

FUNDAMENTAL RIGHTS

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 14 to 32) of the Constitution of India.

Why are they called Fundamental Rights?

These rights are called fundamental rights because of two reasons:

1. They are enshrined in the Constitution which guarantees them
2. They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

List of Fundamental Rights

There are six fundamental rights of Indian Constitution along with the constitutional articles related to them are mentioned below:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

There was one more fundamental right in the Constitution, i.e., the right to property (Article 31). However, this right was removed from the list of fundamental rights by the 44th Constitutional Amendment, 1978. This was because this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth (property) equitably among the people.

Note: The right to property is now a legal right and not a fundamental right.

Right to Equality (Art. 14-18)

Article 14 represents the idea of equality, which states that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The equality before the law is guaranteed to all without regard to race, colour, or nationality.

Right to Freedom (Articles 19 – 22)

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The freedom right includes many rights such as:

- Freedom of speech

- Freedom of expression
- Freedom of assembly without arms
- Freedom of association
- Freedom to practise any profession
- Freedom to reside in any part of the country

Some of these rights are subject to certain conditions of state security, public morality and decency and friendly relations with foreign countries. This means that the State has the right to impose reasonable restrictions on them.

Right to Life

According to **Article 21**:

“Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”

- This fundamental right is available to every person, citizens and foreigners alike.
- Article 21 provides two rights:
 - I. Right to life
 - II. Right to personal liberty

The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees.

The Supreme Court of India has described this right as the ‘**Heart of fundamental rights**’.

The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that **this right has been provided against the State only**. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc.

Any private individual encroaching on these rights of another individual does not amount to a violation of Article 21. The remedy for the victim, in this case, would be under Article 226 or under general law.

The right to life is not just about the right to survive. It also entails being able to live a complete life of dignity and meaning.

The chief goal of Article 21 is that when the right to life or liberty of a person is taken away by the State, it should only be according to the prescribed procedure of law.

Right to Freedom of Religion (Articles 25-28)

Articles 25 and 26 embody the principles of religious tolerance and serve to emphasize the secular nature of Indian democracy, i.e. equal respect to all religions. Article 25 offers freedom of Conscience and Free Profession, Practice and Propagation of Religion whereas Article 26 helps to manage religious affairs, which is subject to public order, morality and health, every religious denomination or any section.

Article 27 provides freedom not to pay taxes for religious expenses on the promotion or maintenance of any particular religion. Article 28 prohibits religious instructions in educational institutions wholly maintained by the state.

Cultural and Educational Rights (Articles 29 – 30)

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 deal with the cultural and educational rights of Indian citizens.

1. This fundamental right intends to preserve the culture of all minority groups in India.
2. Indian society is a composite heterogeneous one and its diversity is one of its strengths.
3. 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 all citizen groups that reside in India having a distinct culture, language, and script, the right to conserve their culture and language. This right is absolute and there are no ‘reasonable restrictions’ in the interest of the general public here.

Article 29(2): The State shall not deny admission into educational institutes maintained by it or those that receive aids from it to any person based on race, religion, caste, language, etc. This right is given to individuals and not any community.

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.

Article 30(2): The State should 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.

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. Dr. B.R. Ambedkar called this article as the "**Heart and Soul of the Indian Constitution**"

Fundamental Rights Available Only to Citizens

The following is the list of fundamental rights that are available only to citizens (and not to foreigners):

1. Prohibition of discrimination on grounds of race, religion, caste, gender or place of birth (Article 15).
2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of freedom of:(Article 19)
 - Speech and expression
 - Association
 - Assembly
 - Movement
 - Residence
 - Profession

Protection of the culture, language and script of minorities (Article 29).

Right of minorities to establish and administer educational institutions (Article 30).

Amendability of Fundamental Rights

Any changes to the fundamental rights require a constitutional amendment that should be passed by both the Houses of Parliament. The amendment bill should be passed by a **special majority** of Parliament.

As per the Constitution, Article 13(2) states that no laws can be made that take away fundamental rights.

The question is whether a constitutional amendment act can be termed law or not.

In the Sajjan Singh case of 1965, the Supreme Court held that the Parliament can amend any part of the Constitution including fundamental rights.

But in 1967, the SC reversed its stance taken earlier when in the verdict of the Golaknath case, it said that the fundamental rights cannot be amended.

In 1973, a landmark judgement ensued in the **Kesavananda Bharati case**, where the SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be abrogated even by a constitutional amendment."

This is the basis in Indian law in which the judiciary can strike down any amendment passed by Parliament that is in conflict with the basic structure of the Constitution.

In 1981, the Supreme Court reiterated the Basic Structure doctrine.

It also drew a line of demarcation as April 24th, 1973 i.e., the date of the Kesavananda Bharati judgement, and held that it should not be applied retrospectively to reopen the validity of any amendment to the Constitution which took place prior to that date.