**INDIAN CONSTITUTION AND FUNDAMENTAL RIGHTS**

The Constitution of India is the supreme law of India. It frames fundamental political principles, procedures, practices, rights, powers, and duties of the government. It imparts constitutional supremacy and not parliamentary supremacy, as it is not created by the Parliament but, by a constituent assembly, and adopted by its people, with a declaration in its preamble. Parliament cannot override it.

The world’s longest constitution is the Indian constitution. At its commencement, it had 395 articles in 22 parts and 8 schedules. It consists of approximately 145,000 words, making it the second-largest active constitution in the world. Currently, it has a preamble, 25 parts with 12 schedules, 5 appendices, 448 articles, and 106 amendments.

**History**

The constitution of India was adopted on the 26th of November, in the year 1949. However, it came to effect on the 26th of January, 1950. 26th of January is celebrated as the Republic Day of India.

The Constitution Assembly adopted it. Dr. B. R. Ambedkar, the chairman of the Drafting Committee, is widely considered to be the architect of the Constitution of India. After, the adoption of the constitution, The Union of India became the contemporary and modern Republic of India.

**Fundamental Rights**

Fundamental rights are the basic human rights enshrined in the [Constitution of India](https://byjus.com/free-ias-prep/constitution-of-india-an-overview/) 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 the Indian Constitution?**

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

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)

**Right to equality**

 The right to equality is one of the important fundamental rights of the 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

**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.

**Right against Exploitation (Articles 23 – 24)**

This right implies the prohibition of traffic in human beings, *beggar*, and other forms of forced labour. It also implies the prohibition of employment of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

**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, and establish and maintain religious and charitable institutions

**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 courts. Citizens can even go directly to the [Supreme Court](https://byjus.com/free-ias-prep/supreme-court-of-india/) 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](https://byjus.com/free-ias-prep/landmark-cases-relating-basic-structure-constitution/).

The Fundamental Rights of the Indian Constitution 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 that has been placed under martial law or military rule.

### **Fundamental Rights Available Only to Citizens**

The following is the list of fundamental rights in the Indian constitution 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).

The uniqueness of Indian constitution is that if there are rights of victims there also exist rights of accused. We shall now discuss them in detail

 **Rights of victims**

By reading the title a question arises in our minds: who is a victim? Generally, people believe a victim is a person who has been harmed physically. But it is not entirely true.

A victim is a person who has been harmed physically and mentally. As per section 2(a) of the Code of Criminal Procedure 1973, a victim is a person who has suffered any loss or injury caused because of the act or omission for which the accused person has been charged.

Hence, one can say a victim is a person who has suffered harm, physical or mental injury, emotional suffering, economic loss or violation of their fundamental rights through acts or omissions violative of Indian criminal laws.

The Indian Constitution and the Code of Criminal Procedure, 1973 prescribe various rights for victims. Article 14 and Article 21 incorporate fundamental rights that must be read with the Directive Principles of State Policy listed in articles 39A, 41, 46, and 51C.

As per Article 39A, the State offers free legal assistance and a guarantee for promoting justice on the grounds of equal opportunity. By compelling the State to compensate victims of criminal violence, Article 21 ensures against unfair deprivation of life and liberty.

A Public Prosecutor appointed by the state represents the victim. Moreover, in 2008, an amendment was made to Section 24 (8) of the CrPC. As per the amendment, the victim was allowed to choose an advocate to assist the public prosecutor. Though the Code identifies a few rights that favour the victims, they are not as effective as those of the accused.

For example, the victim can choose his private lawyer, but the authority given to such a lawyer is limited. The lawyer can only submit the written arguments after the evidence is recorded and only after the court permits.

Other rights include the right to file an FIR (First Information Report). Although the police are the primary authority that investigates the case, they are unaware of international developments in areas such as victimology. As well as this, they are unaware of how victims should be treated.

United Nations Declaration rightly states that treating victims negatively will lead to misperceptions among victims of the criminal justice system in India. Hence, there is no iota of doubt about the importance of compassionate treatment and respect for the victims’ dignity.

Moreover, according to Section 25 of the Indian Evidence Act, no confession made to a police officer shall be proved against a person accused of any offence.

In a criminal case, after the judgment is pronounced, the victim’s role ceases to exist. However, after pronouncing the judgment, the victims should be offered some rights to ensure complete justice, such as the right to compensation.

According to Section 357(3) of CrPC, the court has the right to grant compensation to the victim for any loss or injury suffered by him, even in cases where a fine has not been levied upon the accused.

However, in the case Harikishan & State of Haryana v. Sukhbir Singh, it was observed by the Supreme Court of India that courts in India rarely make use of section 357 of the CrPC to grant compensation to victims of crime.

Thus, the legislature inserted a provision in section 372 of the Code through the Amendment Act of 2008, keeping in mind the recommendations given by the Malimath Committee and the Law Commission empowering victims with the right to appeal.

UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

In 1985, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power reaffirmed the importance of the protection of crime victims in international law. It has recognised the following major rights of victims:

**Right to Attend Proceedings.**

During criminal proceedings, the victims and their families are entitled to attend the proceedings. This right to attend proceedings includes the right to attend trial, sentencing, parole hearing of the offender etc. A crime victim is more confident and in a better state of mind to exercise his right to attend the proceedings with the support and presence of a trusted advocate or family member.

**Right to Compensation**

To reimburse victims for their expenses relating to the crime, victim compensation is designed by the government. Most compensation programs are open to the direct victims of crime, or their surviving family members. However, sometimes victims are ineligible to claim compensation if their misconduct contributed to their injuries.

**Right to be Heard**

Generally, according to the law, the statements provided by the victim may be oral or written. However, in some states, such statements can be submitted in the form of videotape, audiotape, or other electronic means. These statements provided by the victims describe the impact of the offence on them, including financial, physical, psychological or emotional impact etc.

**Right to Information**

General information of interest to victims should be provided by the criminal justice system. It includes information on the right to attend a proceeding, submit a victim impact statement, sue the offender for money damages in the civil justice system, file for a protection order, and collect witness fees for their testimony, among others. The victim should be informed of various proceedings in the criminal justice process such as the arrest of the accused, bail release and related proceedings, dismissal of charges, negotiated pleas, sentencing hearings, parole release and related proceedings etc.

**Right to Restitution**

Restitution refers to the restoration of the harm caused by the defendant. Courts have the authority to order restitution from convicted offenders as part of their sentences. A court considers the victim’s losses for calculation of the restitution owed. The court may also consider the defendant’s financial resources while setting the total amount of restitution.

**Right to the Expeditious Return of Personal Property**

Sometimes, a victim of a crime may suffer the loss of property. This loss can either be due to theft or the seizure of property by the police. Generally, the property seized is returned to its rightful owner when it is no longer required as evidence in criminal prosecution. Some states have attempted to impose specific time requirements for the return of property so that the victim is not deprived of his property for a long time.

**Right to a Speedy Trial**

This right is provided by many jurisdictions to crime victims. Moreover, some specific cases are given priority as compared to others due to their facts and circumstances by several jurisdictions. Such priority cases can be cases involving children or vulnerable elderly victims.

**Right to Privacy**

Furthermore, many victims back down from seeking justice because of the fear of harassment or retaliation from their known ones and offenders. Victims have the right to protect their privacy such as name, address, phone number etc. In addition, particular communications, such as conversations between husband-wife, doctor-patient, attorney-client etc. are safeguarded from judicial disclosure.

Moreover, the State has witnessed significant developments in the form of new laws such as the Protection of Women from Domestic Violence Act 2005, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, Maintenance and Welfare of Parents and Senior Citizens Act 2007 etc.

**Protection of Women from Domestic Violence Act, 2005**

This Act protects the victim from domestic violence and prohibits the accused from denying the victim continued access to resources or facilities which the victim is entitled to use or enjoy under the domestic relationship, including access to the shared household.

The victims can obtain a protection order, a monetary relief order, a custody order, a residence order, a compensation order etc.

**Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**

This Act was introduced to prevent atrocities against the members of the scheduled castes and scheduled tribes. Under this Act, compensation to victims is mandatory, besides several other reliefs depending on the type of atrocity faced by the victims.

**Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

This Act has been adopted to eradicate the growing problem of elder abuse and victimisation prevalent in many countries, including India. Under the provisions of this law, children or legal adult heirs are required to maintain their parents or senior citizens above the age of 60 who are unable to utilise their earnings to live a normal life.

The Tribunal may issue an order to the children or legal heirs asking them to give a monthly maintenance allowance in case the children or legal heirs fail or refuse to retain the elderly citizen.

**National Commission for Protection of Child Rights**

Article 21-A of the Constitution provides that the State shall grant free and obligatory education in the form that the State may determine by law to all children aged 6-14 years.

To ensure that all laws, policies, programmes and administrative mechanisms conform to the views of children’s rights, the National Commission for Protection of Child Rights (NCCPR) was established in March 2007. The National Committee can recommend the commencement of prosecution proceedings or any other action it may deem appropriate following an inquiry.

**Conclusion**

Several rights have been enacted to empower victims. However, the victims have to go through many struggles and hardships including long and cumbersome proceedings and the fear of victimization by the people. As a result, the Indian criminal justice system has become a channel of social control by the state by taking over the right to prosecute the accused without the victim.

Hence, there should be a replacement of the vertical criminal justice system with a horizontal justice system in which the punishment system is sought to be replaced by a negotiation system. Hence, giving the central role to the victim.

Moreover, medical, psychological, and social assistance should be provided to victims in a manner that is governmental, voluntary, community-based, and indigenous. Victims should also be informed of the availability of health and social services and have easy access to them.

Moreover, victims should be treated with compassion and respect for their dignity. Furthermore, an unnecessary delay should be avoided in the disposition of cases and the execution of orders or decrees granting awards to victims.

Continuing the progress, citizens should use informal dispute resolution methods, such as arbitration, customary justice, or indigenous practices, to facilitate conciliation and redress for victims. Sadly, our criminal justice system has neglected to adequately assist the victims of crime for far too long.

It’s time to ensure that victims are given their rights. Since suffering confers no rights on its victims, we who witness are the ones responsible for restoring these rights.

 **Right of Accused**

Every person has individual rights and fundamental rights guaranteed by the constitution of India. Rights mean moral or legal entitlement to do something. The court should treat every person equally. Fair trial is essential for everyone. The rights of the accused are mentioned in our Indian constitution. Certain rights are available to the accused person during the inquiry, trial, or investigation. He should be saved or protected from unlawful arrest. Article 21 of the constitution states the right to life and liberty and to treat the accused in a good manner. Article 22 of the constitution states that no one should be denied the right to consult the lawyer, of his choice. The accused is given protection and also assistance by a lawyer. As per the Criminal Procedure Code (Cr.P.C.), the accused has the right to free legal aid, to be examined by a medical practitioner, the right to be silent, etc.

**Right to legal assistance for an accused person**

As per Criminal Law, the accused has various rights as follows:

Assume to be innocent – Till the crime is proven the accused is treated as innocent. Without any doubt, the trial is conducted, and the accused is deemed an innocent person until he is proven guilty.

**Family visit** – The accused has the right to meet his family once in the given time in jail.

**Pre-trial rights of accused in India**

To know the grounds of arrest – The Accused has full rights to know why he is being arrested and for what crime. As mentioned in section 50 (1) of the criminal procedure code, a person can know the reason why he is being arrested without a warrant. And person whose shown warrant should be given all details of arrest by section 75 of the Criminal Procedure code.

**Free legal aid** – Like the common people, even the accused have the right to consult a legal practitioner as per fundamental rights in Article 22(1) of the Indian constitution. In every case, this should be followed. In the criminal procedure code also given the accused has the legal right to be defended by an advocate of his choice. Courts and magistrates must inform the accused of their right to free legal aid. The accused person can consult any advocate.

**Right to be examined by a doctor-** This right was given in the D.K. Basu case in guidelines given by the judge.

If the accused wants to do a medical checkup of him by a medical practitioner, he is allowed to do so. But the request should not be made for delay or vexation of trial for his benefit. This right is mentioned in section 54 of Cr.P.C.

**Free, fair, and speedy trial** – The accused should be given speedy justice and it should be fair and impartial. A common phrase related to this justice delay is justice denied. Speedy trial is an important part of Article 21 of the constitution.

Right against double jeopardy – As per Article 20(2) of the Constitution, A person cannot be prosecuted and punished for the same offence more than once.

**Right against the ex-post facto law** – The right against ex-post facto law in India, gives a person the authority where he/she cannot be tried for an offence that was the earlier crime and now is not. This means that the retrospective effect law is not applicable. An act that was not a crime on the day when it was done, cannot be considered an offence.

**Right of bail –** To release from jail custody, a bail is filed. Any person arrested without a warrant and accused of a bailable offence has to be informed by the police officer that he is entitled to be released on bail on payment of the surety amount.

In Indian law, there are three types of bail- Interim bail, anticipatory bail, and bail by bond. Also, a person can file an anticipatory bail through his criminal lawyer, before his arrest.

**Right to privacy and protection against unlawful searches** – The arrested persons are also given the right to privacy which means the privacy of the accused should not be violated by the police officer in any situation and police cannot search the property of the accused without a warrant.

**Rights available to an arrested person while the trial is going on**

Right to be present during the trial – Section 273 of the Code states that all evidence and statements must be recorded in the presence of the accused or his criminal lawyer.

**Right to be produced before a magistrate**

 Irrespective of the fact, that whether the arrest was made with or without a warrant, the person who is making such arrest has to bring the arrested person before a judicial officer without any unnecessary delay. By Sec 56 and 76 of the code, an accused has to be produced before a magistrate within 24 hrs. In the case of Naresh Sridhar Mirajkar v. State of Maharashtra, the apex court observed that the right to open trial must not be denied except in exceptional circumstances. The high court has inherent jurisdiction to hold trials or part of a trial in camera or to prohibit the publication of a part of its proceedings.

**Right to cross-examination –**

 The accused can be cross-examined by the prosecutor to prove his innocence. This right is available to him.

**Right to get copies of the documents** – The accused has the right to receive copies of all the documents filed by the prosecutor about the case.

**Right to appear in the trial** – The accused person has the right to be present during his trial and can observe the testimony being presented in front of him.

**Right to appeal** – If the accused is not satisfied with the decision of the lower court, he has the right to appeal in a higher court against his conviction.

**Right to humane treatment in prison** – The prison authorities should treat the accused in a careful manner and with humanity. They have the right to have all human rights.

**Post-trial rights of the accused person**

An accused person also has certain rights after his trial is completed. These rights of the accused depend upon the outcome of his trial. This means, whether (s)he has been acquitted by the court or has been held guilty and arrested by police.

**Rights of the accused, if declared innocent**

There are certain rights as follows

When a person is declared innocent and acquitted by the court, the following rights are given to him.

Accused persons have a right to get a copy of the judgment

Right to receive protection from police if there are reasons to believe there is a threat to his life post-acquittal.

If the accused is guilt then lawful punishment and proper execution of the sentence if needed.

**Conclusion**

All have their rights given by the Indian constitution. Article 21 of the constitution states the right to life and liberty and to treat the accused in a good manner. While a person is in the custody of the police, he must be aware of the rights available to him. There are pre-trial, rights during the trial, and post-trial rights available to the accused for their protection of life.

The accused person is assisted by the lawyer. As per the rules of natural justice, the court should treat every person with equality and fair treatment. The accused have the right to meet their family on given days, access to an advocate, right to appeal, right to bail, free trail, speedy trial, etc in India. As per the legal principle, one is considered innocent until proven guilty.

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