

TEACHERS' VISION

WAY TO GOVERNMENT JOBS

STUDY MATERIAL

INDIAN POLITY

HIGHLY EXPERIENCED FACULTY 10+ YEARS TEACHING EXPERIENCE



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- ❖ Small Size Batch.
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- ❖ We prepare Students for Previous Year & Latest Pattern Based Questions.
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INDIAN POLITY PART - III

FUNDAMENTAL RIGHTS

Part III of the Indian Constitution consisting of Article 12 to 35 deals with Fundamental Rights. Part III of the Constitution is called the Cornerstone of the Constitution (Sajjan Singh v. State of Rajasthan) together with Part IV (Directive Principles of State Policy) as the 'Conscience of the Constitution'.

Features of Fundamental Rights

- 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.
- The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):
 - i. Right against discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
 - ii. Right to equality of opportunity in the matter of public employment (Article 16).
 - iii. Right to freedom of speech and expression, assembly, association, movement, residence and profession (Article 19).
 - iv. Cultural and educational rights (Articles 29 and 30).
- They are not absolute but qualified.
- Some of them are negative in character which means that they limit the power of the State.
- They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.
- They are not sacrosanct or permanent.
- 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).

Classification of Fundamental Rights:

All the Fundamental Rights have been classified under the following six categories:

1. Right to Equality (Art. 14-18)
2. Right to Freedom (Art. 19-22)
3. Right against Exploitation (Art. 23-24)
4. Right to Freedom of Religion (Art. 25-28)
5. Cultural and Educational Rights (Art. 29-30)
6. Right to Constitutional Remedies (Art. 32)

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.

Article 12: Defines State (As used in FRs) which includes:

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- The Government and Parliament of India,
- The Government and legislatures of the states,
- All local authorities and
- Other authorities in India or under the control of the Government of India.

Article 13: Laws inconsistent with FRs

- Provides shield to FRs by declaring that all laws, which are inconsistent with or in derogation of any of the Fundamental Rights, shall be void to the extent of their inconsistency.
- This Article provides for the Judicial Review of any Law passed by the State.

Article 14: Equality before the Law or the Equal Protection of Law

- It says that state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Two aspects are there:
- **Equality Before Law:** A negative concept, where no man is above law. It ensures juristic equality under the constitution. Equality is antithetic to arbitrariness. Equality and arbitrariness are sworn enemies.
- But certain exceptions to it are, the president of India, state governors, Public servants, Judges, Foreign diplomats, etc., who enjoy immunities, protections, and special privileges.
- **Equal Protection of Law:** A positive concept, which says that law(s) shall be applied equally among individuals who are placed equally. It means like should be treated alike.

Rule of Law

- The guarantee of Equality before Law is a concept of Rule of Law which originated in England.
- It means no man is above law and that every person, whatever be his rank or status is subject to the jurisdiction of ordinary courts.
- **Article 15:** Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth
- This says that the state shall not discriminate against 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, restriction or condition with regard to:
 - i. Access to shops, public restaurants, hotels, and places of public entertainment;
 - ii. 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 the general public.

Exceptions

There are three exceptions to this general rule of non-discrimination:

- The state is permitted to make any special provision for women and children.
- The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes.

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- The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions. The last provision was added by the 93rd Amendment Act of 2005.

Article 16: Equality of Opportunity in matters of Public Employment

- It provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State.
- No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

Exceptions

- Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.
- The State can provide for reservation of appointments or posts in favor of any backward class that is not adequately represented in the state services.
- A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.

Article 17: Abolition of Untouchability

- It abolishes —untouchability and its practice in any form is made an offence punishable under the law.
- The enforcement of any disability arising out of untouchability shall be an offence punishable by law.
- It's an absolute right which means there is no exception attached to this article.

Article 18: Abolition of Titles

- No title, not being a military or academic distinction, shall be conferred by the State.
- No citizen of India shall accept any title from any foreign state.
- No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
- No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present emolument or office of any kind from or under any foreign State.

Right to Freedom: Article 19 to 22

Article 19: Article 19 guarantees to all citizens the six rights and they are as follows:

- i. Right to freedom of speech and expression.
- ii. Right to assemble peaceably and without arms.
- iii. Right to form associations or unions or co-operative societies.
- iv. Right to move freely throughout the territory of India.
- v. Right to reside and settle in any part of the territory of India.

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vi. Right to practice any profession or to carry on any occupation, trade or business.

- These six rights are protected against only state action and not private individuals.
- The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in Article 19 itself and not on any other grounds.

Restrictions

- The State can impose reasonable restrictions on the exercise of the freedom of speech and expression on the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.

Article 20: Protection in Respect of Conviction for Offences

- It grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or a legal person like a company or a corporation. It contains three provisions in that direction:
 - No ex-post-facto law- This limitation is imposed only on criminal laws and not on civil laws or tax laws.
 - No double jeopardy
 - No self-incrimination- The protection against self-incrimination extends to both oral evidence and documentary evidence. However, it does not extend to (i) compulsory production of material objects, (ii) compulsion to give thumb impression, specimen signature, blood specimens, and (iii) compulsory exhibition of the body.

Article 21: Protection of Life and Personal Liberty

- It declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law.
- According to the Menaka case, the protection under Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action.
- It must be noted here that Right to life does not include Right to Die or Right to get killed, eg., mercy killing
- Giving the widest interpretation to Article 21, the Supreme Court has declared the following rights as fundamental rights within the scope of Article 21:
 - Right to education
 - Right to health
 - Right to environment
 - Right to shelter
 - Right to privacy
 - Right to a speedy trial
 - Right of the prisoners
 - Right to legal aid

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- Right against cruel and unusual punishment
- Right not to be subjected to bonded labour
- Right to travel abroad
- Right against solitary confinement
- Right against handcuffing

Right to Education (Article 21-A):

It asks the state to provide free and compulsory education to all children between the ages of 6 to 14 years. In the same way, the Supreme Court has also held that Freedom of speech and expression guaranteed under Article 19(1) includes the right to know, right to information and right to reply.

Article 22: Protection against arrest and detention

- Article 22 grants protection to persons under both kinds of detention namely, punitive and preventive.
- Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court. Preventive detention, on the other hand, means detention of a person without trial and conviction by a court.
- If a person is arrested after committing a crime, it is called punitive detention.
- Article 22 provides the following protection against such detention.
- Right to be informed of the ground of arrest.
- Right to consult and be defended by a lawyer.
- Right to be produced before a magistrate within 24 hours of his arrest (excluding the time of journey).
- Right not to be detained for more than 24 hours without the authority of a magistrate.

Rights against Exploitation: Article 23 & 24

Article 23: Prohibition of Traffic in human beings and forced labour

- It prohibits traffic in human beings, begar (forced labour) and other similar forms of forced labour.
- Parliament has enacted the Immoral Traffic (Prevention) Act, 1956 and the Bonded Labour System (Abolition) Act 1976 to punish for such traffic.

Exception

- It permits the State to impose compulsory service for public purposes, as for example, military service or social service, for which it is not bound to pay.
- However, in imposing such service, the State is not permitted to make any discrimination on grounds only of religion, race, caste or class.

Article 24: Prohibition of employment of children in Factories, etc.

- It prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway.
- But it does not prohibit their employment in any harmless or innocent work.
- Right to Freedom of Religion: Article 25 – 28

Article 25: Freedom of conscience and free profession, practice and propagation of religion

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WAY TO GOVERNMENT JOBS

➤ It says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.

➤ The implications of these are:

i. Freedom of conscience

ii. Right to profess

iii. Right to practice

iv. Right to propagate

Article 26: Freedom to manage religious affairs

➤ This article allows every religious denomination or a section of it to establish and maintain institutions for religious and charitable purposes and manage their religious affairs.

➤ They can also acquire and own movable and immovable properties and administer such properties in accordance with the law.

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

➤ It prohibits the state to impose tax proceeds of which are meant for payment of promotion or maintenance of any particular religion.

➤ It means that the state cannot raise a religious tax and also that the state cannot spend its secular taxes on any particular religion as it would go against its secular character.

Article 28: Freedom from attendance of religious instructions or worship in educational institutions:

➤ Educational institutions wholly maintained by state funds are prohibited from imparting religious instructions.

➤ However, an institution established by a trust but administered by the state can impart religious instructions. But in these institutions, no person can be compelled to attend these instructions.

Educational and Cultural Rights: Article 29 and 30

Article 29: Protection of Interests of Minorities

➤ It provides that any section of the citizens residing 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 grants protection to both religious minorities as well as linguistic minorities.

Article 30: Right of Minorities to Establish and Administer Educational Institutions

i. It grants the following rights to minorities, whether religious or linguistic:

ii. All minorities shall have the right to establish and administer educational institutions of their choice.

iii. 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. This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities in this regard. The Act deleted the right to property as a Fundamental Right (Article 31).

iv. In granting aid, the State shall not discriminate against any educational institution managed by a minority.

Right to Property and Saving of Certain Laws: Article 31

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Article 31: Abolition of right to property

Right to Constitutional Remedies: Article 32

- It is the very soul of the Constitution and the very heart of it.
- The Supreme Court has ruled that Article 32 is a basic feature of the Constitution.
- These writs are borrowed from English law where they are known as 'prerogative writs'.
- The writs issued may include habeas corpus, mandamus, prohibition, certiorari and quo warranto.

Habeas Corpus

- Means: to have a body

Mandamus

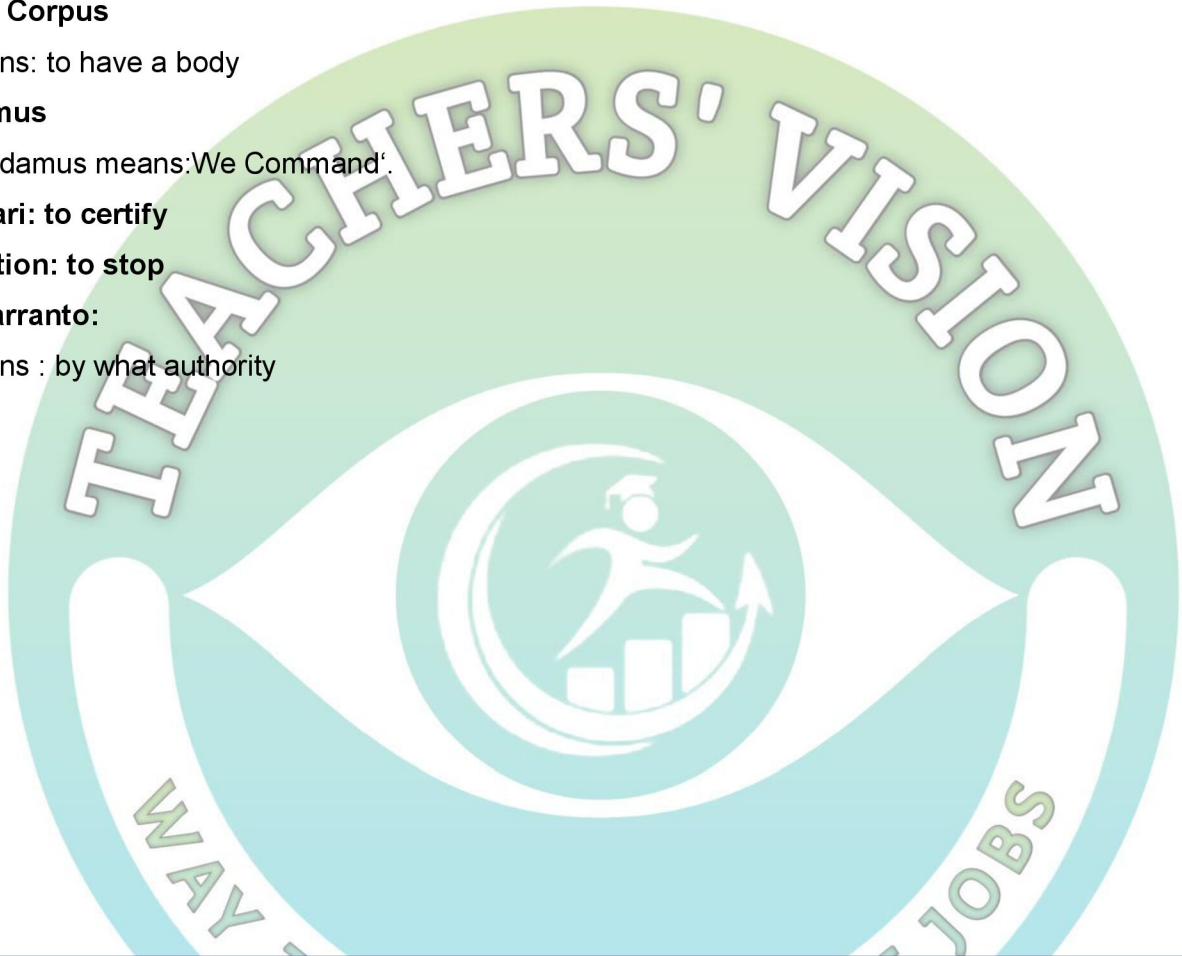
- Mandamus means: We Command.

Certiorari: to certify

Prohibition: to stop

Quo Warranto:

- Means : by what authority



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