

**PART III of the Indian Constitution – FUNDAMENTAL RIGHTS****Right to Freedom of Religion (Article 25 – 28)****Article 25 - Freedom of conscience and free profession, practice and propagation of religion**

**25. (1)** Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

**25. (2)** nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

- a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

This right guarantee to every person the freedom of conscience and right to profess, practise and propagate religion. This right is however, subjected to public order, morality and health and to the other provisions of Part III of constitution. Right to propagate does not include right to convert. This means no one has the right to convert another person to his own religion by force, fraud or by offering incentives.

The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

**Secularism**

- In the West, the state has nothing to do with religion.
- In India, the state will remain neutral in the matters of religion.
- This means, if a state seeks to promote religion, it has to promote all religions equally.
- Secularism is seen as a means to promote communal harmony.

**Why aren't we able to achieve a secular society?**

- Considering Hindu-Muslim communalism, the wounds of partition have not healed so far.
- Imbalances in development in the Hindu and Muslim community.
- These imbalances were brought out by Sachar Committee Report (2006).
- Majority of communities have not been magnanimous enough to accommodate the diversity of this country.
- Absence of Uniform Civil code.
- There is no effective framework, legal or institutional, to check communalism and promote National Unity.

**Article 26 - Freedom to manage religious affairs**

**26.** Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

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

This article permits every religious group, the right to manage its own affairs in matters of religion. Every religious sect has the right to establish and maintain institutions for religious and charitable purposes. Each religious group is also free to purchase and manage its movable and immovable property in accordance with law, for the propagation of its religion.

#### **Article 27 - Freedom as to payment of taxes for promotion of any particular religion**

**27.** No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

According to this article, the state cannot levy or collect any tax, the proceeds of which are to be used exclusively for the promotion of a particular religion. E.g. Jizyah, tax levied during medieval times imposed on non-Muslims and the proceeds of the tax were reserved for the promotion of Islamic religion. The government can levy fee for maintenance of religious shrines and this does not amount to violation of Article 27.

#### **Article 28 - Freedom as to attendance at religious instruction or religious worship in certain educational institutions**

**28. (1)** No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

**28. (2)** Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

**28. (3)** No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

According to this article, no religious education can be imparted in any educational institution which is wholly maintained out of the state funds. This restriction does not apply to those educational institutions which are not wholly maintained out of State funds. But, even in those institutions, no child can be compelled to receive religious instructions against his /her wishes.

If religious denominations are set up under religious denominations or charitable trusts, religious education can be provided at such institutions and students can be compelled to attend.

#### **Cultural and Educational Rights (Article 29 – 30)**

- Also referred to as Rights of Minorities.
- Types of minorities identified under the Indian Constitution are primarily Linguistic and Religious.

#### **Article 29 - Protection of interests of minorities**

**29. (1)** Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

**29. (2)** No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

### **Article 30 - Right of minorities to establish and administer educational institutions**

**30. (1)** All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

**IA.** In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

**30. (2)** The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Cultural and Educational Rights provide necessary guarantees to preserve maintain and promote their culture and language. The Constitution allows minorities to establish and maintains educational institutions of their own. It also provides that the state shall not discriminate against any educational institution while granting financial aid on the grounds that it is being run by a minority community. These rights ensure that minorities will be given assistance by the state in the preservation of their language and culture. The Ideal before the state is to preserve and propagate the composite culture of the country.

#### **Right to Property**

- In the original Constitution, all citizens had a threefold right to property.
  1. Article 19 (1) (f) – repealed in 1978.
  2. Article 31 (1) – was removed from Fundamental Rights and placed under Article 300A in 1978.
  3. Article 31 (2) – repealed in 1978.
- By the 4<sup>th</sup> Amendment Act, 1955, Article 31 (2) was amended. It added that if a citizen is not satisfied with the compensation received, it cannot be challenged in the court of law.
- 25<sup>th</sup> Amendment Act, 1971 again amended Article 31 (2). In this amendment the word 'compensation' from the article was replaced with 'amount'.
- By the 1<sup>st</sup> Amendment Act, 1951, Article 31A and 31B was added. These were exceptions to Right to Property.
- In 2007, SC in its verdict held that even Schedule nine cannot provide immunity to those laws which are violating that part of Fundamental Rights, which according to apex court, are a component of basic structure.
- Article 31C was introduced by 25<sup>th</sup> Amendment Act, 1971. This is also an exception to Right to property.
- 42<sup>nd</sup> Amendment Act, 1976 expanded the scope of Article 31C. Accordingly, if a law is made to give effect to any Directive Principle and if it violates Article 14 and 19, it shall not be an invalid law.
- In the case of *Minerva Mills Vs. Union of India*, 1980, this expansion beyond 39 (B) and (C) was considered unconstitutional and struck down.
- Article 31D was added by the 42<sup>nd</sup> Amendment Act, 1976. According to this, if any law is made in the context of checking anti – national activities, even if it violates Article 14 and 19, it shall be a valid law.
- Article 31D was removed from the constitution by the 43<sup>rd</sup> Amendment Act, 1977.
- Right to property is, at present, a Constitutional Right under Article 300A.

## Right to Constitutional Remedies (Article 32)

Part III of the Constitution provides for legal remedies for the protection of these rights against their violation by the State or other institutions/individuals. It entitles the citizens of India to move the Supreme Court or High Courts for the enforcement of these rights. The State is forbidden from making any law that may be in conflict with the Fundamentals Rights.

- The Constitution empowers the Supreme Court and High Courts to issue orders or writs. It broadly provides for five kinds of “prerogative” writs, namely, Habeas Corpus, Certiorari, Mandamus, Quo Warranto and Prohibition.
  - ✓ The writ of prohibition is issued by a higher court to a lower court prohibiting it from taking up a case because it falls outside the jurisdiction of the lower court. Thus, the higher court transfers the case to itself.
  - ✓ The writ of habeas corpus is issued to a detaining authority, ordering the detainer to produce the detained person in the issuing court, along with the cause of his or her detention. If the detention is found to be illegal, the court issues an order to set the person free.
  - ✓ The writ of certiorari is issued to a lower court directing that the record of a case be sent up for review, together with all supporting files, evidence and documents, usually with the intention of overruling the judgment of the lower court. It is one of the mechanisms by which the fundamental rights of the citizens are upheld.
  - ✓ The writ of mandamus is issued to a subordinate court, an officer of government, or a corporation or other institution commanding the performance of certain acts or duties.
  - ✓ The writ of quo warranto is issued against a person who claims or usurps a public office. Through this writ the court inquires ‘by what authority’ the person supports his or her claim.
- Supreme Courts can issue writs only for the restoration and enforcement of Fundamental Rights whereas High Courts can issue writs for Fundamental Rights and any other issues also.
- Supreme Court has writ jurisdiction across the territory of India whereas jurisdiction of High Courts are restricted to the particular state.

### Writ Petition

A writ petition is essentially a court petition for extraordinary review, asking a court to intervene in a lower court’s decision. Under the Indian legal system, jurisdiction to issue ‘prerogative writs’ is given to the Supreme Court, and to the High Courts of Judicature of all Indian states. Parts of the law relating to writs are set forth in the Constitution of India.

### Suspension of Fundamental Rights

- During National Emergency under Article 352
- President can proclaim a state of emergency in the threat of war, external aggression or armed rebellion.
- Under Article 358, if National Emergency is imposed on grounds of war or external aggression, six rights under Article 19 stand automatically suspended.
- Under Article 359, other rights can also be suspended but a separate notification has to be issued by the President.
- Article 20 and 21 can never be suspended.
- Constitutional emergency and financial emergency have no impact on Fundamental Rights.