

# Critical Analysis of Fundamental Rights in the Indian Constitution

Bhavna Kumari

Amity University, Patna

**Abstract:** *Fundamental rights are guaranteed by the constitutions of democratic nations in order to preserve peace and harmony. These rights are intended to safeguard citizens' fundamental rights, promote equality, establish the rule of law, and aid in the expansion and advancement of society. The Indian Constitution's third part, which covers fundamental rights, is subject to legal action.*

**Keywords:** India's Constitution, fundamental rights, writs, equality, freedom of expression, exploitation, freedom of religion, rights to culture and education, constitutional remedies.

## 1. Introduction

All Indian citizens are guaranteed the fundamental rights of human dignity by several sections of the Indian Constitution of 1950. There are six fundamental rights that are unaffected by discrimination on the basis of gender, color, religion, or any other category. If any of these rights are violated, persons have the ability to assert their rights. Section III of the Indian Constitution, sometimes referred to as the "Magna Carta" of the Indian Constitution, contains the list of fundamental rights.

Schedule of Fundamental Rights: The Indian Constitution guarantees the following six fundamental rights:

Article 14 - 18 Equal Rights, Article 19–22: Right to Freedom Article 23–24: Right against Exploitation, Article 25 – 28: Rights to Religious Freedom, Articles 29–30: Cultural and Educational Rights Article 32: Right to Constitutional Remedies.

It is important to remember that one of the fundamental rights guaranteed by the Constitution was the ability to own property. However, the 44th Constitutional Amendment Act of 1978 removed the right to property from the list of essential rights. The right to property, which falls under the category of fundamental rights, was standing in the way of socialism, equality, and the equitable distribution of property. As a result, the right to property is currently recognized by Article 300A as a legal rather than a fundamental right.

Important aspects of fundamental rights: The Indian Constitution guarantees some fundamental rights, some of which are as follows:

- Fundamental rights are guaranteed and safeguarded under the Indian Constitution. Although reasonable circumstances allow the Parliament to limit fundamental rights, these restrictions are only allowed to stay in place for a set amount of time.
- The judge will assess the reasonableness of the justifications used by the parliament to curtail fundamental rights. Fundamental rights are therefore neither unassailable nor inviolable.

- In the event of a national emergency, the protections afforded by Articles 20 and 21 may be suspended, although fundamental rights remain in effect. Any portion of Indian territory subject to military rule may see restrictions on fundamental rights.
- If a person's fundamental rights are curtailed or violated, they have the option to file a direct appeal with the Supreme Court of India under the Indian Constitution. Thus, the fundamental rights are subject to legal action.

Significance of Fundamental Rights: In India, the democratic system and secularism are based on the principles of fundamental rights. They lay out the prerequisites that guarantee a person's material and moral safety while upholding social fairness and equality. Additionally, they stand up for the rights of marginalized groups in society including minorities. Personal freedom is guaranteed by fundamental rights as well. Because these rights uphold the rule of law, the totality of the government's power is restrained.

Fundamental Rights Amendability: In the Kesavananda Bharati case (1974), the Supreme Court ruled that the Parliament could change any provision of the Constitution, including all of the fundamental rights, provided that it did not alter the "Doctrine of Basic Structure."

The Fundamental Structure of the Constitution has not been precisely defined by the Supreme Court, nor has it contained an all-inclusive inventory of its components. Nonetheless, the Supreme Court ruled that only changes to the fundamental framework would be permitted—no removals. The following clauses are considered to be a component of the fundamental framework of the Constitution, according to a string of rulings by the Supreme Court: India's Autonomy, secularism, Democracy, Elections that are free and Fair court review, and so on.

Severability doctrine: The "Doctrine of Separability" is another name for the severability concept. Because Article 13 (1) of the Constitution states that all laws enacted in India prior to the Constitution's adoption shall remain in effect, but to the extent that they conflict with the fundamental rights, such conflicts will be void, it safeguards our fundamental rights. To put it simply, just the portions of the legislation

that conflict with the Fundamental Rights will be deemed defective or illegal, not the entire law.

Doctrine of eclipse: As the name implies, this doctrine is used when a law or action disregards or is incompatible with the Fundamental Rights. It is applied when one legal provision predominately overshadows another. An incongruous statute or conduct is superseded by fundamental rights, rendering it unenforceable but not void from the outset. Reimplementing such a legislation or act would require the removal of the restrictions imposed by the Fundamental Rights.

Article 14: Equality before the law - Right to Equality According to Article 14, every person is treated equally under the law. According to this article, every Indian citizen must get equal treatment under the law. The aforementioned Article goes on to say that everyone is equally protected by the law. The law must treat people the same way when they are in similar circumstances.

Article 15: Prohibition of discrimination. Any form of discrimination is forbidden by this clause of the Indian Constitution. In the event that any citizen is exposed to any handicap, limitation, liability, or condition with respect to any of the following: Entry to public areas; Use of state, including as wells, and ghats; Furthermore, the previously mentioned Article permits the creation of specific provisions for women, children, and the underprivileged classes in spite of this Article.

Article 16: Parity of opportunities in public service All citizens are entitled to equal job chances in State Service under this clause of the Constitution. No citizen may be appointed or subjected to discrimination in the workplace on the basis of race, gender, religion, caste, place of birth, residence, or ancestry. It is possible to provide exceptions to the aforementioned Article in order to give the underprivileged groups further protection.

Section 17: Elimination of Untouchability The untouchability practice is expressly forbidden in the aforementioned article. Untouchability has been outlawed in its entirety as of this article. Any impairment or conflict resulting from untouchability is regarded as criminal.

Article 18: Title Elimination. Article in question eliminates titles. It says that titles cannot be bestowed by the State. However, titles with a military or scholarly focus will be accepted. Furthermore, it is against the law for Indian nationals to receive any type of title from a foreign nation. This article also abolishes the titles that were granted by the British administration at the time, like Rai Bahadur and Khan Bahadur.

Awards like the Bharat Ratna, Ashok Chakra, Param Vir Chakra, and Padma Shri are not included in this category, nor are military decorations like the Padma Bhushan, Padma Vibhushan, and Padma Shri.

The Right to Freedom Article 19, among other provisions, addresses the fundamental right to freedom in the

Constitution. The next six freedoms are guaranteed by Article 19. They're listed below:

Article 19 (1) (a): Right to free speech and Expression. Every Indian citizen is guaranteed the right to free speech and expression under this article. The extent of this freedom may, however, be limited by the law in order to protect the nation's integrity, security, and sovereignty. In addition, there are exemptions for upholding public order, good relations with other countries, inciting an offense, defamation, and contempt of court.

Article 19 (1) (b): Right to assemble and protest. This clause protects everyone's right to peaceful assembly without the need for weapons. Nonetheless, reasonable limitations may be put in place in order to preserve public order as well as the nation's sovereignty and integrity.

Article 19 (1) (c): Freedom to organize into cooperative societies, unions, and associations This clause permits Indian citizens to organize cooperative organizations, unions, or associations, with some restrictions that take into account the integrity and security of the nation as well as the preservation of public order.

Article 19 (1) (d) - Unrestricted mobility This clause guarantees the freedom of movement for Indian people across the country. However, for the purpose of maintaining public safety, order, or the interests of the Scheduled Tribes, this freedom may be limited.

Article 19 (1) (e) - Freedom of residence. According to this clause, any Indian citizen is free to live anywhere in the nation. To protect the interests of the Scheduled Tribes or to maintain public order, this freedom may, nevertheless, be limited.

Article 19 (1) (g): Right to practice any profession According to this clause, every person is free to engage in any trade, profession, or occupation as long as it's not against the law or immoral. Furthermore, the legislation does not forbid the State from enacting rules pertaining to the professional or technical credentials needed to engage in a given trade or occupation

Article 20: Protection of Citizens in the Event of an Offense Conviction This clause addresses the protection of citizens in the event that they are found guilty of crimes. It lists three types of protections that an individual has against the State: a prohibition on self - incrimination, double jeopardy, and retroactive criminal laws.

Article 21: Right to life This clause stipulates that the State may not take away a person's life or personal freedom unless it follows a legally prescribed process. The right to life requires that a person live a decent life, not just survive. This particular article covers a great deal of ground, and over the years, interpretations of it have changed significantly. Children aged 6 to 14 are entitled to free education under Article 21A. The 86th Constitutional Amendment Act of 2002 added this clause to the document. The requirement is made that all children between the ages of six and fourteen receive free and mandatory education from the State.

Article 22: Protection against arrest and detention under specific circumstances Both citizens and non - citizens are covered by this law. In the event of an arrest, it offers important procedural protections to individuals. Noting that this clause does not provide a basic right against incarceration and arrest is important. Preventing arbitrary arrests and detention is the goal of this right. Enemy aliens and those detained under laws pertaining to preventative detention are not covered by this provision. This article also offers the following:

Section 22 (1) According to this clause, everyone detained must be told the reason they were taken into custody. Furthermore, they must not be prevented from obtaining legal counsel.

Section 22 (2) According to this clause, the person who has been arrested must appear before a court magistrate within 24 hours of the arrest. This clause also prohibits holding an arrested person in custody for longer than the time frame the judicial magistrate specifies.

Article 23: Right against exploitation. Prohibition of forced labor and human trafficking This clause is further broken down into the following sections: Article 23 (1) - This section prohibits human trafficking, "beggar" labor, and other forms of forced labor; any kind of violation of this provision will be prosecuted under the law.

Article 23 (2) - This article does not prohibit the state from enforcing mandatory service for public purposes. In doing so, the state is prohibited from discriminating on the basis of any of the following: race, religion, caste, class, or any combination of these. This clause shields citizens from both private individuals and the State. The Suppression of Immoral Traffic in Women and Girls Act of 1956 and the Bonded Labour System (Abolition) Act of 1976 are two laws that the Parliament passed in relation to this issue.

Freedom of Religion Article 25: Conscience freedom and the freedom to practice, profess, and spread religion. This clause protects all citizens the freedom of conscience as well as the right to practice, profess, and spread their faith. The aforementioned liberties are nevertheless susceptible to morality, public health, and order. The State may enact laws to control or prohibit financial, economic, political, or other secular activities that are connected to religious practice, according to this article. Additionally, it permits social welfare programs and the public reformation or opening of Hindu religious institutions to members of all Hindu social levels.

Article 26: Authority to oversee religious matters This clause stipulates that each and every religious denomination has the following rights, subject to morality, health, and public order: the freedom to establish and uphold organizations for philanthropic and religious purposes. the freedom to conduct its own business regarding religion the right to purchase both moveable and immovable asset, the authority to manage said property in compliance with the law.

Article 27: Freedom to pay taxes for the advancement of any religion. This clause states that any profits that are utilized directly to support and/or promote a specific religion or religious sect will not be subject to taxes.

Article 28: In certain educational institutions, the freedom to attend religious instruction or worship In order to spread religious education, this clause permits the creation of educational institutions run by religious organizations.

Rights to Culture and Education Article 29: Safeguarding Minority Interests The purpose of this Constitutional Article is to safeguard minority groups' interests. Article 29 (1) This clause guarantees the right to cultural, linguistic, and script preservation to any group of Indian citizens who speak a different language or write a different script.

Article 29 (2) states that no person shall be denied entrance to educational institutions run by the state or those that receive its assistance on the basis of race, religion, caste, language, or any combination of these.

Article 30 - The Right of Minorities to Found and Run Educational Organizations. The ability to establish and run their own educational institutions is granted to minorities. The "Charter of Education Rights" is another name for the aforementioned paragraph because of this. Article 30 (1) The right to create and run any educational institution of their choosing is guaranteed by this article to all linguistic and religious minorities.

Section 30 (1) According to this clause, every linguistic and religious minority is entitled to create and run whatever kind of educational institution they choose. Article 30 (2) guarantees that the state will not discriminate against any educational institution because it is managed by a minority group, regardless of the institution's language or religion, when providing help to educational institutions.

Article 32: Constitutional Remedies as a Right In the event that citizens' fundamental rights are violated, the Constitution provides for specific remedies. The State lacks the ability or jurisdiction to restrict or violate an individual's rights. If any of these rights are breached, the person who was wronged may file a lawsuit. They can even go straight to the Indian Supreme Court, which has the authority to grant writs to enforce basic rights. The courts have the authority to grant the following five types of writs:

Habeas corpus "To have the body of" is what the word "Habeas Corpus" refers to. According to this writ, the court can ask anyone who is being held to evaluate whether or not their custody is lawful.

Ceritorari

The definition of "certiorari" is "to be certified. " Through the use of this writ, a higher court is able to review a case that was previously heard by a lower court. Essentially, it is used to request judicial review of a ruling made by a court or other government body.

Prohibition A court may issue a writ of "Prohibition" to limit or forbid subordinate courts, tribunals, and other quasi -

judicial bodies from acting in ways that are not permitted by law. While the writ of mandamus checks activity, it is used to check idleness.

Mandamus "We command" is what the word "Mandamus" signifies. The court will utilize this writ to order a public servant who has neglected or refused to carry out his duties to get back to work. A government, a corporation, a tribunal, a public body, or an inferior court may also be the target of a writ of mandamus.

Quo Warranto Quo Warranto translates to "By what authority or warrant" The Supreme Court or other higher courts use this writ to prevent an individual from unlawfully taking over a public position. The Quo Warranto writ empowers the court to investigate the validity of an individual's claim to a public position.

Conscience summary of significant cases concerning Fundamental Rights:

A. K. Gopalan vs State of Madras (1950) A. K. Gopalan invoked his right to habeas corpus in this case by filing a petition under Article 32, challenging his incarceration. Later on, he was not allowed to reveal the reasons for his detention because Section 14 of the Preventive Detention Act of 1950 forbade this kind of revelation in court.

The Supreme Court of India rendered a major decision in this case, holding that Indian courts are not required by Article 21 of the Constitution to follow the due process of the law. The Preventive imprisonment Act, 1950 was also affirmed by the Honorable Court, with the exception of Section 14, which stated that the detainee's reasons for imprisonment and any arguments he may have made against them would not be revealed to the court.

Shankari Prasad v. Union of India (1952) The first Amendment of 1951, which limited the right to property, was contested in this case as being unconstitutional. This case involved a challenge to the argument that Article 13 prohibits changes to Article 31A and 31B that restrict citizens' basic rights. The Supreme Court ruled that the authority granted by Article 368 to change the Constitution encompasses the authority to modify basic rights.

GolakNath v. State of Punjab (1967) In this case, the Punjabi land claims made by Golak Nath and his family exceeded 500 sections. The Punjab Securities and Land Tenures Act, 1950, a law passed by the state government in the interim, limited the amount of extra land that Golak Nath and his family could possess to thirty sections. Golak Nath thus invoked Article 32 of the Indian Constitution to file a writ petition, contesting the legality of the statute and asserting that his fundamental right to property was being infringed. The Supreme Court was asked to rule on whether or not the Parliament could amend the Fundamental Rights listed in Part III of the Indian Constitution. The Court decided that no Fundamental Right guaranteed by the Constitution may be restricted by Parliament.

Kesavananda Bharati v. State of Kerala (1973) In this instance, the Golaknath case described before was examined. The Court held that it is impossible to change the

Constitution's "basic structure." In its 7: 6 ruling, the Supreme Court held that the Parliament lacks the ability to change the fundamental framework of the Constitution.

Indira Nehru Gandhi v. Raj Narain (1975) This case addressed the purpose of the 39th Amendment to the Constitution as well as election controversies involving the then - prime minister, Indira Gandhi. The 39th Constitutional Amendment Act, 1975's clause (4) 's legitimacy was the main issue at hand in this case. In this decision, the Supreme Court expanded upon the list of fundamental elements established in the Kesavananda Bharati case, adding elements like judicial review, democracy, and the rule of law as "Basic Features."

## 2. Conclusion

All Indian people can be sure that their fundamental rights will be protected as long as they are incorporated in the Indian Constitution, which functions as a guarantee for democracy. Any other state law is superseded by these civil liberties. For people to advance as a nation and as a whole, fundamental rights are necessary.

Citations: Section of the UPSC exam is where these basic rights are granted on <https://byjus.com/free-ias-prep/fundamental-rights/#:~:text=/Images/pdf1/Part3.pdf> - <https://www.mea.gov.in> The fundamental rights and duties of every Indian citizen are outlined in the Hindustan Times article "Know Your Constitution" (101642927940238.html).