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Department of Employment and Training

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FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES

FUNDAMENTAL RIGHTS

Introduction:

The founding fathers of the Indian constitution were conscious of the need to recognize the basic rights of the people. The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. Part III of the Constitution is rightly described as the Magna Carta of India. It contains a very long and comprehensive list of 'justiciable' Fundamental Rights. The Fundamental Rights are meant for promoting the ideal of political democracy. The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. They are 'fundamental' also in the sense that they are most essential for the all-round development (material, intellectual, moral and spiritual) of the individuals.

The Constitution provided for six Fundamental Rights viz,

1. Right to equality (Articles 14–18):

The state should ensure that every person is equal before law and all are equally protected by law. In order to establish equality, the constitution enshrines the following right.

(a) Equality before law and equal protection of laws (Article 14):

Article 14 says 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.

(b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).

Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. The two crucial words in this provision are 'discrimination' and 'only'. The word 'discrimination' means 'to make an adverse distinction with regard to' or 'to distinguish unfavourably from others'.

(c) Equality of opportunity in matters of public employment (Article 16).

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Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State. No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

(d) Abolition of untouchability and prohibition of its practice (Article 17).

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.

(e) Abolition of titles except military and academic (Article 18).

Article 18 abolishes titles and makes four provisions in that regard: It prohibits the state from conferring any title (except a military or academic distinction) on anybody, whether a citizen or a foreigner. 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. No citizen or foreigner holding any office of profit or trust under the State is to accept any present, emolument or office from or under any foreign. State without the consent of the president.

2. Right to freedom (Articles 19–22)

1) Article 19 guarantees to all citizens the six rights:

These are:

(i) Right to freedom of speech and expression.

It implies that every citizen has the right to express his views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner.

(ii) Right to assemble peaceably and without arms.

Every citizen has the right to assemble peaceably and without arms. It includes the right to hold public meetings, demonstrations and take out processions. This freedom can be exercised only on public land and the assembly must be peaceful and unarmed.

(iii) Right to form associations or unions or co-operative societies.

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All citizens have the right to form associations or unions or co-operative societies. It includes the right to form political parties, companies, partnership firms, societies, clubs, organisations, trade unions or anybody of persons.

(iv) Right to move freely throughout the territory of India.

This freedom entitles every citizen to move freely throughout the territory of the country. He can move freely from one state to another or from one place to another within a state.

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

Every citizen has the right to reside and settle in any part of the territory of the country. This right has two parts: (a) the right to reside in any part of the country, which means to stay at any place temporarily, and (b) the right to settle in any part of the country, which means to set up a home or domicile at any place permanently.

(vi) Right to practice any profession or to carry on any occupation, trade or business. All citizens are given the right to practise any profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood.

2) Article 20 of the constitution prohibits arbitrary imprisonment of any person. No person shall be prosecuted or punished for the same crime more than once. No one is compelled to give a self-incriminating evidence.

3) Article 21 of the constitution establishes the right of life and personal liberty to all people. Nobody shall be deprived of his life or personal liberty except according to procedure established by law.

4) 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 in such a manner as the State may determine. Thus, this provision makes only elementary education a Fundamental Right and not higher or professional education.

5) Articles 22 of the constitution prohibits the state from arbitrarily arresting any person. This article provides safeguard to people from arbitrary arrest. People

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who are arrested shall have the right to be informed about the reason for the arrest.

3. Right against exploitation (Articles 23–24)

- (a) Article 23 of the constitution Prohibits traffic in human beings and forced labour system. This article prohibits slavery, traffic in women or children or crippled persons in immoral purposes like prostitution or begging.
- (b) Article 24 prohibits any child below the age of fourteen from working in dangerous and hazardous employment.

4. Right to freedom of religion (Articles 25–28)

- (a) Article 25 of the constitution ensures freedom of conscience and freedom to process, practice and propogate religion of one's choice.
- (b) Article 26 of the constitution guarantees the right to establish and maintain institutions for religious or charitable purposes.
- (c) Article 27 of the constitution guarantees the citizen the freedom from payment of taxes for the promotion or maintenance of any particular religion.
- (d) Article 28 of the constitution no religious instruction shall be provided in any educational institution maintained by state funds.

5. Cultural and educational rights (Articles 29–30)

- (a) Article 29 of the constitution protects the right of minorities to safeguard their distinct language, script & culture.
- (b) Article 30 of the Constitution grants the right of minorities to setup their educational institutions.

6. Right to constitutional remedies (Article 32)

Article 32 of the constitution grants the right to move Supreme court by appropriate writ for enforcement of right conferred by the constitution. The Supreme Court or High Court has the power to issue Writs or order in the nature on “Habeaus Corpus, Mandamus, Prohibition, Certiorari and Quo Warrantor” whichever may be appropriate.



Habeas Corpus

Which literally means ‘to have the body of’. It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. The court then examines the cause and legality of detention.

Mandamus

It literally means ‘we command’. It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

Prohibition

Literally, it means ‘to forbid’. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.

Certiorari

In the literal sense, it means ‘to be certified’ or ‘to be informed’. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case.

Quo-Warranto

In the literal sense, it means ‘by what authority or warrant’. It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.

Armed Forces and Fundamental Rights (Articles 33)

Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military 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.

Martial Law and a Fundamental Rights (Articles 34)

Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India. It empowers the Parliament to indemnify

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any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force. Article 34 under which martial law can be declared in any area within the territory of India. The martial law is imposed under the extraordinary circumstances like war, invasion, insurrection, rebellion, riot or any violent resistance to law.

Besides the Fundamental Rights included in Part III, there are certain other rights contained in other parts of the Constitution. These rights are known as constitutional rights or legal rights or non-fundamental rights. They are:

1. No tax shall be levied or collected except by authority of law (Article 265 in Part XII).
2. No person shall be deprived of his property save by authority of law (Article 300-A in Part XII).
3. Trade, commerce and intercourse throughout the territory of India shall be free (Article 301 in Part XIII).
4. The elections to the Lok Sabha and the State Legislative Assembly shall be on the basis of adult suffrage (Article 326 in Part XV).

FUNDAMENTAL DUTIES

Introduction:

The original constitution contained only the fundamental rights and not the fundamental duties. In 1976, the Congress Party set up the Sardar Swaran Singh Committee to make recommendations about fundamental duties.

In 1976, the fundamental duties of citizens were added in the Constitution. Part IVA of the Constitution consists of only one Article, that is, Article 51A which for the first time specified a code of ten fundamental duties of the citizens.

This part has been inserted by the 42nd Amendment Act, 1976. In 2002, one more Fundamental Duty was added making it eleven.

Article 51A -

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

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- (b) to cherish and follow the noble ideals that inspired the national struggle for freedom;
 - (c) to uphold and protect the sovereignty, unity and integrity of India;
 - (d) to defend the country and render national service when called upon to do so;
 - (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
 - (f) to value and preserve the rich heritage of the country's composite culture;
 - (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
 - (h) to develop scientific temper, humanism and the spirit of inquiry and reform;
 - (i) to safeguard public property and to abjure violence;
 - (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
 - (k) to provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

Questions:

1. What are rights to constitutional remedies?
2. Discuss about the "Right to Freedom of Religion".
3. What are the fundamental duties incorporated in Part IVA of the constitution?