



सत्यमेव जयते

FUNDAMENTAL RIGHTS

SYNDICATE GROUP 5

FUNDAMENTAL RIGHTS : INTRO

What are rights?

- Certain freedoms given to the people, to develop their potentials

Why some rights are called as Fundamental?

- The basic rights given to the citizens and guaranteed by the constitution.
- Contain in part III of Indian constitution.
- Called as the soul of our constitution and corner stone of Indian Democracy.
- Safe-guard the citizens against state exploitation.
- Justifiable.
- Helps an individual to raise to his abilities and potential.
- Inspired by the “Bill Of Rights”
-



American Concept Need for a law above the Legislature

The American Constitution was apprehensive of tyranny, not only from the executive but also from the legislature. American went further to assert that there had to be a law superior to the legislature itself and that the restraint of such paramount written law could only save them from the fears of absolutism and autocracy which are ingrained in the human nature.



British Concept Parliament Expected to protect Rights.

The constitution of England is unwritten. No code of fundamental right exists. In the doctrine of the sovereignty of Parliament in England it does not envisage a real check on the power of the parliament which is, as a matter of legal theory, free to make any law. The object here is deferent way to protect the fundamental right not on the constitutional guarantee but on public opinion, good sense of the people, strong common law and individual liberty and the parliamentary form of government.



Indian Concept Fundamental Rights as Corner Stone of Democracy

Simon Commission and Joint Parliamentary Committee had rejected the idea of enacting declaration of Fundamental right on the ground that the abstract declaration is useless. Although the demand of the people was not met by the British Parliament under the government of India Act 1935 yet the enthusiasm of the people to have such rights in the constitution was not impaired. The recommendation of the Nehru Committee was included in the constitution in 16 May'1946 by the cabinet mission.





FUNDAMENTAL RIGHTS

Fundamental Rights are incorporated from Article 12 to 35 in the Third Chapter of the Indian Constitution. Rights are the basic facilities which we need for our growth. These are the claims of individual recognised by the society and enforced by the State. The existence of Democracy can't be imagined without Fundamental Rights in India because Rights are the pillars of Democracy.

Article 12:Definition

In this Part, unless the context otherwise required, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Article 13 :Laws inconsistent with or in derogation of the fundamental rights

(1)All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2)The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3)In this article, unless the context otherwise required, -

(a)"law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b)"laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Nothing in this article shall apply to any amendment of this Constitution made under article 368.

AMENDMENT OF FUNDAMENTAL RIGHTS

- Shankari prasad case 1951
- Golaknath case 1967
- 24th Constitutional Amendment Act 1971
- Keshavananda Bharathi case 1973

RIGHT TO EQUALITY, ARTICLE-14 TO 18

- Equality before law and equal protection of law. **Article-14**
- Prohibition of Discrimination **Article-15**
- Equality of opportunity. **Article-16**
- Abolition of untouchability. **Article-17**
- Abolition of title **. Article-18**

ARTICLE 19

- (i) **Freedom of Speech and expression**, which enable an individual to participate in public activities. The phrase, "freedom of press" has not been used in Article 19, but freedom of expression includes freedom of press.
- (ii) **Freedom to assemble peacefully without arms**, on which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.

- (iii) **Freedom to form associations or unions** on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.
- (iv) **Freedom to move freely throughout the territory of India** though reasonable restrictions can be imposed on this right in the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics.
- (v) **Freedom to reside and settle in any part of the territory of India** which is also subject to reasonable restrictions by the State in the interest of the general public or for the protection of the schedule tribes because certain safeguards as are envisaged here seem to be justified to protect indigenous and tribal peoples from exploitation and coercion.

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- (vi) **Freedom to practice any profession or to carry on any occupation, trade or business** on which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral.

ARTICLE 20

PROTECTION IN RESPECT OF CONVICTION OF OFFENCES

Article 20(1)

- **No Ex Post Facto Criminal law**
- **Punishment shall not exceed what is prescribed by law**

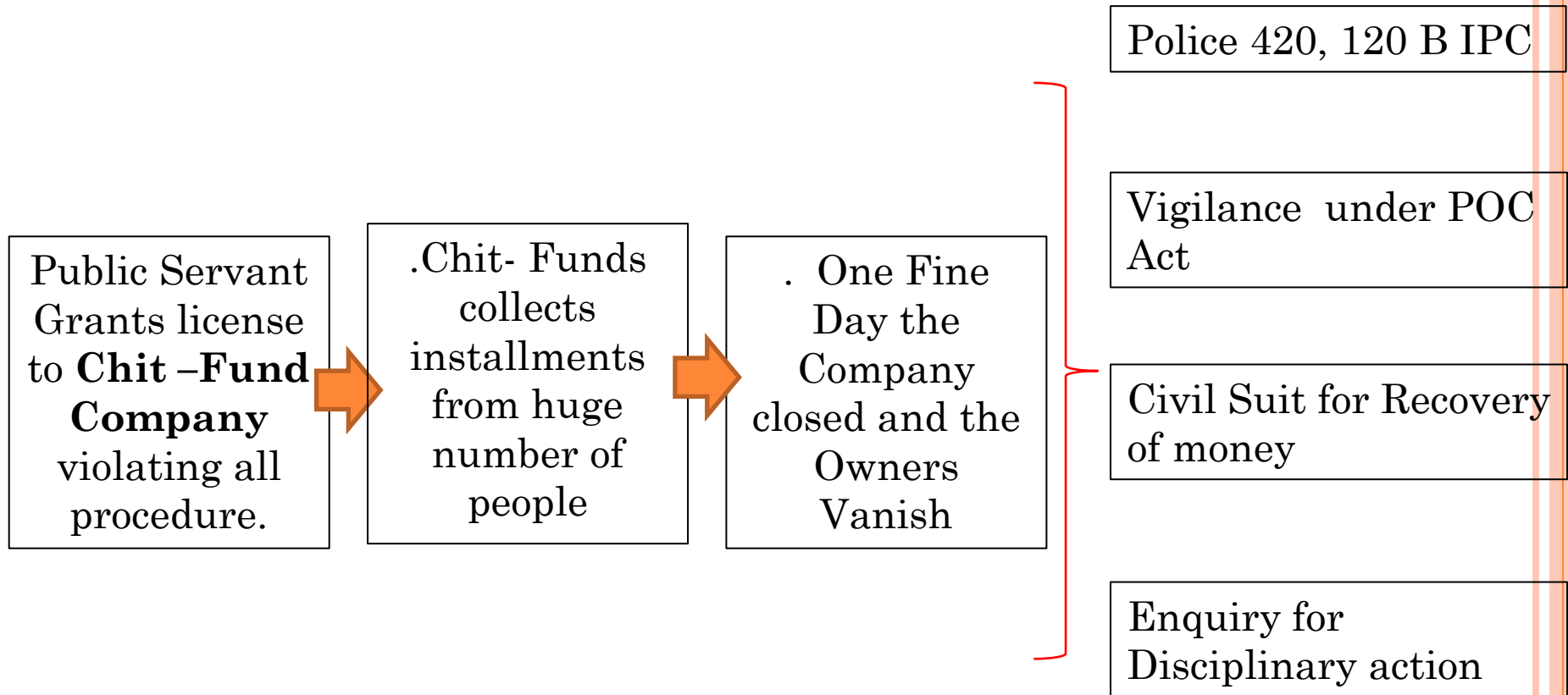
Article 20(2).

- **Protection against Double Jeopardy**

Article 20(3)

- **Nobody can be compelled to be a witness against themselves**

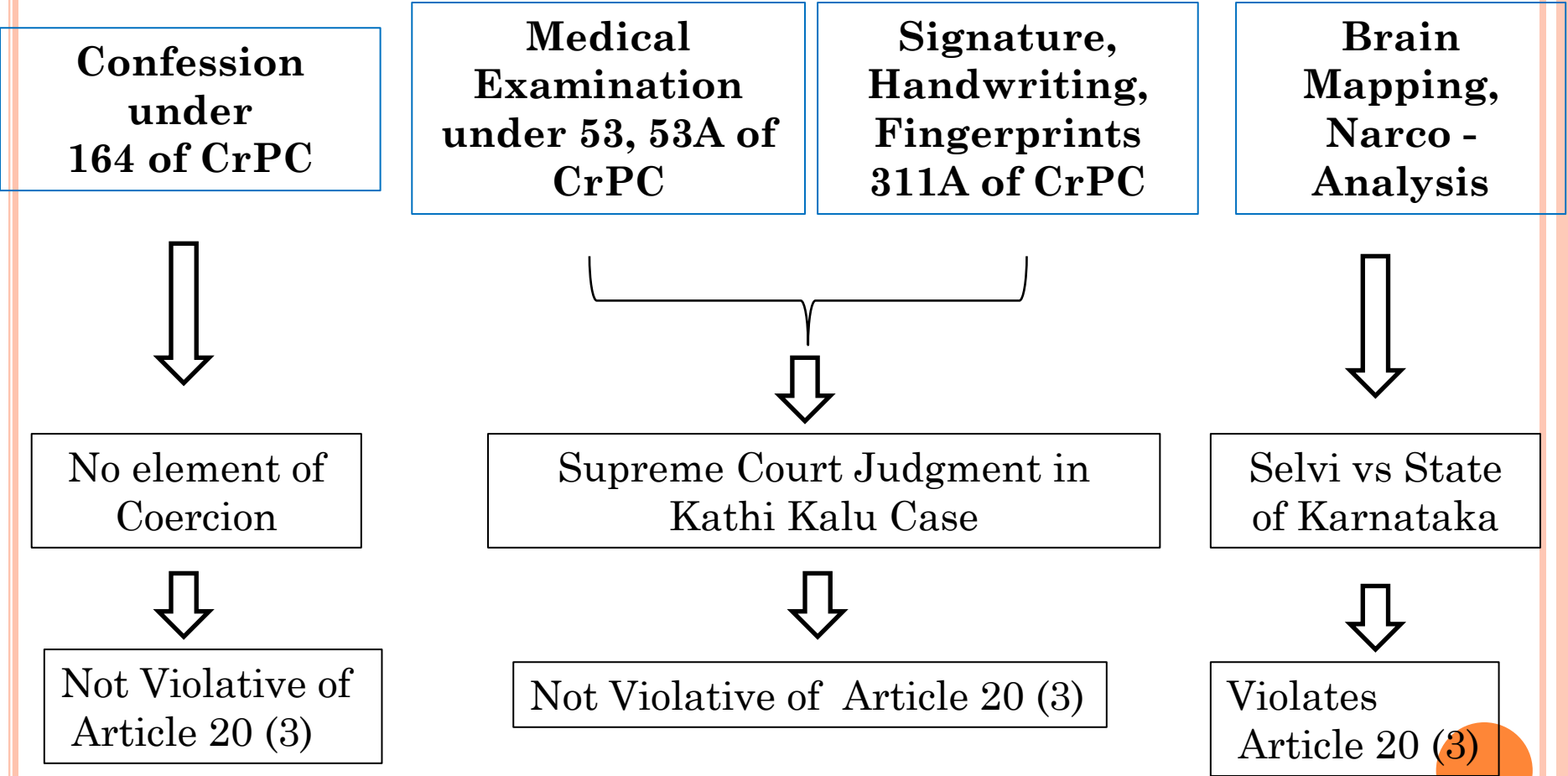
ILLUSTRATIONS ON ARTICLE 20(2)



NO DOUBLE JEOPARDY



ILLUSTRATION ON 20(3)



ARTICLE 22

PROTECTION IN RESPECT OF ARREST AND DETENTION

Arrest

- **Right to be informed of the grounds of arrest**
- **Right to contact a legal practitioner of choice**
- **Right to be produced before a magistrate in 24 Hrs**

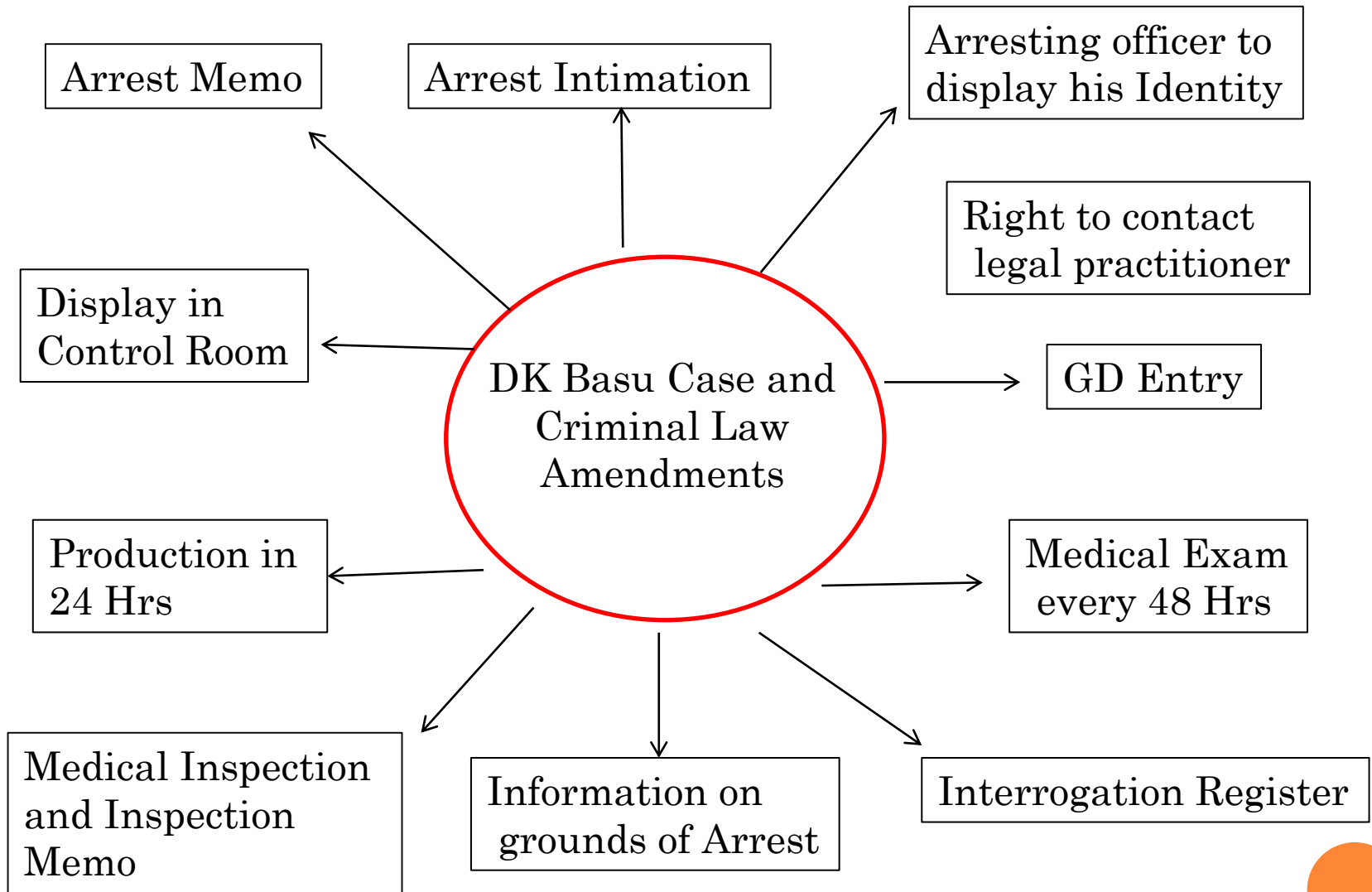
Exception

- **Preventive detention**
- **Enemy Alien**

Preventive Detention

- **No Preventive detention Law can authorize detention for more than 3 months without sanction of an Advisory board.**
- **Parliament can make law with respect to exceptions, maximum period of detention and procedure to be followed by Advisory Board.**
- **Right to know the ground of detention and the right to make representation against it.**

EVOLUTION OF RIGHTS WITH RESPECT TO ARREST



KAAPA – PREVENTIVE DETENTION LAW

ANTISOCIAL

Rowdy(IPC offenders and arms -explosive case offenders)

Goonda (Bootlegger, counterfeiter, drug peddler and other offences under special / localacts)

Report of the District S.P

District Collector Orders Detention under Section 3

Execution as under Ar.22

Government confirms the order

Review By Advisory Board



ARTICLE 21. WHAT IS IT????

Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law.

ARTICLE 21 A . WHAT IS IT??

It declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine.

RIGHTS AGAINST EXPLOITATION

Article 23

- It prohibits traffic in human beings, begar, and other similar forms of forced labour. Traffic includes:
 - selling and buying of men women and children as goods
 - immoral traffic of women and children including prostitution
 - Devadasis and
 - Slavery
- Immoral Traffic Prevention Act, 1956.
- Minimum Wages Act, 1948; Contract Labour Act, 1970; Equal Remuneration Act, 1976
- IPC 370 under the criminal amendment act of 2013
- State can impose compulsory service for public purposes

ARTICLE 24

- Prohibits employment of children below 14 yrs of age in factories, mines or other hazardous activities.
- Child Labour (Prohibition and Regulation) Act, 1986, amended 2013
- Prohibits all forms of child labour
- Employment of children below 14yrs in any occupation and between 14-18 yrs of age in hazardous occupations is a cognizable offence.
- Commission for protection of child rights act 2005

Right to Freedom of Religion

ARTICLE

25. Freedom of conscience and free profession, practice and propagation of religion.

26. Freedom to manage religious affairs.

27. Freedom as to payment of taxes for promotion of any particular religion.

28. Freedom as to attendance at religious instruction or religious worship in certain education institutions.

ARTICLE 25

- Freedom of conscience and free profession, practice and propagation of religion
- 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.
- Nothing in this article shall affect the operation of any existing law or prevent the State from making any law.
- Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

ARTICLE 26

Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right:

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

ARTICLE 27

Freedom as to payment of taxes for promotion of any particular religion 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 religions denomination

ARTICLE 28

Freedom as to attendance at religious instruction or religious worship in certain educational institutions

- No religion instruction shall be provided in any educational institution wholly maintained out of State funds
 - 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
 - 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
- Cultural and Educational Rights

Cultural and Educational Right.

Article 29 to 30

Protection of interests of minorities

- (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.
- 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.



- **30. Right of minorities to establish and administer educational institutions.-**
- All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, 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.
- (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.



RIGHT TO PROPERTY

- ARTICLE 31- REPEALED
- ARTICLE 31A - Saving of laws providing for acquisition of estates, etc.
- ARTICLE 31B-Validation of certain Acts and Regulations
- ARTICLE 31 C-Saving of laws giving effect to certain directive principles
- ARTICLE 31D-REPEALED

Right to constitutional remedies

- Citizen can approach the Supreme Court for implementation of fundamental rights- **Article 32(1)**.
- The Supreme Court has the right to issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto & Certiorari- **Article 32(2)**.
- The Indian Parliament can power any court to issue notice within its jurisdiction without infringing or influencing the powers of the Supreme Court- **Article 32(3)**.
- The State cannot suspend the right to constitutional remedies except in cases provided by the Constitution- **Article 32(4)**.



ARTICLE 33

- Power of Parliament to modify the rights conferred by this Part in their application etc Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,
 - (a) the members of the Armed Forces; or
 - (b) the members of the Forces charged with the maintenance of public order; or
 - (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
 - (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them

ARTICLE 34

- Restriction on rights conferred by this Part while martial law is in force in any area
Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

ARTICLE 35

Legislation to give effect to the provisions of this Part Notwithstanding anything in this Constitution,

- (a) Parliament shall have, and the Legislature of a State shall not have, power to make laws
 - (i) with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and
 - (ii) for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub clause (ii);
- (b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub clause (i) of clause (a) or providing for punishment for any act referred to in sub clause (ii) of that clause shall, subject to the terms there of and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament Explanation In this article, the expression law in force has the same meaning as in Article 372

CERTAIN FEATURES AND COMPARISONS

23/07/2015

- Amending of Fundamental Rights
- Comparison with Fundamental Duties
- Comparison with DPSP
- Comparison with natural rights and Human rights.

THANK YOU