



## Fundamental Rights in India : A Review

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**Abstract** : Fundamental Rights are the basic rights of the common people and inalienable rights of the people who enjoy it under the charter of rights contained in Part III(Article 12 to 35) of Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law freedom of speech and expression, religious and cultural freedom and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus, Mandamus, Prohibition, Certiorari and Quo Warranto. Violation of these rights result in punishments as prescribed in the Indian Penal Code or other special laws, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms that every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste or gender. Though the rights conferred by the constitution other than fundamental rights are equally valid and their enforcement in case of violation shall be secured from the judiciary in a time consuming legal process. However, in case of fundamental rights violation, Supreme court of India can be approached directly for ultimate justice per Article 32. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

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As we have seen, rights are claims that are essential for the existence and development of individuals. In that sense there will a long list of rights. Whereas all these are recognized by the society, some of the most important rights are recognized by the State and enshrined in the Constitution. Such rights are called fundamental rights. These rights are fundamental because of two reasons. First, these are mentioned in the Constitution which guarantees them and the second, these are justifiable, i.e. enforceable through courts. Being justifiable means that in case of their violation, the individual can approach courts for their protection. If a government enacts a law that restricts any of these rights, it will be declared invalid by courts. Such rights are



provided in Part III of the Indian Constitution. The Constitution guarantees six fundamental rights to Indian citizens as follows:

- (I) right to equality,
- (ii) right to freedom,
- (iii) right against exploitation,
- (iv) right to freedom of religion,
- (v) cultural and educational rights, and
- (vi) right to constitutional remedies. While these fundamental rights are universal, the constitution provides for some exceptions and restrictions.

### **Right to Equality**

Right to equality is very important in a society like ours. The purpose of this right is to establish the rule of law where all the citizens should be treated equal before the law. It has five provisions (Articles 14-18) to provide for equality before law or for the protection of law to all the persons in India and also to prohibit discrimination on the grounds of religion, race, caste, sex or place of birth.

1. Equality before Law:
2. No Discrimination on the basis of Religion, Race, Caste, Sex or Place of Birth:
3. Equality of Opportunity to all Citizens in matter of Public Employment: The State cannot discriminate against anyone in the matter of public employment. All citizens can apply and become employees of the State. Merits and qualifications will be the basis of employment. However, there are some exceptions to this right. There is a special provision for the reservation of posts for citizens belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes (OBCs)
4. Abolition of Untouchability: Practising untouchability in any form has been made a punishable offence under the law.
5. Abolition of Titles: All the British titles like Sir (Knighthood) or Rai Bahadur which were given to the British loyalists during the British rule, have been abolished because they created distinctions of artificial nature.



## **Right to Freedom**

You will agree that the freedom is the most cherished desire of every living being. Human beings definitely want and need freedom. You also want to have freedom. The Constitution of India provides Right to Freedom to all its citizens. This Right is stipulated under Articles 19-22. The following are the four categories of Rights to Freedom:

1. Freedom of speech and expression
2. Freedom to assemble peacefully and without arms
3. Freedom to form Associations and Unions
4. Freedom to move freely throughout the territory of India
5. Freedom to reside and settle in any part of India
6. Freedom to practise any profession or to carry on any occupation, trade or business

## **Right against Exploitation**

Have you ever thought how many ways exploitations take place in our society? You might have seen a small child working in a tea shop or a poor and illiterate person being forced to work in the household of a rich person. Traditionally, the Indian society has been hierarchical that has encouraged exploitation in many forms. Which is why, the Constitution makes provisions against exploitation. The citizens have been guaranteed the right against exploitation through Articles 23 and 24 of the Constitution. These two provisions are:

1. Prohibition of traffic in human beings and forced labor:
2. Prohibition of employment of children in factories, etc

## **Right to Freedom of Religion**

As you know, one of the objectives declared in the Preamble is “to secure to all its citizens liberty of belief, faith and worship”. Since India is a multi-religion country, where Hindus, Muslims, Sikhs, Christians and many other communities live together, the Constitution declares India as a ‘secular state’. It means that Indian State has no religion of its own. But it allows full freedom to all the citizens to have faith in any religion and to worship, the way they like. But this should not interfere with the religious beliefs and ways of worship of other fellow beings. This freedom is available to the foreigners as well. In respect of the Right to freedom the Constitution makes the following four provisions under Articles 25-28:



1. Freedom of conscience and free profession, practice and propagation of religion:
2. Freedom to manage religious affairs:
3. Freedom as to the payment of taxes for promotion of any particular religion:
4. Freedom as to attendance at religious instruction or religious worship in certain educational institutions:

### **Cultural and Educational Rights**

India is the largest democracy in the world having diversity of culture, scripts, languages and religions. As we know the democracy is a rule of the majority. But the minorities are also equally important for its successful working. Therefore, protection of language, culture and religion of the minorities becomes essential so that the minorities may not feel neglected or undermined under the impact of the majority rule. Since people take pride in their own culture and language, a special right known as Cultural and Educational Right has been included in the Chapter on Fundamental Rights. In Articles 29-30 two major provisions have been made:

1. Protection of interests of minorities: Any minority group having a distinct language, script or culture of its own shall have the right to conserve the same.
2. Right of minorities to establish and administer educational institutions:

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## **Right to Constitutional Remedies**

Since Fundamental Rights are justiciable, they are just like guarantees. They are enforceable, as every individual has the right to seek the help from courts, if they are violated. But in reality it is not so. Encroachment or violation of Fundamental Right in our day to day life is a matter of great concern. Which is why, our Constitution does not permit the legislature and the executive to curb these rights. It provides legal remedies for the protection of our Fundamental Rights. This is called the Right to Constitutional Remedies stipulated in Article 32. When any of our rights are violated, we can seek justice through courts. We can directly approach the Supreme Court that can issue directions, orders or writs for the enforcement of Fundamental Rights.

## **Right to Education (RTE)**

The Right to Education is added by introducing a new Article 21A in the Chapter on Fundamental Rights in 2002 by the 86th Constitutional Amendment. It was a long standing demand so that all children in the age group of 6-14 years (and their parents) can claim compulsory and free education as a Fundamental Right. It is a major step forward in making the country free of illiteracy. But this addition remained meaningless, as it could not be enforced until 2009 when the Parliament passed the Right to Education Act, 2009. It is this Act which aims at ensuring that every child who is between 6-14 years of age and is out of the school in India, goes to school and receives quality education, that is his/her right.

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