

Fundamental rights in Indian Constitution

Introduction

The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA (i.e., Bill of Rights). Part III of the Constitution is rightly described as the *Magna Carta* of India. It contains a very long and comprehensive list of 'justiciable' Fundamental Rights. In fact, the Fundamental Rights in our Constitution are more elaborate than those found in the Constitution of any other country in the world, including the USA.

The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation. The Fundamental Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people against the invasion by the State. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. In short, they aim at establishing 'a government of laws and not of men'. The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land.

They are 'fundamental' also in the sense that they are most essential for the all-round development (material, intellectual, moral and spiritual) of the individuals.

Originally, the Constitution provided for seven Fundamental Rights viz,

1. Right to equality (Articles 14–18)
2. Right to freedom (Articles 19–22)
3. Right against exploitation (Articles 23–24)
4. Right to freedom of religion (Articles 25–28)
5. Cultural and educational rights (Articles 29–30)
6. Right to property (Article 31)7. Right to constitutional remedies (Article 32)

However, the right to property was deleted from the list of Fundamental

Rights by the 44th Amendment Act, 1978. It is made a legal right under

Article 300-A in Part XII of the Constitution. So at present, there are only

six Fundamental Rights.

1. Right to Equality ,Art (14 TO 18)

1. Equality before law and equal protection of law (Article 14) of the Indian Constitution guarantees that the State shall not deny any person equality before the law or the equal protection of the laws within India. This right applies to all individuals, including both citizens and foreigners. Additionally, the term "person" includes legal entities such as corporations, companies, and registered societies.

The idea of "**equality before the law**" comes from the British legal system and means:

1. No individual is given special privileges.

2. Everyone is equally subject to the ordinary law enforced by regular courts.
3. No person, regardless of status, is above the law.

The "**equal protection of laws**" concept is taken from the U.S. Constitution and means:

1. People in similar situations should be treated the same.
2. The same laws should apply equally to those in identical circumstances.
3. Similar cases should be handled similarly without discrimination.

Essentially, "equality before the law" is a **negative** concept (ensuring no special privileges), while "equal protection of laws" is a **positive** concept (ensuring fairness in legal treatment). Together, they aim to establish **legal equality, fair opportunities, and justice**.

2. Prohibition of Discrimination on Certain Grounds (Article 15)

Article 15 states that the government cannot **discriminate** against any citizen **only** based on religion, race, caste, sex, or place of birth. Here, the key terms are:

- **Discrimination** – treating someone unfairly compared to others.
- **Only** – meaning that discrimination based on other factors is not explicitly prohibited by this article.

Protection Against Discrimination

The law ensures that no citizen faces **restrictions, liabilities, or conditions** based solely on religion, race, caste, sex, or place of birth when it comes to:

1. **Access to public places** like shops, restaurants, hotels, and entertainment venues.

2. **Use of public facilities** such as wells, tanks, roads, and bathing areas that are either maintained by the government or open to the public.

This provision applies to **both the government and private individuals**, meaning that no one can deny someone access to these facilities based on these factors.

Exceptions to the Rule

There are **four important exceptions** where the government can make special provisions for certain groups:

1. **For Women and Children** – The government can introduce policies to help women and children, such as **reserving seats for women in local government bodies** or **providing free education for children**.
2. **For Socially and Educationally Backward Classes** – Special provisions can be made for **Scheduled Castes (SCs), Scheduled Tribes (STs), and other backward classes (OBCs)**, such as **reserved seats in schools and colleges or fee concessions**.
3. **For Admission to Educational Institutions** – The government can ensure **special provisions for backward classes, SCs, and STs in both government and private educational institutions** (except minority institutions).
4. **For Economically Weaker Sections (EWS)** – The government can reserve **up to 10% of seats** in educational institutions (including private institutions, except minority-run ones) for people from economically weaker backgrounds. The criteria for this are based on **family income and other economic factors**, which the government decides over time.

This **10% reservation** is in addition to the already existing reservations for SCs, STs, and OBCs.

3. Equality of Opportunity in Public Employment (Article 16)

Article 16 ensures that **all citizens have equal opportunities** when it comes to **government jobs** or appointments to public offices. It means that no one can be denied a job **only** because of their **religion, race, caste, sex, family background, place of birth, or residence**.

Exceptions to Equal Opportunity

There are **four exceptions** where the government can make special rules:

1. **Residence Requirement for Certain Jobs** – Parliament can set **residency rules** for specific jobs in a **state, union territory, or local government**. However, after the **Public Employment (Requirement as to Residence) Act of 1957** expired in **1974**, such restrictions no longer exist, except in **Andhra Pradesh and Telangana**.
2. **Reservation for Backward Classes** – The government can **reserve jobs for socially and educationally backward communities** if they are **not adequately represented** in government services.
3. **Religious Institutions** – A law can require that certain **religious offices or positions** (such as those in a temple, mosque, or church) be **held only by members of that religion**.
4. **Reservation for Economically Weaker Sections (EWS)** – The government can **reserve up to 10% of jobs** for people from **economically weaker sections (EWS)**. This is **in addition to existing reservations** for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). The criteria for EWS are decided by the government based on **family income and other economic factors**.

Abolition of Untouchability (Article 17)

Article 17 **completely abolishes untouchability** and **forbids its practice in any form**. If anyone **enforces untouchability** and causes harm to another person because of it, they will be **punished under the law**.

Legal Protection Against Untouchability

- In **1976**, the **Untouchability (Offences) Act, 1955** was **renamed and strengthened** as the **Protection of Civil Rights Act, 1955** to make punishments **stricter** and expand its coverage.
- This law defines **civil rights** as the rights given to people because **untouchability has been abolished** under the Constitution.

Meaning of Untouchability

- The **Constitution and the law do not define** the exact meaning of "untouchability."
- However, the **Mysore High Court** ruled that it refers to the **historical practice of discrimination against certain groups** in India based on their **birth in a particular caste**.
- It **does not** include situations like **social boycotts of individuals** or **exclusion from religious events** for other reasons.

State's Responsibility

- The **Supreme Court** has ruled that **Article 17 applies to private individuals** as well.
- It is the **government's duty** to take action to **prevent and punish any violations** of this right.

Abolition of Titles (Article 18)

Article 18 **bans hereditary titles of nobility** like **Maharaja, Raj Bahadur, Rai Bahadur, Rai Saheb, and Dewan Bahadur**, which were given by colonial rulers. These titles go against the **principle of equal status for all citizens**.

National Awards and Article 18

- In **1996**, the **Supreme Court ruled** that national awards like **Bharat Ratna, Padma Vibhushan, Padma Bhushan, and Padma Shri** are **not considered titles** under Article 18.
- The court clarified that **only hereditary titles** (which pass from one generation to another) are banned.

- National awards **recognize merit and achievements**, which is not against the idea of equality.

Restriction on Using Awards as Titles

- Award winners **cannot use these honors as prefixes or suffixes** with their names.
- If they do, they may **lose their awards**.

Right to Freedom, Art (19-22)

1. Protection of Six Fundamental Rights (Article 19)

Article 19 guarantees **six important rights** to all **citizens** of India:

1. **Freedom of Speech and Expression** – Every citizen can **express their thoughts** through speech, writing, printing, pictures, or any other method.
2. **Freedom to Assemble Peacefully** – People can **gather** for meetings, demonstrations, or processions as long as they **are unarmed and peaceful**.
3. **Freedom to Form Associations or Unions** – Citizens can **form political parties, trade unions, clubs, and organizations**, including cooperative societies.
4. **Freedom of Movement** – People can **move freely anywhere** within India.
5. **Freedom to Reside and Settle** – Citizens can **live and settle** in any part of the country.
6. **Freedom to Choose a Profession or Business** – People can **take up any profession, trade, or business** of their choice.

Initially, there were **seven** rights, but the **right to own and sell property** was removed in **1978** by the **44th Amendment Act**.

Who Can Enjoy These Rights?

- These rights **only apply to Indian citizens**, not foreigners or corporations.

- They **protect citizens only from government actions**, not from private individuals.
- The **government can impose reasonable restrictions** on these rights **only on specific grounds** mentioned in **Article 19**.

1. Freedom of Speech and Expression

Every citizen has the right to express their **opinions, beliefs, and ideas**. The **Supreme Court** has clarified that this right includes:

- The **right to share** personal views and those of others.
- **Freedom of the press** to publish news.
- **Right to advertise** for businesses.
- **Protection from phone tapping**.
- **Right to broadcast on TV and radio** (government does not have a monopoly).
- **Right to information** about government activities.
- **Freedom to remain silent** (not forced to speak).
- **No pre-censorship on newspapers**.
- **Right to protest or demonstrate**, but **not** the right to **strike**.

Restrictions on Speech

The government can limit freedom of speech **for reasons such as**:

- Protecting India's **sovereignty and integrity**.
- **National security**.
- Maintaining **friendly relations with other countries**.
- **Public order and morality**.
- Preventing **defamation, contempt of court, or incitement to crime**.

2. Freedom of Assembly

Every citizen has the right to **gather in public** for **meetings, protests, or processions** as long as they are **peaceful and unarmed**.

- **Violent gatherings** or those that **disturb public peace** are **not protected**.
- **Strikes** are **not a fundamental right**.

- The government can restrict gatherings if they **threaten national security** or **public order**.
- **Under Section 144 of the Criminal Procedure Code (1973)**, a magistrate can **ban gatherings** if they could cause **violence, riots, or threats to public safety**.
- **Under Section 141 of the Indian Penal Code**, a gathering of **five or more people** is **unlawful** if its purpose is to:
 - Resist the execution of **law**.
 - **Forcefully** take someone's property.
 - Commit **criminal acts**.
 - **Threaten the government**.

3. Freedom to Form Associations

Every citizen has the right to **form or join** any association, **political party, trade union, club, or cooperative society**.

- People also have the **right to refuse** to join any association.
- The **government does not have to recognize** an association.

The government can **ban or restrict** associations if they:

- **Threaten national security**.
- **Disturb public order**.
- **Violate morality**.

The Supreme Court ruled that **trade unions do not have a fundamental right to strike** or demand collective bargaining.

4. Freedom of Movement

Every citizen can **travel anywhere within India** without restrictions.

- This strengthens **national unity** and prevents regional divisions.

The government can restrict movement:

- **For public safety or public health**.
- **To protect scheduled tribes**, ensuring their **culture, traditions, and land** are not exploited.

For example:

- **Prostitutes** can be restricted from certain areas for public morality.
- **AIDS patients** were restricted in Bombay for public health reasons.

This freedom has **two parts**:

1. **Internal movement** (within India) – Protected under **Article 19**.
2. **External movement** (leaving and returning to India) – Covered under **Article 21**.

5. Freedom to Reside and Settle

Citizens can **live anywhere in India** and **settle permanently** in any state.

- This removes **internal barriers** between states and promotes **national unity**.
- The government can restrict settlement for:
 - **Public safety**.
 - **Protecting scheduled tribes**, to **preserve their culture and traditions**.
- In some areas, **tribals have the right to regulate their own land laws**.
- Certain areas can **ban criminals, prostitutes, or habitual offenders** from residing there.

This right **overlaps with freedom of movement**—both work together to give citizens full mobility.

6. Freedom to Choose a Profession or Business

Every citizen has the **right to earn a living through any job, profession, trade, or business**.

The government can limit this right:

- **For public interest** (e.g., banning harmful industries).
- **By requiring professional qualifications** (e.g., doctors and lawyers need special training).
- **By running businesses itself**, either:
 - As a **monopoly** (government has exclusive control).
 - In **competition with private businesses**.
- **Illegal businesses** like human trafficking, drug trade, or selling explosives **are not protected**.
- The government can **ban or regulate** such professions **through licensing**.

Protection Against Punishment for Crimes (Article 20)

Article 20 **protects individuals from unfair or excessive punishment** when they are accused of a crime. This protection applies to **everyone**, including **citizens, foreigners, and legal entities like companies**.

It provides **three key safeguards**:

1. No Ex-Post-Facto Laws

- A person **cannot be punished** for an act that was **not a crime at the time they did it**.
- The **punishment** for a crime **cannot be increased** after the act has already been committed.
- This rule applies **only to criminal laws**, not **civil or tax laws**. The government can **apply new taxes or civil liabilities retroactively**.
- **Trials under new laws are allowed**, but punishment under new laws is not.
- **Does not apply to preventive detention or security measures**.

2. No Double Jeopardy

- A person **cannot be punished twice** for the **same crime**.
- This applies **only to legal trials in a court**, not to **internal disciplinary actions by government or private organizations**.

3. No Self-Incrimination

- A person accused of a crime **cannot be forced to testify against themselves.**
- This applies to **both spoken statements and written evidence.**
- However, this protection **does not include:**
 - Being **forced to submit material evidence** (like weapons or stolen goods).
 - Giving **thumbprints, signatures, or blood samples.**
 - Being **physically examined** as part of an investigation.
- This safeguard applies **only in criminal cases**, not **civil cases.**

Protection of Life and Personal Liberty (Article 21)

Article 21 states that **no person** can be **denied their life or personal freedom** unless it follows a **legal process**. This right is **for everyone**, including **citizens and non-citizens.**

How the Supreme Court Interpreted Article 21

- **Initially (1950 - Gopalan Case):** The Supreme Court **interpreted this law narrowly**, saying that the government **could take away life or personal liberty** as long as there was a **law in place**, even if the law was unfair or unjust.
- **Later (1978 - Menaka Case):** The Supreme Court **changed its stance** and ruled that any law taking away life or liberty **must be fair, just, and reasonable**. This decision **gave more protection to personal liberty** and ensured that laws **cannot be arbitrary or unfair.**
- The Court also said that the **right to life is not just about survival**, but includes **living with dignity and having a meaningful life.**

Rights Under Article 21

The **Supreme Court expanded Article 21** to include many rights essential for a **dignified life**, such as:

1. **Right to live with dignity.**
2. **Right to a clean environment**, including **pollution-free water and air.**
3. **Right to livelihood** (the ability to earn a living).
4. **Right to privacy.**
5. **Right to shelter.**
6. **Right to health and medical treatment.**
7. **Right to free education** for children up to **14 years old.**
8. **Right to legal aid** for those who cannot afford lawyers.
9. **Right against solitary confinement** (keeping prisoners alone for long periods).
10. **Right to a speedy trial** (not keeping people in jail without a fair trial).
11. **Right against handcuffing** (no unnecessary restraints on prisoners).
12. **Right against cruel or inhuman treatment.**
13. **Right against delayed execution** (prisoners on death row cannot be left waiting indefinitely).
14. **Right to travel abroad.**
15. **Right against bonded labor** (forcing someone to work against their will).
16. **Right against custodial torture or harassment.**
17. **Right to emergency medical aid.**
18. **Right to timely treatment in government hospitals.**
19. **Right not to be forced out of a state.**
20. **Right to a fair trial.**
21. **Right of prisoners to basic necessities.**
22. **Right of women to be treated with dignity.**
23. **Right against public hangings.**
24. **Right to roads in hilly areas.**
25. **Right to information** (to know about government activities).
26. **Right to reputation** (protection from defamation).
27. **Right to appeal a conviction.**
28. **Right to family pension.**
29. **Right to social and economic justice.**
30. **Right against excessive restraints on prisoners.**

31. **Right to have life insurance.**
 32. **Right to sleep** (no unnecessary disruptions, e.g., in prisons).
 33. **Right to be free from noise pollution.**
 34. **Right to sustainable development.**
 35. **Right to equal opportunities.**
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Right to Education (Article 21A)

Article 21A states that **all children aged 6 to 14 years** must receive **free and compulsory education** as decided by the government.

- **This was added in 2002 by the 86th Constitutional Amendment.**
- **Only elementary education** (basic schooling) is covered, not higher education or professional courses.
- This step was seen as a **major milestone** toward achieving **universal education** in India.

The government called it "**the second revolution in citizens' rights.**"

Protection Against Arrest and Detention (Article 22)

Article 22 provides **safeguards for individuals who are arrested or detained**. There are **two types of detention**:

1. **Punitive Detention** – This happens **after** a person **commits a crime, is tried in court, and convicted**.
2. **Preventive Detention** – This happens **before** a person commits a crime, to **prevent them from doing something illegal in the future**. It is based on **suspicion** and is a **precautionary measure**.

Two Parts of Article 22

Article 22 is divided into **two sections**:

1. **Protections for people arrested under normal laws.**
2. **Protections for people detained under preventive detention laws.**

Anyone arrested under a **normal criminal law** has the following rights:

- **Right to know why they are being arrested.**
- **Right to consult and hire a lawyer for defense.**
- **Right to be presented before a magistrate within 24 hours** (including travel time).
- **Right to be released after 24 hours** unless a magistrate extends the detention.

Exceptions:

- These rights **do not apply** to **enemy aliens** or those **detained under preventive detention laws**.
- The **Supreme Court clarified** that these protections do not apply in cases of:
 - **Arrest ordered by a court.**
 - **Civil arrests** (e.g., failure to pay debts or taxes).
 - **Deportation of foreign nationals.**
 - **Non-criminal arrests affecting public interest.**

Preventive detention applies **both to Indian citizens and foreigners**. It includes the following protections:

- A person **cannot be detained for more than three months** unless an **advisory board** (including high court judges) **approves an extension**.
- The **grounds for detention must be shared** with the detained person. However, details **that affect public interest may be withheld**.
- The detained person must be **given a chance to appeal against the detention order**.

Parliament's Role in Preventive Detention

Parliament can create laws to:

- Allow detention for **more than three months** in special cases **without advisory board approval**.
- Set the **maximum detention period** for different cases.
- Define **how advisory boards will review detentions**.