CHAPTER 5

Fundamental Rights and Obligation of Citizens of the People's Republic of China

Basic concepts: rights, obligations, citizens
Various types of fundamental rights stated in the Constitution of the PRC

The structure and of the Constitution of the PRC

The *Constitution of the People's Republic of China* is consisted of the Preamble and four chapters. There are 143 articles.

The structure of the Constitution is as the following:

Preamble

Chapter I General Principle

Chapter II Fundamental Rights and Obligations of Citizens

Article 33 to 56

Chapter III State Institutions

Chapter IV The National Flag, National Anthem, National Emblem and the Capital

Rights (權利)

A **right** is an entitlement authorizing a person to do or to have something. The entitlement overrides other normative considerations, such as whether or not the person doing or having that thing is for some other reason considered to be right or wrong. Rights are therefore valued possessions since having a right means having a strong normative power which others ought to respect.

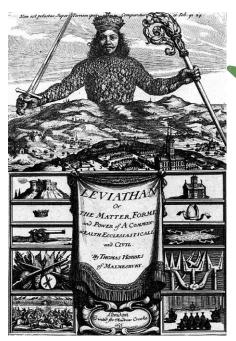
A legal relationship between two equal subjects.

Recognized by legal norms.

A legal quality.

Rights (權利) vs. Freedom (自由)

What is "freedom" or "liberty"?



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Hobbes: "Liberty, or Freedom, signifieth, properly, the absence of opposition."

(自由,就是指沒有阻礙的情況。)

Montesquieu: "Liberty is the right of doing whatever the laws permit, and if a citizen could do what they forbid he would be no longer possessed of liberty, because all his fellow-citizens would have the same power."

De L'Esprit des Lois Montesquieu



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Rights vs. Freedoms

Freedom is the quality or condition of being free, not being interfered or hindered by the state power. Freedoms are usually human desires that are morally accepted. It is generally believed that freedoms are not granted by the state, freedom exists before the establishment of any states.

Rights, especially rights in a narrow sense, is a quality that has to be protected (usually by the state) through some external conditions.

Freedom of speech

Right to receive education

Freedom of religious belief

Right to yote

Fundamental rights (基本權利)

"Basic" rights and duties as those that are necessary for living or maintaining a minimally acceptable human life and therefore being in a position to benefit from less basic rights.

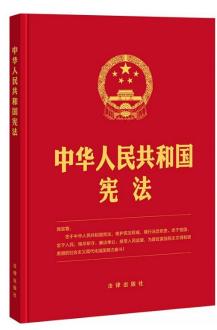
"Fundamental" rights and their correlative duties we may define as those that are given high priority or special protection and emphasis, sometimes through constitutional recognition.

"Human rights" are those fundamental rights that morally ought to be secured for all human beings.

Para. 3, Article 33, Constitution of the People's Republic of China
The state shall respect and protect human rights.

《中華人民共和國憲法》第33條第3款 國家尊重和保障人權。

A few features of fundamental rights



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People vs. State

- A constitution should be a norm of restrictions, as it restricts the state power against people's right.
- Comparing to people vs. people in civil laws

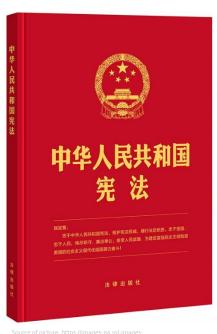
Negative Rights vs. Positive Rights

- Negative rights: protecting rights by restraining state actions
- Positive rights: claiming the state to protect rights against another person

Who are the subjects?

- General subjects: citizens
- Special subjects: legal persons, foreigners, etc.
- Particular subjects: women, elderly, children, disabled people, etc

Types of fundamental rights in the Constitution



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Types of fundamental rights in the Constitution of the PRC

- Right to equality (平等權)
- Political rights (政治權利)
- Freedom of spiritual and cultural activities (精神文化活動的自由)
- Personal freedom (人身自由) and personal dignity (人格尊嚴)
- Socio-economic rights (社會經濟自由)
- Right to obtain legal remedy (獲得權利救濟的權利)

Obligations (義務)

A **right** is an entitlement authorizing a person to do or to have something...

Similarly, **duties** (**obligations**) are characteristically unwelcome, mandatory requirements that must be carried out, even against the wishes and opinions of those involved.



"Obligations" involves a sense of being contractual and compulsory. It refers to a particular thing that has to be performed despite the fact we like it or not. It has to be fulfilled and can't be ignored if someone belongs or lives in a society.

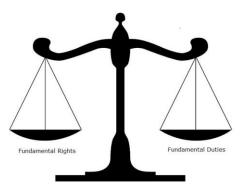
Rights and obligations

Para. 4, Article 33, Constitution of the People's Republic of China

Every citizen shall enjoy the rights prescribed by the Constitution and the law and must fulfill the obligations prescribed by the Constitution and the law.

《中華人民共和國憲法》第33條第4款

任何公民享有憲法和法律規定的權利,同時必須履行憲法和法律規定的義務。



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Citizens (公民)

Para. 1, Article 33, Constitution of the People's Republic of China

All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China.

《中華人民共和國憲法》第33條第1款

凡具有中華人民共和國國籍的人都是中華人民共和國公民。

Nationality Law of the People's Republic of China 《中華人民共和國國籍法》



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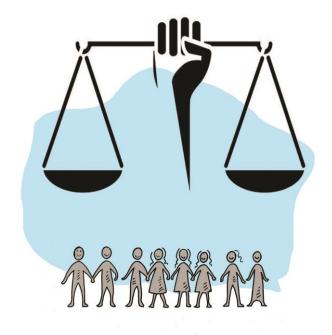
Types of Fundamental Rights in the Constitution of the People's Republic of China

Para. 2, Article 33, Constitution of the People's Republic of China

All citizens of the People's Republic of China are equal before the law.

《中華人民共和國憲法》第33條第2款

中華人民共和國公民在法律面前一律平等。



Source of picture: https://itsourright.co.uk/wp-content/uploads/2020/06/06.jpg

Article 48, Constitution of the People's Republic of China

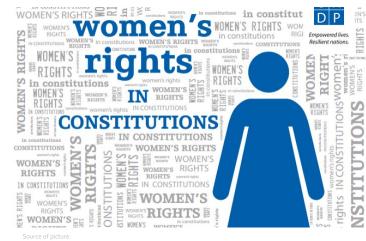
Women in the People's Republic of China shall enjoy equal rights with men in all spheres of life: political, economic, cultural, social and familial.

The state shall protect the rights and interests of women, implement a system of equal pay for equal work, and train and select female officials.

《中華人民共和國憲法》第48條

中華人民共和國婦女在政治的、經濟的、文化的、社會的和家庭的生活等各方面享有同男子平等的權利。

國家保護婦女的權利和利益,實行男女同工同酬,培養和選拔婦女干部。

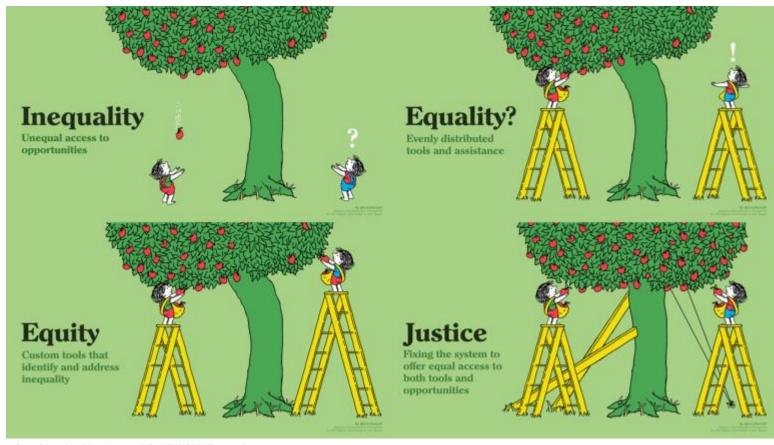


Para. 1 & 4, Article 49, Constitution of the People's Republic of China

Marriage, families, mothers and children shall be protected by the state. ...
Infringement of the freedom of marriage is prohibited; mistreatment of senior citizens, women and children is prohibited.

《中華人民共和國憲法》第49條第2、4款

婚姻、家庭、母親和兒童受國家的保護。...... 禁止破壞婚姻自由,禁止虐待老人、婦女和兒童。



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Equality



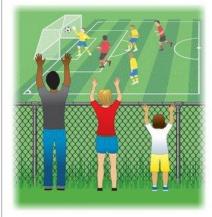
The assumption is that everyone benefits from the same supports. This is equal treatment.

Equity



Everyone gets the supports they need (this is the concept of "affirmative action"), thus producing equity.

Justice



All 3 can see the game without supports or accommodations because the cause(s) of the inequity was addressed.

The systemic barrier has been removed.

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Four types of political rights in China

- Right to vote and stand for election (選舉權和被選舉權)
- Freedom to express (表達自由)
- Right to oversight (監督權)
- Other political rights, such as the right to be a civil servants

Article 34, Constitution of the People's Republic of China

All citizens of the People's Republic of China who have reached the age of 18, regardless of ethnicity, race, gender, occupation, family background, religious belief, level of education, property status or length of residence, shall have the right to vote and stand for election; persons deprived of political rights in accordance with law shall be an exception.

《中華人民共和國憲法》第34條

中華人民共和國年滿十八周歲的公民,不分民族、種族、性別、職業、家庭出身、宗教信仰、教育程度、財產狀況、居住期限,都有選舉權和被選舉權;但是依照法律被剝奪政治權利的人除外。



Source of picture: https://www.acluaz.org/sites/default/files/styles/featured_image_mobile_48ox319/public/field_image/democrats3594094_1920.jpq?ttok=1ltVnWen

Article 34, Constitution of the People's Republic of China

Citizens of the People's Republic of China shall enjoy freedom of speech, the press, assembly, association, procession and demonstration.

《中華人民共和國憲法》第34條

中華人民共和國公民有言論、出版、集會、結社、游行、示威的自由。



Source of picture: https://dz8htnjzzelwuj.cloudfront.net/wpcontent/uploads/2019/02/04150035/clear-present-danger-logo-600x400-1.png



Source of picture: https://itsourright.co.uk/wp-content/uploads/2020/06/04-1.jpg



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Para. 1, Article 41, Constitution of the People's Republic of China

Citizens of the People's Republic of China shall have the right to criticize and make suggestions regarding any state organ or state employee, and have the right to file with relevant state organs complaints, charges or reports against any state organ or state employee for violations of the law or dereliction of duty, but they shall not fabricate or distort facts to make false accusations.

《中華人民共和國憲法》第41條第1款

中華人民共和國公民對於任何國家機關和國家工作人員,有提出批評和建議的權利;對於任何國家機關和國家工作人員的違法失職行為,有向有關國家機關提出申訴、控告或者檢舉的權利,但是不得捏造或者歪曲事實進行誣告陷害。

Freedom of spiritual and cultural activities

It includes:

- Freedom of thoughts and conscience (absolute freedom)
- Freedom to express [Article 35, Article 40]
- Freedom of religious belief [Article 36]
- Freedom of cultural activities [Article 47]

Personal freedom and personal dignity

Article 37, Constitution of the People's Republic of China

The personal freedom of citizens of the People's Republic of China shall not be violated.

No citizen shall be arrested unless with the approval or by the decision of a people's procuratorate or by the decision of a people's court, and arrests must be made by a public security organ.

Unlawful detention, or the unlawful deprivation or restriction of a citizen's personal freedom by other means, is prohibited; the unlawful search of a citizen's person is prohibited.

《中華人民共和國憲法》第37條 中華人民共和國公民的人身自由不受侵犯。

任何公民,非經人民檢察院批準或者決定或者人民法院決定,並由公安機關執行,不 受逮捕。

禁止非法拘禁和以其他方法非法剝奪或者限制公民的人身自由,禁止非法搜查公民的 身體。

Personal freedom and personal dignity

Article 38, Constitution of the People's Republic of China

The personal dignity of citizens of the People's Republic of China shall not be violated. It is prohibited to use any means to insult, libel or falsely accuse citizens.

《中華人民共和國憲法》第38條

中華人民共和國公民的人格尊嚴不受侵犯。禁止用任何方法對公民進行侮辱、誹謗和誣告陷害。

Right to reputation 名譽權

Right to personal name 姓名權

Right to portrait 肖像權

Socio-economic rights

Social rights:

- Right to life (fundamental human right)
- Right to health [Article 45]
- Right (and obligation) to receive education [Article 46]
- Freedom of cultural activities (Article 47)
- Etc...



Source of picture: https://imgz.chinadaily.com.cn/images/202006/18/5eeaf9d2a3108348fcd66c10.jpec

Socio-economic rights

Economic rights:

- Right to property (fundamental human right) [Article 39]
- Freedom of contract
- Freedom of business
- Right (and obligation) to work [Article 42, 43] and employment at will
- Etc...

Right to obtain legal remedy

Para. 2-3, Article 41, Constitution of the People's Republic of China

The state organ concerned must ascertain the facts concerning the complaints, charges or reports made by citizens and take responsibility for their handling. No one shall suppress such complaints, charges or reports or take retaliatory action.

Persons who have suffered losses resulting from infringement of their civil rights by any state organ or state employee shall have the right to receive compensation in accordance with the provisions of law.

《中華人民共和國憲法》第41條第2-3款

對於公民的申訴、控告或者檢舉,有關國家機關必須查清事實,負責處理。任何人不得壓制和打擊報復。

由於國家機關和國家工作人員侵犯公民權利而受到損失的人,有依照法律規定取得賠償的權利。

Right to obtain legal remedy

The very essence of civil liberty... consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. ~ John Marshall, Marbury v. Madison 1803 ~ Americans Against The Tea Party/AATTP.org

Source of picture: https://cdn.quotesgram.com/img/20/78/1585899089-marshall-quote.jpg

A brief review on fundamental rights

A constitution is like a contract between the state and its people. People group together to form a country and fulfill the obligations to support its existence and operation because the country safeguards people's dignity and rights. Therefore, a constitution is the fundamental law of a country to safeguard the dignity and rights of the people. It is the most important function of a constitution.



Source of picture: https://www.nps.gov/mava/learn/kidsyouth/images/constitution_4.jpg?maxwidth=65o&autorotate=fals quality=286/ormat=webo

Obligations of Citizens in the Constitution of the People's Republic of China

Obligations to the state

Article 51: Restrictions while exercising freedom and right

Article 52: Obligation to safeguard national unity

Article 53: Abiding by the Constitution and the law

Article 54: Obligation to safeguard national security

Article 55: Obligation to perform military service

Article 56: Obligation to pay taxes

Other obligations in the Constitution

Article 42: Obligation to work

Article 46: Obligation to receive education

Article 49: Obligation to family planning; to raise and educate children, to support

and assist parents

Key knowledge points

- 1. The definitions of "rights", "freedom" and "obligation".
- 2. The various types of fundamental rights in the Constitution.
- 3. The various types of fundamental political rights.
- 4. Why is it important to protect or safeguard people's fundamental rights in the Constitution?
- 5. What are the obligations of the Chinese citizens to the state?

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- Li, L. (2018). *Lectures on Constitution*. Beijing: Tsinghua University Press. [林來梵:《憲法學講義》(第三版),北京:清華大學出版社,2018年。]
- 4. Montesquieu (1752). *The Spirit of the Laws*.