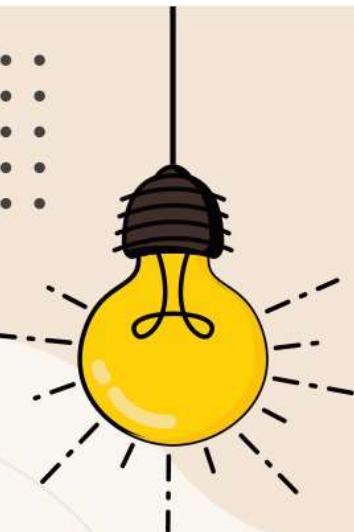




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# **50 DAYS PLAN**

Mains Answer Writing Program  
**for BPSC 67**



**INDIAN POLITY**

1. संविधान एक हाथ से जो अधिकार देता है वह दूसरे हाथ से छीन लेता है। क्या आप भारतीय संविधान में मौलिक अधिकारों के संदर्भ में इस कथन से सहमत हैं?

**What the constitution gives with one hand, it takes away with another. Do you agree with this statement in reference to fundamental rights in the Indian Constitution?**

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# 67TH BPSC MAIN EXAM

## INDIAN POLITY

**Ques.1: What the constitution gives with one hand, it takes away with another. Do you agree with this statement in reference to fundamental rights in the Indian Constitution?**

Fundamental rights can only be those rights the exercise of which is not only in the interest of the citizen but that of the whole world" — M. Gandhi

The Fundamental Rights are defined as the basic human rights of all citizens.

They are enshrined in Part III of the Constitution (Articles 12-35) which is described as the Magna Carta of India. It has been inspired by the Bill of Rights of the USA.

The Indian Constitution has given six groups of Fundamental Rights

1. Right to Equality (Article 14 - 18)
2. Right to Freedom (Article 19 - 22)
3. Right Against Exploitation (Article 23 & 24)
4. Right to Freedom of Religion (Article 25 - 28)
5. Cultural & Educational Rights (Article 29 & 30)
6. Right to Constitutional Remedies (Article 32)

There is a view that the Indian Constitution has given these rights from one hand and taken them back by another which needs to be analysed.

### 1. Points of Agreement

#### A. Reasonable Restrictions:

1. Six Freedoms mentioned under Article 19(1) has been restricted by Articles 19(2) to 19(5) in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court, general public and Scheduled tribes. For ex. Freedom of movement can be restricted on the grounds of Public Order and interest of Scheduled Tribes.
2. The Right to Freedom of Religion given under Article 25 to 28 are subject to public order, morality, health and other provisions relating to fundamental rights. For ex. Use of loudspeakers for religious purposes could be restricted in the vicinity of areas having heart hospitals.

#### B. Exceptions: There are various exceptions to the Chapter of Fundamental Rights

1. Article 361, 105 and 194 are exceptions to Equality before Law & Equal Protection of laws. It states that no civil or criminal proceedings can occur or continue against the President/Governor in any court during their term of office. No member of Parliament and State Legislature shall be liable to any court proceedings in respect of anything said or any vote given by him in Parliament or any committee. The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
2. Article 31A and Article 31B which deals with provisions for land reforms and IXth Schedule saves laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 and 19. These act as exceptions to the enjoyment of Fundamental Rights.
3. Article 33 and 34 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, Paramilitary forces, police forces, intelligence agencies, analogous forces and while martial law is in force in any area within the territory of India.

#### C. Limitations by some other Constitutional Provisions

1. **Article 39 (b) and (c):** As per Article 31C, if any law seeks to implement socialistic directive principles specified in Articles 39 (b) and (c) shall be declared void on the grounds of contravention of the fundamental rights conferred by Article 14 or Article 19.
2. **National Emergency:** All Fundamental Rights except Article 20 and 21 (44th AA, 1978) can be suspended when National Emergency is in force.
3. **Article 368:** As per Article 368 of the Constitution, even Fundamental Rights can be amended or repealed by way of amendment to the constitution. eg. Right to Property was repealed by 44th AA, 1978

#### 2. Points of Disagreement: However it is inappropriate to say that the constitution has given Fundamental Rights by one hand and taken back by another because of the following:

##### A. Reasonable Restrictions are imposed to achieve a larger good:

The reasonable restrictions mentioned under Article 19(2) like Security of the state is itself of utmost importance as our rights ultimately depend on the continued existence of the State.



Another example is the restriction on our religious freedom on the grounds of public order as the enjoyment of our religious rights will be heavily dependent on peace and the correct order of the society itself.

- B. **Living Document:** The constitution makers had stressed on the fact that the Indian Constitution is a living document and hence it can be changed or amended. As the people of the nation grow, their needs and aspirations change. To satisfy and accept these changes in the thought process of the citizens of the country, our Constitution needs to be amended and updated timely. One of the best examples was the repeal of Right to Property to accommodate the ideal of a socialist and welfare state.
- C. **Limitations & Exceptions for a Larger Good:** The exceptions imposed by the constitution on the exercise of Fundamental Rights are targeted to achieve a larger good. For eg. Reservation Policy as an exception to Article 15(1) & 16(1) aims to achieve Social Justice as enshrined in our Preamble. Also National Emergency is imposed on the grounds of War, External Aggression & Armed Rebellion which are abnormal circumstances and hence require special measures which makes their suspension justified.
- D. **Significance & Evolution w.r.t Article 21:** Looking at the enlargement of the scope of Fundamental Rights by the Supreme Court with respect to Article 21, and addition of Article 21 A by the Parliament, it would be inappropriate to say that the constitution has taken back these rights from the other hand. Article 21 has been expanded to include all the basic rights which are required to lead a dignified life.
- E. **Fundamental Rights & Basic Structure:** The above argument can also be justified by the doctrine of Basic Structure as fundamental rights like Right to Constitutional Remedies, Right to Life have been declared part of Basic Structure and hence cannot be altered under any circumstances.

### Conclusion

India was one of the first countries to include Fundamental Rights in the original constitution and it did so with a noble purpose. Being a progressive country, it needs to adapt to the changing times and respect the varied group of rights which are in consonance with the Fundamental rights. **The National Commission for Review of Working of the Constitution headed by Venkatachaliah in Chapter 3** of its report has also stressed on the importance of Fundamental Rights and stressed for its expansion as they are most essential for the all round development (material, intellectual, moral and spiritual) of the individual.