

Democratic Rights

Democratic rights are the socially recognised rights which are written into law in a democracy.

Life Without Rights

The importance of rights can be judged by the one whose life has absence of rights. The following three examples viz. prison in Guantanamo Bay, citizens' rights in Saudi Arabia and ethnic massacre in Kosovo describe how life without rights.

Prison in Guantanamo Bay

About 600 people were secretly picked up by the US forces from all over the world and put in a prison in Guantanamo Bay, near Cuba. According to the American Government, they were enemies of the US and linked to the attack on New York on 11th September, 2001.

As a result, there was no trial before any magistrate in the US and these prisoners could not even approach courts in their own country.

Amnesty International¹ reported that the prisoners were being tortured in ways that violated the UN laws.

Despite the provisions of international treaties, prisoners were being denied the treatment which they are entitled to get.

Citizens' Rights in Saudi Arabia

The position of the citizens in Saudi Arabia with regard to their government are as follows:

- Saudi Arabia is ruled over by a hereditary king and the people have no role in electing or changing their rulers.
- The king selects the Legislature as well as the Executive. He appoints the judges and can change any of their decisions.

¹Amnesty International: An international organisation of volunteers, who campaign for human rights. The organisation brings out reports on the violation of the human rights all over the world.

- Citizens cannot form political parties or any political organisations.
- Media cannot report anything that the monarch does not like.
- There is no freedom of religion. Every citizen is required to be Muslim. Non-Muslim residents can follow their religion in private, but not in public.
- Women are subjected to many public restrictions. The testimony of one man is considered equal to that of two women.

¹Note: There are many countries in the world where conditions like Saudi Arabia exist.

Ethnic Massacre in Kosovo

In Yugoslavia, Serbs were in majority and Albanians were in minority. A democratically elected Serb leader Slobodan Milosevic wanted to dominate the country. Serbs thought that the Albanians, (the Ethnic Minority Group¹) should leave the country or accept the dominance of Serbs.

As a result of ethnic clashes, Kosovo with majority population of Albanians declared independence in February 2008.

Chapter Syllabus

- Life Without Rights
- Rights in a Democracy
- Rights in the Indian Constitution
- Expanding the Scope of Rights

Rights in a Democracy

Everyone wants a system where at least a minimum assurance is guaranteed to all, whether he/she is powerful or weak, rich or poor, majority or minority. No one should be arrested without proper reason and information. If it happens then he/she should have a fair chance to defend themselves. This assurance should not only be on paper. There should be someone to enforce them and to punish those who violate them. This is real spirit behind the rights.

Meaning of Rights

Rights are reasonable claims of persons recognised in society and sanctioned by law.

A right is possible when a person makes a claim that is equally possible for others.

Rights should be made available to others in an equal measure. Thus, a right comes with an obligation to respect other rights.

When fellow citizens or the government do not respect their rights, it is called violation of rights. In such situations, citizen can approach courts to protect their rights.

¹ Ethnic Minority Group: An ethnic minority group is a human population whose members usually identify each other on the basis of a common ancestry. People of an ethnic group are united by cultural practices, religious beliefs and historical memories.

Need of Rights

- Rights are necessary for the sustenance of a democracy. In a democracy, every citizen has the Right to Vote and the Right to be Elected to government.
- Rights protect minorities from the oppression of majority. They ensure that majority cannot do whatever it wishes to do.
- Rights are like guarantees which can be used when things go wrong. Specially, when some citizens may wish to take away the rights of others.
- Some rights need to be placed higher than the government, so that the government cannot violate them. In most democracies, the basic rights of the citizen are written down in the Constitution.

Check Point 01

1. Which International organisation reported that the prisoners in Guantanamo Bay were tortured?
2. In Saudi Arabia, who appoint the judges and selects the legislature as well as executive?
3. In Yugoslavia, _____ were in majority and _____ were in minority.
4. When fellow citizens do not respect their rights, then it is called _____.

Rights in the Indian Constitution

Some rights which are fundamental to our life are given a special status in Indian Constitution. They are called Fundamental Rights.

These are the basic human rights, which are given to every citizen in a democracy for the development of his/her personality. These rights are guaranteed by the Constitution.

The six Fundamental Rights recognised by the Constitution are as follows:

1. Right to Equality

The Constitution says that the government shall not deny the equality before the law or the equal protection of the laws to any person in India.

It means that the laws apply in the same manner to all, regardless of a person's status. This is called the rule of law.

Rule of Law is the foundation of any democracy. It means that no person is above the law. The government shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. Every citizen shall have access to public places like shops, restaurants, hotels and cinema halls.

Reservations

The Government of India has provided reservation for Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs). But these reservations are not against the Right to Equality.

Equality does not mean giving everyone the same treatment, but it means giving everyone an equal opportunity to achieve, according to the capability of a particular person. Thus, the reservations of this kind are not a violation of the Right to Equality.

Untouchability

The Constitution directs the government to put an end to the practice of untouchability. It is the extreme form of social discrimination.

Untouchability does not mean refusal to touch people belonging to certain castes. Rather, it refers to any belief or social practice which looks down upon people on account of their birth with certain caste labels.

Such social practice denies people to interact with others or access to public places as equal citizens. So, the Constitution made untouchability a punishable offence.

Many Forms of Untouchability

In 1993, P. Sainath wrote a series of news reports in the *Hindu* newspaper describing untouchability and caste discrimination that was still being practised against Dalits or persons belonging to scheduled castes.

P. Sainath travelled many places of the country and found in various forms of untouchability. These were:

- They made two kinds of cups, one for Dalits and one for others.
- Bachelors refused to serve Dalit clients.
- Dalit students were made to sit separately in the classroom and drink water from separate pitcher.
- Dalit guests were not allowed to ride a horse in the wedding procession.
- Dalits were not allowed to use common handpump or if they did, the handpump was polluted to punish it.

2. Right to Freedom

Freedom means absence of constraint (restriction). In practical life, it means absence of interference in our affairs by others, individuals or the government.

Under the Indian Constitution, all citizens have the right to:

- Freedom of speech and expression
- Assembly in a peaceful manner
- Form associations, unions and cooperative societies
- Move freely throughout the country
- Reside in any part of the country
- Practice any profession or to carry on any occupation, trade or business
- Nobody can exercise freedom in such a manner that violates other's rights to freedom.
- The government can impose certain reasonable restrictions on our freedom in the larger interests of the society.

Freedom of Speech and Expression

Our views are expressed through pamphlets, magazines, newspapers, paintings, poetry or songs. However, this freedom cannot be used to stimulate violence against others and excite people to rebel against government. It is also cannot be used to defame others by saying false and mean things that cause damage to a person's reputation.

Assembly in a Peaceful Manner/Form Associations

Citizens have the freedom to hold meetings, processions, rallies and demonstrations on any issue. But such meetings should be peaceful and people participating in these should not carry weapons. Citizens also can form associations to promote their interests.

Freedom to Travel/Choice of Occupations

The citizen have the freedom to travel to any part of the country and are free to reside or settle in any part of the territory of India.

The same freedom extends to choice of occupations. No one can force a person to do or not to do a certain job.

Personal Liberty

The Constitution says that no person can be deprived of his life or personal liberty except according to procedure established by law. It means that no person can be killed unless the court has ordered a death sentence.

It also means that a government or police officer cannot arrest or detain any citizen unless he has proper legal justification.

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When police arrests someone, they have to follow some procedures like:

- A person who is arrested and detained in custody will have to be informed of the reasons for such arrest and detention.
- Such a person shall be produced before the nearest magistrate within a period of 24 hours of arrest.
- Such a person has the right to consult a lawyer or engage a lawyer for his own defence.

3. Right Against Exploitation

Constitution makers thought it is necessary to write down certain clear provisions to prevent exploitation of the weaker sections of the society.

The Constitution mentions following these conditions and declares them illegal:

- First, the Constitution prohibits **traffic**¹ in human beings. Traffic here means selling and buying of human beings, usually, women or children, for immoral purposes.
- Second, the Constitution also prohibits forced labour or **Begar**² in any form. Begar is a practice where the worker is forced to render service to the master free of charge or at a nominal remuneration. When this practice takes place on a life long basis, it is called the practice of **bonded labour**.
- Third, the Constitution prohibits **child labour**. No one can employ a child below the age of 14 to work in any factory or mine or any other hazardous work, such as railways and ports.

4. Right to Freedom of Religion

Every person has a right to profess, practice and propagate the religion, in which he or she believes. Every religious group or sect is free to manage its religious affairs. Freedom to propagate one's religion does not mean that a person has right to force another person to convert into his religion by means of force, fraud, inducement or allurement.

Secularism

A secular state is one that does not establish any one religion as official religion. India is a secular state. In India, no privilege or favour is provided to any particular religion.

The government cannot force any person to pay any tax for the promotion or maintenance of any particular religion or religious institution. There shall be no religious instruction in the government educational institutions.

5. Cultural and Educational Rights

The following cultural and educational rights for minorities are specified by our Constitution:

- Any section of citizens with a distinct language or culture have a right to conserve it.
- Admission to any educational institution maintained by government or receiving government aid cannot be denied to any citizen on the grounds of religion or language.
- All minorities have the right to establish and administer educational institutions of their choice.

6. Right to Constitutional Remedies

The Fundamental Rights in the Constitution are important because they are enforceable. There is a right to seek the enforcement of these mentioned rights which is called the **Right to Constitutional Remedies**. This right makes other rights effective.

When any of the Fundamental Rights are violated, then citizens can directly approach the Supreme Court or the High Court. Both courts have the power to **Writ**³ (Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari) for the enforcement of the rights.

That is why Dr Ambedkar called the Right to Constitutional Remedies 'the heart and soul' of our Constitution.

Right to Property

The Constitution originally provided for the Right to Property under Articles 19 and 31. But the 44th Amendment Act of 1978 abolished this right from the list of Fundamental Rights.

The Amendment made it a legal right under Article 300-A in the Constitution. This right states that no person shall be deprived of his property.

¹ Traffic: Selling and buying of men, women or children for immoral purposes.

² Begar: It is a practice where the worker is forced to render service to the 'master' free of charge or at a nominal remuneration.

³ Writ: A formal document containing an order of the court to the government issued only by High Court or the Supreme Court.

Right to Education

Under Article 21-A, India joined a group of few countries in the world to make education a Fundamental Right of every child. It came into force on 1st April, 2010.

The Article 21-A says that state shall provide free and compulsory education to all children of the age of six to fourteen years. Thus, this provision makes elementary education a Fundamental Right.

Check Point 02

1. Freedom means absence of _____.
2. What is the extreme form of social discrimination?
3. No one can employ a child below the age of _____ to work in any factory.
4. What do you mean by bribe?
5. Who called the Right to Constitutional Remedies as heart and soul of the Constitution?

Securing the Fundamental Rights

If any act of the Legislature or the Executive takes away or limits any of the Fundamental Rights, it will be invalid. Citizens can challenge such laws in courts which enforce the Fundamental Rights against private individuals and bodies. If it is of social or public interest, it is called Public Interest Litigation (PIL).

Under the PIL, any citizen or group of citizens can approach the Supreme Court or High Court for the protection of public interest against a particular law or action of the government.

National Human Rights Commission (NHRC)

It is an independent commission established in 1993. The Commission is appointed by the President. The Commission focuses on helping the victims to secure their human rights. These include all the rights granted to the citizens by the Constitution. The Commission also considers the Human Rights mentioned in the UN sponsored international treaties that India has signed. The NHRC makes independent and credible inquiry into any case of violation of human rights. The Commission presents its findings and recommendations to the government.

Expanding Scope of Rights

Our Constitution and law offers a wider range of rights apart from the fundamental rights. The scope of rights has expanded over the years.

Certain rights like Right to Freedom of Press, Right to Education and Right to Information are derived from Fundamental Rights.

According to the Right to Education, every child has the right to get elementary education. According to Right to Information, anybody can demand information regarding the functions of a government department or official.

Some rights that Constitution provides apart from Fundamental Rights are the Right to Property and Right to Vote in Election. These are not Fundamental Rights, but these are Constitutional Rights.

Human Rights

Human rights are universal moral claims⁶ that may or may not have been recognised by laws. In that sense these claims are not rights that are defined earlier.

With the expansion of democracy all over the world, there is greater pressure on governments to accept these claims. Some international covenants⁷ have contributed to the expansion of rights.

International Covenant on Economic, Social and Cultural Rights

The international covenant recognises many rights that are not directly a part of the Fundamental Rights in the Indian Constitution. This covenant is regarded as a standard of human rights by human right activists all over the world.

These rights in this covenant include

- Right to work i.e. opportunity to everyone to earn livelihood by working
- Right to safe and healthy working conditions, fair wages that can provide decent standard of living for the workers and their families.
- Right to adequate standard of living including adequate food, clothing and housing.
- Right to social security and insurance.
- Right to health i.e. medical care during illness, special care for women during childbirth and prevention of epidemics.
- Right to education i.e. free and compulsory primary education, equal access to higher education.

Democratic Rights

Conclusion

Thus, the scope of rights has been expanding and new rights are evolving over time. They are result of the struggle of people.

New rights emerge, as societies develop or as new constitutions are made. For example, the Constitution of South Africa guarantees its citizens several kinds of new rights. These are

- Right to Privacy which guarantees that citizens' home cannot be searched, their phones cannot be tapped and their communication cannot be opened.

- Right to an Environment that is not harmful to their health or well being.
- Right to have access to health care services, sufficient food and water and no one may be refused emergency medical treatment.

Check Point 03

1. National Human Rights Commission was established in _____.
2. What do you mean by 'Right to Work'?
3. Which right gives opportunity to earn livelihood by working?
4. What is Right to Privacy?

SUMMARY

- Rights are reasonable claims of persons recognised by society and sanctioned by law and rights are necessary for the very sustenance of a democracy.
- Everyone whether he/she is powerful or weak, rich or poor wants a system where atleast a minimum assurance is guaranteed to all.
- There are six Fundamental Rights recognised by the Constitution of India.
- The Right to Equality means that the government shall not deny equality before the law to any person in India.
- Right to Freedom means absence of interference in our affairs by others, be it other individuals or the government.
- Freedom of Speech and Expression is one of the essential features of any democracy.
- The Constitution provides Right against Exploitation which prohibits evils like traffic in human beings, begar and child labour. The Constitution of India provides Cultural and Educational Rights.
- Right to Constitutional Remedies provides the right to the citizens to directly approach the Supreme Court or the High Court for the enforcement of the other rights.
- Both courts have the power to Writs which are Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari.
- Article 21A inserted in 2010 provides Right to Education to provide free and compulsory education to all children of the age of six to fourteen years.
- Any person can go to court against the violation of the Fundamental Right. It is known as Public Interest Litigation if the violation is of social or public interest.
- The National Human Rights Commission (NHRC) focuses on helping the victims to secure their human rights.

6. Claim: Demand for legal or moral entitlements, a person makes on fellow citizens, society or the government.
7. Covenant: Promise made by individuals, groups or countries to uphold a rule or principle. It is legally binding on the signatories to the agreement or the statement.