

Part-3: Fundamental Rights

About:

The Fundamental Rights are enshrined in **Part III of the Constitution (Articles 12-35)**.

Part III of the Constitution is described as the ***Magna Carta*** of India.

‘Magna Carta’, the Charter of Rights issued by **King John of England in 1215** was the first written document relating to the Fundamental Rights of citizens.

- **The Fundamental Rights:** The Constitution of India provides for six Fundamental Rights:
 - Right to equality (Articles 14–18)
 - Right to freedom (Articles 19–22)
 - Right against exploitation (Articles 23–24)
 - Right to freedom of religion (Articles 25–28)
 - Cultural and educational rights (Articles 29–30)
 - Right to constitutional remedies (Article 32)

Originally the constitution also included **Right to property (Article 31)**. However, it 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.

Provision for Laws Violating Fundamental Rights: Article 13 of the Indian constitution declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.

This power has been conferred on the Supreme Court (**Article 32**) and the high courts (Article 226).

Further, the article declares that a constitutional amendment cannot be challenged (as it is not a law).

However, the Supreme Court in the **Kesavananda Bharati case (1973)** held that a Constitutional amendment can be challenged if it violates a fundamental right.

Writ Jurisdiction: A writ is a legal order given by a court of law.

the Supreme Court (Article 32) and the High courts (Article 226) can issue the writs of **habeas corpus, mandamus, prohibition, certiorari and quo-warranto**.

Features of the Fundamental Rights:

Protected by Constitution: Fundamental Rights, unlike ordinary legal rights, are protected and guaranteed by the constitution of the country.

Some of the rights are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.

Not Sacrosanct, Permanent, or Absolute: They are not sacrosanct or permanent and the Parliament can curtail or repeal them but only by a constitutional amendment act.

The rights are not absolute but qualified.

The state can impose reasonable restrictions on them, however, the reasonability of the restrictions is decided by the courts.

Rights are Justiciable: The rights are justiciable and allow persons to move the courts for their enforcement, if and when they are violated.

Any aggrieved person can directly go to the Supreme Court in case of violation of any fundamental right.

Suspension of Rights: The rights can be suspended during the operation of a National Emergency except the rights guaranteed by **Articles 20 and 21**.

Further, the six rights **guaranteed by Article 19** can be suspended only when there is an external emergency (war or external aggression) [and not on the ground of armed rebellion (i.e., internal emergency)].

Restriction of Laws: Their application to the members of armed forces, paramilitary forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).

Fundamental Rights (available to citizens as well foreigners) (except enemy aliens)	Fundamental Rights available to citizens only
<ul style="list-style-type: none"> ▪ Equality before law. 	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
<ul style="list-style-type: none"> ▪ Protection in respect of conviction for offences. 	Equality of opportunity in matters of public employment.
<ul style="list-style-type: none"> ▪ Protection of personal life and liberty. 	Protection of the six fundamental rights of freedom mentioned in article 19.
<ul style="list-style-type: none"> ▪ Right to elementary education. 	Protection of language, script and culture of minorities.
<ul style="list-style-type: none"> ▪ Protection against arrest and detention in certain cases. 	Right of minorities to establish and administer educational institutions

<ul style="list-style-type: none">▪ Prohibition of human trafficking and forced labour.	
<ul style="list-style-type: none">▪ Prohibition of employment of children in factories.	
<ul style="list-style-type: none">▪ Freedom of conscience and free profession, practice and propagation of religion.	
<ul style="list-style-type: none">▪ Freedom to manage religious affairs.	
<ul style="list-style-type: none">▪ Freedom from payment of taxes for promotion of any religion.	
<ul style="list-style-type: none">▪ Freedom from attending religious instruction or worship in certain educational institutions.	

Their application can be restricted while martial law (military rule imposed under abnormal circumstances) is in force in any area.

The Fundamental Rights

CONSTITUTION OF INDIA

Part III: Fundamental Rights

Right to Equality

- √ Equality before law
 - equal protection of laws
- √ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
 - equal access to shops, hotels, wells, tanks, bathing ghats, roads etc.
- √ Equality of opportunity in public employment
- √ Abolition of Untouchability
- √ Abolition of titles

Right to Freedom

- √ Protection of Right to
 - freedom of speech and expression;
 - assemble peacefully;
 - form associations/unions;
 - move freely throughout the territory of India;
 - reside and settle in any part of India;
 - practise any profession, or to carry on any occupation, trade or business.
- √ Protection in respect of conviction for offences
- √ Right to life and personal liberty
- √ Right to education
- √ Protection against arrest and detention in certain cases

Right against Exploitation

- √ Prohibition of traffic in human beings and forced labour
- √ Prohibition of employment of children in hazardous jobs

Right to Freedom of Religion

- √ Freedom of conscience and free profession, practice and propagation of religion
- √ Freedom to manage religious affairs
- √ Freedom to pay taxes for promotion of any particular religion
- √ Freedom to attend religious instruction or worship in certain educational institutions

Cultural and Educational Rights

- √ Protection of language, culture of minorities
- √ Right of minorities to establish educational institutions

Right to Constitutional Remedies

- √ Right to move the courts to issue directions/orders/writs for enforcement of rights

Right to Equality (Article 14, 15, 16, 17 and 18):

Equality Before Law: Article 14 says that no person shall be denied treatment of equality before the law or the equal protection of the laws within the

territory of India.

The right is extended to all persons whether citizens or foreigners, statutory corporations, companies, registered societies or any other type of legal person.

Exceptions: As per article 361, the President of India or Governor of states is not answerable to any court for the exercise of their powers/duties and no civil or criminal proceedings can occur or continue against them in any court during their term of office.

As per article 361-A, no civil or court proceedings can occur for a person for publishing any substantially true report of either House of the Parliament and State Legislature.

No member of Parliament (article 105) and State Legislature (article 194) shall be liable to any court proceedings in respect of anything said or any vote given by him in Parliament or any committee.

The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.

Prohibition of Discrimination: Article 15 provides that no citizen shall be discriminated on grounds only of religion, race, caste, sex or place of birth.

Exception: Certain provisions can be made for the women, children, citizens from any socially or educationally backward class for their upliftment (such as reservation and access to free education).

Equality of Opportunity in Public Employment: Article 16 of the Indian constitution provides for equality of opportunity for all citizens in matters of employment or appointment to any public office.

Exceptions: There are provisions for reservation in appointments or posts for any backward class that is not adequately represented in the state services.

Also, an incumbent of a religious or denominational institution may belong to the particular religion or denomination.

Abolition of Untouchability: Article 17 abolishes 'untouchability' and forbids its practice in any form. The enforcement of any disability arising out of

untouchability shall be an offence punishable in accordance with law.

A person convicted of the offence of 'untouchability' is disqualified for election to the Parliament or state legislature. **The acts of offences include:**

Preaching untouchability directly or indirectly.

Preventing any person from entering any shop, hotel, public place of worship and place of public entertainment.

Refusing to admit persons in hospitals, educational institutions or hostels established for public benefit.

Justifying untouchability on traditional, religious, philosophical or other grounds.

Insulting a person belonging to scheduled caste on the ground of untouchability.

Abolition of Titles: Article 18 of the constitution of India abolishes titles and makes four provisions in that regard:

It prohibits the state from conferring any title on any citizen or a foreigner (except a military or academic distinction).

It prohibits a citizen of India from accepting any title from any foreign state.

A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the President of India.

No citizen or foreigner holding any office of profit or trust within the territory of India can accept any present, emolument or office from or under any foreign State without the consent of the president.

Right to Freedom (Article 19, 20, 21 and 22):

Protection of 6 Rights: Article 19 guarantees to all citizens the six rights of freedom including:

Right to freedom of speech and expression.

Expressing one's own views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner.

Right to assemble peaceably and without arms.

includes the right to hold public meetings, demonstrations and take out processions which can be exercised only on public land.

It does not protect violent, disorderly and riotous assemblies or strike.

Right to form It includes the right to form (and not to form) political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of persons.

Right to move freely throughout the territory of India.

The freedom of movement has two dimensions, viz, internal (right to move inside the country) (article 19) and external (right to move out of the country and right to come back to the country) (article 21).

Right to reside and settle in any part of the territory of India.

The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture and customs of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

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

It doesn't include the right to carry on a profession that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc.).

Protection in Respect of Conviction for Offences: Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It provides that:

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act or subjected to a penalty greater than that prescribed by the law.

No person shall be prosecuted and punished for the same offence more than once.

No person accused of any offence shall be compelled to be a witness against himself.

Protection of Life and Personal Liberty: Article 21 declares that no person shall be deprived of his **life or personal liberty** except according to procedure established by law. This right is available to both citizens and non-citizens.

The right to life is not merely confined to animal existence or survival but also includes the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living.

Right to Education: Article 21 (A) declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years.

This provision makes only elementary education a Fundamental Right and not higher or professional education.

This provision was added by the **86th Constitutional Amendment Act of 2002**.

Before the 86th amendment, the Constitution contained a provision for free and compulsory education for children under **Article 45 in Part IV** of the constitution.

Protection Against Arrest and Detention: Article 22 grants protection to persons who are arrested or detained.

Detention is of two types, namely, **punitive** (punishment after trial and conviction) and **preventive** (punishment without trial and conviction).

The first part of Article 22 deals with the ordinary law and includes:

- Right to be informed of the grounds of arrest.
- Right to consult and be defended by a legal practitioner.
- Right to be produced before a magistrate within 24 hours, excluding the journey time.
- Right to be released after 24 hours unless the magistrate authorises further detention.

The second part of Article 22 deals with preventive detention law. Protection under this article is available to both citizens as well as aliens and includes the following:

The detention of a person **cannot exceed three months** unless an advisory board (judges of high court) reports sufficient cause for extended detention.

The grounds of detention should be communicated to the detenu.

The detenu should be afforded an opportunity to make a representation against the detention order.

Right Against Exploitation (Article 23 and 24)

Prohibition of Human Trafficking and Forced Labour: Forced labour in India was imposed by landlords, moneylenders and other wealthy persons in the past.

The **Article 23** of the Indian Constitution prohibits human trafficking and begar (forced labour without payment) to protect the millions of underprivileged and deprived people of the country.

The right is available to **citizens** of India as well as to **non-citizens**.

The right provides against human trafficking in the form of:

- Selling and buying of men, women and children.
- Prostitution
- **Devadasis**
- Slavery.

The **Immoral Traffic (Prevention) Act 13, 1956** has been enacted to deal with violations of this fundamental right.

Prohibition of Child Labour: Article 24 of the Indian Constitution forbids employment of children below the age of 14 years in dangerous jobs like

factories and mines.

However, it did not prohibit their employment in any harmless or innocent work.

The **Child Labour (Prohibition and Regulation) Act, 1986** (renamed as **Child & Adolescent Labour (Prohibition and Regulation) Act, 1986** in 2016) specifically deals with the violations of related to this right.

The 2016 amendment of this act completely prohibited employment or of children below 14 years of age in all occupations and processes.

It also prohibited the employment of adolescents (14-18 years of age) in hazardous occupations or processes.

Right to Freedom of Religion (Article 25-28)

Freedom of Conscience, Profession, Practice and Propagation: Article 25 of the Constitution of India provides the freedom of conscience, to profess, to practice and to propagate any religion. These rights are **available to citizens as well as non-citizens.**

Conscience: A person may or may not choose to follow any religion.

Right to Profess: One can declare his/her religious beliefs and faith openly and freely.

Right to Practice: Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.

Right to Propagate: Persuading people to convert from one religion to another. However, **the Constitution does not allow forcible conversions.** It only gives us the right to spread information about our religion and thus attract others to it.

Limitations: The government can impose restrictions on the practice of freedom of religion in order to protect public order, morality and health.

The government can interfere in religious matters for rooting out certain social evils. For example: banning practices like sati, bigamy or human

sacrifice.

Such restrictions cannot be opposed in the name of interference in the right to freedom of religion.

Freedom to Manage Religious Affairs: The **Article 26** of the Indian Constitution provides every religious denomination (or any section of it) the **right to establish and maintain institutions for religious and charitable purposes.**

It also empowers the religious denominations to manage their own affairs in matters of religion.

Moreover, the right to own and acquire movable and immovable property and the right to administer such property is also provided to every religious denomination.

The rights provided under Article 26 are also **subjected to public order, morality and health.**

Freedom from Taxation for Promotion of a Religion: The Indian Constitution under **Article 27** lays down that **no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.**

It says that no public money, collected through taxes, shall be spent for the promotion or maintenance of any particular religion.

Favouring, patronising or supporting any religion over the other is prohibited.

It prohibits only levy of a tax and not a fee.

The purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion.

Freedom from Attending Religious Instruction: **Article 28** states that no religious instruction shall be provided in any educational institution wholly maintained out of State (the territory of India) funds.

However, the provision is not applicable to educational institutions administered by the State or established under any endowment or trust.

Moreover, no person is required to attend any religious instructions or worship without his consent in any educational institution recognised by the State or receiving aid out of State funds.

In case of a minor, the consent of his guardian is needed.

Cultural and Educational Rights (Article 29 and 30)

Protection of Interests of Minorities: Article 29 provides that every section of citizens residing in any part of the country have the right to protect and conserve its own distinct language, script or culture (**it provides the right to a group/section/community of people**).

Further, it says that **no citizen shall be denied admission into any educational institution on grounds only of religion, race, caste, or language** (it provides the rights to an individual citizen).

Article 29 grants protection to both **religious, linguistic as well as cultural minorities**.

However, the rights are **not necessarily restricted to minorities only**, as it is commonly assumed to be. It includes minorities as well as the majority.

Right of Minorities to Establish and Administer Educational Institutions: Article 30 grants all the minorities the following rights:

The right to establish and administer educational institutions of their choice.

The State shall not discriminate against any educational institution managed by a minority.

Thus, the protection under Article 30 is confined only to minorities (religious, cultural or linguistic) and does not extend to any other section of citizens (as under Article 29).

Article 31, 31A, 31B and 31C

Originally, the **right to property was one of the seven fundamental rights** and provided that **no person shall be deprived of his property except by authority of law.**

However, being one the most controversial rights, the **44th Amendment Act of 1978** abolished the right to property as a Fundamental Right and made it a legal right (constitutional right) under **Article 300A in Part XII** of the Constitution.

Article 31 led to a number of Constitutional amendments; 1st, 4th, 7th, 25th, 39th, 40th and 42nd Amendments.

The **First Amendment Act, 1951** inserted Articles 31A and 31B to the Constitution.

Article 31C was inserted in the Constitution by 25th Amendment Act, 1971.

Article 31A: It saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 and Article 19.

It includes:

- **Acquisition of estates and related rights by the State;**
- **Taking over the management of properties by the State;**
- **Amalgamation of corporations;**
- **Extinguishment or modification of rights of directors or shareholders of corporations**
- **Extinguishment or modification of mining leases.**
- **It also provides the guaranteed right to compensation in case of acquisition or requisition of the private property by the state.**

Article 31B: It protects the acts and regulations included in the **Ninth Schedule** from being challenged and invalidated on the ground of contravention of any of the fundamental rights.

The **scope of Article 31B is wider than Article 31A** as it immunises any law included in the Ninth Schedule from the Fundamental Rights (unlike article 31A that protects only five categories).

However, the Supreme Court in its judgement in the **I.R. Coelho case (2007)** ruled that **even laws under the Ninth Schedule would be open to scrutiny** if they violated Fundamental Rights or the basic structure of the Constitution.

The Supreme Court first propounded the doctrine of 'basic structure' of the constitution in the **Kesavananda Bharati on April 24, 1973**.

Article 31C: It contained two provisions:

it says that **no law that seeks to implement socialistic directive principles specified in Articles 39 (b) and (c), shall be declared void** on the grounds of contravention of the fundamental rights conferred by Article 14 or Article 19.

Moreover, no law containing a declaration that it is for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

Articles 31A, 31B and 31C have been retained as exceptions to the fundamental rights.

Right to Constitutional Remedies (Article 32)

Article 32 is considered the most important article of the Constitution as it provides that the **right to get Fundamental Rights protected is itself a fundamental right**.

It confers the **right to remedies for the enforcement of the fundamental rights** of an aggrieved citizen.

The Supreme Court has ruled that Article 32 is a basic feature of the Constitution. Hence, it **cannot be abridged or taken away even by way of an amendment** to the Constitution.

It contains the following **four provisions**:

- The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights.
- The Supreme Court shall have power to issue directions or orders or **writs** for the enforcement of any of the fundamental rights.
- Parliament can empower any other court to issue directions, orders and writs of all kinds.
- Any other court here does not include high courts because **(Article 226)** has already conferred these powers on the high courts.
- **The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution.**

In the case of national emergency, the right can be suspended by the President **(Article 359)**.

Only the Fundamental Rights guaranteed by the Constitution can be enforced under Article 32 and not any other right like non-fundamental constitutional rights, statutory rights, customary rights etc.

The violation of a fundamental right is the *sine qua non* (absolutely necessary condition) for the exercise of the right conferred by Article 32.

The Supreme Court of India is the defender of the fundamental rights of the citizens. For that, it has original and wide powers. It issues five kinds of writs for enforcing the fundamental rights of the citizens. The five types of writs are:

Habeas Corpus

Mandamus

Prohibition

Certiorari

Quo-Warranto

Habeas Corpus

The Writ of Habeas Corpus is issued by the Courts in those cases where a person is **illegally detained**. Habeas Corpus means 'to have the body' and it is one of the most effective remedies available to a person detained.

By this Writ, the Court commands the person or authority who has detained or restrained another person to present such person before the Court.

The Court requires the detaining person to provide the grounds on which the person has been detained and if he fails to provide a valid ground, the person who has been detained will be released by the Court immediately.

Rules regarding the Writ of Habeas Corpus

The following are the rules related to the writ of Habeas Corpus:

The applicant should be in custody of another

Usually, the detained person and his family members are allowed to file an application for habeas corpus but the court has also allowed such application by strangers if it is done in public interest.

The manner prescribed for filing this writ is not necessary so both formal and informal applications in respect of the writ is accepted by the Courts. For e.g., a writ application can also be made by postcard. **In the case of Sunil Batra v. Delhi Administration**, the Supreme Court had accepted the application made through a letter by a stranger due to the inhuman treatment of prisoners. In this case, the letter was accepted as an application and the writ of Habeas Corpus was issued.

A person cannot make the application for the Writ successively to different judges of the same court. Thus, if an application is rejected by one judge, the same application cannot be made to another judge of the same court and if it is done, such an application will be rejected because of the **principle of res judicata**.

This Writ will apply in case of an arrest made by the police when all the formalities and procedures which are required to be followed are not followed. For example – the requirement of presenting the arrested person

before a magistrate or the officer in charge of the police station. [Section 56 of CrPC] Habeas Corpus

Facts about Habeas Corpus in India:

The Supreme Court or High Court can issue this writ against both private and public authorities.

Habeas Corpus cannot be issued in the following cases:

When detention is lawful

When the proceeding is for contempt of a legislature or a court

Detention is by a competent court

Detention is outside the jurisdiction of the court

Mandamus

The literal meaning of this writ is '**We command.**'

This writ is used by the **court to order the public official** who has failed to perform his duty or refused to do his duty, to resume his work. Besides public officials, Mandamus can be issued against any public body, a corporation, an inferior court, a tribunal, or government for the same purpose.

Facts about Mandamus in India:

Unlike Habeas Corpus, Mandamus cannot be issued against a private individual

Mandamus cannot be issued in the following cases:

- To enforce departmental instruction that does not possess statutory force
- To order someone to work when the kind of work is discretionary and not mandatory
- To enforce a contractual obligation
- Mandamus can't be issued against the Indian President or State Governors
- Against the Chief Justice of a High Court acting in a judicial capacity

Prohibition

The literal meaning of '**Prohibition**' is '**To forbid.**' A court that is higher in position issues a Prohibition writ against a court that is lower in position to prevent the latter from **exceeding its jurisdiction** or that it does not possess. It directs inactivity.

Facts about Prohibition in India:

Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.

It can't be issued against administrative authorities, legislative bodies and private individuals or bodies.

Certiorari

The literal meaning of the writ of '**Certiorari**' is '**To be certified**' or '**To be informed.**' This writ is issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or quash their order in a case.

It is issued on the grounds of an excess of jurisdiction or lack of jurisdiction or error of law. It not only prevents but also cures for the mistakes in the judiciary.

Facts about Certiorari in India:

Pre-1991: The writ of Certiorari used to be issued only against judicial and quasi-judicial authorities and not against administrative authorities

Post-1991: The Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting the rights of individuals

It cannot be issued against legislative bodies and private individuals or bodies.

Quo-Warranto

The literal meaning of the writ of '**Quo-Warranto**' is '**By what authority or warrant.**' Supreme Court or High Court issue this writ to prevent illegal of a public office encroachment, by a person. Through this writ, the court enquires into the legality of a claim of a person to a public office

Facts about Quo-Warranto in India:

Quo-Warranto can be issued only when the substantive public office of a permanent character created by a statute or by the Constitution is involved

It can't be issued against private or ministerial office

General Facts about Writs in India:

Article 32 also empowers Parliament to authorize any other court to issue these writs

Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs.

Article 226 empowers all the High Courts of India to issue the writs

Writs of India are borrowed from English law where they are known as 'Prerogative writs'

Article 33, 34 and 35

Article 33: It empowers the **Parliament to restrict or abrogate the fundamental rights of the 'Members of the Armed Forces', paramilitary forces, police forces, intelligence agencies and analogous forces.**

The objective of this provision is to **ensure the proper discharge of their duties** and the maintenance of discipline among them.

The **power to make laws under Article 33 is conferred only on Parliament** and not on state legislatures.

Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

The 'members of the armed forces' also cover non-combatant employees of the armed forces such as barbers, carpenters, mechanics, cooks, chowkidars, bootmakers and tailors.

Article 34: It provides for the **restrictions on fundamental rights while martial law is in force** in any area within the territory of India. The expression 'martial law' has not been defined anywhere in the Constitution but literally, it means 'military rule'.

The martial law is **imposed under extraordinary circumstances** like war, invasion, insurrection, rebellion, riot or any violent resistance to law.

Article 35: Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures.

Conclusion

The Fundamental Rights, despite having a lot of exceptions & restrictions and lack of permanency, are a crucial part of the Constitution of India as:

They provide necessary conditions for the material and moral protection of man and ensure the liberty of every individual.

These rights protect the interests of minorities and weaker sections of society and also strengthen the notion of India as a secular State.

They ensure the dignity and respect of individuals by laying down the foundation of social equality and justice.

Current Issues Related to Part -3

Martial law and FR- Violation of FR (Article 19,21)-Applicability of Article 33

The Armed Forces (Special Powers) Bill was passed by both the Houses of Parliament and it was approved by the President on **September 11, 1958**. It became known as the Armed Forces Special Powers Act (AFSPA), 1958.

The Act came into force in the context of increasing violence in the North-eastern States decades ago, which the State governments found difficult to control.

AFSPA gives armed forces the power to maintain public order in “**disturbed areas**”. They have the authority to prohibit a gathering of five or more persons in an area, can use force or even open fire after giving due warning if they feel a person is in contravention of the law.

If reasonable suspicion exists, the army can also arrest a person without a warrant; enter or search premises without a warrant; and ban the possession of firearms.

Disturbed Areas

A disturbed area is one which is declared by notification under Section 3 of the AFSPA.

An area can be disturbed due to differences or disputes between members of different religious, racial, language or regional groups or castes or communities.

The Central Government, or the Governor of the State or administrator of the Union Territory can declare the whole or part of the State or Union Territory as a disturbed area.

Once declared ‘disturbed’, the region is maintained as disturbed for a period of three months straight, according to The **Disturbed Areas (Special Courts) Act, 1976**. The government of the state can suggest whether the Act is required in the state or not.

States under AFSPA, Act

It is effective in the whole of Nagaland, Assam, Manipur (excluding seven assembly constituencies of Imphal) and parts of Arunachal Pradesh.

In Arunachal Pradesh, the impact of AFSPA was reduced to eight police stations.

Jammu and Kashmir too have a similar Act

Controversy on the application of AFSPA, Act

Act provides the security personnel with absolute powers without being accounted for. This leads to various atrocities and human rights violation by the security agencies.

AFSPA violates the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the **Convention against Torture (India is a signatory, but it has not ratified it).**

BP Jeevan Reddy committee examining it in relation to the Northeast in 2005, and **the Veerappa Moily report** of the Second Administrative Reforms Commission of 2007, recommended that the Act be repealed.

The reports of the **Justice Verma Committee (2013)** and the **Justice Hegde Commission (2013)** supported need to address the abuses committed under the AFSPA and end the effective impunity enjoyed by security forces.

Supreme Court appointed Hegde Commission (2013) found that all seven deaths in the six cases it investigated were extrajudicial executions, and also said that the AFSPA was widely abused by security forces in Manipur.

Need for AFSPA

- Army is of the opinion that the AFSPA is absolutely essential to combat insurgency in the country and protect the borders.
- In a virulent insurgency, security forces cannot operate without the cover of the AFSPA. Without it, there would be hesitation which would work to the advantage of insurgents.
- Army officials also cite the need to protect the morale and integrity of the army as reason not to scrutinize allegations against army personnel.

What is the Mob Lynching?-Violation of Article 21

Mob lynching is an extreme act by a group of violent people attacking another person which sometimes leads to the informal execution of a person.

India has witnessed mob lynching since centuries. Most of the victims were Dalits and Women.

The mob lynching statistics of India shows that India has not been very successful in handling mob violence issues.

Some cases : West Bengal lynching case, Akhlaq lynching case, Palghar etc .

What is Mob Lynching Act in India?

Mob lynching is a violation under Article 21 of the constitution of India as well as the Universal Declaration of Human Rights.

There is no specific definition of mob lynching in IPC.

Mob Lynching is considered an offence under Section 300 and 302 of IPC.

The Supreme Court in 2018, quoted mob lynching as a “horrendous act of mobocracy”.

In pursuance of this, the Manipur government came up first with its Law against lynching in 2018.

Inspired by this Rajasthan and West Bengal have formulated their version of laws to curb mob lynching.

Issue related to Article 21 Right to Life or Right to marry

Issue: Same Sex Marriage

Central Government opposed same-sex marriage in Delhi High Court stating that a marriage in India can be recognised only if it is between a “biological man” and a “biological woman” capable of producing children.

Why is news? -Petitions, seeking recognition of same sex marriages under the **Hindu Marriage Act (HMA), 1955 and the Special Marriage Act (SMA), 1954**, were filed in 2020.

Centre’s Argument:

Supreme Court’s Order:

In reading down the provision of Section 377 of the Indian Penal Code (IPC), the Supreme Court only decriminalised a particular human behaviour but neither intended to, nor did in fact, legitimise the human conduct in question.

Societal Morality:

There exists a “legitimate State interest” in limiting the recognition of marriage to persons of opposite sex.

The considerations of “societal morality” are relevant in considering the validity of a law and it is for the Legislature to enforce such societal morality and public acceptance based upon Indian ethos.

Not in Consonance with Existing Laws:

The fundamental right under Article 21 is subject to the procedure established by law and it cannot be expanded to include the fundamental right for same sex marriage to be recognised under the laws which in fact mandate the contrary.

Article 21 of the constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable.

Any interference with the existing marriage laws would cause complete havoc with the delicate balance of personal laws in the country.

Sanctity of Marriage:

Living together as partners or in a relationship with a same-sex individual is “not comparable” with the “Indian family unit concept” of a husband, wife and children, arguing that the institution of marriage has a “sanctity”.

Legality of same-sex marriages in India:

The right to marry is not expressly recognized either as a fundamental or constitutional right under the Indian Constitution.

Though marriage is regulated through various statutory enactments, its recognition as a fundamental right has only developed through judicial decisions of India’s Supreme Court.

Such declaration of law is binding on all courts throughout India under Article 141 of the Constitution.

Important Supreme Court Decisions:

Marriage as a Fundamental **Right (Shafin Jahan v. Asokan K.M. and others 2018):**

LGBTQ Community Entitled to all Constitutional Rights (**Navjet Singh Johar and others v. Union of India 2018):**

The SC held that members of the **LGBTQ community** “are entitled, as all other citizens, to the full range of constitutional rights including the liberties protected by the Constitution” and are entitled to equal citizenship and **“equal protection of law”**.

ISSUE

The Government of Uttar Pradesh has passed the Prohibition of Unlawful Conversion of Religion Ordinance 2020. Many other states are also in the process of similar laws.

The UP ordinance prohibits any religious conversion **due to coercion, force, undue influence, allurement, fraud or by marriage and makes such a marriage liable to be declared void.** It also makes such an act of conversion a non-bailable criminal offence.

However, the law has been criticised as being a violation of an individual's right to marry a person of one's choice and being restrictive of the fundamental right to life, autonomy and privacy.

Moreover, the law has roots in the **patriarchy and communalism**, which may affect social harmony and respect for individual dignity.

Issues Related to The Proposed Law

Interfering With Secularism: Indian Constitution enshrines secularism as one of the cardinal principles.

Despite this, several states have had anti-conversion laws for a long time, including Odisha, Arunachal Pradesh, Gujarat, Himachal Pradesh and Jharkhand.

Against Personal Liberty: According to Articles 25 to 28, an Indian citizen is guaranteed the freedom to practise any religion of his or her choice.

Through this ordinance, the State wants to intervene not only in the citizens' personal liberty by interfering with the choice of their spouse.

Asymmetrical With Various Supreme Court's Judgment: The Supreme Court in *Shafin Jahan v Ashok KM* (2018), has upheld the right to marry a person of one's choice as a part of Article 21.

Right to Privacy

About:

Generally understood that privacy is synonymous with the right to be let alone.

The Supreme Court described privacy and its importance in the landmark decision of K.S. Puttaswamy v. Union of India in 2017 that - Right to Privacy is a fundamental and inalienable right and attaches to the person covering all information about that person and the choices that he/ she makes.

The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21.

Restrictions (as stated in the Judgement):

The right may be restricted only by state action that passes each of the three tests:

- First, such state action must have a legislative mandate;
- Second, it must be pursuing a legitimate state purpose; and
- Third, it must be proportionate i.e., such state action- both in its nature and extent, must be necessary in a democratic society .

Government Steps to Protect Privacy

Draft Personal Data Protection Bill 2019:

The Bill regulates the processing of personal data of individuals (data principals) by government and private entities (data fiduciaries) incorporated in India and abroad. Processing is allowed if the individual gives consent, or in a medical emergency, or by the State for providing benefits.

B N Srikrishna Committee:

Government appointed a committee of experts on data protection under the chairmanship of Justice B N Srikrishna that submitted its report in July 2018.

Information Technology Act, 2000:

The IT Act provides for safeguard against certain breaches in relation to data from computer systems. It contains provisions to prevent the unauthorized use of computers, computer systems and data stored therein.

Phone Tapping

An FIR can be lodged when illicit phone interception comes into the knowledge of the person. Moreover, the aggrieved person can move to the Court against the person or company doing the Act. Therefore, in India, phone tapping has to be approved by a designated authority and it is illegal otherwise.

Euthanasia

Euthanasia refers to the practice of intentionally ending a life in order to relieve pain and suffering. **It is categorized as voluntary, non-voluntary and involuntary.**

Euthanasia can be further classified into **active or passive ones**.

Active euthanasia is an intentional act to deliberately kill a terminally ill patient using various means whereas passive euthanasia happens when medical treatment is removed purposefully resulting in a person's death to relieve him from unending pain. **Until now euthanasia is not legalized in India.**

In 2016 Government proposed a draft bill on passive euthanasia for the first time called "The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill".

The phrase "euthanasia" was coined by Sir Francis Bacon. It is also called as 'mercy killing'. The term "Euthanasia" has been derived from the two Greek words 'eu' and 'thanotos', which literally means 'good death'.

Euthanasia is the practice of intentionally ending a life in order to relieve pain and suffering (provided motive should be good & death must be painless as much as possible) or

“A deliberate intervention was undertaken with the express intention of ending a life, to relieve intractable suffering.” – British House of Lords Select Committee on Medical Ethics.

Difference between Euthanasia and physician-assisted suicide.

- Physician-assisted suicide is often misunderstood with euthanasia. The difference being in who administers the lethal drug.
- In euthanasia-a physician or third party administers it.
- In physician-assisted suicide- it is the patient himself administers it, though on the advice of the doctor.
- Assisted suicide and euthanasia are sometimes called under the umbrella term “**assisted dying**”.

Broad classification-

Voluntary Euthanasia (with patients’ consent)– euthanasia is performed with the patients consent. It is legal in some countries like Belgium, Netherlands, etc.

Non-voluntary Euthanasia (patient’s consent unavailable)– where a person is unable to give their consent (for example –the patient is in a state of coma or are severely brain-damaged) and another person takes the decision on their behalf, often because the ill person had expressed a wish previously to end their life in such circumstances.

Involuntary Euthanasia (without asking consent or against the patient’s will)– Euthanasia conducted against the will of the patient is termed involuntary euthanasia. It is also regarded as murder.

All types of euthanasia can be further divided into passive or active types-

a) Active Euthanasia– where a person intentionally intervenes to end someone’s life with the use of lethal substances or forces.

For example- Administering a lethal injection to end life.

b) Passive Euthanasia– where a person causes death by withholding or withdrawing treatment that is essential to maintain life. For example- stoppage

of antibiotics treatment in certain cases where it is necessary for the continuance of life, removal of life support system, etc

Arguments For Euthanasia- According to euthanasia opponent Ezekiel Emanuel, proponents of euthanasia have presented four main arguments:

- That people have a right to self-determination, and thus should be allowed to choose their own destiny.
- Assisting a subject to die is a better option than continuing to suffer.
- The distinction between passive euthanasia (which is frequently allowed) and active euthanasia is not substantive (the underlying principle—the doctrine of double effect is unreasonable) /

Arguments based on rights

People got an explicit right to die

Death is a private subject and if there is no harm done to others then, the state and other people have no right to interfere (libertarian case)

Practical arguments—

Death is a private subject and if there is no harm done to others then, the state and other people have no right to interfere (libertarian case)

Allowing people to die may free up scarce health resources (this is a possible argument, but so far no authority has seriously proposed it)

Arguments Against Euthanasia

Similarly, Emanuel argues that there are four major arguments presented by opponents of euthanasia:

All deaths are not painful.

Termination of active treatment, combined with the effective use of pain relief are available as alternatives to euthanasia

The distinction between active and passive euthanasia is morally significant and

Legalizing euthanasia will put society on a slippery slope, which will lead to unacceptable consequences. (In Oregon 2013, the pain wasn't one of the top five reasons that people sought euthanasia for. In fact, it was a loss of dignity, and a fear of burdening others).

Other arguments-

Ethical arguments

Euthanasia could weaken society's respect for the sanctity of life.

Accepting euthanasia would mean that some lives (those of the sick or disabled) are worth less than others.

Voluntary euthanasia could start on a slippery slope that may lead to involuntary euthanasia and the killing of people who are thought undesirable.

Euthanasia might not be in a person's best interests.

Euthanasia affects the rights of other people and not just those of the patient

Religious arguments- Religions are opposed to euthanasia for a number of reasons.

a) Euthanasia is against the will and word of God. (God has forbidden it)

Virtually all religions in their scriptures say 'you must not kill'. Therefore, carrying out any of these would be against God's command, and would be an attack on the sovereignty of God

b) Euthanasia weakens society's respect for the sanctity of life.

Human life is sacred. Human lives are special because God created them. Human beings are made in God's image. Therefore, human life should be protected and preserved, whatever happens

c) law of karma –Suffering may have value (Freedom from worldly life)

Hinduism and Buddhism see mortal life as part of a continuing cycle in which we take birth, live, die, and are reborn over and over again.

During each cycle of life and death, human beings make progress towards their ultimate aim, which is liberation.

Thus, shortening life interferes with the law of karma.

d) Voluntary euthanasia could start on a slippery slope that may lead to involuntary euthanasia and the killing of people who are thought undesirable

e) Most religions disapprove of euthanasia. Some absolutely forbid it.

For example, the Roman Catholic church is one of the most active organizations in opposing euthanasia.

f) Virtually all religions state that those who become vulnerable through illness or disability deserve special care and protection, and proper care of life is a much better thing than euthanasia.

g) Non-harm – the principle of ahimsa-Hinduism and Buddhism regard all life as precious. (not just human life). They say that we should try to avoid harming living things and therefore this also rules out killing people, even if they want to die.

Practical arguments

- a) Proper palliative care could make euthanasia unnecessary.
- b) Euthanasia cannot be properly regulated
- c) Permitting euthanasia will lead to less good care for the terminally ill.
- d) Permitting euthanasia could undermine the commitment of doctors and nurses to save lives.
- e) Euthanasia may become in the future a cost-effective way to treat the terminally ill.
- f) Allowing euthanasia could discourage the search for new modes of treatment for the terminally ill.
- g) Euthanasia could discourage the motivation to provide good care for the dying.
- h) Euthanasia gives too much authority to doctors.
- i) Euthanasia exposes vulnerable people to pressure to end their lives.
- j) Moral pressure on elderly people by selfish families.

- k) Moral pressure to free up medical resources.
- l) Patients may feel euthanasia is the only way out when they are abandoned by their families.

India's Euthanasia Timeline

In the **Gyan Kaur case**, the Supreme Court held that both euthanasia and assisted suicide are not lawful in India. The Court confusingly stated-

1) The right to life under Article 21 of the Constitution does not include the right to die. The court held that Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life be read into it.

2) The right to live with dignity does include the right to die with dignity

But the court could not come up with any practical rules and passed the buck to lawmakers to come up with laws regulating euthanasia

In 2006, the 196th report of the Law Commission of India brought out 'The Medical Treatment of Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill 2006. However, no law was made on euthanasia.

In 2011 the supreme court in Aruna Shanbaug versus Union of India case laid down guidelines to process pleas for passive euthanasia. It said till Parliament works out legislation, the procedures laid down by the guidelines should be followed. It also spelled out differences between active and passive euthanasia.

In 2012, **The Law Commissions 241st report** again proposed making legislation on passive euthanasia and prepared a draft bill called the Medical Treatment of Terminally Ill Patients (protection of patients and medical practitioners) Bill. Bill deals with passive euthanasia and living will. It doesn't recommend active euthanasia

*In 2014, a three-judge bench of the Supreme Court of India had called the judgment in the Aruna Shanbaug case to be **'inconsistent in itself'** and has referred the subject of euthanasia to its five-judge Constitution bench.*

In 2016, the health ministry uploads the draft bill for public opinion -The Medical Treatment of Terminally Ill Patients (**Protection of Patients and Medical Practitioners**) Bill and wants people to give their views so that it can take a decision to enact/not to enact a law on passive euthanasia.