

# Salient Features of the Constitution (A) Fundamental Rights and Duties

## Fundamental Rights

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The independence of many Asian and African nations did not result in the establishment of democracy and liberal institutions in all countries. The United Nations adopted the Universal Declaration of Human Rights on 10<sup>th</sup> December 1948 which stressed on providing basic rights to humans.

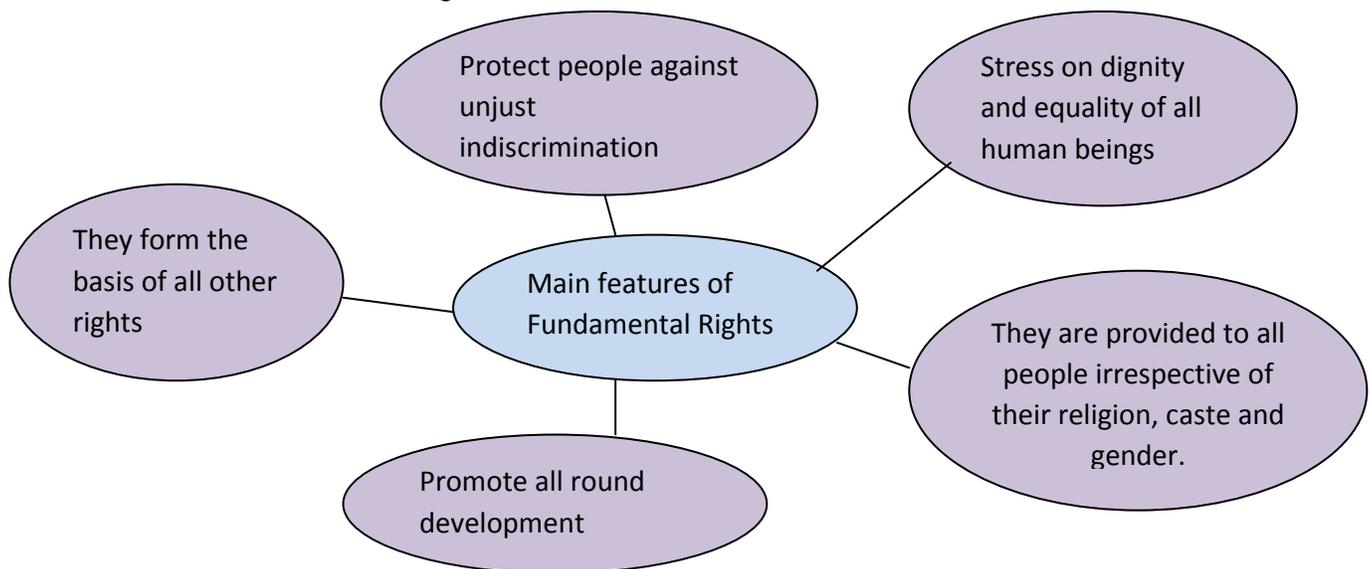
The Constitution of India incorporated the basic human rights from the French Revolution and the American Constitution.

Fundamental rights are included in the Constitution of India in Part III, Articles 12–35. They have been included in Part III because of the following reasons:

- The fundamental rights are in nature of civil and political rights and correspond to the International Covenant on Civil and Political Rights, 1996.
- Fundamental rights are an essential part of the Constitution and cannot be changed by ordinary legislation. They are included in Part III as any changes to these rights could take place only through amendment to the Constitution. It requires two-thirds majority of both Houses present and voting.
- These rights are universal in nature and are justiciable (case can be filed in the Court if these rights get violated).
- Fundamental rights are not absolute as balance has to be maintained between individual liberty and social security. Some curbs can be placed on these rights to safeguard larger social interests.
- These rights are placed in Part III as they can be suspended in case of national emergency. Such situation can take place in case of external war or aggression. Also, if it has been found out that individual liberty is at conflict with public welfare, the State may place restrictions on these rights.

## Main Features of the Fundamental Rights

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## Classification of Fundamental Rights

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The fundamental rights are

- **Right to Equality: Articles 14–18**

- Article 14 guarantees equality before law to each citizen irrespective of caste, creed and gender.
- Article 15 prohibits discrimination on social or economic grounds. For example, admission to educational institutions cannot be denied to anyone on the basis of caste, creed and gender.
- Article 16 provides for equality of opportunity for all citizens in matters relating to employment in an office under the central or state government.
- Article 17 abolishes untouchability.
- Article 18 abolishes titles such as Rai Sahab and Maharaja. However, civilian and military honours can be awarded to the citizens.

- **Right to Freedom: Articles 19–22**

Under Article 19, **six basic freedoms** can be guaranteed to the people. These are

- Freedom of speech and expression
- Freedom to assemble peacefully without arms
- Freedom to form associations and unions
- Freedom to move freely throughout India
- Freedom to reside and settle in any part of the country
- Freedom to practise any profession, trade or business

The above freedoms have some limitations. They can be abolished during emergency. They are not absolute. Legislations such as Preventive Detention impose restrictions on the rights to freedom.

- Article 20 gives the following protections to a citizen:

1. A person cannot be punished twice for the same crime.
2. He cannot be compelled to be a witness in case where he himself is accused of the offence.
3. No one gets greater penalty than what is prescribed under a law.

- Article 21 ensures that a person cannot be deprived of his life and liberty except in accordance with law.

- Article 22 gives important rights to citizens:

- An arrested person should be informed of his/her offence.
- He should be presented before a magistrate within 24 hours from the time of arrest.
- The arrested person has the right to consult a lawyer and prepare his defence at the trial.
- Preventive detention does not mean that a person stands accused. It is a precautionary measure.
- Detention beyond three months could be extended only by the Advisory Board.
- The detained person has the right to make representation against detention.

The limitation of the above rights are that due to public interests, the state can refuse to disclose the grounds of detention and the Parliament has the power to specify the maximum period of Preventive Detention.

- **Right Against Exploitation: Articles 23 and 24**

- Article 23 provides freedom from slavery, beggary or other forms of forced labour. It also prohibits trafficking of human beings.
- Article 24 prohibits the employment of children below 14 years of age in factories, mines and other hazardous occupations.

- **Right to Freedom of Religion: Articles 25–28**

- Every person is free to profess, propagate and practise their religion.

- He/she has the right to establish and maintain institutions for religious and charitable purposes.
- Citizens have the right to manage their own affairs in religious matters.
- They have the right to acquire property and to administer such property.
- No one can be compelled to pay taxes for promoting any religion.
- No religious instructions should be provided in any institution which is maintained partly or fully out of State funds.
- **Cultural and Educational Rights: Articles 29 and 30**
  - Article 29 gives people the right to preserve their language, script and culture.
  - Article 30 gives minorities the right to establish and administer educational institutions of their choice.
- **Right to Constitutional Remedies: Article 32:** This article gives rights to the citizens to move to the Supreme Court for the enforcement of fundamental rights conferred upon them. The Supreme Court or a High Court can issue writs. A **writ** is a formal written order issued by the Supreme Court and the High Courts to provide legal remedy to the people who do not have protection under ordinary laws. Some important writs are
  - **Habeas Corpus:** According to this writ, the Supreme Court or a High Court can get any person released if he/she has been wrongfully detained by the police.
  - **Mandamus:** It is an order from a superior court to a lower court to perform certain duty.
  - **Writ of Prohibition:** When the lower court decides a case which is not in its jurisdiction, the higher court may ask it to stop proceedings.
  - **Writ of Certiorari:** This writ is issued by a superior court to a judicial authority desiring it to be informed of the current proceedings in a court.
  - **Quo-warranto:** The writ prevents public officers from forcibly or wrongly holding a high public office.
  - **Right to Education:** The right to education has been granted by the Constitution Act, 2002. The State has to provide free and compulsory education to all children between 6 and 14 years of age.

### **Right to Property: Article 31**

Article 31 of the Constitution earlier empowered the citizens to buy, hold and dispose of movable and immovable property as fundamental rights. After the addition of the word, 'socialist', the right to property was deleted from the list of fundamental rights by the 44<sup>th</sup> Amendment Act, 1978. **Right to Property is now a legal right.** (Article 300A).

### **Limitations on the Fundamental Rights**

Fundamental rights are not absolute keeping in mind the general welfare of the people. These are

1. Fundamental rights could be suspended during emergency. The rights of citizens are restored as soon as emergency is over.
2. The Parliament has the power to modify the application of fundamental rights to the members of the armed forces, police forces or intelligence organisations so that they are able to ensure proper discharge of their duties and maintain discipline among them.
3. Laws such as Defence of India Act and National Security Act curtail the use of the fundamental rights to safeguard the interests of the nation.
4. Fundamental rights can be suspended when emergency is declared by the President under Article 352. During emergency, the legislature can frame any laws. Citizens have no protection against the executive or legislative authorities.

## Fundamental Duties

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Rights and duties go hand in hand. While the citizens of the country have been given certain fundamental rights, they also need to perform certain duties. The fundamental duties were added to the Constitution by the 42<sup>nd</sup> Amendment Act, 1976. Some duties of the citizens are

- To follow the Constitution and to respect the national flag and national anthem
- To uphold and protect the sovereignty, unity and integrity of India
- To cherish and follow the noble ideals which inspired our national struggle for freedom
- To defend the country and to render national service when called upon to do so
- To promote harmony and spirit of fraternity among all people of India
- To value and preserve the rich heritage of our composite culture
- To protect and improve our natural environment including forests, lakes, rivers and wildlife
- To develop scientific spirit, inquiry and reform
- To strive towards excellence in all spheres of individual and collective activity
- The duty of a parent or guardian is to provide opportunities for educating his/her child aged between six and fourteen

### Importance of Fundamental Duties

- To make citizens aware of their social and economic obligations
- To instil a feeling among the people to protect and awaken the people to their cultural heritage
- To tame unruly elements in society
- To strengthen national harmony
- To protect and awaken people to their cultural heritage

Fundamental duties help in fostering cooperation between the citizens and the state. These fundamental duties are not enforceable by law.