

# Understanding Democracy and Constitutional Design

## What is Democracy?

Democracy is the most prevalent form of government globally, continuously expanding. Initially, a simple definition of democracy is explored: a form of government where rulers are elected by the people. This definition helps distinguish democratic governments from non-democratic ones, such as military rule (e.g., Myanmar, General Pervez Musharraf in Pakistan) or monarchies (e.g., Saudi Arabia), where rulers are not chosen by the populace. However, this simple definition is insufficient because many governments that are not truly democratic hold elections and claim to be democracies. Therefore, a deeper understanding of democracy's features is necessary to differentiate genuine democracies from those that merely pretend to be.

## Features of Democracy

To provide a comprehensive understanding, democracy is characterized by four key features:

**1. Major Decisions by Elected Leaders:** In a democracy, the final decision-making power must reside with those elected by the people. The example of General Pervez Musharraf in Pakistan illustrates a deviation from this principle. Despite holding elections, the ultimate authority remained with Musharraf and military officers, not with the elected representatives, rendering it non-democratic.

**2. Free and Fair Electoral Competition:** Elections in a democracy must offer a genuine choice between political alternatives, and it must be possible for the existing rulers to lose. China's electoral system, where candidates require approval from the Chinese Communist Party, and Mexico's historical PRI dominance, where the ruling party used unfair tactics to win every election until 2000, are examples of elections that are neither free nor fair, as they do not provide a real choice or a fair chance for the opposition to win.

**3. One Person, One Vote, One Value:** Democracy is founded on the principle of political equality, meaning each adult citizen must have one vote, and each vote must hold equal value. Instances like Saudi Arabia, where women historically lacked voting rights; Estonia, where citizenship rules make it difficult for the Russian minority to vote; and Fiji, where indigenous Fijian votes have more value than Indian-Fijian votes, demonstrate violations of this fundamental democratic principle.

**4. Rule of Law and Respect for Rights:** A democratic government must operate within limits set by constitutional law and respect citizens' rights. The case of Zimbabwe under Robert Mugabe, where the government regularly won elections but suppressed opposition, harassed journalists, and ignored court judgments, highlights that popular approval alone is insufficient. A true democracy requires respect for basic rights (freedom of thought, expression, association, protest) and a government accountable to constitutional law and independent officials.

In summary, democracy is a form of government where rulers elected by the people make all major decisions, elections offer a choice and fair opportunity to change rulers, this opportunity is available to all on an equal basis, and the government is limited by constitutional rules and citizens' rights.

## Why Democracy?

### Arguments Against Democracy

Common criticisms against democracy include:

- **Instability:** Leaders frequently change, leading to governmental instability.
- **Lack of Morality:** It is often seen as a political competition and power play with no room for morality.
- **Delays:** Consultation with many people leads to delays in decision-making.
- **Bad Decisions:** Elected leaders may not always know the best interests of the people, leading to poor decisions.
- **Corruption:** Electoral competition can foster corruption.
- **Ignorant Voters:** Ordinary people may not know what is good for them and should not decide.

While democracy is not a perfect solution and can lead to delays or changes in leadership, the crucial question is whether it is better than other forms of government.

### Arguments For Democracy

Democracy offers several significant advantages:

- **Accountability and Responsiveness:** It is a more accountable form of government, as rulers must respond to the needs of the people. The comparison between India and China during the 1958-1961 famine illustrates this: democratic India responded to food scarcity, preventing a large-scale famine, unlike non-democratic China, where millions died.

- **Improved Quality of Decision-Making:** Democratic decisions involve extensive consultation and discussion, allowing many people to identify potential mistakes. This process, though time-consuming, reduces the chances of rash or irresponsible decisions.
- **Method to Deal with Differences and Conflicts:** In diverse societies, democracy provides a peaceful framework for resolving conflicts. It ensures that no group is a permanent winner or loser, fostering coexistence and unity, as seen in India's ability to remain together despite its vast social diversity.
- **Enhances Dignity of Citizens:** Democracy is based on political equality, recognizing that all citizens, regardless of wealth or education, have equal status. Citizens are not subjects but rulers themselves, responsible for their conduct.
- **Allows Correction of Mistakes:** Unlike non-democratic governments, democracy provides mechanisms for correcting mistakes through public discussion, allowing rulers to change decisions or be changed by the people.

## Broader Meanings of Democracy

Beyond a minimal definition of government, democracy can be understood in broader terms:

- **Representative Democracy:** In modern states with large populations, direct rule by all citizens is impractical. People rule through elected representatives, who make decisions on their behalf. Citizens may lack the time, desire, or skills for direct participation in all decisions.
- **Democracy Beyond Government:** The principle of democracy, involving consultation and consent, can apply to various spheres of life, such as families, classrooms, or organizations, where everyone affected by a decision has a say.
- **Democracy as an Ideal:** Democracy can also represent an ideal standard, striving for a society where no one goes hungry, and every citizen has equal information, basic education, resources, and commitment to participate in decision-making. While no country perfectly embodies this ideal, it serves as a benchmark to evaluate existing democracies and identify areas for improvement.

## Constitutional Design

### Overview of Constitutions

A constitution is a set of fundamental rules accepted by all people in a country. It is the

supreme law that defines the relationship among citizens and between citizens and the government. Constitutions perform several crucial functions:

- Generate trust and coordination among diverse people.
- Specify how the government is constituted and who holds decision-making power.
- Lay down limits on government powers and define citizens' rights.
- Express the aspirations of the people for creating a good society.

All democratic countries have constitutions, and increasingly, these are written documents.

### **Democratic Constitution in South Africa**

South Africa's journey to a democratic constitution provides a powerful example. Under the oppressive system of **apartheid**, a unique form of racial discrimination, the white minority government enforced segregation and denied non-whites basic rights. Nelson Mandela and other leaders of the African National Congress (ANC) fought against this regime, enduring imprisonment and severe repression.

Following decades of struggle, the government realized it could no longer maintain control through repression. Discriminatory laws were repealed, and political parties were unbanned. In 1994, South Africa transitioned to a multi-racial democracy. Black leaders, including Nelson Mandela, advocated for forgiveness and reconciliation, leading to the creation of one of the world's finest constitutions. This constitution, forged through two years of discussion between former oppressors and the oppressed, enshrined extensive rights for all citizens, aiming to heal past divisions and build a

## **Electoral Politics and Democratic Elections**

In a democracy, direct governance by all citizens is neither possible nor necessary, especially in large communities. Therefore, people govern through their elected representatives. This chapter explores how these representatives are chosen, why elections are essential, what constitutes a democratic election, and assesses the electoral system in India.

### **Why Elections Are Necessary**

Elections are a fundamental mechanism in modern representative democracies. They provide a way for people to choose their representatives at regular intervals and to change them if they are dissatisfied. Without elections, it would be difficult to ascertain if representatives truly reflect the wishes of the people or to hold them accountable. The example of the 1987 Haryana

Assembly Election, where Chaudhary Devi Lal's Lok Dal party won overwhelmingly on a promise to waive farmer loans, demonstrates how elections can lead to significant changes in government policy and leadership, reflecting the popular will. Voters make several crucial choices through elections:

- They choose who will create laws for them.
- They determine who will form the government and make major decisions.
- They select the party whose policies will guide governance and law-making.

## What Makes an Election Democratic?

While many countries, including non-democratic ones, hold elections, certain minimum conditions distinguish democratic elections:

1. **Universal Adult Franchise:** Everyone should have the right to choose, meaning every adult citizen has one vote, and every vote has equal value.
2. **Real Choice:** Parties and candidates must be free to contest and offer voters genuine alternatives.
3. **Regular Intervals:** Elections must be held periodically, typically every few years.
4. **People's Preference:** The candidate preferred by the people should be the one who gets elected.
5. **Free and Fair Conduct:** Elections must be conducted in a manner that allows people to choose freely and without coercion.

## The Role of Political Competition

Elections inherently involve political competition, primarily among parties and candidates. While competition can lead to disunity, 'factionalism,' allegations, and even 'dirty tricks,' it is considered beneficial in the long run. Our Constitution makers opted for free competition because it provides incentives for political leaders to serve the people. Leaders know that if they address public concerns, their popularity and chances of victory increase. Conversely, failure to satisfy voters leads to electoral defeat. This dynamic forces parties and leaders, even if primarily motivated by power, to deliver good governance, much like market competition forces shopkeepers to provide good service to retain customers.

## India's System of Elections

India follows an area-based system of representation, with elections held regularly every five years for the Lok Sabha (Parliament) and Vidhan Sabhas (State Assemblies). A 'general

election' occurs when all constituencies vote simultaneously, while a 'by-election' fills a vacancy in a single constituency.

## **Electoral Constituencies**

The country is divided into electoral constituencies. For Lok Sabha elections, there are 543 constituencies, each electing one Member of Parliament (MP). States are similarly divided into Assembly constituencies, each electing a Member of Legislative Assembly (MLA). To ensure 'one vote, one value,' each constituency is designed to have a roughly equal population. Local bodies (Panchayats, Municipalities) are divided into 'wards,' which function as constituencies.

## **Reserved Constituencies**

To ensure representation for weaker sections, the Constitution provides for reserved constituencies. This system prevents influential and resourceful individuals from dominating elections and ensures that Parliament and Assemblies reflect the diversity of the population. Currently, 84 seats in the Lok Sabha are reserved for Scheduled Castes (SC) and 47 for Scheduled Tribes (ST), proportionate to their population share. This reservation system has been extended to Other Backward Classes (OBC) and women (one-third of seats) in rural and urban local bodies. The Nari Shakti Vandan Adhiniyam, 2023, also reserves one-third of seats in Parliament and Legislative Assemblies for women.

## **Voters' List (Electoral Roll)**

Before elections, a list of eligible voters, known as the Electoral Roll or Voters' List, is prepared and distributed. This ensures that everyone has an equal opportunity to choose representatives, upholding the principle of universal adult franchise. All citizens aged 18 and above can vote, irrespective of caste, religion, or gender, with rare exceptions for criminals or persons of unsound mind. The list is regularly updated, adding new eligible voters and removing those who have moved or passed away. The Election Photo Identity Card (EPIC) has been introduced, though other identity proofs are also accepted for voting.

## **Nomination of Candidates**

Any eligible voter (18+) can become a candidate, provided they are at least 25 years old. Political parties nominate their candidates, granting them a 'party ticket.' Candidates must fill a 'nomination form' and pay a 'security deposit.' A significant reform, directed by the Supreme Court, requires candidates to make a legal declaration detailing:

- Serious criminal cases pending against them.

- Their assets and liabilities, and those of their family.
- Their educational qualifications.

This information is made public, allowing voters to make informed decisions. The absence of educational qualifications for candidates is often debated, but the rationale is that the relevant qualification for a representative is the ability to understand and represent people's interests, which is ultimately judged by the voters every five years.

## **Election Campaign**

Election campaigns are crucial for voters to understand candidates, parties, and policies. In India, the formal campaign period lasts for two weeks between the announcement of the final list of candidates and the polling date. During this time, candidates contact voters, leaders hold rallies, and media covers election-related news. Parties often use successful slogans to focus public attention on key issues, such as Indira Gandhi's 'Garibi Hatao' (Remove Poverty) in 1971 or the Janata Party's 'Save Democracy' in 1977.

To ensure fair competition, election law prohibits practices like bribing/threatening voters, appealing in the name of caste/religion, using government resources, or exceeding spending limits (e.g., ₹25 lakh for Lok Sabha, ₹10 lakh for Assembly). Additionally, a Model Code of Conduct, agreed upon by parties, restricts the use of places of worship for propaganda, government vehicles/officials for campaigns, and prohibits ministers from laying foundation stones or making major policy decisions once elections are announced.

## **Polling and Counting of Votes**

On election day, voters cast their ballots at polling booths. Election officials identify voters, mark their fingers, and allow them to vote. Agents of each candidate are present to ensure fairness. Historically, ballot papers were used, but now Electronic Voting Machines (EVMs) are common. Voters press a button next to their chosen candidate's name and party symbol. After polling, EVMs are sealed and transported to secure locations. On a fixed counting day, votes are tallied, with candidate agents present to monitor the process. The candidate with the highest number of votes in a constituency is declared elected. Results are usually declared within hours on the same day, determining the next government.

## **Are Elections in India Democratic?**

Despite allegations of unfair practices like false names in voter lists, misuse of government facilities, excessive money use, and intimidation, Indian elections are largely considered free

and fair. The scale of these malpractices is generally not enough to undermine the overall purpose of elections.

## Independent Election Commission (EC)

A key factor in India's democratic elections is the independent and powerful Election Commission (EC). The Chief Election Commissioner (CEC) is appointed by the President but enjoys judicial independence, making it virtually impossible for the government to remove them. The EC possesses wide-ranging powers:

- It controls every aspect of election conduct, from announcement to results.
- It implements the Code of Conduct and punishes violations.
- During elections, it can issue guidelines to the government to prevent misuse of power and order transfers of officials.
- Government officers on election duty work under the EC's control. The EC has increasingly exercised its powers, ordering repolls and reprimanding the government, demonstrating its independence and effectiveness.

## Popular Participation

Public participation is a strong indicator of democratic elections. In India:

- **Voter Turnout:** Turnout has remained stable or increased over the last fifty years, unlike the decline seen in many Western democracies.
- **Social Group Participation:** Poor, illiterate, and underprivileged sections in India vote in larger proportions compared to the rich and privileged, a contrast to trends in Western democracies like the US.
- **Importance of Vote:** Common people attach great importance to elections, believing their vote can influence policies and the country's direction.
- **Election-Related Activities:** Interest in campaign activities has been increasing, with a significant portion of voters participating in rallies or identifying with a political party.

## Acceptance of Election Outcome

The acceptance of election results by losing parties is a crucial test of fairness. In India:

- Ruling parties routinely lose elections at both national and state levels, with the incumbent party losing in two out of three elections in the last 25 years.

- About half of sitting MPs or MLAs lose their elections, unlike in the US where incumbents rarely lose.
- Candidates known for spending heavily or having criminal connections often lose.
- Barring very few disputed cases, electoral outcomes are widely accepted as the 'people's verdict' by defeated parties.

## Challenges to Free and Fair Elections

While Indian elections are fundamentally democratic, deeper issues and challenges persist:

- **Money Power:** Candidates and parties with significant financial resources have an unfair advantage over smaller parties and independents.
- **Criminal Connections:** In some areas, candidates with criminal backgrounds manage to secure party tickets and push out other contenders.
- **Family Domination:** Political parties are often dominated by certain families, leading to tickets being distributed to relatives.
- **Limited Choice:** Voters sometimes face limited real choice, as major parties may be quite similar in their policies and practices.
- **Disadvantage for Smaller Parties:** Smaller parties and independent candidates face significant disadvantages compared to larger, established parties.

These challenges are not unique to India and are a concern for democracy advocates globally, prompting calls for electoral reforms to ensure a truly level playing field for all.

## Working of Democratic Institutions and Citizens' Rights

### Working of Institutions: How Major Decisions are Taken

Democracy involves not just electing rulers, but also ensuring they follow rules and procedures within institutions. This section explores how major decisions are made and implemented, and how disputes are resolved, focusing on the legislature, executive, and judiciary.

### The Mandal Commission Case: A Policy Decision Example

On August 13, 1990, the Government of India issued an Office Memorandum (O.M. No. 36012/31/90-Est (SCT)) announcing a major policy decision: 27% reservation of civil posts and

services under the Government of India for Socially and Educationally Backward Classes (SEBC). This expanded job reservations, previously only for Scheduled Castes and Scheduled Tribes.

- **Decision Makers Involved:**

- **President:** Head of the state, highest formal authority. Announced the government's intention to implement the recommendations to Parliament.
- **Prime Minister:** Head of the government, exercises actual governmental powers, takes most decisions in Cabinet meetings. V.P. Singh, leader of the Janata Dal (which promised implementation in its 1989 election manifesto), became Prime Minister and informed Parliament of the Cabinet's decision.
- **Parliament:** Consists of the President and two Houses (Lok Sabha and Rajya Sabha). Discussed the Mandal Commission Report, influencing and shaping the government's decision.
- **Union Cabinet:** Took the formal decision to implement the recommendations on August 6, 1990.
- **Department of Personnel and Training:** Senior officers drafted the order based on the Cabinet's decision, obtained ministerial approval, and an officer signed it.
- **Supreme Court:** Resolved the dispute arising from the order. In 1992, the Supreme Court, in the 'Indira Sawhney and others Vs Union of India case', upheld the order's validity but asked for modification to exclude well-to-do persons (creamy layer) among backward classes. This led to a new Office Memorandum on September 8, 1993, ending the dispute.

## Need for Political Institutions

Governing a country involves numerous activities like ensuring security, providing education and health, collecting taxes, and implementing welfare schemes. Institutions are necessary to:

- Assign responsibilities and ensure accountability.
- Ensure continuity of activities even if personnel in key positions change.
- Provide a framework for consultation and prevent hasty, bad decisions, even if they sometimes cause delays.

# Parliament

Parliament is the national assembly of elected representatives in India (at the state level, it's called Legislature or Legislative Assembly). It exercises supreme political authority:

1. **Law Making:** It is the final authority for making, changing, or abolishing laws.
2. **Control over Government:** It controls those who run the government; the government needs Parliament's support to take decisions.
3. **Financial Control:** It controls public money; government spending requires Parliament's sanction.
4. **Forum for Discussion:** It is the highest forum for discussion and debate on public issues and national policy.

## Two Houses of Parliament

Most large democracies divide Parliament into two Houses or Chambers. In India, these are:

- **Lok Sabha (House of the People):** Directly elected by the people, exercises real power.
- **Rajya Sabha (Council of States):** Indirectly elected, looks after the interests of various states.
- The President is part of Parliament but not a member of either House; laws require Presidential assent.

## Powers of Lok Sabha vs. Rajya Sabha

While Rajya Sabha is sometimes called the 'Upper Chamber', Lok Sabha is generally more powerful:

1. **Ordinary Laws:** Both Houses must pass an ordinary law. In case of a difference, a joint session is held, where Lok Sabha's view is likely to prevail due to its larger number of members.
2. **Money Matters:** Lok Sabha has more power. It can pass the budget or money-related laws, which Rajya Sabha cannot reject. Rajya Sabha can only delay it by 14 days or suggest changes, which Lok Sabha may or may not accept.
3. **Council of Ministers:** Most importantly, Lok Sabha controls the Council of Ministers. The Prime Minister must have the support of a majority of Lok Sabha members. If Lok Sabha passes a 'no confidence' motion, all ministers, including the Prime Minister, must resign. Rajya Sabha does not have this power.

# Political Executive

The executive comprises functionaries who take day-to-day decisions and execute government policies. When we refer to 'the government', we usually mean the executive.

## Political and Permanent Executive

- **Political Executive:** Elected by the people for a specific period (e.g., ministers). These are political leaders who take major decisions.
- **Permanent Executive (Civil Services):** Appointed on a long-term basis (civil servants). They remain in office even when the ruling party changes and assist the political executive in administration.

**Why the Political Executive is More Powerful:** In a democracy, the will of the people is supreme. Ministers, as elected representatives, are empowered to exercise this will and are answerable to the people. While civil servants provide expert advice, ministers decide the overall framework and objectives, making the final decisions based on a broader view of public interest.

## Prime Minister and Council of Ministers

- **Prime Minister:** The most important political institution. Appointed by the President as the leader of the majority party or coalition in the Lok Sabha. Has no fixed tenure, remaining in power as long as they command majority support.
- **Council of Ministers:** The official body including all ministers (usually 60-80). Ministers are appointed by the President on the Prime Minister's advice, usually from Parliament members (or must get elected within six months).
- **Cabinet Ministers:** Top-level leaders in charge of major ministries (about 25 ministers). They meet to take decisions in the name of the Council of Ministers, forming the 'inner ring'.
- **Ministers of State with Independent Charge:** In charge of smaller ministries, participate in Cabinet meetings only when invited.
- **Ministers of State:** Assist Cabinet Ministers.
- The Cabinet works as a team; all ministers must own up to Cabinet decisions. The Cabinet Secretariat, comprising senior civil servants, assists the Cabinet in coordinating ministries.

## Powers of the Prime Minister

As head of the government, the Prime Minister has wide-ranging powers:

- Chairs Cabinet meetings.
- Coordinates work of different departments.
- Decisions are final in inter-departmental disagreements.
- Exercises general supervision over ministries; all ministers work under their leadership.
- Distributes and redistributes work to ministers, and can dismiss them.
- If the Prime Minister quits, the entire ministry quits.
- The Prime Minister is the most powerful within the Cabinet, leading to parliamentary democracies sometimes being called 'Prime Ministerial form of government'.
- The rise of coalition politics has, however, imposed constraints, requiring accommodation of different groups and alliance partners.

## The President

- **Head of State:** The President is the head of the State, exercising only nominal powers, similar to the Queen of Britain. Functions are largely ceremonial.
- **Election:** Not directly elected by the people. Elected by Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs). Requires a majority of votes to represent the entire nation, but lacks the direct popular mandate of the Prime Minister, ensuring nominal executive status.
- **Powers (Nominal):** All governmental activities, laws, major policy decisions, and appointments (Chief Justice, Supreme/High Court Judges, Governors, Election Commissioners, Ambassadors) are made in the President's name. The President is also the supreme commander of the defence forces.
- **Limitations:** The President exercises all powers only on the advice of the Council of Ministers. Can ask for reconsideration of advice or a bill, but is bound to act according to it if the advice/bill is reiterated by Parliament.
- **Discretionary Power:** The only significant discretionary power is appointing the Prime Minister when no single party or coalition secures a clear majority in the Lok Sabha. The President appoints a leader most likely to muster majority support and can ask them to prove it within a specified time.

# The Judiciary

An independent and powerful judiciary is essential for democracies. The Indian judiciary is integrated, meaning the Supreme Court controls judicial administration, and its decisions bind all other courts.

## Structure and Jurisdiction

- **Integrated Judiciary:** Consists of the Supreme Court (national), High Courts (states), District Courts, and local courts.
- **Jurisdiction:** Can take up disputes:
  - Between citizens.
  - Between citizens and government.
  - Between two or more state governments.
  - Between governments at the union and state level.
- **Highest Court of Appeal:** Hears appeals against High Court decisions in civil and criminal cases.

## Independence of the Judiciary

- Judges are not under the control of the legislature or executive; they do not act on government directions or party wishes.
- **Appointment of Judges:** Appointed by the President on the advice of the Prime Minister and in consultation with the Chief Justice. In practice, senior Supreme Court judges select new judges for the Supreme Court and High Courts, minimizing political executive interference.
- **Removal of Judges:** Extremely difficult, similar to removing the President. Requires an impeachment motion passed separately by two-thirds of members in both Houses of Parliament. This has never occurred in Indian democracy.

## Powers of the Judiciary

- **Interpretation of the Constitution:** Supreme Court and High Courts can interpret the Constitution.
- **Judicial Review:** Can declare any law or executive action (union or state level) invalid if it is found to be against the Constitution. This determines the constitutional validity of legislation or executive action when challenged.

- **Guardian of Fundamental Rights:** Its powers and independence allow it to protect Fundamental Rights. Citizens can approach courts for remedy if their rights are violated.
- **Public Interest Litigation (PIL):** Courts can give judgments and directives to protect public interest and human rights. Any person or group can approach the Supreme Court or High Court if public interest is hurt by government actions, even through a postcard. Courts intervene to prevent misuse of government power and check malpractices by public officials.

## Citizens' Rights

Democracy requires not just elections and institutions, but also the enjoyment of rights, which set limits on rulers.

### Life Without Rights: Illustrative Cases

- **Guantanamo Bay:** About 600 people were secretly imprisoned by US forces without trial, denied international prisoner-of-war treatment, and tortured. Their home governments were often not informed. This highlights the absence of due process, fair trial, and basic human dignity.
- **Saudi Arabia:** Ruled by a hereditary king with no role for citizens in electing or changing rulers. The king appoints legislature, executive, and judges, and can change their decisions. Citizens cannot form political parties, media is censored, there is no freedom of religion (all citizens must be Muslim), and women face severe public restrictions and unequal legal testimony. This illustrates absolute monarchy and denial of political, religious, and gender rights.
- **Ethnic Massacre in Kosovo:** In 1999, the Serb nationalist government of Milosevic, elected democratically, carried out a massacre of ethnic Albanians in Kosovo. This shows how even elected governments can attack citizens' rights based on ethnic prejudices, leading to crimes against humanity.

## What are Rights?

Rights are reasonable claims of a person over other fellow beings, society, and the government. They are claims that are equally possible for others, come with an obligation to respect others' rights, are recognized by society, and sanctioned by law. When law recognizes claims, they become enforceable, allowing citizens to approach courts for protection against violations.

# Why Do We Need Rights in a Democracy?

Rights are necessary for the sustenance of democracy:

- **Participation:** Ensure citizens have the right to vote, be elected, express opinions, form parties, and participate in political activities.
- **Protection of Minorities:** Protect minorities from the oppression of the majority, ensuring the majority cannot do whatever it likes.
- **Guarantees against Government:** Act as guarantees against potential misuse of power by elected governments, ensuring that certain basic rights are placed higher than the government and cannot be violated.

## Rights in the Indian Constitution: Fundamental Rights

India's Constitution provides six Fundamental Rights, which are fundamental to life and have a special status, putting the promise of equality, liberty, and justice into effect.

### 1. Right to Equality:

- **Equality Before Law (Rule of Law):** The government cannot deny any person equality before the law or equal protection of laws. Laws apply equally to all, regardless of status (political leader, official, ordinary citizen). No one is above the law.
- **Prohibition of Discrimination:** No discrimination against any citizen on grounds of religion, race, caste, sex, or place of birth.
- **Access to Public Places:** All citizens have access to public places like shops, restaurants, hotels, cinema halls, wells, tanks, bathing ghats, roads, and playgrounds.
- **Equality of Opportunity in Public Employment:** All citizens have equal opportunity in government employment; no discrimination based on religion, race, caste, sex, or place of birth.
- **Reservations:** Reservations for Scheduled Castes, Scheduled Tribes, and Other Backward Classes, women, poor, or physically handicapped are not against equality. They are special treatments to ensure equal opportunity, as equality doesn't mean identical treatment but equal opportunity to achieve one's potential.
- **Abolition of Untouchability:** The Constitution forbids the practice of untouchability in any form, making it a punishable offense. This includes any social practice or belief that looks

down upon people due to caste labels, denying them interaction or access to public places as equal citizens.

## 2. Right to Freedom:

- **Absence of Constraints:** Freedom means absence of interference in one's affairs by others or the government.
- **Six Freedoms for Citizens:**
  - Freedom of speech and expression (cannot instigate violence or defame others).
  - Assembly in a peaceful manner (without weapons, not causing public disorder).
  - Form associations and unions.
  - Move freely throughout the country.
  - Reside in any part of the country.
  - Practice any profession, occupation, trade, or business (no one can be forced into or out of a job based on caste or gender).
- **Limitations:** Freedoms are not unlimited; reasonable restrictions can be imposed in the larger interest of society.
- **Protection of Life and Personal Liberty:** No person can be deprived of life or personal liberty except according to procedure established by law. This includes protection against arbitrary arrest and detention.
  - Reasons for arrest/detention must be informed.
  - Arrested person must be produced before the nearest magistrate within 24 hours.
  - Right to consult and engage a lawyer for defense.

## 3. Right against Exploitation:

- Prohibits three specific evils to protect weaker sections:
  - **Traffic in Human Beings:** Selling and buying of human beings (e.g., women for immoral purposes) is illegal.
  - **Forced Labor (Begar):** Prohibits forced labor where workers render service free or for nominal remuneration. Bonded labor (life-long forced labor) is also prohibited.
  - **Child Labor:** Prohibits employment of children below 14 years in factories, mines, or hazardous work (e.g., railways, ports). Many laws have been made based on this to prohibit

child labor in various industries.

#### 4. Right to Freedom of Religion:

- **Secular State:** India is a secular state, meaning the state is neutral and impartial towards all religions, not establishing any one as official religion. It maintains a principled distance from all religions.
- **Individual Freedom:** Every person has the right to profess, practice, and propagate the religion they believe in.
- **Group Freedom:** Every religious group or sect is free to manage its religious affairs.
- **Limitations:** Right to propagate does not mean compelling conversion by force, fraud, inducement, or allurement. Freedom to practice does not allow practices that harm others (e.g., animal/human sacrifice) or infringe women's freedom (e.g., forcing widows to shave heads).
- **State Neutrality:** The government cannot compel taxes for religious promotion, and there shall be no religious instruction in government educational institutions. In private institutions, no one can be compelled to participate in religious instruction or worship.

#### 5. Cultural and Educational Rights:

- These rights specifically protect minorities (religious or linguistic) whose language, culture, or religion might be neglected or undermined by the majority.
- **Conservation of Culture:** Any section of citizens with a distinct language or culture has the right to conserve it.
- **Access to Education:** Admission to any government-maintained or aided educational institution cannot be denied on grounds of religion or language.
- **Establishment of Institutions:** All minorities have the right to establish and administer educational institutions of their choice.

#### 6. Right to Constitutional Remedies:

- This is a Fundamental Right itself, making other rights effective and enforceable. Dr. Ambedkar called it 'the heart and soul' of our Constitution.
- **Enforcement:** Citizens can seek enforcement of Fundamental Rights through courts. If a Fundamental Right is violated, one can directly approach the Supreme Court or a High Court.

- **Protection against Authorities:** Fundamental Rights are guaranteed against actions of Legislatures, Executive, and other government authorities. Any law or action violating them is invalid.
- **Public Interest Litigation (PIL):** Any citizen or group can approach the Supreme Court or a High Court for protection of public interest against a law or government action, even by writing a letter to judges.
- **National Human Rights Commission (NHRC):** An independent commission set up in 1993 to inquire into human rights violations, abetment, or negligence by government officials. It makes recommendations to the government or intervenes in court on behalf of victims. It has wide inquiry powers but cannot punish the guilty (that's the courts' responsibility). State Human Rights Commissions exist in all states.

## Expanding Scope of Rights

The scope of rights in India has expanded beyond the initial Fundamental Rights:

- **Judicial Interpretation:** Courts have expanded the scope of existing rights, leading to new legal rights.
- Right to freedom of press, right to information, and right to education are derived from Fundamental Rights.
- School education up to 14 years is now a right for Indian citizens.
- Parliament enacted the Right to Information Act under the Fundamental Right to freedom of thought and expression.
- The Supreme Court expanded the right to life to include the right to food.
- **Constitutional Rights (Non-Fundamental):** Other rights exist in the Constitution that are not Fundamental Rights, such as the right to property (now a constitutional right) and the right to vote in elections.
- **Human Rights (Universal Moral Claims):** The concept of human rights, universal moral claims not always legally recognized, is also expanding. International covenants (like the International Covenant on Economic, Social and Cultural Rights, which includes rights to work, safe working conditions, adequate living standards, social security, health, and education) contribute to this expansion.
- **New Rights in Other Democracies:** Countries like South Africa guarantee new rights such as right to privacy, right to a healthy environment, and right to access adequate housing, health

care, food, and water. Many advocate for similar rights (work, health, minimum livelihood, privacy) to be made fundamental rights in India.