

Fundamental Rights

[UPSC Notes]

Fundamental Rights (Fundamental Rights) are privileges that are essential privileges extended to all individuals in a State. The origin of the concept of Fundamental Rights is assisted by the drafting of the Magna Carta in England in 1215. It was laid down that there were certain rights of the subjects which could not be violated even by a legal sovereign. Further, it was through the French Revolution (1789) and the United States' struggle for freedom (1776) that nations of the world seriously thought of giving some basic rights to their people. In India, Congress adopted a resolution in its Karachi session in March 1931 on Fundamental Rights.

The Fundamental Rights in the Indian Constitution are inspired by the American Bill of Rights which were included in the US Constitution by the first ten amendments. They are provided in Part III of the Constitution under Articles 12-35.

Fundamental rights are a very important topic for the UPSC Exam under the polity segment.

Fundamental Rights Articles

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)

The main objective of the inclusion of Fundamental Rights in the Constitution is to establish 'a government of law and not of man'. The importance of Fundamental Rights was emphasized by Justice Bhagwati in the Maneka Gandhi v. Union of India case in the following words:

"Fundamental Rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent."

Features of Fundamental Rights

- Fundamental Rights are protected and guaranteed by the Indian Constitution.
- The Fundamental Rights are regarded as limitations on the powers of the State. The Parliament can curtail Fundamental Rights or put reasonable restrictions on them for a fixed period of time. However, the court has the power to review the reasonability of the restrictions.

- The Fundamental Rights are individual rights and are enforceable against the State and not against individuals except for the Right Against Untouchability, The Right Against Exploitation, and The Right to Personal Liberty.
- The Fundamental Rights are justiciable in the Court of Law. The Constitution of India allows the individual to move directly to the Supreme Court for the reinforcement of his/her Fundamental Rights when they are violated, restricted, or curtailed.
- The Constitution does not formulate Fundamental Rights in absolute terms. Every right is to be exercised subject to the limitations embodied in that very part itself.
- However, some of the Fundamental Rights are absolute. These rights are, Right Against Untouchability, the Right against engaging children below 14 years of age in hazardous units, and the Right to freedom of conscience.
- All the Fundamental Rights are suspended during National Emergencies except the rights guaranteed under Articles 20 and 21. Moreover, Fundamental Rights can also be restricted during military rule in any particular area.

Fundamental Rights Article 12: The State

The Constitution of India Article 12 of the Constitution provides for the definition of State under Part III. It states, “unless the context otherwise requires, the State includes the Government 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.” This definition suitably covers all government-funded organizations, government-controlled and administered bodies including statutory bodies. The expansion of the provision was enunciated in the case of *Ajay Hasia v. Khalid Mujeeb* (1981).

Fundamental Rights Article 13: Judicial Review

It declares all laws, whether pre-constitutional or post-constitutional void if they are inconsistent with or abridge or violate the Fundamental Rights. The main objective of Article 13 is to secure the paramountcy of the Constitution, especially with regard to fundamental rights. This was held in the case of *Renu v. District and Sessions Judge, Tis Hazari* (2014).

Fundamental Rights- Right to Equality (Article 14-18)

The Right to equality envisions equality before the law and equal protection of laws, it also envisions special protections for vulnerable members of the society such as Scheduled Castes, Scheduled Tribes, Women, and Children. Article 17 provides for the abolition of untouchability and Article 18 abolishes the announcement of titles. This is in the spirit to provide an egalitarian society.

Fundamental Rights- Right to Freedom (Article 19-22)

Article 19-22 provides for the protection of personal liberty. Under Article 19, various rights have been provided:

- a. Freedom of Speech and expression
- b. Freedom to assemble peacefully without arms
- c. Freedom of forming associations, unions, and cooperative society
- d. Freedom of movement

- e. Freedom to reside and settle
- f. Property (abolished by 44th Constitutional Amendment Act, 1978)
- g. Freedom of profession, occupation, trade, or business.

Article 20 enunciates the protection in respect of conviction for offenses, it provides protection against retrospective application of criminal laws, double jeopardy, and self-incrimination.

Article 21 is widest in interpretation and the provision for the Right to Life has been explained to include the right to a healthy environment, the right to a speedy trial, and the right to sleep among others. It aims to help in the overall development of the individual.

Article 22 denotes protection in cases of preventive detention and post-arrest mechanisms. It provides for the right to counsel, the right to be informed of grounds on which arrest takes place, and the right to be taken to the nearest magistrate within 24 hours of arrest.

Fundamental Rights- Right against Exploitation (Article 23-24)

Article 23 prohibits traffic in human beings and beggars and other similar forms of forced labor while Article 24 prohibits employment of children below 14 years of age in factories and hazardous employment.

Fundamental Rights- Right to Freedom of Religion (Article 25-28)

One of the most important features in our secular country is the constitutional protection granted with respect to the freedom to profess, propagate, and practice any religion along with freedom of conscience. It is the settled principle that State protects all religions but interferes with none, this was held in the case of *Vasudev v. Vimanji* (1881).

Article 28 provides an injunction against the dissemination of religious instruction in government-aided educational institutions thereby ensuring that the growth and development of each individual are equidistant of all religions.

Fundamental Rights- Cultural and Educational Rights (Article 29-30)

Article 29-30 provides for the rights of citizens and religious/linguistic minorities to protect their culture, script, and language, and to administer educational institutions respectively.

Fundamental Rights- Right to Constitutional Remedies (Article 32)

The jurisdiction of the Supreme Court under Article 32 is plenary in nature and not limited to the territorial boundary. The five prerogative writs such as Mandamus, Quo Warranto, Prohibition, Certiorari, and Habeas Corpus are both injunctive and remedial in nature.

Fundamental Rights- Limitations

The group of Articles 31A, 31B, 31C, 33, 34, and 35 lays down various limitations on the Fundamental Rights and the circumstances under which these limitations may be imposed. Article 31A was intended to enable the state to achieve the abolition of zamindari and other similar tenures. Article 31B validated the acts and regulations mentioned in the Ninth Schedule. The intention of Article 31C has to save laws giving effect to DPSP specified in Articles 39(b) and (c).

Fundamental Rights- Suspension or Denial

The rights contained in Part III can be curtailed or suspended in the following cases:

- i. Under Article 33, Parliament may by law restrict or abrogate any of the Fundamental Rights in their application to the members of the Armed Forces or Forces charged with the maintenance of public order.
- ii. Article 34 authorizes Parliament to make a law to grant immunity in respect of acts done by any person during the operation of martial law in the country.

Article 358 provides that when the proclamation of emergency is made by the President under Article 352, the freedom guaranteed by Article 19 is automatically suspended for the period of emergency. Article 359 further empowers the President to suspend the right to move any court for the enforcement of Fundamental Rights (except Articles 20 & 21) during the continuance of emergency.

Chart Fundamental Rights

Fundamental Rights are the basic human rights guaranteed by the Constitution of India under Part III. These rights are included in the Constitution of India because they are considered essential for the development of the personality of every individual and to preserve human dignity.

