

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

Part-2

COMPREHENSIVE STUDY NOTES: FUNDAMENTAL RIGHTS (PART III)

I. Historical Context and Special Provisions (Article 35-A)

Article 35-A was a unique provision that empowered the Jammu and Kashmir (J&K) Legislature to define "permanent residents" of the state and provide them with special rights and privileges.

- **Privileges included:** The exclusive right to acquire immovable property, access to government jobs, and eligibility for scholarships.
- **Constitutional Debate:** It was often criticized for creating a "class within a class" of Indian citizens, potentially challenging the concept of the "oneness of India".

II. Freedom of Profession and State Monopolies (Article 19)

Article 19(1)(g) guarantees all citizens the right to practice any profession or carry on any occupation, trade, or business.

- **Reasonable Restrictions [Article 19(6)]:** This right is not absolute and is subject to restrictions in the interests of the general public.
- **Professional Qualifications:** The State can prescribe necessary professional or technical qualifications for any trade or business.
- **State Monopoly:** The State (or a state-owned corporation) has the power to carry on any trade or business to the exclusion, complete or partial, of citizens. This was clarified after the First Amendment Act of 1951 to ensure that schemes of nationalization were not held invalid by courts.

III. Judicial Doctrines: The Doctrine of Eclipse

The Doctrine of Eclipse is a vital principle for interpreting the validity of pre-constitutional laws.

- **Core Principle:** A pre-constitutional law that is inconsistent with a Fundamental Right (FR) is not null and void *ab initio* (from the beginning). Instead, it is merely overshadowed or "eclipsed" by the FR and remains dormant.

- **Prospective Nature of FRs:** Fundamental rights are generally prospective, meaning they apply to laws passed after the Constitution came into force.
- **Revival of Law:** If the relevant Fundamental Right is later amended to remove the inconsistency, the "eclipse" is removed, and the dormant law becomes active and enforceable again.
- **Leading Case:** *Bhikaji Narain Dhakras v. State of Madhya Pradesh (1955)*. The court held that an existing law (C.P. & Berar Motor Vehicles Act, 1947) which created a state monopoly became void against citizens upon the commencement of the Constitution but was "revived" once Article 19(6) was amended to permit state monopolies.

IV. The Right to Education (Article 21A)

Education is viewed as the "right weapon" to cut social slavery and enlighten the masses, as noted by Dr. B.R. Ambedkar.

- **Article 21A:** Inserted by the 86th Constitutional Amendment Act, 2002, it mandates that the State provide free and compulsory education to all children aged 6 to 14 years.
- **Implementation:** The Right of Children to Free and Compulsory Education (RTE) Act, 2009, was enacted to give effect to this right (w.e.f. April 1, 2010).

Provision	Nature	Age Group	Legal Status
Article 45	Directive Principle (DPSP)	0–6 years (Early childhood care)	Non-justiciable; policy-guiding
Article 21A	Fundamental Right	6–14 years	Justiciable and enforceable
Article 51A(k)	Fundamental Duty	6–14 years (for parents/guardians)	Non-enforceable; moral obligation

V. Rights Against Exploitation (Articles 23 & 24)

Article 23: Prohibition of Traffic in Human Beings and Forced Labour

This article prohibits human trafficking, *begar* (unpaid labor), and other similar forms of forced labor.

- **Scope:** It includes the prohibition of bonded labor, the *Devadasi* system, and forced prostitution.

- The Immoral Traffic (Prevention) Act, 1956: Enacted to punish offences related to trafficking.
- Exception [Article 23(2)]: The State is permitted to impose compulsory service for public purposes (e.g., military conscription or skilling programs).
- Non-Discrimination: In imposing such service, the State must not discriminate based only on religion, race, caste, or class.

Article 24: Prohibition of Employment of Children

No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

- Child Labour (Prohibition and Regulation) Amendment Act, 2016:
 - Prohibits child employment in all occupations.
 - Exceptions: Children can help in family-owned businesses or work as artists in the audio-visual entertainment industry (excluding circuses), provided it is after school hours or during vacations and does not affect their education.
- Landmark Case: *M.C. Mehta v. State of Tamil Nadu (1996)* addressed the issue of children in hazardous industries like matchstick and firework factories.

VI. Right to Freedom of Religion (Articles 25 - 28)

Article 25: Freedom of Conscience

Guarantees the freedom of conscience and the right freely to profess, practice, and propagate religion.

- Restrictions: This right is subject to public order, morality, and health.
- State Intervention [Article 25(2)]: The State can regulate secular activities (economic, financial, political) associated with religious practice and provide for social welfare/reform, such as opening Hindu religious institutions to all classes and sections of Hindus.

Article 26: Freedom to Manage Religious Affairs

A collective right granted to every religious denomination or section thereof.

- Rights include:
 1. Establishing and maintaining institutions for religious/charitable purposes.

2. Managing its own affairs in matters of religion.
 3. Owning and acquiring movable and immovable property and administering it in accordance with law.
- **Definition of Religious Denomination:** Requires a common faith, a common organization, and a distinctive name.
 - **Doctrine of Essentiality:** Originating in the Shirur Mutt Case (1954), the Supreme Court took the responsibility of determining which rituals and practices are "integral" or essential to a religion and which are not.

Article 27: Freedom from Taxes for Religion

No person shall be compelled to pay taxes the proceeds of which are specifically used for the promotion or maintenance of any particular religion or denomination.

- **Haj Subsidy Controversy:** In *Prafull Goradia v. Union of India*, the court observed that Article 27 is violated only if a substantial part of tax collected is utilized for one religion.
- **Current Status:** The government has since phased out/withdrawn the Haj subsidy.

Article 28: Religious Instruction in Educational Institutions

- **Wholly State-funded institutions:** No religious instruction allowed.
- **State-administered but Trust-established institutions:** Religious instruction is permitted.
- **State-recognized/aided institutions:** No person can be required to take part in religious instruction or worship without their (or their guardian's) consent.
- **Distinction:** The court distinguishes between "religious instructions" (teaching of rituals/modes of worship) and the "study of religions" (teaching philosophies and essential moral thoughts), the latter of which is considered necessary for national integrity.

VII. Case Study: Sabarimala Judgment (*Indian Young Lawyers Association v. State of Kerala*)

The case challenged the ban on women of "menstruating age" (10 to 50 years) from entering the Sabarimala temple.

Key Arguments

- **Petitioners:** Argued the ban violated Articles 14 (Equality), 15 (Non-discrimination), 17 (Untouchability), and 25 (Freedom to practice religion). They claimed exclusion based on a biological factor (menstruation) was akin to practicing untouchability.
- **Respondents:** Argued that Lord Ayyappa is a "Naishtika Brahmacharya" (Eternal Celibate) and his rights as a person should be protected. They claimed the devotees formed a separate religious denomination under Article 26.

The Judgment (4:1 Majority)

- **Practice Struck Down:** The Court struck down Rule 3(b) of the Kerala Hindu Places of Public Worship Rules, 1965, as unconstitutional.
- **Observations:**
 1. Devotees of Lord Ayyappa do not constitute a separate religious denomination; they are Hindus.
 2. Exclusionary practices based on biological factors violate the dignity of women and are contrary to Constitutional Morality.
 3. The right of a denomination to manage internal affairs (Art 26b) is subject to the State's social reform mandate (Art 25(2)b).
- **Dissent (Justice Indu Malhotra):** Held that notions of rationality cannot be brought into religion and the court should respect a denomination's right to manage its affairs regardless of whether practices seem rational to others.

VIII. Constitutional Morality

This concept holds that the principles and values enshrined in the Constitution should guide the behavior of citizens and institutions.

- It serves as a moral compass for society.
- It is linked to the Social Contract, where citizens abide by constitutional values in exchange for state protection.
- Fundamental Rights must work within the dimension of Constitutional Morality to balance religion, customs, and equality.

IX. Cultural and Educational Rights (Articles 29 & 30)

Article 29: Protection of Interests of Minorities

- (1) Any section of citizens with a distinct language, script, or culture has the right to conserve the same. Note: The word "minority" is not used here to allow for a wider interpretation.
- (2) No citizen can be denied admission to state-funded educational institutions based only on religion, race, caste, or language.

Article 30: Right of Minorities to Establish Educational Institutions

All minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice.

- **TMA Pai Foundation Case (2002):**
 1. Minority status is State-dependent, as linguistic and religious groups are spread unevenly across India.
 2. Private unaided institutions have autonomy in admissions and fee structures.
 3. The State can impose reasonable regulations to ensure transparency and merit-based admissions.
- **Current Minority Communities:** Muslims, Sikhs, Christians, Buddhists, Jains, and Zoroastrians (Parsis) are notified as minorities under the National Commission for Minorities Act, 1992.

X. Right to Property (Article 31 to Article 300A)

- **Removal from FRs:** The right to property was removed from the list of Fundamental Rights (Part III) by the 44th Constitutional Amendment Act, 1978.
- **Current Status:** It is now a legal/constitutional right under Article 300A in Part XII.
- **Mandatory Procedure:** The State cannot deprive a person of their property except by the authority of law and following proper procedures.

XI. Right to Constitutional Remedies (Article 32)

Dr. Ambedkar described Article 32 as the "very soul of the Constitution".

- It guarantees the right to move the Supreme Court for the enforcement of Fundamental Rights.
- The Supreme Court has the power to issue directions, orders, or writs.

The Five Prerogative Writs

1. **Habeas Corpus ("You may have the body"):** Issued to challenge unlawful detention. The court orders the detaining authority to produce the person and release them if the detention is illegal.
2. **Mandamus ("We command"):** Issued to a public official, authority, or lower court to compel them to perform a legal duty they have failed to perform.
3. **Prohibition ("To forbid"):** A preventative writ issued by a higher court to a lower court to prevent it from exceeding its jurisdiction or acting against natural justice.
4. **Certiorari ("To be certified"):** A curative writ issued to quash/overturn an order already passed by a lower court or tribunal that acted without jurisdiction or in violation of the law.
5. **Quo Warranto ("By what authority"):** Used to challenge a person's legal right to hold a public office. It ensures only qualified individuals hold such positions.

XII. Exceptions and Limits to Fundamental Rights (Articles 33 - 35)

- **Article 33:** Parliament can restrict or abrogate the FRs of members of the Armed Forces, police forces charged with public order, and intelligence agencies to ensure proper discharge of duties and discipline.
- **Article 34:** Provides for the restriction of FRs while Martial Law is in force in any area. Parliament can indemnify government servants for acts done during this period. *Note: Independent India has never seen Martial Law.*
- **Article 35:** Only Parliament (not State Legislatures) has the power to make laws to give effect to certain Fundamental Rights and prescribe punishments for offences against them.

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