

Human Rights and Fundamental Rights

We have come across various struggles of people to achieve equality with others in the previous chapter. Yet even after independence, forms of discrimination have not completely vanished. The makers of the Indian Constitution were aware that it is not easy to wipe out all forms of discrimination and so developed a Constitution which would allow laws to emerge to meet the varying needs and goals of the society. The Constitution envisaged a society that is based on the certain principles listed in the Preamble. Any law which violates the Preamble will be struck down.

- Write few important features of Preamble you studied last year

What are the Rights?



Rights are reasonable claims of persons. These claims are protected by law. All of us would like to live happily, without being made to feel inferior. Similarly we have the responsibility to allow others to enjoy their rights as well. Your rights come with the responsibility to protect and respect the rights of other persons as well.

The concept of equal rights has been a changing one. We have seen elsewhere that not everyone was treated equally all the time. Black people were traded as slaves, women were not given the right to property and so on. But today we would consider these as unjust and a violation of that person's rights.

Rights also become significant in the context of democratic systems. Democratic systems strive to persevere equal ground for all. They allow people to express their opinion and make choices, including the choice of being represented by people they believe in. This choice is called a Vote.

Democracy safeguards not just the majority but also the minorities. Democracies place all people whether majority or the minority on the same plane. The Indian Constitution ensures that each person's rights irrespective of caste, race, gender, religion, and creed is protected. However there are some rights which are so fundamental to personhood that they have been given statutory and guaranteed in the Constitution. They are known as Fundamental Rights.

These rights are so important that they are also expressed by many of the democratic nations the world over and have been codified by the United Nations Organisation (UNO) and find a place in the Universal Declaration of Human Rights (UDHR). The UDHR is a document to which many of the modern states are signatory too implying that they will uphold all the basic human rights mentioned there.

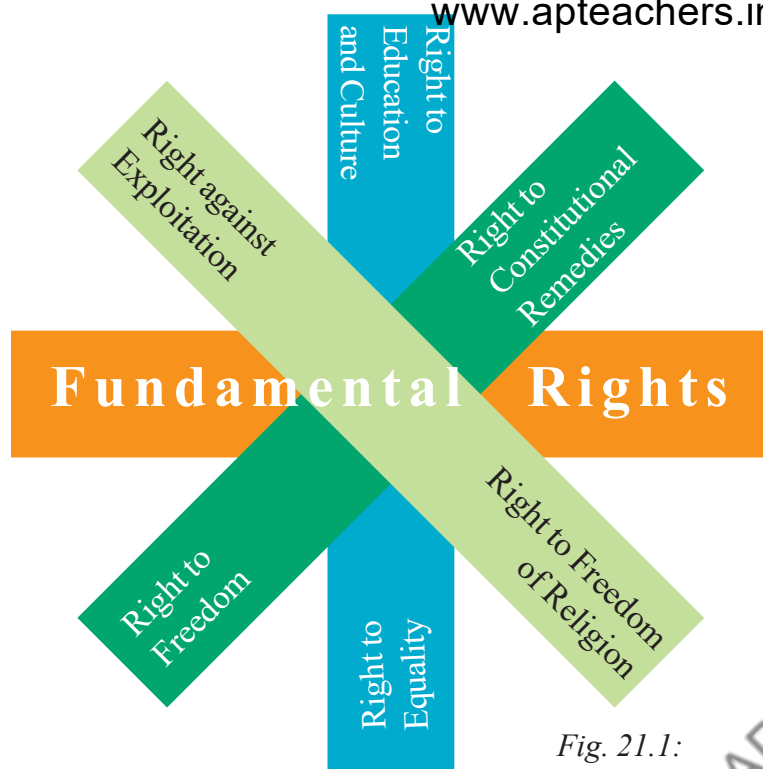


Fig. 21.1:
Fundamental Rights

Fundamental Rights in Indian Constitution

Fundamental Rights find a place in Part 3 of the Constitution of India. These rights give people a protection from oppressive governments and place a duty on the government to uphold them. They are so important that if they are violated by the government, any person has a right to approach the High Court or the Supreme Court directly without going to the lower courts for relief. Writ is an authority given to the court to issue directions to the

government to protect and enforce any constitutional right. It is an inherent power given to the court. The court can *sue motu* (on its own motion) take cognizance of a violation of a fundamental right.

Right to Equality

The Indian Constitution guarantees the Right to Equality. It includes most notably the following rights:

1. Equal Protection of Law

The Constitution says that the government “shall not deny to any person equality before the law or equal protection of the laws.” This means that the laws apply in the same manner to all, regardless of a person’s income, status, background etc. This is called the rule of law.

The Right to equality, guarantees that all citizens shall be equally protected by the laws of the country, whether she be an ordinary citizen, a minister, government official or a small farmer. Everyone is under the same law. It means that the State cannot discriminate against and cannot mete out preferential treatment to any of the Indian citizens on the basis of their caste, creed, colour, sex, gender, religion, office or place of birth.

Even a Prime Minister may be trailed in a court of law and will have to attend the courts just as an ordinary person would if there is an accusation of a crime. Or



in the same way, if some official is found guilty of a crime then he or she should be given the same punishment as applies to any other person. No one can claim special treatment because of his or her class or background.

In the modern State, the executive arm of the Government is armed with vast powers, in the matter of enforcing bye-laws, rules and regulations as well as in the performance of a number of other functions. The equality clause prevents such power being exercised in a discriminatory manner.

2. Social Equality

Another feature of this right is Social Equality. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. Further, on the basis of any of these grounds a citizen cannot be denied access to shops, public restaurants or the use of wells, tanks, roads and places of public resort maintained wholly or partly out of State funds or those which are dedicated to the use of the general public. The significance of the Article is that it is a guarantee against every form of discrimination by the State on the basis of religion, race, caste, or sex.

This right has, however, two notable exceptions in its application. The first of these permits the State to make special provisions for the benefit of women and children. The second allows the State to make any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes and the Schedule Tribes.

The special treatment meted out to women and children is in the largest and the long range interest of the community itself. It also recognises the social customs and background of the country as a whole, and the historical disempowerment and oppression of these people groups. In an attempt to uphold this right, laws governing civil matters like property laws today have been amended to include women as coparceners in joint family property

Thus the Constitution permits the discrimination in reverse by reserving seats in educational institutions and by reserving posts or appointments in public service. The extent of such reservation assumes great importance for the citizen, for the general public and for the State. For example, medical colleges must admit a certain percentage of students who belong to OBC/SC/ST.

3. Equality of Opportunity

The Constitution guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, resident nor will any of them be ineligible for or discriminated against in any respect of any employment or office under the State.

However, a notable exception lies to this right again, is that the State can make provisions for the reservation of posts in favour of any backward class of citizens, which in the opinion of state is not adequately represented in the services under the state. That is the state may also reserve posts for members of Backward Classes, Scheduled Castes or Scheduled Tribes which are not adequately represented in the services under the State to empower and lift the weaker sections of the society.

4. Abolition of Untouchability

The Constitution in no uncertain terms abolishes Untouchability - its practice in any form. Further the practice of untouchability is an offence and anyone doing so is punishable by law even attracting a jail term. The Protection of Civil Rights Act provides penalties for preventing a person from entering a place of worship or from taking water from a tank or well.

5. Abolition of Title

In another move to remove arbitrary and unequal classification of the aristocratic class and the bourgeoisie, the Constitution prohibits the State from conferring any titles. The British government had created an aristocratic class known as Rao Bahadurs and Khan Bahadurs in India – these titles were also abolished. Citizens of India cannot accept titles from a foreign State. However, military and academic distinctions can be conferred on the citizens of India. The awards like the Bharat Ratna, the Paramveer Chakra and the Padma Vibhushan cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition.

- What kinds of rights to equality does the Constitution ensure? Give examples.
- Discuss whether you think each of the following is a violation of the Fundamental Right to Equality. Also discuss whether you think it is constitutionally right or wrong to do such things.
 - While filling water from a public source some people object if the vessel of another person touches their pots.
 - Some communities are never provided a place to live within the village but always outside.
 - In some schools, certain children are not allowed to serve water because they belong to a particular caste.
 - Members of some communities do not go to many places of worship because they fear that they will be ill treated or beaten up.
- What would happen if the Fundamental Right to Equality were not in the Constitution? Discuss.

Right to Freedom

The Constitution of India also guarantees certain individual rights that were considered vital by the framers of the constitution. The Right to Freedom guarantees the following six freedoms:



1. Freedom of speech and expression: This enables an individual to participate in public activities. Citizens are free to express their views in many ways such as through meetings, publications, plays, paintings etc. However this right is a restrictive right and can be curtailed on the grounds of public order, security of State, morality and public good. Hence movies are subject to review by the Censor Board in the interests of public good, decency and morality.

Again there are various laws regulating free speech. Although we have the right to free speech, it is a right which cannot be used without any thought. Our free speech must not be defamatory, immoral or illegal. Again there are other laws forbidding people to incite others/ tell others to rebel against the government.

2. Freedom to assemble peacefully without arms: On which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.

People have the right to come together or assemble for many reasons such as to hold meetings about their rights, to discuss their problems or business, to exchange ideas and share views etc. Everyone also has the right to carry out peaceful demonstrations, public meetings and rallies.

However, there are some restrictions on this right – for example, any assembly should be conducted in a peaceful manner without the display or use of arms. Similarly, whenever a demonstration or a rally is organised, prior permission from the administration needs to be taken.



Fig. 21.2: A rally

3. Freedom to form associations or unions: The State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.

People are free to form many kinds of associations - cultural groups, business associations, trade unions. For example, you may have heard that many factories have workers' unions. These unions hold meetings to discuss their problems. They make demands to the officers of the factory. Thus, the union protects the rights of the workers.

- What associations are there in your area?
- Why are workers' unions formed? What problems do they face?

4. Freedom to move freely: People have freedom to move freely throughout the territory of India though reasonable restrictions can be imposed on this right in the interest of the general public. For example, restrictions may be imposed on

movement and traveling, so as to control epidemics. Again, in some border areas the government may think that free movement is posing problems for the security of the country and so impose restrictions on it.

5. Freedom to reside and settle in any part of the territory of India: Which is also subject to reasonable restrictions by the State in the interest of the general

- Why do people want to move and settle in various parts of the country?
- What is the responsibility of the government towards workers who are able to find some work in the city but don't have a proper place to live?

public or for the protection of the Scheduled Tribes. Certain safeguards as are envisaged here to protect indigenous and tribal people from exploitation and coercion.

6. Freedom to practise any profession or to carry on any occupation, trade or business: On

which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practising any profession or carrying on any trade.

The constitution also imposes restrictions on these rights. The government restricts these six freedoms in the interest of the independence, sovereignty and integrity of India. In the interest of morality and public order, the government can also impose restrictions. The six freedoms are also automatically suspended or have restrictions imposed on them during a state of emergency. However, the right to life and personal liberty cannot be suspended.

■ Discuss the implications of the statement that although the six freedoms may be suspended, the right to life and personal liberty may not be suspended.

7. Right to Life: The Indian Constitution also guarantees the Right to Life and Personal Liberty. This includes:

■ Protection with respect to conviction for offenses is guaranteed in the right to life and personal liberty. No one can be awarded punishment which is more than what the law of the land prescribes at that time.

■ No citizen can be denied his life and liberty except by law. This means that a person's life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offense.

■ In 2002, the right to primary education became a part of the right to life. Here the governments are responsible for providing free and compulsory education to all children up to the age of 6 to 14 years. This makes it necessary for the government to arrange for schools and for parents to see to it that their children attend schools regularly. This right has been added because people feel that all children should have the opportunity to study, learn about the world around them, acquire skills to express themselves and make creative contributions to society, and have more opportunities for their future.

■ Rights of a person arrested under ordinary circumstances is laid

down in the right to life and personal liberty. No one can be arrested without being told the grounds for his arrest. If arrested, the person has the right to defend himself by a lawyer of his choice.

- Conduct a debate in the following issues in the context of regulation on freedom of speech:

1. A book is written with an intention to hurt the feeling of a specific caste group.
2. Every film has to get approval from the Censor Board.
3. The court orders that no one can use public microphones during festivals and prayers beyond 11:00 p.m.

- What do you remember about the difference between the role of the police and that of the court (VIII Class)?

- What are the different types of schools you see in your area? Why do you think there are such different types of schools?

Right against Exploitation



Under this Right all forms of “forced labour are prohibited”.

You read in some of the history chapters that some people were forced to do *vetti* to work without any wages. If any landlord or contractor today forces a person to work without any wages or at very low wages, it would be a violation of the fundamental right against exploitation. Such a person can file a case in the court. Similarly, if a person is forced to work as a bonded labourer it would also be a violation.

“Prohibition of employment of children in factories”

The Constitution states, “no child below the age of 14 shall be employed to work in any factory or mines or engaged in any other hazardous employment.” Accordingly, laws have been made that prohibit children from making matches, crackers, beedis and carpets, or doing printing and dyeing etc.

- Do you think this right has been made available to children in the villages and cities in your area?
- With the help of the teacher find out the minimum wages in your state.

Right to Freedom of Religion

All individuals are free to follow their conscience and practise any religion. No one can be prohibited from following his or her



Fig. 21.3: Places of worship and people of different religions

religious practices as an individual. This also means that a person can decide to change his or her religion. This right preserves the spirit of secularism in India. For example, one cannot commit a crime like infanticide in the name of religion. Similarly the practice of *Sati* cannot be committed in the name of religious freedom.

According to the Constitution, the government does not have any religion. It should treat all religions are equal, as mentioned earlier. This is what the Preamble means when it says that India is secular.

- How does the practice of Sati violate fundamental rights?
- Can anyone not follow any religion if he/ she wishes?

Right to Education and Culture

The Constitution says, “All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”

Minority groups are usually thought of, in terms of language and religion. Whether or not someone is a minority depends on where they live. For example Telugu speaking people form a majority in Andhra Pradesh but they would be a minority in West Bengal. Sikhs constitute a majority in Punjab. But they are a minority in Andhra Pradesh, Rajasthan, Haryana etc.

They have the freedom to establish and run institutions in order to protect their culture and language. For example if Kannada speaking people wish to run a Kannada medium school in A.P. in order to preserve their culture and language they cannot be prevented from doing so.

The government also has to recognise and provide grants to such institutions if they fulfill other essential conditions. In the above example, if such a school is affiliated with the A.P. State Board and fulfils the Board’s conditions, then it can receive grants from the state government just like any other aided private school.



Right to Constitutional Remedies



As mentioned earlier these rights are so important that a violation of these rights by the State gives the people the Fundamental Right to approach the High Courts and Supreme Court. When such rights are violated, they can be restored by the courts by giving specific directions or orders. It is the responsibility of the government to protect the people against any violation of their Fundamental Rights. A case can be filed against the government if it fails to do so.

Many times, the poorest and marginalised sections of the society cannot afford to approach the court even when their rights are violated. To make these rights meaningful to everybody the courts under the exercise of judicial review have encouraged the people to file Public Interest Litigation or PIL. That is if the rights of a group of people are being denied, each affected person does not have to file a separate case. Any person (or organisation) can file a case against the government on behalf of this group of people. This kind of case is called a Public Interest Litigation. It has now expanded to include many other kinds of public interest litigation including environmental issues, transparency and probity of the governments, the treatment of prisoners etc.

An Example of a Public Interest Litigation

Suppose the government decides to construct a dam on a river. And suppose there are around 50,000 people whose fields would be flooded if the dam was built. They would lose their land and livelihood. Their way of life would be seriously affected. This is a violation of their fundamental rights to freedom of life, freedom to settle in any part of the country and freedom to pursue any occupation of their liking. In such a situation, a case can be filed in the Supreme Court to protect the Fundamental Rights of these people. One case can be filed on behalf of all 50,000 people.

Scope of Fundamental Rights

The Fundamental Rights provided in Constitution have been amended from time to time. Moreover, there has been new rights that have been included into, like Right to Education. Rights may be modified through the parliament. Or supreme court could make judgements that would expand the meaning of a particular right. For instance, right to food has thus been expanded into the context of Right to Life.

Other Institutions and Rights

Rights like the idea of democracy, has captured the attention of people across the globe. Rights are often traced to the Magna Carta of England and French Revolution where a declaration of rights of man and of citizens was announced. After the world wars, United Nations was established with an objective to ensure that there are no more major wars in the globe. United Nations assigned this task to

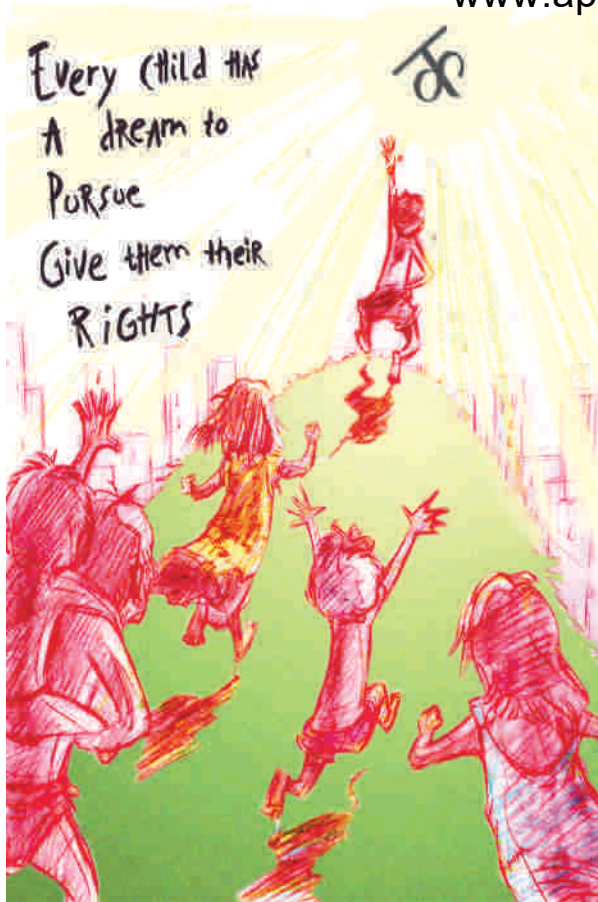


Fig. 21.4: A poster on Child Rights

a group of people from 9 different countries around the world who drafted a list of 30 articles. This became the Universal Declaration of Human Rights which was passed by the UN General Assembly in 1948. That is to say the member nations of the UN are all signatories to this and thus under an obligation to uphold these rights. While these do not have the force of the law, violation of these rights will be considered unacceptable by the international community and in many cases invite sanctions by other countries.

Human Rights Commission

The United Nations has been working to protect the basic human rights of people and in this effort they have encouraged their member nations to do the same. In 1993, the Government of India passed an act of legislature to protect human rights. A commission for human rights was set up under this law called the National Human Rights Commission (NHRC). The commission has been given powers of a civil court extendable to the entire country. The Government has also established other institutions to monitor and inquire into situations in which rights are violated. Thus we have different institutions such as the National Commission for Women, National Commission for Protection of Child Rights, National Minority Commission and State Human Rights Commissions.

NHRC is vested with the authority to make an inquiry, suo motu (on its own initiative), or on a petition presented to it by a victim or any person on his / her behalf. It intervenes in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. It also makes and reviews the safeguards provided by or under the constitution for the protection of human rights and recommends measures for their effective implementation.



Fig. 21.5: Logo of Human Rights (United Nations)

At the International level, the UNO has instituted a committee for Human Rights which looks into the violations of the international pacts.

Violation of Human Rights

Police excesses, arbitrary arrests, denial of right to information and corruption, sexual cruelty and rape of women, delay in investigation of crimes, female infanticide, kidnapping for ransom, deplorable conditions of women, children and downtrodden people, discriminations against women in the family, cruelty to domestic servants are certain violations of human rights. These violations continue unchecked because people are not aware of their human rights. Protection of human rights is the responsibility of the state. Complaints about violations can be made to national or state commissions.

- Is there a State Human Rights Commission in our state? Find out about its activities.
- State some instances of the violations of Human Rights.
- Write a petition to the NHRC if you know any instances of human rights violation in your area.

Fundamental Duties



Just as we have rights, we have some responsibilities too. These responsibilities are towards other people living around us.

Unlike Fundamental Rights even a person violates them he or she cannot be taken to court.

“It shall be the duty of every citizen of India

- abide by the Constitution and not insult either the National Anthem or the National Flag.
- to cherish and follow the noble ideals which inspired our national struggle for freedom.
- to maintain the unity and sovereignty of India.
- to defend the country.
- to bring harmony and peace amongst people of different languages and religions, and to refrain from insulting the dignity of women.
- to prevent and improve the natural environment.
- to value and preserve the rich heritage of our composite culture.
- to develop the scientific temper, humanism and the spirit of inquiry and reform.
- to safeguard public property.
- to strive towards excellence in all spheres.
- to educate our children.”

Key words

1. Fundamental rights
2. Human Rights
3. Litigation
4. Titles
5. Arbitrary



Improve your learning

1. Which of the following is not an instance of an exercise of a fundamental right? AS₁
 - a. Workers from Bihar go to Punjab to work on the farms
 - b. Religious minority set up a chain of schools
 - c. Men and women government employees get the same salary
 - d. Parents' property is inherited by their children
2. Which of the following freedoms is not available to an Indian citizen? AS₁
 - a. Freedom to criticise the government
 - b. Freedom to participate in armed revolution
 - c. Freedom to start a movement to change the government
 - d. Freedom to oppose the central values of the Constitution
3. Which of these statements about the relationship between democracy and rights is more valid? Give reasons for your preference. AS₁
 - a. Every country that is a democracy gives rights to its citizens.
 - b. Every country that gives rights to its citizens is a democracy
 - c. Giving rights is good, but it is not necessary for a democracy
4. Are these restrictions on the right to freedom justified? Give reasons for your answer. AS₂
 - a. Indian citizens need permission to visit some border areas of the country for reasons of security
 - b. Outsiders are not allowed to buy property in some areas to protect the interest of the local population
 - c. The government bans the publication of a book that can go against the ruling party in the next elections
5. Look through this chapter and the previous one and make a list of the six Fundamental Rights in the Constitution. AS₁
6. Are the Fundamental Rights being violated in each of the following cases? If so, which Fundamental Right or Rights? Discuss with your classmates. AS₁

- a. Suppose a person is kept in a police station for 4 days without being told which law was broken?
 - b. Suppose your neighbour tries to claim some of your land as her own.
 - c. Suppose your parents do not allow you to go to school. They make you take up a job in a match factory instead, because they cannot afford to feed you properly.
 - d. Suppose your brother refuses to give you the land that you have inherited from your father.
7. Suppose you are an advocate. How would you argue the case for a group of people who come to you with the following request: AS₄
- “The river in our area is getting very polluted by the factories upstream. We get our drinking water from the river. People in our villages keep falling ill because of the polluted water. We have complained to the government but there has been no action from their side. This is surely a violation of our Fundamental Rights.”
8. Read the paragraph under the heading ‘Abolition of Title’ and answer the following question. AS₂
- The Awards can’t be used by the recipient as a title. Why?
9. Analyse an incident you know where the Rights are violated. AS₆

Project

Invite a senior advocate into your classroom and collect the following information by conducting an interview.

- violation of fundamental rights and its consequences
- violation of children rights
- ways of struggle for rights in democracy
- any other related