



Estd-1973

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FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES

Now-a-days, terms like 'right to education', 'right to information' and 'right to protest peacefully' are being used quite frequently. Many a time, you also feel that you have certain rights. Simultaneously, you may have been told by some one, may be your teacher, that you have certain duties towards other individuals, society, nation or the humanity. But do you think that every human being enjoys the rights or everyone performs the duties? Perhaps not. But everyone will agree that there are certain rights that must be enjoyed by individuals. Particularly, in a democratic country like ours, there are rights that must be guaranteed to every citizen. Similarly there are certain duties that must be performed by democratic citizens. Which is why, the Constitution of India guarantees some rights to its citizens. They are known as Fundamental Rights. Besides, the Indian Constitution also enlists certain core duties that every citizen is expected to perform. These are known as Fundamental Duties. This lesson aims at discussing the details about the Fundamental Rights and Fundamental Duties.

MEANING AND IMPORTANCE OF RIGHTS AND DUTIES :

We often talk about rights, but do you know what does the term 'rights' mean? Rights are rules of interaction between people. They place constraints and obligations upon the actions of the state and individuals or groups. For example, if one has a right to life, this means that others do not have the liberty to kill him or her. Rights are defined as claims of an individual that are essential for the development of his or her own self and that are recognized by society or State. These are legal, social, or ethical principles of freedom or entitlement and are the fundamental normative rules about what is allowed to people or owed to people, according to some legal system, social convention, or ethical theory. Rights are often considered fundamental to civilization, being regarded as established pillars of society and culture. But the rights have real meaning only if individuals perform duties. A duty is something that someone is expected or required to do. Parents, for example, have a duty to take care of their child. You have duties towards your parents. A teacher has a duty to educate students. In fact, rights and duties are two wheels on which the chariot of life moves forward smoothly. Life can become smoother if rights and duties go hand in hand and become complementary to each other. Rights are what we want others to do for us whereas the duties are those acts which we should perform for others. Thus, a right comes with an obligation to show respect for the rights of others. The obligations that accompany rights are in the form of duties. If we have the right to enjoy public facilities like transport or health services, it becomes our duty to allow others to avail the same. If we have the right to freedom, it becomes our duty not to misuse this and harm others.

FUNDAMENTAL RIGHTS: As we have seen, rights are claims that are essential for the existence and development of individuals. In that sense there will a long list of rights. Whereas all these are recognized by the society, some of the most important rights are recognized by the State and enshrined in the Constitution. Such rights are called fundamental rights. These rights are fundamental because of two reasons. First, these are mentioned in the Constitution which guarantees them and the second, these are justiciable, i.e. enforceable through courts. Being



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justiciable means that in case of their violation, the individual can approach courts for their protection. If a government enacts a law that restricts any of these rights, it will be declared invalid by courts. Such rights are provided in Part III of the Indian Constitution. The Constitution guarantees six fundamental rights to Indian citizens as follows:

- (i) right to equality
- (ii) right to freedom
- (iii) right against exploitation
- (iv) right to freedom of religion
- (v) cultural and educational rights and
- (vi) right to constitutional remedies.

RIGHT TO EQUALITY

Right to equality is very important in a society like ours. The purpose of this right is to establish the rule of law where all the citizens should be treated equal before the law. It has five provisions (Articles 14-18) to provide for equality before law or for the protection of law to all the persons in India and also to prohibit discrimination on the grounds of religion, race, caste, sex or place of birth.

(i) Equality before Law: The Constitution guarantees that all citizens will be equal before law. It means that everyone will be equally protected by the laws of the country. No person is above law. It means that if two persons commit the same crime, both of them will get the same punishment without any discrimination.

(ii) No Discrimination on the basis of Religion, Race, Caste, Sex or Place of Birth: The State cannot discriminate against a citizen on the basis of religion, race, caste, sex or place of birth. This is necessary to bring about social equality. Every citizen of India has equal access to shops, restaurants, places of public entertainment or in the use of wells, tanks or roads without any discrimination. However, the State can make special provisions or concessions for women and children.

(iii) Equality of Opportunity to all Citizens in matter of Public Employment: The State cannot discriminate against anyone in the matter of public employment. All citizens can apply and become employees of the State. Merits and qualifications will be the basis of employment. However, there are some exceptions to this right. There is a special provision for the reservation of posts for citizens belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes(OBCs).

(iv) Abolition of Untouchability: Practising untouchability in any form has been made a punishable offence under the law. This provision is an effort to uplift the social status of millions of Indians who had been looked down upon and kept at a distance because of either their caste or the nature of their profession. But, it is really very unfortunate that despite constitutional provisions, this social evil continues even today.

(v) Abolition of Titles: All the British titles like Sir (Knighthood) or Rai Bahadur which were given to the British loyalists during the British rule, have been abolished because they created distinctions of artificial nature. However, the President of India can confer civil and military awards to those who have rendered meritorious service to the nation in different fields. The civil awards such as Bharat Ratna, Padma Vibhushan, Padam Bhushan and Padma Shri and the military awards like Veer Chakra, Paramveer Chakra, Ashok Chakra are conferred.

Right to Freedom



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We will agree that the freedom is the most cherished desire of every living being. Human beings definitely want and need freedom. We also want to have freedom. The Constitution of India provides Right to Freedom to all its citizens. This Right is stipulated under Articles 19-22. The following are the four categories of Rights to Freedom:

I Six Freedoms(6F): Article 19 of the Constitution provides for the following six freedoms:

- (a) Freedom of speech and expression
- (b) Freedom to assemble peacefully and without arms
- (c) Freedom to form Associations and Unions
- (d) Freedom to move freely throughout the territory of India
- (e) Freedom to reside and settle in any part of India
- (f) Freedom to practise any profession or to carry on any occupation, trade or business

The purpose of providing these freedoms is to build and maintain an environment for proper functioning of democracy. However, the Constitution has authorized the State to impose certain reasonable restrictions on each of them:

1. Restrictions may be put on the Right to Freedom of speech and expression in the interests of the sovereignty, integrity and security of India, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

2. Right to assemble peacefully and without arms may be restricted in the interests of the sovereignty and integrity of India or public order.

3. Right to form associations or unions may have restrictions in the interests of the sovereignty and integrity of India, public order or morality.

4. Right to move freely throughout the territory of India and to reside and settle in any part of India may also be restricted in the interest of the general public or for the protection of the interests of any Scheduled Tribe.

5. Right to practise any profession or to carry on any occupation, trade or business may have restrictions in the interests of the general public. The State is also permitted to lay down the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

II. Protection in respect of conviction for offences: Article 20 of the Constitution provides for the protection in respect of conviction for offences. No one can be convicted for an act that was not an offence at the time of its commission, and no one can be given punishment greater than what was provided in the law prevalent at the time of its commission. Also, no one can be prosecuted and punished for the same offence more than once and can be forced to give witness against his or her own self.

III. Protection of life and personal liberty: As provided in Article 21, no one can be deprived of his or her life or personal liberty except according to the procedure established by law.

IV. Protection against arrest and detention in certain cases: It is provided in Article 22 that whenever a person is arrested, he or she should be informed, as soon as it is possible, of the grounds for arrest and should be allowed to consult and to be defended by a legal practitioner of his or her choice. Moreover, arrested person must be produced before the nearest magistrate within 24 hours of such an arrest excepting a person who has been arrested under preventive detention law. The case of the person arrested under preventive detention law has also to be referred to an Advisory Board within a period of three months of his or her arrest.



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Right against Exploitation

Traditionally, the Indian society has been hierarchical that has encouraged exploitation in many forms. Which is why, the Constitution makes provisions against exploitation. The citizens have been guaranteed the right against exploitation through Articles 23 and 24 of the Constitution. These two provisions are:

- 1. Prohibition of traffic in human beings and forced labour:** Traffic in human beings and begar and other similar forms of forced labour are prohibited and any breach of this provision shall be an offence punishable in accordance with law.
- 2. Prohibition of employment of children in factories, etc.:** As the Constitution provides, no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. This right aims at eliminating one of the most serious problems, child labour, that India has been facing since ages. Children are assets of the society. It is their basic right to enjoy a happy childhood and get education. But as shown in the illustration and as you also may have observed, in spite of this constitutional provision, the problem of child labour is still continuing at many places. This malice can be eliminated by creating public opinion against it.

Right to Freedom of Religion

One of the objectives declared in the Preamble is “to secure to all its citizens liberty of belief, faith and worship”. Since India is a multi-religion country, where Hindus, Muslims, Sikhs, Christians and many other communities live together, the Constitution declares India as a ‘secular state’. It means that Indian State has no religion of its own. But it allows full freedom to all the citizens to have faith in any religion and to worship, the way they like. But this should not interfere with the religious beliefs and ways of worship of other fellow beings. This freedom is available to the foreigners as well. In respect of the Right to freedom the Constitution makes the following four provisions under Articles 25-28:

- 1. Freedom of conscience and free profession, practice and propagation of religion:** All persons are equally entitled to freedom of conscience and the right to profess, practise and propagate religion freely. However, it does not mean that one can force another person to convert his/her religion by force or allurement. Also, certain inhuman, illegal and superstitious practices have been banned. Religious practices like sacrificing animals or human beings, for offering to gods and goddesses or to some supernatural forces are not-permissible. Similarly, the law does not permit a widow to get cremated live with her dead husband (voluntarily or forcibly) in the name of Sati Pratha. Forcing the widowed woman not to marry for a second time or to shave her head or to make her wear white clothes are some other social evils being practised in the name of religion. Besides the above stated restrictions, the State also has the power to regulate any economic, financial, political or other secular activities related to religion. The State can also impose restrictions on this right on the grounds of public order, morality and health.
- 2. Freedom to manage religious affairs:** Subject to public order, morality and health, every religious group or any section thereof shall have the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.



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3. Freedom as to the payment of taxes for promotion of any particular religion: No person shall be compelled to pay any tax, the proceeds of which are specifically used in payment of expenses the incurred on the promotion or maintenance of any particular religion or religious sect.

4. Freedom as to attendance at religious instruction or religious worship in certain educational institutions: No religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, it will not apply to an educational institution which is administered by the State but has been established under any trust which requires that religious instruction shall be imparted in such an institution. But no person attending such an institution shall be compelled to take part in any religious instruction that may be imparted there or attend any religious worship that may be conducted there. In case of a minor, the consent of his/her guardian is essential for attending such activities.

Cultural and Educational Rights

India is the largest democracy in the world having diversity of culture, scripts, languages and religions. As we know the democracy is a rule of the majority. But the minorities are also equally important for its successful working. Therefore, protection of language, culture and religion of the minorities becomes essential so that the minorities may not feel neglected or undermined under the impact of the majority rule. Since people take pride in their own culture and language, a special right known as Cultural and Educational Right has been included in the Chapter on Fundamental Rights. In Articles 29-30 two major provisions have been made: 1. Protection of interests of minorities: Any minority group having a distinct language, script or culture of its own shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. 2. Right of minorities to establish and administer educational institutions: All Minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice. In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property would not restrict or abrogate the right guaranteed under that clause. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Right to Constitutional Remedies

Since Fundamental Rights are justiciable, they are just like guarantees. They are enforceable, as every individual has the right to seek the help from courts, if they are violated. But in reality it is not so. Encroachment or violation of Fundamental Right in our day to day life is a matter of great concern. Which is why, our Constitution does not permit the legislature and the executive to curb these rights. It provides legal remedies for the protection of our Fundamental Rights. This is called the Right to Constitutional Remedies stipulated in Article 32. When any of our rights are violated, we can seek justice through courts. We can directly approach the Supreme Court that can issue directions, orders or writs for the enforcement of Fundamental Rights.

Right to Education (RTE)



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The Right to Education is added by introducing a new Article 21A in the Chapter on Fundamental Rights in 2002 by the 86th Constitutional Amendment. It was a long standing demand so that all children in the age group of 6-14 years (and their parents) can claim compulsory and free education as a Fundamental Right. It is a major step forward in making the country free of illiteracy. But this addition remained meaningless, as it could not be enforced until 2009 when the Parliament passed the Right to Education Act, 2009. It is this Act which aims at ensuring that every child who is between 6-14 years of age and is out of the school in India, goes to school and receives quality education, that is his/her right.

FUNDAMENTAL RIGHTS AS HUMAN RIGHTS

You have already read that Fundamental Rights are indeed very essential for the well being of every citizen. We also know that people have always struggled against injustice, exploitation and inequality for the creation of better surroundings, better living conditions and preservation of the human dignity. Efforts to avail such rights to all human beings have been made at the international level also by recognising various rights which are popularly known as Human Rights. The General Assembly of the United Nations adopted Human Rights in 1948 and enshrined them in Universal Declaration of Human Rights about which you will study later. Some of the Human Rights are: Equality before Law, Freedom from Discrimination, Right to Life, Liberty and Personal Security, Right to Free Movement, Right to Education, Right to Marriage and Family, Freedom of Thought, Conscience and Religion, Right to Peaceful Assembly and Association and Right to Participate in the Cultural Life of the Community. If you carefully examine the above mentioned rights, you will realise how important the Human Rights are. That is why, many of the Human Rights have found place in the Chapter on Fundamental Rights in the Indian Constitution. The Human Rights which could not find place under the Fundamental Rights have been included in the Chapter on Directive Principles of State Policy. Moreover, keeping in view the importance of Human Rights, the National Human Rights Commission was founded in 1993 by the Government of India to guarantee that the Indian citizens also enjoy those rights.

Fundamental Duties

After going through the Fundamental Rights, you must have observed and realized that in return for every right, the society expects the citizens to do certain things which are collectively known as duties. Some such important duties have been incorporated in the Indian Constitution also. The original Constitution enforced on 26th January, 1950 did not mention anything about the duties of the citizen. It was expected that the citizens of free India would perform their duties willingly. But things did not go as expected. Therefore, ten Fundamental Duties were added in Part-IV of the Constitution under Article 51-A in the year 1976 through the 42nd Constitutional Amendment. However, whereas Fundamental Rights are justiciable, the Fundamental Duties are non-justiciable. It means that the violation of fundamental duties, i.e. the non-performance of these duties by citizens is not punishable. The following ten duties have been listed in the Constitution of India: 1. to abide by the Constitution and respect its ideals and institutions, the National Flag, National Anthem; 2. to cherish and follow the noble ideals which inspired our national struggle for freedom; 3. to uphold and protect the sovereignty, unity and integrity of



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India; 4. to defend the country and render national service when called upon to do; 5. to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women; 6. to value and preserve the rich heritage of our composite culture; 7. to protect and improve the natural environments including forests, lakes, rivers and wildlife; 8. to develop the scientific temper, humanism and the spirit of inquiry and reform; 9. to safeguard public property and not to use violence; and 10. to serve towards excellence in all spheres of individual and collective activity. Besides, a new duty has been added after the passage of Right to Education Act, 2009. "A parent or guardian has to provide opportunities for the education of his child/ward between the age of six and fourteen years.

Source: nois.ac.in