



0972CH04

CHAPTER 4

WORKING OF INSTITUTIONS

OVERVIEW

Democracy is not just about people electing their rulers. In a democracy the rulers have to follow some rules and procedures. They have to work with and within institutions. This chapter is about the working of such institutions in a democracy. We try to understand this by looking at the manner in which major decisions are taken and implemented in our country. We also look at how disputes regarding these decisions are resolved. In this process we come across three institutions that play a key role in major decisions – legislature, executive and judiciary.

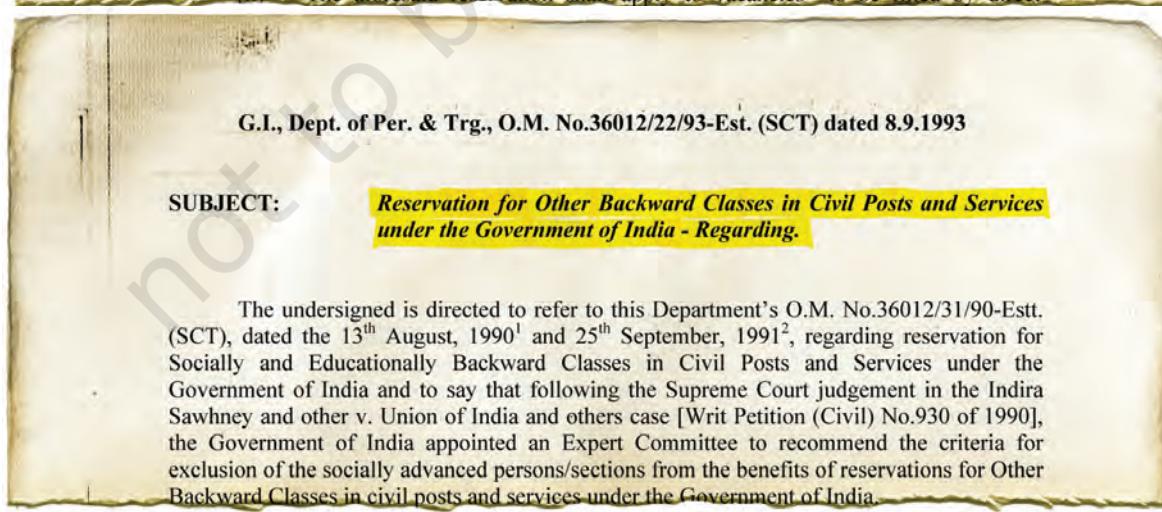
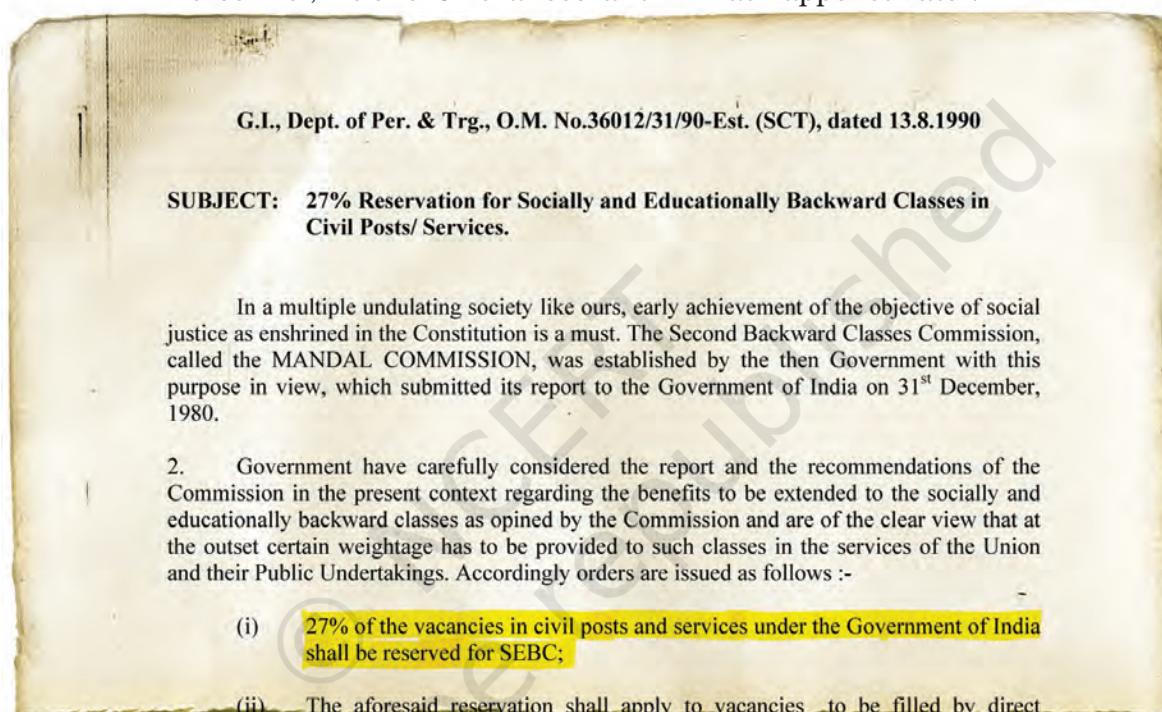
You have already read something about these institutions in earlier classes. Here we shall quickly summarise those and move on to asking larger questions. In the case of each institution we ask: What does this institution do? How is this institution connected to other institutions? What makes its functioning more or less democratic? The basic objective here is to understand how all these institutions together carry on the work of government. Sometimes we compare these with similar institutions in other democracies. In this chapter we take our examples from the working of the national level government called Central Government, Union Government, or just Government of India. While reading this chapter, you can think of and discuss examples from the working of the government in your state.

4.1 HOW IS A MAJOR POLICY DECISION TAKEN?

A Government Order

On August 13, 1990, the Government of India issued an Order. It was called an **Office Memorandum**. Like all government orders, it had a number and is known by that: O. M. No. 36012/31/90-Est (SCT), dated 13.8.1990. The Joint Secretary, an officer in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and

Pensions, signed the Order. It was quite short, barely one page. It looked like any ordinary circular or notice that you may have seen in school. The government issues hundreds of orders every day on different matters. But this one was very important and became a source of controversy for several years. Let us see how the decision was taken and what happened later.



This Order announced a major policy decision. It said that 27 per cent of the vacancies in civil posts and services under the Government of India are reserved for the Socially and Educationally Backward Classes (SEBC). SEBC is another name for all those people who belong to castes that are considered backward by the government. The benefit of job reservation was till then available only to Scheduled Castes and Scheduled Tribes. Now a new third category called SEBC was introduced. Only persons who belong to backward classes were eligible for this quota of 27 per cent jobs. Others could not compete for these jobs.

The Decision Makers

Who decided to issue this Memorandum? Clearly, such a big decision could not have been taken by the person who signed that document. The officer was merely implementing the instructions given by the Minister of Personnel, Public Grievances and Pensions, of which the Department was a part. We can guess that such a major decision would have involved other major functionaries in our country. You have already read in the previous class about some of them. Let us go over some of the main points that you covered then:

- President is the head of the **state** and is the highest formal authority in the country.
- Prime Minister is the head of the **government** and actually exercises all governmental powers. He takes most of the decisions in the Cabinet meetings.
- Parliament consists of the President and two Houses, Lok Sabha and Rajya Sabha. The Prime Minister must have the support of a majority of Lok Sabha members.

So, were all these people involved in this decision regarding the Office Memorandum? Let us find out.



A C T I V I T Y

- Which points, other than the ones mentioned above, do you recall about these institutions from the previous class? Discuss in class.
- Can you think of a major decision made by your state government? How were the Governor, the Council of Ministers, the state assembly and the courts involved in that decision?



Is every Office Memorandum a major political decision? If not, what made this one different?

This Office Memorandum was the culmination of a long chain of events. The Government of India had appointed the Second Backward Classes Commission in 1979. It was headed by B.P. Mandal. Hence it was popularly called the Mandal Commission. It was asked to determine the criteria to identify the socially and educationally backward classes in India and recommend steps to be taken for their advancement. The Commission gave its Report in 1980 and made many recommendations. One of these was that 27 per cent of government jobs be reserved for the socially and educationally backward classes. The Report and recommendations were discussed in the Parliament.

For several years, many parliamentarians and parties kept demanding the implementation of the Commission's recommendations. Then came the Lok Sabha election of 1989. In its election manifesto, the Janata Dal promised that if voted to power, it would implement the Mandal Commission report. The Janata Dal did form the government after this election. Its leader V. P. Singh became the Prime Minister. Several developments took place after that:

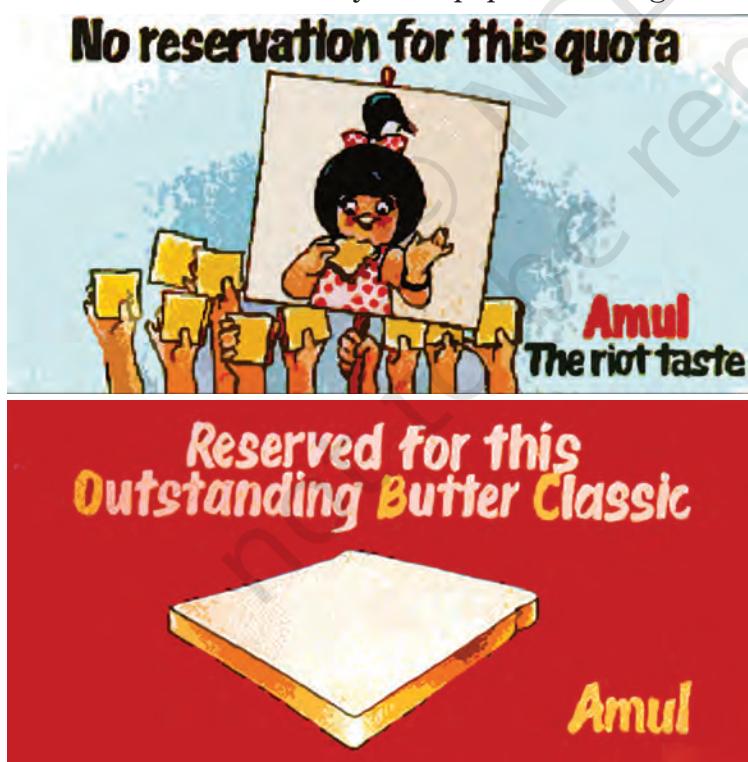


Now I can see clearly! That is why they talk of Mandalisation of politics. Don't they?

read the image

Reservation debate was such an important issue during 1990-91 that advertisers used this theme to sell their products. Can you spot some references to political events and debates in these Amul Butter hoardings?

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- The President of India in his address to the Parliament announced the intention of the government to implement the recommendations of the Mandal Commission.
- On 6 August 1990, the Union Cabinet took a formal decision to implement the recommendations.
- Next day Prime Minister V.P. Singh informed the Parliament about this decision through a statement in both the Houses of Parliament.
- The decision of the Cabinet was sent to the Department of Personnel and Training. The senior officers of the Department drafted an order in line with the Cabinet decision and took the minister's approval. An officer signed the order on behalf of the Union Government. This was how O.M. No. 36012/ 31/90 was born on 13 August 1990.

For the next few months, this was the most hotly debated issue in the country. Newspapers and magazines

were full of different views and opinions on this issue. It led to widespread protests and counter-protests, some of which were violent. People reacted strongly because this decision affected thousands of job opportunities. Some felt that existence of inequalities among people of different castes in India necessitated job **reservations**. They felt, this would give a fair opportunity to those communities who so far had not adequately been represented in government employment.

Others felt that this was unfair as it would deny equality of opportunity to those who did not belong to backward communities. They would be denied jobs even though they could be more qualified. Some felt that this would perpetuate caste feelings among people and hamper national unity. In this chapter we won't discuss whether the decision was good or not. We only take this example to understand how major decisions are taken and implemented in the country.

Who resolved this dispute? You know that the Supreme Court and the High Courts in India settle disputes arising out of governmental decisions. Some persons and associations opposed to this order filed a number of cases in the courts. They appealed to the courts to declare the order invalid and stop its implementation. The Supreme Court of India bunched all these cases together. This case was known as the 'Indira Sawhney and others Vs Union of India case'. Eleven judges of the Supreme Court heard arguments of both sides. By a majority, the Supreme Court judges in 1992 declared that this order of the Government of India was valid. At the same time the Supreme Court asked the government to modify its

original order. It said that well-to-do persons among the backward classes should be excluded from getting the benefit of reservation. Accordingly, the Department of

Personnel and Training issued another Office Memorandum on 8 September 1993. The dispute thus came to an end and this policy has been followed since then.

Who did what in this case of reservations for backward classes?

Supreme Court	Made formal announcement about this decision
Cabinet	Implemented the decision by issuing an order
President	Took the decision to give 27% job reservations
Government Officials	Upheld reservations as valid



Need for Political Institutions

We have seen one example of how the government works. Governing a country involves various such activities. For example, the government is responsible for ensuring security to the citizens and providing facilities for education and health to all. It collects taxes and spends the money thus raised on administration, defence and development programmes. It formulates and implements several welfare schemes. Some persons have to take decisions on how to go about these activities. Others have to implement these decisions. If disputes arise on these decisions or in their implementation, there should be someone to determine what is right and what is wrong. It is important that everyone should know who is responsible for doing what. It is also important that these activities keep taking place even if the persons in key positions change.

So, to attend to all these tasks, several arrangements are made in all modern democracies. Such arrangements are called institutions. A democracy works well when these institutions perform functions assigned to them. The Constitution of any country lays down basic rules on the powers and functions

of each institution. In the example above, we saw several such institutions at work.

- The Prime Minister and the Cabinet are institutions that take all important policy decisions.
- The Civil Servants, working together, are responsible for taking steps to implement the ministers' decisions.
- Supreme Court is an institution where disputes between citizens and the government are finally settled.

Can you think of some other institutions in this example? What is their role?

Working with institutions is not easy. Institutions involve rules and regulations. This can bind the hands of leaders. Institutions involve meetings, committees and routines. This often leads to delays and complications. Therefore dealing with institutions can be frustrating. One might feel that it is much better to have one person take all decisions without any rules, procedures and meetings. But that is not the spirit of democracy. Some of the delays and complications introduced by institutions are very useful. They provide an opportunity for a wider set of people to be consulted in any decision. Institutions make it



Which institutions are at work in the running of your school? Would it be better if one person alone took all the decisions regarding management of your school?

difficult to have a good decision taken very quickly. But they also make it equally difficult to rush

through a bad decision. That is why democratic governments insist on institutions.

4.2 PARLIAMENT

In the example of the Office Memorandum, do you remember the role of Parliament? Perhaps not. Since this decision was not taken by Parliament, you might think that Parliament had no role in it. But let us go back to the story and see whether Parliament figures in it. Let us recall the points made earlier by completing the following sentences:

- The Report of the Mandal Commission was discussed ...
- The President of India mentioned this in his ...
- The Prime Minister made a ...

The decision was not directly taken in Parliament. But Parliamentary discussions on the Report influenced and shaped the decision of the government. They brought pressure on the government to act on the Mandal recommendation. If Parliament was not in favour of this decision, the Government could not have gone ahead with it. Can you guess why? Recall what you read about Parliament in the earlier

class and try to imagine what Parliament could have done if it did not approve of the Cabinet's decision.

Why do we need a Parliament?

In all democracies, an assembly of elected representatives exercises supreme political authority on behalf of the people. In India such a national assembly of elected representatives is called Parliament. At the state level this is called **Legislature** or Legislative Assembly. The name may vary in different countries, but such an assembly exists in every democracy. It exercises political authority on behalf of the people in many ways:

1 Parliament is the final authority for making laws in any country. This task of law making or legislation is so crucial that these assemblies are called legislatures. Parliaments all over the world can make new laws, change existing laws, or abolish existing laws and make new ones in their place.

2 Parliaments all over the world exercise some control over those who run the government. In some countries like India this control is direct and full. Those who run the government can take decisions only so long as they enjoy support of Parliament.

3 Parliaments control all the money that governments have. In most countries the public money can be spent only when Parliament sanctions it.



4 Parliament is the highest forum of discussion and debate on public issues and national policy in any country. Parliament can seek information about any matter.

Two Houses of Parliament

Since Parliament plays a central role in modern democracies, most large countries divide the role and powers of Parliament in two parts. They are called Chambers or Houses. One House is usually directly elected by the people and exercises the real power on behalf of the people. The second House is usually elected indirectly and performs some special functions. The most common work for the second House is to look after the interests of various states, regions or federal units.

In our country, Parliament consists of two Houses. The two Houses are known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). The President of India is a part of Parliament, although she is not a member of either House. That is why all laws made in the Houses come into force only after they receive the assent of the President.

You have read about the Indian Parliament in earlier classes. From the Chapter 3 you know how Lok Sabha elections take place. Let us recall some key differences between the composition of these two Houses of Parliament. Answer the following for the Lok Sabha and the Rajya Sabha:

- What is the total number of members? ...
- Who elects the members? ...
- What is the length of the term (in years)? ...
- Can the House be dissolved or is it permanent? ...

Which of the two Houses is more powerful? It might appear that the Rajya Sabha is more powerful, for sometimes it is called the 'Upper Chamber' and the Lok Sabha the 'Lower Chamber'. But this does not mean that Rajya Sabha is more powerful than Lok Sabha. This is just an old style of speaking and not the language used in our Constitution.

Our Constitution does give the Rajya Sabha some special powers over the states. But on most matters, the Lok Sabha exercises supreme power. Let us see how:

- 1 Any ordinary law needs to be passed by both the Houses. But if there is a difference between the two Houses, the final decision is taken in a joint session in which members of both the Houses sit together. Because of the larger number of members, the view of the Lok Sabha is likely to prevail in such a meeting.
- 2 Lok Sabha exercises more powers in money matters. Once the Lok Sabha passes the budget of the government or any other money related law, the Rajya Sabha cannot reject it. The Rajya Sabha can only delay it by 14 days or suggest changes in it. The Lok Sabha may or may not accept these changes.



What is the point in having so much debate and discussion in the Parliament when we know that the view of the ruling party is going to prevail?



ACTIVITY

When Parliament is in session, there is a special programme everyday on Doordarshan about the proceedings in Lok Sabha and Rajya Sabha. Watch the proceedings or read about it in the newspapers and note the following:

- Powers of the two Houses of Parliament.
- Role of the Speaker.
- Role of the Opposition.

3 Most importantly, the Lok Sabha controls the Council of Ministers. Only a person who enjoys the support of the majority of the members in the Lok Sabha is appointed the Prime Minister. If the

majority of the Lok Sabha members say they have 'no confidence' in the Council of Ministers, all ministers including the Prime Minister, have to quit. The Rajya Sabha does not have this power.

A day in the life of the Lok Sabha

7 December 2004 was an ordinary day in the life of the Fourteenth Lok Sabha. Let us take a look at what happened in the course of that day. Identify the role and powers of the parliament on the basis of the proceedings for the day as given below. You can also enact this day in your classroom.



11:00 Various ministries gave written answers to about 250 questions that were asked by members. These included:

- What is the government's policy on talking to militant groups in Kashmir?
- What are the figures of atrocities against Scheduled Tribes, including those inflicted by the police?
- What is the government doing about over-pricing of medicines by big companies?



12:00 A large number of official documents were presented and were available for discussion. These included:

- Recruitment rules for the Indo-Tibetan Border Police Force
- Annual Report of the Indian Institute of Technology, Kharagpur
- Report and accounts of Rashtriya Ispat Nigam Limited, Visakhapatnam



12:02 The Minister of Development of North Eastern Region made a statement regarding Revitalisation of the North Eastern Council.

The Minister of State for Railways presented a statement showing the grant needed by the

Railways in addition to that sanctioned in the Railway Budget.

The Minister of Human Resource Development introduced the National Commission for Minority Educational Institutions Bill, 2004. He also gave a statement explaining why the government had to bring an ordinance for this.



12:14 Several members highlighted some issues, including:

- The vindictiveness of the Central Bureau of Investigation (CBI) in registering cases against some leaders in the Tehelka case.
- Need to include Rajasthani as an official language in the Constitution.
- Need to renew the insurance policies of farmers and agricultural workers of Andhra Pradesh.



2:26 Two bills proposed by the government were considered and passed. These were:

- The Securities Laws (Amendment) Bill
- The Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Bill



4:00 Finally, there was a long discussion regarding the foreign policy of the government and the need to continue an independent foreign policy in the context of the situation in Iraq.



7:17 Discussion concluded. House adjourned for next day.

4.3 POLITICAL EXECUTIVE

Do you remember the story of the Office Memorandum with which we started this chapter? We found out that the person who signed the document did not take this decision. He was only executing the policy decision taken by someone else. We noted the role of the Prime Minister in taking that decision. But we also know that he could not have taken that decision if he did not have support from the Lok Sabha. In that sense he was only executing the wishes of the Parliament.

Thus, at different levels of any government we find functionaries who take day-to-day decisions but do not exercise supreme power on behalf of the people. All those functionaries are collectively known as the **executive**. They are called executive because they are in charge of the 'execution' of the policies of the government. Thus, when we talk about 'the government' we usually mean the executive.

Political and Permanent Executive

In a democratic country, two categories make up the executive. One that is elected by the people for a specific period, is called the political executive. Political leaders who take the big decisions fall in this category. In the second category, people are appointed on a long-term basis. This is called the permanent executive or civil services. Persons working in civil services are called civil servants. They remain in office even when the ruling party changes. These officers work under political executive and assist them in carrying out the day-to-day administration. Can you recall the role of political and non-political

executive in the case of the Office Memorandum?

You might ask: Why does the political executive have more power than the non-political executive? Why is the minister more powerful than the civil servant? The civil servant is usually more educated and has more expert knowledge of the subject. The advisors working in the Finance Ministry know more about economics than the Finance Minister. Sometimes the ministers may know very little about the technical matters that come under their ministry. This could easily happen in ministries like Defence, Industry, Health, Science and Technology, Mines, etc. Why should the minister have the final say on these matters?

The reason is very simple. In a democracy the will of the people is supreme. The minister is an elected representative of the people and thus empowered to exercise the will of the people on their behalf. She is finally answerable to the people for all the consequences of her decision. That is why the minister takes all the final decisions. The minister decides the overall framework and objectives in which decisions on policy should be made. The minister is not, and is not expected to be, an expert in the matters of her ministry. The minister takes the advice of experts on all technical matters. But very often experts hold different opinions or place before her more than one option. Depending on what the overall objective is, the minister decides.

Actually this happens in any large organisation. Those who understand the overall picture take the most

important decisions, not the experts. The experts can tell the route, but someone with a larger view decides the destination. In a democracy elected ministers perform this role.

Prime Minister and Council of Ministers

Prime Minister is the most important **political institution** in the country. Yet there is no direct election to the post of the Prime Minister. The President appoints the Prime Minister. But the President cannot appoint anyone she likes. The President appoints the leader of the majority party or the coalition of parties that commands a majority in the Lok Sabha, as Prime Minister. In case no single party or alliance gets a majority, the President appoints the person most likely to secure a majority support. The Prime Minister does not have a fixed tenure. He continues in power so long as he remains the leader of the majority party or coalition.

After the appointment of the Prime Minister, the President appoints other ministers on the advice of the Prime Minister. The Ministers are usually from the party or the coalition that has the majority in the Lok Sabha. The Prime Minister is free to choose ministers, as long as they are members of Parliament. Sometimes, a person who is not a member of Parliament can also become a minister. But such a person has to get elected to one of the Houses of Parliament within six months of appointment as minister.

Council of Ministers is the official name for the body that includes all the Ministers. It usually has 60 to 80 Ministers of different ranks.

- **Cabinet Ministers** are usually top-level leaders of the ruling party or parties who are in charge of the major ministries. Usually the Cabinet Ministers meet to take decisions in the name of the Council of Ministers. Cabinet is thus the inner ring of the Council of Ministers. It comprises about 25 ministers.

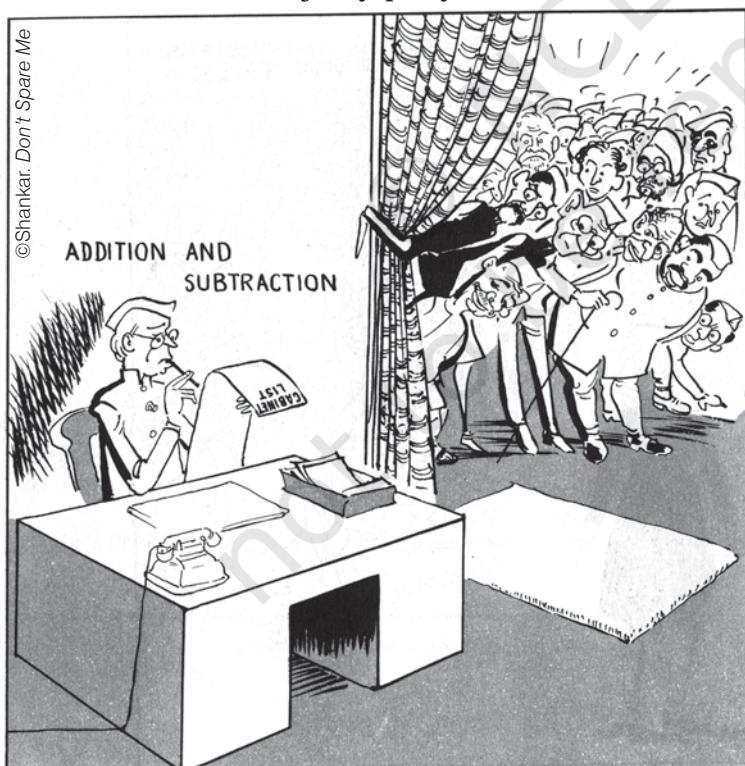
- **Ministers of State with independent charge** are usually in-charge of smaller Ministries. They participate in the Cabinet meetings only when specially invited.

- **Ministers of State** are attached to and required to assist Cabinet Ministers.

Since it is not practical for all ministers to meet regularly and discuss everything, the decisions are taken in Cabinet meetings. That is why parliamentary democracy in most countries is often known as the Cabinet form of government. The Cabinet works as a team. The ministers may have different views and opinions, but everyone has to own up to every decision of the Cabinet.

read the cartoon

The race to become minister is not new. Here is a cartoon depicting ministerial aspirants waiting to get a berth in Nehru's Cabinet after the 1962 elections. Why do you think political leaders are so keen to become ministers?



No minister can openly criticise any decision of the government, even if it is about another Ministry or Department. Every ministry has secretaries, who are civil servants. The secretaries provide the necessary background information to the ministers to take decisions. The Cabinet as a team is assisted by the Cabinet Secretariat. This includes many senior civil servants who try to coordinate the working of different ministries.



A C T I V I T Y

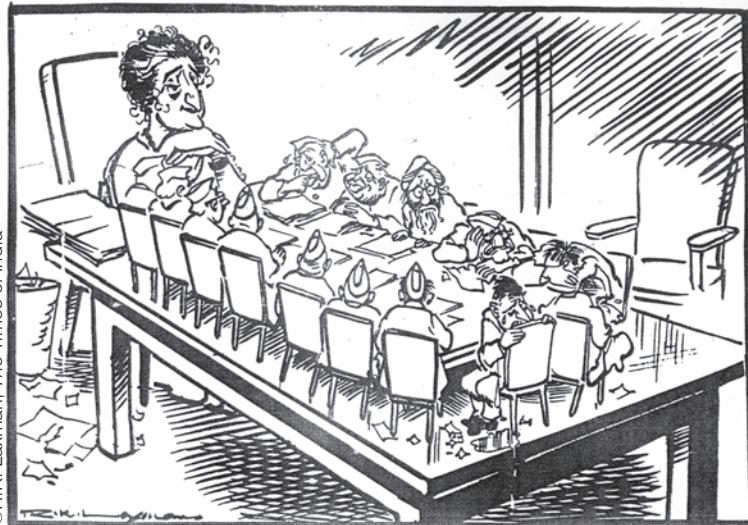
- List the names of five Cabinet Ministers and their ministries each at the Union level and in your state.
- Meet the Mayor or Municipal Chairperson of your town or the President of Zilla Parishad of your district and ask him or her about how the city, town or district is administered.

Powers of the Prime Minister

The Constitution does not say very much about the powers of the Prime Minister or the ministers or their relationship with each other. But as head of the government, the Prime Minister has wide ranging powers. He chairs Cabinet meetings. He coordinates the work of different Departments. His decisions are final in case disagreements arise between Departments. He exercises general supervision of different ministries. All ministers work under his leadership. The Prime Minister distributes and redistributes work to the ministers. He also has the power to dismiss ministers. When the Prime Minister quits, the entire ministry quits.

Thus, if the Cabinet is the most powerful institution in India, within the Cabinet it is the Prime Minister

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read
the
cartoon

This cartoon depicts a cabinet meeting chaired by Prime Minister Indira Gandhi in early 1970s, at the peak of her popularity. Do you think similar cartoons could be drawn about other prime ministers who followed her?

who is the most powerful. The powers of the Prime Minister in all parliamentary democracies of the world have increased so much in recent decades that parliamentary democracies are sometimes seen as Prime Ministerial form of government. As political parties have come to play a major role in politics, the Prime Minister controls the Cabinet and Parliament through the party. The media also contributes to this trend by making politics and elections as a competition between top leaders of parties. In India too we have seen such a tendency towards the concentration of powers in the hands of the Prime Minister. Jawaharlal Nehru, the first Prime Minister of India, exercised enormous authority because he had great influence over the public. Indira Gandhi was also a very powerful leader compared to her colleagues in the Cabinet. Of course, the extent of power wielded by a Prime Minister also depends on the personality of the person holding that position.

However, in recent years the rise of coalition politics has imposed certain constraints on the power of the Prime Minister. The Prime



Why does this book refer to the President as 'she'? Have we ever had a woman President in our country?



Did you protest when the book referred to the Prime Minister as 'he'? Have we not had a woman Prime Minister? Why should we assume that all the important positions are held by men?

Minister of a **coalition government** cannot take decisions as he likes. He has to accommodate different groups and factions in his party as well as among alliance partners. He also has to heed to the views and positions of the coalition partners and other parties, on whose support the survival of the government depends.

The President

While the Prime Minister is the head of the government, the President is the head of the State. In our political system the head of the State exercises only nominal powers. The President of India is like the Queen of Britain whose functions are to a large extent ceremonial. The President supervises the overall functioning of all the political institutions in the country so that they operate in harmony to achieve the objectives of the State.

The President is not elected directly by the people. The elected Members of Parliament (MPs) and the elected Members of the Legislative Assemblies (MLAs) elect her. A candidate standing for President's post has to get a majority of votes to win the election. This ensures that the President can be seen to represent the entire nation. At the same time the President can never claim the kind of direct popular mandate that the Prime Minister can. This ensures that she remains only a nominal executive.

The same is true of the powers of the President. If you casually read the Constitution you would think that there is nothing that she cannot do. All governmental activities take place in the name of the President. All laws and major policy decisions of the government are issued in her name. All major appointments are made in the name of the President. These include the appointment of

Press Information Bureau



The President, Shri Ram Nath Kovind administering the oath of office of the Prime Minister to Shri Narendra Modi, at a Swearing-in Ceremony, at Rashtrapati Bhavan on 30 May 2019.

the Chief Justice of India, the Judges of the Supreme Court and the High Courts of the states, the Governors of the states, the Election Commissioners, ambassadors to other countries, etc. All international treaties and agreements are made in the name of the President. The President is the supreme commander of the defence forces of India.

But we should remember that the President exercises all these powers only on the advice of the Council of Ministers. The President can ask the Council of Ministers to reconsider its advice. But if the same advice is given again, she is bound to act according to it. Similarly, a bill passed by the Parliament becomes a law only after the President gives assent to it. If the President wants, she can delay this for some time and send the bill back to Parliament for reconsideration. But if Parliament passes the bill again, she has to sign it.

So you may wonder what does the President really do? Can she do anything on her own at all? There is one very important thing she should do on her own: appoint the Prime Minister. When a party or coalition of parties secures a clear majority in the elections, the President, has to appoint the leader of the majority party or the coalition that enjoys majority support in the Lok Sabha.

When no party or coalition gets a majority in the Lok Sabha, the President exercises her discretion. The President appoints a leader who in her opinion can muster majority support in the Lok Sabha. In such a case, the President can ask the newly appointed Prime Minister to prove majority support in the Lok Sabha within a specified time.

read
the
image

The Presidential System

Presidents all over the world are not always nominal executives like the President of India. In many countries of the world, the President is both the head of the state and the head of the government. The President of the United States of America is the most well known example of this kind of President. The US President is directly elected by the people. He personally chooses and appoints all Ministers. The law making is still done by the legislature (called the Congress in the US), but the president can veto any law. Most importantly, the president does not need the support of the majority of members in the Congress and neither is he answerable to them. He has a fixed tenure of four years and completes it even if his party does not have a majority in the Congress.

This model is followed in most of the countries of Latin America and many of the ex-Soviet Union countries. Given the centrality of the President, this system of government is called the Presidential form of government. In countries like ours that follow the British model, the parliament is supreme. Therefore our system is called the parliamentary system of government.



What is better for a democracy: A Prime Minister who can do whatever he wishes or a Prime Minister who needs to consult other leaders and parties?

Eliamma, Annakutti and Marymol read the section on the President. Each of them had a question. Can you help them in answering these questions?

Eliamma: What happens if the President and the Prime Minister disagree about some policy? Does the view of the Prime Minister always prevail?

Annakutti: I find it funny that the President is the Supreme Commander of Armed Forces. I doubt if the President can even lift a heavy gun. What is the point in making the President the Commander?

Marymol: I would say, what is the point in having a President at all if all the real powers are with the Prime Minister?

?

CHECK
YOUR
PROGRESS

4.4 THE JUDICIARY

It is quite common in the US for judges to be nominated on the basis of well-known political opinions and affiliations. This fictitious advertisement appeared in the US in 2005 when President Bush was considering various candidates for nomination to the US supreme court. What does this cartoon say about the independence of the judiciary? Why do such cartoons not appear in our country? Does this demonstrate the independence of our judiciary?



Let us return, one final time, to the story of Office Memorandum that we started with. This time let us not recall the story, but imagine how different the story could have been. Remember, the story came to a satisfactory end because the Supreme Court gave a verdict that was accepted by everyone. Imagine what would have happened in the following situations:

- If there was nothing like a Supreme Court in the country.
 - Even if there was a Supreme Court, if it had no power to judge actions of the government.
 - Even if it had the power, if no one trusted the Supreme Court to give a fair verdict.
 - Even if it gave a fair judgement, if those who appealed against the Government Order did not accept the judgement.

Experience a must.

A C T I V I T Y



Follow the news about any major court case in a High Court or the Supreme Court. What was the original verdict? Did the High Court or the Supreme Court change it? What was the reason?

This is why an independent and powerful **judiciary** is considered essential for democracies. All the courts at different levels in a country put together are called the judiciary. The Indian judiciary consists of a Supreme Court for the entire nation, High Courts in the states, District Courts and the courts at local level. India has an integrated judiciary. It means the Supreme Court controls the judicial administration in the country. Its decisions are binding on all other courts of the country. It can take up any dispute

- Between citizens of the country;
 - Between citizens and government;
 - Between two or more state governments; and
 - Between governments at the union and state level.

It is the highest court of appeal in civil and criminal cases. It can hear appeals against the decisions of the High Courts.

Independence of the judiciary means that it is not under the control of the legislature or the executive. The judges do not act on the direction of the government or according to the wishes of the party in power. That is why all modern democracies have courts that are independent of the legislature and the executive. India has achieved this. The judges of the Supreme Court and the High Courts are appointed by the President on the advice of the Prime Minister and in

consultation with the Chief Justice of the Supreme Court. In practice it now means that the senior judges of the Supreme Court select the new judges of the Supreme Court and the High Courts. There is very little scope for interference by the political executive. The senior most judge of the Supreme Court is usually appointed the Chief Justice. Once a person is appointed as judge of the Supreme Court or the High Court it is nearly impossible to remove him or her from that position. It is as difficult as removing the President of India. A judge can be removed only by an impeachment motion passed separately by two-thirds members of the two Houses of the Parliament. It has never happened in the history of Indian democracy.

The judiciary in India is also one of the most powerful in the world. The Supreme Court and the High Courts have the power to interpret the Constitution of the country. They can declare invalid any law of the legislature or the actions of the executive, whether at the Union level or at the state level, if they find such a law or action is against the

Constitution. Thus they can determine the Constitutional validity of any legislation or action of the executive in the country, when it is challenged before them. This is known as the judicial review. The Supreme Court of India has also ruled that the core or basic principles of the Constitution cannot be changed by the Parliament.

The powers and the independence of the Indian judiciary allow it to act as the guardian of the Fundamental Rights. We shall see in the next chapter that the citizens have a right to approach the courts to seek remedy in case of any violation of their rights. In recent years the Courts have given several judgments and directives to protect public interest and human rights. Any one can approach the courts if public interest is hurt by the actions of government. This is called public interest litigation. The courts intervene to prevent the misuse of the government's power to make decisions. They check malpractices on the part of public officials. That is why the judiciary enjoys a high level of confidence among the people.

Give one reason each to argue that Indian judiciary is independent with respect to:

Appointment of judges: ...

Removal of judges: ...

Powers of the judiciary: ...



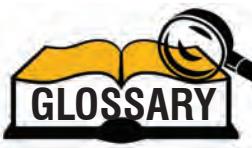
Why are people allowed to go to courts against the government's decisions?



**CHECK
YOUR
PROGRESS**



The Chief Justice of India, Shri Justice J.S. Khehar administering the oath of the office of the President of India to Shri Ram Nath Kovind, at a swearing-in ceremony in the Central Hall of Parliament in New Delhi on 25 July 2017.



Coalition government: A government formed by an alliance of two or more political parties, usually when no single party enjoys majority support of the members in a legislature.

Executive: A body of persons having authority to initiate major policies, make decisions and implement them on the basis of the Constitution and laws of the country.

Government: A set of institutions that have the power to make, implement and interpret laws so as to ensure an orderly life. In its broad sense, government administers and supervises over citizens and resources of a country.

Judiciary: An institution empowered to administer justice and provide a mechanism for the resolution of legal disputes. All the courts in the country are collectively referred to as judiciary.

Legislature: An assembly of people's representatives with the power to enact laws for a country. In addition to enacting laws, legislatures have authority to raise taxes and adopt the budget and other money bills.

Office Memorandum: A communication issued by an appropriate authority stating the policy or decision of the government.

Political Institution: A set of procedures for regulating the conduct of government and political life in the country.

Reservations: A policy that declares some positions in government employment and educational institutions 'reserved' for people and communities who have been discriminated against, are disadvantaged and backward.

State: Political association occupying a definite territory, having an organised government and possessing power to make domestic and foreign policies. Governments may change, but the state continues. In common speech, the terms country, nation and state are used as synonyms.

exercises

- 1 If you are elected as the President of India which of the following decision can you take on your own?
 - a Select the person you like as Prime Minister.
 - b Dismiss a Prime Minister who has a majority in Lok Sabha.
 - c Ask for reconsideration of a bill passed by both the Houses.
 - d Nominate the leaders of your choice to the Council of Ministers.
- 2 Who among the following is a part of the political executive?
 - a District Collector
 - b Secretary of the Ministry of Home Affairs
 - c Home Minister
 - d Director General of Police
- 3 Which of the following statements about the judiciary is false?
 - a Every law passed by the Parliament needs approval of the Supreme Court
 - b Judiciary can strike down a law if it goes against the spirit of the Constitution
 - c Judiciary is independent of the Executive
 - d Any citizen can approach the courts if her rights are violated

- 4** Which of the following institutions can make changes to an existing law of the country?
- a** The Supreme Court
 - b** The President
 - c** The Prime Minister
 - d** The Parliament
- 5** Match the ministry with the news that the ministry may have released:
- | | |
|--|---|
| a A new policy is being made to increase the jute exports from the country. | i Ministry of Defence |
| b Telephone services will be made more accessible to rural areas. | ii Ministry of Agriculture, Food and Public Distribution |
| c The price of rice and wheat sold under the Public Distribution System will go down. | iii Ministry of Health |
| d A pulse polio campaign will be launched. | iv Ministry of Commerce and Industry |
| e The allowances of the soldiers posted on high altitudes will be increased. | v Ministry of Communications and Information Technology |
- 6** Of all the institutions that we have studied in this chapter, name the one that exercises the powers on each of the following matters.
- a** Decision on allocation of money for developing infrastructure like roads, irrigation etc. and different welfare activities for the citizens
 - b** Considers the recommendation of a Committee on a law to regulate the stock exchange
 - c** Decides on a legal dispute between two state governments
 - d** Implements the decision to provide relief for the victims of an earthquake.
- 7** Why is the Prime Minister in India not directly elected by the people? Choose the most appropriate answer and give reasons for your choice.
- a** In a Parliamentary democracy only the leader of the majority party in the Lok Sabha can become the Prime Minister.
 - b** Lok Sabha can remove the Prime Minister and the Council of Ministers even before the expiry of their term.
 - c** Since the Prime Minister is appointed by the President there is no need for it.
 - d** Direct election of the Prime Minister will involve lot of expenditure on election.
- 8** Three friends went to watch a film that showed the hero becoming Chief Minister for a day and making big changes in the state. Imran said this is what the country needs. Rizwan said this kind of a personal

exercises

rule without institutions is dangerous. Shankar said all this is a fantasy. No minister can do anything in one day. What would be your reaction to such a film?

- 9 A teacher was making preparations for a mock parliament. She called two students to act as leaders of two political parties. She gave them an option: Each one could choose to have a majority either in the mock Lok Sabha or in the mock Rajya Sabha. If this choice was given to you, which one would you choose and why?
- 10 After reading the example of the reservation order, three students had different reactions about the role of the judiciary. Which view, according to you, is a correct reading of the role of judiciary?
 - a Srinivas argues that since the Supreme Court agreed with the government, it is not independent.
 - b Anjaiah says that judiciary is independent because it could have given a verdict against the government order. The Supreme Court did direct the government to modify it.
 - c Vijaya thinks that the judiciary is neither independent nor conformist, but acts as a mediator between opposing parties. The court struck a good balance between those who supported and those who opposed the order.



Collect newspapers for the last one week and classify the news related to the working of any of the institutions discussed in this chapter into four groups:

- Working of the **legislatures**
- Working of the **political executive**
- Working of the **civil services**
- Working of the **judiciary**



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CHAPTER 5

DEMOCRATIC RIGHTS

OVERVIEW

In the previous two chapters we have looked at two major elements of a democratic government. In Chapter 3 we saw how a democratic government has to be periodically elected by the people in a free and fair manner. In Chapter 4 we learnt that a democracy must be based on institutions that follow certain rules and procedures. These elements are necessary but not sufficient for a democracy. Elections and institutions need to be combined with a third element – enjoyment of rights – to make a government democratic. Even the most properly elected rulers working through the established institutional process must learn not to cross some limits. Citizens' democratic rights set those limits in a democracy.

This is what we take up in this final chapter of the book. We begin by discussing some real life cases to imagine what it means to live without rights. This leads to a discussion on what we mean by rights and why do we need them. As in the previous chapters, the general discussion is followed by a focus on India. We discuss one by one the Fundamental Rights in the Indian Constitution. Then we turn to how these rights can be used by ordinary citizens. Who will protect and enforce them? Finally we take a look at how the scope of rights has been expanding.

5.1 LIFE WITHOUT RIGHTS

In this book we have mentioned rights again and again. If you remember, we have discussed rights in each of the four preceding chapters. Can you fill in the blanks by recalling the rights dimension in each chapter?

Chapter 1: A comprehensive definition of democracy includes ...

Chapter 2: Our Constitution makers believed that fundamental rights

were quite central to the Constitution because ...

Chapter 3: Every adult citizen of India has the right to ... and to be ...

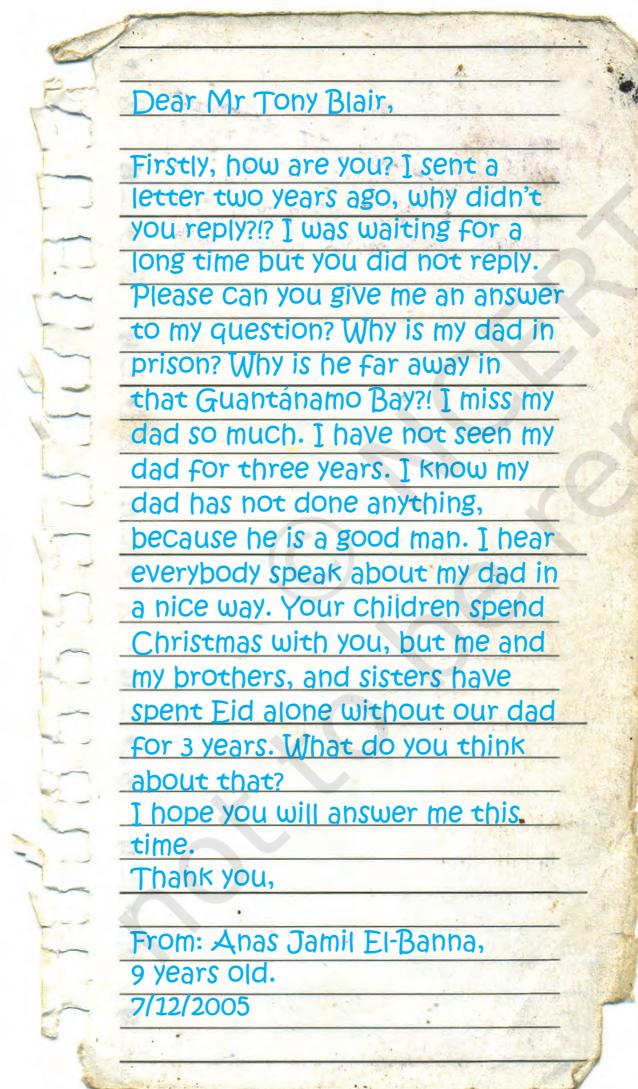
Chapter 4: If a law is against the Constitution, every citizen has the right to approach ...

Let us now begin with three examples of what it means to live in the absence of 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, an area near Cuba controlled by American Navy. Anas's father, Jamil El-Banna, was among them. The American government said that they were enemies of the US and linked to the attack on New York on 11 September 2001. In most cases the governments of their countries were not asked or even informed about their imprisonment. Like other prisoners, El-Banna's family got to know that he was in that prison only through the media. Families of prisoners, media or even UN representatives were not allowed to meet them. The US army arrested them, interrogated them and decided whether to keep them there or not. There was no trial before any magistrate in the US. Nor could these prisoners approach courts in their own country.

Amnesty International, an international human rights organisation, collected information on the condition of the prisoners in Guantanamo Bay and reported that the prisoners were being tortured in ways that violated the US laws. They



were being denied the treatment that even prisoners of war must get as per international treaties. Many prisoners had tried protesting against these conditions by going on a hunger strike. Prisoners were not released even after they were officially declared not guilty. An independent inquiry by the UN supported these findings. The UN Secretary General said the prison in Guantanamo Bay should be closed down. The US government refused to accept these pleas.

Citizens' Rights in Saudi Arabia

The case of Guantanamo Bay looks like an exception, for it involves the government of one country denying rights to citizens of another country. Let us therefore look at the case of Saudi Arabia and the position of the citizens with regard to their government. Consider these facts:

- The country is ruled 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.
- 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.

This is true not just of Saudi Arabia. There are many countries in the world where several of these conditions exist.

Ethnic massacre in Kosovo

You might think that this is possible in an absolute monarchy but not in countries which choose their rulers. Just consider this story from Kosovo. This was a province of Yugoslavia before its split. In this province the population was overwhelmingly ethnic Albanian. But in the entire country, Serbs were in majority. A narrow minded Serb nationalist Milosevic (pronounced Miloshevich) had won the election. His government was very hostile to the Kosovo Albanians. He wanted the Serbs to dominate the country. Many Serb leaders thought that Ethnic minorities like Albanians should either leave the country or accept the dominance of the Serbs.

This is what happened to an Albanian family in a town in Kosovo in April 1999:

“74-year-old Batisha Hoxha was sitting in her kitchen with her 77-year-old husband, Izet, staying warm by the stove. They had heard explosions but did not realise that Serbian troops had already entered the town. The next thing she knew, five or six soldiers had burst through the front door and were demanding “Where are your children?”

“... they shot Izet three times in the chest” recalled Batisha. With her husband dying before her, the soldiers pulled the wedding ring off her finger and told her to get out. “I was not even outside the gate when they burned the house” ... She was standing on the street in the rain with no house, no husband, no possessions but the clothes she was wearing.”

This news report was typical of what happened to thousands of Albanians in that period. Do



If you were a Serb, would you support what Milosevic did in Kosovo? Do you think his project of establishing Serb dominance was good for the Serbs?

remember that this massacre was being carried out by the army of their own country, working under the direction of a leader who came to power through democratic elections. This was one of the worst instances of killings based on ethnic prejudices in recent times. Finally several other countries intervened to stop this massacre. Milosevic lost power and was tried by the International Court of Justice for crimes against humanity.



A C T I V I T Y

- Write a letter to Anas Jamil in UK, describing your reactions after reading his letter to Tony Blair.
- Write a letter from Batisha in Kosovo to a woman who faced a similar situation in India.
- Write a memorandum on behalf of women in Saudi Arabia to the Secretary General of the United Nations.



For each of the three cases of life without rights, mention an example from India. These could include the following:

- Newspaper reports on custodial violence.
- Newspaper reports on force-feeding of prisoners who go on hunger strike.
- Ethnic massacre in any part of our country.
- Reports regarding unequal treatment of women.

List the **similarities** and **differences** between the earlier case and the Indian example. It is not necessary that for each of these cases you must find an exact Indian parallel.

5.2 RIGHTS IN A DEMOCRACY

Think of all the examples that we have discussed so far. Think of the victims in each example: the prisoners in Guantanamo Bay, women in Saudi Arabia, Albanians in Kosovo. If you were in their position, what would you have wished? If you could, what would you do to ensure that such things do not happen to anyone?

You would perhaps desire a system where security, dignity and fair play are assured to everyone. You might want, for example, that no one should be arrested without proper reason and information. And if someone is arrested, he or she should have a fair chance to defend themselves. You might agree that such assurance cannot apply to

everything. One has to be reasonable in what one expects and demands of everyone else, for one has to grant the same to everyone. But you might insist that the assurance does not remain on paper, that there is someone to enforce these assurances, that those who violate these are punished. In other words, you might want a system where at least a minimum is guaranteed to everyone – powerful or weak, rich or poor, majority or minority. This is the spirit behind thinking about rights.

What are rights?

Rights are **claims** of a person over other fellow beings, over the society and over the government. All of us

want to live happily, without fear and without being subjected to degraded treatment. For this we expect others to behave in such a way that does not harm us or hurt us. Equally, our actions should not also harm or hurt others. So a right is possible when you make a claim that is equally possible for others. You cannot have a right that harms or hurts others. You cannot have a right to play a game in such a way that it breaks the neighbour's window. The Serbs in Yugoslavia could not have claimed the whole country for themselves. The claims we make should be reasonable. They should be such that can be made available to others in an equal measure. Thus, a right comes with an obligation to respect other rights.

Just because we claim some thing it does not become our right. It has to be recognised by the society we live in. Rights acquire meaning only in society. Every society makes certain rules to regulate our conduct. They tell us what is right and what is wrong. What is recognised by the society as rightful becomes the basis of rights. That is why the notion of rights changes from time to time and society to society. Two hundred years ago anyone who said that women should have right to vote would have sounded strange. Today not granting them vote in Saudi Arabia appears strange.

When the socially recognised claims are written into law they acquire real force. Otherwise they remain merely as natural or moral rights. The prisoners in Guantanamo Bay had a moral claim not to be tortured or humiliated. But they could not go to anyone to enforce this claim. When law recognises some claims they become

enforceable. We can then demand their application. When fellow citizens or the government do not respect these rights we call it violation or infringement of our rights. In such circumstances citizens can approach courts to protect their rights. So, if we want to call any claim a right, it has to have these three qualities. **Rights are reasonable claims of persons recognised by society and sanctioned by law.**

Why do we need rights in a democracy?

Rights are necessary for the very sustenance of a democracy. In a democracy every citizen has to have the right to vote and the right to be elected to government. For democratic elections to take place, it is necessary that citizens should have the right to express their opinion, form political parties and take part in political activities.

Rights also perform a very special role in a democracy. Rights protect minorities from the oppression of majority. They ensure that the majority cannot do whatever it likes. Rights are guarantees which can be used when things go wrong. Things may go wrong when some citizens may wish to take away the rights of others. This usually happens when those in majority want to dominate those in minority. The government should protect the citizens' rights in such a situation. But sometimes elected governments may not protect or may even attack the rights of their own citizens. That is why 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.



What are the examples of elected governments not protecting or even attacking the rights of their own citizens? Why do they do that?

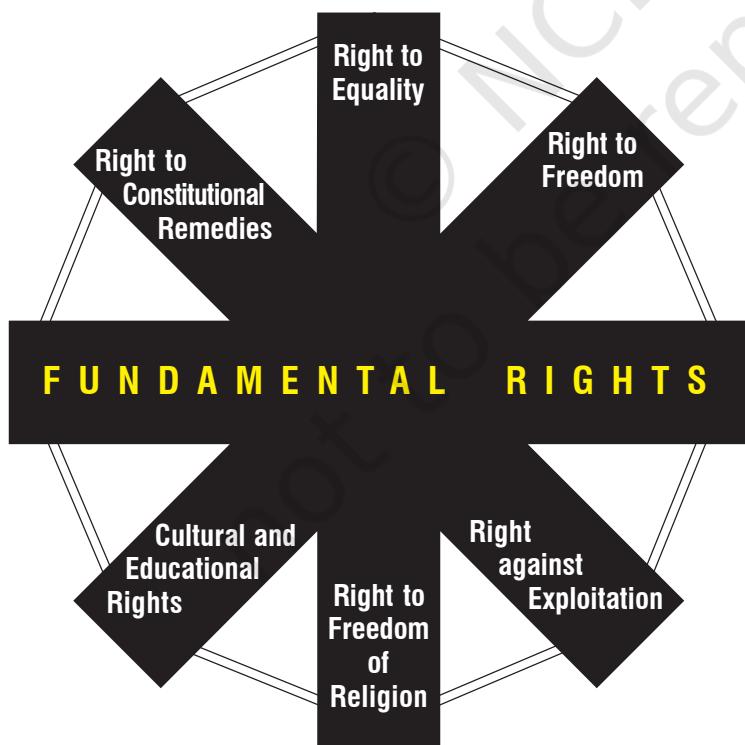
5.3 RIGHTS IN THE INDIAN CONSTITUTION



Everyone knows that the rich can have better lawyers in the courts. What is the point in talking about equality before law?

In India, like most other democracies in the world, these rights are mentioned in the Constitution. Some rights which are fundamental to our life are given a special status. They are called Fundamental Rights. We have already read in Chapter 2 the preamble to our Constitution. It talks about securing for all its citizens equality, liberty and justice. Fundamental Rights put this promise into effect. They are an important basic feature of India's Constitution.

You already know our Constitution provides for six Fundamental Rights. Can you recall these? What exactly do these rights mean for an ordinary citizen? Let us look at these one by one.



Right to Equality

The Constitution says that the government shall not deny to any person in India equality before the law or the equal protection of the laws. 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. There cannot be any distinction between a political leader, government official and an ordinary citizen.

Every citizen, from the Prime Minister to a small farmer in a remote village, is subjected to the same laws. No person can legally claim any special treatment or privilege just because he or she happens to be an important person. For example, a few years ago a former Prime Minister of the country faced a court case on charges of cheating. The court finally declared that he was not guilty. But as long as the case continued, he had to go to the court, give evidence and file papers, just like any other citizen.

This basic position is further clarified in the Constitution by spelling out some implications of the Right to Equality. 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. Similarly, there shall be no restriction with regard to the use of wells, tanks, bathing ghats, roads, playgrounds and places of public resorts maintained by government or dedicated to the use of general public. This might appear very obvious, but it was necessary to

incorporate these rights in the Constitution of our country where the traditional caste system did not allow people from some communities to access all public places.

The same principle applies to public jobs. All citizens have equality of opportunity in matters relating to employment or appointment to any position in the government. No citizen shall be discriminated against or made ineligible for employment on the grounds mentioned above. You have read in Chapter 4 that the Government of India has provided reservations for Scheduled Castes, Scheduled Tribes and Other Backward Classes. Various governments have different schemes for giving preference to women, poor or physically handicapped in some kinds of jobs. Are these reservations against the right to equality? They are not. For equality does not mean giving everyone the same treatment, no matter what they need. Equality means giving everyone an equal opportunity to achieve whatever one is capable of. Sometimes it is necessary to give special treatment to someone in order to ensure equal opportunity. This is what job reservations do. Just to clarify this, the Constitution says that reservations of this kind are not a violation of the Right to Equality.

The principle of non-discrimination extends to social life as well. The Constitution mentions one extreme form of social discrimination, the practice of untouchability, and clearly directs the government to put an end to it. The practice of untouchability has been forbidden in any form. Untouchability here does not only mean refusal to touch people belonging to certain castes. It refers to any belief or social



A C T I V I T Y

- Go to the playground of the school or any stadium and watch a 400 metre race on any track. Why are the competitors in the outer lane placed ahead of those in the inner lane at the starting point of the race? What would happen if all the competitors start the race from the same line? Which of these two would be an equal and fair race? Apply this example to a competition for jobs.
- Observe any big public building. Is there a ramp for physically handicapped? Are there any other facilities that make it possible for physically handicapped to use the building in the same way as any one else? Should these special facilities be provided, if it leads to extra expenditure on the building? Do these special provisions go against the principle of equality?

practice which looks down upon people on account of their birth with certain caste labels. Such practice denies them interaction with others or access to public places as equal citizens. So the Constitution made untouchability a punishable offence.

Many Forms of Untouchability

In 1999, P. Sainath wrote a series of newsreports in *The Hindu* describing untouchability and caste discrimination that was still being practiced against Dalits or persons belonging to Scheduled Castes. He travelled to various parts of the country and found that in many places:

- Tea stalls kept two kinds of cups, one for Dalits one for others;
- Barbers refused to serve dalit clients;
- Dalit students were made to sit separately in the classroom or drink water from separate picher;
- Dalit grooms were not allowed to ride a horse in the wedding procession; and
- Dalits were not allowed to use common handpump or if they did, the handpump was washed to purify it.

All these fall under the definition of untouchability. Can you think of some examples from your own area?

Right to Freedom

Freedom means absence of constraints. In practical life it means absence of interference in our affairs by others – be it other individuals or the government. We want to live in society, but we want to be free. We want to do things in the way we want to do them. Others should not dictate us what we should do. So, under the Indian Constitution all citizens have the right to

- Freedom of speech and expression
- Assembly in a peaceful manner
- Form associations and unions
- Move freely throughout the country
- Reside in any part of the country, and
- Practice any profession, or to carry on any occupation, trade or business.

You should remember that every citizen has the right to all these freedoms. That means you cannot exercise your freedom in such a



Should the freedom of expression be extended to those who are spreading wrong and narrow-minded ideas? Should they be allowed to confuse the public?

manner that violates others' right to freedom. Your freedoms should not cause public nuisance or disorder. You are free to do everything which injures no one else. Freedom is not unlimited licence to do what one wants. Accordingly, the government can impose certain reasonable restrictions on our freedoms in the larger interests of the society.

Freedom of speech and expression is one of the essential features of any democracy. Our ideas and personality develop only when we are able to freely communicate with others. You may think differently from others. Even if a hundred people think in one way, you should have the freedom to think differently and express your views accordingly. You may disagree with a policy of government or activities of an association. You are free to criticise the government or the activities of the association in your conversations with parents, friends and relatives. You may publicise your views through a pamphlet, magazine or newspaper. You can do it through paintings, poetry or songs. However, you cannot use this freedom to instigate violence against others. You cannot use it to incite people to rebel against government.

Irfan Khan



Neither can you use it to defame others by saying false and mean things that cause damage to a person's reputation.

Citizens have the freedom to hold meetings, processions, rallies and demonstrations on any issue.

They may want to discuss a problem, exchange ideas, mobilise public support to a cause, or seek votes for a candidate or party in an election. But such meetings have to be peaceful. They should not lead to public disorder or breach of peace in society. Those who participate in these activities and meetings should not carry weapons with them. Citizens also can form associations. For example workers in a factory can form a workers' union to promote their interests. Some people in a town may come together to form an association to campaign against corruption or pollution.

As citizens we have the **freedom to travel to any part of the country**.

We are free to reside and settle in any part of the territory of India. Let us say a person who belongs to the state of Assam wants to start a business in Hyderabad. He may not have any connection with that city, he may not have even seen it ever. Yet as a citizen of India he has the right to set up base there. This right allows lakhs of people to migrate from villages to towns and from poorer regions of the countries to prosperous regions and big cities. The same freedom extends to choice of occupations. No one can force you to do or not to do a certain job. Women cannot be told that some kinds of occupations are not for them. People from deprived castes cannot be kept to their traditional occupations.

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. Even when they do, they have to follow some procedures:

- A person who is arrested and detained in custody will have to be informed of the reasons for such arrest and detention.
- A person who is arrested and detained 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 defence.



Let us recall the cases of Guantanamo Bay and Kosovo. The victims in both these cases faced a threat to the most basic of all liberties, the protection of individual life and personal liberty.



Are these cases instances of violation of right to freedom? If yes, which constitutional provision does each of these violate?

- The government of India banned Salman Rushdie's book *Satanic Verses* on the ground that it was disrespectful to Prophet Mohammed and was likely to hurt the feelings of Muslim community.
- Every film has to be approved by the Censor Board of the government before it can be shown to the public. But there is no such restriction if the same story is published in a book or a magazine.
- The government is considering a proposal that there will be industrial zones or sectors of economy where workers will not be allowed to form unions or go on strike.
- City administration has imposed a ban on use of public microphones after 10 p.m. in view of the approaching secondary school examinations.

Right against Exploitation

Once the right to liberty and equality is granted, it follows that every citizen has a right not to be exploited. Yet the Constitution makers thought it was necessary to write down certain clear provisions to prevent exploitation of the weaker sections of the society.

The Constitution mentions three specific evils and declares these illegal. First, the Constitution prohibits 'traffic in human beings'. Traffic here means selling and buying of human beings, usually women, for immoral purposes. Second, our Constitution also prohibits forced labour or *begar* 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.

Finally, the Constitution also prohibits child labour. No one can employ a child below the age of fourteen to work in any factory or mine or in any other hazardous work, such as railways and ports. Using this as a basis many laws have been made to prohibit children from working in industries such as beedi making, firecrackers and matches, printing and dyeing.



On the basis of these news reports write a letter to the editor or a petition to a court highlighting the violation of right against exploitation:

A petition was filed in the Madras High Court. The petitioner said a large number of children aged between seven and 12 were taken from villages in Salem district and sold at auctions at Olur Nagar in Kerala's Thrissur district. The petitioner requested the courts to order the government to check these facts.
(March 2005)

Children, from the age of five, were employed in the iron ore mines in the Hospet, Sandur and the Ikal areas in Karnataka. Children were forced to carry out digging, breaking stones, loading, dumping, transporting and processing of iron ore with no safety equipment, fixed wages and working hours. They handled a high-level of toxic wastes and were exposed to mine dust, which was above the permissible level. The school dropout rate in the region was very high. **(May 2005)**

The latest annual survey conducted by the National Sample Survey Organisation found that the number of female child labourers was growing both in rural and urban areas. The survey revealed there were 41 female child labourers per thousand worker population in rural areas as against the previous figure of 34 per thousand. The figure for male child had remained at 31. **(April 2005)**



A C T I V I T Y

Do you know what the minimum wages in your state are? If not, can you find out? Speak to five people doing different types of work in your neighbourhood and find out if they are earning the minimum wages or not. Ask them if they know what the minimum wages are. Ask them if men and women are getting the same wages.

Right to Freedom of Religion

Right to freedom includes right to freedom of religion as well. In this case too, the Constitution makers were very particular to state it clearly. You have already read in Chapter 2 that India is a secular state. Most people in India, like anywhere else in the world, follow different religions. Some may not believe in any religion. Secularism is based on the idea that the state is concerned only with relations among human beings, and not with the relation between human beings and God. A secular state is one that does not establish any one religion as official religion. Indian secularism practices an attitude of a principled and equal distance from all religions. The state has to be neutral and impartial in dealing with all religions.

Every person has a **right to profess, practice and propagate the religion** he or she believes in. Every religious group or sect is free to manage its religious affairs. A right to propagate one's religion, however, does not mean that a person has right to compel another person to convert into his religion by means of force, fraud, inducement or allurement. Of course, a person is free to change religion on his or her own will. Freedom to practice religion does not mean that a person can do whatever he wants in the name of

religion. For example, one cannot sacrifice animals or human beings as offerings to supernatural forces or gods. Religious practices which treat women as inferior or those that infringe women's freedom are not allowed. For example, one cannot force a widow to shave head or wear white clothes.

A secular state is one that does not confer any privilege or favour on any particular religion. Nor does it punish or discriminate against people on the basis of religion they follow. Thus the government cannot compel any person to pay any taxes for the promotion or maintenance of any particular religion or religious institution. There shall be no religious instruction in the government educational institutions. In educational institutions managed by private bodies no person shall be compelled to take part in any religious instruction or to attend any religious worship.



The Constitution does not give people their religion. Then how can it give people the right to practise their religion?

Cultural and Educational Rights

You might wonder why the Constitution makers were so particular in providing written guarantees of the rights of the minorities. Why are there no special guarantees for the majority? Well, for the simple reason that the working of democracy gives power to the majority. It is the language, culture and religion of minorities that needs special protection. Otherwise, they may get neglected or undermined under the impact of the language, religion and culture of the majority.

That is why the Constitution specifies the cultural and educational rights of the minorities:

- 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 ground of religion or language.
- All minorities have the right to establish and administer educational institutions of their choice. Here minority does not mean only religious minority at the national

level. In some places people speaking a particular language are in majority; people speaking a different language are in a minority. For example, Telugu speaking people form a majority in Andhra Pradesh. But they are a minority in the neighbouring State of Karnataka. Sikhs constitute a majority in Punjab. But they are a minority in Rajasthan, Haryana and Delhi.

CHECK YOUR PROGRESS

Read these news reports and identify the right that is being debated in each of these cases:

- An emergency session of the Shiromani Gurdwara Parbandhak Committee (SGPC) rejected the proposal to form a separate body to manage the affairs of Sikh shrines in Haryana. It warned the government that the Sikh community would not tolerate any interference in their religious affairs. (June 2005)
- The Allahabad High Court quashed the Central law, which gave Aligarh Muslim University its minority status, and held illegal the reservation of seats for Muslims in its postgraduate medical courses. (January 2006)
- The Rajasthan Government has decided to enact an anti-conversion law. Christian leaders have said that the Bill would aggravate the sense of insecurity and fear in the minds of minorities. (March 2005)

How can we secure these rights?

If rights are like guarantees, they are of no use if there is no one to honour them. The fundamental rights in the Constitution are important because they are enforceable. We have a right to seek the enforcement of the above mentioned rights. This is called the **Right to Constitutional Remedies**. This itself is a Fundamental Right. This right makes other rights effective. It is possible that sometimes our rights may be violated by fellow citizens, private bodies or by the government. When any of our rights are violated we can seek remedy through courts. If it is a Fundamental Right we can directly approach the Supreme Court or the High Court of a state. That is why Dr. Ambedkar called the Right to Constitutional Remedies, 'the heart and soul' of our Constitution.



Can the President of India stop you from approaching the Supreme Court to secure your fundamental rights?

Fundamental Rights are guaranteed against the actions of the Legislatures, the Executive, and any other authorities instituted by the government. There can be no law or action that violates 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. We can challenge such laws of the central and state governments, the policies and actions of the government or the governmental organisations like the nationalised banks or electricity boards. Courts also enforce the Fundamental Rights against private individuals and bodies. The Supreme Court and High Courts have the power to issue directions, orders or **writs** for the enforcement of the Fundamental Rights. They can also award compensation to the



National Human Rights Commission

Do you notice references to the National Human Rights Commission (NHRC) in the news collage on this page? These references reflect the growing awareness of human rights and struggles for human dignity. Many cases of human rights violations in diverse fields, for instance, Gujarat riots, are being brought to the public notice from across India. Human rights organisations and the media often criticise government agencies for not seriously pursuing these cases or catching the culprits.

Someone had to intervene on behalf of the victims. This is where the National Human Rights Commission stepped in. This is an independent commission set up by law in 1993. Like judiciary, the Commission is independent of the government. The Commission is appointed by the President and includes retired judges, officers and eminent citizens. Yet it does not have the burden of deciding court cases. So it can focus on helping the victims secure their human rights. These include all the rights granted to the citizens by the Constitution. For NHRC human rights also include the rights mentioned in the UN sponsored international treaties that India has signed.

The NHRC cannot by itself punish the guilty. That is the responsibility of courts. The NHRC is there to make independent and credible inquiry into any case of violation of human rights. It also inquires into any case of abetment of such violation or negligence in controlling it by any government officer and takes other general steps to promote human rights in the country. The Commission presents its findings and recommendations to the government or intervene in the court on behalf of the victims. It has wide ranging powers to carry out its inquiry. Like any court it can **summon** witnesses, question any government official, demand any official paper, visit any prison for inspection or send its own team for on-the-spot inquiry.

Any citizen of India can write a letter to this address to complain against the violation of human rights: **National Human Rights Commission**, G.P.O. Complex, INA, New Delhi 110023. There is no fee or any formal procedure to approach the NHRC. Like NHRC, there are State Human Rights Commissions in 26 states of the country (as on 10 December 2018). For more details, visit <http://www.nhrc.nic.in>

victims and punishment to the violators. We have already seen in Chapter 4 that the judiciary in our country is independent of the government and the parliament. We also noted that our judiciary is very powerful and can do whatever is needed to protect the rights of the citizens.

In case of any violation of a Fundamental Right the aggrieved person can go to a court for remedy. But now, any person can go to court against the violation of the Fundamental Right, 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 a High Court for the protection of public interest against a particular law or action of the government. One can write to the judges even on a postcard. The court will take up the matter if the judges find it in public interest.



A C T I V I T Y

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

5.4 EXPANDING SCOPE OF RIGHTS



Are these rights only for adults?
Which of these rights are available to children?

We began this chapter by discussing the significance of rights. In much of the chapter we have focussed only on Fundamental Rights in the Constitution. You might think that Fundamental Rights granted by the Constitution are the only rights citizens have. This is not true. While Fundamental Rights are the source of all rights, our Constitution and law offer a wider range of rights. Over the years the scope of rights has expanded.

Sometimes it leads to expansion in the legal rights that the citizen can enjoy. From time to time, the courts gave judgments to expand the scope of rights. Certain rights like right to freedom of press, right to information, and right to education are derived from the Fundamental Rights. Now school education has become a right for Indian citizens. The governments are responsible for providing free and compulsory education to all children up to the age of 14 years. Parliament has enacted a law giving the right to

information to the citizens. This Act was made under the Fundamental Right to freedom of thought and expression. We have a right to seek information from government offices. Recently the Supreme Court has expanded the meaning of the right to life to include the right to food. Also, rights are not limited only to Fundamental Rights as enumerated in the Constitution. Constitution provides many more rights, which may not be Fundamental Rights. For example the right to property is not a Fundamental Right but it is a constitutional right. Right to vote in elections is an important constitutional right.

Sometimes the expansion takes place in what is called human rights. These are universal moral claims that may or may not have been recognised by law. In that sense these claims are not rights going by the definition that we presented earlier. With the expansion of democracy all over the world, there is greater pressure on governments to accept these claims.

Some international **covenants** have also contributed to the expansion of rights.

International Covenant on Economic, Social and Cultural Rights

This international covenant recognises many rights that are not directly a part of the Fundamental Rights in the Indian Constitution. This has not yet become an international treaty. But human right activists all over the world see this as a standard of human rights. These include:

- right to work: 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: medical care during illness, special care for women during childbirth and prevention of epidemics
- right to education: free and compulsory primary education, equal access to higher education.

Thus the scope of rights has been expanding and new rights are evolving over time. They are result of struggle of the people. New rights emerge as societies develop or as new constitutions are made. The Constitution of South Africa guarantees its citizens several kinds of new rights:

- Right to privacy, so that citizens or their home cannot be searched, their phones cannot be tapped, their communication cannot be opened.
- Right to an environment that is not harmful to their health or well-being;
- Right to have access to adequate housing.
- Right to have access to health care services, sufficient food and water; no one may be refused emergency medical treatment.

Many people think that the right to work, right to health, right to minimum livelihood and right to privacy should be made fundamental rights in India as well. What do you think?

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

Claim: Demand for legal or moral entitlements a person makes on fellow citizens, society or the government.

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 statement.

Dalit: A person who belongs to the castes which were considered low and not touchable by others. Dalits are also known by other names such as the Scheduled Castes, Depressed Classes etc.

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

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

Summon: An order issued by a court asking a person to appear before it.

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



- 1** Which of the following is not an instance of an exercise of a fundamental right?
a Workers from Bihar go to the Punjab to work on the farms
b Christian missions set up a chain of missionary 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?
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 the following rights is available under the Indian Constitution?
a Right to work
b Right to adequate livelihood
c Right to protect one's culture
d Right to privacy
- 4** Name the Fundamental Right under which each of the following rights falls:
a Freedom to propagate one's religion
b Right to life
c Abolition of untouchability
d Ban on bonded labour
- 5** Which of these statements about the relationship between democracy and rights is more valid? Give reasons for your preference.
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.
- 6** Are these restrictions on the right to freedom justified? Give reasons for your answer.
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.
- 7** Manoj went to a college to apply for admission into an MBA course. The clerk refused to take his application and said "You, the son of a sweeper, wish to be a manager! Has anyone done this job in your community? Go to the municipality office and apply for a sweeper's position". Which of Manoj's fundamental rights are being violated in this instance? Spell these out in a letter from Manoj to the district collector.

exercises

- 8 When Madhurima went to the property registration office, the Registrar told her, "You can't write your name as Madhurima Banerjee d/o A. K. Banerjee. You are married, so you must give your husband's name. Your husband's surname is Rao. So your name should be changed to Madhurima Rao." She did not agree. She said "If my husband's name has not changed after marriage, why should mine?" In your opinion who is right in this dispute? And why?
- 9 Thousands of tribals and other forest dwellers gathered at Piparia in Hoshangabad district in Madhya Pradesh to protest against their proposed displacement from the Satpura National Park, Bori Wildlife Sanctuary and Panchmarhi Wildlife Sanctuary. They argue that such a displacement is an attack on their livelihood and beliefs. Government claims that their displacement is essential for the development of the area and for protection of wildlife. Write a petition on behalf of the forest dwellers to the NHRC, a response from the government and a report of the NHRC on this matter.
- 10 Draw a web interconnecting different rights discussed in this chapter. For example right to freedom of movement is connected to the freedom of occupation. One reason for this is that freedom of movement enables a person to go to place of work within one's village or city or to another village, city or state. Similarly this right can be used for pilgrimage, connected with freedom to follow one's religion. Draw a circle for each right and mark arrows that show connection between or among different rights. For each arrow, give an example that shows the linkage.

In every chapter we have done an exercise on reading the newspaper. Let us now try to write for the newspaper. Take any example from the reports discussed in this chapter or any other local example that you are familiar with and write the following:

- Letter to the editor highlighting a case of human rights violation.
- Press release by a human rights organisation.
- A headline and a news item concerning a Supreme Court order related to Fundamental Rights.
- Editorial on growing incidents of custodial violence.

Put these together and make a newspaper for your school notice board.

