

FUNDAMENTAL RIGHTS

The rights, which are enshrined in the Constitution, are called 'Fundamental Rights'. These rights ensure the fullest physical, mental and moral development of every citizen. They include those basic freedoms and conditions which alone can make life worth living. Fundamental Rights generate a feeling of security amongst the minorities in the country. They establish the framework of 'democratic legitimacy' for the rule of the majority. No democracy can function in the absence of basic rights such as freedom of speech and expression. Fundamental Rights provide standards of conduct, citizenship, justice and fair play. They serve as a check on the government. Various social, religious, economic and political problems in our country make Fundamental Rights important. In our Constitution, Fundamental Rights are enumerated in Part III from Article 14 to 32. These rights are justiciable.

Our Constitution does not permit the legislature and the executive to curb these rights either by law or by an executive order. The Supreme Court or the High Courts can set aside any law that is found to be infringing or abridging the Fundamental Rights. You will read about it in detail in the lesson on 'Judiciary'. Some of the Fundamental Rights are also enjoyed by foreigners, for example, the Right to Equality before Law and Right to Freedom of Religion are enjoyed by both i.e. citizens as well as foreigners. The Fundamental Rights though justiciable are not absolute. The Constitution empowers the government to impose certain restrictions on the enjoyment of our rights in the interest of public good.

Seven Fundamental Rights were enshrined in the Constitution of India. However the Right to Property was removed from the list of Fundamental Rights by the 44th Amendment Act of the Constitution in the year 1976. It is made a legal right under Article 300-A in Part XII of the Constitution.

Since then, it has been made a legal right. There are now six Fundamental Rights.

1. Right to equality (Articles 14–18)
2. Right to freedom (Articles 19–22)

3. Right against exploitation (Articles 23–24)
4. Right to freedom of religion (Articles 25–28)
5. Cultural and educational rights (Articles 29–30)
6. Right to constitutional remedies (Article 32)

1.Right to equality (Articles 14–18)

Article 14 says that no person shall be denied treatment of equality before the law or the equal protection of the laws within the territory of India. The right is extended to all persons whether citizens or foreigners, statutory corporations, companies, registered societies or any other type of legal person.

Article 15 provides that no citizen shall be discriminated on grounds only of religion, race, caste, sex or place of birth.

Exception: Certain provisions can be made for the women, children, citizens from any socially or educationally backward class for their upliftment (such as reservation and access to free education).

Article 16 of the Indian constitution provides for equality of opportunity for all citizens in matters of employment or appointment to any public office.

Exceptions: There are provisions for reservation in appointments or posts for any backward class that is not adequately represented in the state services. Also, an incumbent of a religious or denominational institution may belong to the particular religion or denomination.

Article 17 abolishes ‘untouchability’ and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. A person convicted of the offence of ‘untouchability’ is disqualified for election to the Parliament or state legislature.

The acts of offences include: Preaching untouchability directly or indirectly, Preventing any person from entering any shop, hotel, public place of worship and place of public entertainment, Refusing to admit persons in hospitals, educational

institutions or hostels established for public benefit. Justifying untouchability on traditional, religious, philosophical or other grounds and Insulting a person belonging to scheduled caste on the ground of untouchability.

Article 18 of the constitution of India abolishes titles and makes four provisions in that regard: It prohibits the state from conferring any title on any citizen or a foreigner (except a military or academic distinction). It prohibits a citizen of India from accepting any title from any foreign state. A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the President of India. No citizen or foreigner holding any office of profit or trust within the territory of India can accept any present, emolument or office from or under any foreign State without the consent of the president.

2.Right to Freedom (Article 19, 20, 21 and 22):

Protection of 6 Rights: **Article 19** guarantees to all citizens the six rights of freedom including:

Right to freedom of speech and expression: Expressing one's own views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner.

Right to assemble peaceably and without arms Includes the right to hold public meetings, demonstrations and take out processions which can be exercised only on public land. It does not protect violent, disorderly and riotous assemblies or strike.

Right to form associations or unions or co-operative societies includes the right to form (and not to form) political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of persons.

Right to move freely throughout the territory of India: The freedom of movement has two dimensions, viz, internal (right to move inside the country) (article 19) and external (right to move out of the country and right to come back to the country).

Right to reside and settle in any part of the territory of India:The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture and customs of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

Right to practice any profession or to carry on any occupation, trade or business: It doesn't include the right to carry on a profession that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc.).

Protection in Respect of Conviction for Offences: Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It provides that: No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act or subjected to a penalty greater than that prescribed by the law. No person shall be prosecuted and punished for the same offence more than once. No person accused of any offence shall be compelled to be a witness against himself.

Protection of Life and Personal Liberty: Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens. The right to life is not merely confined to animal existence or survival but also includes the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living.

Right to Education: Article 21 (A) declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years. This provision makes only elementary education a Fundamental Right and not higher or professional education. This provision was added by the 86 Constitutional Amendment Act of 2002. Before the 86 amendment, the Constitution contained a provision for free and compulsory education for children under Article 45 in Part IV of the constitution.

Protection Against Arrest and Detention: Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely, punitive (punishment after trial and conviction) and preventive (punishment without trial and conviction). The first part of Article 22 deals with the ordinary law and includes: Right to be informed of the grounds of arrest. Right to consult and be defended by a legal practitioner. Right to be produced before a magistrate within 24 hours, excluding the journey time. Right to be released after 24 hours unless the

magistrate authorizes further detention. The second part of Article 22 deals with preventive detention law. Protection under this article is available to both citizens as well as aliens and includes the following: The detention of a person cannot exceed three months unless an advisory board (judges of high court) reports sufficient cause for extended detention. The grounds of detention should be communicated to the detenu. The detenu should be afforded an opportunity to make a representation against the detention order.

3. Right against Exploitation (Articles 23 – 24)

This right implies the prohibition of traffic in human beings, *begar*, and other forms of forced labour. It also implies the prohibition of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

Article 23 – Prohibition of traffic in human beings and forced labour

Article 23(1): Traffic in human beings and the beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

Article 23(2): Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

- Exploitation implies the misuse of others' services by force and/or labour without payment.
- There were many marginalized communities in India who were forced to engage in manual and agricultural labour without any payment.
- Labour without payment is known as *begar*.
- Article 23 forbids any form of exploitation.
- Also, one cannot be forced to engage in labour against his/her will even if remuneration is given.
- Forced labour is forbidden by the Constitution. It is considered forced labour if the less-than-minimum wage is paid.
- This article also makes 'bonded labour' unconstitutional.
- Bonded labour is when a person is forced to offer services out of a loan/debt that cannot be repaid.

- The Constitution makes coercion of any kind unconstitutional. Thus, forcing landless persons into labour and forcing helpless women into prostitution is unconstitutional.
- The Article also makes trafficking unconstitutional.
- Trafficking involves the buying and selling of men and women for illegal and immoral activities.
- Even though the Constitution does not explicitly ban ‘slavery’, Article 23 has a wide scope because of the inclusion of the terms ‘forced labour’ and ‘traffic’.
- **Article 23 protects citizens not only against the State but also from private citizens.**
- The State is obliged to protect citizens from these evils by taking punitive action against perpetrators of these acts (which are considered crimes), and also take positive actions to abolish these evils from society.
- Under Article 35 of the Constitution, the Parliament is authorized to enact laws to punish acts prohibited by Article 23.
- Clause 2 implies that compulsory services for public purposes (such as conscription to the armed forces) are not unconstitutional.
- Laws passed by the Parliament in pursuance of Article 23:
 - Suppression of Immoral Traffic in Women and Girls Act, 1956
 - Bonded Labour System (Abolition) Act, 1976

Article 24 – Prohibition of employment of children in factories, etc.

Article 24 says that “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

- This Article forbids the employment of children below the age of 14 in any hazardous industry or factories or mines, without exception.
- However, the employment of children in non-hazardous work is allowed.

4. Right to Freedom of Religion (Articles 25 – 28)

This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.

Article 25 (Freedom of conscience and free profession, practice, and propagation of religion)

Article 25 guarantees the freedom of conscience, the freedom to profess, practice, and propagate religion to all citizens.

- The above-mentioned freedoms are subject to public order, health, and morality.
- This article also gives a provision that the State can make laws:
 - That regulates and restricts any financial, economic, political, or other secular activity associated with any religious practice.
 - That provides for the social welfare and reform or opening up of Hindu religious institutions of a public character to all sections and classes of Hindus. Under this provision, Hindus are construed as including the people professing the Sikh, Jain, or Buddhist religions, and Hindu institutions shall also be construed accordingly.
- People of the Sikh faith wearing & carrying the *kirpan* shall be considered as included in the profession of the Sikh religion.

Article 26 (Freedom to manage religious affairs)

This Article provides that every religious denomination has the following rights, subject to morality, health, and public order.

1. The right to form and maintain institutions for religious and charitable intents.
2. The right to manage its own affairs in the matter of religion.
3. The right to acquire the immovable and movable property.
4. The right to administer such property according to the law.

Article 27 (Freedom as to payment of taxes for promotion of any particular religion)

According to Article 27 of the Constitution, there can be no taxes, the proceeds of which are directly used for the promotion and/or maintenance of any particular religion/religious denomination.

Article 28 (Freedom as to attendance at religious instruction or religious worship in certain educational institutions)

This article permits educational institutions that are maintained by religious groups to disseminate religious instruction.

- This provides that no religious instruction shall be provided in State-run educational institutions.
- Educational institutions administered by the State but that were established under any endowment or trust which requires that religious instruction shall be imparted in such institutions are exempt from the above clause (that no religious instruction shall be provided).
- Any person who attends any educational institution recognized by the State or receiving State aid shall not be required to participate in any religious instruction that may be imparted in such institution, or also attend any religious worship in such institutions unless he/she has given consent for the same. In the case of minors, the guardians should have given consent for the same.

5. Cultural and Educational Rights (Articles 29 – 30)

These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

Fundamental Rights guarantee basic rights to the citizens of India. There are six fundamental rights enshrined in the Constitution of India, and Articles 29 and 30 deals with the cultural and educational rights of Indian citizens. This **fundamental right** intends to preserve the culture of minority groups in India. Indian society is a composite heterogeneous one and its diversity is one of its strengths. The Constitution guarantees these rights to minorities so that the diversity of this country is preserved and provides avenues for all groups including marginalized ones to protect, preserve, and propagate their culture.

Article 29 – Protection of Interests of Minorities

This article is intended to protect the interests of minority groups.

Article 29(1): This provides any section of the citizens residing in India having a distinct culture, language, or script, the right to conserve their culture, language and script.

Article 29(2): The State shall not deny admission into educational institutes maintained by it or those that receive aid from it to any person based only on race, religion, caste, language, or any of them.

Article 30 – Right of Minorities to Establish and Administer Educational Institutions

This right is given to minorities to form and govern their own educational institutions. Article 30 is also called the “**Charter of Education Rights**”.

Article 30(1): All religious and linguistic minorities have the right to establish and administer educational institutions of their choice. (Read about [Minority Protection in India](#) in the linked article.)

Article 30(2): The State shall not, when 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.

6. Right to Constitutional Remedies (32 – 35)

The Constitution guarantees remedies if citizens’ fundamental rights are violated. The government cannot infringe upon or curb anyone’s rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the [Supreme Court](#) which can issue writs for enforcing fundamental rights.

A writ petition is essentially a court petition for extraordinary review, asking a court to intervene in a lower court’s decision. Under the Indian legal system, jurisdiction to issue ‘prerogative writs’ is given to the Supreme Court and the High Courts of Judicature of all Indian states. Parts of the law relating to writs are outlined in the Constitution of India.

Type of Writs

The Constitution empowers the Supreme Court and High Courts to issue orders or writs.

The types of writs are:

- Habeas Corpus
- Certiorari
- Prohibition

- Mandamus
- Quo Warranto

Habeas Corpus

Habeas Corpus is a writ that is enforced to protect the fundamental right to liberty of an individual against unlawful detention. This writ commands a public official to deliver a detained person in front of the court and provide valid reasons for the detention. However, this writ cannot be issued in case the proceeding is for contempt of a legislature or a court.

Certiorari

The writ of certiorari is issued to a lower court directing that the transfer of a case for review, usually to overrule the judgment of the lower court. The Supreme Court issues the writ of Certiorari in case the decision passed by the lower court is challenged by the party. It is issued in case the higher court finds it a matter of over jurisdiction or lack of jurisdiction.

It is one of the mechanisms by which the fundamental rights of the citizens are upheld.

Prohibition

Prohibition is a writ issued by a higher court to a lower court to enforce inactivity in the jurisdiction. It happens only in case the higher court is of the discretion that the case falls outside the jurisdiction of the lower court. Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.

Mandamus

The writ of mandamus is issued to a subordinate court, an officer of the government, or a corporation or other institution commanding the performance of certain acts or duties.

Unlike Habeas Corpus, Mandamus cannot be issued against a private individual.

The writ of mandamus can be used to order the completion of a task or in other cases, it may require an activity to be ceased.

Quo-Warranto

Quo warranto is issued against a person who claims or usurps a public office. Through this writ, the court inquires 'by what authority' the person supports his or her claim.

Through this writ, the court enquires into the legality of a claim of a person to a public office. This writ prevents the illegal assumption of a public office by an individual.

To know more about the [types of writs in India](#), refer to the linked article.

Suspension of Fundamental Rights

- Fundamental rights can be suspended in the case of National Emergency as mentioned under article 352.
- The six fundamental rights under Article 19 are automatically suspended in the case National Emergency is imposed on grounds of war or external aggression which is stated under article 358.
- Article 359 has the clause for suspension of other rights. In that case, a separate notification has to be issued by the President.
- The rights mentioned under Article 20 and 21 can never be suspended.
- Constitutional emergency and financial emergency cannot affect the Fundamental Rights.

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