



Digital Constitution Museum, Digital History Lab  
Advanced Study Institute of Asia, SGT University

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# Teaching Module

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## Module 3

### Rights, Freedom, and Social Justice

#### I. Why Rights Were Placed at the Heart of the Constitution

When the framers of the **Constitution of India** debated the inclusion of Fundamental Rights, they were not merely cataloguing freedoms. They were responding to a history in which law had often functioned as an instrument of domination rather than protection.

Colonial rule was legalistic but not just. Racial discrimination, preventive detention, censorship, and emergency powers were all exercised through law. For the framers, this created a central challenge: how could law be redesigned so that it restrained power instead of enabling it?

Fundamental Rights were the answer. They were placed early in the Constitution not accidentally, but symbolically. Before the Constitution speaks of Parliament, executive authority, or administration, it speaks of the individual.

This ordering matters. It asserts that the state exists for the citizen, not the other way around.

#### II. Rights as a Break from Social Hierarchy

Indian society at the time of independence was structured by deep, inherited inequalities. Caste hierarchy determined occupation, dignity, and access to public space. Gender norms restricted autonomy. Religious identity shaped vulnerability. In this context, equality before the law was not a neutral principle; it was a radical intervention.

Article 14 guarantees equality before the law and equal protection of the laws. On paper, this seems simple. In practice, it challenges centuries of graded inequality. The Constitution does not merely promise equal treatment; it authorises the state to take **unequal measures** to correct historical injustice.

This is why provisions for affirmative action coexist with the language of equality. The framers rejected the idea that treating unequals equally could ever produce justice.

### **What this really means**

Equality in the Constitution is not sameness. It is fairness shaped by context.

## **III. Freedom and Its Limits**

Article 19 guarantees a cluster of freedoms: speech and expression, assembly, association, movement, residence, and profession. These rights reflect the nationalist struggle against censorship and repression.

But unlike absolutist free speech traditions, the Indian Constitution explicitly allows **reasonable restrictions**. Public order, morality, security of the state, and decency appear repeatedly as grounds for limitation.

This choice reflects the framers' realism. They feared that unregulated liberty in a deeply divided society could lead to violence rather than freedom. The Constitution therefore, balances liberty against collective stability.

This balance has never been settled once and for all. It is continuously renegotiated through legislation, protest, and judicial interpretation.

## **IV. Religion, Secularism, and Pluralism**

India's approach to religious freedom is distinctive. Articles 25 to 28 protect freedom of conscience and religious practice, but they do not enforce a strict separation between state and religion.

Instead, Indian secularism is based on **principled engagement**. The state may intervene in religious practices to reform social injustice, particularly in matters affecting equality and dignity.

This has led to recurring tensions. When does regulation become interference? When does reform become coercion? The Constitution does not provide easy answers. It provides a framework for debate.

What is clear is that religious freedom in India was never meant to override constitutional values. Faith was protected, but not placed above equality.

## **V. Protection Against the State**

Several Fundamental Rights are explicitly defensive. They protect citizens from arbitrary arrest, detention, and punishment. These provisions reflect colonial abuses, especially preventive detention laws and emergency regulations.

Articles 20 to 22 introduce safeguards such as protection against retrospective criminal laws, double jeopardy, and self-incrimination. These rights assume that the state can be oppressive, even when democratically elected.

This assumption is crucial. Democracy does not guarantee justice. Rights exist precisely because power can be misused.

## **VI. Article 21 and the Expansion of Life and Liberty**

Originally, Article 21 appeared narrow. It stated that no person shall be deprived of life or personal liberty except according to procedure established by law. Early judicial interpretation treated this as procedural compliance.

Over time, however, courts radically expanded their meaning. Life came to include dignity, livelihood, health, education, privacy, and a clean environment. This transformation turned Article 21 into the constitutional core of human rights in India.

The judiciary justified this expansion by arguing that a Constitution meant to endure must be interpreted dynamically. Critics, however, have questioned whether courts have gone beyond interpretation into legislation.

This debate reflects a deeper tension: who should define the content of rights in a democracy?

## **VII. Rights Versus Social Reality**

Despite their ambition, Fundamental Rights have never been fully realised. Social discrimination, custodial violence, censorship, and inequality persist. This gap between constitutional promise and lived reality is not accidental.

The framers knew that rights alone could not dismantle social hierarchy. The law could prohibit discrimination, but it could not instantly transform social attitudes. This is why rights were paired with Directive Principles and later with Fundamental Duties.

Rights were meant to be tools, not miracles.

## **VIII. Courts, Citizens, and the Language of Rights**

One of the most striking developments in post-independence India has been the spread of constitutional language into everyday life. Citizens invoke rights in protests, petitions, and public discourse. Courts have become arenas where social conflict is reframed as constitutional violation.

Public Interest Litigation expanded access to justice, allowing courts to hear cases on behalf of marginalised groups. This blurred the line between legal remedy and social reform.

At the same time, judicialisation has limits. Courts cannot replace political action. Rights gain meaning only when claimed, defended, and institutionalised through democratic struggle.

## **IX. Rights as a Moral Imagination**

Ultimately, Fundamental Rights represent a moral imagination of citizenship. They assume that individuals are worthy of dignity regardless of status. They challenge inherited authority. They invite citizens to see themselves as rights-bearing subjects rather than passive recipients of governance.

This imagination is fragile. Rights survive only when they are demanded, interpreted, and defended. The Constitution provides the vocabulary, but society must supply the courage.

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## **Questions for Discussion and Reflection**

1. Why did the framers place Fundamental Rights so early in the Constitution?
  2. How does the Constitution's idea of equality differ from simple uniform treatment?
  3. Why are freedoms under Article 19 subject to reasonable restrictions?
  4. How does Indian secularism differ from strict separation models?
  5. What does the expansion of Article 21 tell us about constitutional interpretation?
  6. Should courts play a central role in defining the content of rights?
  7. Why do rights often fail to translate fully into social reality?
  8. Can rights transform society, or do they merely regulate power?
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