

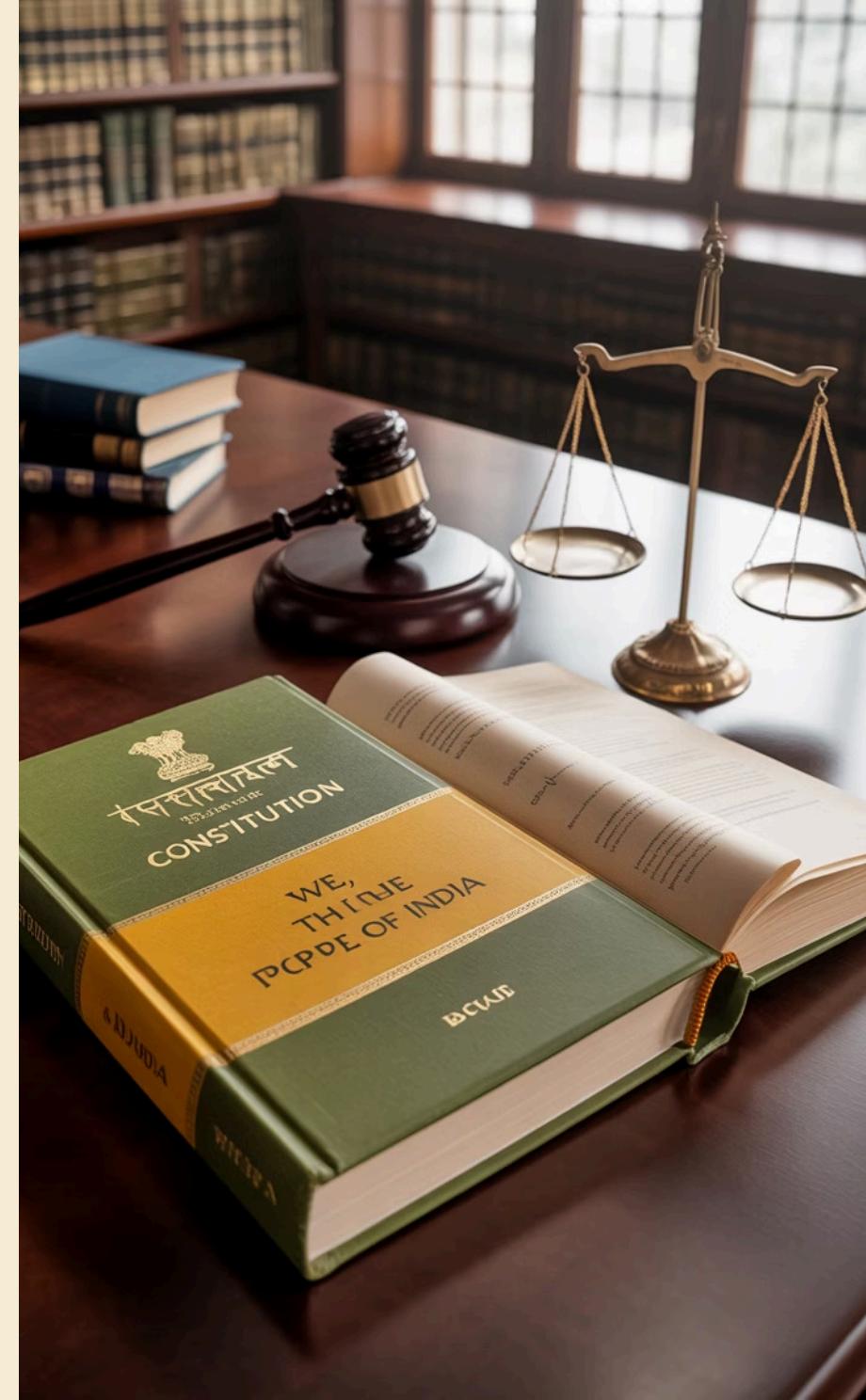
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UPSC 2026 Preparation

Fundamental Rights

Indian Constitution - Part III
(Articles 12-35)

Comprehensive Study Guide with 200+ Essential Facts



Basics & Evolution of Fundamental Rights

Part III Coverage

FRs are enshrined in Part III (Articles 12–35).

Magna Carta of India

Called the Magna Carta of India (Granville Austin).

US Inspiration

Inspired from US Bill of Rights (1791).

Not Absolute

Unlike US, Indian FRs are not absolute; subject to reasonable restrictions.

Universal Application

Apply to both citizens & non-citizens (but selectively).

Emergency Suspension

Can be suspended during Emergency (Art. 352), except Arts. 20 & 21.

Justiciable Rights

FRs are justiciable, unlike DPSPs.

Writ Enforcement

FRs enforceable through Art. 32 & 226 writs.

Heart and Soul

Judicially enforceable rights; SC called Art. 32 the "heart and soul of the Constitution" (Ambedkar).

Six Categories

Classification: Right to Equality, Freedom Against Exploitation, Freedom of Religion, Cultural & Educational Rights, Constitutional Remedies.

Article 12–13: Definition & Judicial Review

State Definition

Art. 12: Defines "State" → includes Govt + Parliament + Legislatures + Local authorities + instrumentalities/authorities of State.

Ajay Hasia (1981) Test

Landmark test: Ajay Hasia (1981) – "functional & financial control" test for 'State'.

Law Making Restriction

Art. 13(2): State cannot make laws violating FRs.

Basic Structure

Judicial Review declared part of basic structure in Kesavananda (1973).

Doctrine of Eclipse

Doctrine of Eclipse (Bhikaji Narain case, 1955): pre-constitutional laws inconsistent with FRs are not void ab initio, only eclipsed.

Severability Doctrine

Doctrine of Severability (R.M.D.C. case, 1957): unconstitutional part of law can be severed.

No Waiver

Doctrine of Waiver: FRs cannot be waived voluntarily (Basheshar Nath case, 1959).

Law Definition

Art. 13(3): "Law" includes Ordinance, order, bye-law, rule, regulation, notification.

Private Bodies as State

Private bodies performing public function may also be treated as "State" (Pradeep Kumar Biswas, 2002).

Constitution Amendment

Trap: Constitution itself is not "law" under Art. 13 → Parliament can amend, but subject to basic structure.

Right to Equality (Articles 14–18)



Dual Concept

Art. 14: Equality before law (British concept) + Equal protection of law (American concept).



Classification Test

Reasonable classification test: Intelligible differentia + Rational nexus (State of West Bengal v. Anwar Ali Sarkar, 1952).



Anti-Arbitrariness

Doctrine of Arbitrariness (E.P. Royappa v. State of TN, 1974): arbitrariness violates Art. 14.



Substantive Equality

Substantive equality recognised in Indra Sawhney (1992).



Discrimination Ban

Art. 15(1): Prohibits discrimination on grounds only of religion, race, caste, sex, place of birth.



Special Provisions

Art. 15(3): Permits special provisions for women & children.



Backward Classes

Art. 15(4): Added by 1st Amendment (1951) for socially & educationally backward classes.



Educational Reservation

Art. 15(5): 93rd Amendment (2005) – OBC reservation in private educational institutions (except minority).



Promotion Reservation

Art. 16(4A): Reservation in promotions for SC/STs (77th Amendment, 1995).



Carry Forward Rule

Art. 16(4B): Carry-forward rule for unfilled SC/ST seats.

Right to Freedom (Articles 19–22)

Six Freedoms

Art. 19(1): 6 freedoms (speech, assembly, association, movement, residence, profession).

Property Deletion

Originally 7 freedoms, **right to property** deleted by **44th Amendment (1978)**.

Reasonable Restrictions

Restrictions under **Art. 19(2)–(6)**: "**Reasonable restrictions**" only.

Proportionality Test

Test: **Proportionality principle (Modern Dental College v. State of MP, 2016)**.

Internet Rights

Right to Internet Access declared part of **freedom of speech (SC in Anuradha Bhasin, 2020)**.

Criminal Protection

Art. 20: Protection in criminal offences (ex post facto, double jeopardy, self-incrimination).

Ex Post Facto

Ex post facto law → **retrospective criminalization** prohibited.

Double Jeopardy

Double jeopardy = No person tried/punished twice for same offence.

Life and Liberty

Art. 21: "Right to life and personal liberty" expanded into a **galaxy of rights (Maneka Gandhi v. Union of India, 1978)**.

Expanded Rights

Rights under **Art. 21: right to live with dignity, privacy (Puttaswamy, 2017), environment, education** (before **RTE**), **speedy trial, shelter**.

Right Against Exploitation & Freedom of Religion

Human Trafficking Ban

Art. 23: Prohibits traffic in human beings, begar & forced labour.

Child Labour Protection

Art. 24: Prohibits child labour in hazardous industries (below 14 years).

Religious Freedom

Art. 25: Freedom of conscience + right to practice, profess, propagate religion.

Denominational Rights

Art. 26: Freedom of religious denominations to manage religious affairs.

Essential Practices

Essential Religious Practices doctrine (Shirur Mutt case, 1954).

Sabarimala Case

Sabarimala case (2018): women's entry linked with ERP + equality.

No Religious Tax

Art. 27: No taxation for promoting any religion.

Educational Freedom

Art. 28: Freedom from religious instruction in State-funded institutions.

Subject to Restrictions

Trap: Art. 25 subject to public order, morality, health + other FRs.

Trust Exception

Trap: Art. 28 allows religious instruction in institutions administered by trust with state aid.

Cultural & Educational Rights (Articles 29–30)

1

Minority Interests

Art. 29(1): Protects interests of minorities → right to conserve language, script, culture.

2

Citizens Only

Applies to citizens only, not to foreigners.

3

Admission Rights

Art. 29(2): No denial of admission in State-funded institutions on grounds of religion, race, caste, language.

4

All Citizens Coverage

Trap: Art. 29(2) applies to all citizens, not just minorities.

5

Educational Institutions

Art. 30(1): Right of minorities to establish and administer educational institutions.

6

Compensation Rights

Art. 30(1A): Compensation for compulsory acquisition of minority institution property (44th Amendment, 1978).

7

T.M.A Pai Foundation

T.M.A Pai Foundation (2002): Laid down rights of minorities over admissions & administration.

8

P.A. Inamdar Case

P.A. Inamdar (2005): No reservation in minority unaided institutions.

9

93rd Amendment Impact

93rd Amendment (2005): Allowed reservation in non-minority private aided/unaided institutions.

10

Reasonable Regulations

Trap: Minority rights under Art. 30 are not absolute → subject to "reasonable regulations" for academic standards.

Right to Constitutional Remedies

(Articles 32–35)

Heart and Soul

Art. 32: Right to move SC for enforcement of FRs → heart & soul (Ambedkar).

Emergency Availability

Remedies available even during emergency, except for suspension of FRs.

Five Writs

SC can issue five writs: Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto.

SC vs HC Powers

Art. 32 vs. 226: SC power (FRs only), HC wider power (FRs + other rights).

Habeas Corpus

Habeas Corpus: "Produce the body" – protects personal liberty.

ADM Jabalpur Case

ADM Jabalpur v. Shivkant Shukla (1976): SC upheld suspension of habeas corpus during Emergency (later overruled in Puttaswamy, 2017).

Armed Forces

Art. 33: Parliament can modify FRs for armed forces, police, paramilitary.

Parliament Only

Trap: Only Parliament, not State legislatures, can restrict FRs of armed forces.

Martial Law

Art. 34: Restriction on FRs during martial law.

Parliamentary Monopoly

Art. 35: Only Parliament can make laws on matters like preventive detention, restricting Art. 23–24.

Preventive Detention (Article 22)

1 Unique Feature

Unique to **India**: **Preventive detention** allowed even in peacetime.

2 Three Month Rule

Art. 22(3): Preventive detention up to **3 months** without **advisory board** approval.

3 Advisory Board

Advisory Board headed by a **High Court judge**.

4 Parliamentary Extension

Parliament can extend **detention** up to **12 months**.

5 Precautionary Measure

Trap: **Preventive detention** is not a punishment, but a precaution.

6 MISA History

MISA (1971): infamous **preventive detention law** during **Emergency** → repealed.

7 NSA Current

NSA (1980): still allows **preventive detention** up to **12 months**.

8 Economic Offences

COFEPOSA (1974): **preventive detention for economic offences**.

9 A.K. Gopalan Case

SC in **A.K. Gopalan** (1950): **Preventive detention** upheld, but later narrowed by **Maneka Gandhi**.

10 Global Comparison

India has the largest **preventive detention system** among **democracies**.

Landmark Expansions of Article 21

01

Maneka Gandhi (1978)

Due process + natural justice essential.

02

Sunil Batra (1978)

Prison reforms – solitary confinement violation of Art. 21.

03

Francis Coralie (1981)

Right to live with human dignity.

04

Olga Tellis (1985)

Right to livelihood.

05

Vishaka (1997)

Protection against sexual harassment at workplace.

06

PUCL (1997)

People's Union for Civil Liberties (1997): Phone tapping violates Art. 21 unless procedure established.

07

Unni Krishnan (1993)

Right to education as part of Art. 21.

08

86th Amendment

Later constitutionalised as Art. 21A (86th Amendment, 2002).

09

Selvi Case (2010)

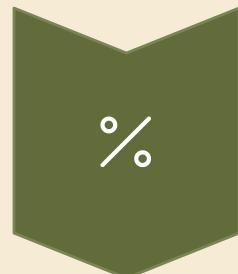
Selvi v. State of Karnataka (2010): Narco-analysis, polygraph → violate Art. 21.

10

Puttaswamy (2017)

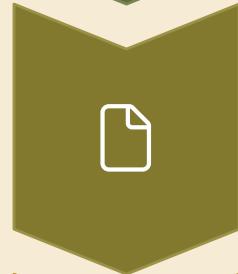
K.S. Puttaswamy (2017): Right to privacy declared FR under Art. 21.

Right to Property (Now Legal Right)



Original Status

Originally a FR (Art. 19(1)(f), 31).



44th Amendment

44th Amendment (1978): deleted from Part III, now Art. 300A (legal right).



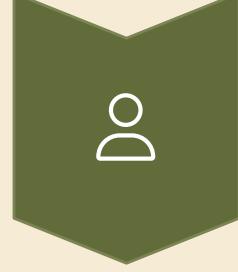
Current Status

Trap: Right to property is no longer a Fundamental Right but still a constitutional right.



Legal Authority

Property can be taken only by authority of law, not executive order.



Fair Compensation

Compensation must be "just, fair, reasonable" (Kesavananda Bharati, 1973).

Trap: Art. 300A cannot be suspended even during Emergency. Trap: Violation of property rights cannot be directly challenged under Art. 32. But can be challenged under Art. 226 before High Courts. SC held in K.T. Plantation (2011): deprivation of property must meet "public purpose" & "fair compensation". Despite removal from Part III, property rights still heavily litigated.

Suspension of Fundamental Rights

Art. 358 - Automatic Suspension

Art. 358: During National Emergency (Art. 352), freedoms under Art. 19 are automatically suspended.

Law vs Executive Action

Trap: Suspension under Art. 358 applies only to laws relating to Emergency → does not protect executive actions unless backed by law.

Art. 359 - Presidential Power

Art. 359: President may suspend enforcement of FRs (except Arts. 20 & 21).

Remedy vs Right

Trap: Art. 359 suspends the remedy, not the right itself.

ADM Jabalpur Infamy

ADM Jabalpur (1976): infamously held FRs can be suspended fully during Emergency.

Puttaswamy Correction

Later overruled in Puttaswamy (2017): Right to life & liberty is inviolable even during Emergency.

44th Amendment Protection

44th Amendment (1978): clarified that Arts. 20 & 21 cannot be suspended even during Emergency.

Art. 32 Suspension

Trap: Right to move SC under Art. 32 can itself be suspended under Art. 359.

1975 Emergency

Internal Emergency (1975–77): darkest chapter in FR history → large-scale suspension & preventive detention.

Learning from History

Lessons from 1975 Emergency shaped later SC pro-liberty judgments.

Doctrines & Principles Shaping FRs



Doctrine of Severability

Doctrine of Severability: unconstitutional part severed, rest valid (R.M.D.C. case, 1957).



Doctrine of Eclipse

Doctrine of Eclipse: inconsistent pre-constitutional laws remain dormant (Bhikaji Narain, 1955).



Post-Constitutional Laws

Trap: Post-constitutional laws inconsistent with FRs are void ab initio, not eclipsed.



Doctrine of Waiver

Doctrine of Waiver: FRs cannot be waived voluntarily (Basheshar Nath, 1959).



Basic Structure

Doctrine of Basic Structure: Kesavananda (1973) held FRs form essential part of Constitution.



Basic Structure Clarification

Trap: Basic Structure is not itself a Fundamental Right, but it protects their essence.



Proportionality Principle

Proportionality Principle: Restrictions must be proportionate (Modern Dental College, 2016).



Essential Religious Practices

Essential Religious Practices (ERP) Doctrine: Only "essential" practices are protected under Art. 25 (Shirur Mutt, 1954).



ERP Criticism

Trap: ERP doctrine criticised for excessive judicial intervention in religion.



Public Trust Doctrine

Public Trust Doctrine: natural resources are meant for public use (MC Mehta, 1997) → linked with Art. 21.

Judicial Innovations in FRs

Reading into Art. 21

Reading into Art. 21: SC expanded scope via judicial interpretation (Maneka Gandhi, 1978).

1

Speedy Trial

Right to Speedy Trial: Hussainara Khatoon (1979).

2

Clean Environment

Right to Clean Environment: Subsumed under Art. 21 (MC Mehta cases).

3

Information Access

Right to Information: Before RTI Act, SC read into Art. 21 & 19(1)(a) (Raj Narain case, 1975).

4

Legal Aid

Right to Legal Aid: Hussainara Khatoon + Art. 39A DPSP.

5

Anti-Torture

Right against Custodial Torture: D.K. Basu v. State of WB (1997).

6

Shelter Rights

Right to Shelter: Chameli Singh v. State of UP (1996).

7

Death with Dignity

Right to Die with Dignity: Passive euthanasia upheld (Common Cause v. Union, 2018).

8

Private Bodies

Trap: FRs are enforceable even against some private bodies (esp. under Art. 21 for dignity).

9

Marriage Choice

Right to Marry of Choice: Hadiya case (2017) »» right to choose partner protected under Art. 21.

10

Comparative Insights with Global Systems

US Bill of Rights

US Bill of Rights: Absolute in text, but judicially limited; India → restrictions explicit.



South Africa

South Africa: Bill of Rights (1996) more expansive than India's FRs, includes socio-economic rights.



Property Rights

Trap: Unlike India, in US, right to property remains a constitutional right.



Equal Protection

Indian Art. 14 vs. US Equal Protection: Indian version broader, covers both citizens & non-citizens.



UDHR Influence

Trap: UN's UDHR (1948) inspired Indian FRs, but is non-binding.



UK System

UK: No written Constitution → rights evolved through Magna Carta & common law.



Germany

Germany: "Basic Law" (Grundgesetz) FRs have strong enforcement & proportionality principle.



Secularism Models

Trap: Indian secularism = positive secularism (equal respect), Western = wall of separation.



Free Speech

Indian Art. 19 vs. US 1st Amendment: Indian free speech not absolute.



ICCPR Alignment

ICCPR (1966): India is a signatory → many FRs align with ICCPR obligations.



Special Dimensions of FRs

Horizontal vs Vertical

1 **Horizontal vs Vertical Rights:** Most **FRs vertical (State vs citizen)**, but some **horizontal** (e.g., Art. 15(2), 17, 23).

Untouchability Abolition

2 **Art. 17: Abolition of Untouchability** » enforceable against both **State & private individuals**.

Human Trafficking

3 **Art. 23: Prohibits human trafficking** » enforceable against **individuals** too.

Foreigner Exclusions

4 Trap: Not all **FRs** are available to **foreigners** » e.g., Art. 15, 16, 19, 29, 30 only for **citizens**.

Foreigner Inclusions

5 Trap: **Foreigners** still enjoy Arts. 21, 22, 25, 27, 28.

Children Rights

6 **Children-specific FRs:** Art. 24 (child labour), Art. 21A (education).

Women Rights

7 **Women-centric FRs:** Art. 15(3), Art. 39 DPSPs read with **FRs**.

Labour Rights

8 **Labour-centric FRs:** Art. 23 (forced labour), Art. 21 (decent working conditions).

Minority Rights

9 **Minorities-centric FRs:** Art. 29 & 30 safeguard **cultural/educational autonomy**.

Health Rights

10 Trap: No explicit **FR** for "**Right to Health**" » derived from Art. 21 via **SC interpretation**.

Amendments & FRs Evolution

1st Amendment (1951)

1st Amendment (1951): Curtailed Art. 19(1)(a) (free speech) » introduced "reasonable restrictions" & Ninth Schedule.

24th Amendment (1971)

24th Amendment (1971): Gave Parliament power to amend any part of Constitution, including FRs.

42nd Amendment (1976)

42nd Amendment (1976): Known as "Mini Constitution" – curtailed judicial review; expanded scope of Art. 31C.

86th Amendment (2002)

86th Amendment (2002): Inserted Art. 21A » Right to free & compulsory education (6–14 years).

97th Amendment (2011)

97th Amendment (2011): Strengthened right to form cooperatives (Art. 19(1)(c)).

7th Amendment (1956)

7th Amendment (1956): Adjusted provisions post reorganisation of States.

25th Amendment (1971)

25th Amendment (1971): Restricted right to property under Art. 31C.

44th Amendment (1978)

44th Amendment (1978): Restored balance » deleted right to property from FRs, protected Arts. 20 & 21 during Emergency.

93rd Amendment (2005)

93rd Amendment (2005): Enabled reservation for OBCs in private unaided institutions (Art. 15(5)).

Basic Structure Test

Trap: Not all amendments to FRs are valid » must pass basic structure test.

Landmark Judgments Expanding FRs



Kesavananda Bharati (1973)

Kesavananda Bharati (1973): FRs amendable, but basic structure inviolable.



Maneka Gandhi (1978)

Maneka Gandhi (1978): Due process integrated into Art. 21.



Indra Sawhney (1992)

Indra Sawhney (1992): 50% cap on reservations; creamy layer principle.



Unnikrishnan (1993)

Unnikrishnan (1993): Right to education under Art. 21 (later 21A).



Vishaka (1997)

Vishaka (1997): Workplace sexual harassment guidelines.



D.K. Basu (1997)

D.K. Basu (1997): Arrest/detention safeguards.



I.R. Coelho (2007)

I.R. Coelho (2007): Ninth Schedule laws also open to judicial review if violate FRs.



Shayara Bano (2017)

Shayara Bano (2017): Triple talaq unconstitutional → equality + dignity.



Navtej Johar (2018)

Navtej Johar (2018): Decriminalised Section 377 IPC; LGBT rights under Art. 21.



Joseph Shine (2018)

Joseph Shine (2018): Adultery law struck down → equality & dignity.

FRs & Directive Principles Relationship

Negative vs Positive

FRs = negative obligations (restraint on State),
DPSPs = positive obligations (directive to State).

Enforceability Difference

Trap: FRs enforceable by courts, DPSPs not.

Minerva Mills Balance

Minerva Mills (1980): Balance between FRs & DPSPs is part of basic structure.

Directive Upliftment

Directive upliftment: Many DPSPs later converted into FRs (e.g., Art. 21A).

Constitutional Conscience

FRs safeguard individual liberty, DPSPs ensure social justice → together = "conscience of the Constitution" (Granville Austin).

Harmonisation Approach

Trap: DPSPs cannot override FRs, but courts often harmonise (e.g., liquor bans justified under DPSPs + Art. 47).

Champakam Case

Case: Champakam Dorairajan (1951) → FRs prevailed over DPSPs (led to 1st Amendment).

No DPSP Defence

Trap: State cannot plead DPSPs as a defence to violate FRs.

Kesavananda Harmony

Evolving harmony: SC in Kesavananda emphasised FR–DPSP balance.

Amendment Limits

Trap: Parliament cannot amend FRs to completely subordinate them to DPSPs.

Advanced Traps & Philosophical Dimensions

Critical Traps & Misconceptions

- Trap: FRs are not absolute – always subject to restrictions.
- Trap: Only citizens enjoy all FRs → foreigners excluded from Art. 15, 16, 19, 29, 30.
- Trap: Right to vote is not a Fundamental Right, it is a statutory right under Representation of People Act.
- Trap: Right to property is not a FR since 1978.
- Trap: FRs do not extend to corporations, except when courts interpret them under Art. 21 indirectly.

Philosophical Legacy

Granville Austin: FRs + DPSPs + Preamble = conscience of the Constitution.

Ambedkar: Art. 32 is "heart & soul" of the Constitution.

Nani Palkhivala: FRs = "conscience of the nation."

Tagore: Liberty without equality is dangerous; equality without liberty is tyranny.

Final Nugget: Fundamental Rights in India are neither absolute (like US) nor illusory (like UK unwritten conventions), but a balanced blend of liberty + restrictions + social justice, tested continually through judicial interpretation & basic structure doctrine.