



## Fundamental Rights in Indian Constitutional System

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### Abstract:

Since the 17th Century, human thinking has been veering round to the theory that man has certain essential, basic, natural and inalienable rights or freedoms and it is the function of the state to recognize these rights and freedoms and allow them free. The philosophical background of Indian Constitutional Law in general and of fundamental rights in particular has been matter of great debate. Fundamental rights are mostly essential for the all round development of Individual. These fundamental rights help not only in protection but also the prevention of gross violations of human rights. Fundamental rights are very fundamental in the governance of the state. The authors acknowledge that the natural rights and position later on has adopted by the Supreme Court has a socialistic tendency which is at variance with western philosophy. Fundamental rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power.

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Fundamental right is the first and foremost social document of Constitution of India. It offers to its all Citizens individually and collectively the basic freedoms and conditions of life. These rights are integral part of the constitution and hence can't be altered or taken away by ordinary legislation. Fundamental rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power. Fundamental rights primarily protect individuals from any arbitrary state actions and others. These fundamental rights secured to the people by the constitutional provision under article 12 to 35 in part iii of the constitution. These rights are regarded as fundamental because they are most

essential for the attainment by the individual his full intellectual, moral and socio economic development.

The fundamental right makes the individual life significant. Fundamental rights are mostly essential for the all round development of Individual. Fundamental rights are justiciable rights enforceable by the court and are available to all citizens. These rights are fundamental in the sense that any law passed by any legislature in the country would be declared as null and void if it is derogative to the rights guaranteed by the constitution. If any of those rights is violated, the individual affected is entitled to move the High Courts or Supreme Court for the protection and enforcement of his rights. However during the operation of emergency the President may suspend all the fundamental rights and may also suspend the right of the people to move the court for the enforcement of these rights. Any such order may extend to the whole or any part of India. Fundamental Rights that are borrowed from the Constitution of the USA. The framers of the Constitution inspired by the Constitution of the USA. U.K, France, German, Switzerland, Irish republic, Japan etc. Part III of the Constitution is rightly described as “the Magna Carta of India.” While Fundamental Rights are available to all persons, certain Fundamental Rights are available only to Indian Citizens. 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. by All people, irrespective of race, religion, caste or gender, have been given the right to petition directly the Supreme Court or the High Courts for the enforcement of their fundamental rights. These fundamental rights help not only in protection but also the prevention of gross violations of human rights. They emphasises on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background. The right to life and personal liberty is available to all people and so is the right to freedom of religion. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are reserved for citizens alone, including non-resident Indian citizens. Some fundamental rights apply for persons of any nationality whereas others are available only to the citizens of India.

**Origin and Development of Fundamental rights:** During the British rule in India, human rights were violated by the rules on a very wide scale. Therefore, the framers of the Constitution, many of whom had suffered incarceration during the British regime, had a very positive attitude towards these rights. As Indian society is fragmented into many religions, cultural and linguistic groups and it was necessary to declare fundamental rights to give to the people a sense of security and confidence. While inculcating the provision of fundamental rights, the framers of the constitution of India were highly inspired by historical England’s Bill of Rights (1689), France’s Declaration of Bill of Rights of Man, Development of the Irish Constitution, as well as, United States of America’s Bill of Rights.

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

1. Fundamental rights are integral part of the constitution and can't be altered or take away by any ordinary legislation.
2. 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.
3. The state can impose reasonable restrictions on these rights, thus making them qualified and not absolute.
4. 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.
5. These rights can be suspended during the operation of a National Emergency except the rights defined under Article 20 and 21.
6. 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.
7. 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.
8. Fundamental rights are comprehensive and detailed one. Everything relating to fundamental rights are detailed and specific.
9. Fundamental rights are justifiable in nature. It means that one can move to the Judiciary for restoration of his rights when he feels it violated.

**Types of Fundamental rights:**

**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:

**Article-14, 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.

**Article -15, 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 and for the advancements of any socially or educationally backward class or, scheduled castes or scheduled tribes.

**Article-16, 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, irrespective of

religion, caste, place of birth or any of them under the state. 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. According to the Citizenship (Amendment) Bill, 2003, this right shall not be conferred to overseas citizens of India.

**Article-17, 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.

**Article-18, 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.

**Right to Freedom:** The Constitution of India contains the right to freedom of the Individual. It gives 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. The right to freedom in Article 19 guarantees the following six freedoms:

Freedom of speech and expression. 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 any arms. 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. Here 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.

Freedom to reside and settle in any part of the territory of India. It is 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. Article 370 formerly restricted citizens from other Indian states and Kashmiri women who marry men from other states from purchasing land or property in the state of Jammu & Kashmir. But this article 370 is no longer applicable in the Union territories of Jammu & Kashmir and Ladakh from 6 August 2019.

Freedom to practice any profession or to carry on any occupation, trade or business. However these freedoms are subject to reasonable restrictions that may be imposed by the state in the interest of sovereignty, integrity and security of the state.

**Article 19(1) Right to information (RTI) :** Right to information has been given the status of a fundamental right under Article 19(1) of the Constitution in 2005. Article 19 (1) under which every citizen has freedom of speech and expression and the right to know how the government works, what roles it plays, what its functions are, and so on.

**Article 20:** It gives protection in respect of conviction for offences. It means that no person shall be convicted of any offence except for violation of laws in force at the time of the commission of the act changed as an offence or be subjected to a penalty greater than that might have been inflicted under the law in force at the time of commission of offence.

**Article 21:** It gives the right to life, personal liberty and the right to die with dignity. It means that no person shall be deprived of his life or personal liberty except according to the procedures established by law. The right to privacy is an intrinsic part of Article 21 (the Right to Freedom) that protects the life and liberty of the citizens. The right to privacy is the newest right assured by the Supreme Court of India. It assures the people's data and personal security.

**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. In 2002, through the 86th Amendment Act, Article 21A was incorporated. It made the right to primary education part of the right to freedom, that the state would provide free and compulsory education to children from 6 to 14 years of age.

**Article 22: Protection against arrest and detention in certain cases.** It reads that law of arrest and detention can't be arbitrary, it should be made reasonable by giving the detainee certain facilities of defending himself against whimsical detention. 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.

**Article 23, 24: Right against Exploitation:** Like the practice of ancient Egypt, Greece and Rome where human slaves were used for manual labour, Indians under

British imperialism were sent to South Africa as contract labour and were exploited due to poor financial condition. Thus in order to eradicate all these nasty human practices from Indian soil, the provision against exploitation are enumerated in article 23 and 24.

**Article- 23:** It prohibits trafficking in human beings (including traffic in women for immoral purposes), beggar and other similar forms of forced labour.

**Article 24:** it enumerates, no child below the age of 14 years shall be employed to work in any other factory, or mines or engaged in any other hazardous occupation. The state in other hand shall impose compulsory service for public purpose and in doing so the state shall not make any discrimination on religion, caste, or any other ground.

**Right to Freedom of Religion:** Article (25, 26, 27, 28): Right to freedom of religion is 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. Negatively it prohibits the state to compel by law and person to accept any particular creed or, religion.

**Article 26:** It guarantees the freedom to manage religion affairs. According to this, every religious denominations is given the right

- : To establish and maintain institutions for religious and charitable purpose.
- : To manage its own affairs in matters of religion.
- : To own and acquire movable and immovable property.
- : To administer such property in accordance with law.

However, establishing a charitable institution can also be restricted in the interest of public order, morality, and health.

**Article – 27:** It provides an additional protection to religious activity by exempting funds appropriated towards the promotion or, maintenance of any particular religion from the payment of taxes. It means that no person shall be compelled to pay taxes for the promotion of a particular religion.

**Article- 28:** No religious instruction shall be provided to any educational institution wholly maintained out of state funds. It means that a state-run institution cannot impart education that is pro-religion. State will not favor any particular religion, nor discriminate against any particular religion or in other words the state will observe an attitude of strict impartiality in matters of religion.

### **Cultural and Educational rights: (Article 29 and 30)**

**Article 29 (1)** ensures to every sections of citizens for the protection of their language, script or culture.

**Article 29(2):** No Citizen shall be denied administration into any educational institutions maintained by state or receiving aid out of the state funds on ground of only of religion, race, caste, language or any of them.

**Article -30:** All minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice and state

shall not in granting aid to educational institutions, discriminate against any educational institution on the grounds that it is under the management of a minority whether based on religion or language.

The Constitution of India guarantees every single citizen of India both rights to education and cultures. It also provides special measures, to protect the rights of the minorities. No citizen can be discriminated against for admission in the state or state-aided institutions. At the same time all minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture.

**Right to constitutional remedies (Articles 32 to 35):** The right to constitutional remedies (Articles 32 to 35) empowers the citizens to move to the court of law in case of any denial or violation of the fundamental rights. The Supreme Court is empowered to issue directions or orders, writ including writ in the nature of Habeas corpus, Mandamus, Prohibition, Quo warranto and Certiorari. The courts can issue various kinds of writs protecting the rights of the citizens.

- **Habeas corpus:** It safeguards the people from illegal arrests. 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:** It protects the petitioner who requires legal help to get his work done by respective public authorities. Mandamus, is 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.
- **Writ of Prohibition:** It prohibits a subordinate court from acting beyond its jurisdiction. 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.
- **Quo warranto :** It prevents the usurpation of public office through illegal manner. 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.
- **Certiorari:** It quashes an order issued by a subordinate court by overstepping its jurisdiction. 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. Certiorari the term Certiorari translates to 'to be certified' or 'to be made certain in regards to something' or 'to be informed'.

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.
- It constitutes the basis of the democratic system in the country.

- It strengthens the secular fabric of the Indian State.

### **Amendment:**

Changes to the fundamental rights require a constitutional amendment, which has to be passed by a special majority of both houses of Parliament. This means that an amendment requires the approval of two-thirds of the members present and voting. However, the number of members voting in support of the amendment shall not be less than the absolute majority of the total members of a house – whether the Lok Sabha or Rajya Sabha.

The right to education at elementary level has been made one of the fundamental rights under the Eighty-Sixth Amendment of 2002.

**Right to property:** The Constitution originally provided for the right to property under Articles 19 and 31. Article 19 guaranteed to all citizens the right to acquire, hold and dispose of property. Article 31 provided that “no person shall be deprived of his property save by authority of law.” It also provided that compensation would be paid to a person whose property has been taken for public purposes. The provisions relating to the right to property were changed a number of times. The Forty-Forth Amendment of 1978 deleted the right to property from the list of fundamental rights. A new provision, Article 300-A, was added to the constitution which provided that “no person shall be deprived of his property save by authority of law”.

**Right to Education:** Article 21A - On 1 April 2010, India joined a group of few countries in the world, with a historic law making education a fundamental right of every child coming into force. Making elementary education an entitlement for children in the 6-14 age groups, the Right of Children to Free and Compulsory Education Act will directly benefit children who do not go to school at present.

The 24th constitutional amendment introduced a new article - Article 13(4) - enabling Parliament to legislate on the subjects of Part III of the constitution using its constituent powers per Article 368 (1). In 1973, a 13 member constitutional bench of the Supreme Court also upheld with majority the validity of the 24th constitutional amendment.

**Suspension of fundamental rights:** When the President makes a Proclamation of national Emergency under Article 352, the freedoms guaranteed under Article 19 are automatically suspended. The President can suspend other fundamental rights through specific orders. These orders must be approved by the Parliament. But he cannot suspend the freedoms given under Arts. 20 and 21 (protection in respect of conviction for offenses and protection of life and personal liberty respectively) in any circumstances.

### **Apex Court verdict on fundamental rights:**

**In Golak Nath v. State of Punjab,** 4 the SC held that, Part III of the Constitution of India guarantees certain fundamental rights because they are considered necessary for the development of human personality. These rights enable a man to chalk out his own life in the manner he likes best. While deciding the Golaknath case in February 1967, the Supreme Court ruled that Parliament had no power to



curtail the fundamental rights. They were made permanent and sacrosanct. Supreme Court's earlier decision which had upheld Parliament's power to amend all parts of the Constitution, including Part III related to fundamental rights. However, it ruled that the basic structure of the constitution, which is built on the basic foundation representing the dignity and freedom of the individual, could not be altered, and that it was "of supreme importance" and could not be destroyed by means of amendment(s) to the Constitution.

**In Maneka Gandhi v. Union of India**, 5 SC observed that, fundamental rights are calculated to protect the dignity of the individual and creates conditions in which every human being can develop his personality to the fullest extent.

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

**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

**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. 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.

### **Conclusion:**

Fundamental Rights play a significant role because they are most essential for the attainment of the full intellectual, moral, and spiritual status of an individual. Therefore, the objective behind the inclusion of Fundamental Rights in the Constitution was to establish a government of Law to preserve individual liberty, building an equitable society, and establish a welfare state. 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. 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.

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