

Fundamental Rights (I)

(मौलिक अधिकार)

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Fundamental Rights

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General introduction



Fundamental Rights

➤ **Fundamental Rights** → These are specific legal rights granted to citizens by the Constitution of the country and which enjoy the highest legal protection

- Described in Part-III of the Indian Constitution from Articles 12 to 35.
- Extremely essential for the all-round development of a person.
- These are much more difficult to change compared to ordinary legal rights.
- Protected and enforceable by courts → On violation, a person can directly approach the Supreme Court or High Court.
- These are guarantees given to citizens against the arbitrary power of the state.

Right	Article
➤ Right to equality (Articles 14-18)	○ 14) Equality before law and equal protection of laws (Article 14). ○ 15) Prohibition of discrimination on the religion, race, caste, sex, or place of birth (15) ○ 16) Equality of opportunity in matters of public employment (Article 16). ○ 17) Abolition of untouchability and prohibition of its practice (Article 17). ○ 18) Abolition of all titles except military and academic distinctions (Article 18).

➤ Right to Freedom (Article 19-22)	○ 19) Protection of six freedoms → Speech and expression, peaceful assembly, association/union, movement, residence, and profession/occupation. ○ 20) Protection in respect of conviction for offences: ○ 21) Protection of life and personal liberty: 22) Article 21A → Right to Education: ○ 22) Protection against arrest and detention:
➤ Right against Exploitation (Article 23-24)	○ 23) Prohibition of traffic in human beings and forced labour. ○ 24) Prohibition of child labour in hazardous employment.

Right to Property — Removed (Most Important)

- Originally the 7th right was the Right to Property (Article 31).
- It was removed from the list of Fundamental Rights by the 44th Constitutional Amendment Act, 1978.
- Now it is a legal right under Article 300A of Part-12.
- Due to this, Fundamental Rights now remain 6 (six).

➤ Right to Freedom of Religion (Article 25-28)	○ 25) Freedom of conscience and free profession, practice, and propagation of religion. ○ 26) Freedom to manage religious affairs by religious denominations. ○ 27) Freedom from payment of taxes for promotion of any particular religion. ○ 28) Freedom from religious instruction in certain educational institutions.
➤ Cultural and Educational Rights (Article 29-30)	○ 29) Protection of interests of minorities → Language, script, and culture ○ 30) Right of minorities to establish and administer educational institutions
➤ Right to Constitutional Remedies (Article 32)	○ Right to move the Supreme Court for enforcement of Fundamental Rights. ○ 5 Writs → Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto. ○ Dr. B. R. Ambedkar called Article 32 the "Heart and Soul of the Constitution."

The Emergence of Fundamental Rights

Year	Event	Description
1215	Magna Carta	Issued by King John of England
1789	French Declaration	Declaration of the Rights of Man and of the Citizen
1791	America : Bill of Rights	Proposed in 1789 → The world's first constitution that gave citizens written fundamental rights

Features of Fundamental Rights

1. Not equal for all :

- Some rights only for citizens.
- Some for all persons (citizens, foreigners and companies).

2. Not absolute, but justiciable :

- The state can impose 'reasonable restrictions' on these.
- Whether the restriction is reasonable or not — is decided by the court.

3. Mainly against the state :

- These rights are against unilateral decisions of the government.
- Some rights (such as Art. 17, 23) are also available against private individuals.

4. Some negative, some positive :

- Some limit the power of the state (negative).
- Some provide special privileges to individuals (positive)

5. Justiciable

- Protected by the Supreme Court : Can directly approach the Supreme Court under Article 32.

6. Some have constitutional limitations : Articles 31A, 31B and 31C restrict their implementation.

7. Not permanent : Parliament can curtail or modify them by constitutional amendment — but without affecting the 'Basic Structure'.

8. Suspension during Emergency :

- During National Emergency, rights other than Articles 20 and 21 can be suspended.
- Rights under Article 19 are automatically suspended only during war/external aggression — not during armed rebellion (internal emergency).

9. Restrictions on Armed Forces : Under Article 33, Parliament can restrict these rights for the army, para-military, police and intelligence services.

10. Restriction in Areas under Martial Law : Under Article 34, their implementation can be suspended in an area under Martial Law.

11. Mostly Self-Executing :

- Most rights are self-executing.
- For implementing some, only Parliament makes laws under Article 35, not the state legislature.

Fundamental Rights Available Only to Citizens

1. Prohibition of discrimination on grounds of religion, race, caste, sex, place of birth or any of them (Article 15)
2. Equality of opportunity in matters of public employment (Article 16)
3. Freedom of speech and expression, peaceful assembly, movement, residence and the right to form associations (Article 19)
4. Rights of minorities regarding education and culture (Article 29)
5. Right of minorities to establish educational institutions for the propagation of their religion (Article 30)

Rights Available to Citizens and Foreigners (Except Enemy Aliens)

1. Equality before law and equal protection of laws (Article 14)
2. Protection in respect of conviction for offences (Article 20)
3. Protection of life and personal liberty (Article 21)
4. Right to elementary education (Article 21A)
5. Protection against arrest and detention in certain cases (Article 22)
6. Prohibition of forced labour and illegal human trafficking (Article 23)
7. Prohibition of employment of children in factories etc. (Article 24)
8. Freedom to profess, practice and propagate religion (Article 25)
9. Freedom to manage religious institutions (Article 26)
10. Exemption from taxes for promotion of any religion (Article 27)
11. Freedom as to attendance at religious instruction in certain educational institutions (Article 28)