

# Fundamental Rights

## 1. Six Fundamental Rights have been provided by the Constitution :

- Right to equality
- Right to liberty
- Right against exploitation
- Right to freedom of religion
- Cultural and educational rights
- Right to constitutional remedy

2. Article 14 of the constitution provides that the State shall not deny any person equality before the law or equal protection of the laws within the territory of India.

3. Exceptions to the provision of equality before law, allowed by the Indian Constitution are :

- The President or the Governor of a State is not answerable to any Court for the exercise and performance of the powers and duties of his office.
- No criminal proceeding can 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 can be instituted during his term of office in any Court in respect of any act done by him in his personal capacity, without a prior notice of two months.

4. The above immunities do not bar Impeachment proceeding against the President and Suits or other appropriate proceeding against the Government of India or the Government of a State.

5. Exceptions acknowledged by the comity of nations in every civilized country, in favour of foreign States, consuls and ambassadors.

- The guarantee of 'equal protection' is a guarantee of equal treatment of persons in 'equal circumstances', permitting differentiation in different circumstances.

6. Article 15 of the Constitution states that : 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 subjected 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 provisions for women, children or any socially and educationally backward classes.

**7. Article 16 guarantees Equality of opportunity in matters of public employment. It says that :**

- There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any employment under the State.

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## **The Mandal Commission Case**

A nine-judge Bench of the Supreme Court has laid down in Indra Sawhney's case (popularly known as the Mandal Commission Case) regarding reservation in Government employment, that :

**1. Under Article 16(4) provisions can be made in favour of the backward classes in the matter of employment by Executive orders also. ? Backward class of citizens is not defined in the Constitution. A caste may also constitute a class. ? The backwardness**

contemplated by Art. 16(4) is mainly social. It need not be both social and educational. ? Income or the extent of property can be taken as a measure of social advancement and on that basis the 'creamy layer' of a given caste can be excluded. ? The reservations contemplated in Art. 16(4) should not exceed 50%. ? Reservation of posts under Art. 16(4) is confined to initial appointment only and cannot extend to providing reservation in promotion.

**Note :** Mandal Commission was set up in 1979 under the Chairmanship of B.N. Madal, M.P. (Former Chief Minister of Bihar).

1. The 77th Amendment has provided to continue reservation in promotion for the S.C. and S.T.
2. Identification of backward classes is subject to judicial review.
3. Article 17 ensures Abolition of Untouchability. The word 'untouchability' has not been defined either in the Constitution or in the relevant Act of Parliament. It has been assumed that the word has a well known connotation.
4. Article 18 ensures Abolition of titles. It prevents the State from conferring any title.
5. This ban is only against the State and not against other public institutions, such as Universities.
6. The State is not debarred from awarding military or academic distinctions, even though they may be used as titles.
7. The State is not prevented from conferring any distinction or award which cannot be used as a title. Bharat Ratna or Padma Vibhushan cannot be used by the recipient as a title and therefore do not come within the Constitutional prohibition.

## **8. Article 19 provides the six freedoms of :**

---> Speech and expression; ? Assemble peacefully and without arms; ? Form associations or unions; ? Move freely throughout the territory of India; ? Reside and settle in any part of the territory of India; and ? Practise any profession, or to carry on any occupation, trade or business.

9. State can impose restrictions on the freedom of speech 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.

**10.** Restrictions can be imposed on the right to form associations in the interests of the sovereignty and integrity of India or public order or morality. Restrictions can also be imposed on freedom of movement and reside and settle in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

**11.** State can prescribe the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. State can exclude any citizen from a business or industry run by the Government or a body of Government.

**12.** There is no specific provision in the Constitution guaranteeing the freedom of the press because freedom of the press is included in the wider freedom of 'expression' which is guaranteed by freedom of expression under Art. 19.

**13.** Article 20 guarantees certain protection in respect of conviction for offences. It prohibits :

---> Restrospective criminal legislation, commonly known as ex post facto legislation. ?  
Double jeopardy or punishment for the same offence more than once. ?  
Compulsion to give self-incriminating evidence.

**14.** Article 21 (A) makes the right of education for children of the age of 6 to 14 years a fundamental right. {Ref. : 86th Amendment Act, 2002} Article 21 of Constitution provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law.

**15.** Under the 'Due Process' Clause of the American Constitution, the Court has assumed the power of declaring unconstitutional any law which deprives a person of his liberty without reasonableness and fairness.

**16.** In England courts have no power to invalidate a law made by Parliament.

**17.** In the case of *Shri K. S. Puttaswamy v. Union of India* the Supreme Court held that our Constitution had embodied the English concept

**18.** In *Maneka's* case the Supreme Court held that a law made by the State which seeks to deprive a person of his personal liberty must prescribe a procedure for such deprivation which must not be arbitrary, unfair or unreasonable. It follows that such law shall be invalid if it violates the principle of natural justice.

**19.** Article 22 provides that no person who is arrested shall be detained in custody without being informed of the grounds for such arrest.

20. No arrested person can be denied the right to consult, and to be defended by a legal practitioner of his choice.

21. Every person who is arrested and detained in custody is to be produced before the nearest magistrate within a period of twenty-four 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 can be detained in custody beyond that period without the authority of a magistrate.

22. The above safeguard is not available to an enemy alien and a person arrested or detained under a law providing for preventive detention.

23. The Constitution authorises the Legislature to make laws for preventive detention for the security of State, the maintenance of public order, or the maintenance of supplies and services essential to the community, or for reasons connected with Defence and Foreign Affairs {Ref. : Art. 22}

24. **Article 23 provides Right against Exploitation in following respects :**

25. Traffic in human beings and begar and other similar forms of forced labour are prohibited.

26. The State can impose compulsory service for public purposes, and in imposing such service the State can not make any discrimination on grounds only of religion, race, caste or class or any of them.

27. Special provision for the protection of children is made in Art. 24 which provides that no child below the age of fourteen years can be employed to work in any factory or mine or engaged in any other hazardous employment.

28. Article 25 provides Right to Freedom of Religion.

29. Article 25 provides freedom of conscience and free profession, practice and propagation of religion subject to public order, morality and health.

30. Under Art. 25 State can regulate religious activities and provide for social reforms and throw open Hindu religious institutions of public character to all sections of Hindus.

31. Article 26 guarantees following rights to all religious groups subject to public order, morality and health :

---> Establish and maintain institution for religious and charitable purposes; ? Manage its own affairs in matters of religion; ? Own and acquire movable and immovable property; ? Administer such property in accordance with law.

32. The State can not compel any citizen to pay any taxes for the promotion or maintenance of any particular religion or religious institution {Ref. : Art. 27}
33. No religious instruction can be provided in any educational institution wholly maintained out of State funds {Ref. : Art. 28}
34. Where a religious community is in the minority, the Constitution enables it to preserve its culture and religious interests by providing that the State shall not impose upon it any culture other than the community's own culture {Ref.: Art. 29(1)}
35. Such community shall have the right to establish and administer educational institutions of its choice and the State shall not, in granting aid to educational institutions, discriminate against such an educational institution maintained by a minority community on the ground that it is under the management of a religious community {Ref. : Art. 30}.
36. Full compensation has to be paid if the State seeks to acquire the property of a minority educational institution {Ref. : Art. 30 (1 A)}.
37. The Fundamental Rights are guaranteed by the Constitution not only against the action of the Executive but also against that of the Legislature.
38. Right to constitutional remedy, which was termed "soul of the constitution" by Dr. B.R. Ambedkar, has been guaranteed by Art. 32 of the Constitution.

## **The Writs**

1. For enforcement of fundamental rights, the judiciary has been armed with the power to issue the writs.
2. The power to issue these writs for the enforcement of the Fundamental Rights is given by the Constitution to the Supreme Court {Ref.: Art. 32} and High Courts **{Ref. : Art 226}**
3. Supreme Court has the power to issue writs only for the purpose of enforcement of the Fundamental Rights whereas under Art. 226 a High Court can issue writs for the purpose of enforcement of Fundamental Rights and / or for the redress of any other injury or illegality.
4. Supreme Court can issue a writ against any person or Government within the territory of India, while High Court can issue a writ against a person, Government or other authority only if they are located within the territorial jurisdiction of the High Court.

**5.** A writ of Habeas Corpus calls upon the person who has detained another to produce the latter before the court, in order to let the court know on what ground he has been confined and to set him free if there is no legal justification for the imprisonment. The words 'habeas corpus' literally mean 'to have a body'. This writ may be addressed to an official or a private person, who has another person in his custody.

**6.** Mandamus literally means a command. It commands the person to whom it is addressed to perform some public or quasi- public legal duty which he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy. Mandamus can not be granted against the President, or the Governor of a state, for the exercise and performance of the powers and duties of his office.

**7.** The writ of prohibition is a writ issued by the Supreme Court or a High Court to an inferior court forbidding the latter to continue proceeding therein in excess of its jurisdiction or to usurp a jurisdiction with which it is not lawfully vested.

**8.** While mandamus is available not only against judicial authorities but also against administrative authorities, prohibition and certiorari are issued only against judicial or quasi-judicial authorities.

**9.** Though prohibition and certiorari are both issued against Courts or Tribunals exercising judicial or quasi-judicial powers, certiorari is issued to quash order or decision of the Court or Tribunal while prohibition is issued to prohibit the Court or Tribunal from making the ultra vires order or decision. Prohibition is available during the pendency of the proceedings and before the order is made, certiorari can be issued only after the order has been made.

**10.** Quo warranto is a proceeding whereby the court enquires into the legality of the claim which a party asserts to a public office, and to oust him from its enjoyment if the claim is not well founded.

**11.** The conditions necessary for the issue of a writ of quo warranto are as follows :

---> The office must be public and it must be created by a statute or by the constitution itself. ? The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another. ? There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such person to that office.

**12.** The limitations on the enforcement of the fundamental rights are as follows :

**13.** Parliament has 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 {Ref. : Art. 33}.

---> When martial law is in force, Parliament may indemnify any person in the service of the Union or a State for any act done by him {Ref. : Art. 34}. ? Certain fundamental rights guaranteed by the Constitution may remain suspended, while a Proclamation of Emergency is made by the President under Art. 352.

## **Right to Information**

1. Right to information has been granted to every citizen of India under Right to Information Act, 2005 which came into force on 12th October, 2005.
2. It is not a Fundamental Right but it entails a clause for penal in case of delay in giving information to the applicant.
3. Information Commission has been set- up at central and state levels to oversee implementation of the Act.