



# A STUDY OF THE FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

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## ABSTRACT

The fundamental rights mentioned in the Indian Constitution are those rights that shape the lives of men and women in society. The rights provide the vision, roadmap and strategy of life for the people. In this paper, a research study is made about the six fundamental rights: right to Equality, right to Freedom, right against exploitation, right to Freedom of religion, cultural and educational rights, and right to constitutional remedies. A comprehensive study is conducted about the rights for better understanding of them. It is also an interpretation of the rules about the rights given in the Indian constitution and to decode them; to simplify understanding about them, this paper also includes the updates or amended rights to the original version of the constitution, like the addition of right to silence under right to Freedom of speech and expression. This paper aims to discover and rediscover knowledge and values; it also provides the criticism and relevance of fundamental rights in society. These rights span from Article number 12 to 35 in the Indian Constitution. Here, due importance will be given to more valuable ideals of rights among all rights, and about rights that are of contemporary relevance and that reflect contemporary challenges like that of right to life and personal liberty- right to privacy (article 21). All these rights are also called 'Bill of Rights'. The function of Fundamental Rights is accordingly to act against arbitrary action against rights of the people. And to provide solution in case any of the rights is breached. The rights of the people aim to provide moral and intellectual perfection for men.

**KEYWORDS:** fundamental rights, Indian Constitution, Freedom, Untouchability, government, minority

## INTRODUCTION

Harold Laski said, "Rights are those conditions of social life without which no man can seek, in general, to be at his best" (Gurpreet Kaur, Nandini Sharma, 2020), this definition by Laski sparks light upon the importance of Rights in individual's life. The people in India derive their rights from the Indian Constitution. The constitution is the most important source of laws, rules and regulation of the country, it is the supreme law of the land. And it holds high significance in the Indian soil. The constitution is a written document; and the Indian Constitution is considered as the lengthiest in the world. The constitution is in working since 26<sup>th</sup> January 1950. At the time of its beginning Indian constitution contained 395 articles, 22 parts, and 8 schedules. It has approximately 448 articles, 25 parts, and 12 schedules. In this manner, Fundamental Rights in the Constitution is contained in Part III, which is from Article 12 to 35. Fundamental rights are important to study because they constituted the bedrock of the Indian democratic system, they provide the necessary pathways and guide for material and moral protection of man. They also form the stepping stones for individual Freedom and liberty, which are important for individual development to its unlimited potential.

## Objectives of the Study

This study aims to:

1. Analyze the six fundamental rights enshrined in the Indian Constitution.
2. Examine their role in upholding democracy and social justice.
3. Investigate the challenges associated with their implementation.
4. Highlight their relevance in contemporary Indian society.

## Methodology

The research follows a qualitative approach, relying on secondary sources such as books, scholarly articles, constitutional texts, and online resources. Analytical and comparative methods have been employed to evaluate the significance of fundamental rights, their historical context, and their practical implementation in modern India.

## DISCUSSION AND RESULTS

### Origin of Fundamental Rights

The concept of fundamental rights are taken or borrowed from countries like England and United States, referred as 'Bill of Rights'. It has been also derived from France's Declaration of the Rights of Man. This throws light upon the importance of fundamental rights, as all democratic countries have adopted



them (human rights) in one form or the other. In India the first demand for fundamental rights came to be seen in the form of Swaraj Act in 1895. From there it was eventually adopted in the Indian Constitution after India's independence in 1947. Fundamental rights works as guarantor to individual's dignity, Freedom and development (NCERT, 2020). The subject study of Indian constitution is a dynamic type, as it keeps on changing and adapting with time and need. It keeps on evolving to meet the ever fast changing world of today's modern generation. Hence, I feel, revising and restudying the special and noble fundamental rights of the Indian constitution is never a waste of an effort. Consequently, as when these are enjoyed by all, a bitter experience by the country seems minimal.

### **State and Law**

The first two articles among the fundamental rights are article 12 and 13, works at defining the term 'state' and 'law' respectively. State means the 'government organs and body'. Law means 'those rules and regulation enacted by government'.

### **Right to Equality**

It aspires to ensure Equality in society. As to promote egalitarian social set up as far as possible. There are five articles (14 to 18) under this segment. It promotes the provision of maintaining Equality in the society. Firstly, **Equality before law and equal protection of law (14)**, Equality before law signifies that no person, whether rich or poor, high or low, official or non-official, is above the law, in the country. The law is the supreme ruler of the land. Moreover, protection of law indicates that a poor man by birth has low chances to compete and win with a wealthy and high status person, in pursuit of things like, education, business, employment, etc., and for this reason to ensure that everyone is given equal chances to grow and compete, here positive discrimination is allowed. This interesting concept of 'equality before law' as an element concept of 'Rule of Law', as propounded by A.V. Dicey, the British Jurist. His concept includes another important aspect: Absence of arbitrary power, that is, no man can be punished except for a breach of law (M Laxmikanth, 2020). This aspect can be related with the contemporary ideal of livelihood that no one deserves to be hurt mentally, physically, or by any other means, except when there is a breach of law; and punishment should be through procedures established by law.

### **Prohibition of Discrimination**

The state is not allowed to discriminate its people on the basis of religion, race, caste, sex, or place of birth. People should have equal access to shops, public restaurants, hotels, and public entertainment; or the use of wells, tanks, bathing ghats, roads and places like public resort. Interestingly, positive discrimination (special privilege) is allowed while providing reservation for women, children, socially and educationally lack-behind classes, in educational institute and various other organizations. This prohibition against discrimination is in line with United Nations Office of the High Commissioner for Human Rights (OHCHR) statement, where it states clearly about the Human Rights. As fundamental rights are just the Human Rights available to all

individuals. As OHCHR states that Human Rights are available and intertwined to all of humans, not discriminating based on sex, ethnic origin, colour, religion, language, etc. and they are among the most basic requirements in human civilized society.

### **Equality of Opportunity in Public Employment**

It speaks about employing all population sections in jobs equally, and representing equal employment from all population sections in jobs equally, and representing equal employment from all racial, ethnic, caste etc., equally in government employment. But society is naturally consisting of unequal population, what does this equal opportunity mean? The constitution says that the government should implement special programs and schemes for improving the living condition of especially the vulnerable population of the society like those of children, women, Socially and Educationally Backward Classes. By providing 'job reserved seats' and seat quota reservation in educational institutions. It is important to note here that this positive discrimination is not counted as unfair treatment to citizens, in case of providing special privilege to certain population. It is a requirement for fulfilling the Equality of opportunity in public employment.

### **Abolition of Untouchability**

Firstly, it is desirable to know what untouchability actually is. It is an old evil practice of socially excluding phenomena to lower caste (class) people by the upper caste section in the Indian society. This undesirable practice had been in practice for a long period of Indian history. For example, denying of entry to store, hotel, nightclubs, public amusement facility, public services-reservoir, tap, and other source of water; road, a public pasture, or crematorium, and the like. This article 17 in the Indian constitution bans 'untouchability' practice completely. The practice is a punishable offence. It is protected under Civil Rights Act of 1955. Where it comprehensively bans the unwanted social practice.

### **Abolition of Titles**

To ensure social status equality, this provision was provided. As in the past, during the colonial rule in India, hereditary title like Maharaja, Raj Bahadur, Rai Saheb, Dewan Bahadur, etc, were in vogue. Accordingly, the only acceptable titles are that of academic and military excellence (Seervai, 2013).

### **Right to Freedom**

There are four articles (19 to 22) under this right to Freedom. This entails the freedoms that are required for a civilized society. The six freedoms mentioned under this right are **Freedom of speech and expression**: it highlights that the people of India have the right to express his or her views deliberately and openly. The people can express through either writing, printing, picturing; other rights included here are Freedom of press, right to know about government activities, Freedom of silence. But in certain exceptional cases this Freedom of speech and expression could be curtailed, for example in 'defamation case' which means to defame someone or destroy someone's image. As it takes a whole life to build reputation and image; by defamation all works could be destroyed in no time. Some other restrictions are sovereignty



and integrity of India, public order, contempt of court etc. and other reasonable grounds of restrictions. **Freedom of assembly:** It gives right to people to assemble or gather in peaceful manner, without arms. For the purpose of public meeting, demonstrations, and taking out processions. **Freedom of association:** all citizens have been given the Freedom to form association or co-operative societies; it could be in the form of political parties, companies, societies, clubs, organizations, trade unions and the like. **Freedom of movement:** it gives Freedom to citizens to move to and from any part of Indian territory. A restriction under this Freedom is that Scheduled Tribe areas could be made an area of restrictive entry, for outside population. It is to protect and preserve their unique language, culture, customs, traditional vocation and properties against exploitation. **Freedom of residence:** under this right all citizens have the right to reside and settle in any part of the country, either temporarily or permanently.

#### ***Protection in conviction cases***

It provides protection against wrongful punishment or sentence, to an accused, whether citizen or foreigner in the following ways: no double jeopardy, there can be no punishment for the same offence twice. No self-incrimination, an accused should not be compelled to be a witness against himself. Past crime cannot be instigated, a crime made in the past cannot be made and offence by passing a law in the present for the same.

#### ***Right to life and personal liberty***

It is one of the most important rights included in the Indian Constitution, it is a very comprehensive right. It signifies that no one is allowed to be deprived of his or her life except by the procedure enshrined in the law. Because if the 'life' is not properly defended, the other rights become likely an utter written document. The points included under this right are right to live with dignity. Because a dignified life is the one worth living and feeling alive. Right to livelihood, right to privacy, right to shelter, right to health, right to free education up to 14 years of age, right to free legal aid, right to speedy trial, right to travel abroad, right to sleep, emergency medical aid, right to Freedom from noise pollution, right to sustainable development, right to opportunity. Right against inhuman treatment, right against bonded labour, right against custodial harassment, and more points.

#### ***Right to fair arrest and detention***

It gives the rights to the detained person to be consulted by a lawyer and to be defended in a court of law. It also gives an arrested person the right to be produced before a magistrate within twenty four hours of the arrest made. And preventive detention is also included, where a suspect is arrested on grounds that the person is likely to commit a crime in the immediate future, and its various conditions of arrest and release procedures.

#### ***Right against exploitation***

For protecting the citizens from unlawful exploitation, this provision is provided. There are two articles under this fundamental right (23 and 24). **Right against traffic in human beings and forced labour (23):** there are vulnerable and under-

privileged sections in Indian society, and they are vulnerable to various kinds of exploitations. This right protects those sections of population against exploitation. This provision protects people against immoral and illegal activities like buying and selling of humans like goods, forced labour; nobody is allowed to work unwillingly, against his or her will and cannot be forced to work without payment. To provide security to people the government of India has enacted the following acts, they are Bonded Labour System (Abolition) Act, 1976; Minimum Wages Act 1948; Contract Labour Act, 1970; and Equal Remuneration Act, 1976. Which are laws against such acts that are exploitative in nature.

#### ***Right to prohibition of employment of children in factories***

This right disallows those children below fourteen years of age to be employed in any factory, mine or other harmful activities, like those in construction work or railway. However, it does not prohibit their working in any harmless or innocent work, like helping in family business. In this subject, the Commission for protection of Child Rights Act, 2005 was passed for providing for establishment of National Commission for Protection of child rights and children's court for providing speedy trial for offences against children.

#### ***Right to Freedom of religion***

To maintain the secular fabric of the country this part becomes necessary, accordingly there are four articles under this (25 to 28). The Freedom of religion is considered as a significant element of democracy. In the past there were rulers around the world, who did not allow their subjects to follow religions of their choice. Those who disobeyed the rule were either punished or forced to convert religion. To change the scenario the democratic setup of government has always incorporated the secularism as its basic tenet. Freedom of religion also includes the Freedom of conscience. This means that a person may choose to follow any religion or may not choose to follow any religion (Laxmikanth, 2020). Regarding government role in religion in the country, the government has the power to regulate religious activities in case of correcting social evils. For example in the past Government has banned practice of sati, bigamy or human sacrifice. For the greater good of the society. **Right against religious tax:** It provides right against payment of tax for the promotion of any of the religion in the country. It also interprets that the tax collected or public money cannot be used for promotion or maintenance of any particular religion.

#### ***Cultural and educational rights***

To ensure that the cultural and educational rights of especially the minorities is protected, this fundamental right is important (29 and 30). **Minority's cultural rights (29):** it provides that the citizens of India especially those of minority population, those minorities that are having a distinct language, script or culture, have the right to protect them, and do necessary steps to preserve them. A statement in the Constituent Assembly Debate (CAD) has it saying as:

“a heavy responsibility would be cast on the majority to see that in fact the minorities feel secure...the only safety for the minorities lies in a Secular State. It pays them to be



nationalists...The majority community should not boast of their national outlook...They should try to place themselves in their position of the minorities and try to appreciate their fears. All demands for safeguards...are the product of those fears that the minorities have in their minds,...as regards their language, their script and also about services". (NCERT, 2020)

### ***Educational rights of minorities***

This article mentions that minorities either religious or linguistic minority can establish their own educational institution. In this manner they can protect, preserve and develop their own distinct cultures that they have. The government will not do discrimination while aiding them for their development and prosperity (Laxmikanth, 2020)

### ***Right to constitutional remedies***

This right provides the solution and remedy for fundamental rights violation. It is considered as the most important fundamental right among all. D.R. B.R. Ambedkar called this right 'the heart and soul of the Indian constitution' (Austin, 1996). As it provides the rights to citizens to approach Supreme Court and High Court when rights are violated, and to get them enforced. In this scenario, the court can issue orders like Habeas Corpus, Mandamus, Prohibition, Quo Warranto, Certiorari (Bakshi, P.M, 2021). Also, there are other statutory bodies enacted to protect the fundamental rights beside the judiciary. They are National Commission on Women, National Commission on Minorities, The National Commission on Scheduled Castes etc., all these statutory bodies have been established for the protection of Human Rights of the people in India.

### ***Martial law***

This provision speaks about the situation when Martial Law (military rule) is in place in any part of India. Under this circumstance, the actions done by Armed forces while discharging their duty cannot be objected as a violation of any person's right. As the power lies with the parliament to forgive and forget the acts of armed forces when Martial law is at place. The military rule is imposed under extraordinary situations like war, invasion, rebellion, riot or any violent resistance to law.

### ***Laws effecting fundamental rights***

This particular provision gives parliament the power to make laws effecting other fundamental rights. For example the government and parliament can make laws against untouchability (article 17), Protection Against Human Trafficking and Forced Labour (Article 23) etc. which enables the Indian government to safeguard the rights of the people in the country.

### ***Criticism of the Fundamental Rights***

The critics have pointed out the following points regarding the fundamental rights:

**Firstly, A little scope for Social and Economic Right:** it says that all rights mostly provided are in the form of political rights. And therefore it is lacking behind social and economic rights like right work, social security, right to employment, right to rest and leisure etc. which are seen to be available for the populations of

many modern democratic countries. **Secondly, High cost justice availability:** in India judiciary is made the primary institution for protecting these fundamental rights, it can be observed that judiciary process in India is often expensive and lengthy. Only the rich class is able to enjoy the benefit.

### ***Value of fundamental rights in the society***

Despite the criticism we cannot deny the value that the fundamental rights bring in the society. And this value proposition attracts the study in the field of Constitutional Studies. The following are noteworthy while highlighting the relevance of the rights in the Indian constitution: They give pathway for the people participation in the political as well as administrative process in the country; they provide a dignified and meaningful life to the individuals; they form the bedrock of social justice in Indian society, and in the spheres of politics; they keep checks on the government power. By making sure that government power do not become limitless or overpowered; the fundamental rights pave the way for strengthening the secular fabric of the country, which is very important for a democratic country like India; they protect and preserve the interest of minorities in the country, also provide protection for weaker section of the country; it provides liberty to individuals; the elements of rights provide necessary democratic political setup and necessary democratic conditions; the rights also provide the material and moral protection of the individual; as rights and freedoms are equally important for a person to achieve his or her full potential, they become necessary for person to achieve higher life goals, physically, mentally, financially, and socially in life.

## **CONCLUSION**

In sum it can be said that fundamental rights in the Indian society constitute a high position. Because it has a high relevance in society like providing Equality against discrimination and act against social exclusion of humans, the freedoms for personal and professional development in life, religious freedoms for the secular fabric of India, as India is one of the most diverse countries globally with hundreds of different cultures and religion, maintaining multiculturalism and tolerance become guiding principles which the fundamental rights provide. As these rights help the individual to achieve the no-limit human potential of achievement and development, by providing equal opportunities for all equally. The fundamental rights is that base structure of the country's foundation and the rest runs automatic as the superstructure part. The awareness of the fundamental rights is very fundamental in all aspects of human life as it provides a clear picture of the country and its vision, by proving how the citizens are treated in the land. In this manner, the studying, learning and mastering of the fundamental rights becomes a necessary commitment that all should have in life, especially when residing under the territory. Hence, I have in this paper tried to put forth a study on the rights given to people in the Indian soil, called Fundamental Rights. Furthermore, a noteworthy mention here is that this paper can be utilized by





scholars across the globe who are interested in constitutional studies and human rights area of study. This paper is going to help students, teachers, scholars, academicians, and all interested readers, etc. across the globe in coming across and getting familiar with the rights provided in the Indian constitution. And I am hopeful that this paper will help in new knowledge discoveries and rediscoveries in the future ahead for the human society.

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