



The Preamble & Fundamental Rights

Fundamental Rights: Articles 12–35 {Part III of Indian Constitution}

Articles 12–35 of the Indian Constitution deal with Fundamental Rights. These human rights are conferred upon the citizens of India for the Constitution tells that these rights are inviolable. Right to life, right to dignity, right to education, etc., all come under the six main fundamental rights.

In this article, you can read all about 6 fundamental rights of India:

- **Right to Equality**
- **Right to Freedom**
- **Right against Exploitation**
- **Right to Freedom of Religion**
- **Cultural and Educational Rights**
- **Right to Constitutional Remedies**

What are the 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:

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

List of Fundamental Rights

The six fundamental rights of the Indian Constitution along with the constitutional articles related to them are listed below:

- Right to Equality (Articles 14–18)
- Right to Freedom (Articles 19–22)
- Right against Exploitation (Articles 23–24)
- Right to Freedom of Religion (Articles 25–28)
- Cultural and Educational Rights (Articles 29–30)
- Right to Constitutional Remedies (Article 32)

Why is the right to property not a fundamental right?

There was one more fundamental right in the 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.

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

Introduction to the Six Fundamental Rights (Articles 12 to 35)

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

1. Right to Equality (Articles 14–18)

Right to equality 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 and 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 children in factories, mines, 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 practise his or her faith, 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 court. 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.
- Fundamental rights 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 which has been placed under martial law or military rule.

Fundamental Rights Available Only to Citizens

The following is the list of fundamental rights 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 the fundamental rights. Article 13 talks about not just laws, but also ordinances, orders, regulations, notifications, etc.

Amendability of Fundamental Rights

Any changes to the 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.

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 24 April 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.

Important Judgements of Independent India

- The Constitution of India, enacted in 1950, has been the cornerstone of India's democracy. After its enactment it has undergone several amendments.
- The Supreme Court is the ultimate interpreter of the Constitution and, by its creative and innovative interpretation, has been the protector of our constitutional rights and fundamental freedom.
- These judgements are to be appreciated not only as precedents, but also as having laid down the law on issues of paramount importance—law that is binding on all courts and authorities in the country.

Kesavananda Bharati v. State of Kerala (1973)

Main theme: Propagating the 'basic structure' doctrine as a safeguard against the usurpation of the Constitution

- It was unique for the reason that it brought a shift in the balance of democratic power. Earlier judgements had taken a stand that the Parliament could amend even the fundamental rights through a proper legislative process.
- But the present case held that Parliament cannot amend or alter the fundamental structure of the 'Basic Structure' of the constitution.
- Besides, Kesavananda Case was significant in that the Supreme Court ascribed to itself the function of preserving the integrity of the Indian Constitution.
- The 'basic structure' doctrine formulated by the court represented the pinnacle of judicial creativity and set a benchmark for other constitutional courts around the world.
- The doctrine ruled that even a constitutional amendment could be invalidated if it impaired the essential features—the basic structure—of the Constitution.

Maneka Gandhi v. Union of India (1978)

Main theme: Expanding the meaning of the 'right to life' under the Constitution of India

- The right to life and personal liberty under Article 21 reads: "No person shall be deprived of his life or personal liberty except according to procedure established by law".

- In other words, courts were not allowed to question any law—no matter how arbitrary or oppressive—as violating the right to life or personal liberty if the law had been suitably passed and enacted.
- However, by vesting in itself the power of substantive review under Article 21, the court transformed itself from being merely a supervisor, to being a watchdog of the Constitution.
- The Supreme Court's judgement in the Maneka Gandhi case effectively meant that 'procedure established by law' under Article 21 would have the same effect as the expression 'due process of law'.
- In a subsequent decision, the Supreme Court stated that Article 21 would read as: 'No person shall be deprived of his life or personal liberty except according to fair, just, and reasonable procedure established by valid law.'

Mohammed Ahmed Khan v. Shah Bano Begum (1985)

Main theme: Questioning the sanctity of personal religious laws and bringing the debate on a Uniform Civil Code to the forefront of the national discourse

- In April 1985, the Supreme Court delivered a judgement on the maintenance a divorced Muslim woman would be entitled to receive from her former husband in the case of Mohammed Ahmed Khan v. Shah Bano Begum (Shah Bano).
- It is seen as one of the milestones in Muslim women's fight for rights in India and the battle against the set Muslim personal law. It laid the ground for thousands of women to make legitimate claims which they were not allowed before.
- While the Supreme Court upheld the right to alimony in the case, the judgement set off a political battle as well as a controversy about the extent to which courts can interfere in Muslim personal law.

Indra Sawhney v. Union of India (1992)

Main theme: Delivering the decision relating to the constitutionality of reservations under the Constitution of India

- In the Indra Sawhney judgement (1992), the Court upheld the government's move and proclaimed that the advanced sections among the OBCs (i.e, the creamy layer) must be excluded from the list of beneficiaries of reservation. It also held that the concept of creamy layer must be excluded for SCs and STs.
- The Indra Sawhney verdict also held there would be reservation only in initial appointments and not promotions.
- But the government through this amendment introduced Article 16(4A) to the Constitution, empowering the state to make provisions for reservation in

matters of promotion to SC/ST employees if the state feels they are not adequately represented.

- The Supreme Court in the judgement also capped the reservation quota at 50%.

Vishaka v. State of Rajasthan (1997)

Main theme: Innovating jurisprudence to prevent sexual harassment at the workplace

- In the context of sexual harassment of women at workplace, judicial activism reached its pinnacle in Vishaka v. State of Rajasthan (Vishaka).
- The judgement was unprecedented for several reasons:
 - a. The Supreme Court acknowledged and relied to a great extent on international treaties that had not been transformed into municipal law;
 - b. The Supreme Court provided the first authoritative definition of 'sexual harassment' in India; and confronted with a statutory vacuum, it went creative and proposed the route of 'judicial legislation'.
- Since there was no legislation in India related to sexual harassment at the workplace, the court stated that it was free to rely on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW—signed by India in 1980) in interpreting Articles 14, 15, 19, and 215 of the Constitution.
- To justify its decision, the court referred to several sources including the Beijing Statement of Principles of the Independence of the Judiciary, a decision of the High Court of Australia, and its own earlier decisions.

Aruna Ramachandra Shanbaug v. Union of India (2011)

Main theme: Accepting passive euthanasia as being constitutional

- Passive euthanasia is a situation where there is withdrawal of medical treatment with the deliberate intention to hasten the death of a terminally-ill patient.
- The Aruna Shanbaug case triggered the debate of euthanasia in India.
- A writ petition under Article 32 before the Supreme Court of India was filed, asking for the legalisation of euthanasia so that Aruna's continued suffering could be terminated by withdrawing medical support.
- The Supreme Court in 2011 recognised passive euthanasia in this case by which it had permitted withdrawal of life-sustaining treatment from patients not in a position to make an informed decision.
- Subsequent to this, in a landmark judgement (2018), the Supreme Court recognised passive euthanasia and "living will".
- A 'living will' is a concept where a patient can give consent that allows withdrawal of life support systems if the individual is reduced to a permanent vegetative state with no real chance of survival.

Lily Thomas v. Union of India (2013)

Main theme: Struck down as unconstitutional Section 8(4) of the Representation of the People Act (RPA)-1951 that allowed convicted lawmakers a three-month period for filing appeals to the higher court and to get a stay on the conviction and sentence

- Section 8 of the RPA deals with disqualification on conviction for certain offences: A person convicted of any offence and sentenced to imprisonment for varying terms under Sections 8 (1), (2), and (3) shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of six years since his release.
- But Section 8 (4) of the RP Act gives protection to MPs and MLAs as they can continue in office even after conviction if an appeal is filed within three months.
- The Supreme Court held that charge-sheeted Members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months' time for appeal, as was the case before.
- The Bench found it unconstitutional that convicted persons could be disqualified from contesting elections but could continue to be Members of Parliament and State Legislatures once elected.

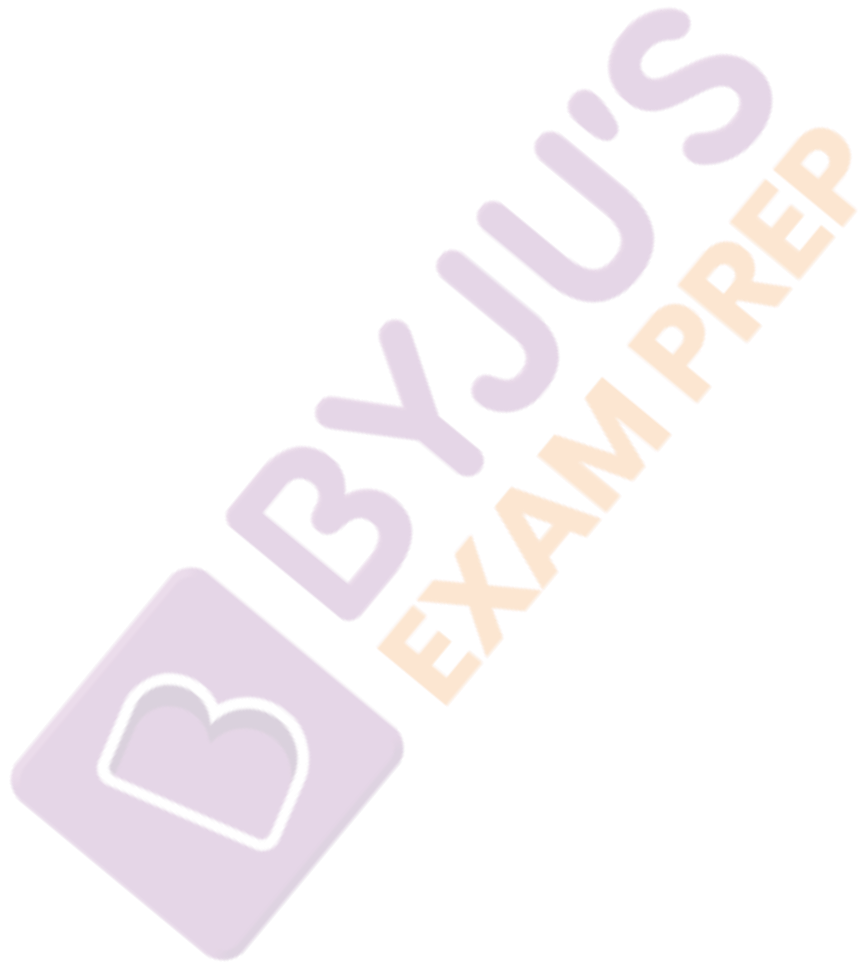
Justice K.S. Puttaswamy vs. Union of India (2017)

Main theme: SC ruled that Fundamental Right to Privacy is intrinsic to life and liberty and thus, comes under Article 21 of the Indian constitution

- Nine judges of this Court assembled to determine whether privacy is a constitutionally protected value. The issue reaches out to the foundation of a constitutional culture based on the protection of human rights and enables this Court to revisit the basic principles on which our Constitution has been founded and their consequences for a way of life it seeks to protect.
- This case presents challenges for constitutional interpretation. If privacy is to be construed as a protected constitutional value, it would redefine in significant ways our concepts of liberty and the entitlements that flow out of its protection.
- The Puttaswamy judgement of 2017 reaffirmed the 'Right to Privacy' as a fundamental right in Indian Jurisprudence. Since then, it has been used as an important precedent in many cases, to emphasise upon the right to privacy as a fundamental right and to clarify the scope of the same.
- The Supreme Court upheld the validity of the Aadhar Scheme on the ground that it did not violate the right to privacy of the citizens as minimal biometric

data was collected in the enrolment process and the authentication process is not exposed to the internet.

- The majority upheld the constitutionality of the Aadhaar Act, 2016 barring a few provisions on disclosure of personal information, cognizance of offences and use of the Aadhaar ecosystem by private corporations.
- They relied on the fulfilment of the proportionality test as laid down in the Puttaswamy (2017) judgement.





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