



# Fundamental Rights (Part-1)

## Introduction

### ▪ About:

- The Fundamental Rights are enshrined in Part III of the Constitution (Articles 12-35).
- Part III of the Constitution is described as the **Magna Carta** of India.
  - 'Magna Carta', the Charter of Rights issued by King John of England in 1215 was the first written document relating to the Fundamental Rights of citizens.
- **The Fundamental Rights:** The Constitution of India provides for six Fundamental Rights:
  - 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)
  - Right to constitutional remedies (Article 32)
- Originally the constitution also included **Right to property (Article 31)**. However, it was deleted from the list of Fundamental Rights by the [44<sup>th</sup> Amendment Act, 1978](#).
  - It is made a **legal right under Article 300-A** in Part XII of the Constitution.
- **Provision for Laws Violating Fundamental Rights:** [Article 13](#) of the Indian constitution declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.
  - This power has been conferred on the Supreme Court ([Article 32](#)) and the high courts (Article 226).
  - Further, the article declares that a constitutional amendment cannot be challenged (as it is not a law).
    - However, the Supreme Court in the **Kesavananda Bharati case (1973)** held that a Constitutional amendment can be challenged if it violates a fundamental right.
- **Writ Jurisdiction:** A writ is a legal order given by a court of law.
  - The Supreme Court (Article 32) and the High courts (Article 226) can issue the writs of [habeas corpus, mandamus, prohibition, certiorari and quo-warranto](#).

## Features of the Fundamental Rights:

- **Protected by Constitution:** Fundamental Rights, unlike ordinary legal rights, are protected and guaranteed by the constitution of the country.
  - Some of the rights are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
- **Not Sacrosanct, Permanent, or Absolute:** They are not sacrosanct or permanent and the Parliament can curtail or repeal them but only by a constitutional amendment act.

- The rights are not absolute but qualified.
  - The state can impose reasonable restrictions on them, however, the reasonability of the restrictions is decided by the courts.
- **Rights are Justiciable:** The rights are justiciable and allow persons to move the courts for their enforcement, if and when they are violated.
  - Any aggrieved person can directly go to the Supreme Court in case of violation of any fundamental right.
- **Suspension of Rights:** The rights can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.
  - Further, the six rights guaranteed by Article 19 can be suspended only when there is an external emergency war or external aggression) [and not on the ground of armed rebellion (i.e., internal emergency)].
- **Restriction of Laws:** Their application to the members of armed forces, paramilitary forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).
  - Their application can be restricted while martial law (military rule imposed under abnormal circumstances) is in force in any area.

Fundamental Rights (available to citizens as well foreigners) (except enemy aliens)	Fundamental Rights available to citizens only
▪ Equality before law.	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
▪ Protection in respect of conviction for offences.	Equality of opportunity in matters of public employment.
▪ Protection of personal life and liberty.	Protection of the six fundamental rights of freedom mentioned in article 19.
▪ Right to elementary education.	Protection of language, script and culture of minorities.
▪ Protection against arrest and detention in certain cases.	Right of minorities to establish and administer educational institutions
▪ Prohibition of human trafficking and forced labour.	
▪ Prohibition of employment of children in factories.	
▪ Freedom of conscience and free profession, practice and propagation of religion.	
▪ Freedom to manage religious affairs.	
▪ Freedom from payment of taxes for promotion of any religion.	
▪ Freedom from attending religious instruction or worship in certain educational institutions.	

## The Fundamental Rights

# CONSTITUTION OF INDIA

## Part III: Fundamental Rights

### Right to Equality

- √ Equality before law
  - equal protection of laws
- √ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
  - equal access to shops, hotels, wells, tanks, bathing ghats, roads etc.
- √ Equality of opportunity in public employment
- √ Abolition of Untouchability
- √ Abolition of titles

### Right to Freedom

- √ Protection of Right to
  - freedom of speech and expression;
  - assemble peacefully;
  - form associations/unions;
  - move freely throughout the territory of India;
  - reside and settle in any part of India;
  - practise any profession, or to carry on any occupation, trade or business.
- √ Protection in respect of conviction for offences
- √ Right to life and personal liberty
- √ Right to education
- √ Protection against arrest and detention in certain cases

### Right against Exploitation

- √ Prohibition of traffic in human beings and forced labour
- √ Prohibition of employment of children in hazardous jobs

### Right to Freedom of Religion

- √ Freedom of conscience and free profession, practice and propagation of religion
- √ Freedom to manage religious affairs
- √ Freedom to pay taxes for promotion of any particular religion
- √ Freedom to attend religious instruction or worship in certain educational institutions

### Cultural and Educational Rights

- √ Protection of language, culture of minorities
- √ Right of minorities to establish educational institutions

### Right to Constitutional Remedies

- √ Right to move the courts to issue directions/orders/writs for enforcement of rights

### Right to Equality (Article [14](#), [15](#), [16](#), [17](#) and [18](#)):

- **Equality Before Law: 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.
  - **Exceptions:** As per article 361, the President of India or Governor of states is not

answerable to any court for the exercise of their powers/duties and no civil or criminal proceedings can occur or continue against them in any court during their term of office.

- As per article 361-A, no civil or court proceedings can occur for a person for publishing any substantially true report of either House of the Parliament and State Legislature.
- No member of Parliament (article 105) and State Legislature (article 194) shall be liable to any court proceedings in respect of anything said or any vote given by him in Parliament or any committee.
- The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
- **Prohibition of Discrimination:** [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).
- **Equality of Opportunity in Public Employment:** [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.
- **Abolition of Untouchability: 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.
    - Insulting a person belonging to scheduled caste on the ground of untouchability.
- **Abolition of Titles: 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.

### **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.**
  - It 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) (article 21).
- **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<sup>th</sup> Constitutional Amendment Act of 2002**.
  - Before the 86<sup>th</sup> 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 authorises 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.

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