

HUMAN RIGHTS IN INDIA

What are human rights?

- In order to live with dignity certain basic rights and freedoms are necessary, which all Human beings are entitled to, these basic rights are called Human Rights
- Human rights demand recognition and respect for the inherent dignity to ensure that everyone is protected against abuses which undermine their dignity, and give the opportunities they need to realize their full potential, *free from discrimination.*

Concept

- Human rights belong to everyone, everywhere, regardless of *nationality, sexuality, gender, race, religion or age*. The foundation of modern human rights is the [Universal Declaration of Human Rights](#) (UDHR). The 30 articles of the Declaration were adopted in 1948 by the United Nations General Assembly, and over time these have been integrated into national laws and international treaties. The core values of the UDHR - human dignity, fairness, equality, non-discrimination - apply to everyone, everywhere.

Components

Human rights include civil and political rights, such as:

- # The right to freedom of expression
- # The right to freedom of religion or conscience
- # The right to property
- # The right to freedom of assembly
- # The right to privacy
- # The right to vote.

Human rights also cover economic and social rights, such as:

The right to an adequate standard of living

The right to adequate food, housing, water and sanitation

The rights you have at work

The right to education.

India and the Universal Declaration

- India was a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in Part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights. The following chart makes it very clear.

HUMAN RIGHTS AND THE INDIAN CONSTITUTION

- The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules, is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal "irrespective of the race, religion, language, sex and culture." The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizens.

Fundamental Rights and Human Rights

- The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural educational rights and the right to Constitutional remedies.¹⁰

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- Fundamental rights differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, which is violative of any of the fundamental right, is void. In ADM Jabalpur v. Shukla, Justice Beg observed "the object of making certain general aspects of rights fundamental is to guarantee them against illegal invasion of these rights by executive, legislative, or judicial organ of the State." Earlier, Chief Justice Subba Rao in Golak Nath v. State of Punjab had rightly observed, "Fundamental rights are the modern name for what have been traditionally known as natural rights."

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- The Supreme Court of India recognizes these fundamental rights as 'Natural Rights' or 'Human Rights'. While referring to the fundamental rights contained in Part III of the Constitution, Sikri the then Chief Justice of the Supreme Court, in *Keshavananda Bharati v. State of Kerala*, "observed, "I am unable to hold these provisions to show that rights are not natural or inalienable rights. As a matter of fact India was a party to the Universal Declaration of Rights . . . and that Declaration describes some fundamental rights as inalienable." The Chief Justice Patanjali Shastri in *State of West Bengal v. Subodh Gopal Bose* observed referred to fundamental rights as those great and basic rights, which are recognized and guaranteed as the natural rights inherent in the status of a citizen of a free country.¹⁰

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- Article 14 of the Indian Constitution proclaims the general right of all persons to equality before the law, while Article 15 prohibits the State from discriminating against any citizen on grounds of religion, race, caste, sex or place of birth, and prohibits any restriction on any citizen's access to any public place, including wells and tanks. Equality of opportunity for all citizens in matters of public employment is guaranteed under Article 16. Article 17 abolishes untouchability and makes its practice an offense punishable under law. Both Articles 15 and 16 enable the State to make special provisions for the advancement of socially and educationally backward classes, for such castes and tribes as recognized in the Constitution (known as the Scheduled Castes and Scheduled Tribes) require very special treatment for their advancement. Article 18 abolishes all non-military or non-academic titles.

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- The right to freedom guaranteed to all citizens under Article 19 encompasses the right to freedom of speech and expression, the right to assemble peaceably without arms, the right to form associations or unions, the right to move freely throughout the territory of India, the right of residence, and the right to practice any profession, or to carry on any occupation, trade or business. The protection of a person in respect of conviction of offense under Article 20 includes protection against ex post facto criminal laws, the principle of autre fois convict and the right against self-incrimination. Article 21, the core of all fundamental rights provisions in the Indian Constitution, ordains: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 21A was added to the Constitution by the Eighty Sixth Constitutional Amendment Act 2002.

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- Article 21A proclaims "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." The rights of a person, arrested and detained by the State authorities, are provided in Article 22. These include the, right to be informed of the grounds of arrest, the right to legal advice and the right to be produced before a magistrate within 24 hours of arrest (except where one is arrested under a preventive detention law). The right against exploitation includes prohibition of trafficking in human beings and forced labour (Article 23), and prohibition of employment of children below 14 years of age "to work in any factory or mine or in any other hazardous employment."

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- Subject to public order and morality, all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion (Article 25). Every religious denomination or section also has the right to establish and maintain religious institutions and manage their religious affairs (Article 26). No one may be compelled to pay any religious taxes (Article 27). The wholly State-funded educational institutions are barred from imparting religious instructions (Article 28).

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- The rights of any section of citizens or a minority to promote its distinct language, script or culture, to have access to Statefunded educational institutions (Article 29), and to establish and maintain educational institutions of its choice (Article 30) are also guaranteed.
- The right to Constitutional remedies is essentially the right to move the Supreme Court of India for enforcement of the above rights (Article 32). The Supreme Court is vested with wide Constitutional powers in this regard.

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- They include the power to issue directions, orders or writs for the enforcement of the fundamental rights (Article 32(2)). State (i.e. provincial) High Courts too have identical powers (Article 226). As laws inconsistent with or in derogation of the rights conferred by part III of the Constitution are void (Article 13), the Courts have the power to adjudge the Constitutional validity of all laws. Furthermore, by virtue of Article 141, the law declared by the Supreme Court shall be binding on all courts in India.

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- Fundamental rights guaranteed under the Indian Constitution may be divided, for the sake of convenience, into two categories viz., specified fundamental rights and other fundamental rights (rights not specifically enumerated).

