

TNPSC GROUP I / II - PRELIMINARY INDIAN POLITY - WORKSHEET

FUNDAMENTAL RIGHTS

The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA. 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.

Fundamental Rights at a Glance

Category	Consists of
Article 12	Definition of State
Article 13	Laws inconsistent with Fundamental Rights
1. Right to equality (Articles 14 - 18)	<ul style="list-style-type: none"> a. Equality before law and equal protection of laws (Article 14). b. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15). c. Equality of opportunity in matters of public employment (Article 16). d. Abolition of untouchability and prohibition of its practice (Article 17). e. Abolition of titles except military and academic (Article 18).
2. Right to freedom (Articles 19 - 22)	<ul style="list-style-type: none"> a. Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19). b. Protection in respect of conviction for offences (Article 20). c. Protection of life and personal liberty (Article 21). d. Right to elementary education (Article 21A). e. Protection against arrest and detention in certain

	cases (Article 22).
3. Right against exploitation (Articles 23 - 24)	a. Prohibition of traffic in human beings and forced labour (Article 23). b. Prohibition of employment of children in factories, etc. (Article 24).
4. Right to freedom of religion (Article 25 - 28)	a. Freedom of conscience and free profession, practice and propagation of religion (Article 25). b. Freedom to manage religious affairs (Article 26). c. Freedom from payment of taxes for promotion of any religion (Article 27). d. Freedom from attending religious instruction or worship in certain educational institutions (Article 28).
5. Cultural and educational rights (Articles 29 - 30)	a. Protection of language, script and culture of minorities (Article 29) b. Right of minorities to establish and administer educational institutions (Article 30).
6. Rights to constitutional remedies (Article 32)	Right to move the Supreme Court for the enforcement of fundamental rights including the writs of (i) <i>habeas corpus</i> , (ii) <i>mandamus</i> , (iii) <i>prohibition</i> , (iv) <i>certiorari</i> , and (v) <i>quo warranto</i> (Article 32).

ARTICLE 12 - DEFINITION OF STATE

The term 'State' has been used in different provisions concerning, the fundamental rights. Hence, Article 12 has defined the term for the purposes of Part III. According to it, the State includes the following:

- Government and Parliament of India, that is, executive and legislative organs of the Union government.
- Government and legislature of states, that is, executive and legislative organs of state government:
- All local authorities, that is, municipalities, panchayats, district boards, improvement trusts, etc.

d. All other authorities, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.

ARTICLE 13 - LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, it expressly provides for the doctrine of judicial review. This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights. The term 'law' in Article 13 has been given a wide connotation so as to include the following:

- a. Permanent laws enacted by the Parliament or the state legislatures;
- b. Temporary laws like ordinances issued by the president or the state governors;
- c. Statutory instalments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification; and
- d. Non-legislative sources of law, that is, custom or usage having the force of law.

Fundamental Rights and Judicial Review

What was the Constitution First Amendment Act, 1951?

About:

- The First Amendment was passed in 1951 by the Provisional Parliament, members of who had just finished drafting the Constitution as part of the Constitutional Assembly.
- The First Amendment Act amended articles 15, 19, 85, 87, 174, 176, 341, 342, 372 and 376.
- Added Ninth Schedule to protect the land reforms and other laws included in it from the judicial review. After Article 31, Articles 31A and 31B were inserted.

Reason for Amendments:

- The immediate reason for the amendments were a series of Supreme Court and High Court judgments that had struck down provisions of public safety laws, press related laws and criminal provisions that were deemed to be incompatible with the constitutional right to freedom of speech.

Implications:

- Under the provisions of Article 31, laws placed in the Ninth Schedule cannot be challenged in a court of law on the ground that they violated the fundamental rights of citizens.
- Article 31(A), has vested enormous power to the State with respect to the acquisition of estates or taking over management of any property or corporation in public interest. It sought to exclude such acquisitions or from the scope of judicial review under Articles 14 and 19.

Shankari Prasad case (1951)

1. The constitutional validity of the First Amendment Act (1951) was challenged. The Supreme Court ruled that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights.
2. The word „law“ in Article 13 includes only ordinary laws and not the constitutional amendment acts (constituent laws).

Sajjan Singh case (1965)

1. In this case, the validity of the 17th Constitutional Amendment Act, 1964 was challenged.
2. The Supreme Court approved the majority judgment given in Shankari Prasad's case and held that the words "amendment of the Constitution" means amendment of all the provisions of the Constitution.
3. The power to amend the fundamental rights had been upheld on the basis of Article 368.

Golak Nath case (1967)

1. The constitutional validity of the Seventeenth Amendment Act (1964), which inserted certain state acts in the Ninth Schedule, was challenged.
2. The Supreme Court ruled that the Parliament cannot abridge or take away any of the fundamental rights.
3. A constitutional amendment act is also a law within the meaning of Article 13 and hence, would be void for violating any of the Fundamental Rights.

24th Amendment Act (1971)

1. The Parliament reacted to the Supreme Court's judgement in the Golak Nath case (1967) by enacting the 24th Amendment Act (1971). This Act amended Articles 13 and 368.
2. It declared that the Parliament has the power to abridge or take away any of the Fundamental Rights under Article 368 and such an act will not be a law under the meaning of Article 13.

25th Amendment Act of 1971 has two provisions that:

- Curtailed the fundamental right to property
- Provided that any law made to give effect to the Directive Principle contained in Article 39 (b) or (c) cannot be challenged on the ground of violation of the rights guaranteed under Article 14, 19 and 31.

Article 31C:

Article 31C Saving of Laws Giving Effect to Certain Directive Principles

- i. No law that seeks to implement the socialistic directive principles specified in Article 39(b) or (c) shall be void on the ground of Article 14 and Article 19.
- ii. 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.

Article 39 (b) -The State shall direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

Article 39 (c) -The state shall direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Kesavananda Bharati Case 1973

In the Kesavananda Bharati case (1973) the Supreme Court held that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the 'basic structure' of the Constitution and hence, can be declared as void.

42nd Amendment 1976

Fundamental Rights X DPSP

Minerva Mills case (1980)

1. The Supreme Court ruled that the power of the parliament to amend the constitution is limited by the constitution.
2. The Supreme Court also held that the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.

DOCTRINE OF ECLIPSE

- The doctrine of eclipse is based on the notion that a pre-constitutional law which is inconsistent with a fundamental right is not a nullity or void from its very inception.
- Such a law becomes only inoperative from the date of the commencement of the constitution.
- It is overshadowed or eclipsed by the fundamental rights and remains Dormant but is not dead altogether.
- It is not wiped out completely from the statute book.

Formulation of the Doctrine

- The doctrine of eclipse was enunciated by the Supreme Court in the Bhikaji case (1955).
- In this case, section 43 of the Motor Vehicles Act (1939) was amended by the Central provinces and Berar Motor Vehicles (Amendment Act 1947).
- This provision empowered the state Government to take over the motor transport business to the exclusion of individual operations.
- But it become void with the Commencement of the constitution in 1950 as it violated the fundamental rights under Article 19(1) g.
- Later, the 1st Amendment Act (1951) amended Article 19(6) and enabled the government to take over any trade or business either exclusively or in competition with the individuals.
- Consequently, the state Government issued a notification to take over the Motor transport business.
- This Notifications was challenged in the Supreme Court.

- The State Government argued that from January 26, 1950 to June 18, 1951 Section 43 of the Motor Vehicles Act (1939) remained invalid, but the amendment of the provision under the Article 19(6) by the 1st Amendment Act (1951) made the same Section 43 of the Act valid again.
- Finally, the Supreme Court held that the impugned Act became, for the time being, eclipsed by the fundamental right but the amendment of Article 19(6) removed the Shadow.
- In other words, the court upheld the validity of the notification by applying the doctrine of eclipse.

Article 19 (1) g

- Article 19(1) g of constitution of India Provided Rights to Practice any profession or to carry on any occupation, trade or business to all citizens subject to art.

RIGHT TO EQUALITY

Article 14 - Equality before Law and Equal Protection of Laws

1. The concept of equality before law is of British origin while the concept of 'equal protection of laws' has been taken from the American Constitution.
2. The former is a negative concept while the latter is a positive concept.
3. Rule of Law: The concept of 'equality before law' is an element of the concept of 'Rule of Law', propounded by A.V. Dicey, the British jurist.

Exceptions to Equality

- ❖ The President of India and the Governor of States enjoy the immunities under Article 361
- ❖ Exceptions to the Members of Parliament and Members of Legislatures under Articles 361-A, 105, 194
- ❖ Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. The Supreme Court held that “where Article 31-C comes in, Article 14 goes out”.
- ❖ The foreign sovereigns (rulers), ambassadors, diplomats, the UNO and its agencies enjoy the diplomatic immunity.

Article 15 - Prohibition of Discrimination on Certain Grounds based on (1) Religion, (2) Race, (3) Caste, (4) Sex, (5) Place of birth

Q. Which of the following provisions of the constitution speaks about the rights of citizens in relation to access to shops and places of public entertainment?

- A) Art. 13 B) Art. 15 C) Art. 17 D) Art. 18

❖ The use of the word 'only' connotes that discrimination on other grounds is not prohibited.

❖ **Four exceptions :**

- (i) women and children,
- (ii) The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes through Reservation of seats or fee concessions in public educational institutions.
- (iii) Admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions.
- (iv) Any economically weaker sections of citizens

Article 16 - Equality of Opportunity in Public Employment

Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State.

Q. The following fundamental right is available only to citizens

- A) Art. 14 B) Art. 21 C) Art. 16 D) Art. 22

Kaka Kalelkar Commission:

The first Backward Classes Commission was set up in 1953 under the chairmanship of Kaka Kalelkar with eleven members. Its report, however, was never implemented.

Mandal Commission and Aftermath

1. In 1979, the Morarji Desai Government appointed the Second Backward Classes Commission under the chairmanship of B P Mandal, a Member of Parliament, in terms of Article 340 of the Constitution to investigate the conditions of the socially and educationally backward classes and suggest measures for their advancement.

2. The commission submitted its report in 1980 and identified as many as 3743 castes as socially and educationally backward classes.
3. They constitute nearly 52% component of the population, excluding the scheduled castes (SCs) and the scheduled tribes (STs). The commission recommended for reservation of 27% government jobs for the Other Backward Classes (OBCs) so that the total reservation for all ((SCs, STs and OBCs) amounts to 50%.
4. Indira Gandhi and Rajiv Gandhi Government: The following Congress governments under Indira Gandhi and Rajiv Gandhi were not willing to act on the Report due to its politically contentious nature.
5. V P Singh Government: It was after ten years in 1990 that the V P Singh Government declared reservation of 27% government jobs for the OBCs.
6. Narasimha Rao Government: Again in 1991, the Narasimha Rao Government introduced two changes: (a) preference to the poorer sections among the OBCs in the 27% quota, i.e., adoption of the economic criteria in granting reservation, and (b) reservation of another 10% of jobs for poorer (economically backward) sections of higher castes who are not covered, by any existing schemes of reservation.
7. **Mandal case (1992):**
 1. In the famous Mandal case (1992), Indira Sawhney Vs Union of India the scope and extent of Article 16(4), which provides for reservation of jobs in favour of backward classes, has been examined thoroughly by the Supreme Court.
 2. Though the Court has rejected the additional reservation of 10% for poorer sections of higher castes, it upheld the constitutional validity of 27% reservation for the OBCs with certain conditions like the total reserved quota should not exceed 50% except in extra ordinary situation.
 - (a) Ram Nandan Committee was appointed to identify the creamy layer among the OBCs. It submitted its report in 1993, which was accepted.
 - (b) National Commission for Backward Classes was established in 1993 by an act of Parliament. It considers inclusions in and exclusions from the lists of castes notified as backward for the purpose of job reservation. Later 102nd Amendment Act of 2018 conferred a constitutional status.

(c) The 76th Amendment Act of 1994 has placed the Tamil Nadu Reservations Act of 1994 in the Ninth Schedule to protect it from judicial review as it provided for 69 per cent of reservation, far exceeding the 50 per cent ceiling.

103rd Amendment Act of 2019:

1. Reservation for EWSs in Public Employment was added by the **103rd Amendment Act of 2019**.
2. In order to give effect to this provision, the central government issued an order (in 2019) providing 10% reservation to the Economically Weaker Sections (EWSs) in civil posts and services in the Government of India.

Q. In which of the following case, the Supreme Court upheld the 103rd Constitutional Amendment providing reservation for Economic Weaker Section

- A) Ashok Kumar Thakur - Vs - Union of India
- B) Janhit Abhiyan - Vs - Union of India
- C) P.A. Inamdar - Vs - State of Maharashtra
- D) Unni Krishnan - Vs - State of Andhrar Pradesh

Article 17 - Abolition of Untouchability

The term 'untouchability' has not been defined either in the Constitution or in the Act.

Untouchability (Offences) Act (1955):

1. To uphold this provision, Untouchability (Offences) Act was enacted by the Parliament in 1955 under Article 35. In 1976, it has been comprehensively amended and renamed as the Protection of Civil Rights Act, 1955 to enlarge the scope and make penal provisions more stringent.

Other Legislative Measures:

1. Other legislative measures include, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which was amended in 2015, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 which was amended in 2014, Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.
2. The Supreme Court held that the right under Article 17 is available against private individuals.

Article 18 - Abolition of Titles

- (a) It prohibits the state from conferring any title (except a military or academic distinction) on anybody, whether a citizen or a foreigner.
- (b) It prohibits a citizen of India from accepting any title from any foreign state.

From the above, it is clear that the hereditary titles of nobility like Maharaja, Raj Bahadur, RaiBahadur, RaiSaheb, DewanBahadur, etc, which were conferred by colonial States are banned by Article 18 as these are against the principle of equal status of all.

National Awards were instituted in 1954. The Janata Party government headed by Morarji Desai discontinued them in 1977. But they were again revived in 1980 by the Indira Gandhi government.

Balaji Raghavan Case

In 1996, the Supreme Court upheld the constitutional validity of the National Awards – Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri. It ruled that these awards do not amount to 'titles' within the meaning of Article 18 that prohibits only hereditary titles of nobility.

Article 19 - RIGHT TO FREEDOM

Article 19 - Protection of Six Rights

1. 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.

2. Freedom Of Assembly

3. Freedom of Association:

4. Freedom of Movement

Q. Right to free movement is guaranteed as fundamental right under _____ of the Constitution of India.

A) Art. 19 (1) (a)

B) Art. 19 (1) (b)

C) Art. 19 (1) (c)

D) Art. 19 (1) (d)

5. Freedom of Residence

6. Freedom of Profession

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.

The State can impose reasonable restrictions on the exercise of this right in the interest of the general public.

Article 20 - Protection in Respect of Conviction for Offences

- (a) **No ex-post-facto law:** No person shall be (i) convicted of any offence except for violation of a law in force at the time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
- (b) **No double jeopardy:** person shall be prosecuted and punished for the same offence more than once.

Q. Which one of the following is correct with respect to "Double Jeopardy" under the Indian Constitution?

- A. No person shall be deprived of his life or personal liberty except according to procedure established by law .
- B. No citizen of India shall accept any title from any foreign state.
- C. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- D. No person shall be prosecuted and punished for the same offence more than once.

- (c) **No self-incrimination:** No person accused of any offence shall be compelled to be a witness against himself.

However, this limitation is imposed only on criminal laws and not on civil laws (or) tax laws.

Article 21 - Protection of Life and Personal Liberty

Gopalan case (1950):

In the famous Gopalan case (1950), the Supreme Court has taken a narrow interpretation of the Article 21. It held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action.

Menaka case (1978):

1. In the Menaka case (1978), the Supreme Court overruled its judgement in the Gopalan case by taking a wider interpretation of the Article 21.
2. Therefore, it ruled that the right to life and "personal liberty of a person can be deprived by a law provided the procedure prescribed by that" law is reasonable, fair and just.
3. In other words, it has introduced the American expression 'due process of law'.
4. In effect Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action.

Article 21A - Right to Education

1. 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.
2. This provision was added by the 86th Constitutional Amendment Act of 2002. This amendment is a major milestone/in the country's aim to achieve 'Education for All'.
3. In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009.

Article 22 - Protection Against Arrest and Detention

Detention is of two types, namely, punitive and preventive.

Punitive detention:

Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court.

Preventive detention:

Preventive detention, on the other hand, means detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him from committing an offence in the near future. The Article 22 has two parts – the first part deals with the cases of ordinary law and the second part deals with the cases of preventive detention law.

Ordinary Law

- i. Right to be informed of the grounds of arrest.
- ii. Right to consult and be defended by a legal practitioner.

- iii. Right to be produced before a magistrate within 24 hours excluding the journey time.
- iv. Right to be released after 24 hours unless the magistrate authorises further detention

Preventive Detention Law

- i. The detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention. The board is to consist of judges of a high court.

The preventive detention laws made by the Parliament are:

- (a) Preventive Detention Act, 1950. Expired in 1969.
- (b) Maintenance of Internal Security Act (MISA), 1971. Repealed in 1978.
- (c) Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974.
- (d) National Security Act (NASA), 1980.
- (e) Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act (PBMSECA), 1980.
- (f) Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985. Repealed in 1995.
- (g) Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PITNDPSA), 1988.
- (h) Prevention of Terrorism Act (POTA), 2002. Repealed in 2004

RIGHT AGAINST EXPLOITATION

Article 23 - Prohibition of Traffic in Human Beings and Forced Labour

The term '**begar**' means compulsory work without remuneration.

[It protects the individual not only against the State but also against private persons.]

Legislations related to Article 23 are,

- i. Immoral Traffic (Prevention) Act, 1956
- ii. Bonded Labour System (Abolition) Act, 1976
- iii. The Minimum Wages Act, 1948
- iv. The Contract Labour Act, 1970
- v. Equal Remuneration Act, 1976

Article 23 also provides for an exception to this provision. It permits the State to impose compulsory service for public purposes, as for example, military service or social service, for which it is not bound to pay.

Right against Sexual Exploitation: The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act of 2013, Protection of Children from Sexual Offences Act (POSCO) of 2012 (Amended in 2016)

Q. Which of the following provisions of fundamental rights expressing declares its violation as an offence?

- A) Art 21 B) Art. 23 C) Art. 24 D) Art. 25

Q. Which of the following is the correct explanation with respect to Right against Exploitation?

- A) Protection of the minorities Interest.
B) Prohibition of traffic in human beings and forced labour .
C) Reservation for scheduled caste and scheduled tribe.
D) Right against self-incrimination.

Article 24 Prohibition of Employment of Children in Factories, etc.

- 1. Article 24** prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway. But it does not prohibit their employment in any harmless or innocent work.
- 2.** The Child Labour (Prohibition and Regulation) Act, 1986, is the most important law in this direction. In addition, the Employment of Children Act, 1938; the Factories Act, 1948; the Mines Act, 1952; the Merchant Shipping Act, 1958; the Plantation Labour Act, 1951; the Motor Transport Workers Act, 1951; Apprentices Act, 1961; the Bidi and Cigar Workers Act, 1966

The Child Labour (Prohibition and Regulation) Amendment Act, 2016:

- ❖ Renamed the original act as Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.
- ❖ Complete prohibition of employment of children below the age of 14
- ❖ Children between 14-18 years are categorised as Adolescents and are not allowed to work in hazardous occupations.

- ❖ Kailash Satyarthi: He is the 2014 Nobel Peace Prize recipient and the founder of Bachpan Bachao Andolan. More than 86,000 children have been liberated by him and his team from child labour, slavery and trafficking

RIGHT TO FREEDOM OF RELIGION

Article 25 - Freedom of Conscience and Free Profession, Practice and Propagation of Religion

Q. Which of the following fundamental right is subjected to limitation of Public order, morality and health under the constitution of India?

- | | |
|--------------------------|------------------------------|
| A) Freedom of Expression | B) Right to Personal Liberty |
| C) Freedom of Religion | D) Right to Education |

Article 26 - Freedom to Manage Religious Affairs

- (a) Right to establish and maintain institutions for religious and charitable purposes;
- (b) Right to manage its own affairs in matters of religion;
- (c) Right to own and acquire movable and immovable property; and
- (d) Right to administer such property in accordance with law.

Article 27 - Freedom from Taxation for Promotion of a Religion

The State should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion.

This provision prohibits only levy of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion.

Article 28 - Freedom from Attending Religious Instruction

No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

CULTURAL AND EDUCATIONAL RIGHTS

Article 29 - Protection of Interests of Minorities

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

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

Article 30 - Right of Minorities to Establish and Administer Educational Institutions

- (a) All minorities shall have the right to establish and administer educational institutions of their choice.

ARTICLE 32 - RIGHT TO CONSTITUTIONAL REMEDIES

1. Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen.
2. This is why Dr Ambedkar called Article 32 as the most important article of the Constitution – 'an Article without which this constitution would be a nullity. It is the very soul of the Constitution and the very heart of it'.
3. 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.

In case of the enforcement of Fundamental Rights, the jurisdiction of the Supreme Court is original but not exclusive. It is concurrent with the jurisdiction of the high court under Article 226.

WRITS – TYPES AND SCOPE

Writs are borrowed from English law where they are known as 'prerogative writs'. They are so called in England as they were issued in the exercise of the prerogative of the King who was, and is still, described as the 'fountain of justice'.

Habeas Corpus

It is a Latin term which literally means 'to have the body'. 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 writ of habeas corpus can be issued against both public authorities as well as private individuals

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. Thus, unlike *mandamus* that directs activity, the prohibition directs inactivity.

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. It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law. Thus, unlike prohibition, which is only preventive, *certiorari* is both preventive as well as curative.

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.

It cannot be issued in cases of ministerial office or private office and this can be sought by any interested person and not necessarily by the aggrieved person.

ARTICLE 33 - ARMED FORCES AND FUNDAMENTAL RIGHTS

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.

Accordingly, the Parliament has enacted the Army Act (1950), the Navy Act (1950), the Air Force Act (1950), the Police Forces (Restriction of Rights) Act, 1966, the Border Security Force Act (1968) and so on.

ARTICLE 34 - MARTIAL LAW AND FUNDAMENTAL RIGHTS

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 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.

The concept of martial law has been borrowed in India from the English common law. However, the expression 'martial law' has not been defined anywhere in the Constitution. Literally, it means 'military rule.

ARTICLE 35 - EFFECTING CERTAIN FUNDAMENTAL RIGHTS

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. This provision ensures that there is uniformity throughout India with regard to the nature of those fundamental rights and punishment for their infringement.

PRESENT POSITION OF RIGHT TO PROPERTY

Originally, the right to property was one of the seven fundamental rights under Part III of the Constitution. It was dealt by Article 19(1)(f) and Article 31. Article 19(1)(f) guaranteed to every citizen the right to acquire, hold and dispose of property. Article 31, on the other hand, guaranteed to every person, whether citizen or non-citizen, right against deprivation of his property. It provided that no person shall be deprived of his property except by authority of law.

The 44th Amendment Act of 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1)(f) and Article 31 from Part III. Instead, the Act inserted a new Article 300A in Part XII under the heading 'Right to Property'. It provides that no person shall be deprived of his property except by authority of law. Thus, the right to property still remains a legal right or a constitutional right, though no longer a fundamental right. It is not a part of the basic structure of the Constitution.

EXCEPTIONS TO FUNDAMENTAL RIGHTS

Article 31A:

Article 31A Saving of Laws. Article 31A 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

Article 31B:

Article 31B Validation of Certain Acts and Regulations Article 31B saves the acts and regulations included in the Ninth Schedule In I.R. Coelho case (2007), the Supreme Court ruled that there could not be any blanket immunity from judicial review of laws included in the Ninth Schedule. Originally (in 1951), the

Ninth Schedule contained only 13 acts and regulations but at present their number is 284.

Article 361-A - No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper (or by radio or television) of a substantially true report of any proceedings of either House of Parliament or either House of the Legislature of a State.

Article 105 - No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof

Article 194 - No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof.

Ninth Schedule

- ❖ It deals with the state acts and regulations of that deal with land reforms and abolition of the zamindari system. It also deals with the acts and regulations of the Parliament dealing with other matters.
- ❖ 1st Amendment Act 1951 added the Ninth Schedule to protect the laws included in it from judicial scrutiny on the ground of violation of fundamental rights.
- ❖ However, in 2007, the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to judicial review

Doctrine of Eclipse

1. The Doctrine of Eclipse states that any law which is inconsistent with fundamental rights is invalid. It is not totally dead but overshadowed by the fundamental right.
2. Article 13 states that any law which was made before the commencement of the constitution must be consistent with the part III of the Indian Constitution.

3. Elements of Doctrine of Eclipse

- it should be pre- constitutional law
- Must be in conflict with Fundamental rights

- The law Doesn't become a dead letter but only inoperative
- If there is an amendment to the Fundamental Rights in future it will automatically make the impugned law operative.

4. The term Eclipse in the doctrine means “it is over-shadowed by the fundamental rights and remains dormant but it is riot dead”.

Power of Parliament to amend the Constitution

1. Article 368 contains the provisions for the Amendment of the Indian Constitution.
2. Amendment, is, an addition or alteration made to a constitution.
3. Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

