

Classification of F. Rights

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Classification of F. Rights

- Part III of our constitution enumerates an elaborate list of F. Rights that no other constitution did cover.
- The constitution itself classifies the F. Rights under seven categories as follows –
 1. Right to Equality,
 2. Right to freedom,
 3. Right against exploitation.
 4. Right to freedom of religion
 5. Cultural and educational rights,
 6. Right to property &
 7. Right to constitutional remedies.
- 1. With the 44th Amendment Act the Right to property has been eliminated from the list now only six categories of rights remain.





1.Right to Equality:

- Article 14 to 18 deals with the right to equality.
- Equality is one of the basic postulates of democracy and rightly forms the bed rock of Indian democracy.
- Art. 14 provides that “the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India.”
- Art. 14 provides two things one is equality before law and the other is equal protection of the law.

Equality before law

- The concept of equality before law is borrowed from the British common laws.
- Equality before the law is a negative concept.
- It means the absence of any special privilege to any individual and equal subjection of all classes to the same ordinary laws.
- It also means that no man is above the law of the land, and every person whatever be his rank or status, is subject to the ordinary law.

Exceptions:

- Exceptions allowed by the constitution are –
 - a. President and governors shall not be answerable to any court of law for the exercise of their powers and duties relating to their offices.
 - b. No criminal proceedings whatsoever shall be instituted against the president or governor in any court during their term of office.

Equal protection of laws:

- This concept has been borrowed from the American constitution.
- It is a positive concept, which means equality of treatment in equal circumstances.
- Among the equals the law should be equal and the like should be treated alike.
- There is equal treatment in similar circumstances both in privilege conferred and in the liabilities imposed by the laws.
- For eg. that not all persons taxed equally different category income people are taxed differently.

Art. 15 – Prohibition of Discrimination:

- If Article 14 relates to legal equality then Article 15 deals with social equality.
- According to Art. 15 “the state shall not discriminate against any citizen on grounds only of religion, race caste sex, place of birth or any of them.
- Further, on the basis of any of these grounds a citizen cannot be denied access to shops, public restaurants or the use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partially out of state funds or dedicated to the use of general public.”

Exceptions:

- There are three exceptions to this general rule of non-discrimination.
 1. The state is permitted to make special provision for women and children.
 2. The state can make any special provision for the advancement of any socially & educationally backward classes of citizens or for the SCs & STs e.g.. Reservation of seats or fee concession in public schools.
 3. The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens.

Art.16-equality of opportunity in public employment:

- Art. 16 guarantees equality of opportunity in matters of public employment.
- The state is prohibited from showing any discrimination against any citizen on grounds of religion, caste, race, sex, descent, place of birth or residence.
- There are 3 exceptions to this general rule –
 1. Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory.

Exceptions.....

2. The state can provide reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.
3. A law can provide that the incumbent of an office related to a religious institution should belong to the particular religion.

Art. 17. abolition of untouchability:

- Art. 17 abolishes untouchability and prohibits its practice in any form.
- The practice of untouchability in any form is made an offence punishable under the law.
- The Parliament enacted the untouchability offences Act, 1955, which has been amended and renamed in 1976 as the protection of Civil Rights Act, 1955.
- The term untouchability refers to the social disabilities imposed on certain classes of persons by reason of their birth in certain castes (Mysore High court

Abolition of untouchability....

- According to the Protection of Civil Rights Act, 1955 the following acts are considered as offences –
 1. Preventing any person from entering any place of worship,
 2. Justifying untouchability on any grounds,
 3. Denying access to any shop, hotel or places of public entertainments,
 4. Insulting a person belonging to scheduled caste on grounds of untouchability,
 5. Refusing to admit persons in hospitals or hostels established for public benefit.
 6. Preaching untouchability directly or indirectly,
 7. Refusing to sell goods or render services to any person.

Art. 18- Abolition of titles:

- Art. 18 abolishes titles and make four provisions in that regard –
 1. It prohibits the state from **conferring any title**(except a military or academic distinction) on any body, whether a citizen or a foreigner.
 2. It prohibits the citizen of India **from accepting any title** from any foreign state.
 3. 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.
 4. No citizen or foreigner holding any office of profit or trust under the state is **to accept any present, emolument or office from any foreign state** without the consent of the president.

Abolition of titles

- The hereditary titles of nobility like Maharaja, Raj Bahadur, Rai Saheb, Dewan Bahadur, etc. which were conferred by colonial states are banned by Art. 18 as these are against equal status of all.

Right to Constitutional Remedies:

- Art. 32 gives the right to remedies for the enforcement of F. Rights of an aggrieved citizen.
- In other words, the right to get the fundamental rights protected is in itself a fundamental right. This makes the fundamental rights real.
- Dr Ambedkar called Art. 32 as the most important article in the constitution.
- He considered it as the very soul and heart of the constitution.
- It forms part of the basic structure or feature of the constitution.

Writs and their types:

- Article 32 and 226 empower the Supreme court and High courts respectively to issue orders and directions and prerogative writs for the enforcement of fundamental rights.
- Writ means the written order of the court to restore the fundamental rights of the aggrieved party.
- There are five kinds of writs which can be issued by the higher judiciary of the country.

Types of writs:

- Five kinds of writs issued by the court may be listed as follows –
 1. Habeas Corpus,
 2. Mandamus,
 3. Prohibition,
 4. Quo-warranto &
 5. Certiorari

1. Habeas Corpus:

- It literally means ‘to have the body’.
- It is an order issued by the court to a person who has detained another person and to produce the later before the court.
- The court then examines the cause and the legality of detention.
- It would set the detained person free, if the detention is found to be illegal.
- Thus this writ is a bulwark of individual liberty against arbitrary detention.

Habeas corpus

- This writ cannot be issued under the following –
 1. If detention is lawful,
 2. If the proceedings is for contempt of a legislature or a court,
 3. If detention is by a competent court, &
 4. If the detention is outside the jurisdiction of the court.

2. 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.
- It cannot be issued against a private individual or body.

3. Prohibition:

- Literally it means 'to forbid'.
- It is issued by a higher court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
- Thus, if mandamus directs activity whereas prohibition directs inactivity.
- The writ of prohibition can be issued only against judicial and quasi judicial authorities.
- It cannot be issued against administrative, legislative or private authorities.

4. Certiorari:

- Literally 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 pending case with the latter to itself.
- 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.

5. Quo-warranto:

- Literally it means ‘by what authority’.
- It is issued by the court to enquire into the legality of the claim of a person to a public office.
- Hence, it prevents illegal usurpation of public office by a person.
- This writ can be issued only in case of a public office of a permanent character created by a statute or by the constitution.

Conclusion:

- The provision of enforcement of fundamental rights by the courts known as the right to constitutional remedies constitutes the bulwark of the constitution(Dicey).
- By making the remedial right itself a guaranteed fundamental right the Indian constitution has gone a step further than most of other constitutions of the world.
- The court is thus, constituted the protector and guarantor of fundamental right.
- It is really a corner stone of the democratic edifice raised by the constitution.