

## Fundamental Rights

Part III of the Indian Constitution guarantees six fundamental rights to all the citizens:

- (a) Right to Equality (Articles 14–18),
- (b) Right to Freedom (Articles 19–22),
- (c) Right against Exploitation (Articles 23–24),
- (d) Right to Freedom of Religion (Articles 25–28),
- (e) Cultural and Educational Rights (Articles 29–30), and
- (f) Right to Constitutional Remedies (Article 32).

The Fundamental Rights are meant for promoting the idea of political democracy. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. They are justiciable in nature, that is, they are enforceable by the courts for their violation. The aggrieved person can directly go to the Supreme Court which can issue the writs of *habeas corpus*, *mandamus*, prohibition, *certiorari* and *quo warranto* for the restoration of his rights.

However, the Fundamental Rights are not absolute and subject to reasonable restrictions. Further, they are not sacrosanct and can be curtailed or repealed by the Parliament through a constitutional amendment act. They can also be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.

### 1. Right to Equality (Art. 14-18)

**(Article 14):** "the state shall not deny to any person equality before law or equal protection of the laws within the territory of India." It represents the idea of equality and while the two expressions may seem identical but in fact mean different things. While equality before law is a somewhat *negative* concept implying the absence of special privilege by reason of birth, creed or the like, in favour of any individual and equal subjection of all classes to the ordinary law, equal protection of law is a more positive concept implying right to equality of treatment in equal circumstances.

**(Article 15):** Non-discrimination on grounds of religion, race, caste, sex, or place of birth

The Article 15 states that the state shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth, or any of them and would not be subject to any disability, liability, restriction, or condition. Nothing in this article shall prevent the state from making any special provisions for women and children. Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the state from making any special provision by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or Scheduled Tribes.

**(Article 16):** Equality of opportunity in public employment

Article 16 states that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them, be ineligible for, or discriminated against in respect of any employment or office under the state.

It empowers Parliament to make a law prescribing any requirement as to residence within that state or UT prior to employment or appointment in that state or UT. It empowers the

state to make special provisions for the reservation of appointments or posts in favour of any backward classes of citizens.

**(Article 17): Abolition of Untouchability**

Article 17 abolishes Untouchability and forbids its practice in any form. Untouchability refers to a social practice which looks down upon certain oppressed classes solely on account of their birth and makes any discrimination against them on this ground.

**(Article 18): Abolition of Titles**

Article 18 abolishes all titles and prohibits the state to confer titles on anybody whether a citizen or a non-citizen. However, military and academic distinctions are exempted from the prohibition.

**2. (Article 19): Right to Freedom**

The Right to Freedom guarantees to the citizens of India six Fundamental Freedoms: 1) Freedom of Speech and Expression, 2) Freedom of Assembly, 3) Freedom to form associations, 4) Freedom of Movement, 5) Freedom to reside and to settle, and 6) Freedom of profession, occupation, trade, or business.

**(Article 20): Protection in respect of Conviction for Offences**

Article 20 provides protection against arbitrary and excessive punishment to any person who commits an offence. This article has taken care to safeguard the rights of persons accused of crimes. Moreover, this article cannot be suspended even during an emergency in operation under Article 359.

**(Article 21): Protection of Life and Personal Liberty**

Article 21 states no person shall be deprived of his life or personal liberty except according to procedure established by law. However, Article 21 puts a limit on the power of the State given under Article 246, read with the legislative lists. Thus, Article 21 does not recognise the Right to Life and Personal Liberty as an absolute right but limits the scope of the right itself.

**(Article 22): Safeguards against Arbitrary Arrest and Detention**

Firstly, Article 22 guarantees the right of every person who is arrested to be informed of the cause of his arrest; secondly, his right to consult, and to be defended by a lawyer of his choice. Thirdly, every person arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours and shall be kept in continued custody only with his authority.

**3. (Articles 23-24): Right against Exploitation**

Article 23 prohibits traffic in human beings, women, children, beggars or other forced labour militate against human dignity. prohibits employing children below the age of 14 years in any hazardous profession. This right followed the human rights concepts and United Nations norms.

**4. (Articles 25-28): Right to Freedom of Religion**

Articles 25 and 26 embody the principles of religious tolerance and serve to emphasise 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 promotion or maintenance of any particular religion. Article 28 prohibits religious instructions in educational institutions wholly maintained by the state.

#### **5. (Articles 29-30): Rights to minorities (cultural and educational rights)**

Article 29 provides protection of interests of minorities. A minority community can effectively conserve its language, script, or culture by and through educational institution. Article 30 states rights of minorities whether based on religion or language to establish and administer educational institutions.

The 44th Amendment has **abolished the Right to Property as a Fundamental Right** guaranteed by Art. 19 (f) and **Art. 31** of the Constitution. It is now only a Legal Right under article 300-A, gives protection against executive action but not against legislative action.

### **RIGHT TO CONSTITUTIONAL REMEDIES (ARTICLE 32)**

Article 32 of the Indian constitution provides for constitutional remedies against the violation or transgression of fundamental rights. The fundamental rights are of highest importance to the individuals. They are basic conditions for the fullest development of personality.

Article 32, which was referred to "as the very soul of the constitution" by Dr. Ambedkar, provides for constitutional remedies. Clause 2 of Article 32 provides that, "The Supreme Court shall have the power to issue directions or order or writs including the writs in the nature of habeas corpus, mandamus, prohibition, Quo warranto and criterion, whichever may be appropriate for the enforcement of any of the rights conferred by" fundamental rights.

The citizens are given the right to move—the Supreme Court in case of transgression of fundamental rights. The Supreme Court thus is constituted into a **protector and guarantor** fundamental rights. The right to constitutional remedy is itself a fundamental right.

Besides the Supreme Court, the High Courts also have been given a role in the protection of fundamental rights. Under Art. 226 of the constitution, High Courts also can issue writs for the enforcement of fundamental rights.

In case of transgression of fundamental rights the Supreme Court or the High Courts may issue five kinds of writs.

These are writs of Habeas Corpus, Mandamus, Prohibition, Criterion, and Quo Warranto.

1. **Habeas Corpus**—Habeas Corpus literally means 'to have a body'—that human person is sacred. Hence no man may be detained illegally. Whenever a man is detained, he must be produced before a court. This writ is a powerful safeguard against arbitrary arrest and detention.

2. **Mandamus**—meaning 'command', mandamus calls upon public servants to perform some duties. Thus mandamus is issued against dereliction of duty.
3. **Prohibition**—as the very term prohibition—suggests, this writ is issued by the Supreme Court or the High Courts, to prohibit inferior courts under them to overstep their jurisdiction.
4. **Certiorari**—it enables a superior court or compels inferior courts to submit records of proceedings to the higher court.
5. **Quo warranto**—literally means 'by what right'. This writ is issued to determine the legality of a person's claim to public office. The purpose of this writ is to prevent usurpation of a public office by an undesirable or, unqualified person.

### **Limitations**

Like fundamental rights themselves, the right to constitutional remedies under Article 32 is not without limits. The constitution visualises the situations when fundamental rights may be denied, constitutional remedies will not be available i.e. Article 32 will not be applicable.

**Article 33** empower the Parliament to modify application of fundamental rights to armed forces and the Police to ensure proper discharge of their duties.

Secondly, under **Article 34**, during the operation of Martial law in any area, the Parliament may indemnify(compensate) any person in the service of the central or a state government for acts for the maintenance or restoration of law and order.

Thirdly, during emergency proclaimed under Art 352 of the constitution, the fundamental rights guaranteed to the citizens, will remain suspended except the rights guaranteed by Articles 20 and 21.

Article 358 authorise the Parliament to restrict fundamental rights guaranteed by Art 19 during the pendency of an emergency under Article 352.

Article 359 empowers the President to suspend the right to move the courts for the restoration of fundamental rights. In other words, Article 359 empowers the President to suspend Art 32 of the constitution. Such an order however is to be submitted to the Parliament, and the Parliament has the right to disapprove the Presidential order.

Therefore, Fundamental Rights play a significant role because they are most essential for the attainment of 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.