

Definition of Fundamental Rights and Constitutional Rights

Fundamental Rights

The fundamental rights are the basic and inalienable rights granted to each citizen of India through Part III of the constitution, and in some cases to non-citizens too.

These rights are enshrined in Part III of the Constitution of India and are 6 in number.

- a) Right to Equality– Article 14,15,16 and 18.
- b) Right to Freedom– Article 19,20, 21, 21A and 22.
- c) Right against Exploitation – Article 23 and 24.
- d) Right to Freedom of Religion – Article 25,26,27 and 28.
- e) Cultural and Educational Rights – Article 29 and 30.
- f) Right to Constitutional Remedies – Article 32.

These fundamental rights apply to every citizen of India irrespective of their caste, creed, religion, sex or place of birth. These rights, if infringed are enforceable and justiciable in the High Courts under Article 226 of the Constitution of India and in the Supreme Court under Article 32 of the Constitution of India. Article 32 is itself a fundamental right. The enforcement of these rights can be done via writs namely – Habeas corpus, Mandamus, Quo Warranto, Certiorari, and Prohibition. These rights come with reasonable restrictions and hence are not absolute in nature. They are enforceable only against the State of India and not against private individuals, except for Article 17 which abolishes untouchability. Article 17 is enforceable against private individuals too.

Constitutional Rights

All rights that have been conferred to the citizens and enshrined in the Constitution of India but are not under the domain of Part III of the Constitution are said to be Constitutional Rights. A constitutional right is a supreme right guaranteed by our Constitution. It means that if any law contradicts with Constitutional rights, it'll be declared null and void. These rights are not basic and do not apply to everyone, unlike fundamental rights. For example, Right to vote or universal adult suffrage is guaranteed in our Constitution under Article 326. However, a citizen of India has to attain a majority, that is the age of 18 before he/she is eligible to vote. Constitutional rights can be created and can be interpreted by law from case to case basis. These

rights can be a prerogative or a duty, it can also be a restraint of some power which is recognized and established by a Sovereign State or a Union of States such as India.

Fundamental Rights - Article-12 to Article-15

Fundamental Rights

Enshrined in Part-III of Indian Constitution, Fundamental Rights are the basic human rights guaranteed by the Constitution of India. The six fundamental rights include Right to Equality, Right to freedom, Right against exploitation, Right to freedom of Religion, Cultural and Educational Rights and Right to constitutional Remedies.

Fundamental Rights is one of the important topics in Indian polity subject in UPSC Syllabus. In this article, we will touch upon some of the most important points from this topic. We'll also discuss some of the previously asked questions centered around Fundamental Rights.

Originally Right to property (Article 31) was also included in the Fundamental Rights. However, by the 44th Constitutional Amendment Act, 1978, it was deleted from the list of Fundamental Rights and made a legal right under Article 300A in Part XII of the constitution.

ARTICLE 12 : DEFINITION

In this Part, unless the context otherwise required, "the State" includes the Governmental and parliament of india and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

ARTICLE 13 : LAWS INCONSISTENT WITH OR IN DEROGATION OF THE FUNDAMENTAL RIGHTS

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise required, – (a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other

competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368

ARTICLE 14 : EQUALITY BEFORE LAW

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

ARTICLE 15 : PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH

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

(2) No citizen shall, on ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

–

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained whole or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) or article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(6) of Article 15 of the Indian Constitution is related to **economically weaker sections of the society**. It was added in 2019 by the Constitution (103rd Amendment) Act. This clause empowers the State to make special provisions for the betterment and development of the economically weaker sections of the society.

FUNDAMENTAL RIGHTS - ARTICLE-15 (6), ARTICLE-16 (6), ARTICLE-17, ARTICLE-18, ARTICLE-19 AND RESERVATION OF EWS

ARTICLE 16 : EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) 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.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts

in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

ARTICLE 17 : ABOLITION OF UNTOUCHABILITY

“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

ARTICLE 18 : ABOLITION OF TITLES

(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any

foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

ARTICLE 19 : PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH, ETC.

(1) All citizens shall have the right –

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) to practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the sovereignty and integrity of India or public order, reasonable restrictions on the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clause (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Schedule Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, –

(i) the professional or technical qualifications necessary for practising any

profession or carrying on any occupation, trade or business, or
(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Fundamental Rights - Article-20 to Article-24

ARTICLE 20 : PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) No person accused of any offence shall be compelled to be a witness against himself.

ARTICLE 21 : PROTECTION OF LIFE AND PERSONAL LIBERTY

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21A: Right to education

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

ARTICLE 22 : PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES

- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to court of the magistrate and no such person shall be detained in custody beyond the said period without the

authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply –

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless –

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe –

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

ARTICLE 23 : PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service

for public purposes, and in imposing such service the State shall not make any discrimination on ground only of religion, race, caste or class or any of them.

ARTICLE 24 : PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES, ETC.

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

FUNDAMENTAL RIGHTS - FUNDAMENTAL OF RIGHTS - LECTURE 05

ARTICLE 25 : FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE AND PROPAGATION OF RELIGION

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II: In sub-Clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

ARTICLE 26 : FREEDOM TO MANAGE RELIGIOUS AFFAIRS

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with the law.

ARTICLE 27 : FREEDOM AS TO PAYMENT OF TAXES FOR PROMOTION OF ANY PARTICULAR RELIGION

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

ARTICLE 28 : FREEDOM AS TO ATTENDANCE AT RELIGIOUS INSTRUCTION OR RELIGIOUS WORSHIP IN CERTAIN EDUCATIONAL INSTITUTIONS

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is minor, his guardian has given his consent thereto.

Cultural and Educational Rights

Fundamental Rights guarantee basic rights to the citizens of India. There are six fundamental rights enshrined in the Constitution of India, and Articles 29 and 30 deal with the cultural and educational rights of Indian citizens. This fundamental right intends to preserve the culture of all minority groups in India. Indian society is a composite heterogeneous one and its diversity is one of its strengths.

The Constitution guarantees these rights to minorities so that the diversity of this country is preserved and provides avenues for all groups including marginalized ones to protect, preserve, and propagate their culture.

ARTICLE 29 : PROTECTION OF INTERESTS OF MINORITIES

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) 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.

ARTICLE 30 : RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

ARTICLE 31 : COMPULSORY ACQUISITION OF PROPERTY {...}

ARTICLE 31A : SAVING OF LAWS PROVIDING FOR ACQUISITION OF ESTATES, ETC.

(1) Notwithstanding anything contained in article 13, no law providing for –

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of share-holders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of and such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19: Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been

reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article, –

(a) the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenure in force in that area and shall also include –

(i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

(b) the expression “rights”, in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue. The constitution of India set out the basic principles and guidelines, for efficient functioning of the country.

44th Amendment -1978

The Constitution of India was adopted by the Constituent Assembly on 26th November 1949 and it was brought into force on 26th November 1950. Till date there are 104 Amendments made. Every Amendment brought some changes in the constitution.

We will be taking about the 44th Amendment Act which, came into force on 1978.

The **44th Amendment** was introduced to safeguard the interest the Nation and it made few changes to the provisions of the Indian Constitution.

It seeks to remove the distortions that the **42nd Amendment** had brought about the constitution during the emergency. Besides, the amendment has considerably modified the emergency provisions of the constitution so as to ensure that it is not abused by the Executive in Future.

ARTICLE 32 : REMEDIES FOR ENFORCEMENT OF RIGHTS CONFERRED BY THIS PART

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

ARTICLE 33 : POWER OF PARLIAMENT TO MODIFY THE RIGHTS CONFERRED BY THIS PART IN THEIR APPLICATION TO FORCES, ETC.

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to, –

- (a) the members of the Armed Forces; or
 - (b) the members of the Forces charged with the maintenance of public order; or
 - (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
 - (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),
- be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

ARTICLE 34 : RESTRICTION ON RIGHTS CONFERRED BY THIS PART WHILE MARITAL LAW IS IN FORCE IN ANY AREA

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any person in respect of any act done by him in connection with the maintenance or restoration or order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

ARTICLE 35 : LEGISLATION TO GIVE EFFECT TO THE PROVISIONS OF THIS PART

Notwithstanding anything in this Constitution, –

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws –

(i) With respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this part,

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation: In this article, the expression “law in force” has the same meaning as in article 372.