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# Constitutional Growth of Fundamental Rights: From Magna Carta till Today

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## ABSTRACT

*The citizens of India have various "FUNDAMENTAL RIGHTS" guaranteed by the Indian Constitution. These rights can be enforced in the courts. However, the government has found these rights to be "obstacles" to its policies on various occasions, particularly those concerning state security and social welfare legislation. As a result, the Parliament has altered these rights from time to time. The Fundamental Rights portion of Part three of the Constitution is one of the most often changed parts of the document.*

*Fundamental Rights are those that are necessary for any human being's development. In their absence, no one can achieve the perfection of his life as a human being. As a result, these rights have a long and arduous history, and India is no different. Human history shows that in order to obtain these rights, humans must engage an endless and long war against existing authorities all across the world. The meaning, nature, types, extent, and implications of Fundamental Right under Indian democracy are the subject of this study. Fundamental Rights are those that are necessary for any human being's development. In their absence, no one can achieve the perfection of his life as a human being. As a result, these rights have a long and arduous history, and India is no different. Human history shows that in order to obtain these rights, humans must engage an endless and long war against existing authorities all across the world. The meaning, nature, types, extent, and implications of Fundamental Rights under Indian democracy are the subject of this study.*

**Keywords:** *Fundamental, Rights, Justiciable, Government, Democracy, Development*

## I. INTRODUCTION

India's constitution, third part, from Art. twelve to thirty-five, enshrines essential rights. The framers of the Constitution drew inspiration from the Bill of Rights<sup>3</sup> in this regard. Some of the content and features are based on the United States Constitution. Part three of the constitution (which contains Essential Rights) is aptly referred to as India's "Magna Carta." Magna Carta<sup>4</sup> is a very important law that was established in England in 1215. Natural Rights is another name

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<sup>3</sup> The Preamble of U.S. Constitution

<sup>4</sup> Holt J.C. Magna Carta. Cambridge University Press, 1992

for it.

## **MAGNA CARTA<sup>5</sup>**

The Magna Carta (also Magna, charta 'great charter') is a charter of rights signed on June 15, 1215 at Runnymede near Windsor by King Joan of England.

It was first drafted by the Archbishop of Canterbury to make peace between the unpopular king and a group of rebel barons, and it promised the protection of church rights, access to swift justice for the Baron, and a limit on federal payments to the crown, all of which will be carried out by a council of 25 barons<sup>6</sup>. The charter was revoked by Pope Innocent III <sup>7</sup>since neither party kept their promises, resulting in the first barons'. Fundamental rights are actionable in court and can be used to request that laws be enforced to protect them if and when they are violated. Under Art. 32<sup>8</sup> High Court. Under Art. 226<sup>9</sup> Supreme Court. The constitution ensures that everyone's Fundamental Rights are protected without discrimination. The reason they are called fundamental rights is because the constitution, which is the incredible law of the land, upholds and defends them. They are 'basic' in the sense that they are absolutely necessary for overall success. Development Individuals' material, intellectual, moral, and spiritual well-being. Motilal Nehru committee<sup>10</sup> has demanded a Bill of Rights as far back in 1928. The rights that would be carefully protected were stated in the constitution and referred to as "FUNDAMENTAL RIGHTS."

These rights are so vital that they are listed separately in the constitution and have additional safeguards in place to preserve them. They are protected by the constitution, which ensures that the government does not violate them.

The purpose of Fundamental Rights is to advance the concept of democratic democracy. They safeguard you from the establishment of a government and tyrannical regulations in the country, as well as the liberties of the people from the state's invasion. They serve as a check on the executive's tyranny and the legislature's arbitrary laws. They seek to build "a government of laws, not of people," in a nutshell.

## **II. ORDINARY RIGHTS VERSUS ESSENTIAL RIGHTS**

The country's constitution protects and guarantees fundamental rights, whereas ordinary

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<sup>5</sup> *ibid*

<sup>6</sup> A Rank of Nobility or Title of Honour

<sup>7</sup> Lotario de' Conti di Sengi (22 Feb 1161 – 16 July 1216)

Former Head of Catholic Church

<sup>8</sup> The Constitution of India

<sup>9</sup> *ibid*

<sup>10</sup> Conference on 19 May 1928

legislation is responsible for upholding regular legal rights.

Ordinary rights can be modified by the legislature through the normal legislative process, while extraordinary rights cannot essential rights may only be changed by amending the constitution itself.

The judiciary has the authority and responsibility to ensure that basic rights are not infringed upon by actions of the government fully stop executive as well as legislative actions can be declared illegal by the judiciary if these violate the essential rights or restrict them in an unreasonable manner.

There are various Fundamental Rights they are named as:

1. Right to equality (Art. 14 to 18)
2. Right to Freedom (Art. 19 to 22)
3. Right against exploitation (Art. 23 to 24)
4. Right of Freedom of religion (Art. 25 to 28)
5. Cultural and Educational Rights (Art. 29 and 30)
6. Right to Property (Art. 31 Right now this right is invalid)<sup>11</sup>
7. Right to constitutional remedies (Art. 32)

Note: The right to own property was eliminated from the list of essential rights by the 44th Amendment. Part 12 of the constitution, 300 A, makes it a legal right. As a result, there are only 6 Fundamental Rights now.

### **III. EVOLUTION OF FUNDAMENTAL RIGHTS**

#### **Historical Background**

- **COI BILL (SWARAJ BILL) 1895**

It is first proposed for the first time in 1895. It is a bill proposed by Bal Gangadhar Tilak. In this they demanded proper rights for Indians and actually they explained the self-government for India. This bill has 111 Art. It was drafted in a proper legal format. Under this bill the main three rights are as:

1. Right to privacy
2. Right to Franchise or right to vote

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<sup>11</sup> Abolished by 44<sup>th</sup> Amendment Act of 1978

### 3. Freedom of speech.

But the outcome of that bill was zero, but it shows our first efforts from the side of India that is recognised and showcased the importance of Fundamental Rights.

- **MADRAS SESSION OF INC (INDIAN NATIONAL CONGRESS) 1927**

Mukhtar Ahmed Ansari was the President of this session. Swaraj constitution 'Resolutions is passed'. INC took pledged that our constitution was based on swaraj and further they defined the term "Swaraj". Under this they also mentioned that what are the Fundamental Rights which should be provided to the citizen, which are the reasonable restriction, which are the various privileges. The detailed description of all the concept was given or presented under the Madras session of INC in 1927.

- **NEHRU REPORT 1928**

It was also related to Fundamental Rights. Simon Commission<sup>12</sup> was announced at the end of 1927 but in India it came in early 1928. It was received with a solid hostility by almost all political parties and people in India for a stop in India there is a strong protest for Simon Commission on this protest only we lost Lala Lajpat Lai. In course of mission to counter the protest and to provide work of INC<sup>13</sup> India's viceroy provided them an offer 'if you can come up with a document for United India' that it satisfied the aspiration of United India means India was given an opportunity to come up with a sort of mini constitution for a United India for stop so at that time it was accepted Motilal Nehru (famous lawyer at that time, father of our first Prime Minister Jawaharlal Nehru)

This report was rejected by Simon Commission, but in this Report, it is for the first time that it was accepted and demanded that Fundamental Rights should be an integral part of Indians and that they had ever been incorporated in India will be of inseparable nature, it means there must be no process of forfeiture, there were no subject to forfeiture.

- **KARACHI SESSION OF INC 1931**

Karachi Session of INC was a landmark on the evolution of fundamental rights in India. This session was held under presidency of Sardar Vallabh Bhai Patel. Under this there was an Incorporation of proper written resolution of a project and presented the list of important rights. Basic civic rights include the right to free expression, access to the press, the right to assemble and associate with others without interference, the right to equal protection under the law, the

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<sup>12</sup> Chairman: Sir John Simon

<sup>13</sup> Indian National Congress

right to vote for all adults, and the right to a free and obligatory primary education.

- **SAPRU COMMITTEE 1945**

Sapru Committee was an important committee which deals with minority community and their issues. There were 30 members. No one belongs to any political party. They selected from non-party background, for the special purpose of minority and at that time there was a situation of civil war. As in 1944 the conversation of Jinnah and Gandhi after their breakdown civil war can happen. So, they came out from this situation Sapru Committee was found (their agenda was instead of communal solution there must be peaceful solutions should be found). They published the list of do's and don'ts. In which there were two types of Fundamental Rights.

1. Justiciable Fundamental Rights
2. Non-justiciable Fundamental Rights

Justiciable Fundamental Rights are those fundamental rights which can be enforced in court all you can approach to the court, if there is a violation and infringement of any of your right. It was advisory in nature but, it was not enforceable in the court of law. Part III of COI should be taken from Tej Bahadur Sapru Committee justiciable part and from non-justiciable part they took Directive Principle of State Policy (DPSP)<sup>14</sup>. Originally the idea of fundamental right was taken from Bill of Rights and the idea of DPSP<sup>10</sup> was taken from Ireland (Irish constitution).

- **ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS 1947**

The final step on the evolution of Fundamental Rights was the formation of advisory committee. It was formed on 24 Jan 1947. This committee was headed by Vallabhbai Patel. In this fundamental right should be properly defined. After that with the commencement of Indian constitution at 26 January 1950 there must be full enforcement of Fundamental Rights enacted in India.

#### **IV. RIGHT TO EQUALITY (ART. 14-18)**

##### **ARTICLE 14**

Art.14 of COI forbids class legislations, but it doesn't forbid reasonable classification. In case of R.K Dalmia V. Justice S.R Tendulkar<sup>15</sup> case, court laid down tests to see that the reasonable classification is reasonable or not.

1. Intelligible Differentiate

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<sup>14</sup> Part IV of Indian Constitution

<sup>15</sup> 1958 AIR 538, 1959 SCR 279

## 2. Reasonable Nexus

In case of *Suneel Jatley V. State of Haryana*<sup>16</sup> case takes about the reasonable classification for rural students.

### **NEW DOCTRINE OF EQUALITY**

The state doesn't do much classification. SC says that you shouldn't over emphasis classification. It should be taken as an exception.

JUSTICE BHAGWATI<sup>17</sup> said that EQUALITY is a dynamic concept, with many concepts and dimensions and it cannot be CRIBBED, CABINED, and CONFINED without traditina and doctrinal limits. EQUALITY is anti-thetically to arbitrariness.

### **ARTICLE 15**

ART. 15(1) of COI talks about general discrimination. Art. 15(2) talks about specific discrimination. Art. 15 (3) talks about the exceptions from 15(1) and 15(2). It is to provide equal protection of law. (Positive Discrimination) special Prov. for women and children. Art.15 (4) talks about socially and economically backward class of citizens or for the SC's and ST's. Art. 15 (5) talks about to educational institutions covers all the 3 categories

- a. Socially and economically backward class
- b. Schedule Casts
- c. Schedule Tribes

Art. 15(6) talks about general and special Provision with respect to admission.

### **ARTICLE 16**

Art.16 (1) of COI talks about equality in matter relating to employment opportunities or appointments to any office under the state defined under Art.12. In case *Air India V. Nergesh Meerza*<sup>18</sup>, the air hostess has to resign her job due to her pregnancy, there is a discrimination on the basis of gender. Art. 16 (2) state about the equality of opportunities doesn't discriminate on the basis of gender, race, caste, sex, descent, place of birth, residence and domicile. Art. 16 (3) talks about the powers of the state that legislature can make or can set eligibility for the employment. Both the Art. I.e., AR 16(1) and Art. 16(2) are contrary to each other. Only through parliamentary rules these conditions can be imposed. Art.16(4) states about the favour provided to any backward classes in appointments, promotions etc.

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<sup>16</sup> 1984 AQIR 1534, 1985 SCR (1) 272

<sup>17</sup> Prafullachandra Natwarlal Bhagwati: Former CJI

<sup>18</sup> 1981 AIR 1829

Case: Champakam Dorairajan V. State of Madras<sup>19</sup>

### **ARTICLE 17**

The Abolition of Untouchability is discussed in this Art. of the Indian Constitution. It's aimed at those who aren't public figures. To put a stop to the caste system, untouchability, prejudice, and other forms of oppression that have existed in our culture for generations. That is why Art. 17 was included. N.A. – Waiver Doctrine. It's a stipulation that must be followed to the letter. In the matter of Karnataka State v. Appa Babu Ingale<sup>20</sup>, court states that 'it is an indirect form of slave.'

### **ARTICLE 18**

This Art. of COI talks about Abolition of Titles the areas: State prohibited from conferring titles. There are exceptions on the basis of military and academic backgrounds. Indians prohibited from accepting foreign titles. Foreigner, who holds any office

- a. Office of profit
- b. Office of state

Unable to accept any foreign titles without the president's permission. Person not permitted to accept any foreign gifts or emoluments. In the case of Balaji Raghavan V. UOI<sup>21</sup> the providing of National award was challenged in which honourable Court states that award is not a title, it's recognizing the merit of that particular person. So, it's not prohibited under Art. 18.

## **V. RIGHT TO FREEDOM (ART. 19-22)**

### **ARTICLE 19**

This Art. of COI deals with Freedom of Speech and Expressions. Art. 19 (2) talks about Restriction on the basis of law not general. Art. 19 (3) talks about Restriction Right to Assembly Restrictions 1. Sovereignty 2. Integrity 3. Public Order. Art. 19 (4) talks about Restriction to form Associations and Unions 1. Sovereignty 2. Integrity 3. Public Order 4. Morality. Art. 19 (5) talks about Restriction to move freely or reside and settle in territory of India. 1. Interest of General Public 2. Interest of SC's and ST's.

Case: Lucy R D' Souza V. State of Goa<sup>22</sup>

Art. 19 (6) talks about to practice any profession, occupation, trade and commerce. 1. Interest of

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<sup>19</sup> AIR 1951 SC 226

<sup>20</sup> AIR 1993 SC 1126, 1993 (1) ALT Cri 390

<sup>21</sup> (1996) 1 SCC 361

<sup>22</sup> AIR 1990 Bom 355

General Public Art. 19 (6) (i) to make any law for qualification and eligibility. Art. 19 (6) (ii) by making law that State can run any trade and commerce whether to exclusion, complete or partial.

## **ARTICLE 20**

Art. 20(1) of The COI provides for protection against ex post facto laws. The said clause of Art. mentions the term 'person'. This clearly implies that the right is not limited for citizens only but available to all.

Ex post facto means retrospective operation of law. Retrospectivity means application of laws from an earlier date.

Art. 20(1), through its words as mentioned in the bare Prov. provides that no person can be punished for an offence of her/his in a manner not provided in law at that particular time (i.e. law in force). This implies that a person has to abide by the law which is in force for the time being. A law which was brought later on through a fresh enactment or may be an amendment shall not apply to my act which I had done earlier in time.

Art. 20(2) lays down the concept of protection against double jeopardy

Nemo debet vis vexari, which states that no one should be punished twice for the same offence, is enshrined in Art. 20(2) of the COI. Hence the principle of double jeopardy. The important element to be noted in clause (2) is "prosecuted and punished". Prosecution occurs by the procedure of law in a court of law. That is the reason why an executive action is treated separate from a judicial action (see *M.H. George v. State of Maharashtra*<sup>23</sup>). An administrative authority may have punished you for an offence, but, this does not mean that you won't be tried in a court of law. This implies that if a person was taken action against by some executive authority and is being tried for the same in a court of law, she/he will not be able to claim the protection of Art. 20(2). The essential elements of Art. 20(2) may be stated as follows:

- A person must be accused of an offence.
- There must have been a trial against him in a court of law (prosecution).
- The person must have been punished (the term 'and' has been used for 'prosecuted and punished').
- The offence in question should be the same i.e. For the same offence, a person cannot be charged and punished.

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<sup>23</sup> 1965 AIR 722, 1965 SCR (1) 123

Art. 20(3) provides for protection against self- incrimination.

Self- incrimination means to give evidence against oneself (referred to as “witness against himself” in Art. 20(3)). A person cannot be forced to testify against themselves, according to Article 20(3). Important thing being “accused of an offence”, and, offence applies the criminal section of wrong (civil wrong and criminal offence). This means torturing prisoners to give statement shall be against Art. 20(3), though, Art. 21 is also covered (will discuss that as a separate topic). The essential elements of Art. 20(3) can thus be stated as:

- A person should be charged with a crime.
- Such a person should not be forced to do anything.

## **ARTICLE 21**

The right to life is at the heart of Art. 21 of the Indian Constitution. Despite the fact that personal liberty also forms a part, right to life in itself is of utmost importance. Hence, we break the Art. into three parts viz. ‘right to life’, ‘personal liberty’ and the exception of ‘procedure established by law’.

According to Art. 21 of the Indian Constitution, life has the following meaning:

There is no legal definition of life. It will not be wrong to claim here that it is in fact impossible to give the definition of life. The SC of The United States of America in *Munn v. Illinois*<sup>24</sup> tried to give meaning to the term. J. Field in the stated case stated that “life means something more than mere animal existence and extends to all those limbs and faculties by which life is enjoyed”. *Francis Coralie Mullin v. UT of Delhi*<sup>25</sup> was decided by the SC of India stated any act which damages or injures any limb or faculty of a person will be said to be an act against Art. 21 of the COI. The SC of India hence supported and extended the view expressed by the SC of USA. Justice Bhagwati in the same case expressed that right to life means right to live with human dignity.

Here, it is important to understand that Justice Bhagwati had also remarked in *Maneka Gandhi v. UOI*<sup>26</sup> that the COI has to be interpreted in the widest possible manner. The way to interpret life and dignity of an individual is hence understandable. In *Shantisar Builders v. Narayanan Khimalal Totame*<sup>27</sup>, it was held that Art. 21 includes right to food, clothing, decent environment and reasonable accommodation to live in. Again, in *Bandhua Mukti Morcha v. UOI*<sup>28</sup>,

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<sup>24</sup> 94 US 113 (1876)

<sup>25</sup> 1981 AIR 746, 1981 SCR (2) 516

<sup>26</sup> 1978 AIR 597, 1978 SCR (2) 621

<sup>27</sup> AIR 1990 SC 630, JT 990 (1) SC 106

<sup>28</sup> 1984 AIR 802, 1984 SCR (2) 67

According to Justice Bhagwati, Article 21 is given life by the Directive Principles of State Policy, specifically clauses (e) and (f) of Article 39 as well as Articles 41 and 42.

### **Personal Liberty**

The term personal liberty under Art. 21 of The COI became a conflict due to its being compared to the term 'Liberty' as enshrined in Art. 19 of The Supreme Law. The question came before the SC in the case of *A.K. Gopalan v. State of Madras*<sup>29</sup>. The facts of the case relating to detention of a person have already been discussed. In this case it was argued that liberty under Art. 19 and that in Art. 21 meant the same thing and should include the principle of *jus naturale* (natural justice). The honourable SC of India did not accept the contention and ruled that liberty under Art. 21 of The COI referred to mere physical condition of a person (i.e. physical restraint), and was hence different from Art. 19.

However, this opinion was overruled in the case of *Maneka Gandhi v. UOI*<sup>30</sup>. Here, the rule for interpreting the Constitution was given as "the words of The COI should be given the widest possible meaning". Also, Art. 14, 19 and 21 were said to form the golden triangle of The COI and hence not separate. Therefore, a law has to take the test of all three Art. mentioned (14, 19 and 21). In the same instance, the court talked about the 'procedure established by law' and 'due process of law'.

*Maneka Gandhi v. UOI*<sup>31</sup> is said to give New Dimension to Art. 19 and 21. *E.P. Royappa v. State of Tamil Nadu*<sup>32</sup> is studied under New Dimension for Art. 14.

### **Procedure established by law**

The COI's Article 21 guarantees the right to life, with one exception: 'process established by law.' As a result, a person's life or personal liberty cannot be taken away without following the legal procedure. The word "legal procedure" may appear to be devoid of any ambiguity at first glance. In *A.K. Gopalan v. State of Madras*<sup>33</sup>, however, it became a point of contention. It was asserted in this case that 'procedure established by law' in India was equivalent to 'due process of law' in the United States. This allegation was rejected, and it was decided that India does not follow the American tenet of due process of law, which encompasses the broad concept of natural justice.

In *Maneka Gandhi v. UOI*, the rule framed as to exclusion of natural justice was overruled. It

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<sup>29</sup> AIR 1950 SC 27, 1950 SCR 88

<sup>30</sup> 1978 SCR (2) 621, 1978 AIR 597

<sup>31</sup> *ibid*

<sup>32</sup> 1974 AIR 555, 1974 SCR (2) 348

<sup>33</sup> 51 Cri LJ 1383

was held that law does not mean a mere enacted piece of legislation, rather, it has to be just, fair and reasonable i.e., which contains the principles of natural justice.

## **VI. RIGHT AGAINST EXPLOITATION (ART.23-24)**

### **ARTICLE 22**

Art. 22 of The COI lays down Prov. for two kinds of persons i.e., arrested and detained. An arrested person is the one who has been kept in custody out of the reason of his not doing an act which was supposed to be done in law, or committing an act which was forbidden by law. Clauses (1) and (2) of Art. 22 provide for the rights given to such a person (arrested).

#### **(A) Rights of an arrested person:**

1) Right to know why you're being detained:

In the case of *Joginder Kumar v. State of UP*<sup>34</sup>, the honourable SC of India laid down the guidelines for protection of the interest of the arrested person. i.e. The arrested person has a right to inform her/his relative or friend about the arrest and the place of custody. The police officer has a duty to inform the person so arrested of such a right available for her/him. The police officer has a duty to record an entry as to the details of the person who was informed about the arrested person in the police diary.

2) Right to choose the legal representative of one's choosing:

The Supreme Court of India went so far as to declare free legal aid to be a basic right under Article 21 of the COI in *Hussainara Khatoon v. Home Secretary Bihar*<sup>35</sup>

3) Within twenty-four hours of an arrest, the right to appear before a magistrate exists.

Within 24 hours following their arrest, everyone who has been detained has a right to appear before a magistrate of appropriate jurisdiction. The 24 hours are computed without taking into account the time required to convey a person from the place of arrest to the designated magistrate.

#### **Exceptions to the rights of the arrested person:**

Clause (3) of Art. 22 provides for two exceptions. The rights mentioned above are not available to an enemy alien, and, to a person detained under a preventive detention law (such a person has been detained and not arrested).

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<sup>34</sup> 1994 AIR 1349, 1994 SCC (4) 260

<sup>35</sup> 1979 AIR 1369, 1979 SCR (3) 532

**(B) Preventive Detention:**

Law in India prescribes two kinds of remedies i.e., punitive and preventive. Punitive remedy is provided after some act has been done (in the form of punishment). Preventive measures are taken when the act is likely to be done i.e., before the actual occurrence of the act. Arrest is a punitive measure whereas preventive detention is a preventive measure. Clauses (4) to (7) of The COI lay down the Prov. for the preventive detention laws in India.

**Time period for preventive detention:**

Clause (4) of Art. 22 expressly lays down that the maximum time period for putting a person under detention by virtue of preventive detention laws in India is three months. However, a detention may go beyond the said period of three months if:

- a) The advisory board is of the opinion that the detention should continue beyond the said period of three months (that there exists sufficient reason to do so).

\*Nobody knows what is that sufficient reason. Supreme law is silent about that.

- b) The parliament by law prescribes an extension in the time period of detention (read sub clause (b) of clause (4) along with clause (7)).

**Advisory Board:**

The advisory board's membership has just been proclaimed to consist of individuals who are HC judges, have served as HC judges, or are eligible to be appointed as HC judges, as specified in clause (4) of Article 22.

The function of the advisory board so formed is to advice the increase in the maximum time period of detention of a person. However, such an advice has to be tendered within the said time period of three months.

**Restriction on the power of the advisory board:**

The proviso to sub- clause (a) of clause (4) puts a restriction on the power of the advisory board. It states that the time period cannot be extended against a law (if any) made by the parliament under clause (7) of Art. 22.

**Powers of parliament:**

Clause (7) of Art. 22 lays down the Prov. about the powers exercised by the Parliament with relation to India's preventive detention. i.e.

- 1) A person may be detained for a longer period of time than what is authorised by law if there are exceptional or extraordinary circumstances (or classes of cases) that are established by

Parliament (three months). The fact that the advisory board's advice or opinion is not required in order for parliament to act should be emphasised.

- 2) The maximum term of detention that a person can be held may be set by Parliament.
- 3) Parliament also has the authority to establish the procedure that the advisory board must follow.

**Rights of the detained person:**

- 1) The individual imprisoned under a preventive detention law or laws has the right to know the reasons for his or her imprisonment (as soon as possible).
- 2) The detained also has the right to be represented at the earliest.

However, there is a limitation on the right to know the reasons for a person's imprisonment. If the authority believes (believes) that disclosing such information (grounds of detention) to the detained person would be against the public interest, the detained person's right to know the grounds of imprisonment will be denied.

**ARTICLE 23**

Prohibition of human trafficking and forced labour

Art. 23 of The COI prohibits human trafficking and forced labour. Beggar has also been prohibited under the same. Beggar refers to someone who is forced to work for no pay. It should also be noted that forced labour in any form has been prohibited. This implies that any type of bonded service falls under its purview and is prohibited from being practised. A person who employed but not paid sufficiently also falls under the same category. (For details go through *People's Union for Democratic Rights v. UOI*<sup>36</sup>)

However, the state can enforce compulsory public service upon a person. For example, it is not considered forced labour to punish a person for an offence by requiring him or her to perform public service. (A person who has committed a public offence may be compelled to clean the road every day for a week or month. This practice will not be called forced labour)

**ARTICLE 24**

Prohibition of employment of children in hazardous industries, factories etc.

Art. 24 of The COI bars the employment of children below fourteen years of age in a hazardous place. The word hazardous is very important (see *M.C. Mehta v. State of Tamil Nadu*<sup>37</sup>).

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<sup>36</sup> 1982 AIR 1473, 1983 SCR (1) 456

<sup>37</sup> AIR 1997 SC 699

## **VII. RIGHT OF FREEDOM OF RELIGION (ART.25-28)**

### **ARTICLE 25**

Art. 25 of The COI proclaims three kinds of rights within the ambit of right to religion in India. Right to religion is available to all persons irrespective of their citizenship in India. The three elements mentioned therein are “practise, profess and propagate”. Carrying out religious practises, teaching/professing and spreading the ideas about one’s religion has hence been guaranteed as a fundamental right to the people in India. However, one should remember that this does not include forced conversion.

The right guaranteed under Art. 25 expressly provides for three specific restrictions (public order, morality and health), and a general restriction (other Prov. of this part) to it. Right to religion may be covered under right to freedom of speech and expression as well and restrictions to freedom of speech and expression (other Prov. of this part i.e., Part III).

Another important aspect of the right guaranteed under Art. 25 is that it cannot prevent the State from regulating activities associated with religious practices. Hindu religious institutions can be made accessible to all classes of Hindus as well under the same Art.

### **ARTICLE 26**

As stated in the headnote of Art. 26 itself, the stated Art. inter alia gives a brief of the right of religious denominations to manage their religious affairs. The other rights mentioned under Art. 26 are:

- Establishing and maintaining religious and charitable institutions.
- Be the owner of both moveable and immovable property.
- Administer the so owned property in accordance with law.

A religious denomination means a class or a group (an organization) of individuals having a common name and a common faith. Hindus, Muslims, Christians etc. are all religious denominations. Even sects such as ‘Nirankaris’ find place under the broad ambit of ‘religious denomination’.

Right of management of religious affairs by these denominations poses a very important question i.e. who can decide whether the so-called affairs are essential? The answer being obvious- the judiciary (see *Syedna Teher v. State of Bombay*<sup>38</sup>).

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<sup>38</sup> 1962 AIR 853, 1962 SCR Supl. (2) 496

**ARTICLE 27**

The words tax and fee are synonymous in general terms, but The COI makes a difference between the two. Tax has been regarded as a measure of promoting public welfare. This means that a tax so collected by the State authority is spent for the general welfare of the public at large and does not afford any specific benefit to the person paying tax (example, you do not get anything in return for payment of income tax, only your paid tax is applied for the development of this nation). Fee on the other hand is charged in lieu of some benefit to be given to the fee payer.

Both are same but this is the difference which “The Supreme law of the land” tends to foretell. Hence, under Art. 27 taxes cannot be charged but fees can be charged on money being spent for management of religious affairs (profess, practise and propagate).

**ARTICLE 28**

An educational institution that is entirely supported by State funds cannot offer religious instruction. The words worth noting are “wholly out of state fund”. However, if an educational purpose was created for the purpose of providing education of some particular religion or text, it shall be made an exception to this rule enshrined in Art. 28 of the COI. For example, if I donate my land to the government for building an institution which will teach lessons of Bhagwat Geeta, Quran or may be Bible whatsoever, the land now belongs to the government and shall be wholly aided and funded in future by the government (state). This land was given for a particular purpose and that purpose cannot be defeated. This implies that clause (2) of the Art. shall apply and not clause (1).

Clause (3) of Art. 28 provides that a person cannot be compelled to participate in a religious function in an educational institution. For example, if some pooja is taking place in an educational institution and some Muslim student refuses to attend it, she/he cannot be compelled to attend.

**VIII. CULTURAL AND EDUCATIONAL RIGHTS (ART.29-30)****ARTICLE 29**

Art. 29 of The COI is categorized into two clauses. Clause (1) of Art. 29 lays down the right of a distinct class of citizens (if any) to conserve their language, script or culture. It is essential to note here that section or class of people refers to only those categories citizens who speak a different language, write in a different script, or have a different culture. As a result, only three categories of minorities are specified in Art. 29. (1). Under this clause, religious minorities are

not recognised.

Clause (2) of Art. 29 prima facie seems to be same as Art. 15. Both Articles undeniably mention the right of citizens against discrimination. However, they are not same by the fact that while Art. 15 lays down Prov. for non- discrimination in general, Art. 29(2) specifically denies discrimination in admission in educational institutions only.

### **ARTICLE 30**

Art. 30 of The COI lays down the rights given to minority educational institutions i.e. administration and establishment. The two rights conferred by this Art. are different in their approach. While establishment of a minority educational institution is a right conferred on minorities only, it is not necessary for a person to be belonging to a minority community for administration of an educational institution (*D.A.V. College v. State of Maharashtra*<sup>39</sup>). Another noteworthy point is that Art. 30 mentions religious and linguistic minorities only.

In case of acquisition of property of such a minority educational institution, compensation has to be provided by the State (Art. 30(1A)).

Also, the State shall not discriminate between minority educational institutions and other educational institutions in granting the necessary aid (Grants-in-aid).

## **IX. RIGHT TO PROPERTY (ART.31 NOW ABOLISHED)**

A human right that covers the possessions of natural persons is the right to property, also referred to as the right to own property. When property is owned by legal entities (i.e., corporations) and used for production rather than consumption, a broad recognition of a right to private property is uncommon and usually closely regulated.

The right to property was removed from the list of Fundamental Rights by the 44th Amendment Act of 1978. The primary purpose of this removal was to blur the distinctions between the rich and the poor.

It is abolished as if it remains as a fundamental right then it became difficult for government if they wanted to acquire someone's property.

## **X. RIGHT TO CONSTITUTIONAL REMEDIES (ART.32)**

### **ARTICLE 32**

Art. 32 of The COI mentions the right of the citizens of this nation to move to the SC for the issue of writs, orders or directions. An important element to be understood here is “in the nature

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<sup>39</sup> AIR 2013 SC 1420

of". This implies that the writs are not limited to five in number but rather can be more (but have to be in the nature of the mentioned ones). Example, "certiorarified mandamus". No such kind of a writ is mentioned under Art. 32 and yet it is being used by the honourable SC of India. Furthermore, issuing of writs is the power bestowed only on the SC and HCs of the nation (unless parliament may otherwise prescribe (clause (3)). Also, it has been expressly mentioned under clause (4) that the Art. cannot be suspended.

Art. 32 forms the most important part of the chapter. Art. 32 has been described as the heart and soul of the supreme law of the land by Dr B.R. Ambedkar<sup>40</sup>. Art. 32 along with Art. 226 and Art. 13 form the important concept of Judicial review as well.

## **KINDS OF WRITS**

- **Habeas Corpus**

Art. 21 of The COI guarantees the right to life and personal liberty. The importance of Art. 21 can be claimed out of the fact that it cannot be suspended even during an emergency. Personal liberty has been given a lot of importance, but, what if it somehow gets infringed? The answer lies in the writ of Habeas Corpus. Habeas Corpus literally means "you may have the body". Writ of Habeas Corpus is applied for in case a person has been detained for more than 24 hours. Detention, for this Art. refers to an illegal detention. A detention may be illegal if done without a justification. A detention is also called as illegal if the procedure established by law is not followed. An executive authority if detains a person for a period exceeding 24 hours is against the procedure established by law (violation of Art. 22). In such an instance inter alia, a writ of Habeas Corpus is applied for in The SC or the concerned HC. A writ of Habeas Corpus may lie against a private individual as well. Also, it was held by the SC of India in *Ichhu Devi v. UOI*<sup>41</sup>, that a mere postcard may even be instituted in the court in case of Habeas corpus without paying too much attention on technicalities (drafting procedure etc.).

- **Quo Warranto**

"What is your authority?" is the literal translation of Quo Warranto. This writ is issued in the event that an appointment which was not in accordance to law. The Court may ask a person to justify her/his qualification against the post the person is bearing. However, the writ applies only to a public post (*Arun Kumar v. UOI*<sup>42</sup>). The relaxation of the general rule of locus standi

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<sup>40</sup> Former Minister of Law and Justice of India

<sup>41</sup> 1980 AIR 1983, 1981 SCR (1) 640

<sup>42</sup> W.P.(C),4946 OF 2021

incurred in *Satish Chander v. Rajasthan University*<sup>43</sup> related to the issue of this writ.

- **Mandamus**

This means “do your duty”. A writ of mandamus is issued upon a body not performing the functions towards the public which it ought to have performed. It should be noted that mandamus applies for non- performance of an imperative duty only and not a discretionary duty. However, it has been held “what is determinative of the nature of duty, whether it is the scheme of the statute in which the responsibility has been placed is called obligatory, mandatory, or directory. Even if the duty is not set out clearly and specifically in the statute, it may be implied as correlative to a right” (*Mansukhlal v. State of Gujarat*<sup>44</sup>).

- **Certiorari and Prohibition**

The reason behind mentioning two writs together is that one must understand their meaning in a comparative manner. There is a difference between the two though both may at times seem same. While certiorari is brought to quash the decision (i.e., a matter already decided), prohibition is issued in case a matter is pending (not finally decided). It can hence be said that the difference between the two is of the stage of the case at hand.

A writ of certiorari or prohibition is generally issued on the grounds declared by the honourable SC of India in *Syed Yakoob v. K.S. Radhakrishnan*<sup>45</sup> i.e.

- Without jurisdiction, an act has been or is being carried out (excess of jurisdiction or no jurisdiction)
- On the face of the record, there appears to be a legal error.
- Contravention of natural justice
- Violation of Fundamental Rights
- Findings of the facts were based on no evidence

## **XI. OTHER FUNDAMENTAL RIGHTS**

### **ARTICLE 33**

The right to move to the SC in general is available to all, even government officers and servants. However, there are certain restrictions mentioned in The COI for certain categories of people (particularly the ones belonging to the armed forces). Fundamental Rights are not available for

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<sup>43</sup> AIR 1970 Raj, 1970 (3) WLN 124

<sup>44</sup> 1997 7 SCC 622

<sup>45</sup> 1964 AIR 477 SCR (5)64

such persons in the manner as they are to other people (citizens or non-citizens). The justification given behind them is- to be able to maintain discipline among them. For instance, if an Army officer posted in some tough conditions starts claiming dignified life (Art. 21), it would be impossible to guard and protect the nation.

As a result, Article 33 of the COI gives the Parliament the authority to decide to what extent members of the armed forces and other forces responsible for maintaining public order are subject to fundamental rights protections, members belonging to intelligence bureau (*Ejusdem Generis*), or, people belonging to the telecommunication services for the mentioned category. In *OKA Nair v. UOI*<sup>46</sup>, it was held that civilian employees (barbers, mechanics etc.) in the forces and the categories mentioned above shall also lie under Art. 33. Also, services such as military, paramilitary, special forces or the likes (*Ejusdem Generis*) are included under Art. 33, and, civil servants are excluded.

#### **ARTICLE 34**

Art. 34 of The COI empowers the Parliament to validate any order that was passed during the Martial law in force. The Parliament is also empowered to indemnify (for indemnity, refer to section 124 of the Indian Contract Act, 1872) a person who may have participated in any manner in the service of Union or State in relation to maintenance of law and order during the Martial law.)

**Martial Law:** Here, i.e., under this Art., Martial law means the law-and-order situation completely in the hands of military. Such a situation may arise in case of a war or an emergency situation in the nation when the law-and-order situation go out of the hands of the government.

#### **ARTICLE 35**

Art. 35 gives the Union Parliament legislative jurisdiction over the above-mentioned clauses and prohibits state legislatures from enacting laws in this area. This Art. has never been changed by a constitutional amendment.

When we look at the demands of India's nationalist leaders during the British rule, as well as the deliberations in the Constituent Assembly, we can see that the question of fundamental rights was taken very seriously. However, once the Constitution began to take effect, there were some inconsistencies between citizens' fundamental rights and societal rights. It resulted in a conflict between judicial judgements and legislative acts. Due to these

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<sup>46</sup> 1976 AIR 1179 , 1976 SCR (2) 769

inconsistencies, the Part on fundamental rights was revised from time to time, and it is the Part of the Constitution that has been amended more frequently than any other.

## **XII. CONCLUSION, RECOMMENDATIONS AND SUGGESTIONS**

India has taken a long road to independence, with the major events and fights occurring between 1858 and 1947, a span of over a century. It is clear that the demand for fundamental rights began with the demand for a responsible government during the colonial era and grew over time, eventually being met with the passage of the Constitution. Fundamental Rights will be established, and the Constitution will provide protection and remedies for them. The importance of these rights has been reaffirmed by Indian courts on a number of occasions, using various instances as examples.

To protect these rights, the constitution has included Articles 32 and 226. In accordance with these Articles, a court may issue a variety of writs, including certiorari, quo warranto, mandamus, prohibition, and habeas corpus. Art. 226 has a considerably broader reach than Art. 32, but it doesn't take away from the importance of Art. 32, which is more than simply an Art.; it is a basic right in and of itself.

The first is to prevent someone from holding any public office that he or she is not entitled to hold or to inquire as to why they are holding such an office; the second is to prevent any governmental authority from acting contrary to what they are supposed to do; the third is to prevent any judicial or quasi-judicial authority from acting beyond their powers while the case is pending; and the fourth is to prevent someone from holding any public office that he or she is not entitled to hold or to inquire as to why they are holding such an office.

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