

PART III of the Indian Constitution – FUNDAMENTAL RIGHTS

Article 16 - Our Constitution guarantees equality of opportunity in matters relating to employment or appointment to public services to all citizens. There shall be no discrimination on the basis of religion, race, caste, sex, place of birth or residence in matters relating to employment in public services. Merit will be the basis of employment. However, certain limitations have been provided to the enjoyment of these rights.

Article 17 - Abolition of Untouchability

It states that - "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

The Constitution abolishes untouchability and its practice in any form is forbidden. The following actions are considered as offences when committed on the grounds of untouchability

- ✓ Refusing admission to any person to the public institutions;
- ✓ Preventing any person from worshipping in place of public worship;
- ✓ Insulting a member of Scheduled Caste on the grounds of untouchability;
- ✓ Preaching untouchability directly or indirectly.

Punishments for violations include minimum jail sentence of 6 months and/or fine, or the person can be permanently debarred from contesting any elections in the country. According to the article, punishment has to be in accordance with law. Parliament, for this purpose, enacted 'The Untouchability offenses Act, 1955'. This was renamed as 'The Civil Rights Protection Act' in 1976. If a case of untouchability is brought before the court, the court will act on the assumption of guilt (unlike other cases where assumption is innocent until proven guilty).

Article 18 - Abolition of titles

18 (1) No title, not being a military or academic distinction, shall be conferred by the State.

18 (2) No citizen of India shall accept any title from any foreign State

18 (3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

18 (4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

All titles national or foreign which create artificial distinctions in social status amongst the people have been abolished.

This provision has been included in the Constitution to do away with the titles like 'Rai Sahib', 'Rai Bahadur' have been conferred by the British on a few Indians as a reward for their effective co-operation to the colonial regime. The practice of conferring titles like this is against the doctrine of equality before law. To recognise the meritorious service rendered by individual citizens to the country or mankind, the President of India can confer civil and military awards on those individuals for their services and achievements such as; Bharat Ratna, Padma Vibhushan, Padma Sri, Param Veer Chakra, Veer Chakra etc., but these cannot be used on 'titles'.

Right to Freedom (Article 19 – 22)

Article 19 -

The Constitution guarantees the following six Fundamental Freedoms at present:

- ✓ Freedom of speech and expression
- ✓ Freedom to assemble peacefully without arms
- ✓ Freedom to form associations or unions
- ✓ Freedom to move freely throughout the territory of India
- ✓ Freedom to reside and settle in any part of the territory of India
- ✓ Freedom to practise any profession or to carry on any occupation, trade or business

Freedom of speech and expression is an important freedom. This freedom ensures free and frank speech, discussion and exchange of opinions. It includes the freedom of the press. However these freedoms like freedom of speech and expression are not absolute. The state is empowered to impose reasonable restrictions on the exercise of this right in the interest of security of the state, public order, morality etc.

Concept of Inferred Rights: Article 19 (1) (a) gives the right to Freedom of speech and expression. This also means that a person can stay silent if he wishes to. This can be inferred from Article 19 (1) (a). Hence, there are rights in the constitution which can be inferred from the given rights. This is Concept of Inferred Rights.

Explaining the scope of freedom of speech and expression Supreme Court has said that the words "freedom of speech and expression" must be broadly constructed to include the freedom to circulate one's views by words of mouth or in writing or through audio visual instrumentalities. It therefore includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this country therefore has the right to air his or their views through the printing and or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution.

Freedom of Press: The fundamental right of the freedom of press implicit in the right the freedom of speech and expression is essential for the political liberty and proper functioning of democracy. The Indian Press Commission says that "Democracy can thrive not only under the vigilant eye of legislature, but also under the care and guidance of public opinion and the press is par excellence, the vehicle through which opinion can become articulate." Unlike the American Constitution, Art. 19(1) (a) of the Indian Constitution does not expressly mention the liberty of the press but it has been held that liberty of the press is included in the freedom of speech and expression. The editor of a press for the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press. Freedom of press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of press and invalidate all laws or administrative actions, which interfere with it contrary to the constitutional mandate.

Grounds of Restrictions: Clause (2) of Article 19 contains the grounds on which restrictions on the freedom of speech and expression can be imposed

Security of State: Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of State. The term "security of state" refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. Thus speeches or expression on the part of an individual, which incite to or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of State.

Friendly relations with foreign states: This ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardise the maintenance of good relations between India, and that state. No similar provision is present in any other Constitution of the world. In India, the Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against foreign dignitaries. Interest of friendly relations with foreign States, would not justify the suppression of fair criticism of foreign policy of the Government.

Public Order: This ground was added by the Constitution (First Amendment) Act. 'Public order' is an expression of wide connotation and signifies "that state of tranquillity which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established."

Freedom of assembly is not absolute but restricted. The assembly must be must be non-violent and must not cause any breach of public peace. If the assembly is riotous then it is not protected under Article 19 (1) (b) and reasonable restrictions may be imposed.

Freedom to form Associations includes association of political, social or cultural. Further, it also gives the right to join or not join associations or right to continue or not to continue with any association. It also gives the right to form trade unions. Article 33 of the constitution empowers the to pass a law restricting the right to form political association to members of armed forces, persons employed in any bureau or other organizations established by the state for the purpose of intelligence or counter intelligence, persons employed in or in connection with the telecommunications system.

Freedom of movement guarantees to the citizens the right to move freely throughout the territory of India. But this can restricted on the grounds of Security, Public order or for protecting the interests of the scheduled tribes.

Freedom of Residence provides the right to reside or settle down throughout the territory of India. This right is subject to certain reasonable restriction in areas like scheduled areas or border areas.

Freedom of Trade and Occupation guarantees all citizens right to choose any profession, occupation, trade or business. This right can be restricted by the state under Clause 6 which includes

- ✓ Imposing reasonable restrictions in the interest of general public
- ✓ Prescribing professional or technical qualifications necessary for carrying on any profession, trade or business to the exclusion of private citizens, wholly or partially.

These freedoms can be suspended during the State of National Emergency. As soon as the State of National Emergency is declared under Article 352, the above- mentioned freedoms except the right to life and liberty, automatically remain suspended as long as the State of National Emergency continues. All these freedoms get restored as soon as the proclamation of National Emergency is lifted.

Article 20 – Protection in respect of conviction for offences

20 (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

20 (2) No person shall be prosecuted and punished for the same offence more than once

This Constitutional provision assures protection against arbitrary arrest and excessive punishment to any person who is alleged to have committed an offence. No person shall be punished except for the violation of law which is in force when the crime was committed. An accused cannot be compelled to be a witness against himself/herself. No person shall be punished for the same offence more than once. Also, no criminal law can be invoked retrospectively.

Article 21 – Protection of life and Personal liberty

21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

21A. Right to education—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

The Constitution lays down that no person shall be deprived of his/her life or personal liberty except according to the procedure established by law. It guarantees that life or personal liberty shall not be taken away without the sanction of law. It ensures that no person can be punished or imprisoned merely at the whims of some authority. He/she may be punished only for the violation of the law.

Right to Education was introduced by the 86th Amendment Act, 2002. It was earlier under Article 45 of the Constitution as a part of Directive Principles of State Policy. Right to Education Act, a law required to execute this right, was passed by the Parliament in 2009. According to the law, 25% of the seats have to be reserved for economically backward section even in private institutions, only exception being minority institutions.

Article 22 - Prevention against Arbitrary Arrest and Detention

Our Constitution guarantees certain rights to the arrested person. As per the provision, no person can be arrested and/or be detained in custody without being informed of the grounds for detention. He /she has the right to consult and be defended by a lawyer of his/her choice. The accused has to be produced before the nearest magistrate within a period of twenty-four hours of arrest. These safeguards however are not available to foreigners as well as to those citizens detained under Preventive Detention Act.

What is Preventive Detention?

When the State feels that a person is likely to commit crime or is a threat to the security of the State, he/she may be detained without trial for a limited period. However, no person can be kept under detention for more than three months until permitted by an Advisory Board consisting of persons who are qualified to be appointed as judges of the High Courts. Such a board is presided over by a sitting judge of a High Court.