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Competitive Exams: Fundamental Rights Part 2

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Right to Freedom (Art. 25 – 28)

- India is a secular State, not an irreligious or an atheist State.
- The State protects all the religions; but interferes with none. It believes in the ancient Indian doctrine of Sarva Dharma Sambhava.
- The State is concerned with the relations between man and man and not with those of man and supernatural power.
- India is a home of many religions, thus, Freedom of religion is the essence or an important element of Freedom in India.

Article 25

Freedom of conscience, profession, practice and propagation of religion

- Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to the freedom of conscience and the right to profess, practice and propagate religion.
- The right to propagate does not mean alluring a person to join any religion.
- A Constitution Bench of the Supreme Court, in a group of related cases in 1977 called the Rev. Stainislaus vs State of Madhya Pradesh. Others case, ruled that Article 25 (1) does not give the right to convert but only the right to spread the tenets of ones own religion.
- The Supreme Court was delivering the verdict about the legislation made in Madhya Pradesh and Orissa to outlaw conversions based on force, fraud and allurement in 1968.

Article 26

Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right:

- To establish and maintain institutions for religious and charitable purposes.
- To manage its own affairs in the matters of religion

- To own and acquire movable and immovable property
- To administer such property in accordance with law.

Article 27

Freedom as to payment of taxes for promotion of any particular religion.

- No person shall be compelled to pay any tax for religious purposes.
- If the Government has done any service for a particular religious denomination, the Government is free to charge fees from the devotees.

Article 28

Freedom as to the attendance at religious instruction or religious worship in certain educational institutions. Article 28 divides educational institutions into four categories:

1. Wholly maintained by the State
2. Recognised by the State
3. Receiving aids out of the State funds
4. Administered by State but established under a religious endowment In the first case, there can be no religious instructions whatsoever. In the second and third case, religious instructions can be imparted, but the pupils cannot be compelled to attend such instructions. In the fourth case, there is no restriction whatsoever, as far as religious instructions are concerned.

Cultural and Educational Rights (Art 29 – 30)

Article 29

Protection of interests of minorities

- Any section of the citizens, residing in the territory of India or any part thereof, having a distinct language, script or culture of its own, shall have the right to conserve the same.

Article 30

Right of minorities to establish and administer educational institutions.

- All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- It provides to religious, educational and cultural institutions, the right to own, possess and dispose immovable property.
- The State shall give due compensation in case of acquisition of such property.

- The right to preserve language, culture or script can be implemented through educational institutions.
- Administer means the management of affairs of the institution.
- The State can regulate the working of such institutions.
- The Supreme Court observed that the Right to Administration is not the Right to Maladministration.
- The university can put basic qualifications for the selection of teachers.
- Conscience: Absolute inner freedom of the citizen to mould his/her own relation with God in whatever manner he/she likes.
- Profess: To declare freely and openly ones faith and belief.
- Practise: To perform the prescribed religious duties, rites and rituals and to exhibit his religious beliefs.
- Propagate: Spread and publicise his/her religious views for the edification of others. It only indicates persuasion and exposition without any element of coercion.

Right to Constitutional Remedies (Art 32)

Article 32

- Article 32 provides institutional framework for the enforcement of the Fundamental Rights by the Supreme Court.
- Dr. B R Ambedkar called this Article as The fundamental of the Fundamental Right and the heart and soul of the Constitution.
- To enforce the Fundamental Rights, the Supreme Court is empowered, under Art. 32, to issue writs of various forms.
- The concept of issuing writs is taken from the UK.

Types of Writs

However, there has been a progressive strengthening of the Fundamental Rights as well.

Firstly, there have been attempts to make Right to Work a Fundamental Right. Secondly, the Supreme Court has been interpreting the Right to Life as including all basic material facilities and legal access to them like clean environment. Thirdly, the Supreme Court, in the case of capitation fees in April 1993 held that right to primary education is Fundamental Right. Finally, the Supreme Court has always come to the rescue of the journalists, whose reports have been found to be violative of the privileges of the legislators, and these arrests have been ordered by the legislatures without giving journalists a chance to free and fair trial, as promised by Art. 21.

1. Habeas corpus-It literally means to have a body i.e.. . to be produced before the Court.
 - a. This kind of writ is issued to protect personal liberty of an individual against the arbitrary action of both the State and private individuals.
 - b. The aggrieved person can even claim for compensation against such action.
2. Mandamus-It literally means Command.
 - a. This kind of writ is issued against a public authority or an officer and inferior Courts for purpose of enforcing legal rights only.
 - b. This writ cannot be issued against the President and the Governors.
 - c. Private rights cannot be enforced by the writ of the Mandamus.
3. Prohibition-to restrain.
 - a. This kind of writ is issued by the higher Courts to the lower Courts or the quasi-judicial bodies when the latter exceed their judicial authority.
 - b. The objective is to keep the inferior Courts or the quasi-judicial bodies within the limits of their respective jurisdiction.
 - c. The difference between Mandamus and Prohibition is that while the former can be issued against judicial as well as administrative authorities, the latter is issued only against the judicial or quasi-judicial authorities.
4. Certiorari-It is similar to Prohibition.
 - a. This writ is issued to quash the order of a lower Court or the decision of a tribunal in excess of its jurisdiction.
 - b. The purpose of this writ is to secure that the jurisdiction of an inferior Court or tribunal is properly exercised and that it does not usurp the jurisdiction it does not possess.
5. Quo Warranto
 - a. It literally means what is your authority.
 - b. This kind of writ is issued to ensure that the person holding a public office is qualified to hold the office.