law.*" It provides the right not to be subjected to imprisonment, arrest or physical coercion in any manner without legal justification. The term "procedure established by law" means the awarding of punishment in accordance with law and according to the set procedure.

The 44th Amendment of the Constitution has made the right of life and liberty (Art. 21) inviolable even during an emergency. In other words, it has made Art. 21 beyond the scope of powers conferred under Article 359 of the Constitution of India. However, the 59th Amendment of the Constitution has laid down that right can be suspended by the President.

While interpreting the Right to Life and Personal Liberty under Art 21, the Supreme Court of India has stated

"A right to life cannot be limited to an animal existence. It must include the right to live with dignity as well as the right to basic necessities of life and the right to engage in activities that allow individuals to express themselves."

In fact, "Right to Life includes all those things which give meaning to an individual life, including tradition, heritage and culture, and preservation of the same".

Right to Life and Personal Liberty under Art 21, involve several rights :

1. **Right to Live with Human Dignity.**
2. **Right to Privacy.**
3. **Right to Pollution Free Environment.**
4. **Right against Sexual Harassment.**



5. Right against Solitary Confinement.
6. Right to Legal Aid.
7. Right to Speedy Trial.
8. Right against Handcuffing.
9. Right against custodial violence.
10. Right against Delayed Execution.
11. Right against Bar Fetters (Iron rod Fetters)
12. Right to Travel Abroad.
13. Right to Shelter.
14. Right to Health Care and Medical Assistance.
15. Right to Know.
16. Right to Release and Rehabilitation of Bonded Labour
17. Right against Cruel and unusual punishment.

Article 21A Right to Education of Children

The 86th Constitutional Amendment Act 2002 has made free and compulsory education for children between the age of 6 to 14 years, a fundamental right. Government has been assigned the responsibility to provide free and compulsory education to all children between the age of 6 to 14 years.

Under the Right to Information Act, the people have been given the right to get all necessary and needed information from the government departments and agencies. But it is not a fundamental right.

Right to Privacy as a Fundamental Right

On 24 July 2017, in an historic judgement the constitutional bench of nine judges of the Supreme Court of India unanimously ruled that Right to Privacy is a Fundamental Right under Article 21 of the Constitution. It is included in the constitutional provision which states that "No person shall be deprived of life and liberty except according to procedure established by law."

However, while admitting the Right to Privacy in the category of Fundamental Rights, the Supreme Court has not defined the meaning and content of this right. As such it can be observed that this right would also be subject to 'reasonable restrictions' which can be imposed under the provisions of Part III of the Constitution.

(d) Protection against Arrest and Detention (Art. 22).

This Article of the Constitution provides for protection against arbitrary arrest and detention.

It lays down that a person who is arrested and detained shall be :

- (i) informed of the ground of his arrest and shall have the right to consult and be defended by a legal practitioner of his choice (22) (1).

- (ii) produced before the nearest magistrate within a period of 24 hours of his arrest excluding the time taken in journey from the place of his arrest to the court of the magistrate. He cannot be detained in custody beyond 24 hours without the authority of the Magistrate. (Art. 22) (2).

However, the above two safeguards do not apply :

- (a) to any person who for the time being is an enemy alien ; or
- (b) to any person who is arrested or detained under any law providing for preventive detention.

In other words, the Constitution authorises preventive detention which involves, arrest, detention and imprisonment without trial and before any crime has actually been committed. The Parliament and the state legislatures have the power to pass preventive detention acts which can enable the executive to arrest, detain and imprison any person without trial.

Along with providing for preventive detention, the Constitution also lays down some provisions for checking its misuse by the executive. It lays down that no law providing for preventive detention shall authorise the detention for more than two months, unless an advisory board consisting of persons who are, or have been, or are qualifying to be appointed as judges of the High Court, have reported before the expiration of the said period of two months, that there is sufficient cause for his longer detention.

However, there is an exception to the above provision. The Parliament can by law prescribe the circumstances in which, and the class or classes of cases in which persons can be detained, and fix the maximum period for which a detained person can be kept in custody.

The provision for preventive detention is required in the interest of national unity and integration but its misuse by the government cannot be ruled out. That is why it has come to be a very controversial provision.

This power has been used on several occasions both by the Union Government and the State Governments. In 1950 the Union government passed the Preventive Detention Act which remained in operation till 1969. In 1970, the State Legislatures of Madhya Pradesh, Rajasthan and Maharashtra passed laws providing for preventive detentions. In 1971, Maintenance of Internal Security Act (MISA) was passed by the Union Government which remained in operation till March 1977. Currently three such acts—National Security Act (NSA) 1980, the Prevention of Black Marketing and Essential Supplies Act 1980 and COFEPOSA (1974) are in operation. Terrorist and Disruptive Activities Prevention Act (TADA) lapsed in 1995. Thereafter the NDA government got passed POTA, which continued be in operation till November 2004. In December 2004, the UPA Government terminated POTA and declared that a new law will be enacted. After the 26/11 terrorist attacks in Mumbai the Union Government enacted a new National Security Act.

Solve the following questions.

1. Discuss the nature of the Indian Bill of Rights.
2. Explain the 'Right to Equality' and 'Right to Freedom'.