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INDIAN POLITY

CHAPTER 4

Fundamental Rights and Writs

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CHAPTER 4

Fundamental Rights and Writs

Part III (Articles 12–35)

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- Facts about Writs

What are Fundamental Rights?

- Fundamental Rights are the **basic human rights** enshrined in the Constitution of India and **guaranteed to all citizens**.
- They apply **without discrimination** on the basis of race, religion, gender, etc.
- They are **enforceable by the courts**, subject to certain conditions.

Why are they called "Fundamental"?

- They are **enshrined in the Constitution**, which guarantees them.
- They are **justiciable** (enforceable by courts). If a Fundamental Right is violated, a person can **directly approach the High Court or the Supreme Court**.

Six Fundamental Rights

Originally there were **seven** Fundamental Rights; **currently there are six**.

No.	Fundamental Right	Articles
1	Right to Equality	14–18
2	Right to Freedom	19–22
3	Right against Exploitation	23–24
4	Right to Freedom of Religion	25–28
5	Cultural and Educational Rights	29–30

No.	Fundamental Right	Articles
6	Right to Constitutional Remedies	32

RIGHT TO PROPERTY

The **Right to Property (Article 31)** was the seventh right. It was **deleted** from the list of Fundamental Rights by the **44th Amendment Act, 1978**, and made a **legal right under Article 300-A** in Part XII. So at present there are **only six** Fundamental Rights.

Article 12 and Article 13

Article 12 — Definition of "State"

The term **'State'** includes:

- the **Government and Parliament of India** (executive and legislative organs of the Union);
- the **Government and legislature of states** (executive and legislative organs of the states);
- all **local authorities** — municipalities, panchayats, district boards, improvement trusts, etc.;
- all **other authorities** — statutory or non-statutory, like **LIC, ONGC, SAIL**;
- a **private body or agency** working as an instrument of the State.

Article 13 — Judicial Review

- Article 13 provides for the **doctrine of judicial review**.
- It gives power to the **Supreme Court (Article 32)** and the **High Courts (Article 226)** to declare **invalid** any law or rule that affects the Fundamental Rights of citizens.

Fundamental Rights in Detail

Right	Provisions
1. Right to Equality (Articles 14–18)	(a) Equality before law and equal protection of laws (**Art. 14**) (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (**Art. 15**) (c) Equality of opportunity in matters of public employment (**Art. 16**) (d) Abolition of untouchability and prohibition of its practice (**Art. 17**) (e) Abolition of titles except military and academic (**Art. 18**)

Right	Provisions
2. Right to Freedom (Articles 19–22)	(a) Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (**Art. 19**) (b) Protection in respect of conviction for offences (**Art. 20**) (c) Protection of life and personal liberty, right to privacy (**Art. 21**) (d) Right to elementary education (**Art. 21A**) — added by the **86th Amendment, 2002** (e) Protection against arrest and detention in certain cases (**Art. 22**)
3. Right against Exploitation (Articles 23–24)	(a) Prohibition of traffic in human beings and forced labour (**Art. 23**) (b) Prohibition of employment of children in factories, etc. (**Art. 24**)
4. Right to Freedom of Religion (Articles 25–28)	(a) Freedom of conscience and free profession, practice and propagation of religion (**Art. 25**) (b) Freedom to manage religious affairs (**Art. 26**) (c) Freedom from payment of taxes for promotion of any religion (**Art. 27**) (d) Freedom from attending religious instruction or worship in certain educational institutions (**Art. 28**)
5. Cultural and Educational Rights (Articles 29–30)	(a) Protection of language, script and culture of minorities (**Art. 29**) (b) Right of minorities to establish and administer educational institutions (**Art. 30**)
6. Right to Constitutional Remedies (Article 32) — also known as the **"soul of the Constitution"**	Right to move the Supreme Court for the enforcement of Fundamental Rights, including the writs of (i) habeas corpus, (ii) mandamus, (iii) prohibition, (iv) certiorari and (v) quo-warranto (**Art. 32**)

Facts about Fundamental Rights

- Fundamental Rights are derived from the **Constitution of the USA**.
- They are described as the **Magna Carta** of the Indian Constitution.
- Rights under **Articles 15, 16, 19, 29 and 30** are **not available to foreigners**.
- Fundamental Rights can be amended **only by Parliament** through a constitutional amendment, but only if the amendment **does not alter the basic structure** of the Constitution.

- They can be **suspended during a national emergency**, except the rights guaranteed under **Articles 20 and 21**.
- Their application can be **restricted** in an area placed under **martial law** (military rule).
- They are **justiciable** — people can directly approach the Supreme Court and High Courts if they are violated.

Writs

- A **writ** is a written order from the **Supreme Court or a High Court** that commands constitutional remedies for citizens against the violation of their Fundamental Rights.
- **Article 32** empowers the **Supreme Court** to issue writs; the **High Courts** have the same power under **Article 226**.
- The Supreme Court is the **defender of the Fundamental Rights** of citizens and has original and wide powers for this purpose.
- It issues **five kinds of writs**:

Writ	Literal meaning	When is it issued?
Habeas Corpus	'To have the body of'	To enforce the right of individual liberty against **unlawful detention**. The court orders a person (e.g., a government official) who has arrested another person to **produce the arrested person before the court**. It is issued when a person is arrested without any reason.
Mandamus	'We command'	Issued to a **public official** who has failed or refused to perform his duty, ordering him to resume his work. It can also be issued against any public body, corporation, inferior court, tribunal or government.
Prohibition	'To forbid'	Issued by a **higher court to a lower court** to prevent it from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
Certiorari	'To be certified' or 'To be informed'	Issued by a higher court to a lower court or tribunal, either to **transfer a pending case** to itself or to **quash its order** in a case.
Quo-Warranto	'By what authority or warrant'	Issued to prevent **illegal usurpation of a public office** by a person. The court enquires into the legality of the person's claim to the office.

Facts about Writs

- The **Supreme Court (Article 32)** and the **High Courts (Article 226)** can issue all five writs.

- **Article 32** also empowers **Parliament** to authorise any other court to issue these writs.
- Writs are borrowed from **English law**, where they are known as **'prerogative writs'**.

Supreme Court vs High Court: Writ Jurisdiction

Point	Supreme Court (Art. 32)	High Court (Art. 226)
Purpose	Only for enforcement of **Fundamental Rights**	For Fundamental Rights **and for any other purpose**
Territorial reach	Against a person or government **throughout India**	Only within its **territorial jurisdiction** (state)
Nature	Remedy is itself a **Fundamental Right**, so the SC **may not refuse**	Remedy is **discretionary**, so the HC **may refuse**

EXAM TIP

The **High Court's writ jurisdiction is wider** than the Supreme Court's (it covers "any other purpose" too). Habeas Corpus = unlawful detention; Quo-Warranto = public office; Prohibition = only against courts/tribunals.

QUICK REVISION

1. Six Fundamental Rights at present; originally **seven**.
2. Right to Property removed by the **44th Amendment, 1978** → legal right under **Article 300-A**.
3. Article 12 defines **"State"**; Article 13 provides **judicial review**.
4. Article 17 abolishes **untouchability**; Article 18 abolishes **titles**.
5. Article 21A (Right to Education) added by the **86th Amendment, 2002**.
6. Article 32 — Right to Constitutional Remedies — **"soul of the Constitution"**.
7. Articles **15, 16, 19, 29, 30** are not available to foreigners.
8. During national emergency, **Articles 20 and 21** cannot be suspended.
9. Five writs: **Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo-Warranto**.
10. Writs come from **English law** ("prerogative writs").