

Fundamental Rights in the Constitution of India

Introduction

Fundamental rights are enshrined under part III of the Indian Constitution which was adopted on 26th November 1949 but was put on use on 26th January 1950. These Fundamental rights guarantee that every citizen of this nation can live a life of peace and harmony throughout the territory of India and these rights were included in the constitution because they were considered to be essential for the development of each and every individual. People of all races, religion, caste, or sex, have been given the right to move to the Supreme Court or the High Court for the enforcement of these rights. These Fundamental rights are Divided into seven categories which are covered from Article 12 till Article 35 of the Indian Constitution.

Origin and development of The Concept of Fundamental rights

The Fundamental rights are considered to be an important part, if not, the most important part of the Constitution of India. These rights have originated from France's Declaration of Bill of Rights of Man, England's Bill of Rights, Development of the Irish Constitution, as well as, United States of America's Bill of Rights.

Originally the constitution provided for seven Fundamental rights,

1. Right to Equality (Article 14 to 18),
2. Right to Freedom (Article 19 to 22),
3. Right against exploitation (Article 23 and 24),
4. Right to freedom of religion (Article 25 to 28),
5. Cultural and Educational rights (Article 29 to 30),
6. Right to property (Article 31),
7. Right to Constitutional remedies (Article 32).

But later on, the right to property was removed from the list of fundamental rights by the **44th Amendment Act** of 1978. So now there are only six fundamental rights in the Constitution of India.

What are the features of Fundamental Rights?

The fundamental rights guaranteed by the constitution of India have certain features that establish their uniqueness, these are:

1. Some of the Fundamental rights are available only to the citizens of India while some are available to everyone such as Indian citizens, foreign citizens, or even companies and corporations.
2. The state can impose reasonable restrictions on these rights, thus making them qualified and not absolute.
3. These fundamental rights are defended and guaranteed by the Supreme Court of India, hence the aggrieved party can directly move to the Supreme Court on the infringement of these rights.
4. These rights can be suspended during the operation of a National Emergency except the rights defined under Article 20 and 21.
5. The application of these rights can be restricted when a military rule is imposed under abnormal circumstances to restore order (**Article 34**) and is very different from the imposition of a national emergency.

6. The application of these rights can be restricted or abrogated by the parliament (**Article 33**), rights of armed forces, police forces, intelligence agencies, etc. can be restricted by this Article.

What are the various laws that are inconsistent with the Fundamental Rights?

- It is defined under **Article 13** of the Constitution of India that all laws which are inconsistent with any of the fundamental rights enshrined under part III shall be void. Supreme Court and the High Courts of India can declare a law unconstitutional and invalid on the grounds of violation of any of the Fundamental rights.
- Article 13 also declares that a constitutional amendment is not a law and it cannot be challenged in the courts, but it was established during the case of [Kesavananda Bharti v. State of Kerala](#) that a constitutional amendment can be challenged on the grounds that it is in violative nature of the fundamental rights which form a part of the 'basic structure' of the Constitution of India and it can be declared to be void.

What are the fundamental rights defined under the Constitution of India?

Right to Equality

- **Article 14** of the Constitution of India declares that the state will not deny anybody equality before the law or equal protection of the laws within the territory of India. This right is conferred on everyone

including foreigners and even legal persons, such as a corporation or a company.

- This concept of 'equality before the law' is of British origin while the concept of 'equal protection of laws' is of American origin (it has been taken from the American Constitution).
- **Article 15** of the Constitution of India declares that the state will not discriminate against any citizen of India on the grounds of religion, caste, sex or their place of birth.
- **Article 16** of the Constitution of India declares the equality of opportunity for the Indian citizens in the matters which involve employment or appointment to any office under the state. Hence, no citizen of India shall be discriminated against or be declared ineligible for any employment under the state on the grounds of religion, caste, place of birth, or gender.
- **Article 17** of the Constitution of India abolishes the concept of 'Untouchability' and prohibits its practice in any shape or form.
- **Article 18** of the Constitution of India abolishes the concept of 'Titles' and declares that:
 - No title (except for military and academic titles) shall be conferred by the State.
 - Citizens of India are prohibited from accepting any title from any foreign State.
 - No foreign individual (while he holds any office of profit or trust under the State) can accept any office from any foreign state without the consent of the President of India, any title from any foreign state.
 - No Indian Citizen or foreigner who is holding an office of profit or trust under the state can accept any present or office from or under any foreign State without the consent of the President of India.

Right to Freedom

- Article 19 of the Constitution of India guarantees six rights to all the Indian citizens, these rights defined under this Article are:

Right to freedom of speech and expression (Article 19(1)(a))

- The right to freedom of speech and expression implies that every citizen of India has the legal right to express his or her views, opinions, and beliefs freely by the medium of words spoken orally, or by writing, by printing, or by picturization in any manner. This is subjected to reasonable restrictions by the Parliament.

Right to assemble (peacefully and without arms) (Article 19(1)(b))

- This right empowers the citizens of India with the right to assemble peacefully and without arms, arms such as ammunition, or melee weapons, etc.
- This freedom can only be exercised on public lands and the assembly must be peaceful and unarmed.
- This right does not include the right to strike.

Right to form associations or co-operative societies (Article 19(1)(c))

- All citizens of India are given the right to form associations or co-operative societies, this includes the right to the formation of political parties, companies, partnership firms, clubs, etc.

Right to freely move throughout the Indian territory (Article 19(1)(d))

- This right guarantees the freedom of movement and entitles every citizen of India to move freely throughout the territory of India. Every citizen of India has been given the right to move freely from one state of the country to another. The purpose is to promote national feeling among the citizens of the nation.

Right to reside and settle also in any part of Indian territory (except for the state of Jammu and Kashmir as per Article 35A) (Article 19(1)(e)),

- This right grants every citizen of India with the right to reside and settle in any part of the territory of India except for the state of Jammu and Kashmir which has been given a special status as per Article 370 which empowers the Article 35A which has a clause that does not allow residents of other states to reside in the state of Jammu and Kashmir.
- Except for Jammu and Kashmir, all citizens have a right to reside and settle in any other state of India. But this article is also subjected to reasonable restrictions.

Right to practice any kind of profession or any occupation, trade, or business (Article 19(1)(g)).

- All the citizens of India have been granted the right to practise any profession or carry on any occupation or business of their wish. But this right does not include the right to carry on a profession or business which involves anything which is immoral (such as trafficking) or dangerous in nature (drugs or explosives).

- Previously, Article 19 contained seven rights but later on the right to acquire, hold and dispose of the property was removed by the Amendment Act of 1978.
- The State can also impose reasonable restrictions on the enjoyment of these rights which are mentioned in Article 19 itself.

Article 20 of the Constitution of India allows protection against unreasonable and excessive punishment to an accused individual, whether a citizen of India or a citizen of any foreign nation or even a legal person like a company or a corporation. This Article further contains three provisions:

No ex-post-facto law

- It means that no one will be convicted for any offence except for the violation of a law in force at the time of the commission of the act which may amount to some liability.

No double jeopardy

- It means that no one will be convicted for the same offence more than once. No person shall be incriminated more than once for the offence he has committed once.

No self-incrimination

- It means that no one who is accused of any offence shall be allowed to be a witness against himself.

Article 21 declares one of the most important fundamental right, if not the most important, the right to life. It states that no person will be deprived of his or her life or personal liberty except according to the procedure established by the law. This right is available to both Citizens of India and Citizens of foreign nations in India.

- Further **Article 21A** declares that the State must provide free and obligatory education to all children or minors of the age group six to fourteen years in any manner the State may determine.
- **Article 22** provides for protection to individuals who are arrested or detained.

Right against exploitation

- The trafficking of human beings, forced labour and any other similar forms of forced labour are prohibited by **Article 23** of the Constitution of India which declares these as punishable offences and this right is available to both, the citizens of India as well as, citizens of foreign nations who are in India.
- **Article 24** of the Constitution of India forbids the employment of minor/children below the age of 14 years of age in any factory, mine, or any other hazardous activities such as construction work or railways. But this article does not forbid the employment of children/minors in any harmless or innocent work environment.

Right to freedom of religion

- **Article 25** of the Constitution of India declares that everyone is equally entitled to the freedom of conscience and the right to freely profess, practice and propagate any religion. These rights are available to all, citizens of India as well as, citizens of any foreign nation currently in India.
- The freedom to manage religious affairs are stated under **Article 26** of the Constitution of India which declares every person's rights to religious denominations, in other words, Article 26 protects the collective freedom of religion.

- The rights stated under Article 25 and 26 are both subject to public order, morality, and health but they are not subject to other provisions which are related to Fundamental rights.
- Freedom from taxation for the promotion of religion is enshrined under **Article 27** of the Constitution of India which states that no person will be compelled to pay any taxes for the promotion or maintenance of any religion or religious denomination, in other words, the state shouldn't spend public money collected by the way of tax for the promotion or maintenance of any religion.
- **Article 28** of the Indian Constitution declares that no religious instructions shall be provided in any educational institution which is maintained fully by the State funds. But this provision does not apply to institutions administered by the State but are established under any trust or endowment and requires imparting of religious instructions.

Cultural and Educational rights

- **Article 29** of the Constitution of India states that any section of the citizens residing anywhere in the territory of India having their own distinct language, culture, will have the right to conserve the same.
- Further **Article 29** declares that no citizen of India shall be denied admission into any educational institution which is maintained by the state or receiving funds from the state on the grounds of race, religion, caste, or language. It further grants protection to both religious minorities as well as linguistic minorities.
- **Article 30** of the Constitution of India grants the right of minorities (linguistic or religious) to establish and administer educational institutions of their choice. This right also includes the right to impart education to its children in its very own language.

Right to Constitutional Remedies.

- **Article 32** of the Constitution of India grants the right to remedies for the enforcement of the fundamental rights of a citizen of India who has suffered. This makes the fundamental rights enforceable in the court of law.
- The reason stated above is the reason why **Dr BR Ambedkar** **called** Article 32 the most important article of the Constitution of India and calling it as the heart and soul of the Indian Constitution. It is Article 32 that makes all other rights legitimate in nature.
- The Supreme Court has also ruled Article 32 as a basic feature of the Constitution of India. It further contains four provisions:
 - The right to move to the Supreme Court of India for the enforcement of Fundamental rights.
 - The Supreme Court's power to issue directions, orders, or writs for the enforcement of these fundamental rights. The writs that can be issued are Habeas corpus, mandamus, prohibition, certiorari, and quo-warranto.
 - The parliament can empower any other court to issue directions, orders and writs of all kinds. High Courts are not included in any other Courts under this section as they have already been conferred with these powers under article 226 of the Constitution of India.
 - The right to move to the Supreme Court of India shall not be suspended except otherwise provided by the Supreme Court.

What are the Writs available under Article 32 and 226?

- The Supreme Court and the High Courts can issue certain writs for the enforcement of an individual's legal rights, these are defined under Article 32 in case of the Supreme Court of India and under Article 226 in case of High Courts. There are five kinds of writs that can be issued, these are:

Habeas corpus

- It is a Latin phrase which literally translates to '**to have to body of**' or 'to produce the body'. It is an order which the court issues for a person who has been detained by another person, to produce the body of the person detained. The person who has been detained will be free if he has been detained wrongfully.

Mandamus

- This is also a Latin phrase which translates to 'We Command'. It is a command which is issued by the Court to a public official asking that individual to perform their duty which they have failed or have refused to do so.

Prohibition

- The purpose of this writ is 'to forbid'. It is issued by a higher court to a lower court or a tribunal preventing them from exceeding their jurisdiction which they do not possess.

Certiorari

- The term *Certiorari* translates to 'to be certified' or 'to be made certain in regards to something' or 'to be informed'. It is issued by a higher Court to a lower Court or a tribunal to transfer a case pending there to itself or to squash the order made by the lower Court or tribunal with respect to the case.

Quo-Warranto

- The term *Quo-Warranto* translates to 'by what authority or warrant' or 'On whose authority or warrant?'. It is a writ issued by the court to investigate and inquire into the legality of the claim of a person to a public office.

What are the exceptions to Fundamental Rights?

Saving of Laws that provide for Acquisition of Estates

Under **Article 31A** of the Constitution of India, Five categories of laws have been defined from being challenged on the grounds of violation of Fundamental rights granted by Article 14 and 19 of the Constitution. These categories are related to

- Acquisition of estates and the rights related to it by the State.
- An amalgamation of various corporations.
- Modification of mining leases or even Extinguishment.

- Taking over the management of properties by the State.
- Modification of the rights of the directors of various corporations.

Saving of laws that give effect to some Directive Principles

Under **Article 31C** (which was Inserted by the 25th Amendment Act of 1971), are contained two provisions, these are:

- It states that if there is a law which seeks to implement the socialistic directive principles defined under **Article 39(b) or 39(c)** then it shall not be declared void on the grounds of the violation of the fundamental rights defined under the **Article 14 and Article 19** of the Constitution of India.
- And, if there's a law which contains a declaration for giving effect to such a policy then it shall not be called in question in the Court of law.

Validation of Some Acts and Regulations

- Under **Article 31B** of the Constitution of India, the Acts and the Regulations which are included in the Ninth Schedule are protected from being challenged on the grounds of violation of Fundamental right. Article 31B immunises any law which is included in the Ninth Schedule from all the Fundamental rights and it does not matter if any of the laws included in the Ninth Schedule falls under any of the five categories which are defined under Article 31A.

Criticism of Fundamental Rights

The Fundamental rights have been criticised for a number of reasons, some of them are listed below:

Immoderate Limitations

- The Fundamental rights enshrined by the Constitution are subjected to reasonable restrictions as well as exceptions hence they are criticised on this remark.

Lack of Social and Economic Rights

- The list of Fundamental rights mainly consists of political rights. There are no provisions which make important social and economic rights such as the right to social security, the right to work, right to employment, etc. Whereas the Constitutions of other nations such as China provides for such rights.

Lacks Clarity

- Many phrases and words used under the definitions of various fundamental rights are found to be not clear or vague as their explanation is not given anywhere in the Constitution of India. Words such as, 'Public order', 'minorities', 'reasonable restrictions', etc. belong to this category.

No Permanency

- The Parliament can curtail or abolish the fundamental rights. An example of this is the abolition of the fundamental right to property. They have been criticised for becoming a play tool in the hands of the

politicians having majority support in the Parliament. Hence they lack permanency.

Suspended during Emergencies

- Fundamental rights are criticised on the basis of their temporary suspension during the operation of a National Emergency (except for the fundamental rights defined under Articles 20 and 21) all fundamental rights are suspended during an emergency.

Preventive Detention

- Provisions for the concept of Preventive Detention are criticised by many and the reason for this is said to be that it takes away the spirit and substance of fundamental rights as it confers arbitrary powers on the State.

Expensive Remedy

- The judicial processes are way too expensive and hinder the common man from getting his rights enforced in the Courts as not every person has the money or even time to afford such proceedings.

Significance of Fundamental Rights

- They form a defensive wall of individual liberty.
- They protect the interest of minorities.
- They ensure the dignity and respect of individuals.
- They constitute the basis of the democratic system in the country.
- They strengthen the secular fabric of the Indian State.

Conclusion

- The fundamental rights have been included in the Constitution because they were considered to be essential for the development of the personality of each and every individual and are there to preserve human dignity and respect. Most of these rights are enforceable against the state by way of their language while some of these rights can be directly enforced against both the state as well as, a private individual.
- One of the most important aspects of the fundamental rights is that it gives Judiciary clear criteria as to how the regulation of relations between the citizens and the government will take place.
- Because of the existence of these rights and their enforceability in the court people can freely enjoy their life and personal liberty, they can move from one part of the country to another, they can assemble peacefully, etc. However, these fundamental rights are also criticised by many as some of the words or phrases used in defining these fundamental rights are found to be vague by many or their meaning is not defined anywhere else in the Constitution of India. Words or phrases such as, 'public order', 'minorities', etc. belong to this category.
- Another positive aspect of the Fundamental rights is that these empower the young children of our nation as they are granted the right to receive free education up to the age of 14. The fundamental rights may have flaws but it does provide more protection to the citizens of the nation than most of the flaws.