



Rights of Children In the Constitution

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What are Rights?

Your Right is what someone else must **do**
for you

Your right is also about what other **must not**
do to you (such as discriminate, use
violence)

Rights are entitlements

Needs, Rights, Privileges

The title is centered at the top of the slide. Behind the text are five circles of varying shades of light purple and white, arranged horizontally. The circles are of different sizes and some are partially overlapping.

- Needs are all those tangible and intangible things we wish for to live.
- Some of these are basic needs
- Some of these basic needs get translated into a legal frame and become a right
- A privilege is a need that may be legally valid but beyond a basic need or right.

Concept of Rights



- Rights dominate our understandings of what actions are proper and which institutions are just
- Rights structure the forms of our governments, the contents of our laws, and the shape of morality as we perceive it.
- Right holders have corresponding duty bearer.
The citizen is the right holder and the state the duty bearer
- Governments have the **obligation** to ensure the realisation of rights of citizens



Children and their rights

- Children are **right holders**
- They are entitled to **support** as right holders
- The **State and its government is obligated** to realise the rights of children
- **All adults can play a role in achieving children's rights** but state is the primary duty bearer
- **All rights are common** for adults and children
- Some rights are **defined specifically for children** (hence UNCRC and also articles in the constitution and special laws)
- While all children have all rights, **some children need special attention because of their situation**

The title 'Constitution of India' is positioned at the top left. To its right, there are five decorative circles arranged horizontally. The first, third, and fifth circles are solid light purple. The second and fourth circles are hollow with a light purple outline.

Constitution of India


The Constitution lays down the rules that the Government must follow to protect people from unjust action by the government. These are rights that the government cannot take away

- Children have all rights as equal citizens of India, just as any other adult male or female.
- The Constitution of India also has special articles for children



Preamble of the Constitution

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



Fundamental Rights (Part III) are the basic human rights of all citizen and are enforceable by the courts, subject to specific restrictions.

Directive Principles of State Policy (Part IV) are guidelines for the framing of laws by the government and not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing and passing laws.

The **Fundamental Duties** set out in Part IV–A are the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India and they are not legally enforceable.

Fundamental Rights

Fundamental means Basic. All rights that are basic to every human being has been listed by the Constitution Under Fundamental Rights:

Right to equality

Right to Equality Before Law (Article 14)

- Right against discrimination (Article 15) *The State must make special provisions for women and children (Article 15 (3)).*
- Right to be protected from Untouchability (Article 17)

Right to Freedom

- **Right to Freedom speech and Expression** (Article 19) (Includes the right to know; Creative expression
 - To assemble peaceably and without arms
 - To form associations and unions
 - To move freely throughout the territory of India
 - To practice any profession, occupation or carry on trade and business
- **Right to life and personal liberty** (Article 21) (Right to a life with dignity)
 - *Right to free and compulsory elementary education for all children in the 6-14 year age group (Article 21 A) Inserted after 86th Amendment in 2006*
- **Protection against arrest and detention** (Article 22)



Right Against Exploitation

- Right to being protected from being trafficked and forced into bonded labour (Article 23)
- Prohibition of Traffic in human beings and forced labour (Article 23)
- Prohibition of Employment of children in factories etc.

Right to Freedom of Religion

- Freedom of Conscience and practice of Religion (Article 25)
- Freedom to manage religious affairs (this includes the right to establish and maintain institutions and administer property in accordance with law (Article 26)
- Freedom to promote one's religion (Article 27)
- Freedom of religious instruction (Article 28).
However, no religious instruction shall be provided in any institution maintained by State funds)

Cultural and Educational Rights

- Protection of Rights of Minorities (Article 29)
 - Right to conserve one's language, script and culture *Facilities for instruction in mother-tongue at primary stage. Article 350*
 - Right to admission to any educational institution without discrimination
- Right to establish and administer educational institutions (Article 30)

Right to Constitutional Remedies

- The Right to move the Supreme Court for enforcement of rights (Article 32)

Normally one cannot approach the Supreme Court directly without first going through the lower courts. But because of their importance, one can do so in the case of violation of ones fundamental rights

To Enforce Fundamental Rights

- File a petition in Supreme Court
- Petition in the High Court
- Writing a letter to the High Court or Supreme Court
- Asking someone to file a petition on our behalf
- Write a letter on our behalf if one is unable to (as may be the case with children)

Directive principles of State Policies

Article 39A. The State shall secure that the operation of the legal system promotes **justice, on a basis of equal opportunity**, and shall, in particular, **provide free legal aid**, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 39(e) Right to be protected from **being abused and forced by economic necessity** to enter occupations unsuited to their age or strength.

Article 39(f) **Right to equal opportunities** and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment

Article 45. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, **for free and compulsory education for all children until they complete the age of fourteen years.**
This has now changed

- . **Right to early childhood care and education to all children until they complete the age of six years (Article 45)**

Article 46. **Right of weaker sections** of the people to be protected from social injustice and all forms of exploitation

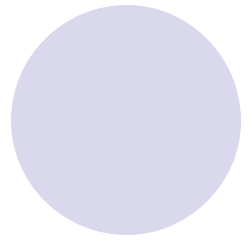
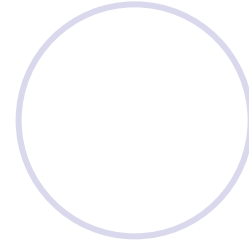
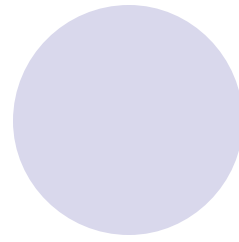
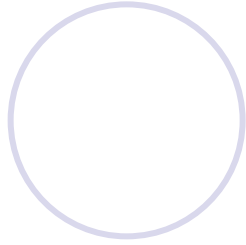
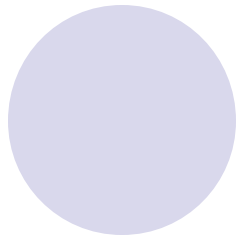
Article 47. **Right to nutrition and standard of living** and improved public health

Fundamental Duties Article 51 A

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Applicability of International Law

- International law does not become automatically applicable in India. It needs to be translated into national law. But they can be cited as additional documents. Supreme Court has used it to make judgments, which have now become case law.



In Githa Hariharan & Anor v. Reserve Bank of India & Another, (February 17, 1999) **Supreme Court of India** court stated, "India is a signatory to CEDAW...[t]he interpretation...placed on s6(a) gives effect to the principles contained in these instruments. The domestic courts are under an obligation to give due regard to international conventions and norms for construing domestic laws when there is no inconsistency between them."



Vishaka Judgement

- **Before we refer to the international conventions and norms having relevance in this field in the manner in which they assume significance in application judicial interpretation, we may advert to some other provisions in the Constitution which permit such use....Article 253- Legislation for giving effect to international agreements. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty. Agreement or convention with any other country or countries or any decision made at any international conference, association or other body**



Constitutional Provisions must be backed by law, policy and programmes and schemes

- Article 21 –Right to Education Bill 2008
- Right Against Exploitation (Articles 23, 24 and 39e)- ITPA; Bonded Labour System Abolition Act (1976); Child Labour (Prohibition and Regulation Act), 1986; Children (Pledging of Labour) Act, 1933
- Right to equality and equal opportunity; and Right against discrimination (Article 15,39f;)-The Persons with Disabilities Act 1995; Laws for SC and ST, scavenging etc. PC&PNDT Act
- Protection against arrest and detention (Article 22)- JJ Act