

POLITY LECTURE NOTES

PART III of the Indian Constitution – FUNDAMENTAL RIGHTS

What are Fundamental Rights?

- Fundamental Rights are those Rights which are mentioned under Part III of the Indian Constitution.
- There are certain Rights which are mentioned in the Constitution, but not under Fundamental Rights. Such Rights are called Constitutional Rights. (E.g. Right to Vote)
- There are certain Rights which are available to citizens through laws passed by Legislatures (Centre or State). Such Rights are called Statutory Rights. (E.g. Right to Information)

Nature of Fundamental Rights

1. Most of the Rights are Negative Obligations on the State (E.g. Article 14), with certain exceptions (E.g. Article 21A). Negative Obligations means that the State cannot do something that hurts or curtails people's rights.
2. Majority of Rights mentioned in Part III are enjoyed by citizens against the State.
3. These Rights are Justiciable.
4. Fundamental Rights are not absolute i.e. certain reasonable restrictions can be imposed upon them.
5. Fundamental Rights can be suspended during emergency.
6. Fundamental Rights of people occupying sensitive positions (Armed Forces, Intelligence Agencies etc.) can be restricted or even denied by Parliament by law.
7. Most of the Rights are self-executory i.e. the parliament need not make laws to implement these Rights. There are certain exceptions e.g. For Right to Education under Article 21A, a law was required by the parliament.
8. Some of these Rights are available to aliens (Foreigners).

Article 12 – Definition of State

It states that, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

NOTE: Government and Parliament of India include Union Government & Union Parliament. Government and the Legislature include all State Government & State Legislature of each of the States.

All local or other authorities include all Institutions of local self-Government (E.g. municipality, Panchayats etc.).

Article 13 - Laws inconsistent with or in derogation of the fundamental rights

13 (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

NOTE: Parliament cannot make laws which violate any part of the Constitution. With respect to Part III, Judiciary will review those laws which are made by the Parliament and violate the provisions of Part III. Judicial Review of Part III of the Constitution is not explicitly mentioned. It is implicitly conveyed through Article 13 (1).

13 (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

Amendment of Fundamental Rights

Article 13 (2) states that the state shall not make any laws which take away Fundamental Rights of a citizen. A question arises as to whether the term 'law' in Article 13 (2) includes just ordinary laws or Constitutional Amendment Acts also. If Constitutional Amendment Act is not covered under law then the Parliament can amend the Fundamental rights by Amending the Constitution itself.

The Supreme Court **Shankari Prasad vs. Union of India (1951)** case held that Constitutional Amendment Act is not a law and thus Parliament can amend any Fundamental Right by using Constitutional Legislative Power. It gave a similar verdict in **Sajjan Singh vs. State of Rajasthan Case (1965)** case.

However in **Golaknath vs. State of Punjab (1967)** case the Supreme Court held that Fundamental Rights had been given transcendental position by the Constitution and even Parliament cannot amend Fundamental Rights.

The **24th Constitutional Amendment Act amended Article 13 and 368** which made it clear that Parliament has the power to amend Fundamental Rights through Constitutional Amendment. This was challenged in the Supreme Court in **Keshavananda Bharati vs. State of Kerala (1979)** case. The Supreme Court upheld the validity of 24th Amendment Act. However, the Supreme Court held that the Parliament's amendment power is limited and is subject to "**Basic Structure**" of the Constitution. The Supreme Court has not explicitly defined the term "Basic Structure". However, in various judgments, the Supreme Court has held that the **following concepts form a part of Basic Structure**

- Supremacy of the Constitution
- Secular character of the Constitution
- Federalism
- Separation of Powers
- Power of Judicial Review
- The mandate to build a welfare state

Classification of Fundamental Rights

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

RIGHT TO EQUALITY

Article 14 – Equality before Law

It states that - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

NOTE: Equality before the law means that every person (including aliens) shall be treated equally by the law. There are certain exceptions (E.g. Article 361, Diplomatic Immunity).

Equal Protection of law means law must operate equally among equals. Rolling out special schemes only for BPL category does not amount to violation of Article 14 as it attempts to bring BPL category towards non BPL category (reduce inequality).

To operationalize Equal protection of Laws, categories formed should be homogenous and the categories so formed should have a reasonable correlation with the objective that has to be achieved.

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

NOTE: This right is available only to citizens and not aliens. The state cannot discriminate only on the above mentioned grounds but can discriminate on grounds other than these. (E.g. Marks in Entrance Exams)

15. (2) 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— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) 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.

NOTE: The rights under 15 (2) are not only available against a state but also against other citizens as shops, restaurants etc. can be owned by state or can be a private property.

15. (3) Nothing in this article shall prevent the State from making any special provision for women and children.

15. (4) 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.

NOTE: Article 15 (1) states that no citizen shall be discriminated on the grounds of caste, sex, religion. But there are special considerations for SC/ST, OBC, Women and Children. Exceptions for these categories are mentioned in Clause 2 and 3 of Article 15.

15.(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

NOTE: In order to serve the educationally and socially backward classes, the state asked the private education institutions also to reserve seats for the backward classes. Private institutions objected to it, stating it would amount to violation of right under **Article 19 (1) g**. The Parliament, by amending the constitution in 2005, added Clause 15 (5). According to this, it is mandatory to reserve seats for backward classes also even in private institutions whether aided or unaided, by law. The only exception is educational institutions run by minority communities. A law was enacted in this effect called Central Educational Institutions Reservation in Admission Act 2006. This Act was challenged in the Supreme Court, but the Supreme Court upheld the validity of this law.

Vishaka Case

A was a PIL filed in Supreme Court by Vishaka and four other women's organizations in Rajasthan against the State of Rajasthan and the Union of India. This case in reference to the Bhanwari Devi's alleged Gang Rape in 1992 in Rajasthan. Bhanwari Devi's legal battle culminated when the Supreme Court of India in a PIL, defined sexual harassment at workplace, preventive measures and redress mechanism. Vishaka Guidelines against Sexual Harassment at Workplace Guidelines and norms were laid down by the Hon'ble Supreme Court in Vishaka and Others vs. State of Rajasthan and Others.