

These stellar notes by Dr. Sidharth Arora cut through the noise to deliver a clear, exam-ready narrative

Part-1

FUNDAMENTAL RIGHTS: COMPREHENSIVE STUDY NOTES FOR UPSC

I. INTRODUCTION TO FUNDAMENTAL RIGHTS

Fundamental Rights are enshrined in Part III of the Indian Constitution, spanning from Article 12 to Article 35. Often described as the Magna Carta of India, these rights are essential for the material and moral development of individuals.

1. Historical Evolution

- **Magna Carta (1215):** The concept of written fundamental rights traces back to the Magna Carta, signed by King John of England in 1215 under pressure from rebellious barons. It established the foundational principle that "the King is not above the law" and guaranteed liberties like the right to a fair trial and freedom from arbitrary imprisonment.
- **U.S. Bill of Rights:** The American Constitution (1787) initially lacked a declaration of rights. This was addressed through the first ten amendments in 1791, known as the Bill of Rights, which served as a primary inspiration for the Indian Constitution-makers.
- **International Influence:** The drafting was also significantly influenced by the Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly.

2. Philosophy and Need for Rights

- **Protection Against the State:** The State is inherently powerful; rights serve as a claim of citizens against the State to prevent tyranny and the abuse of power.
- **Rule of Law:** Rights transition society from *Rex Lex* (The King is Law) to *Lex Rex* (The Law is King).
- **Justiciability:** Unlike other legal rights, Fundamental Rights are justiciable, meaning they are enforceable by courts (Article 32 for the Supreme Court and Article 226 for High Courts).

II. DEFINITION OF "STATE" (ARTICLE 12)

Article 12 provides a "working definition" of the State for the purposes of Part III. This is crucial because Fundamental Rights are primarily enforceable against the State.

1. Components of the State

1. **Government and Parliament of India:** The executive and legislative organs of the Union.
2. **Government and Legislature of each State:** The executive and legislative organs of the states.
3. **Local Authorities:** Includes municipal committees, district boards, and bodies legally entitled to manage municipal or local funds (as defined by the General Clauses Act, 1897).
4. **Other Authorities:** Authorities within the territory of India or under the control of the Government of India.

2. Judicial Interpretation of "Other Authorities"

The Supreme Court has clarified that this term includes bodies created by the government that exercise a degree of independent power. However, it excludes purely private bodies.

3. Status of the Judiciary

In the case of *Naresh Shridhar Mirajkar v. State of Maharashtra*, the Court held:

- **Judicial Capacity:** When a court acts in its judicial capacity to resolve disputes, it is not regarded as the "State" under Article 12.
- **Administrative Capacity:** The administrative actions of the judiciary (e.g., recruitment, rules) are amenable to writ jurisdiction as they fall under the definition of State.

III. LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS (ARTICLE 13)

Article 13 acts as the "Protector of Fundamental Rights" by establishing the Doctrine of Judicial Review.

1. Key Clauses

- **Article 13(1):** All pre-constitutional laws (laws in force before 1950) that are inconsistent with Part III shall be void to the extent of such inconsistency.
- **Article 13(2):** The State shall not make any law that takes away or abridges the rights conferred by Part III. Any law made in contravention shall be void.

- **Article 13(3) - Definition of "Law":** Includes ordinances, orders, bye-laws, rules, regulations, notifications, customs, or usages having the force of law.
- **Article 13(4):** This article does not apply to constitutional amendments made under Article 368 (though this has been subject to further judicial scrutiny in various landmark cases).

2. Doctrine of Judicial Review

While not explicitly mentioned in the U.S. Constitution, it was established there in ****Marbury v. Madison* (1803)***. In India, Article 13 provides the explicit basis for the judiciary to strike down unconstitutional legislation.

3. Doctrine of Severability

When a part of a statute is found unconstitutional, the Court does not necessarily invalidate the entire act.

- **The "Sever" Principle:** If the invalid portion can be separated from the rest without destroying the statute's purpose, only the invalid part is struck down.
- **Interdependence:** If the provisions are so intertwined that they cannot exist independently, the entire statute is declared void.

IV. RIGHT TO EQUALITY (ARTICLES 14–18)

1. Equality Before Law and Equal Protection (Article 14)

Article 14 declares that the State shall not deny to any person equality before the law or equal protection of the laws.

- **Equality Before Law (Negative Concept):** Derived from English Common Law, it implies the absence of any special privileges and that no person is above the law.
- **Equal Protection of Laws (Positive Concept):** Derived from the American Constitution, it implies that "equals should be treated equally". It allows for different treatment of people in different circumstances.

Reasonable Classification vs. Class Legislation

Article 14 prohibits class legislation (discriminating against a group) but allows reasonable classification. A classification is valid if it meets two tests:

1. **Intelligible Differentia:** The group being classified must be clearly distinguishable from others.
2. **Rational Nexus:** The classification must have a logical connection to the objective of the law.
 - *Example:* A law requiring a minimum age of 18 for voting is a reasonable classification based on maturity.

Exceptions to Article 14

- **The President and Governors (Article 361):** They are not answerable to any court for official duties. They enjoy immunity from criminal proceedings, arrest, and imprisonment during their term. Civil proceedings require a 2-month prior notice.
- **Legislative Privilege:** MPs and MLAs are not answerable for speeches or votes in the House.
- **Diplomatic Immunity:** Foreign sovereigns and ambassadors are immune from civil and criminal proceedings.

2. Prohibition of Discrimination (Article 15)

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth.

- **Public Access:** No citizen can be restricted from accessing shops, restaurants, hotels, or using public wells, tanks, and roads.
- **Special Provisions (Defensive Separation):** The State can make special provisions for:
 1. **Women and Children.**
 2. **Socially and Educationally Backward Classes (SEBC), SCs, and STs.**
 3. **Economically Weaker Sections (EWS):** Introduced by the 103rd Amendment (2019), allowing up to 10% reservation in educational institutions.

3. Equality of Opportunity in Public Employment (Article 16)

Article 16 provides equality of opportunity for all citizens in State employment, prohibiting discrimination based on religion, race, caste, sex, descent, place of birth, or residence.

- **Reservation Policy:**
 - **Article 16(4):** Allows reservation for backward classes not adequately represented in services.

- Article 16(4A): Allows reservation in matters of promotion with consequential seniority for SCs and STs.
- Article 16(4B): Allows "carry forward" of unfilled vacancies without counting them towards the 50% ceiling of the current year.
- Article 16(6): Allows up to 10% reservation for EWS.
- Key Insight: Reservation is viewed as "Protective Discrimination," a facet of equality that addresses de facto inequalities in society.

4. Abolition of Untouchability (Article 17)

Untouchability is abolished, and its practice in any form is forbidden.

- Nature: This is an absolute right with no exceptions.
- Legislation: The Parliament enacted the Protection of Civil Rights Act, 1955 and the SC and ST (Prevention of Atrocities) Act, 1989 to provide punishments for violations.
- Definition: "Untouchability" is not defined in the Constitution or Acts but refers to social disabilities imposed on certain classes by reason of their birth.

5. Abolition of Titles (Article 18)

To ensure social equality, the State is prohibited from conferring titles.

- Prohibitions: No title (except military or academic) can be conferred. Citizens cannot accept titles from foreign states without the President's consent.
- National Awards: Awards like Bharat Ratna and Padma awards are not considered "titles" under Article 18 as they recognize excellence in duty rather than hereditary status.

V. RIGHT TO FREEDOM (ARTICLE 19)

Article 19 guarantees six democratic freedoms to citizens only. These are not absolute and are subject to reasonable restrictions.

1. The Six Freedoms

1. Speech and Expression: Includes the right to express views via words, writing, or media.

2. **Assembly:** Right to assemble peaceably and without arms. It includes rallies but not the right to strike.
3. **Association:** Right to form unions, groups, or co-operative societies (added by 97th CAA 2011).
4. **Movement:** Freedom to move throughout India.
5. **Residence:** Freedom to reside and settle in any part of India.
6. **Profession:** Freedom to practice any occupation, trade, or business.

2. Reasonable Restrictions

Freedoms can be restricted in the interest of:

- Sovereignty and integrity of India.
- Security of the State.
- Friendly relations with foreign states.
- Public order, decency, or morality.
- Contempt of court, defamation, or incitement to an offence.

3. Landmark Doctrines and Cases

- **Freedom of Press:** Though not explicitly mentioned, it is implicit in Freedom of Speech and Expression. Landmark cases include *Romesh Thappar v. State of Madras* and *Bennett Coleman v. Union of India*.
- **Doctrine of Chilling Effect:** Established in ****Shreya Singhal v. Union of India* (2015)***, which struck down Section 66A of the IT Act. A "chilling effect" occurs when vague or overly broad laws discourage citizens from exercising their legitimate rights for fear of legal repercussions.
- **Sedition (Section 124A IPC):** Historically used to silence dissent (e.g., trials of Tilak and Gandhi). In ****Kedar Nath v. State of Bihar* (1962)***, the SC upheld its constitutionality but limited its application to acts causing incitement to violence or public disorder. Recently, the SC has expressed concern over its misuse and sought a government review.

VI. KEY AMENDMENTS AND RECENT DEVELOPMENTS

- **44th Amendment (1978):** Repealed the Right to Property as a Fundamental Right (formerly Article 19(1)(f)).
- **103rd Amendment (2019):** Introduced EWS reservation under Articles 15(6) and 16(6).
- **Defensive Separation:** This philosophical underpinning justifies special provisions for weaker sections (Women, SCs, STs) as necessary for achieving Constitutional objectives of social and financial equity.
- **Gender Justice:** In *Shayara Bano v. Union of India*, the SC held that instantaneous Triple Talaq violated the right to equality under Article 14.

VII. SUMMARY TABLE FOR QUICK REVISION

Article	Right	Key Aspect	Restrictions
12	Definition of State	Working definition for Part III	Excludes purely private bodies
13	Judicial Review	Voiding inconsistent laws	Doctrine of Severability
14	Equality	Equality before Law / Equal Protection	Intelligible Differentia
15	Non-discrimination	5 grounds: Religion, Race, Caste, Sex, PoB	Special provisions for Women/SCs/STs/EWS
16	Public Employment	Equality of opportunity	Reservations (Protective Discrimination)
17	Abolition of Untouchability	Absolute right; punishable offence	None
18	Abolition of Titles	Prohibits hereditary titles	Military and Academic titles allowed
19	Six Freedoms	Speech, Assembly, Association, etc.	Reasonable restrictions (Public order, etc.)

End of Part-1

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