



# Fundamental Rights and Directive Principles



**National Human Rights Commission  
India**



# **Fundamental Rights and Directive Principles**



TRAINING & RESEARCH DIVISION  
**NATIONAL HUMAN RIGHTS COMMISSION  
INDIA**

# **Fundamental Rights and Directive Principles**

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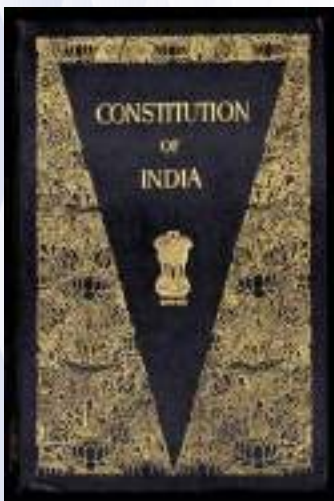


# FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

## THE CONSTITUTION OF INDIA

The Constitution is the supreme law of India. All other laws in India are measured against it. It sets out the values and intentions of independent India, remedies for social problems, and the governance framework for administrative functioning.

The Constitution of India begins with a PREAMBLE that captures the essence of the Constitution, its fundamental values, and the aspirations of the Indian nation. The Preamble declares the ideals of India as a sovereign, socialist, secular, democratic republic which guarantees justice, liberty, equality and fraternity to all its people.



### PREAMBLE

**WE, THE PEOPLE OF INDIA** having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizen

**JUSTICE**, social, economic and political  
**LIBERTY** of thought, expression, belief, faith and worship  
**EQUALITY** of status and of opportunity and to promote among them all.  
**FRATERNITY** assuring the dignity of individual and the unity and integrity of the nation.

**IN OUR CONSTITUENT ASSEMBLY** the twenty-sixth day of November, 1949, do, **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION**


The Constitution of India contains the Fundamental Rights as well as Directive Principles. The Preamble to the Constitution sets out the basic values and aspirations of the Indian State

# FUNDAMENTAL RIGHTS


Chapter 3 of the Indian Constitution sets out the fundament rights. There are 6 broad categories of fundamental rights:

- ☐ Right to equality
- ☐ Right to freedom
- ☐ Right against exploitation
- ☐ Right to freedom of religion
- ☐ Cultural and educational rights
- ☐ Right to constitutional remedies

Some fundamental rights are available only to citizens, whereas others are available to all persons in India, including foreigners. For example, the rights to freedom of expression, assembly or residence are only available to citizens. Nationals of other countries cannot claim these rights. The right to life and liberty is universal and extends to foreign tourists, residents, refugees and people who are in the country without permission ('illegal immigrants').

Fundamental rights guaranteed ONLY to Indian citizens	
No discrimination on grounds of religion, race, caste, sex or place of birth	Right to freedom
Equal opportunity in public employment	Protection of language, script and culture of minorities
	

Most fundamental rights are guaranteed against the state. Here, the term 'state' does not refer to only the federal states in India (e.g. Maharashtra, Gujarat, Assam, Tamil Nadu). It includes the parliament, state legislatures, central and state governments, all local bodies and authorities under the Government of India. The scope of fundamental rights has increased over the years. In a few cases they have been available against private bodies as well.<sup>1</sup>

Fundamental rights guaranteed to Indian citizens AND foreigners		
		
Right to equality	Right to freedom of religion	Right to life and personal liberty
Safeguards regarding arrest, punishment and detention		Right to elementary education
No human trafficking or forced labour	No employment of children in factories or hazardous employment	

Fundamental Rights are not absolute. This means that in certain circumstances, these rights listed may be restricted or withdrawn. The state can impose limitations for the protection of another individual, group or society as a whole.

<sup>1</sup>Vishaka and Others v. State of Rajasthan and Others (1997)6SCC241, Society of Unaided Private Schools of Rajasthan Vs UOI and Others (2012) 6 SCC 1

## THE RIGHT TO EQUALITY

Articles 14 to 18 of the Constitution guarantee the fundamental right to equality. Broadly, the right to equality includes equality before the law, non – discrimination and equal opportunity.

### *Equality before the law*

Article 14 states that everyone is equal in the eye of law. No one is above the law, and the law must treat everyone equally. Anyone who commits a crime, whether the person is rich or poor, male or female, Hindu or Muslim, they must be punished under the same law as everyone else.

Article 14 guarantees equality before the law i.e. everyone is equal in the eye of law. Criminals will be punished for their crimes, regardless of their background



A rich man committing a crime will be punished

A poor person committing a crime will be punished

### *Equal protection of laws*

Article 14 of the Constitution also guarantees the equal protection of laws. Equal protection of laws recognizes that there may be differences among people that affect the way they understand things or have access to resources including justice. Circumstances, and the way society treats different people



creates inequalities that make some people poor, weak and powerless, and therefore vulnerable to exploitation, mistreatment or influence by more powerful people. Equal protection of laws means that although the law must treat everyone equally, it must also protect the vulnerable by safeguarding their rights.



As women are more vulnerable to sexual abuse in the workplace than men are, the 'equal protection of laws' requires the state to take special measures to protect them

Access to free legal counsel is an important measure to ensure that everyone has equal protection of the law. In the Constitution, there is provision for the state to provide legal aid to an accused if s/he is too poor to pay for a lawyer. Besides the poor, other disadvantaged sections entitled to free legal aid from the state include women, children, prisoners, people with disabilities and people from Scheduled Castes and Scheduled Tribes.



Equal protection of laws requires the state to take special steps to help and rehabilitate people suffering from undeserved want e.g. natural calamities

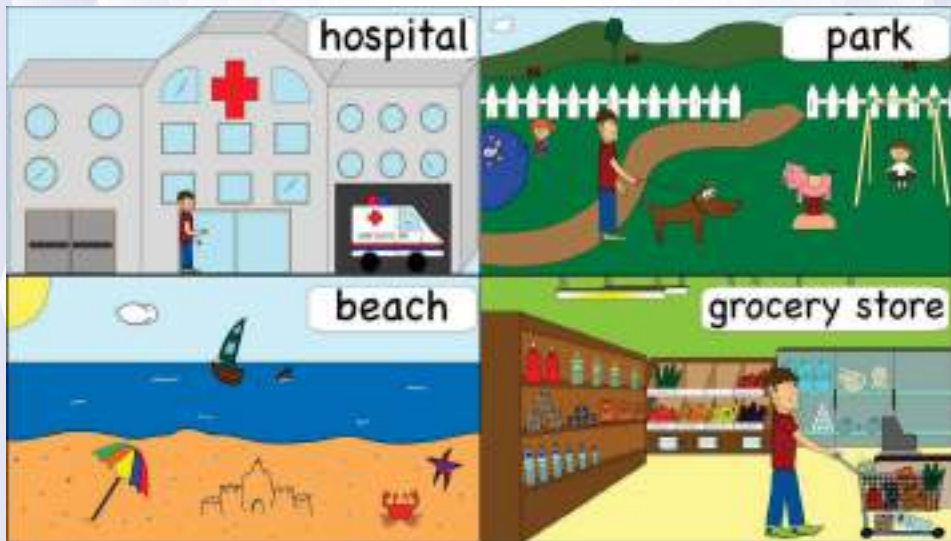
The state cannot treat the vulnerable in the same way as it treats others. Poor and marginal farmers face great hardship in India. The 'equal protection of laws' allows for special support being extended to them e.g. loan waivers



### ***Non – discrimination***

Article 15 guarantees that no Indian citizens will be discriminated against on the basis of religion, race, caste, sex or place of birth. It particularly prohibits discrimination with regard to:

- ☐ access to shops, public restaurants, hotels and places of public entertainment
- ☐ the use of wells, tanks, bathing ghats, roads and public places meant for the general public



No citizen shall be prohibited from entering public places on grounds of religion, race, caste, sex or place of birth

However, the state can make special provisions for:

- ☐ women
- ☐ children
- ☐ socially and educationally backward classes
- ☐ Scheduled Castes
- ☐ Scheduled Tribes



The state can make special laws and provisions for the vulnerable and marginalized



Women



Scheduled Tribes



Children



Scheduled Castes



Socially and Educationally Backward Classes

### ***Public Employment***

Article 16 of the Constitution guarantees that all Indian citizens will have equal opportunity in access to employment under the state. Every Indian will have the right to try for government service – there will be no discrimination on grounds of religion, race, caste, sex, place of birth, descent or residence.

However, the government can stipulate that for certain categories of jobs, applicants have to be resident of a particular state or union territory. The State can also lay down reasonable criteria for appointment to government service.

Anwar wants to apply for a job as a driver in the Health Department. He is a qualified driver, but only matriculates have been asked to apply for the job. Anwar dropped out of school after Class 8. He will not be eligible to apply for this job. This is not a violation of Anwar's right to equality. If the condition to apply for the job was that one has to be a Hindu, then this would be a violation of the right to equality.



Article 16 allows the state to make reservations in government jobs for 'backward classes' of citizens. These reservations (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) should not be more than 50% of posts in a year.

For Scheduled Castes and Scheduled Tribes persons, reservation can also extend to reservation in promotion. If any posts reserved for Scheduled Castes or Scheduled Tribes are not filled up in a particular year, these vacancies will roll over to subsequent years. Such rolled over vacancies will not be affected by the ceiling of 50% reservation.

The Department of Textiles, Government of Madhya Pradesh, is recruiting 500 computer operators. Out of these 500 posts, 20% are reserved for applicants from the Scheduled Castes, and 25% for applicants from the Scheduled Tribes. This is not a violation of the fundamental right to equality of those not belonging to these sections of the population as the Constitution allows the state to make special provisions for Scheduled Castes and Scheduled Tribes. If the total number of reserved seats had crossed the 50% limit, then it would have been unlawful.

### ***Untouchability***

Article 17 emphatically condemns the barbaric practice of 'untouchability' – where certain groups of people were shunned and excluded on account of their so – called lower caste status. 'Untouchability' is forbidden and its practice is a punishable offence.



'Untouchability'  
is abolished and  
is a punishable  
offence

## ***Titles and Distinctions***

A title is a mark of distinction or recognition given to a person or family as a sign of privilege, and which is used before one's name e.g. the title 'Lord' or 'Dame' in the United Kingdom. Titles such as *Rai Bahadur*, *Sawai*, *Rai Sahab*, *Zamindar*, etc were prevalent in medieval and British India.

All these titles have been abolished by the Constitution. No Indian citizen can accept a title from a foreign state.

The Indian state will only grant military or academic titles. It does, of course, grant distinctions through such awards as Bharat Ratna, Padma Vibhushan, Padma Bhushan, etc. These do

not come under the category of 'titles' as they are not to be used as a part of one's name.



**BHARAT RATNA**



**PADMA VIBHUSHAN**



**PADMA BHUSHAN**



**PADMA SHRI**

The Government of India can only grant military or academic titles. But it can grant awards such as Bharat Ratna, Padma Vibhushan, Padma Bhushan, etc. These awards are not 'titles'.

## THE RIGHT TO FREEDOM

### *6 freedoms under Article 19*

Article 19<sup>2</sup> guarantees the following fundamental freedoms to citizens:

#### *Freedom of speech and expression*

Freedom of speech and expression means the right to express oneself freely and without fear. Indian citizens have the constitutional right to articulate their views, publish and propagate them. They can do this for their own views, as well as the views of other people. This is why the fundamental right to freedom includes the freedom of the press.



The right to freedom of expression includes the right to express oneself freely in various ways

As with other rights, this right is not absolute. The state can make laws that impose limitations on the fundamental right of speech and expression.

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<sup>2</sup> Article 19(1)(a)

The state can put limitations on the fundamental right to freedom of speech and expression in the interest of:

- sovereignty and integrity of India
- the security of the State
- friendly relations with foreign States
- public order
- decency or morality
- in relation to contempt of court
- defamation
- incitement to an offence

The state may impose reasonable restrictions on *freedom of speech and expression* on these grounds:

		
Sovereignty & Security of India	Friendly relations with foreign states	Public order, decency, morality
		
Contempt of court	Defamation	Incitement to an offence



However, even the State's power to impose limitations is not absolute – there can only be **reasonable restrictions** to the freedoms guaranteed to citizens.

Dattu publishes a newspaper in which he raises issues related to Dalits. The newspaper often has articles that criticize government policies and measures. He also runs news items about police inaction on atrocities on Dalits. Dattu has a fundamental right to freedom of speech and expression to publish this newspaper. He cannot be restrained from doing this unless he breaks the law or encourages others to break the law. He does not use hate speech and does not fabricate stories so he is free to write and publish without interference from the state.

### *Freedom to assemble peaceably and without arms*

The freedom to assemble is a cornerstone of the life of citizens in a constitutional democracy. This freedom enables citizens to organize themselves for the achievement of collective aims and for the engagement of citizens with one another. Article 19<sup>3</sup> of the Constitution gives every citizen the fundamental right to assemble peacefully and without arms.



Citizens have the fundamental right to assemble peaceably and without arms

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<sup>3</sup> Article 19 (1)(c)

This fundamental right too is not absolute and comes with reasonable restrictions imposed on it. The State can make laws that impose limitations on this right in the interest of:


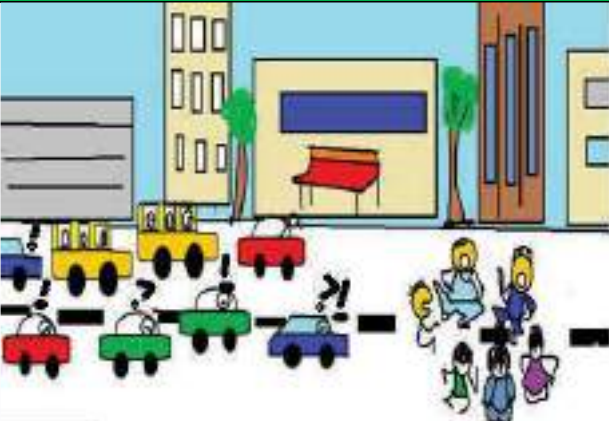


sovereignty and integrity of India



public order

The State may impose reasonable restrictions on *freedom to assemble peaceably and without arms* on these grounds:

	
<p>Sovereignty &amp; integrity of India</p>	<p>Public order [the state can ensure that people do not assemble to disrupt public order]</p>

There is no right to assemble with arms or disrupt the peace. While citizens have the fundamental right to hold protests and rallies under the right to peaceful assembly, the state can make special laws to secure public order. Different states in India have different rules regarding this. In most cases, a person needs only a police permit and a No Objection Certificate (NOC) from the police to hold a peaceful assembly without arms. The police have the power to refuse granting such permit if it deems the rally to be against public order. However, this can only be done in accordance with the law. Therefore, unless there is proper reason, police cannot refuse a citizen the right to protest.

Citizens have the fundamental right to protest. But they do not have a right to form an unlawful assembly. An unlawful assembly is a crime in India. It happens when five or more persons have a common object of:

- ☐ Using criminal force against government or a person, or
- ☐ Resisting a law, or
- ☐ Committing mischief or offence

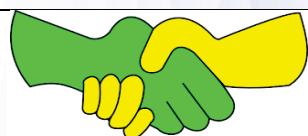
If a peaceful protest becomes an unlawful assembly or disrupts public order, the state has the right to intervene.

A tribal community from a district in Odisha gathered peacefully at the district headquarters to protest against proposed mining activities on their lands. They have the fundamental right to assemble peacefully and without arms. This can be restricted only to a reasonable extent in the interest of public order - such as, informing the police prior to assembling so that appropriate arrangements can be made and no inconvenience or law and order problem is caused.

### Freedom to form associations or unions

Article 19<sup>4</sup> guarantees citizens the fundamental right to form associations or unions. It includes the right to form companies, societies, partnerships, trade unions and political parties. This right also includes the right *not* to form or join any association. Thus, a citizen cannot be unlawfully stopped from forming an organisation, nor can one be forced to become a member of an organisation.

The fundamental right to form associations or unions can have reasonable restrictions imposed on it. The State can make laws that impose limitations on this right in the interest of:



Citizens have the fundamental right to form associations or unions

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<sup>4</sup> Article 19 (1) (c)



sovereignty and integrity of India



public order



morality

Kamal is a worker in a steel factory in Jharkhand. He is a member of a registered trade union. The management tells him that he will not be made permanent unless he gives up his membership. This is illegal and a violation of Kamal's fundamental rights.

The State may impose reasonable restrictions on *freedom to form associations or unions* on these grounds:



Sovereignty & integrity of India



Public order [the state can ensure that people do not form associations that disrupt public order]



Morality [the state can ensure that people do not form associations that shock the moral conscience]

### *Freedom to move freely, reside and settle in any part of India*

Article 19<sup>5</sup> of the Constitution guarantees citizens the right to go wherever they like within India. They can travel to or from any state or union territory. Movement within a state or union territory is also not restricted. An Indian

<sup>5</sup> Article 19(1)(d) guarantees the fundamental right to move freely throughout India. Article 19(1)(e) guarantees the fundamental right to reside and settle in any part of India.



citizen can also stay in any part of the country. There can be no restrictions based on such things as religion, language, place of birth, sex, etc.



Citizens have the right to move freely, reside and settle in any part of India

However, reasonable restrictions can be made on this right in the interest of the general public or for the protection of any Scheduled Tribe. As far as protection of Scheduled Tribes goes, the object is to protect these tribes from undesirable external influences. Where it is felt necessary, the entry of non – tribals to tribal areas can be restricted in order to preserve the culture, language, customs and manners of the tribes.

The fundamental right to move freely throughout the territory of India can have reasonable restrictions imposed on it for the following purposes:



Interest of the general public



Protection of any Scheduled Tribe



The imposition of wearing helmets by drivers of two wheelers has been made for the good of the people, and is thus a reasonable restriction on the freedom of movement

Chander Mohan is an Indian lawyer from Delhi. He wants to tour the north-eastern states of India. After arriving in Assam, he plans to go to Arunachal Pradesh. He is informed that he cannot travel to Arunachal Pradesh without the required permit (also called the Inner Line Permit). This is a permissible restriction on Chander Mohan's fundamental right to move freely throughout India, as it has been made to protect the Scheduled Tribes living in Arunachal Pradesh.

Irene Jajo is a teacher from Nagaland. She is travelling to New Delhi to attend a conference. When she reaches her hotel, the receptionist demands that she provide her passport and visa as "she is obviously a foreigner from China or Japan." Irene refuses to do so and threatens to complain to the management.

*The receptionist's behavior is unacceptable. Irene does not need a passport to travel in India as she is an Indian citizen.*

Biru is from a village in Uttar Pradesh. He works as a taxi driver in Mumbai. A few days ago a man from Uttar Pradesh was arrested on charges of sexually assaulting a child in Mumbai. After this incident, some local goons have begun abusing Biru - saying that north Indians like him are destroying the city and he should go back to where he came from.

*Biru has every right to live and work in Mumbai. It is the duty of the authorities to protect him. He can complain to the police against such elements.*



Indian citizens have the right to travel, live and work in any part of India – whether for pleasure or out of necessity. Only few places have restricted entry on account of public interest or protection of Scheduled Tribes.

*Freedom to follow any profession and carry on any business*

Article 19<sup>6</sup> also guarantees citizens the fundamental right to practice any profession. They can also carry on any trade, occupation or business. They have the right to choose their work – whether as employees, professionals, or entrepreneurs.

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<sup>6</sup> Article 19(1)(g)



Citizens have the fundamental right to carry on any profession. They can also carry on any trade, occupation or business.

Of course, the state can impose reasonable restrictions on this right *in the interest of the general public*. It can also make laws regarding the professional or technical qualifications required for practicing any profession, or carrying on any trade/business/occupation. The state can also decide to carry on any trade/business/industry/service on its own – thereby excluding citizens fully or partially.

The fundamental right to follow any profession and carry on any business can have reasonable restrictions imposed on it for the following purposes:





Interest of the general public

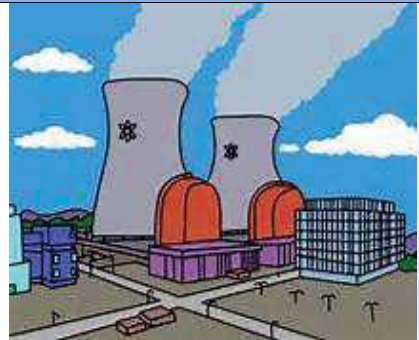


Professional or technical qualifications required for carrying on of any trade/business/occupation

For the sake of public interest, there are restrictions on businesses involving gambling or prostitution.



The State can decide to carry on any trade/business/industry/service on its own - thereby excluding citizens fully or partially. In India, such areas as railways and nuclear power are run by the State



### ***Freedom viz a viz Arrest and Punishment***

The Constitution<sup>7</sup> ensures (to both citizens and non – citizens) 3 important protections with regard to arrest and punishment.

- (i) A person cannot be punished for committing an act which was not a crime at the time when the act was committed. For example, the offence of ‘cruelty to wife’ became an offence in India in 1983<sup>8</sup>. A person who committed cruelty to his wife in 1982 cannot be punished for this. But people who commit the offence after 1983 can.

A person cannot be punished for committing an act which was not a crime at the time when the act was committed



Stalking and voyeurism became crimes against women in 2013. Men can be punished under these offences only if they committed them after 2013



The punishment cannot be more than it was under the law at the time the offence was committed. For example, the punishment for insulting a woman was imprisonment up to one year until February 2013, when it was raised to three years<sup>9</sup>. A person who committed this crime in 2010 can be punished for a maximum of one year. A person who commits this crime after February 2013 can be jailed for three years.

<sup>7</sup> Article 20

<sup>8</sup> Section 498A of the Indian Penal Code which punishes cruelty to wife became law in 1983

<sup>9</sup>Section 509 of the Indian Penal Code which punishes insulting the modesty of a women was amended in 2013



Punishment cannot be more than it was at the time the offence was committed.

A man insulting a woman before 2013 can be jailed for 1 year.

A man doing this after 2013 can be jailed for 3 years

- (ii) The right to freedom includes the right not to be prosecuted and punished for the same offence twice. If a person is accused of committing a crime, is found guilty, and then serves his sentence, he cannot be repeatedly punished for the same offence.

Rajesh steals cash worth 4 lacs from an ATM in Delhi in 2011. He is arrested, tried in a court of law and found guilty. He is sentenced to 3 years of imprisonment. While he is in jail, the police come to know that he had similarly stolen cash from another ATM in Delhi in 2010. He can be tried for the offence of committing theft in 2010 as it is a separate offence.

Anwar and Nathu murder one Ashok. Anwar is arrested while Nathu manages to escape. Anwar is tried, but acquitted (found not guilty). Later, Nathu is arrested, and he confesses to the crime, telling the police about Anwar's role in the murder. Anwar can be tried for the same offence again because although he had earlier been prosecuted, he had not been punished. Anwar is tried again and this time, with the help of the evidence provided by Nathu, he is found guilty and sentenced. This is not a violation of Anwar's fundamental right not to be tried and punished for the same offence twice.

	
<p>No one can be tried and punished twice for the same offence</p>	<p>No accused person can be forced to give evidence against himself</p>

(iii) The right to freedom also includes the right not to be compelled to give evidence against oneself if one is accused of a crime. The basic principle is that a person accused of a crime is presumed innocent till proven guilty. It is the duty of the prosecution to prove in a court of law that the accused is guilty. The accused person cannot be forced to help in the process. They may confess if they voluntarily wish to. But there can be no compulsion.

As part of the fundamental right to freedom, the Constitution<sup>10</sup> also ensures important protections in the case of arrest. They are:



The person arrested must be informed why he is being arrested



The arrested person has right to be defended by a lawyer of his/her choice



The arrested person should be produced before the nearest magistrate within 24 hours (excluding travel time to reach the court)



A person cannot be detained beyond the period authorised by a magistrate.

<sup>10</sup> Article 22





Under the fundamental right to freedom, an arrested person has the right to be:

- + Informed why s/he has been arrested
- + Represented by a lawyer of his/her own choice
- + Brought before a magistrate within 24 hours

HOWEVER, the above protection is not available to:



**Enemy aliens** {all foreigners are not enemy aliens – only those foreigners who are from countries that India is at war with are enemy aliens}



**Persons arrested under laws of preventive detention**

Under **PREVENTIVE DETENTION**, a person is arrested not because they have committed a crime, but because they are *likely to* commit a crime. Preventive Detention is done before the crime has been committed. Preventive detention laws have been made to secure such things as:



security of state



maintenance of public order



maintenance of supplies and essential services



defence, foreign affairs or security of India



Anup Prakash is a member of a terrorist organisation. They have designs to destabilize the Government of India by spreading terror and across the country. Chander Mohan has illegally procured weapons and ammunitions to carry out these plans. He and other members of his group can be held under Preventive Detention even **BEFORE** the crime has been committed.

The following *protection* is available to persons under preventive detention:



Every case of preventive detention must be authorized by law



The preventive detention cannot extend beyond a period of 3 months



Every case of preventive detention must be placed before an Advisory Board composed of Judges of the High Court (or persons qualified to be Judges of the High Court)



The person will be given earliest opportunity to make a representation against the preventive detention.







No person can be detained indefinitely.

The National Security Act (1980) is a preventive detention law in India.

## ***Right to Life and Liberty***

The Constitution<sup>11</sup> guarantees every person the right to life and personal liberty. It assures that a person's life or personal liberty can only be taken away by **procedure established by law**. The right to life is not merely the right to be physically alive, but the right to live a life of dignity. It includes the right to health, shelter, livelihood, clean air, etc. Each individual has the right to live free from restrictions on his person, unless these restrictions have been imposed by law that is just, fair and reasonable.

THE RIGHT TO LIFE AND PERSONAL LIBERTY MEANS A RIGHT TO LIVE WITH DIGNITY. This includes various other rights:	
	
Right to speedy trial	Right to privacy
	
Right to clean environment	Right to health and medical treatment

<sup>11</sup> Under Article 21



The state *can* deprive a person of life and personal liberty, but this can only be done on the basis of '*procedure established by law*'. This means that the government can make a law which lays down the procedure to take away a person's life or personal liberty. However, the Supreme Court has declared that any such procedure must be fair, just and reasonable.

One extreme example of the power of the state to take away life is that of the death penalty. Criminal offences of very serious nature can be punishable with death. But here again, it is settled law that this most extreme of punishments can be given only in the *rarest of rare cases*.

There are also numerous checks to ensure that the death penalty is passed only after great consideration and with little or no scope for error. These checks take the form of the many layers of appeals, procedures and petitions that are followed when anyone is sentenced to death.

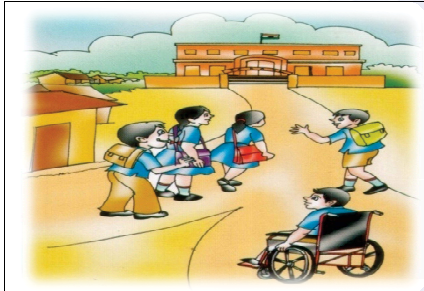




## Right to Education

All children from the ages of six to fourteen years have the fundamental right to education. The Constitution<sup>12</sup> guarantees this as a fundamental right as education is integral to a life of dignity and freedom. The Right to Free and Compulsory Education Act<sup>13</sup> guarantees this right to all children in India. All children, including foreigners, refugees, etc. are entitled to this right.

It is the duty of the state to ensure that all children have access to basic education. No child should be deprived of education for any reason whatsoever.



All children from 6 to 14 years have the fundamental right to education

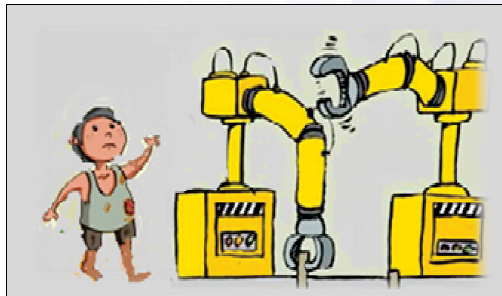
## THE RIGHT AGAINST EXPLOITATION

The fundamental right to be free from exploitation is guaranteed to all. The Constitution<sup>14</sup> declares that human trafficking, '*begar*' and all forms of forced labour are prohibited and will be punishable by law.

*Begar* was a system of slave labour which forced people to do (usually) heavy manual labour without payment. Human trafficking is the criminal trade in human beings for the purposes of commercial or sexual exploitation.

The Constitution also guarantees that no child below the age of fourteen years will be employed in any factory or mine, or made to work at any hazardous process.

Several laws have been enacted in view of this fundamental right against exploitation e.g. the Immoral



No child below the age of 14 will work in any factory, mine or dangerous employment

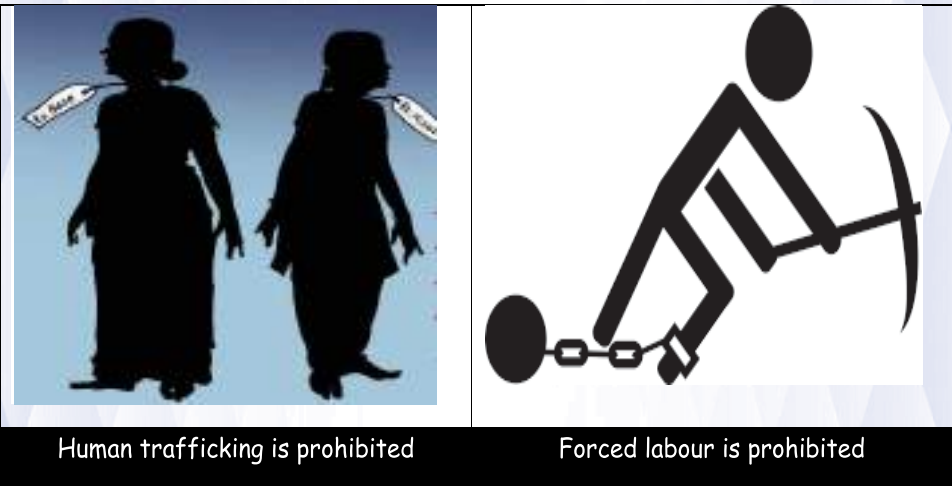
<sup>12</sup> Article 21A

<sup>13</sup> Dealt with in detail in a separate booklet in this series

<sup>14</sup> Article 23

Traffic (Prevention) Act 1956, the Bonded Labour System (Abolition) Act 1976, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

The State may impose compulsory service for public purposes. However, in doing so, it must not discriminate on grounds of race, sex, caste or religion. Thus, it is permissible for the government to compel people to serve for a national cause e.g. defense of the country. But it cannot discriminate while doing so.



**THE RIGHT TO FREEDOM OF RELIGION**

The Constitution<sup>15</sup> guarantees all persons the fundamental right to freedom of conscience and the free profession, practice and propagation of religion. All the major religions in the world are practiced in India. It is the duty of the state to ensure that no one is persecuted on account of their religion. India is a secular state (there is no state religion), and the Constitution requires the government to protect all religions.

The fundamental right to freedom of religion is limited by the following:

<sup>15</sup> Article 25



public order



morality



health



other fundamental rights



Everyone has the fundamental right to freely practice and spread their own religion

This includes the right not to follow any religion

Shyam believed that sacrificing a child would bring him closer to God, who would then grant him invincible powers. He kidnaps a child for this purpose. Mukul and his friends see Shyam carrying an unconscious child into a deserted area. They alert the police. Shyam is stopped from carrying out this heinous act. He screams at the police for coming between him and God.

The police are right to stop him. Shyam cannot violate the rights of a child, the provisions of criminal law, as well as basic morality in the name of the right to practice religion. He is in fact liable to be punished for trying to commit a grave offence.

Vipul and his friends want to celebrate Diwali by bursting firecrackers. They are very disappointed that the government has banned the use of crackers during Diwali in order to reduce pollution. They feel this is unfair as they only burst crackers once a year, and Diwali is no fun without bursting crackers.


The government is justified as bursting crackers is not a part of the right to practice religion. Diwali is a festival of lights, not noise. Similarly, the government has the right to regulate the use of loudspeakers for *Azaan and Bhajan Kirtans*.

The Constitution<sup>16</sup> also makes it clear that no religious instruction will be provided in any educational institution wholly maintained by the state.

However, in educational institutions recognised by the state or receiving aid from the state, religious instruction can be imparted purely on *voluntary basis*. Students cannot be forced to attend such religious classes if they or their guardians are not inclined to.

### CULTURAL AND EDUCATIONAL RIGHTS

The Constitution guarantees certain fundamental cultural and educational rights to citizens. This section of fundamental rights are also called **minority rights**. Any citizen or section of citizens having a distinct language, script or culture have the right to conserve the same. Further, no citizen can be denied admission on the ground of religion/race/caste/language to any educational institution maintained by or receiving funds from the state.

	Citizens having a distinct language, script or culture have the fundamental right to conserve them
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<sup>16</sup> Article 28

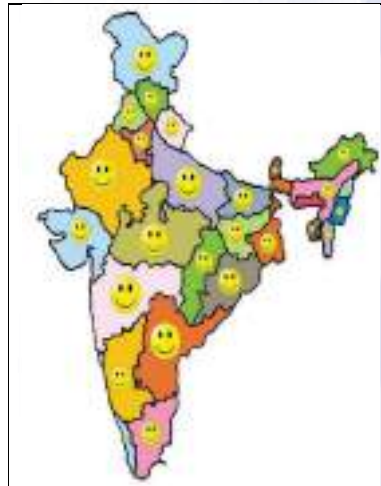


All minority communities—religion or linguistic – have the right to establish and administer educational institutions of their choice. In granting aid to educational institutions, the state shall not discriminate on the grounds of religion or language.

To determine a **linguistic or religious minority**, the unit of measure is the federal state. Most states have a dominant language or regional language, which is spoken by majority of the people. All those who do not speak the regional language belong to *linguistic minorities* in that state.

So with religion, persons following a religion which is not predominantly followed in a state will be *religious minorities*.

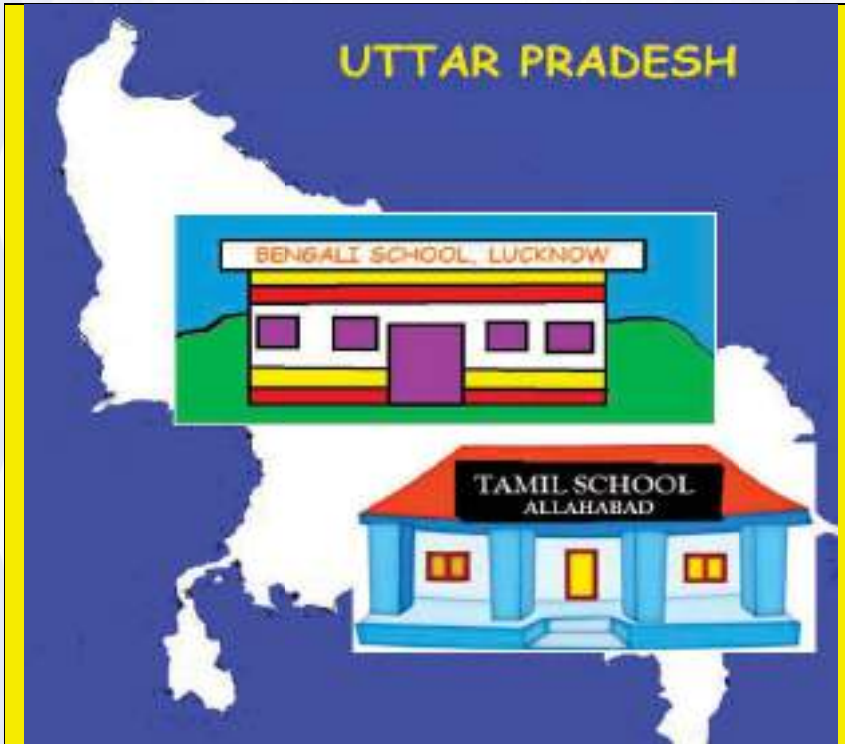
Muslims, Christians, Sikhs, Jains, Buddhists and Zoroastrians have also been notified as 'religious minorities' nationally under the National Commission for Minorities Act.



To determine a **linguistic or religious minority**, the unit of measure is the federal state

Manju Shah speaks Gujarati as her mother tongue. She lives in Kolkata, where she wants to start a school to promote Gujarati literature. Bengali is the predominant language spoken in West Bengal. Manju Shah is a linguistic minority in Kolkata and so will have a fundamental right to set up a school to promote Gujarati literature.

Arpita Sen wants to set up a Bengali medium school in Ahmedabad. As the dominant language in Gujarat is Gujarati, the Bengali language will enjoy minority status in Gujarat. Arpita has the fundamental right to start her Bengali school in Ahmedabad.



Since Tamil and Bengali are not spoken by the majority of the people in Uttar Pradesh, these languages attain minority status in this state. Religious and linguistic minorities have the right to establish and administer educational institutions of their choice.

## RIGHT TO CONSTITUTIONAL REMEDIES

In case of violation of fundamental rights, a person can approach the Supreme Court<sup>17</sup> for relief. This right to approach the Supreme Court for enforcement of fundamental rights is in itself a fundamental right. One may also approach a High Court in case of fundamental rights violation, but this right to approach a High Court is not in itself a fundamental right. [The litigation process is dealt with in detail in a subsequent booklet in this series.]

The Indian Constitution not only guarantees fundamental rights - it makes the protection of fundamental rights a fundamental right as well!

### WHAT'S SO SPECIAL ABOUT FUNDAMENTAL RIGHTS?



Since they find place in the highest law of the land – the Indian Constitution – the fundamental rights are the most secure of rights in India. This is because removing any of these rights would require an amendment of the Constitution. While it is not impossible to remove or amend a fundamental right (the fundamental right to property was deleted and made an ordinary legal right), it is not easy, as amending the Constitution is a fairly difficult process.



Fundamental rights are far easier to remedy than other rights as one can go directly to the Supreme Court or a High Court for relief by filing a writ petition. As writ cases involve far fewer technicalities and procedures (compared to other cases), they can be dealt with far more quickly, making it easier for people to get justice.

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<sup>17</sup> Article 32

## DIRECTIVE PRINCIPLES

Appearing in its fourth chapter, the Directive Principles of State Policy may be said to contain the philosophy of the Constitution. They set out the primary principles for governance in India and give the broad direction for policy making. Unlike the fundamental rights, the directive principles are not enforceable in any court of law. However, they play a key role in determining lawmaking, as it is the duty of the state to apply these principles in legislation.



The Directive Principles can be seen in the following categories:

### JUSTICE

The State should strive to promote the welfare of the people. It should maintain social order through social, economic and political justice.

### EQUALITY

The State should strive towards removing economic inequalities. It should promote equal opportunities and equal status.

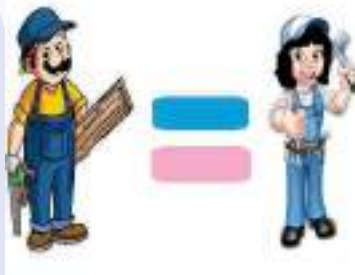

	
<p>The state should promote the welfare of the people</p>	<p>Laws should be made to remove economic inequalities and promote equal opportunities</p>



## LIVELIHOOD AND SOCIAL SECURITY

The state should try to secure equal work opportunities and equal pay for men and women. There should be no exploitation of men, women or children. No citizen should be forced by poverty to take up work not suitable for their age or health. There should be just and humane conditions of work, adequate means of livelihood for citizens, and adequate leisure to the workforce. Provision should be made for maternity benefit.

The economic system should not result in the concentration of wealth or the means of production in such a way as to harm the public good. The ownership of material resources should be distributed in such a way as to best serve the good of all. To the extent it is economically possible, the state should provide access to work and education. It should also provide financial support in the case of unemployment, old age, sickness, disability, and other cases of undeserved want.

	
There should be equal work opportunities and equal pay for men and women	The state should provide financial support in the case of unemployment, old age, sickness, disability, and other cases of undeserved want

## CHILD RIGHTS

Children should have the opportunity to grow to their full capacities in an atmosphere of freedom and dignity. No child should be abandoned. Early childhood care and education should be provided for all children until the age of six years.

## JUSTICE SYSTEM

The legal system should promote justice. Free legal aid should be provided so that no citizen is denied access to justice due to poverty or other barriers.

		
Free legal aid to the poor and needy	Children to be protected so they can develop to their full potential	There should be functioning panchayats in rural areas

## RURAL AREAS

Village Panchayats should be organized with enough power to function effectively as units of self government. Cottage industries should be promoted in rural areas.

## UNIFORM CIVIL CODE

The state should try to establish a uniform civil code for all the citizens of India. As of now, in personal matters (such as marriage, divorce, succession, etc) people in India are governed by their religion or (in the case of indigenous tribal populations) by their customary law.

## FARMING

The state should try to organise agriculture and animal husbandry on modern and scientific lines, taking steps for preserving and improving the breeds. It




should also try to prohibit the slaughter of cows, calves and other milch and draught cattle.

## **WEAKER SECTIONS**

The state should look after the economic and educational interests of weaker sections of society, particularly the Scheduled Castes and Scheduled Tribes. They should be protected from exploitation and injustice. .

## **HEALTH**

Improvement of public health is among the state's primary duties. The state should try to prohibit the consumption of alcoholic drinks, except for medicinal purposes. The consumption of drugs injurious to health should also be prohibited.

		
The environment should be protected and improved	Monuments of national importance should be protected	The state should promote world peace

## **ENVIRONMENT**

The state should protect and improve the environment, and safeguard forests and wildlife.

## **HERITAGE**

The state should protect monuments, as well as places and objects of historic or artistic interest which are declared to be of national importance. They should be guarded against destruction and damage

## **WORLD PEACE**

The state should promote international peace and security, just and honourable relations between nations, and respect for international law and treaty obligations.

### **WHAT'S SO SPECIAL ABOUT DIRECTIVE PRINCIPLES?**



The Directive Principles of State Policy have inspired several progressive legislations e.g. Minimum Wages Act, Maternity Benefit Act, Right of Children to Free and Compulsory Education Act, Equal Remuneration Act, etc.



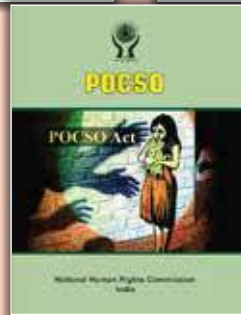
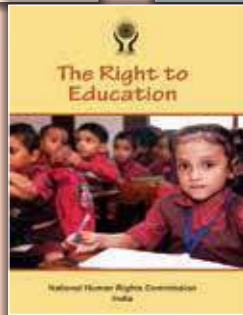
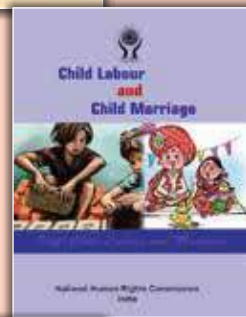
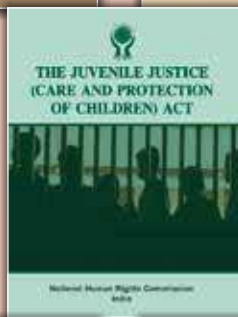
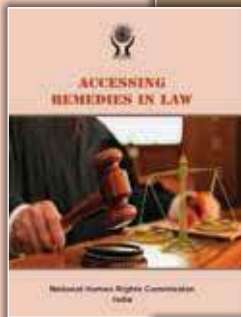
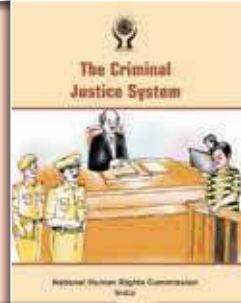
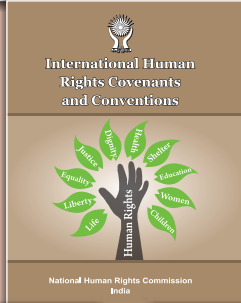
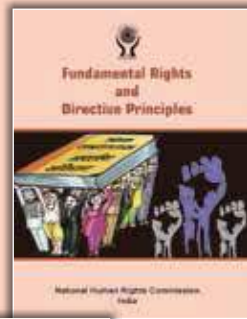
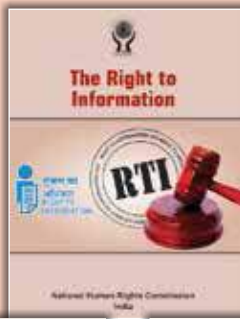
Although they are not enforceable in a court of law, the Supreme Court of India has given due regard to the pivotal position of the Directive Principles in the Constitution. Well before the Constitution was amended to include the right to education as a specific fundamental right, the Supreme Court had deemed it to be a fundamental right on the ground that it is integral to the right to life.











## NATIONAL HUMAN RIGHTS COMMISSION

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