

Fundamental Rights

What are 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:

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

How many Fundamental Rights are there in Indian Constitution?

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

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)

Why Right to Property is not a Fundamental Right?

- There was one more fundamental right in Indian 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.

Introduction to Six Fundamental Rights

1. Right to Equality (Articles 14 – 18)

Right to equality is one of the important fundamental rights of Indian constitution that 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 as well as 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, etc. This 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 practice 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 and 226)

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 courts. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights.

Under Articles 32 and 226 of the Indian Constitution, any person whose Fundamental Rights are violated by any act of the State or Authority can directly approach to the Supreme Court and High Courts respectively filing a writ petition and the concerned court may pass any writ as mentioned in both the Articles, exercising its writ jurisdiction if it deems fit to provide Constitutional remedies to him. The powers of the High Courts under Article 226 are sometimes considered to be broader than the Supreme Court because it doesn't only contain the Constitutional remedies, but also the other remedies guaranteed in the different parts of the Constitution.

Different Types of Writs

Article 32 of the Indian Constitution refers specifically to 5 types of writs to provide Constitutional remedy. Those are:

- 1. Writ of Habeas Corpus**
- 2. Writ of Certiorari**

- 3. Writ of Prohibition**
- 4. Writ of Mandamus**
- 5. Writ of Quo Warranto.**

1. Writ of Habeas Corpus:

It is always considered to be the most valuable writ to protect the 'life and personal liberty' of the citizens which is guaranteed by Article 21 of the Constitution of India.

Habeas Corpus means 'Show me the body' or 'Let us have the body'. When someone is arrested by any detaining authority, he must be produced before the nearest magistrate within twenty-four hours as per Article 22. Such detention can be termed as 'illegal detention'. If the arrested person is not produced before any court within the stipulated time period, he may file a Habeas Corpus writ petition directly to the Supreme Court under Article 32 of Indian Constitution and the Court will examine this matter whether the detention of the person is lawful or not. If the Court is satisfied with the fact that the person is detained without any valid lawful justification, the Court may pass an order to release the person immediately. Thus this writ ensures that no person can be detained by any authority without the order of any court. If any person is found to be arrested without any lawful justification or any sufficient cause or evidence, the person will be released immediately by the Court. In this way, the Supreme Court provides a remedy to a person who was illegally detained by any authority exercising its writ jurisdiction. Likewise, if the Court finds that the detention has any legal ground, the remedy will not be granted by the Court. Thus this writ plays the most vital role to safeguard the personal liberty of the individuals from the arbitrary actions of the State.

2. Writ of Certiorari:

The literal meaning of Certiorari is 'to be certified'. This writ of Certiorari is issued by the Supreme Court or High Court in the exercise of the writ jurisdiction to some inferior court or tribunal to transfer the matter to it or to any other superior authority for proper consideration. This writ can also be issued by the Superior Court to quash or transfer the case to itself. When any order already passed by a lower court or tribunal if the superior court thinks that the lower

court acted beyond its jurisdiction or missed out on any important facts relating to the case or made some error in deciding the particular case, the court can quash or transfer the case to itself issuing this writ. This writ is only available when the order of the lower court or tribunal is already passed.

3. Writ of Prohibition:

Prohibition means 'to stop' or 'to prohibit'. This is commonly known as 'stay order'. This writ can be issued by any courts of superior jurisdiction to its inferior courts to forbid the court from passing any order relating to a particular case. This is usually used when the lower court transgresses its jurisdiction or violates any principles of natural justice. If any lower court exceeds its legal jurisdiction in a proceeding pending before it or acting in contrary to the principles of natural justice, the Supreme Court or High Court can pass a stay order to forbid that court from acting beyond the jurisdiction which is vested in it in a case pending before it. It is in contrast with the writ of Certiorari because the writ of certiorari can only be passed when the lower court has already announced its order. But, the writ of prohibition can only be passed when the lower court has not yet announced its order. It is often said that 'prevention is better than cure'.

4. Writ of Mandamus:

Mandamus means "We Command". It is issued by the Supreme Court or High Courts to the lower courts or tribunal or any public authority to perform its public duty. When any authority denies performing its public duty vested in it or denies exercising its jurisdiction which is legally vested in it, the Supreme Court or High Court by issuing this writ can compel the authority or lower court or tribunal to exercise its jurisdiction and perform its public duty. It may not be claimed as the right of an individual. It is the discretionary power of the Superior Court to issue such writs. It plays an important role to secure the private rights of individuals withheld by public authorities when the authorities refuse to perform their public duty. The basic purpose of this writ is to check whether the Government machineries are acting properly or not and secure the rights of individuals from any breach of mandatory duty committed by any public authority.

These are some important features of the writ of mandamus:

1. The writ of mandamus can only be granted when there is a right of the applicant to compel the performance of some duty cast upon the authority. The duty which is sought to be enforced must be a public duty and not a private duty.
2. A writ of mandamus can also be issued to the public authority to restrain it from acting under a law that has been declared unconstitutional.
3. The writ of mandamus can only be granted in cases where there is a statutory duty imposed upon the officer concerned, and there is a failure on the part of that officer to discharge the statutory obligation.

5. Writ of Quo Warranto:

The writ of Quo Warranto means “by what warrant”. This writ is issued by the Supreme Court or High Courts with a view to restraining a person from holding a public office for which he is not entitled. The Court orders the authority to show his warrant to check whether he is holding that public office legally or illegally. If a public authority acts without lawful authority, the Court can issue this writ to prevent illegal usurpation of any public office by anybody. The basic purpose of issuing this writ is to review the executive actions with regard to the appointments made against any statutory provisions to public offices and protect the rights of common citizens who are deprived of their right to hold a public office. Similarly, this writ can only be issued against public authorities, not private authorities.