



Fundamental Rights

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'Fundamental Right' is the modern name for what has been traditionally known as 'natural right'.

*Justice Subba Rao,
Former Chief Justice of India in Golak Nath v. State of Punjab
(MANU/SC/0029/1967)*

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‘Fundamental Rights’: What Does It Mean?

Every individual has certain basic inalienable rights and it is the function of the State to protect, preserve and nourish these rights.

They are the rights or freedoms which are necessary for overall development of a person.

Part III of the Indian Constitution guarantees, protects, preserves and nourishes these rights in India.

Some of these rights are available to every person, irrespective of his/her nationality, while some of them are available exclusively to the citizens of India.

These rights are freedoms guaranteed but these freedoms are not absolute, but are justifiable.

‘Justifiable’ means enforceable in the Court of law.

Did you know?

The fundamental rights differ from an ordinary legal right in a way that the legal rights are protected and enforced by ordinary law which the Parliament has enacted deriving its power from the Constitution.

On the contrary the fundamental rights are guaranteed and protected by the Constitution and any person can directly approach the Supreme Court, under Article 32, or the High Court, under Article 226, for enforcing such rights.

Basic Fundamental Rights

- Right to Equality (Article 14 to 18)
- Right to Freedom (Article 19 to 22)
- Right Against Exploitation (Article 23 to 24)
- Right to Freedom of Religion (Article 25 to 28)
- Right to Cultural and Educational Rights (Article 29 to 30)
- Right to Constitutional Remedies (Article 32)

‘Article 21A’ of the Constitution which guarantees the fundamental right to education was inserted in the Constitution in the year 2002 vide 86th amendment to the Constitution.

Did you know?

Undefined But Recognised Constitutional Rights

(The list is not exhaustive)

- Right to Dignity
- Right to Privacy
- Right to Fair Labour Practices
- Right to Healthy Environment
- Right to Protection of Environment
- Right to Adequate Housing
- Right to Healthcare
- Right to Food
- Right to Clean Water
- Right to Social Security
- Right to Sleep
- Right to Information
- Right to Go Abroad
- Right Against Solitary Confinement
- Right of Prisoners Against Bar Fetters
- Right to Legal Aid
- Right to Speedy Trial
- Right Against Handcuffing
- Right Against Custodial Violence
- Right Against Public Hanging
- Right to Shelter
- Right to Doctor's Assistance at Government Hospitals
- Right to Freedom from Torture
- Right to Reputation
- Right to Earn a Livelihood

Fundamental Rights Are Not Absolute

No right is per se absolute in nature.

All rights, whether recognised by constitution or otherwise, are subject to certain reasonable limitations or restrictions.

The restrictions imposed on fundamental rights strike a balance between individual rights and State's interest.

Even the basic 'right to life' can be taken away in accordance with the procedure established by law.

However, any such restriction limiting the scope of fundamental rights must pass the 'test of reasonableness'.

Such restrictions or limitations should not be arbitrary, artificial or evasive.

Such restrictions must also be just, fair and reasonable.

'Article 13' makes all laws and administrative actions which abridges or tends to abridge the fundamental rights *ipso facto* null and void.

Did you know?

Suspension of Fundamental Rights

In case of proclamation of emergency by the President under Article 352 of the Constitution, all the fundamental freedoms guaranteed under Article 19 gets suspended automatically.

An emergency under Article 352 can be proclaimed on grounds of armed rebellion, war or external aggression.

In case of proclamation of emergency under Article 352 of the Constitution, the President is empowered to suspend the right to move any court for enforcement of fundamental rights.

However, the suspension of the right to move court does not cover the rights guaranteed under Article 20 & 21 of the Constitution.

Importantly, such suspension of the right to move court does not operate automatically and the President has to specifically order such suspension.

State: Definition

The Constitution cast the onerous obligation of protecting and guaranteeing the fundamental rights of every individual upon the State.

Article 12 of the Constitution defines the term 'State'.

State includes:

Government of the Union;

Government of each State;

The Parliament of India;

The Legislature of each State;

All local and other authorities within the territory of India or under the control of Government of India.

Did you know?

Corporation may or may not amount to 'State' under Article 12 depending on the below mentioned factors:

- It would be a 'State' if it is wholly controlled by the Government in its policy-making and in discharge of its function.
- It would be a 'State' if the entire share capital is held by Government.
- It would be a 'State' if it discharges functions of public importance which makes it an instrumentality of Government.
- It may or may not be a 'State' if the Corporation established by statute has no shares or shareholders but if its administration is in hands of Board of Directors appointed by the Government.

Right to Equality

Constitutional Provision: Article 14

It says that the State shall not deny to any person equality before law and equal protection of the laws.

Right to Equality has three dimensions:

Equality before the law

Rule of law

Equal protection of the laws

Dimensions of Equality

'Equality before the law' means that the State must not accord special privilege to any person.

The concept works on the principle 'be you ever so high, the law is above you' and establishes the rule that 'all are equal in the eyes of law'.

'Rule of law' means that no man is above law and that every person is subject to the jurisdiction of ordinary Courts.

'Equal protection of the laws' directs the State to give equal treatment to those who are in equal circumstances.

It doesn't mean that the same law shall be made applicable to all throughout the territory of India without any regard to the difference in circumstances.

It means that the same law is applicable to those who are similarly placed.

Dicey's Concept of the Rule of Law

It says that "no man is above the law and everyone, whatever his condition or rank is, is subject to the ordinary laws of the land".

It means 'absence of arbitrary power of the government' and absolute supremacy of the law.

It means everyone will be charged equally to the same law and be subject to the same law courts. Governments and citizens will obey the same law and no special treatment will be given to anyone.

The rule of law indicates that the general principles of the constitution are the result of judicial decisions of the courts in England.

Rights such as right to speak in public, freedom to organize a public meeting and right to vote are guaranteed by a written constitution in most countries but in England, it is not so.

Doctrine of Classification

The Courts have evolved the principle that if some differentiation is based on rational classification, it is not regarded as discrimination.

However, any such classification must be just, fair and reasonable and based on an intelligible differentia and it must not be arbitrary, artificial and evasive.

Article 14 permits reasonable classification but prohibits class legislation.

The rule of natural hearing is implicit in Article 14 which prescribes that 'no person shall be condemned unheard and every person shall be given a reasonable opportunity of being heard'. This principle is based on the maxim '*audi alterem partem*' and is applicable to both judicial and quasi-judicial proceedings.

Did you know?

Prohibition of Discrimination on Religion

Constitutional Provision: Article 15

It prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth or any of them.

Its object is to foster national identity and to set right the wrong and misplaced social practices in the Country.

This Article is applicable only to the citizens.

It says that religion, race etc., alone cannot be grounds for discrimination, but such classifications coupled with some other reasonable grounds can be a ground for discrimination.

Principles Laid Down Under Article 15

Article 15(1): State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth or any of them.

Article 15(2): No citizen shall be subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment, the use of well, tanks, bathing ghats, roads and places of public resort only on the grounds mentioned hereinabove.

Article 15(3): State is empowered to make special provisions for women and children.

Article 15(4): State is empowered to make special provisions in favour of Socially and Educationally Backward Class of Citizens and Scheduled Castes & Scheduled Tribes.

'Article 15(4)' of the Constitution which speaks for special provisions in favour of Socially and Educationally Backward Class of Citizens and Scheduled Castes & Scheduled Tribes was added by the Constitution (First Amendment) Act, 1951.

Did you know?

Equal Opportunity in Public Employment

Constitutional Provision: Article 16

It speaks for equality of opportunity in matters relating to employment to only offices under the State.

It commands that there shall be no discrimination on grounds only of religion, race, caste, sex or place of birth or any of them in matters relating to employment.

It also empowers the State to make reservation of posts in Government jobs in favour of backward class of citizens who have not been adequately represented.

It also empowers the State to make reservation in matters of promotion of SCs and STs citizens.

Article 16(4) permits reservation as being an exception to the Constitutional principle of right to equality enshrined in Article 16(1).

The Supreme Court of India has ruled in ***Indra Sawhney v. Union of India*** ***MANU/SC/0104/1993 (Mandal case)*** that “the total reservation for SC/ST and other backward classes or special categories should not exceed 50 percent.”

Did you know?

Abolition of Untouchability, Titles

Constitutional Provision: Article 17 and 18

Article 17 lays down that untouchability is abolished and its practice in any form is forbidden.

The enforcement of any disability arising out of untouchability shall be an offence.

Article 18 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.

Protection of Civil Rights Act, 1955 was enacted to prescribe punishment for the preaching and practice of "Untouchability" for the enforcement of any disability arising therefrom. The Act repealed the Untouchability (Offences) Act, 1955 which was the governing law on this subject prior to its enactment in the year 1955.

Did you know?

Protection of Basic Freedoms

Article 19 of
the
Constitution
of India.

Freedom of Speech and Expression

Freedom to Assemble

Freedom to Form Associations and Unions

Freedom of Movement

Freedom of Residence

Freedom of profession, occupation, trade
of business

Freedom of Speech and Expression

It is the foundation on which a successful democracy is based.

It includes right to express one's own convictions and opinions freely by words, writings, pictures and the likes.

It means expression of ideas through any medium of communication or visible representation.

It connotes freedom of press and liberty of circulation.

It includes liberty to propagate one's own opinion, belief.

It also includes the right to information.

These freedoms are subject to certain reasonable restrictions enumerated under Article 19 (2).

Freedom to Assemble

It guarantees to the citizens the right to assemble peaceably.

Such an assembly must be peaceful and without arms.

It includes the right to hold meetings, demonstrations and to take out processions.

It does not sanction the meeting of any unlawful assembly.

An assembly of five or more persons becomes unlawful when the common object of the persons composing the assembly is to:

1. overpower the Government or any public servant in the exercise of his lawful powers,
2. take possession of any property,
3. resist the execution of any law,
4. compel a person to do what he is legally not bound to do or omit what he is legally bound to do,
5. commit any criminal trespass.

[Section 141 of the Indian Penal Code, 1860]

Freedom to Form Associations & Unions

It provides the freedom to form associations or unions which enables the formation of political parties, trade unions etc.,

Right to form associations includes the right not to be compelled to join an association.

Right to strike is not a fundamental right and the same can be controlled by appropriate legislation.

Such a right is subjected to certain reasonable restrictions as enumerated under Article 19(4).

Freedom of Movement

It guarantees the right to move freely throughout the territory of India.

It includes the right to move from one part of the country to the other.

Such a freedom can be restricted on the grounds of interest of general public or for the protection of the interest of any Scheduled Tribes.

The reasonable restrictions are enumerated under Article 19(5).

Freedom of Residence

It guarantees the right to reside and settle in any part of the territory of India.

Right to reside and right to move freely go hand in hand.

Such a freedom can be restricted on the grounds of interest of general public or for the protection of the Scheduled Tribes.

The reasonable restrictions are enumerated under Article 19(5).

Freedom of Profession, Trade, Occupation or Business

It guarantees the freedom to practice any profession, carry on any occupation, trade or business.

However, such profession, occupation, trade or business must not be illegal and it must be commercial in nature.

Such a freedom can be restricted on the grounds of interest of general public or the State.

The reasonable restrictions are enumerated under Article 19(6).

Fundamental Freedoms & Their Restrictions

Freedom of speech & expression [Article 19 (1) (a)]	<ul style="list-style-type: none"> • Sovereignty & integrity of India • Security of the State • Friendly relations with foreign friends • Public Order • Decency • Morality • Contempt of Court • Defamation • Incitement of an offence [Article 19(2)]
Freedom to assemble peaceably and without arms [Article 19 (1) (b)]	<ul style="list-style-type: none"> • Sovereignty & integrity of India • Public Order [Article 19(3)]
Freedom to Form Associations and Unions [Article 19 (1) (c)]	<ul style="list-style-type: none"> • Sovereignty & integrity of India • Public Order • Morality[Article 19(4)]
Freedom to move freely throughout the territory of India [Article 19 (1) (d)]	<ul style="list-style-type: none"> • In the interest of general public • For the protection of the interests of any Scheduled Tribes [Article 19(5)]
Freedom to reside and settle in any part of the territory of India [Article 19 (1) (e)]	
Freedom of profession, occupation, trade of business [Article 19 (1) (g)]	<ul style="list-style-type: none"> • In the interest of general public • Prescribing professional or technical qualifications for practising any profession etc., • Carrying on of any business by the State to the complete or partial exclusion of citizens [Article 19(6)]

Protection in Respect of Conviction for Offences

Constitutional Provision: Article 20

It guarantees three basic protections to every person who are connected with conviction of offences:

1. Ex post facto law
2. Double jeopardy
3. Prohibition against self-incrimination

Confession by an accused while in custody is not admissible unless made in the immediate presence of the Magistrate.

Did you know?

Ex post facto law

It says that no person shall be convicted of any offence except for the violation of a law for the time being in force.

It also says that no person shall be subject to a penalty greater than that which might have been inflicted under the law in force.

An act which is in violation of law must be declared as an offence by any law in force at the time of commission of such act.

Double Jeopardy

It says that no person shall be convicted twice for the same offence.

The protection extends not only to conviction, but to prosecution also. As such, no person shall be prosecuted and punished for the same offence more than once.

The rule of double jeopardy comes into picture only when prosecution and punishment is for an identical offence.

Prohibition Against Self-incrimination

It says that no person shall be compelled to be a witness against himself.

It is a right available to a person who is accused of an offence.

It is basically a protection against compulsion to be a witness.

However, the protection is available only when a person is compelled to give evidence 'against himself'.

Right to Life and Personal Liberty

Constitutional Provision: Article 21

This safeguard is available to both the citizens and the non-citizens.

It says, "No person shall be deprived of his life and personal liberty except according to the procedure established by law".

Article 14, 19, 21 are not mutually exclusive and are interlinked.

A rule or a law prescribing procedure for deprivation of rights guaranteed under Article 21 must satisfy the test of reasonableness or the test of Article 14, 19, 21.

The expression 'personal liberty' is of widest amplitude and should not receive narrow interpretation by the Court of law.

It includes the 'right to live with human dignity and all that goes along with it'.

Right to livelihood, to food, to shelter, to privacy, to health, to education, to healthy environment, to free legal aid, to speedy trial are some of the derivatives of Article 21 which is now well recognised by the Supreme Court of India.

Did you know?

Prohibition Against Arrest and Detention in Certain Cases

Constitutional Provision: Article 22

It prescribes the procedure to be followed while arresting any person and when a person is in preventive detention.

Since both 'arrest' and 'detention' tends to interfere with the person's right to life with liberty, the procedure regulating such arrest and detention must be prescribed by law and it must be just, fair and reasonable.

No preventive detention law shall provide for detention for a period longer than 3 months.

Article 21A guarantees the right to free and compulsory education to all children between the age of 6 to 14 years.

Did you know?

Basic Rights of a Arrested Person

Right to be informed about the grounds of arrest.

Right to consult a lawyer of his choice.

Right to be produced before the Magistrate within 24 hours of arrest.

Article 22 of
the
Constitution
of India.

Right Against Exploitation

Constitutional Provision: Article 23 and 24

Article 23 prohibits trafficking in human beings and forced labour.

Article 24 prohibits employment of children in factories etc.

Trafficking in human beings means 'buying and selling' of human beings and includes immoral trafficking in women and children for immoral or other purposes.

Article 24 is in accordance with the directive principles under Article 39 which states that the State is under an obligation to ensure the health and strength of workers.

It prohibits employment of children below the age of fourteen years in any factory, mine or other hazardous engagement.

In India, trafficking in human beings is regulated by the Immoral Traffic (Prevention) Act, 1956 which declares it as a punishable offence.

The operating law on prohibition of employment of children in hazardous employment is the Child Labour (Prohibition and Regulation) Act, 1986.

Did you know?

Right to Freedom of Religion

Constitutional Provision: Article 25-28

The Preamble to the Indian Constitution declares India to be a Secular State.

State is under an obligation to treat all religions and religious denominations alike.

Article 25: It includes the freedom of conscience and free profession practice and propagation of religion.

Article 26: It includes the freedom to manage religious affairs.

Article 27: It includes freedom as to payment of taxes for promotion of any particular religion.

Article 28: It includes freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Cultural and Educational Rights

Constitutional Provision: Article 29-30

Article 29: It protects the interest of minorities.

Article 28: It guarantees the right of minorities to establish and administer educational institutions.

It provides the right to any section of the citizens having a distinct language, culture or script of its own to conserve the same.

It also provides the right to establish and manage educational institutions to minorities.

However, no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Right to Constitutional Remedies

Constitutional Provision: Article 32-35

Article 32 is the heart and soul of the Indian Constitution.

It guarantees the right to move the Supreme Court for enforcement of fundamental rights.

The Supreme Court has the power to issue directions or orders of writs which may include writs in the nature of
habeas corpus,
mandamus,
certiorari,
prohibition and
quo warranto.

Right to Constitutional Remedies

Article 32 can only be suspended in accordance with the provisions established by the Constitution itself and not otherwise.

The right to enforce a fundamental right is itself a fundamental right by virtue of Article 32.

The writ jurisdiction of Supreme Court can only be invoked in cases of violation of a fundamental right.

A Public Interest Litigation (PIL) may also be filed under Article 32 by any public spirited person for enforcement of any fundamental right that affects the public at large.

Thank You!

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