

FUNDAMENTAL RIGHTS

Fundamental Rights is a charter of rights contained in the Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India.

Violations of these rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, color or Gender. They are enforceable by the courts, subject to certain restrictions.

The seven fundamental rights recognized by the constitution are:

1. The right to equality
2. The right to freedom
3. The right to freedom from exploitation
4. The right to freedom of religion
5. Cultural and educational rights
6. The right to constitutional remedies
7. The right to Education

Rights mean those freedoms which are essential for personal good as well as the good of the community.

Right to equality

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

- **Equality before law:** Article 14 of the constitution guarantees that all citizens shall be equally protected by the laws of the country. It means that the State^[5] cannot discriminate against a citizen on the basis of caste, creed, colour, sex, religion or place of birth.^[13] According to the *Electricity Act* of 26 January 2003 the Parliament has the power to create special courts^[14] for the speedy trial of offences committed by persons holding high offices. Creation of special courts is not a violation of this right.
- **Social equality and equal access to public areas:** Article 15 of the constitution states that no person shall be discriminated on the basis of caste, colour, language etc. Every person shall have equal access to public places like public parks, museums, wells, bathing ghats and temples etc. However, 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.^[15]
- **Equality in matters of public employment:** Article 16 of the constitution lays down that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions. The Parliament may enact a law stating that certain jobs can only be filled 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, there a law may be passed which requires that the holder of an office of any religious institution shall also be a person professing that particular religion.^[16] According to the *Citizenship (Amendment) Bill, 2003*, this right shall not be conferred to Overseas citizens of India.^[9]

- Abolition of untouchability: Article 17 of the constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law.^[17] 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.

Right to freedom

The Constitution of India contains the right to freedom, given in articles 19, 20, 21 and 22, 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:^[20]

- Freedom of speech and expression, which enable an individual to participate in public activities. The phrase, "freedom of press" has not been used in Article 19, but freedom of expression includes freedom of press. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality.
- 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 on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.
- Freedom to move freely throughout the territory of India though reasonable restrictions can be imposed on this right in the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics.
- Freedom to reside and settle in any part of the territory of India which is also 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 restricts citizens from other Indian states and Kashmiri women who marry men from other states from purchasing land or property in Jammu & Kashmir.
- Freedom to practice any profession or to carry on any occupation, trade or business on which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade.

The constitution also guarantees the right to life and personal liberty, which in turn cites specific provisions in which these rights are applied and enforced:

- Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty. According to Article 20, no one can be awarded punishment which is more than what the law of the land prescribes at that time. This legal axiom is based on the principle that no criminal law can be made retrospective, that is, for an act to become an offence, the essential condition is that it should have been an offence legally at the time of committing it. Moreover, no person accused of any offence shall be compelled to be a witness against himself. "Compulsion" in this article refers to what in law is called "Duress" (injury, beating or unlawful imprisonment to make a person do something that he does not want to do). This article is known as a safeguard against self incrimination. The other principle enshrined in this article is known as the principle of double jeopardy, that is, no person can be convicted twice for the same offence.
- Protection of life and personal liberty is also stated under right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by law. This means that a person's life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offence. (Attempted suicide being interpreted as a crime has seen many debates. The Supreme Court of India gave a landmark ruling in the year 1994. The court repealed section 309 of the Indian penal code, under which people attempting suicide could face prosecution and prison terms of up to one year. In the year 1996 however another Supreme Court ruling nullified the earlier one. "Personal liberty" includes all the freedoms which are not included in Article 19 (that is, the six freedoms). The right to travel abroad is also covered under "personal liberty" in Article 21.
- In 2002, through the 86th Amendment Act, Article 21(A) was incorporated. It made the right to primary education part of the right to freedom, stating that the State would provide free and compulsory education to children from six to fourteen years of age.
- Rights of a person arrested under ordinary circumstances is laid down in the right to life and personal liberty. No one can be arrested without being told the grounds for his arrest. If arrested, the person has the right to defend himself by a lawyer of his choice. Also an arrested citizen has to be brought before the nearest magistrate within 24 hours. The rights of a person arrested under ordinary circumstances are not available to an enemy alien. They are also not available to persons detained under the *Preventive Detention Act*. Under preventive detention, the government can imprison a person for a maximum of three months. It means that if the government feels that a person being at liberty can be a threat to the law and order or to the unity and integrity of the nation, it can detain or arrest that person to prevent him from doing this possible harm. After three months such a case is brought before an advisory board for review.^[30]

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

Child labour and *Begar*(forced labour) is prohibited under 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 labor), and abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. 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. Trafficking in humans for the purpose of 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.

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 which 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. Also, nothing in this article shall 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 which may be associated with religious practice, or providing for social welfare and reform.^[36]

Cultural and educational rights:

As India is a country of many languages, religions, and cultures, the Constitution provides special measures, in Articles 29 and 30, to protect the rights of the minorities. Any community which 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 State or State aided institutions.

All minorities, religious or linguistic, can set up their own educational institutions in order 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. But the right to administer does not mean that the State cannot interfere in case of maladministration. In a precedent-setting judgment in 1980, the Supreme Court held that the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards. It can also issue guidelines for ensuring the security of the services of the teachers or other employees of the institution. In another landmark judgment delivered on 31 October 2002, the Supreme Court ruled that in case of aided minority institutions offering professional courses, admission could only be through a common entrance

test conducted by State or a university. Even an unaided minority institution ought not to ignore the merit of the students for admission.

Right to constitutional remedies

Right to constitutional remedies empowers the citizens to move a court of law in case of any denial of the fundamental rights. For instance, in case of imprisonment, the citizen can ask the court to see if it is according to the provisions of the law of the country. If the court finds that it is not, the person will have to be freed. This procedure of asking the courts to preserve or safeguard the citizens' fundamental rights can be done in various ways. The courts can issue various kinds of *writs*. These writs are *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. When a national or state emergency is declared, this right is suspended by the central government.

"Freedom of press" has not been included in the right to freedom, which is necessary for formulating public opinion and to make freedom of expression more legitimate. Employment of child labor in hazardous job environments has been reduced, but their employment even in non-hazardous jobs, including their prevalent employment as domestic help violates the spirit and ideals of the constitution. More than 16.5 million children are employed and working in India. India was ranked 88 out of 159 in 2005, according to the degree to which corruption is perceived to exist among public officials and politicians worldwide. The right to equality in matters regarding public employment shall not be conferred to Overseas citizens of India, according to the *Citizenship (Amendment) Bill*, 2003.

Amendments

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 should not be less than the simple majority of the 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 off 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". Thus if a legislature makes a law depriving a person of his property, there would be no obligation on the part of the State to pay anything as compensation. The aggrieved person shall have no right to move the court under Article 32. Thus, the right to property is no longer a fundamental right, though it is still a constitutional right. If the government appears to have acted unfairly, the action can be challenged in a court of law by citizens.

The liberalisation of the economy and the government's initiative to set up special economic zones has led to many protests by farmers and have led to calls for the reinstatement of the fundamental right to private property. The Supreme Court has sent a notice to the government questioning why the right should not be brought back.

As in 2007 the supreme court unanimously said that the fundamental rights are a basic structure of the constitution and cannot be removed or diluted.

Right To Education

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 group, the Right of Children to Free and Compulsory Education Act, 2009 will directly benefit children who do not go to school at present.

Prime Minister Manmohan Singh announced the operationalisation of the Act. Children, who had either dropped out of schools or never been to any educational institution, will get elementary education as it will be binding on the part of the local and State governments to ensure that all children in the 6-14 age group get schooling. As per the Act, private educational institutions should reserve 25 per cent seats for children from the weaker sections of society. The Centre and the States have agreed to share the financial burden in the ratio of 55:45, while the Finance Commission has given Rs. 25,000 crore to the States for implementing the Act. The Centre has approved an outlay of Rs.15,000 crore for 2010-2011.

The school management committee or the local authority will identify the drop-outs or out-of-school children aged above six and admit them in classes appropriate to their age after giving special training.