

Chapter Two

RIGHTS IN THE INDIAN

CONSTITUTION

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1. Introduction to Rights:

- Rights are essential for individuals in a democratic society to ensure their dignity, freedom, and well-being.
- The Indian Constitution recognizes and guarantees fundamental rights to its citizens.

2. Kinds of Rights:

- **Fundamental Rights:** These are enshrined in Part III of the Indian Constitution and protect individual liberties and equality.
- **Legal Rights:** These are rights recognized by law and can be enforced in a court.
- **Constitutional Rights:** Rights that are protected by the constitution but may not always be enforceable through courts.

- **Human Rights:** Rights recognized internationally as essential to human dignity and are often incorporated into a nation's legal framework.

3. Enforceability of Rights:

- Fundamental Rights are justiciable, meaning citizens can approach the courts for their enforcement.
- The Indian judiciary plays a crucial role in upholding and safeguarding these rights.

4. Historical Background:

- The demand for fundamental rights in India was influenced by the struggle for independence.
- Leaders like Mahatma Gandhi emphasized the importance of individual rights in a free India.

5. Fundamental Rights in the Indian Constitution:

- These rights are contained in Articles 12 to 35 of the Indian Constitution.
- They include the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, and the right to constitutional remedies.

6. Right to Equality:

- Includes equality before the law, prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.
- The state is also prohibited from discriminating in government jobs.

7. Right to Freedom:

- Includes freedom of speech and expression, freedom to assemble peacefully, freedom to form associations or unions, freedom of movement, and freedom to reside and settle in any part of India.

8. Right Against Exploitation:

- Prohibits all forms of forced labor and child labor.
- Trafficking and exploitation of human beings for forced labor are prohibited.

9. Right to Freedom of Religion:

- Guarantees the freedom to practice, profess, and propagate any religion.
- The state is mandated to maintain religious neutrality and not promote any religion.

10. Cultural and Educational Rights: - Provides minority communities with the right to establish and administer educational institutions. - Preserves the right of minorities to conserve their culture, language, and script.

11. Right to Constitutional Remedies: - Ensures that citizens can move the court (Supreme Court or High Court) if their fundamental rights are violated. - The Supreme Court can issue writs for the enforcement of rights.

12. Restrictions on Fundamental Rights: - Fundamental rights are not absolute and can be restricted by the state in the interest of public order, security, morality, and other specified grounds. - The restrictions must be reasonable and not violate the basic structure of the Constitution.

13. Conclusion: - Fundamental rights are the cornerstone of India's democratic framework. - They protect citizens from arbitrary state actions and guarantee individual freedoms and equality.

The courts can issue various special orders known as writs.

□ Habeas corpus: A writ of habeas corpus means that the court orders that the arrested person should be presented before it. It can also order to set free an arrested person if the manner or grounds of arrest are not lawful or satisfactory.

□ Mandamus: This writ is issued when the court finds that a particular office holder is not doing legal duty and thereby is infringing on the right of an individual.

□ Prohibition: This writ is issued by a higher court (High Court or Supreme Court) when a lower court has considered a case going beyond its jurisdiction.

□ Quo Warranto: If the court finds that a person is holding office but is not entitled to hold that office, it issues the writ of quo warranto and restricts that person from acting as an office holder.

□ Certiorari: Under this writ, the court orders a lower court or another authority to transfer a matter pending before it to the higher authority or court.

1. Write true or false against each of these statements:

a) A Bill of Rights lays down the rights enjoyed by the people of a country.

- b) A Bill of Rights protects the liberties of an individual.
- c) Every country of the world has a Bill of Rights.
- d) The Constitution guarantees remedy against violation of Rights.

Answer

- a) True - A Bill of Rights lays down the rights enjoyed by the people of a country.
- b) True - A Bill of Rights protects the liberties of an individual.
- c) False - Not every country in the world has a Bill of Rights; the presence of such a document varies by country.
- d) True - The Constitution guarantees a remedy against the violation of rights through provisions like the Right to Constitutional Remedies.

2. Which of the following is the best description of Fundamental Rights?

- a) All the rights an individual should have.
- b) All the rights given to citizens by law.
- c) The rights given and protected by the Constitution.
- d) The rights given by the Constitution that cannot ever be restricted.

Answer

- c) The rights given and protected by the Constitution.

3. Read the following situations. Which Fundamental Right is being used or violated in each case and how?

a) Overweight male cabin crew are allowed to get promotion in the national airlines but their women colleagues who gain weight are penalised.

Answer

a) Violation of the Right to Equality - Discrimination based on gender, as overweight male cabin crew are promoted while overweight women are penalized.

b) A director makes a documentary film that criticises the policies of the government.

Answer

b) Exercise of the Right to Freedom of Speech and Expression - The director making a documentary critical of government policies is exercising this right.

c) People displaced by a big dam take out a rally demanding rehabilitation.

Answer

c) Exercise of the Right to Freedom of Assembly - People displaced by a dam taking out a rally to demand rehabilitation is an exercise of this right.

d) Andhra society runs Telugu medium schools outside Andhra Pradesh.

Answer

d) Exercise of the Cultural and Educational Rights - Andhra society running Telugu medium schools outside Andhra Pradesh to promote its language and culture.

4. Which of the following is a correct interpretation of the Cultural and Educational Rights?

- a) Only children belonging to the minority group that has opened educational institution can study there.
- b) Government schools must ensure that children of the minority group will be introduced to their belief and culture.
- c) Linguistic and religious minorities can open schools for their children and keep it reserved for them.
- d) Linguistic and religious minorities can demand that their children must not study in any educational institution except those managed by their own community.

Answer

c) Linguistic and religious minorities can open schools for their children and keep them reserved for them.

5. Which of the following is a violation of Fundamental Rights and why?

- a) Not paying minimum wages - Violation of the Right to Equal Remuneration as it discriminates against workers by not providing fair wages.
- b) Banning of a book - Potential violation of the Right to Freedom of Speech and Expression if it restricts the author's freedom to express their views.
- c) Banning of loudspeakers after 9 pm - Balancing act between individual freedom (noise control) and the Right to Freedom of Speech and Expression.

d) Making a speech - Not a violation of Fundamental Rights; it is an exercise of the Right to Freedom of Speech and Expression.

6. An activist working among the poor says that the poor don't need Fundamental Rights. What they need are Directive Principles to be made legally binding. Do you agree with this? Give your reasons.

- It's essential to have both Fundamental Rights and Directive Principles. Fundamental Rights protect individuals from state abuse and ensure their immediate welfare. However, Directive Principles provide a long-term vision for social and economic justice. Legal enforceability of Directive Principles can help ensure that policies are designed with the welfare of marginalized sections in mind. Therefore, a balance of both is necessary to ensure holistic development.

7. Several reports show that caste groups previously associated with scavenging are forced to continue in this job. Those in positions of authority refuse to give them any other job. Their children are discouraged from pursuing education. Which of their Fundamental Rights are being violated in this instance?

- The Fundamental Rights being violated include:
 - Right to Equality (discrimination based on caste).
 - Right to Freedom of Choice of Profession (forcing them into scavenging).

- Right to Freedom of Education (discouraging their children from pursuing education).

8. a. Which different rights does this case involve? How are these rights interlinked?

- This case involves several rights, including:
 - Right to Food (availability of food grains).
 - Right to Information (knowing about ration quantities).
 - Right to Life (access to food and information).
 - Right to Equality (fair distribution of food).
 - Right to Education (awareness about ration card entitlements).
- These rights are interlinked because they collectively contribute to an individual's overall well-being and quality of life.

b. Should these rights form part of the right to life?

- Yes, these rights should be considered as part of the Right to Life. The Right to Life encompasses not just physical existence but also the right to live with dignity, which includes access to food, education, and information to make informed choices.

9. Read the statement by Somnath Lahiri in the Constituent Assembly quoted in this chapter. Do you agree with him? If yes, give instances to prove it. If not, give arguments against his position.

- The specific statement by Somnath Lahiri isn't provided, so a direct response is not possible without the full context of the statement.

10. Which of the Fundamental Rights is in your opinion the most important right? Summarize its provisions and give arguments to show why it is most important.

- The Right to Equality (Article 14 to 18) can be considered one of the most important Fundamental Rights because it lays the foundation for ensuring fairness, justice, and non-discrimination in all aspects of life. This right prohibits discrimination on various grounds such as religion, race, caste, sex, and place of birth. It promotes social inclusivity and the idea that all citizens are equal before the law.

Arguments for its importance:

- **Basis for Other Rights:** The Right to Equality forms the basis for many other rights, ensuring that discrimination does not hinder the enjoyment of other fundamental freedoms.
- **Social Justice:** It is crucial for addressing historical injustices, particularly in a diverse society like India, where discrimination has been pervasive.
- **Equal Opportunity:** It enables citizens to access opportunities and resources without prejudice, contributing to a more equitable society.
- **Foundational to Democracy:** Equality is a core principle of democracy, and without it, the functioning of a democratic system can be compromised.

While all Fundamental Rights are important, the Right to Equality is foundational in ensuring that other rights can be exercised without bias or prejudice.

"Relationship Between Fundamental Rights and Directive Principles,"

1. Introduction:

- The Indian Constitution incorporates both Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV).
- Understanding the relationship between these two is essential for comprehending the Indian constitutional framework.

2. Fundamental Rights (FRs):

- Fundamental Rights are justiciable, meaning citizens can approach the courts if these rights are violated.
- They are enforceable and are aimed at protecting individual liberties and ensuring equality.
- Examples include the Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and the Right to Constitutional Remedies.

3. Directive Principles of State Policy (DPSPs):

- Directive Principles are non-justiciable, meaning they are not enforceable through the courts.
- They are policy directives for the government and aim to establish a welfare state and promote social and economic justice.
- Examples include the right to work, right to education, and the protection of the environment.

4. Relationship Between FRs and DPSPs:

- Fundamental Rights and Directive Principles are interrelated and complementary.
- They are designed to work together to create a just and equitable society.

5. Harmony Between FRs and DPSPs:

- The Constitution envisions harmony between these two sets of provisions.
- FRs and DPSPs should be interpreted in a way that advances the objectives of both without violating the other.

6. Examples of Harmony:

- Right to Education (FR and DPSP): The Right to Education (Article 21A) makes education a fundamental right while also working towards the directive principle of achieving universal elementary education (DPSP).
- Equal Pay for Equal Work (FR and DPSP): The principle of equal pay for equal work (Article 39(d)) aligns with the Right to Equality (FR) and social justice.

7. Conflicts and Resolutions:

- In cases of conflict between FRs and DPSPs, the Supreme Court may have to balance competing rights and principles.
- The court aims to uphold the spirit and basic structure of the Constitution while ensuring social and economic justice.

8. State's Duty to Apply DPSPs:

- While DPSPs are non-justiciable, the state has a moral and constitutional duty to apply them.
- They guide policymaking and legislative actions and provide a framework for social and economic development.

9. Conclusion:

- The relationship between Fundamental Rights and Directive Principles is not one of conflict but of complementarity.
- Both sets of provisions work together to create a just, equitable, and welfare-oriented society, as envisioned by the Indian Constitution.

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Article 16 (4): Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Right to Equality

- Equality before law – equal protection of laws
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth – equal access to shops, hotels, wells, tanks, bathing ghats, roads etc.
- Equality of opportunity in public employment
- Abolition of Untouchability
- Abolition of titles

Right to Freedom

Protection of Right to

- freedom of speech and expression;
- assemble peacefully;
- form associations/unions;
- move freely throughout the territory of India;
- reside and settle in any part of India;
- practise any profession, or to carry on any occupation, trade or business.

Protection in respect of conviction for offences

- Right to life and personal liberty
- Right to education
- Protection against arrest and detention in certain cases

Right against Exploitation

- Prohibition of traffic in human beings and forced labour

- Prohibition of employment of children in hazardous jobs

Right to Freedom of Religion

- Freedom of conscience and free profession, practice and propagation of religion
- Freedom to manage religious affairs
- Freedom to pay taxes for promotion of any particular religion
- Freedom to attend religious instruction or worship in certain educational institutions

Cultural and Educational Rights

- Protection of language, culture of minorities
- Right of minorities to establish educational institutions

Right to Constitutional Remedies

- Right to move the courts to issue directions/orders/writs for enforcement of rights

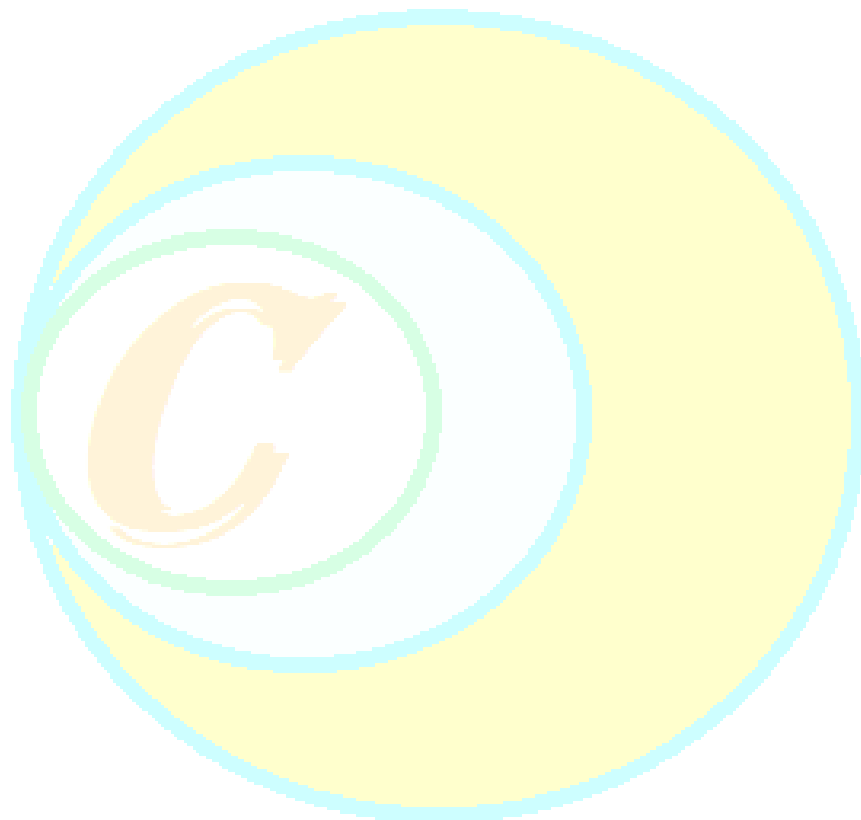
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