

Examrace

Competitive Exams: Political Science Study Material: Fundamental Rights

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Part III of the Constitution contains a long list of the Fundamental Rights.

- The most striking difference between the Government of India Act, 1935 and the present Constitution is the presence of the Fundamental Rights in the later.
- This chapter of the Constitution has been described as the 'Magna Carta' of India.
- Part III of the Constitution is called the 'Cornerstone' of the Constitution, and together with Part IV (Directive Principles), constitutes the 'conscience' of the Constitution.
- The Fundamental Rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their Government. They are the limitations upon all the powers of the Government, legislative as well as executive.

Why Are They Fundamental?

These rights are regarded as fundamental because they are most essential for the attainment by the individual his/her full intellectual, moral and spiritual status. The declaration of the Fundamental Rights in the Constitution serves as the reminder to the Government in power that certain liberties, assured to the people by the Constitution, as respected by law.

- The object behind the inclusion of the chapter on the Fundamental Rights in the Indian Constitution is to establish 'a Government of law and not of man'
- Fundamental Rights are the restricted rights, they do not give absolute powers to the individual.
- Article 17 (Abolition of Untouchability) and Article 24 (Prohibition of employment of children in factories, etc.) are the only absolute rights.
- Protection of Life and Personal Liberty Article 21 states no person shall be deprived of his life or personal liberty except according to procedure established by law. However, Article 21 puts a limit on the power of the State given under Article 246, read with the legislative lists. Thus, Article 21 does not recognise the Right to Life and Personal Liberty as an absolute right but limits the scope of the right itself. Right to privacy is fundamental but not absolute according to Supreme Court of India. "The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21" It is a 'right to be let alone'

- Right against discrimination [Art 15 (2)], Right against untouchability (Art 17) and Right against exploitation [Art (23) & (24)] can be enforced against the private individuals also.
- Article 13 provides for the Judicial Review of all the legislations in India.
- Judicial Review is the power conferred on the High Courts and the Supreme Court of India to declare a law unconstitutional, if it is inconsistent with any of the provisions of Part III of the Constitution, to the extent of the contravention.
- The concept of the Judicial Review is taken from the Constitution of the US.
- The Supreme Court in the number of cases, from Shankari Prasad vs. Union of India (1952)
- The Court in this case held that the Parliament can amend any of the provisions of the Constitution including Fundamental Rights by its amending power under Art 368, provided such amendments do not infringe the basic structure of the Constitution.
- The Constitution of India contains provisions for automatic suspension of the Fundamental Rights under certain circumstances, as fore. g. During the National Emergency under Article 352 (i.e.. War or external aggression).
- The Constitution empowers the President, under Article 359, to suspend any or all the Fundamental Rights by issuing a separate Proclamation during a National Emergency.
- The 44th Amendment Act, 1978 prohibits the suspension of Art. 20 and 21 (protection in respect of conviction for offences and protection of Life and Personal Liberty respectively) even during a National Emergency.

Right to Equality (Art 14 – 18)

Article 14

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

This concept is borrowed from the British Constitution.

Equality before law is a negative concept. It means 'no man is above law' and every person, whatever be his/her social status, is subject to the Jurisdiction of the Courts. The rule of equality before law is, however, not an absolute rule and there are a number of exceptions to it.

Equal protection of law is a positive concept.

- This concept is borrowed from the US Constitution.
- It only means that all persons in similar conditions/circumstances shall be treated alike.
- There can be a discrimination between the groups but not within the groups.
- Since the State stands for the welfare of all sections of the society, it can make certain discriminations in favour of those who are less privileged.

- The 'rule of law' embodied in Art. 14 is a basic feature of the Indian Constitution and hence it cannot be destroyed even by an amendment of the Constitution under Article 368 of the Constitution.
- The word 'any person' in Article 14 of the Constitution denotes that the guarantee of the equal protection of laws is available to any person which includes any association, company or body of individuals.

Article 15

- Article 15 of the Constitution provides for the prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.
- Article 15 directs the State not to discriminate against a citizen on the grounds only of race, caste, religion, sex or place of birth etc.
- The word 'only' indicates that the discrimination cannot be made merely on the ground that one belongs to a particular caste, religion, race etc.
- If other qualifications are equal, religion, race, caste etc. Should not be a disability.
- The guarantee under Article 15 is available to the citizens only and not to every person whether 'citizen or non-citizen' as under Article 14.
- The third clause, empowers the State to make special provisions for the protection of women and children.
- The fourth clause which was added by the 1st Constitutional Amendment Act 1951, enables the State to make special provisions for protection of the interests of the Backward Classes and is, therefore, an exception to Article 15 and 29 (2) of the Constitution.
- Art 29 (2) states that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them

Article 16

- Equality of opportunity in matters of public employment.
- No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or residence be ineligible for, or discriminated against in respect of, any employment or office under the State.
- The State is free to specify the qualifications. There cannot be any other ground for non-eligibility.
- The Constitution (81st Amendment) Act, 2000 has added a new clause (4 – B) in Article 16 of the Constitution which seeks to end the 50% limit for the SC/STs and OBCs in backlog vacancies which could not be filled up due to the non availability of eligible candidates of

these categories in the previous years. Note: Under Article 16, the guarantee against discrimination is limited to 'employment' and 'appointment' under the State.

- Equal pay for equal work, although not expressly declared to be a Fundamental Right, is clearly a Constitutional goal under Articles 14, 16 and 39 (c) of the Constitution and can be enforced by the Courts in the cases of unequal scales of pay based on irrational classification.

Exceptions

- Residence can be made as a restriction for employment on the basis of historical aspects.
- Special favors can be given to the Backward Classes which are not adequately represented.
- Religion can be a ground for discrimination in special cases. There are religious institutions taken over by the State, so, the religious posts are reserved for the people of the same religious denomination.

Article 17

Abolition of untouchability

- '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 the law.
- The Constitution itself does not prescribe any punishment under this Article.
- The Parliament enacted the 'Untouchability (offences) Act, 1955' which prescribes the punishment for the practice of untouchability.
- This Act was amended by the 'Untouchability (offences) Amendment Act, 1976' in order to make the untouchability laws more stringent.
- The name of the original Act was changed to 'Civil Rights (Protection) Act, 1976'
- Later, when there was violence against members of Scheduled Castes and Scheduled Tribes, leading to brutalities such as mass murder, rape, arson, grievous injuries, etc. Enactment of a special law for their protection was resorted to known as Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to provide for strong punitive measures which could serve as a deterrence.
- The Act does not define 'untouchability'
- According to the Supreme Court, 'untouchability' should not be understood in its literal or grammatical sense. It is to be understood as the 'practice as it had developed historically'
- Article 17 also imposes a duty on the Public Servants to investigate such offences.

Article 18 Abolition of Titles

- No title, not being a Military or Academic
- Andhra Pradesh government has decided providing for five per cent reservations for Muslims in jobs and educational institutions and issued an ordinance for the same.
- The Andhra High Court declared the ordinance granting reservations to Muslims as void on the ground that the recognition of Muslims as backward class was not done by the Backward Caste Commission but by the Minorities Welfare Board.
- So the government has established a Backward Caste Commission, which recommended the whole of Muslim Community as backward. Based on the recommendation, the government has granted and made a law for that purpose.
- The government in Andhra Pradesh received a setback once again with the High Court quashing the quota on November 7, 2005.
- Disapproving religion-based reservation, a five-member Bench found fault with the procedure adopted by the State Backward Classes Commission whose report formed the basis for the quota order.
- The entire process is vitiated by arbitrariness and failure to adopt reasonable criteria. Thus the reservation act is ultra vires of the Constitution, the Court said.

Arguments for Reservation

- Muslim Community as a whole in the state is backward that it can be considered as separate class for reservations. The per capita income, standard of living, representation in public services, literacy rate etc among the Muslims is significantly low. This brings them within the ambit of socially and educationally backward class within Art 15 (4) and 16 (4) of the Constitution.

Flaws in the Decision

- Reservation under Art 15 (4) and 16 (4) is granted to socially and educationally backward class and not to either socially or educationally backward. Muslims may be educationally backward but they have never been socially backward as they have always been close to power and never have they been subjected to degrading treatment.
- A particular section among Muslims may be backward but not the whole community. The High Court in its earlier order had asked the Backward Caste Commission to pick the backward section among the Muslims and not the whole community.
- The reservation in this case would increase above 50%, a violation of Mandal judgment.
- Constitution does not provide reservation in the name of religion.
- It is a politically motivated decision, which is against the larger public interest.
- It may open the Pandora's box whereby demands from more states would start coming.

- Mandal Commission had already included a few sections of Muslim Community among backward class. Thus whole community is not backward.
- This decision may increase the competition for backwardness among Muslims.
- Such political games to sub serve the vested interests must be avoided. It is not a welcome sign for Indian democracy. It may be detrimental to the nation's health in the long run.
- No citizen of India shall accept any title from any foreign State.
- It also prohibits a foreign national under the employment of the State to receive any title from any foreign State without the consent of the President.
- Article 18 does not prescribe any punishment for the offence.
- Parliament is free to make a law for the punishment.
- These National Awards were formally instituted in January, 1954 by two Presidential Notifications.

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