

Chapter-6

Democratic Rights

In democracy there is the participation of the public. This participation is possible only through individual's rights [for example, right to vote, right to expression, right to information, etc.]. Hence, the rights of an individual is not only a compulsory element for democracy, it is also an associate of democratic politics whose presence regularly display the real nature of a democratic rule.

IMPORTANCE OF RIGHTS:

To know the importance of rights let us begin this chapter with those incidents through which the individual loses his rights. The difficulties and problems coming out of it make us feel immediately that without the rights our life would have been very difficult. This also invites us to know what is the meaning of right? Why do we need them? What is the necessity of getting them or getting them mentioned in the Constitution? which was the first country to take a step in this direction? How much did we have to struggle to get rights placed in our Constitution? After independence what were the rights given to the citizens in our Constitution? we will also see how a common man can achieve these rights. If anyone takes away these rights who will safeguard them and who will implement them?

In the end we shall see why do we need rights in a democracy?

What is the role of rights in maintaining democracy, implementing it and developing it? Today most of the countries are democratic. Has the development and expansion of democracy also expanded the rights? What has our own country, other countries of the world and the United Nations Organisation done for it in the recent years?

Life without Rights

Every day in the newspapers we read that innocent persons have been the victims of the torture exercised on them by the police, the wicked people, the strong and the persons in power. There are news of such prisoners who pass the major time of their life in prisons because of the delay in justice. The prisoners, children and women are treated in the most inhuman manner. In Bhagalpur the prisoners were blinded. The American army had immensely tortured in the name of revival of democracy. After 11th September 2001, in the name of terrorism, America tortured the innocents as well. In Myanmar, Aung San Su Kyi was kept in House arrest for years. In Iraq, Yugoslavia, India, and in many other countries of the world the common people had to face great problems because of the human slaughter done in the name of religion.

What do we think after reading such news? Definitely we would not like to repeat these incidents again and try for an organisation which would guarantee the minimum things and where there is an equal opportunity for respect and honour.

In other words man wants to live a healthy life. For this he needs certain facilities. The individual makes a demand for these facilities. Since all the people of the society need these facilities, these demands and claims should be reasonable and intelligible. These demands have to be implemented equally on all. Only then can it get a social sanction.

The society accepts only those demands which are essential, and in which there is the emotion of universal welfare. When the socially recognized claims are written into law they acquire real force and then these are called rights.

Hence, rights are those reasonable demands of people which have been accepted by the society and recognized by the courts.

ACTIVITY

- ◆ What type life is it without right? You can find it yourself by collecting incidents from magazines and journals, for example:-
- ◆ Newspaper reports on custodial violence
- ◆ Ethnic massacre in any part of the country.
- ◆ Reports regarding unequal treatment of women .

NECESSITY OF RIGHTS IN A DEMOCRACY:

In the beginning of this chapter we have seen that in a democracy there is the participation of the common people. This participation is of two types - first, the citizens participate in the regular decisions and run the government directly but when the question is of millions of people to participate then this sort of democracy becomes impractical and impossible. Hence, a system has been organized in which the representatives chosen by the citizens run the government and take decisions. We have read in the last chapter that the process of choosing the representatives is called elections and the rights which are needed to choose the representatives by the citizens , is called the voting rights.

In this way the first condition of representative democratic rule is the presence of rights. In a democracy every citizen has the right to vote and elect his favourite representative and also through election get elected as representative.

This representative government should regularly express in the real sense the aspirations and wants of the people and for this it is essential to compose a government through impartial elections on regular intervals. For this it is necessary that people should have the freedom to express, form political parties, and political activities.

It is necessary to pay attention on the limits of their works so that a government may not become despotic and their democratic nature be maintained. The powers of the government has to prescribe these limits for the rights of the people. This helps the government to maintain its democratic nature. It is necessary that the government is evaluated regularly to see that it is functioning properly. It is possible only if people have the freedom to express. They have the right to information regarding the works of the government, they have the right to criticize the government.

The work- culture of democracy is such that the majority is always powerful. Hence, there is always a chance of the majority being arbitrary. By suppressing the rights of the majority the security of the minority is guaranteed. They organise that the majority may not act arbitrarily in any democratic organisation.

WHY DO WE NEED TO MENTION RIGHTS IN THE CONSTITUTION

Very often even the elected governments do not secure the rights of its citizens. Rather they themselves attack the rights of the citizens. That

is why some rights need to be given a higher status than the government itself so that the government may not violate them and the rights may be implemented. So in a democratic rule there is the necessity of writing down the rights.

Now let us see from where has the list of rights begun in the constitutions of the world.

IN THE CONTEXT OF THE WORLD:

At the international law Fundamental Rights were used for the first time in the French Revolution of 1789. The National Assembly of France while declaring the Human Rights, included in its Constitution some of the Fundamental rights of its citizens. The declaration of Human Rights has influenced many constitutions of the world. The United States of America made Fundamental Rights a part of the constitution within two years of its implementation with the help of ten amendments. Please also refer to United Nations declaration of Universal Human Rights in 1948. Today in all constitutions of the world there is a mention of Fundamental Rights. Even the constitutions of countries like China and Russia where the rights are controlled, mention the Fundamental rights of the citizens.

IN THE CONTEXT OF INDIA:

In India for the first time Bal Gangadhar Tilak raised the question of Fundamental rights. During the freedom struggle, the Congress demanded the Fundamental rights several times. In the Bombay session of 1918, in the Karachi session of 1933, by the Nehru Committee in 1928, and by the Sapru Committee in 1945 the matter of Fundamental Rights was raised but the Indians were not granted these rights. Hence,

it was natural that after freedom struggle, the Fundamental rights be incorporated in the constitution and they also remain secured. This was suggested by all. The rights which had to give security were listed in the fundamental frame of the constitution and were called the Fundamental Rights.

The Preamble of the Indian Constitution promises to give to its citizens equality, freedom and justice and the Fundamental Rights try to fulfil these promises.

The Fundamental Rights are very important. Special provisions have been made for their security. They are so important that the constitution itself ascertains that the government does not violate them.

RIGHTS IN THE INDIAN CONSTITUTION:

PURPOSE OF FUNDAMENTAL RIGHTS:

Fundamental rights are different from our other rights. Whereas to protect and implement the general legal rights, the help of general laws are taken, for Fundamental Rights the guarantee and security is provided by the constitution itself. The general laws can be altered by the Parliament by making a law, there has to be an amendment done in the constitution to alter the Fundamental Rights. Apart from this, any organ of the government cannot function against the Fundamental Rights.

These are the following rights whose provision have been given in our constitution:

RIGHT TO EQUALITY: [Articles 14 to 18]

Many things happen around us which make us think that these

conditions are not fit to live in human society.

- ◆ In a farm both men and women work. At the end of the day while the men get Rs.50, the women get only Rs.45.
- ◆ On a public place the Dalits or persons of a particular religion are denied entry.
- ◆ In any school there is a separate place for drinking water for any special caste or class.

All these are clear examples of distinctions. In one case there has been a discrimination on the ground of sex, in another on caste. Do you find these discriminations reasonable?

The right to equality tries to remove all these discriminations. On the basis of equality it gives access to public places, for example, shops, hotels, entertainment houses, wells, wash-rooms, and places of worship. On the basis of caste, race, colour, sex, religion and place of birth, no one can discriminate their entry.

On the basis of above mentioned data there can be no discrimination in public services. There is equality for all citizens for the appointment to any position in the government. There are equal opportunities for all in matters of public jobs.

Except those persons who have achieved some greatness in the spheres of education or army, people are not awarded special titles by the state.

In this way the right to equality establishes India as a true democracy. According to this every person is equal before law. 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.

Have you read the Preamble of our constitution? You will find that in the Preamble there has been mention of two things regarding equality : equality of honour and equality of opportunity. The meaning of equality of opportunity is that every class in the society should get equal opportunity. But when the society is full of inequalities, then what is the meaning of equal opportunity. The constitution makes it clear that the government will implement plans and programmes for the betterment of children, women and men of socially and economically backward classes. We had read in the last chapter about the provision of reservation by the government for schedule castes, scheduled tribes, and backward castes. Different governments through different plans give preference to women, persons below poverty line, and handicapped persons in jobs. You can think that this policy of reservation is against the right to equality. But this is not true. 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 reservations do. To clarify this point the Constitution says that reservations of this kind are not a violation of the Right to Equality.

ACTIVITY

Observe any public building. Is there a special arrangement for physically handicapped and senior citizens? Is this arrangement a violation of the Right to Equality? For example on a reservation counter there is the provision of a special counter for senior citizens.

RIGHT TO FREEDOM :

Can you imagine a condition where you have no freedom to work according to your wishes? Definitely you would not like to live in such a condition. The first condition of a democratic society is freedom. But freedom does not mean that you have unlimited license to do anything. If you do that many people will violate other people's rights. Freedom is that license in which an individual without harming the freedom, social and legal organisation enjoys freedom.

Let's see what types of Rights of Freedom has been given by the Constitution.

Freedom to speech and expression: the Freedom to expression includes expressing your ideas by speaking, by writing, printing, publication, and through different forms of art. Without these our personality cannot develop.

But this freedom cannot be used for disrespect, abusive language, for false allegation, contempt of court, to instigate violence against a person or a community. You cannot use it to incite people to rebel against government. On this basis the government can put legal restrictions. There was no provision of freedom of press in our Constitution. This was incorporated in the 44th



PM Addressing people

Constitutional amendment of our Constitution in 1978, so that no one can be punished if a true report of the sessions of the Parliament or of the State Assemblies is published. But if the publication has been due to some wrong purpose, the related persons are liable to be punished.

Citizens have the freedom to hold meetings, processions, rallies, and demonstrations on any issue. They may want to discuss a problem, exchange ideas, mobilize 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 everyone has the freedom to travel to any part of the country, reside or settle in any part of the territory of India.

The same freedom also extends to choice of occupations.



Procession

Right to Freedom of Religion:

If you study History you will see that the rulers or kings of many of the countries of the world do not give their people the right to freedom of religion. People with religion different from the rulers have either been killed or forced by the rulers to accept their religion. Hence, in democracy it was accepted as a basic theory to follow religion of one's own choice.

You have read in Chapter 3 that India is a secular country, the state has no religion of its own. Everyone has the freedom to select one's religion. According to the Constitution the citizens of India have the right to accept any religion and propagate it and profess it. Persons of different religion can deliver speeches to propagate their religion, hold meetings, publish books, and establish institutions and run educational institutions. For example, the Sikhs have the right to keep *kripans* with them according to their religious tradition. This right related to religion is complete since in India there are followers of many religions. So due to the process of propagating religion there are chances of disagreement. As a result, keeping in view the social organisation and moral conduct the state has been given the right to regularise and control religious freedom. If the followers of any religion create disharmony in the state through their method of propagation, or any immoral acts are done, then the state can control it and postpone it.

Propagation of Religion:

The followers of a religion have the right to open schools, colleges, madrasas etc. Like other educational institutions these will also get financial aid from the government. But there will be no religion related education in the institutions run and conducted by the government. Nor the students studying in the institutions run by any followers of religion

can be forced to accept any religion.

The religious institutions have the right to acquire property but the state can control it in the same way as any common citizen's property.

The state cannot fund any religion for its propagation or helping any religion financially. It cannot acquire taxes for the above mentioned causes.

CHECK YOUR PROGRESS

1. Make a list of the economic activities and the educational institutions run by different followers of religion.
2. Make a list of those incidents from newspapers which have given a blow to economic independence and there has been a case when someone voiced against it.

Cultural and Educational Rights:

Unity in diversity is the chief quality of the national character of our country. In India various types of people live and have their own language-script and culture. Through these articles of the Constitution the people living in India have the right to protect their script, language and culture. For this they can open and conduct schools, colleges, museums.

The classes based on different religions and the minorities have

the right to protect their script, language and culture. No government or government aided institution can deny admission on the ground of religion or language.

All minorities have the right and administer educational institutions of their choice.

Right to Life and Personal Security:

According to the Constitution no person can be denied of their right to life or personal security by law or its processes. This means that until the court gives the verdict of death sentence, he cannot be denied of his life. This also means that on the basis of law the government or the police officials can arrest a citizen. But if they do this they have to follow some rules.

When a person is arrested the reasons for his arrest has to be given. Without giving reasons no one can be arrested.

Any person has to be presented before the magistrate within 24 hours of his arrest. The arrested person also has the right to consult his advocate to plead for his arrest.

The Constitution has also made the system of preventive detentions. Laws for preventive detentions can also be made for state security, universal peace, to maintain the essential services in the society, India's security, and for foreign affairs. According to these laws if the government has a doubt on any person that in the near future he may get involved in some crime, the government may beforehand, that is, before committing

the crime, detain him. In the Presidential bill of 24th October and 31st December, 2001, the system of preventive detention has been organised. This bill of Preventive Detention was passed by a joint session of both the Houses of Parliament on 26th March 2002, under the act of opposing Terrorism. But the U.P.A. led government repelled POTA.

Right Against Exploitation:

The system of forced or bonded labour without wages, i.e., "begari" was prevalent in India from centuries. Hence, this provision was enacted in our Constitution so that the weaker sections could not be exploited.

The Constitution prohibits 'trafficking' in human beings, especially the women and children who have been victims of fraud and are being exploited for immoral purpose. In Chennai through the ill tradition of 'Devadasi' children were offered to gods and goddesses, and later the girls were compelled to work immorally. Through an act this ill tradition was abandoned.

Our constitution prohibits forced labour or 'begari' in any form. 'Begari' 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. 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, fire crackers and matches, printing and dyeing.

Right to Education:

Through the 86th Constitutional amendment 2002, Right to Education has been made a Fundamental Right. It has been mentioned in Par 3 of the Constitution which contains Fundamental Rights. Now children from 6 to 14, have the Fundamental Right to Education . For children up to the age of 6 years, the government will take care for compulsory education and childhood. If this right is violated petition can be given for its implementation.

Right to Constitutional Remedies:

The above mentioned rights are useless if there is no one to accept them and implement them. It is possible that our rights are being violated by a person or an institution or by the government itself. If any one violates our rights we can prevent that attempt through the court.

If the matter is related to Fundamental Rights we can directly go to the Supreme Court or to the High Court of the state. The Supreme Court and the High Courts have the right to issue the following writs:

By the writ of Habeas Corpus the court can order to present the person before it who has been illegally arrested. If the court thinks that his arrest is illegal or improper, it can order to release him.

By the writ of Mandamus, the court can order a person or an institution to perform its duty which it is compelled by law to do. For example, if a factory owner dismisses a worker without any reason, or deducts his

salary or his allowances, then on the application of the worker the writ of Mandamus can be issued against the owner of the factory.

By the writ of Prohibition, the Supreme Court and high court can prohibit the subordinate courts from doing any work which is against law or outside its jurisdiction.

By Certiorari the High court can order the subordinate courts to bring all the records related to accusation.

By the writ of Quo Warranto the court can prohibit such a person whose appointment or selection has not been made according to law, from doing any government work.

Thus we have seen that the judiciary of our country can take steps to secure the rights of its citizens. Under the PIL [Public Interest Litigation], any citizen 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.

EXPANDING SCOPE OF RIGHTS :

In this chapter we have discussed the Fundamental Rights. But other than the Fundamental Rights, our Constitution offers a wide range of rights, which can bring a change and develop the social and political situations. Over the years the scope of rights has expanded. In a democratic organisation the demands for rights expand rapidly. In reality, the democratic values develop simultaneously along with the rights. In

other words, the growing rights of the individual are a proof of the fact how strong the roots of democracy are in the given society.

Certain rights like right to freedom of press, right to information, and right to education are derived from the Fundamental Rights.

From time to time, the courts' judgements, people's struggles, bills passed by the Parliament etc. has expanded the rights. In the Constitution we have the right to Life. Even in emergency a citizen cannot be deprived of this right. In the same way by expanding the right to Life the Supreme Court has also included the right to Food in it.

Several times by making new Constitutions we also get new rights. For example, in South Africa, a search of the citizens or in his houses cannot be done, their phones cannot be tapped, their letters cannot be opened and read.

After the above mentioned rights it is also essential to be introduced to two of the following democratic rights:

1. **Right to Property:** In the original Constitution, this was included among the Fundamental Rights. But by the 44th Constitutional Amendment Act in 1978, this right was removed from that list and given the status of a legal right.
2. **Right to Information:** In accordance to the emotions of democracy, the Parliament of India, by making a law, has given its citizens the Right to Information.

IMPORTANT RIGHTS GIVEN IN THE CONSTITUTION OF SOUTH AFRICA

- ✓ Right to Dignity
- ✓ Right to Individuality
- ✓ Right to labour related proper behaviour
- ✓ Right to Healthy Environment and Environment Protection
- ✓ Right to proper Housing
- ✓ Right to Health Facilities, Food, Water and social Security
- ✓ Child rights
- ✓ Right to basic and higher education
- ✓ Cultural, Economical and Language Community Rights
- ✓ Right to Information.

FUNDAMENTAL DUTIES:

Many countries of the world such as China, Japan, Russia, Italy, etc, mention Fundamental duties along with the rights. In Indian Constitution through the 86th Amendment the Fundamental Duties were also included. These include -

- ◆ To abide by the Constitution and respect its ideals and institutions,

the National Flag and the National Anthem;

- ◆ To cherish and follow the noble ideals which inspired our National struggle for freedom;
- ◆ To uphold and protect the sovereignty, unity and integrity of India;
- ◆ To defend the country and render national service when called upon to do so;
- ◆ To promote harmony and the spirit and common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- ◆ To value and preserve the rich heritage of our composite culture;
- ◆ To protect and improve the natural environment including forests, lakes, rivers and wild life and have compassion for living creatures;
- ◆ To develop the scientific temper, humanism and the spirit of enquiry and reform;
- ◆ To safeguard public property and abjure violence; to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- ◆ Provision of proper opportunities of education for children by the parents.

FUNDAMENTAL DUTIES IN CHINA

- √ To maintain national integrity;
- √ To follow the Constitution and laws of the country;
- √ To maintain the secrecy of the state;
- √ To protect public property;
- √ To maintain labour discipline;
- √ To maintain public arrangement;
- √ To get included in army service.

QUESTIONS

1. Which of the following is not a Fundamental Right?
 - a. Right to Equality
 - b. Right to travel in foreign countries
 - c. Freedom of religion.

2. Who is the protector of Fundamental Rights?
 - a. President
 - b. Prime- Minister
 - c. Supreme Court
 - d. Supreme Court and High Courts

3. Which right has been taken out from the category of Fundamental Rights?
- a. Right to Equality
 - b. Right to Freedom
 - c. Right to Property
 - d. Right to Life
4. Fundamental Rights of citizens during Emergency -
- a. Are postponed
 - b. Are put to an end
 - c. The Constitution is silent about this
 - d. It becomes meaningless
5. Which of the following freedoms is not available to an Indian citizen?
- a. Freedom to criticize 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
6. Which of the following rights is available under the Indian Constitution?
- a. Right to Work
 - b. Right to Life
 - c. Right to protect one's culture
 - d. Right to sufficient livelihood

7. Which of the following two is the correct explanation of freedom of religion
- Each individual has the freedom to accept any religion according to his wishes and propagate it.
 - If any religious body runs an educational institution it has the freedom not to give entry to followers of other religions
8. Which of the following is a Right to Freedom given to the citizens?
- Freedom to hold a meeting with arms
 - Freedom to conspire against the government
 - Freedom to deliver speeches and express opinions
 - Freedom to travel in foreign countries
9. State true or false
- In India the rights are protected by the judiciary
 - We have the right to choose only our traditional profession
 - We have the right to live in that state where we have taken birth
 - The right to Expression means that we have the right to speak anything to a person
10. Write a letter to Human Rights Commission of your state, discussing an incident of the violation of Human Rights.
11. Read the following situations and tell in each situation whether the Fundamental Rights have been violated and if yes, how?
- Sunita went to an office to give an application for job. Her application was rejected because she was a woman.

- b. Ban on a book criticizing government policies.
 - c. The people of Orissa are running a cultural institution in Bihar to propagate their language and culture.
12. Do you think that the following situations demand for a prohibition on the Right to Freedom. Give reasons for your answer.
- a. During the period of riots people want to take out an armed procession.
 - b. Ramesh and Suresh want to go to those areas which are safe in the eyes of army.
13. 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 arrow that show connection between or among different rights. For each arrow give an example that shows the linkage.

PROJECT WORK:

Write a newspaper for the notice board of your school in which try to include the following reports

- a. Recent incidents related to violation of rights.
- b. News related to court decisions to Fundamental Rights.
- c. News related to violation of Human Rights in other countries of the world.