

FUNDAMENTAL RIGHTS

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Fundamental rights are those rights which are essential for intellectual, moral and spiritual development of citizens of India. As these rights are fundamental or essential for existence and all-round development of individuals, they are called 'Fundamental rights'. These are enshrined in Part III (Articles 12 to 35) of the Constitution of India. Fundamental Rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their Government. They are limitations upon all the powers of the Government, legislative as well as executive and they are essential for the preservation of public and private rights notwithstanding the representative character of political instruments.

Speaking about the importance of fundamental rights in the historical judgement of *Maneka Gandhi vs. Union of India AIR 1987 SC 597 Bhagwati J.* observed: “These fundamental rights represent the basic values cherished by the people of this country since the Vedic time and they are calculated to protect the dignity of the individual and creates conditions in which human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of human rights and impose negative obligations on the State to encroach on individual liberty in its various dimensions.”

There are following fundamental rights recognised by the Indian constitution:

- Right to Equality (Articles. 14-18)
- Right to Freedom (Articles. 19-22)
- Right Against exploitation (Articles 23-24)
- Right to Freedom of Religion_(Articles. 25- 28)
- Cultural and Educational Rights (Articles. 29-30), and
- Right to Constitutional remedies_(Articles. 32-35)

1. The **right to equality** includes equality before the law, the prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, equality of opportunity in matters of employment, the abolition of untouchability and abolition of titles.

2. The **right to freedom** includes freedom of speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation.

3. The **right against exploitation** prohibits all forms of forced labour, child labour and trafficking of human beings. Children under age of 14 are not allowed to work.

4. The **right to freedom of religion** includes freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes.

5. The **Cultural and educational Rights** preserve the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.

6. The **right to constitutional remedies** is present for enforcement of fundamental rights.

The development of such constitutionally guaranteed fundamental human rights in India was inspired by historical examples such as England's Bill of Rights (1689), the United States Bill of Rights (approved on 17 September 1787, final ratification on 15 December 1791) and France's Declaration of the Rights of Man (created during the revolution of 1789, and ratified

on 26 August 1789). A notable development during that period having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions. The fundamental rights were included in the First Draft Constitution (February 1948), the Second Draft Constitution (17 October 1948) and final Third Draft Constitution (26 November 1949), prepared by the Drafting Committee. The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. The writers of the constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion, were not recognised and protected by the State. According to them, democracy is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the fundamental rights.

These provisions act as a check both on state action as well as the action of private individuals. However, these rights are not absolute or uncontrolled and are subject to reasonable restrictions as necessary for the protection of general welfare. They can also be selectively curtailed. Since the fundamental rights can be altered only by a constitutional amendment, their inclusion is a check not only on the executive branch but also on the Parliament and state legislatures. A state of national emergency has an adverse effect on these rights. Under such a state, the rights conferred by Article 19 (freedoms of speech, assembly and movement, etc.) remain suspended. Hence, in such a situation, the legislature may make laws that go against the rights given in Article 19. The President may by order suspend the right to move the court for the enforcement of other rights as well.

Right to Equality

The right to equality is an important right provided in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties and guarantees:

- Equality before the law: Article 14 of the constitution guarantees that all people shall be equally protected by the laws of the country. It means that the State will treat people in the same circumstances alike. This article also means that individuals, whether citizens of India or otherwise shall be treated differently if the circumstances are different.
- Social equality and equal access to public areas: Article 15 of the constitution states that no citizen of India shall be discriminated on the basis of religion, race, caste, sex or place of birth. Every person shall have equal access to public places like public parks, museums, wells, bathing Ghats, etc. It states, however, that the State may make any special provision for women and children. Special provisions may be made for the advancements of any socially or educationally backward class or scheduled castes or scheduled tribes.
- Equality in matters of public employment: Article 16 of the Constitution lays down that the State cannot discriminate against citizen in the matters of employment. All citizens can apply for government jobs, however, there are some exceptions. The Parliament may enact a law stating that certain jobs can be filled only by applicants who are domiciled in the area. This may be meant for posts that require knowledge of the locality and language of the area. The State may also reserve posts for members of backward classes, scheduled castes or scheduled tribes which are not adequately represented in the services under the State to bring up the weaker sections of the society. Also, laws may be passed that require the holder of an office of any religious institution to also be a person professing that particular religion.
- Abolition of untouchability: Article 17 of the constitution abolishes the practice of untouchability. The practice of untouchability is an offence and anyone doing so is punishable by law. The *Untouchability Offences Act* of 1955 (renamed to *Protection of Civil Rights Act* in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well.
- Abolition of Titles: Article 18 of the constitution prohibits the State from conferring any titles. "Citizens of India cannot accept titles from a foreign State. The British government had created an aristocratic class known as *Rai Bahadurs* and *Khan Bahadurs* in India – these titles were also abolished. However, Military and academic distinctions can be conferred on the citizens of India. The awards of *Bharat Ratna* and

Padma Vibhushan cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition". The Supreme Court, on 15 December 1995, upheld the validity of such awards.

Cases: 1. State of West Bengal vs. Anwar Ali Sarkar, AIR 1952 SC 75

2. Indira Nehru Gandhi vs. Raj Narain AIR 1875 SC 2299

Right to freedom

The Constitution of India contains the right to freedom, given in articles 19, 20, 21A, and 22, and with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. It is a cluster of four main laws. The right to freedom in Article 19 guarantees the following six freedoms:

- Freedom of speech and expression, on which the State can impose reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.
- 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.
- Freedom to form associations or unions or co-operative societies on which the State can impose reasonable restrictions in the interest of public order, morality and the sovereignty and integrity of India.
- Citizens have the freedom to move freely throughout India, although reasonable restrictions can be imposed on this right in the public's interest. For example, to control an epidemic, restrictions on movement and travel can be imposed. For Example: We have witnessed entire nation locked down for months during COVID-19 epidemic.
- Freedom to reside and settle in any part of the territory of India, subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes_because certain safeguards as are envisaged here seem to be justified to protect indigenous and tribal peoples from exploitation and coercion.

● Freedom to practice any profession or to carry on any occupation, trade or business. But the state may impose reasonable restrictions in the public's interest through statute. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practising any profession or carrying on any trade.

Cases: 1. A.K. Gopalan vs. State of Madras AIR 1951 SC 21

2. Romesh Thapper vs. State of Madras AIR 1950 SC 124

Article 20 gives protection in respect of conviction for offences. Case: Selvi vs. State of Karnataka AIR 2010 SC 1974.

Article 21 gives the right to life, personal liberty and the right to die with dignity (passive euthanasia). Case: Kharak Singh vs. State of UP AIR 1963 SC 1295, Sunil Batra vs. Delhi Administration AIR 1978 SC 1675, Chameli Singh vs. State of UP AIR 1996 SC 549.

Article 21A gives free education to all children of the age of six to fourteen years such manner as the State may, by law, determine. Case: Unni Krishnan vs. State of UP AIR 1993 SC 645, Mohini Jain vs. State of Karnataka AIR 1992 SC 666.

Article 22: Protection against arrest and detention in certain cases.

The constitution also imposes restrictions on these rights. The government restricts these freedoms in the interest of the independence, sovereignty and integrity of India. In the interest of morality and public order, the government can also impose restrictions. However, the right to life and personal liberty cannot be suspended. The six freedoms are also automatically suspended or have restrictions imposed on them during a state of emergency.

Right against exploitation

The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely the abolition of trafficking in human beings and Begar (forced labour), and the abolition of employment of children below the age of 14 years in dangerous jobs like factories, mines, etc. Child labour is considered a gross violation of the spirit and provisions of the constitution. Begar, practised in the past by landlords, has been declared a crime and is punishable by law. Human trafficking for the purpose of the slave trade or prostitution is also prohibited by law. An exception is made in employment without payment for compulsory services for public purposes. Compulsory military conscription is covered by this provision. Case: Deena vs. Union of India AIR 1983 SC 1155, Bandhu Mukti Morcha vs. Union of India AIR 1984 SC 802.

Right to freedom of religion

Right to freedom of religion, covered in Articles 25, 26, 27 and 28, provides religious freedom to all citizens of India. The objective of this right is to sustain the principle of secularism in India. According to the Constitution, all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice. Religious communities can set up charitable institutions of their own. However, activities in such institutions that are not religious are performed according to the laws laid down by the government. Establishing a charitable institution can also be restricted in the interest of public order, morality, and health. No person shall be compelled to pay taxes for the promotion of a particular religion. A state run institution cannot impart education that is pro-religion. However, nothing in the Article is deemed to affect the operation of any existing law or prevent the State from making any further law regulating or restricting any economic, financial, political or other secular activity that may be associated with religious practice, or providing for social welfare and reform. Case: S. R. Bommai vs. Union of India AIR 1994 SC 1918, Aruna Roy vs. Union of India AIR 2002 SC 3176.

Cultural and educational rights: The Constitution guarantees every single citizen of India both rights to education and cultures. The Constitution also provides special measures, to protect the rights of the minorities. Any community that has a language and a script of its own has the right to conserve and develop it. No citizen can be discriminated against for admission in the state or state-aided institutions. All minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture. In granting aid to institutions, the state cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution. The right to administer does not mean that the state cannot interfere in case of maladministration. Case: St. Xaviers College vs. State of Gujarat AIR 1974 SC 1389, In re Kerala Education Bill AIR 1958 SC 956.

Right to constitutional remedies: Right to constitutional remedies (Articles 32 to 35) empowers the citizens to move to a court of law in case of any denial of the fundamental rights. For instance, in case of imprisonment, any citizen can ask the court to see if it is according to the provisions of the law of the country by lodging a public interest litigation. If the court finds that it is not, the person must be freed. This procedure of asking the courts to preserve or safeguard the citizen's fundamental rights can be done in various ways. The courts can issue various kinds of writs protecting the rights of the citizens. These writs are ● habeas corpus ● mandamus ● Writ of Prohibition ● quo-warranto ● certiorari. This allows a citizen to move to court if they believe that any of their Fundamental Rights have been violated by the State. Article 32 is also called the citizens right to protect and defend the constitution as it can be used by the citizens to enforce the constitution through the judiciary. Dr. B. R. Ambedkar declared the right to constitutional remedies "the heart and soul" of the Indian constitution. When a national or state emergency is declared, this right is suspended by the government.

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