



Fundamental Rights PART III

Articles 12 to 35

Evolution of Fundamental Rights

- England: Magna Carta in 1214- -King John- first written document relating to rights of citizens – 1689- Bill of Rights
- France: 1789- Declaration of Rights of man and Citizens
- America- Bill of Rights included in Constitution for the first time
- U.N. – Universal declaration of human rights(UNDHR)- 1948- fundamental human rights should be universally protected- inspired the constitutions of many newly independent States and many new democracies – 30 Human rights –Later on social and political rights
- India – Constitution- 1950- Most elaborate and comprehensive till now

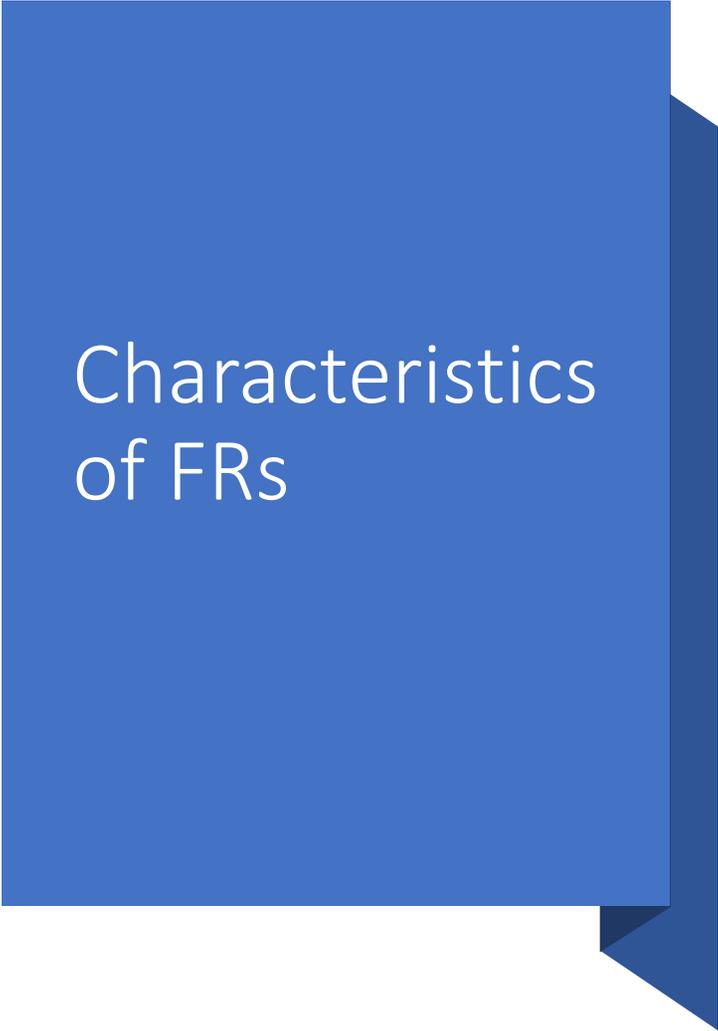
Importance

- Essential to maintain democracy
- Essential for and to attain
 - full moral, intellectual and spiritual status by human being
- Essential in Parliamentary system – legislature should not have a free hand in dealing with people

Objectives-

- To establish government of law not of man
- To establish rule of law
- Establish certain standard of conduct, citizenship, justice and fairplay

- Fundamental to the existence of human being
- Difference between Human right and fundamental right
- Cannot be taken away by State/Governments
- Can be suspended in emergency situations



Characteristics of FRs

Characteristics FRs

- Not gifts from a State to citizens
- Chapter III only confirm, not confer, their existence
- In America- Earlier- Absolute- Caused many problems- S.C. invented the doctrine of “Police Power” of State- State has inherent power to impose restrictions upon F.R. – to protect common good

Characteristics FRs

- Indian Constitution- clearly establishes restrictions
- F.R.- Not absolute- with reasonable restrictions- establish balance between liberty and social need

Characteristics FRs

- Available against whom?-----**State**
- How they can be availed?-----**Directly approaching- Supreme Court of India (Art. 32) and High courts of India (Art. 226)**
- For private actions – ordinary law of the land

Classification

Divided into six groups:

- Right to equality (Art. 14-18)
- Right to freedom (Art. 19-22)
- Right against exploitation (Art. 23-24)
- Right to freedom of religion (Art. 25-28)
- Cultural and educational rights (Art. 29-30)
- Right to constitutional remedies (Art. 32-35)

State – Article 12

- Art. 12 gives an extended significance to the term ‘state’ occurring in Art. 13(2) or any other provision concerning fundamental rights,
- has an expansive meaning.
- **In P. D. shamdasani V/s Central Bank of India** Supreme court held that Art. 19(1) and Art.31(1) contains the rights which are available against the state not against the private individual.

State – Article 12

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

- Central executive and central legislature
- States executives and states legislature
- Local authorities
- Other authorities
- **It is therefore an action of these bodies that can be challenged before the courts as violating the fundamental rights.**

What is
included in
term “State”

Authorities –

- It means a person or body exercising power to command in the context of Art. 12.
- word ‘authority’ means –
- the power to make laws.
- The orders, regulations, bye-laws, notification etc. to enforce those laws.

Local authorities

- General Clauses Act
- Section 3(31)
- "local authority" shall mean a municipal committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

Case laws –Local authority

- In *Premji Bhai Panwar v. Delhi Development Authority (DDA)* the Delhi Development Authority, a statutory body, has been held to be a ‘local authority’ because it is constituted for the specific purpose of development of Delhi according to plan which is ordinarily a municipal function.
- In the case of *Calcutta State Transport Corporation v. Commissioner of Income-tax, West Bengal* Supreme Court refused to characterize the corporation as a ‘local authority’. The corporation is meant only for the purpose of providing road transport services and has no element of popular representation in its constitution. Its powers and functions bear no relation to the powers and functions of a municipal committee. It is more in the nature of a trading corporation.
- **Mohammad Yasin V/s Town Area Committee** The S.C. held that the bye-laws of Municipal Committee charging a prescribed fee on the wholesale dealer was an order by a State Authority contravened Art. 19(1). These bye-laws in effect and in substance have brought about a total stoppage of the wholesale dealer’s business in the commercial sense.

Other authorities

- Authorities **other than those of local self-Government**, who have the power to make rules, regulations, etc., having the force of a law.
- The expression of “other authorities is so wide in itself that it could have covered all authorities created by constitution or state on whom power are conferred by law.
- **It is not necessary that statutory authority should be engaged in performing governmental or sovereign function.**
- Supreme Court of India came up with more broad and liberal interpretation of “other authorities” so as to include all those bodies or instrumentalities which are **though not created by the constitution or by a statute of government.**
- They evolved the **Doctrine of Instrumentality.**
- As India – adopted concept of welfare State.

Case Laws Relating To Other Authorities

- ***University of Madras V/s Santa Bai.*** AIR 1954 Mad. 67

Madras H.C. held that ‘other authorities’ could only indicate authorities of like nature that **is ejusdem generic**. So it could only mean authorities exercising governmental or sovereign functions. It cannot include authorities or person natural or juristic such as university unless it is maintained by the state.

- But In ***Ujjambai V/s State of U.P.*** AIR 1962 Court rejected the restrictive, interpretation of expression ‘other authorities’ given by the Madras H.C. and held that ejusdem generic rule could not be resorted to in interpreting this expression. In Art. 12 the bodies specially named are the Government of Union and States and the Legislature of Union and states and local authorities. **There is no common genus running through these named bodies nor can these bodies so placed in one single category on any rational basis.**

Creation Test:

Electricity Board Rajasthan V/s Mohan Lal AIR 1967- the decision given by Madras High Court in Santa bai's case was overruled and held university to be a 'state' .

- it was held that to be State, it is not necessary that the authority must be performing governmental or sovereign functions. It should-
 - (i) Be created by the Constitution of India;
 - (ii) Have power to make laws
- In ***Sukhdev v/s Bhagatram AIR 1975*** , LIC , ONGC AND IFC were held to be State as performing very close to governmental or sovereign functions. The Corporations are State when they enjoy
 - (i) Power to make regulations;
 - (ii) Regulations have force of law.
- Patna High Court is in ***Umesh singh v. V.N. Singh*** following the decision of Supreme Court held that 'Patna University' is a 'state'

Romana Dayaram Shetti v The International Airport Authorities of India

Clearance of 5 Tests

Instrumentality Test:

- **P.N. Bhagwati, J.** laid down test for determining whether a body is an agency or instrumentality of government –
 - i) Financial resources of the state is the chief funding source that is if the entire share capital of the corporation is held by the government.
 - ii) Existence of deep and pervasive state control.
 - iii) Functional character being governmental in essence.
 - iv) If a department of government is transferred to a corporation.
 - v) Object of the authority

Case laws

- In **Ajay Hasia v/s Khalid Mujib** AIR 1981 the Court observed that the test to know whether a juristic person is State is not how it has been brought but why it has been brought. Society established under Societies Registration Act, 1898 will come under other authorities.
- **Union of India v/s R.C.Jain**, to be a local authority, an authority must fulfill the following tests-
 - (i) Separate legal existence.
 - (ii) Function in a defined area.
 - (iii) Has power to raise funds.
 - (iv) Enjoys autonomy.
 - (v) Entrusted by a statute with functions which are usually entrusted to municipalities.

Case laws

- In **AISSF Association v. Defense Minister-cum-Chairman, B.O.G.S.S. Society** - it was held that Sainik School Society fall under the term State as entire funding of it was done by State Government and Central Government.
- **Central Inland Water transport Corporation v. Brojo Nath Ganguly** - the court held that it was wholly owned by the Central Government by applying the above test.
- **General Manager, Kisan Sakhari Chini Mills Ltd., Sultanpur, U.P. v. Satrughan Nishan** - it was held that this corporation is not included in State as it only holds 50% share in the company. Expenditure of the mill was also not met by government. And also there was no deep and pervasive control over the mill.

Case laws

SM.Iiyar V/s ICAR

it has been held that the Indian council of Agricultural research is a state within the meaning of Art. 12 of the constitution.

CSIR is state –2002,

Supreme court by 7:5 majority overruled its old judgement delivered in 1975 and held that Council of Scientific and Industrial Research (CSIR) is a state within the meaning of Art. 12 of the constitution and therefore its employees can approach the High Courts or the Supreme Court to enforce their fundamental rights of equality.

Functionality Test:

- In **Zee Telefilms & Ors. v. Union of India** , it was held if private body perform public function that is amenable under article 226 of the constitution even though private body is not included in meaning of article 12 of the constitution.
- **BCCI – not state though covered under RTI Act.**
- In **M. P. Varghese v. Mahatma Gandhi University AIR 2007 Kerala 230**, it was held that the definition of ‘public authority’ has a much wider meaning than that of ‘State’ under Article 12. The definition of ‘State’ under Article 12 is primarily concerning enforcement of fundamental rights. On the other hand, the RTI Act is aimed to provide an effective framework for the right to information guaranteed under Article 19 of the Constitution of India.

WHETHER 'STATE' INCLUDES JUDICIARY?

A.R.Antulay v/s R.S.Nayak , N.S.Mirajkar v/s State of Maharashtra

Naresh v. State of Maharashtra

while exercising the rule making powers the judiciary is covered by the expression state with Art.12 but while performing its judicial functions it is not so included."

Thereby a court may be sued for a violation of the fundamental right to the extent only till it is performing its **administrative function**.

The point it began its **judicial function** it does not violate any fundamental right and cannot be taken as "State".