

## **What are Fundamental Rights?**

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, **fundamental rights are enforceable by the courts**, subject to certain conditions.

## **Why are they called Fundamental Rights?**

These rights are called fundamental rights because of two reasons:

1. They are enshrined in the Constitution which guarantees them.
2. They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

How many Fundamental Rights are there in the Indian Constitution?

There are six fundamental rights in the Indian Constitution. They are mentioned below along with the constitutional articles related to them:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

## **Why Right to Property is not a Fundamental Right?**

There was one more fundamental right in the Indian Constitution, i.e., the right to property.

However, this right was removed from the list of fundamental rights by the 44th Constitutional Amendment.

This was because this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth (property) equitably among the people.

**Is right to property a constitutional right or legal right?**

**Note: The right to property is now a legal right and not a fundamental right.**

## **6 Fundamental Rights of India**

In this section, we list the fundamental rights of India and briefly describe each of them.

### **1. Right to Equality (Articles 14 – 18)**

The right to equality is one of the important fundamental rights of the Indian Constitution that guarantees equal rights for everyone, irrespective of religion, gender, caste, race or place of birth. It ensures equal employment opportunities in the government and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc. This right also includes the abolition of titles as well as untouchability.

### **2. Right to Freedom (Articles 19 – 22)**

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The freedom right includes many rights such as:

- Freedom of speech
- Freedom of expression
- Freedom of assembly without arms
- Freedom of association

- Freedom to practise any profession
- Freedom to reside in any part of the country

Some of these rights are subject to certain conditions of state security, public morality and decency and friendly relations with foreign countries. This means that the State has the right to impose reasonable restrictions on them.

### **3. Right against Exploitation (Articles 23 – 24)**

This right implies the prohibition of traffic in human beings, *begar*, and other forms of forced labour. It also implies the prohibition of employment of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

### **4. Right to Freedom of Religion (Articles 25 – 28)**

This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, and establish and maintain religious and charitable institutions.

### **5. Cultural and Educational Rights (Articles 29 – 30)**

These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

### **6. Right to Constitutional Remedies (32 – 35)**

The Constitution guarantees remedies if citizens' fundamental rights are violated. The government cannot infringe upon or curb anyone's rights.

When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights.

### Features of Fundamental Rights

- Fundamental rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the SC bypassing the lower courts. He or she should first approach the lower courts.
- Some of the fundamental rights are available to all citizens while the rest are for all persons (citizens and foreigners).
- Fundamental rights are not absolute rights. They have reasonable restrictions, which means they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
- They are justiciable, implying they are enforceable by courts. People can approach the SC directly in case of violation of fundamental rights.
- Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution.
- The Fundamental Rights of the Indian Constitution can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.
- The application of fundamental rights can be restricted in an area that has been placed under martial law or military rule.

### Fundamental Rights Available Only to Citizens

The following is the list of fundamental rights in the Indian constitution that are available **only to citizens** (and not to foreigners):

1. Prohibition of discrimination on grounds of race, religion, caste, gender or place of birth (Article 15).

2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of freedom of: (Article 19)
  - Speech and expression
  - Association
  - Assembly
  - Movement
  - Residence
  - Profession
4. Protection of the culture, language and script of minorities (Article 29).
5. Right of minorities to establish and administer educational institutions (Article 30).

### Importance of Fundamental Rights

Fundamental rights are very important because they are like the backbone of the country. They are essential for safeguarding the people's interests.

According to Article 13, all laws that are violative of fundamental rights shall be void. Here, there is an express provision for judicial review. The SC and the High Courts can declare any law unconstitutional on the grounds that it is violative of fundamental rights. Article 13 talks about not just laws, but also ordinances, orders, regulations, notifications, etc.

### Amendability of Fundamental Rights

- Any changes to fundamental rights require a constitutional amendment that should be passed by both the Houses of Parliament. The amendment bill should be passed by a **special majority** of Parliament.
  - Read about the types of majorities in the Indian Parliament in the linked article.
- **As per the Constitution, Article 13(2) states that no laws can be made that take away fundamental rights.**

- The question is whether a constitutional amendment act can be termed law or not.
- In the Sajjan Singh case of 1965, the Supreme Court held that the Parliament can amend any part of the Constitution including fundamental rights.
- But in 1967, the SC reversed its stance taken earlier when in the verdict of the Golaknath case, it said that the fundamental rights cannot be amended.
- In 1973, a landmark judgement ensued in the **Kesavananda Bharati case**, where the SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be abrogated even by a constitutional amendment."
- This is the basis in Indian law in which the judiciary can strike down any amendment passed by Parliament that is in conflict with the basic structure of the Constitution.
- In 1981, the Supreme Court reiterated the Basic Structure doctrine.
- It also drew a line of demarcation as April 24th, 1973 i.e., the date of the Kesavananda Bharati judgement, and held that it should not be applied retrospectively to reopen the validity of any amendment to the Constitution which took place prior to that date.

### Doctrine of Severability

This is a doctrine that protects the fundamental rights enshrined in the Constitution.

- It is also known as the Doctrine of Separability.
- It is mentioned in Article 13, according to which all laws that were enforced in India before the commencement of the Constitution, inconsistent with the provisions of fundamental rights shall **to the extent of that inconsistency** be void.
- This implies that only the parts of the statute that are inconsistent shall be deemed void and not the whole statute. Only those

provisions which are inconsistent with fundamental rights shall be void.

### Doctrine of Eclipse

- This doctrine states that any law that violates fundamental rights is not null or void ab initio, but is only non-enforceable, i.e., it is not dead but inactive.
- This implies that whenever a fundamental right (which was violated by the law) is struck down, the law becomes active again (is revived).
- Another point to note is that the doctrine of eclipse applies only to pre-constitutional laws (laws that were enacted before the Constitution came into force) and not to post-constitutional laws.
- This means that any post-constitutional law which is violative of a fundamental right is void ab initio.

### Fundamental Rights and Duties Difference

Fundamental Rights are the rights available to the people of this country, while Fundamental Duties are the obligations on the part of the citizens. Fundamental Duties were added to the Indian Constitution by the 42nd Constitution Amendment Act 1976 by the Indira Gandhi Government.

Fundamental rights and duties are two important concepts of the Indian Constitution. While fundamental rights are the entitlements that individuals possess by virtue of being citizens of a particular country, fundamental duties are the responsibilities that citizens have towards their country and fellow citizens. Here are some key differences between the two:

1. **Nature:** Fundamental rights are legal rights that are enshrined in the constitution of a country. These rights are meant to protect the interests of individuals and provide them with a sense of security and equality. On the other hand, fundamental duties are moral and

ethical obligations expected of citizens towards their country and fellow citizens.

2. **Enforcement:** Fundamental rights are enforceable through the courts of law. If an individual's fundamental rights are violated, they can seek legal recourse and the courts can provide appropriate remedies. However, fundamental duties are not enforceable in the same way. While citizens are expected to fulfil their fundamental duties, there are no legal sanctions if they fail to do so.
3. **Goal:** The focus of fundamental rights is on protecting the interests of individuals and ensuring their well-being. Fundamental duties, on the other hand, are focused on promoting the collective good and ensuring that citizens contribute to the welfare of their country.