

# FUNDAMENTAL RIGHTS



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# INTRODUCTION

- **Fundamental rights** are those rights which are essential for intellectual, moral and spiritual development of citizens of India. As these rights are fundamental or essential for existence and all-round development of individuals, they are called 'Fundamental rights'. **Harold Joseph Laski defines rights as “those conditions of social life without which no man can seek, in general, to be himself at his best”**. These are enshrined in Part III (Articles 12 to 35) of the [Constitution of India](#).

- The purpose of the Fundamental Rights is to preserve individual liberty and democratic principles based on equality of all members of society.<sup>[21]</sup> Dr Ambedkar said that the responsibility of the legislature is not just to provide fundamental rights but also and rather, more importantly, to safeguard them.
- The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. The writers of the constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion, were not recognised and protected by the State.<sup>[6][7]</sup> According to them, democracy is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the fundamental rights..

- These fundamental rights help not only in protection but also the prevention of gross violations of human rights. They emphasize on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background. Some fundamental rights apply for persons of any nationality whereas others are available only to the citizens of India. The right to life and personal liberty is available to all people and so is the right to freedom of religion. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are reserved for citizens alone, including [non-resident Indian citizens](#).<sup>[10]</sup> The right to equality in matters of public employment cannot be conferred to [overseas citizens of India](#).<sup>[11]</sup>

- **Fundamental rights primarily protect individuals from any arbitrary state actions, but some rights are enforceable against individuals.<sup>[12]</sup> For instance, the Constitution abolishes untouchability and also prohibits begar. These provisions act as a check both on state action as well as the action of private individuals. However, these rights are not absolute or uncontrolled and are subject to reasonable restrictions as necessary for the protection of general welfare. They can also be selectively curtailed. The Supreme Court has ruled<sup>[13]</sup> that all provisions of the Constitution, including fundamental rights, can be amended, but that Parliament cannot alter the basic structure of the constitution. Since the fundamental rights can be altered only by a constitutional amendment, their inclusion is a check not only on the executive branch but also on the Parliament and state legislatures.**

# SIX GOLDEN FREEDOM:



**Right to Equality**



**Right to Freedom**



**Right Against Exploitation**



**Right to Freedom of Religion**



**Cultural and Educational Rights**



**Right to Constitutional Remedies**

# Right to Equality:

- The Right to Equality is one of the chief guarantees of the Constitution. It is embodied in Articles 14–16, which collectively encompass the general principles of equality before law and non-discrimination and Articles 17–18 which collectively encompass further the philosophy of social equality.
- *Article 14* guarantees equality before law as well as equal protection of the law to all people within the territory of India. This includes the equal subjection of all persons to the authority of law, as well as equal treatment of persons in similar circumstances. The latter permits the State to classify persons for legitimate purposes, provided there is a reasonable basis for the same, meaning that the classification is required to be non-arbitrary, based on a method of intelligible differentiation among those sought to be classified, as well as have a rational relation to the object sought to be achieved by the classification.



- **Article 15** prohibits discrimination on the grounds of religion, race, caste, sex, place of birth, or any of them. This right can be enforced against the State as well as private individuals, with regard to free access to places of public entertainment or places of public resort maintained partly or wholly out of State funds. However, the State is not precluded from making special provisions for women and children or any socially and educationally backward classes of citizens, including the [Scheduled Castes](#) and [Scheduled Tribes](#). This exception has been provided since the classes of people mentioned therein are considered deprived and in need of [special protection](#).
- **Article 16** guarantees [equality of opportunity](#) in matters of public employment and prevents the State from discriminating against anyone in matters of employment on the grounds only of religion, race, caste, sex, descent, place of birth, place of residence or any of them. It creates exceptions for the implementation of measures of [affirmative action](#) for the benefit of any backward class of citizens in order to ensure adequate representation in public service, as well as reservation of an office of any religious institution for a person professing that particular religion.

- **Article 17** abolishes the practice of **untouchability** in any form, making it an offense punishable by law. The Protection of Civil Rights Act, 1955 was enacted by Parliament to further this objective.
- **Article 18** prohibits the State from conferring any titles other than military or academic distinctions, and the citizens of India cannot accept titles from a foreign state. Thus, Indian aristocratic titles and title of nobility conferred by the British have been abolished. However, awards such as the **Bharat Ratna** have been held to be valid by the Supreme Court on the ground that they are merely decorations and cannot be used by the recipient as a title

# Right to Freedom Art 19

- The Right to Freedom is covered in Articles 19 to article 22, with the view of guaranteeing individual rights that were considered vital by the framers of the Constitution, and these Articles also include certain restrictions that may be imposed by the State on individual liberty under specified conditions.
- Article 19 guarantees six freedoms in the nature of civil rights, which are available only to citizens of India. These include the freedom of speech and expression, freedom of assembly without arms, freedom of association, freedom of movement throughout the territory of our country, freedom to reside and settle in any part of the country of India and the freedom to practice any profession. All these freedoms are subject to reasonable restrictions that may be imposed on them by the State, listed under Article 19 itself. The grounds for imposing these restrictions vary according to the freedom sought to be restricted and include national security, public order, decency and morality, contempt of court, incitement to offences & defamation. The State is also empowered, in the interests of the general public to nationalize any trade, industry or service to the exclusion of the citizens.†

The freedoms guaranteed by Article 19 are further sought to be protected by Articles 20–22.<sup>[45]</sup> The scope of these articles, particularly with respect to the doctrine of due process, was heavily debated by the Constituent Assembly. It was argued, especially by Benegal Narsing Rau, that the incorporation of such a clause would hamper social legislation and cause procedural difficulties in maintaining order, and therefore it ought to be excluded from the Constitution altogether. The Constituent Assembly in 1948 eventually omitted the phrase "due process" in favor of "procedure established by law". As a result, Article 21, which prevents the encroachment of life or personal liberty by the State except in accordance with the procedure established by law,<sup>[</sup> was, until 1978, construed narrowly as being restricted to executive action.

- However, in 1978, the Supreme Court in the case of *Maneka Gandhi v. Union of India* extended the protection of Article 21 to legislative action, holding that any law laying down a procedure must be just, fair and reasonable, and effectively reading due process into Article 21. In the same case, the Supreme Court also ruled that "life" under Article 21 meant more than a mere "animal existence"; it would include the right to live with human dignity and all other aspects which made life "meaningful, complete and worth living". Subsequent judicial interpretation has broadened the scope of Article 21 to include within it a number of rights including those to livelihood, good health, clean environment, water, speedy trial and humanitarian treatment while imprisoned. The right to education at elementary level has been made one of the Fundamental Rights under Article 21A by the 86th Constitutional amendment of

- Freedom to practice any profession or to carry on any occupation, trade or business. But the state may impose reasonable restrictions in the public's interest through statute. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practising any profession or carrying on any trade.
- Article 20 gives protection in respect of conviction for offences.
- Article 21 gives the right to life, personal liberty and the right to die with dignity (passive euthanasia).
- Article 21A gives free education to all children of the age of six to fourteen years such manner as the State may, by law, determine.

- Article 22: Protection against arrest and detention in certain cases.
- The constitution also imposes restrictions on these rights. The government restricts these freedoms in the interest of the independence, sovereignty and integrity of India. In the interest of morality and public order, the government can also impose restrictions. However, the right to life and personal liberty cannot be suspended. The six freedoms are also automatically suspended or have restrictions imposed on them during a state of emergency.
- Courts in India have mandated that some of these rights are applicable to non-human entities which have been given the status of a "[legal person](#)" and humans have the [legal duty](#) to act as "[loco parentis](#)" towards animals welfare like a parent has towards the minor children ([Punjab and Haryana High Court](#) in 2018 [cow-smuggling](#) case), a [deity](#) as a legal person is entitled to the rights (Supreme Court in 2018 [entry of women to Sabarimala](#) granted Lord [Ayyappan](#) right to privacy), rivers are legal persons ([Uttarakhand High Court](#) mandated that the river [Ganges](#) and [Yamuna](#) have right to be protected against pollution caused by humans)

- Certainly, let's break down the key points in a more structured manner:

### **1. Background:**

1. Raj Narain, defeated by Indira Gandhi in the 1971 parliamentary election, filed a case accusing her of election fraud and misuse of state machinery.
2. Shanti Bhushan represented Raj Narain, and Nani Palkhivala represented Indira Gandhi in the case.

### **2. Allahabad High Court Verdict (June 12, 1975):**

1. Justice Jagmohanlal Sinha found Indira Gandhi guilty of misusing government machinery for her election campaign.
2. The court declared her election null and void, unseating her from the Lok Sabha.
3. She was banned from contesting any election for an additional six years.
4. Specific charges included using state police, availing government officer's services, and using state electricity for campaign purposes.

### **3. Public Reaction and Protests:**

1. Indira Gandhi's supporters organized mass demonstrations in Delhi in her favor.
2. Raj Narain's persistent efforts over four years were praised globally.



#### **4. Supreme Court Appeal (June 24, 1975):**

4. Justice V. R. Krishna Iyer upheld the High Court judgment.
5. Ordered the cessation of all privileges as an MP and debarring her from voting.
6. Indira Gandhi was allowed to continue as Prime Minister pending the resolution of her appeal.

#### **1. Political Climate and Declaration of Emergency:**

1. Anti-government protests led by Jayaprakash Narayan and Morarji Desai gained momentum.
2. On the next day after the Supreme Court ruling, Indira Gandhi declared a state of emergency.
3. This period saw the suppression of political opposition, censorship of the media, and widespread arrests.
4. Emergency lasted until 1977 and marked a suspension of civil liberties.

#### **2. Impact on Indian Politics:**

1. The Raj Narain case and subsequent events had a profound impact on the political landscape.
  2. The declaration of emergency altered the course of Indian politics during that period.
- In summary, the Raj Narain case played a pivotal role in shaping the political narrative in India during the 1970s, leading to significant legal and constitutional developments.

- **Right to information (RTI)**

- [Right to information](#) has been given the status of a fundamental right under Article 19(1) of the Constitution in 2005. Article 19 (1) under which every citizen has freedom of speech and expression and the right to know how the government works, what roles it plays, what its functions are, and so on.

- Right against exploitation

- The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely the abolition of trafficking in human beings and Begar (forced labour), and the abolition of employment of children below the age of 14 years in dangerous jobs like factories, mines, etc. Child labour is considered a gross violation of the spirit and provisions of the constitution. Begar, practised in the past by landlords, has been declared a crime and is punishable by law. Human trafficking for the purpose of the slave trade or prostitution is also prohibited by law. An exception is made in employment without payment for compulsory services for public purposes. Compulsory military conscription is covered by this provision.

- Right to freedom of religion
- Right to freedom of religion, covered in Articles 25, 26, 27 and 28, provides [religious freedom](#) to all citizens of India. The objective of this right is to sustain the principle of [secularism in India](#). According to the Constitution, all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.
- Religious communities can set up charitable institutions of their own. However, activities in such institutions that are not religious are performed according to the laws laid down by the government. Establishing a charitable institution can also be restricted in the interest of public order, morality, and health. No person shall be compelled to pay taxes for the promotion of a particular religion. A state-run institution cannot impart education that is pro-religion. However, nothing in the Article is deemed to affect the operation of any existing law or prevent the State from making any further law regulating or restricting any economic, financial, political or other secular activity that may be associated with religious practice, or providing for social welfare and reform.

# Right to life

- The Constitution guarantees the right to life and personal liberty, which in turn cites specific provisions in which these rights are applied and enforced:
- Protection with respect to a conviction for offences is guaranteed under the right to life and personal liberty. According to Article 20, no one can be awarded punishment which is more than what the law of the land prescribes at the time of commission of the crime. This legal axiom is based on the principle that no criminal law can be made retrospective, that is, for an act to become an offence, the essential condition is that it should have been an offence legally at the time of committing it. Moreover, no person accused of any offence shall be compelled to be a witness against himself. Compulsion in this article refers to what in law is called duress (injury, beating or unlawful imprisonment to make a person do something that he may not want to do). This article is known as a safeguard against self-incrimination. The other principle enshrined in this article is known as the principle of double jeopardy, that is, no person can be convicted twice for the same offence, which has been derived from Anglo-Saxon law. This principle was first established in the Magna Carta.

- Protection of life and personal liberty is also stated under the right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by [due process](#) of law. This means that a person's life and personal liberty can be disputed only if that person has committed a crime. However, the [right to life](#) does not include the [right to die](#) and hence, suicide or any attempt thereof, is deemed an offence (attempted suicide being interpreted as a crime has seen many debates. The Supreme Court of India gave a landmark ruling in 1994. The court repealed section 309 of the Indian penal code, under which people attempting suicide could face prosecution and prison terms of up to one year).<sup>[24]</sup> In 1996, another Supreme Court ruling nullified the earlier one.<sup>[25]</sup> But with the passage of the Mental Healthcare Bill 2017, attempted suicide has been decriminalised.<sup>[26]</sup> "Personal liberty" includes all the freedoms which are not included in Article 19 (that is, the six freedoms). The right to travel abroad is also covered under "personal liberty" in Article 21.<sup>[27]</sup>
- In 2002, through the 86th Amendment Act, Article 21A was incorporated. It made the right to primary education part of the right to freedom, stating that the state would provide free and compulsory education to children from six to fourteen years of age.<sup>[28]</sup> Six years after an amendment was made in the Indian Constitution, the [Union Cabinet](#) cleared the Right to Education Bill in 2008.<sup>[29]</sup>

- **Rights of a person arrested under ordinary circumstances is laid down in the right to life and personal liberty. No one can be arrested without being told the grounds for his arrest. If arrested, the person has the right to defend himself through a lawyer of his choice. Also, an arrested citizen has to be brought before the nearest [magistrate](#) within 24 hours. The rights of a person arrested under ordinary circumstances are not available to an enemy alien. They are also not available to persons under any law providing for [preventive detention](#). Under [preventive detention](#), the government can imprison a person for a maximum of three months. It means that if the government feels that a person being at liberty can be a threat to the law and order or to the unity and integrity of the nation, it can detain or arrest that person to prevent him from doing this possible harm. After three months, such a case is to be brought before an advisory board for review, unless specific legislation(s) by Parliament regarding preventive detention do(es) not necessitate scrutiny by such an advisory board.**

# Cultural and educational rights

- **The Constitution guarantees every single citizen of India both rights to education and [cultures](#). The Constitution also provides special measures, to protect the rights of the minorities. Any community that has a language and a script of its own has the right to conserve and develop it. No citizen can be discriminated against for admission in the state or state-aided institutions.**
- **All minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture. In granting aid to institutions, the state cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution. The right to administer does not mean that the state cannot interfere in case of maladministration.**
- **In a precedent-setting judgment in 1980, the Supreme Court held that the state can take regulatory measures to promote the efficiency and excellence of educational standards. It can also issue guidelines for ensuring the security of the services of the teachers or other employees of the institution. In another judgment delivered on 31 October 2002, the Supreme Court ruled that in case of aided minority institutions offering professional courses, admission could be only through a common entrance test conducted by State or a university. Even an unaided minority institution ought not to ignore the merit of the students for admission**

# Right to privacy

- **The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. It protects the inner sphere of the individual from interference from both State and non-State actors and allows individuals to make autonomous life choices. On 24 August 2017, the Supreme Court of India ruled that:**
- **"Right to Privacy is an integral part of Right to Life and Personal Liberty guaranteed in Article 21 of the Constitution,"**
- **Former Chief Justice of India on Right to privacy**
- **Former Chief Justice of India Dipak Misra said "My house is my castle, how can you disturb me at my home? Even as a lawyer, you have to have some kind of appointment with me. My time is my time, my life is my life. My privacy is supreme to me,".**



- The fundamental rights have been revised for many reasons. Political and other groups have demanded that the [right to work](#), the right to economic assistance in case of unemployment, old age, and similar rights be enshrined as constitutional guarantees to address issues of poverty and economic insecurity,<sup>[48]</sup> though these provisions have been enshrined in the [directive principles of state policy](#).<sup>[49]</sup> The right to freedom and personal liberty has a number of limiting clauses, and thus has been criticised for failing to check the sanctioning of powers often deemed "excessive".<sup>[48]</sup> There is also the provision of preventive detention and suspension of fundamental rights in times of [emergency](#). The provisions of acts like the [Maintenance of Internal Security Act \(MISA\)](#), [Armed Forces \(Special Powers\) Act \(AFSPA\)](#) and the [National Security Act \(NSA\)](#) are a means of countering these fundamental rights, because they sanction excessive powers with the aim of fighting internal and [cross-border terrorism](#) and political violence, without safeguards for [civil rights](#).<sup>[48]</sup> The phrases "security of State", "public order" and "morality" are of wide implication. The meaning of phrases like "reasonable restrictions" and "the interest of public order" have not been explicitly stated in the Constitution, and this ambiguity leads to unnecessary litigation.<sup>[48]</sup> The freedom to assemble peaceably and without arms is exercised, but in some cases, these meetings are broken up by the police through the use of non-fatal methods

- **Freedom of press** has not been included in the right to freedom, which is necessary for formulating **public opinion** and to make **freedom of expression** more legitimate.<sup>[48]</sup> Employment of child labour in hazardous job environments has been reduced, but their employment even in non-hazardous jobs, including their prevalent employment as domestic help violates the spirit and ideals of the Constitution. More than 16.5 million children are employed and working in India.<sup>[52]</sup> India was ranked 88 out of 159 in 2005, according to the degree to which corruption is perceived to exist among public officials and politicians worldwide. In 2014, India had improved marginally to a rank of 85.<sup>[53][54]</sup> The right to equality in matters regarding public employment is not conferred upon **overseas citizens of India**, according to the **Citizenship (Amendment) Bill, 2003**.<sup>[11]</sup>

- As per [Article 19 of Part III](#) of the Constitution, the fundamental rights of people such as freedom of speech and expression, gathering peaceably without arms and forming associations or unions shall not effect the interests of the sovereignty<sup>[55]</sup> unity and integrity of India. The words sovereignty and integrity are the qualities to be cultivated/emulated by Indian people as urged by the Constitution but not used related to the territory of India. [Article 1](#) of Part 1 of the Indian constitution, defines India (Bharat) as a Union of states. In a nutshell, India "is its people, not its land", as enshrined in the Constitution.
- Since [speedy trial](#) is not a Constitutional right of citizens, the cases involving violations of fundamental rights take an inordinate amount of time for resolution by the Supreme Court which is against the [legal maxim 'justice delayed is justice denied'](#)

# Right to constitutional remedies

- **Right to constitutional remedies (Article 32) empowers the citizens to move to a court of law in case of any denial of the fundamental rights. For instance, in case of imprisonment, any citizen can ask the court to see if it is according to the provisions of the law of the country by lodging a public interest litigation. If the court finds that it is not, the person must be freed. This procedure of asking the courts to preserve or safeguard the citizen's fundamental rights can be done in various ways. The courts can issue various kinds of writs protecting the rights of the citizens. These writs are:**
  - habeas corpus
  - mandamus
  - Writ of Prohibition
  - quo warranto
  - certiorari
- **This allows a citizen to move to court if they believe that any of their Fundamental Rights have been violated by the State. Article 32 is also called the citizens' right to protect and defend the constitution as it can be used by the citizens to enforce the constitution through the judiciary. When a national or state emergency is declared, this right is suspended by the government.**

# What is a Writ?

- Writs are written orders issued by the [Supreme Court](#) of India to provide constitutional remedies to protect the fundamental rights of citizens from a violation.
- Facts about writs in India
- Article 32 also empowers Parliament to authorize any other court to issue these writs
- Before 1950, only the High Courts of Calcutta, Bombay, and Madras had the power to issue the writs
- Article 226 empowers all the high courts of India to issue the writs
- Writs of India are borrowed from English law where they are known as 'Prerogative writs'
- What is a Writ Petition?
- A writ petition is essentially a court petition for extraordinary review, asking a court to intervene in a lower court's decision. Under the Indian legal system, jurisdiction to issue 'prerogative writs' is given to the Supreme Court and the High Courts of Judicature of all Indian states. Parts of the law relating to writs are outlined in the Constitution of India.

# WRITS

- **Type of Writs**
- The Constitution empowers the Supreme Court and High Courts to issue orders or writs.
- The types of writs are:
  - Habeas Corpus
  - Certiorari
  - Prohibition
  - Mandamus
  - Quo Warranto

# HABEAS CORPUS

- **Habeas Corpus is a writ that is enforced to protect the fundamental right to liberty of an individual against unlawful detention. This writ commands a public official to deliver a detained person in front of the court and provide valid reasons for the detention. However, this writ cannot be issued in case the proceeding is for contempt of a legislature or a court.**

- **Literal meaning: 'to have the body of'.**
- **2- This writ protects an individual from unlawful detention.**
- **3- Under this writ, an order is issued by the court to a public official to produce the detained person before the court.**
- **4- The court then examines the grounds on which the individual has been detained.**
- **5- If the detention has no legal justification, the detained person is set free.**
- **6- It is to be noted that the writ cannot be issued in the cases where (a) the detention is lawful (b) the proceeding is for contempt of a legislature or a court (c) an individual is detained by a competent court, and (d) the detention falls outside the jurisdiction of a particular High Court.**
- **7- This writ is ineffective if the detainee is produced before the judicial magistrate.**
- **8- An individual can seek compensation from the state against the arbitrary detention.**
- **9- The petition under this writ can be filed by the detainee, prisoner or by any person on behalf of the detainee/prisoner.**
- **10- The writ of Habeas Corpus cannot be suspended even during the emergency under Article 359.**



# CERTIORARI

- **The writ of certiorari is issued to a lower court directing that the transfer of a case for review, usually to overrule the judgment of the lower court. The Supreme Court issues the writ of Certiorari in case the decision passed by the lower court is challenged by the party. It is issued in case the higher court finds it a matter of over jurisdiction or lack of jurisdiction.**
- **It is one of the mechanisms by which the fundamental rights of the citizens are upheld.**

- **Literal meaning: 'to be certified' or 'to be informed'.**
- **2- It is issued by the Supreme Court and High Courts to a lower court, tribunal or Quasi-judicial body usually to overrule the judgement of the latter.**
- **3- It can be issued under the following grounds (a) to correct errors of the jurisdiction (excess or lack of jurisdiction) (b) in case of error of law.**
- **4- It can also be issued against administrative authorities affecting the rights of individuals.**
- **5- This writ is unavailable against the equal or higher court and is only available against the lower courts.**
- **6- It is also unavailable against legislative bodies and private individuals or bodies.**
- **7- The writ is both preventive and curative in nature.**

# Prohibition.

- **Prohibition is a writ issued by a higher court to a lower court to enforce inactivity in the jurisdiction. It happens only in case the higher court is of the discretion that the case falls outside the jurisdiction of the lower court. Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.**

- **Literal meaning: 'to forbid' or 'Stay order'.**
- **2- It is issued by a higher court to a lower court to enforce inactivity in the jurisdiction (in case of excess or absence of jurisdiction).**
- **3- It can only be issued against judicial and quasi-judicial authorities.**
- **4- The writ is preventive in nature.**
- **5- It is not available against administrative authorities, legislative bodies, and private individuals or bodies.**

# MANDAMUS.

- **The writ of mandamus is issued to a subordinate court, an officer of the government, or a corporation or other institution commanding the performance of certain acts or duties.**
- **Unlike Habeas Corpus, Mandamus cannot be issued against a private individual.**
- **The writ of mandamus can be used to order the completion of a task or in other cases, it may require an activity to be ceased.**

- - Literal meaning: 'we command'.
- 2- It is issued by a court commanding a lower court or public authority to perform his official duties correctly.
- 3- The writ of Mandamus can be issued against any public body, a corporation, an inferior court, a tribunal or government itself.
- 4- It cannot be issued against a private individual/ body and to enforce contractual obligation/departmental instruction that does not possess statutory force.
- 5- This writ cannot be issued against the President of India or the State Governors; Chief Justice of a High Court acting in a judicial capacity.
- 6- This writ can also be issued by the High Courts for violation of ordinary rights.
- 7- It can also be issued to direct a public official not to implement a law which is unconstitutional.
- 8- The writ is both ways: Positive as well as Negative.
- 9- It is to be noted that this writ is a discretionary remedy and the High Courts may refuse to grant it where some alternate remedy is available.

# QUO-WARRANTO

- **Quo warranto is issued against a person who claims or usurps a public office. Through this writ, the court inquires ‘by what authority’ the person supports his or her claim.**
- **Through this writ, the court enquires into the legality of a claim of a person to a public office. This writ prevents the illegal assumption of a public office by an individual.**

- **1- Literal meaning: 'by what authority or warrant'.**
- **2- It is issued by the court against the person who usurps a public office.**
- **3- It enquires the legality of usurpation of public office by a person.**
- **4- The grounds on which this writ is issued (a) public office created by a statute or by the Constitution of India (b) person to be appointed by a statute.**
- **5- The writ cannot be issued against a ministerial office or private office.**



# Suspension of Fundamental Rights

- **Fundamental rights can be suspended in the case of National Emergency as mentioned under article 352.**
- **The six fundamental rights under Article 19 are automatically suspended in the case National Emergency is imposed on grounds of war or external aggression which is stated under article 358.**
- **Article 359 has the clause for suspension of other rights. In that case, a separate notification has to be issued by the President.**
- **The rights mentioned under Article 20 and 21 can never be suspended.**
- **Constitutional emergency and financial emergency can affect the Fundamental Rights. ie, they may be temporarily suspended or restricted to address the specific crisis or situation.**

- The father of the Indian constitution, and polymath, [B. R. Ambedkar](#) wanted a specific guarantee of fundamental rights expressly incorporated in the constitution so that it could be easily enforced. He drafted this Article 32.
- During the Constituent Assembly debates in December 1948, Dr. [Babasaheb Ambedkar](#) had said that the rights invested with the Supreme Court through this Article could not be taken away unless the Constitution itself is amended and hence it was 'one of the greatest safeguards that can be provided for the safety and security of the individual'.[\[42\]](#)[\[43\]](#)
- The right to [constitutional remedies](#) is present for enforcement of fundamental rights.

- **Amendments**
- **Changes to the fundamental rights require a constitutional amendment, which has to be passed by a special majority of both houses of Parliament. This means that an amendment requires the approval of two-thirds of the members present and voting. However, the number of members voting in support of the amendment shall not be less than the absolute majority of the total members of a house – whether the Lok Sabha or Rajya Sabha.**

- While deciding the [Golaknath case](#) in February 1967, the Supreme Court ruled that Parliament had no power to curtail the fundamental rights. They were made permanent and sacrosanct, reversing the Supreme Court's earlier decision which had upheld Parliament's power to amend all parts of the Constitution, including Part III related to fundamental rights. Up until the [24th constitutional amendment](#) in 1971, the fundamental rights given to the people were permanent and could not be repealed or diluted by Parliament. The 24th constitutional amendment introduced a new article - [Article 13\(4\)](#) - enabling Parliament to legislate on the subjects of [Part III of the constitution](#) using its constituent powers per [Article 368 \(1\)](#). In 1973, a [13 member constitutional bench](#) of the Supreme Court also upheld with majority the validity of the 24th constitutional amendment. However, it ruled that the [basic structure of the constitution](#), which is built on the basic foundation representing the dignity and freedom of the individual, could not be altered, and that it was "of supreme importance" and could not be destroyed by means of amendment(s) to the Constitution.<sup>[57]</sup> Many constitutional amendments to Part III of the Constitution were made deleting, adding or diluting the fundamental rights before the judgement of Golaknath case (Constitutional amendments 1, 4, 7, and 16) and after the validity of 24th constitutional amendment was upheld by the Supreme Court (Constitutional amendments 25, 42, 44, 50, 77, 81, 85, 86, 93, and 97).

# Right to property

- The Constitution originally provided for the [right to property](#) under Articles 19 and 31. Article 19 guaranteed to all citizens the right to acquire, hold and dispose of property. Article 31 provided that "no person shall be deprived of his property save by authority of law." It also provided that compensation would be paid to a person whose property has been taken for public purposes.
- The provisions relating to the right to property were changed a number of times. The [44th Amendment](#) of 1978 removed the right to property from the list of fundamental rights.<sup>[59]</sup> A new provision, Article 300-A, was added to the constitution, which provided that "no person shall be deprived of his property save by authority of law". Thus, if a legislator made a law depriving a person of his property, there would be no obligation on the part of the State to pay anything as compensation. Furthermore, the aggrieved person would also have no right to move the court under Article 32 due to the right to property no longer being a fundamental right, though it would still be a constitutional one. If the government appeared to have acted unfairly, the action could have been challenged in a court of law by aggrieved citizens before the amendment.<sup>[48]</sup>
- The liberalisation of the economy and the government's initiative to set up special economic zones has led to many protests by farmers and have led to calls for the reinstatement of the fundamental right to private property.<sup>[60]</sup> The Supreme Court had sent a notice to the government questioning why the right should not be brought back, but in 2010, the Court rejected the PIL

# Right to education

- The right to education at elementary level has been made one of the fundamental rights in 2002 under the 86th Amendment of 2002.<sup>[28]</sup> However this right was brought in to implementation after eight years in 2010. On 2 April 2010, India joined a group of few countries in the world, with a historic law making education a fundamental right of every child coming into force.<sup>[62]</sup>
- The [Right of Children to Free and Compulsory Education Act](#) is said to be of direct benefit to children who do not go to school. This Act provides for the appointment of teachers with the requisite entry and academic qualifications.
- Former Prime Minister [Manmohan Singh](#) announced the implementation of the Act. Children, who had either dropped out of schools or never been to any educational institution, would get elementary education as it would be binding on the part of the local and state governments to ensure that all children in the 6–14 age group get schooling. As per the Act, private educational institutions should reserve 25 percent seats for children from the weaker sections of society. The Union and the state governments had agreed to share the financial burden in the ratio of 55:45, while the Finance Commission gave Rs.250 billion to the states for implementing the Act. The Union government approved an outlay of Rs.150 billion for 2010–2011.
- The school management committee or the local authority would identify the drop-outs or out-of-school children aged above six and admit them in classes appropriate to their age after giving special training.