

# THE CONSTITUTION

## AND

### FUNDAMENTAL RIGHTS AND DUTIES

(PART 1)

## The Constituent Assembly

The history chapters tell us about India's struggle for freedom and how different groups were protesting against British rule. They wanted the British to leave India. They wanted India to be a free country.

*What were the grievances that the Indians had about the way they were ruled under the British System of Administration?*



"At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom." This was how Jawaharlal Nehru addressed the midnight session of the Constituent Assembly in Delhi on the night of 14<sup>th</sup> August 1947.

Along with this struggle for freedom there was another question discussed by people involved in the Freedom Movement. This was: 'What should be the form of government after the British leave? Should we go back to the rule of the kings, as some of our old rulers are suggesting?'

While most people agreed that we should have our own rule, people had different opinions about what kind of government we should have. Some people thought that most of the powers should be with the Panchayats. Others believed that the Prime Minister or President should have more power. Should we have elections? Should we have

the same rules for everyone? How should we collect taxes? What kind of life do we want for everyone in the country?

In order to decide on such questions and visualise the future of our country, a group of people, called the Constituent Assembly was elected. Its task was to write the **Constitution** – the document that gives the basic laws and principles by which the country will be governed. The Constituent Assembly had 299 members from all parts of the country. They held long discussions on every point that was to be put in the Constitution. These discussions went on for three years.



Sardar Patel

## For Extra Reading at Home...

Would you like to find out how the people in the Constituent Assembly decided what the Constitution should say? And why it took so long? You can get an idea of their discussions from the following. A committee had submitted a Report on Fundamental Rights and this discussion took place after that.

### CONSTITUENT ASSEMBLY OF INDIA VOLUME-III

Tuesday, the 29th April, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at half past Eight of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

The Hon'ble Sardar Vallabhbhai Patel: ...There were two schools of thought in the Committee and there was a large number of very eminent lawyers who could scrutinise every word of every sentence, even commas and semi-colons, from a very critical point of view. These two schools viewed the matter from two different angles. One school considered it advisable to include as many rights as possible in this Report—rights which could straightaway be enforceable in a court of law, rights in regard to which a citizen may without difficulty go straightaway to a court of law and get his rights enforced. The other school of thought considered it advisable to restrict fundamental rights to a few very essential things that may be considered fundamental. Between the two schools there was considerable amount of discussion and finally a mean was drawn, which was considered to be a very good mean. . . . the two schools of thought . . . studied not the fundamental rights of one country alone but of almost every country in the World. They studied all the Constitutions of the world and they came to the conclusion that in this Report we should include as far as possible rights which may be considered to be reasonable. On that there may be difference of opinion in this House and this House is entitled to consider every clause from a critical point of view and to suggest alterations, modifications or omissions...

What does the word 'Fundamental' mean?

Outline some of the ways by which the makers of the Constitution decided upon the rights that were to be included in the constitution?

... the debate continues...

Mr. Bhamathi Ranjan Thakur: Sir, ... [A] point to which I wish to refer is in relation to clause 6 regarding 'untouchability' where it is said that—

"Untouchability in any form is abolished and the imposition of any disability only on that account shall be an offence."

I do not understand how you can abolish untouchability without abolishing the very caste system. Untouchability is nothing but the symptom of the disease, namely, the caste system... Unless we can do away with the caste system altogether there is no use tinkering with the problem of untouchability superficially.

S. C. Banerjee: Mr. President, the word 'untouchability' actually requires clarification. We have been accustomed to this word for the last 25 years, still there is a lot of confusion as to what it connotes. Sometimes it means merely taking a glass of water and sometimes it has been used in the sense of admission of 'Harijans' into temples, sometimes it meant inter-caste dinner, sometimes inter-caste marriage. Mahatma

Gandhi who is the main exponent of 'untouchability', has used it in various ways and on different occasions with different meanings. So when we are going to use the word 'untouchability', we should be very clear in our mind as to what we really mean by it. What is the real implication of this word?

I think we should make no distinction between untouchability and caste distinction, because as Mr. Thakur has said, untouchability is merely a symptom, the root cause is caste distinction and unless and until the root cause, that is caste distinction is removed, untouchability in some form or other is bound to exist and when we are going to have an independent India, we should expect everyone to be enjoying equal social conditions.

Srijut Rohini Kumar Chaudhury: ...[For] defining untouchability, it may be clearly stated that: 'Untouchability' means any act committed in exercise of discrimination on grounds of religion, caste or lawful vocation of life . . .

Mr. K. Munshi: Sir, I oppose this amendment. The definition is so worded that if it is accepted, it will make any discrimination even on the ground of place of birth or 'caste or even sex 'untouchability'.

Mr. Dharendra Nath Datta : Sir, it seems to me that whether the definition suggested by Mr. Rohini Kumar Chaudhury is accepted or not, it is necessary that there should be some definition put in. Here it is said that 'untouchability' in any form is an offence. A magistrate or a judge dealing with offences shall have to look to the definition. One magistrate will consider a particular thing to be untouchability, while another magistrate may hold a different thing to be untouchability, with the result there will be no uniformity on the part of the magistracy in dealing with offences. It will be very difficult for the judge to decide cases.

Moreover, untouchability means different things in different areas. In Bengal, untouchability means one thing, while in other provinces, it means an entirely different thing.

Mr. President: I should like to draw the attention of the House to clause 24 which says ...[that the] Union Legislature shall make laws to give effect to those provisions of this part which require such legislation. . . [Therefore,] I take it that the Union legislature will define the word 'untouchability' so that the courts might prescribe proper punishment.

[Eventually it was decided to leave the definition of untouchability up to future law makers . . ]

Rajendra Prasad



Finally, the Constitution was adopted by members of the Constituent Assembly on behalf of all the people of India.

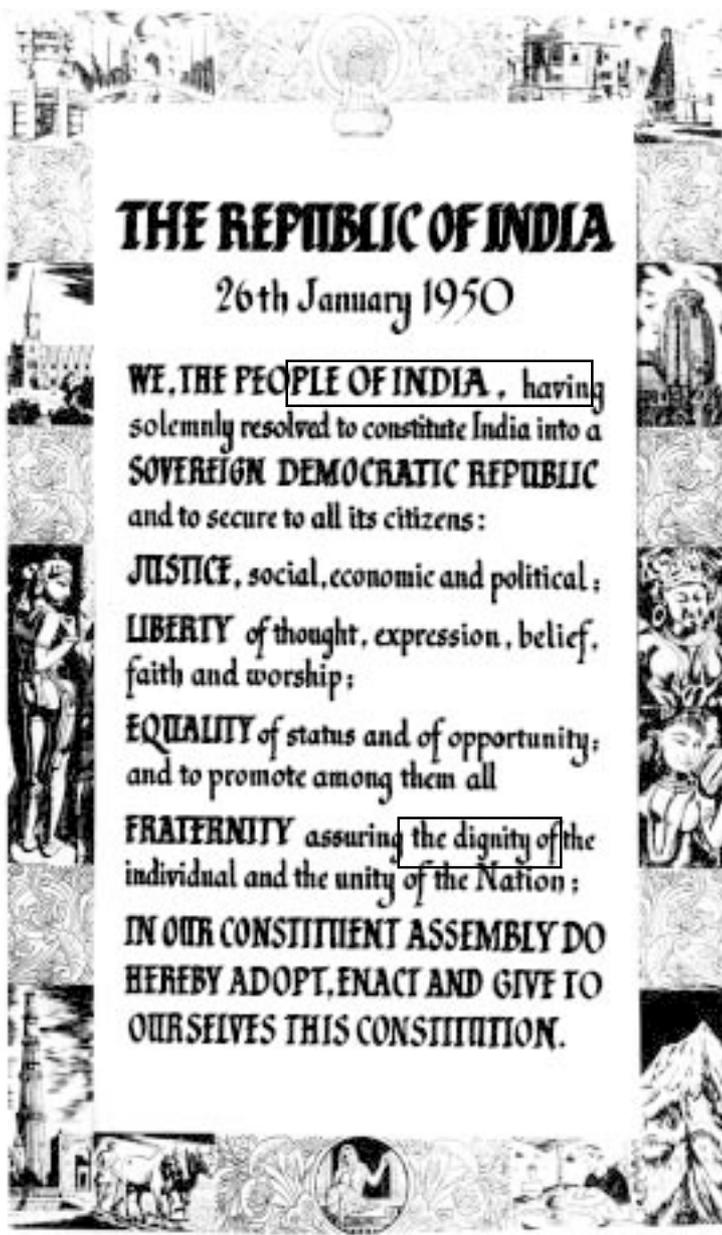
### The Constitution of India

The Constitution describes how India is divided into States and Union Territories. There are governments at both levels. One at the Centre (Delhi) for the entire country and the other in each State or Union Territory for that particular state or Union Territory.

This was done because the members of the Constituent Assembly felt that India was a large country and one government at the centre would not be able to solve the problems and look after the interests of all the people and the different regions.

The Constitution, therefore, also provides specific powers for the government at the Centre and at the State level. You can read about this later on in the chapter on the Central Government.

Jawaharlal Nehru signing the Constitution



Above is the Preamble (introduction) to the Constitution. Don't worry if you don't understand all the difficult words in the Preamble. We will discuss some of them later. The words in boxes were added in 1976.

### Republic Day

The Constitution came into force on 26 January 1950, which has been celebrated as Republic Day ever since.

In a **democracy**, people should participate in the making and changing of governments. Thus, every adult has the same power to vote. Whether a person is rich or poor or belongs to a particular social background does not matter. The Freedom Movement had highlighted the idea that all people are equal.

**demos** (people) + **kratos** (rule) = **democracy**, meaning rule by the people.

Thus, the Constitution states that governments in India are to be formed through elections. These elections are based on the principle of **universal adult franchise**. All elections in India for forming governments at any level have to follow this principle, since it is stated in the Constitution.

### **Universal Adult Franchise**

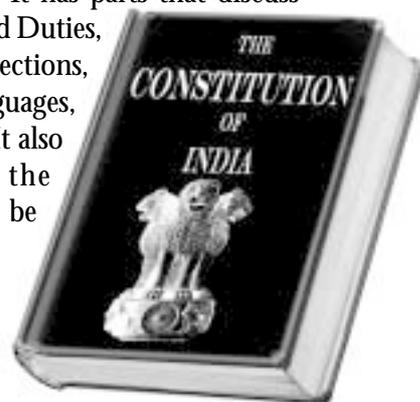
**Franchise** means the right to vote.

**Universal** means that this right applies to all adults in all of India.

**The Constitution is to be followed by all the people of India.** In a democracy no individual should be considered to be above the law, no matter how high or important that person is. Therefore whether it is the Prime Minister, Chief Justice, President or any other high official, they all have to follow the laws. They also have to make sure that these laws are followed by all. The Constitution tells in detail how these officials should function.

**The Constitution lays down the guidelines for all laws made by the Central and State governments.** All laws must be in line with the Constitution.

Our Constitution is very long. It has 395 Articles, divided into 22 Parts. It has parts that discuss Fundamental Rights and Duties, the Judiciary (courts), elections, citizenship, official languages, finance and trade, etc. It also describes how the Constitution itself can be changed.



Dr. B. R. Ambedkar played a major role in writing the Constitution. He was the Chairman of the committee of eight people who wrote the first draft of the Constitution. They

presented this draft to the Constituent Assembly for discussion and modification. In this photo Dr. Ambedkar is seen with a group of dalit women and children.



Last year we read about the State Government and the Judiciary. Now we will learn about our Fundamental Rights and Duties.

NOTE:

In the following pages, the phrases in quotes are given in the same words as in the Constitution.

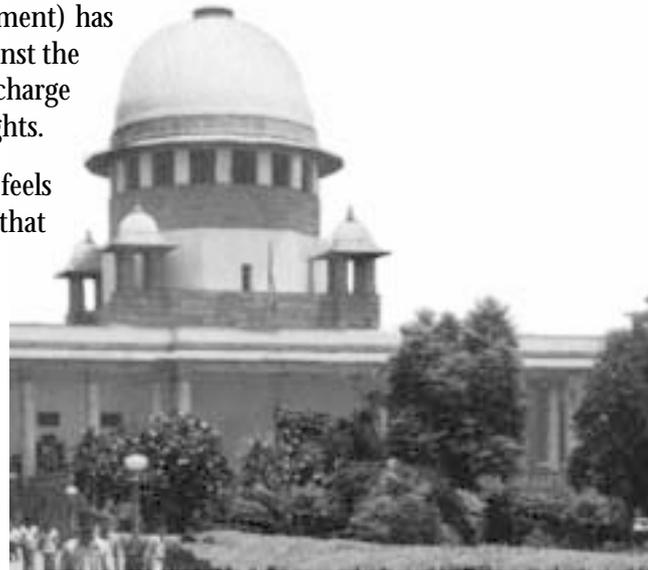
# “FUNDAMENTAL RIGHTS”

The third part of the Constitution is very important because it states our Fundamental Rights. It is the responsibility of the government to make sure that no one's Fundamental Rights are violated.

If you feel that someone or some organisation (or the government) has violated your Fundamental Rights, then you can file a case against the government in the High Court or Supreme Court. You can charge the government with failing to protect your Fundamental Rights.

These rights form the basis for many laws. Sometimes someone feels that a law has been passed by the Central or State Government that is in violation of the Fundamental Rights stated in the Constitution. S/he can then file a case against the government in the High Court or the Supreme Court. The courts must then decide whether or not the law is according to the Constitution.

The Constitution has divided Fundamental Rights into six sections. Let us study each one of them.



The Supreme Court (in New Delhi).

## 1. “Right to Equality”

The Constitution says that the government “shall not deny to any person equality before the law or equal protection of the laws.” This means that the laws apply in the same manner to all, regardless of a person's income, status, background etc.

For example, if some official is found guilty of a crime then he or she should be given the same punishment as applies to any other person. No one can claim special treatment because of his or her class or background.

The Constitution also says that we should not show any preference or treat some one unfavourably because “of religion, race, caste, sex or place of birth.” It also specifies that no one should be stopped from using public places such as hotels, shops, film halls, public wells, tanks and bathing ghats or stopped from offering prayers in a place of public worship.

Thus, people of any one religion have the same rights as the people of any other religion.



Everyone is equal before the law.

The Constitution specifies that there should be “equality of opportunity for all citizens in matters relating to employment” and that no one should be discriminated against on the grounds of religion, caste, sex, place of birth etc. This means, for example, that girls cannot be denied training as airplane pilots even though some employer may feel that girls are not suited for the job of pilots.

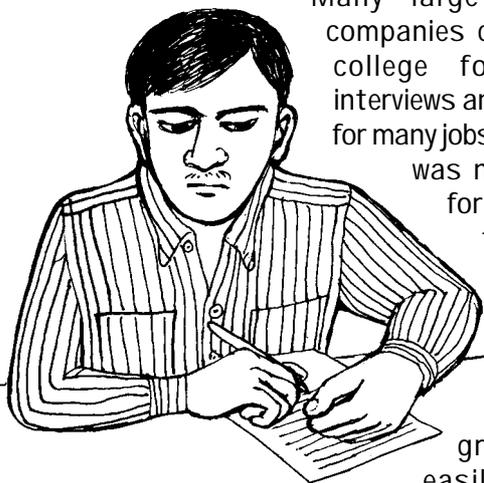
The Constitution clearly states, “Untouchability is abolished and its practice in any form is forbidden.”

The following is an actual example of the widespread discrimination that *dalit* students face.

### Getting a Job

Manoharlal's son recently cleared his B.Tech examination from Kurukshetra Regional Engineering College and stood 6<sup>th</sup> in his college.

Many large computer companies came to his college for campus interviews and he applied for many jobs. However, he was not selected for any job. On the other hand, his classmates with lower grades were easily selected.



Manoharlal looked at his son's bio-data. It showed an excellent record. After some thought, he advised his son to remove the mention of his scheduled caste status. His son made the change and sent his application to more companies. This time many of the companies that interviewed him offered a job!

### Reservation

Why does the Constitution try to prevent discrimination on the basis of caste? Because people's abilities and merits are not determined by their caste. A baby born in a *dalit* family is no different from a baby born in any other family. Both children should therefore have an equal opportunity to lead a good life. The Constitution guarantees this right.

However, even many years after the Constitution had guaranteed this right, there is still a lot of discrimination based on caste. For example, most *dalit* children are not able to get an education.

*What kinds of rights to equality does the Constitution ensure? Give examples. What does the Preamble to the Constitution say about equality?*

*Discuss whether you think each of the following is a violation of the Fundamental Right to Equality. Also discuss whether you think it is right or wrong to do such things.*

- *In some homes separate utensils are kept to be used by people of certain communities.*
- *While filling water from a public source some people object if the vessel of another person touches their pots.*
- *In some villages particular communities cannot organise a 'baraat' procession through the main streets of the village.*
- *If you want to rent a house, the houseowners are keen to know your caste and religion.*
- *Some communities are never provided a place to live within the village but always outside.*
- *In some schools, certain children are not allowed to serve water because they belong to a particular caste.*
- *Members of some communities do not go to many places of worship because they fear that they will be ill treated or beaten up.*

### DALITS

It is necessary to identify which castes and tribes are discriminated against so that their rights can be defended. The Constitution refers to these groups (whom we usually call *dalits*) as 'Scheduled Castes and Scheduled Tribes' (SC/ST). Schedule means list.



IF WE ARE ABLE TO GO TO SCHOOL, WE MAY NOT BE TREATED AS WELL AS OTHER STUDENTS, JUST BECAUSE WE ARE DALITS. EVEN IF WE MANAGE TO FINISH SCHOOL AND POST GRADUATION, AND DO WELL IN EXAMS, WE DON'T GET AS HIGH PAYING JOBS AS OTHERS.

In order to overcome discrimination on the basis of caste, the government has made laws for reservation of jobs and seats in higher education to scheduled castes and tribes. For example, medical colleges must admit a certain percentage of students who belong to SC/ST.

Reservation has been made in order to give people belonging to SC/ST the same opportunities that other people have. Without reservation they would have almost no chance of getting certain kinds of jobs. Thus, reservation does not give people belonging to SC/ST an advantage over others - it merely removes a disadvantage.

However, the laws for reservation are not always enforced. Discrimination has persisted. Even though 24% of the total population belongs to SC/ST, only 13% of the best jobs in government and only 2% of all university and college teachers belong to SC/ST.

A peaceful rally of people demanding the right to be rehabilitated before being displaced from their villages due to the construction of a dam.



## 2. "Right to Freedom"

The Constitution lists many kinds of things that we as individuals, are 'free' to do. This means that no one should stop us from having these freedoms. However, along with freedoms there are some restrictions, i.e. some things that we are not supposed to do. Let us discuss some of these freedoms and restrictions.

### Freedom "of speech and expression"

Citizens are free to express their views in many ways such as through meetings, publications, plays, paintings etc. However, there are some restrictions, too. For example, there are laws forbidding people to publicly tell others to rebel against the government. Laws also forbid people to publicly defame others (to publicly say false and mean things about someone that will damage that person's reputation).

### Freedom "to assemble peacefully and without arms"

People have the right to come together or assemble for many reasons such as to hold meetings about their rights, to discuss their problems or business issues, to exchange ideas and share views etc. Everyone also has the right to carry out demonstrations, public meetings and rallies. However, there are some restrictions on this right – for example, any assembly should be conducted in a peaceful manner without the display or use of arms. Similarly, whenever a demonstration or a rally is organised, prior permission from the administration needs to be taken.

## Freedom “to form associations or unions”

People are free to form many kinds of associations - cultural groups, business associations, trade unions etc. For example, you may have heard that many factories have workers’ unions. These unions hold meetings to discuss their problems. They make demands to the officers of the factory and at times may also organise a strike in the factory. Thus, the union protects the rights of the workers.

In spite of the right to form associations, in many factories the employers do not allow the workers to do so. In some cases they make workers sign a bond that they will not join a union. Workers may also face the threat of being fired. Since so many people in our country are unemployed or do not find enough work, no one would like to lose a regular factory job. Hence many people do not protest against this loss of freedom.

An activist of a farm workers’ union called Mazdoor Kisan Sangram Samiti delivering a speech in Arwal, Bihar.



*What associations are there in your area?*

*Why are workers’ unions formed? What problems do they face?*

## Freedom “to move freely throughout the territory of India”

Citizens are free to move in any part of the country. However, the government may impose some restrictions. For example, in some border areas the government thinks that free movement is posing problems for the security of the country. In such a situation restrictions on movement may be imposed.

## Freedom “to reside and settle in any part of the territory of India”

Any Indian can reside or seek employment in any part of the country. Let us read an example of a case related to this freedom.

### What about Slum Dwellers?

There are many cities like Mumbai, Kolkata, and Delhi where large numbers of people from far off villages come in search of jobs. They do not get jobs very easily. They usually work as daily wage labourers wherever they find work. Since they do not find proper places to stay, they live on roadside pavements or places near railway tracks.

Many years back, the Mumbai Municipal Corporation tried to remove some 50,000 people who had been living on the pavements. It began to destroy their shelters. In 1982 a case was filed in the Supreme Court against this action. While the case was pending, the people could not be removed.



Homes next to railroad tracks in Mumbai

Here is what the lawyers for the slum dwellers argued:

The slum dwellers should not be removed from their homes until they are given an alternative space to settle. A large number of construction workers come from outside the city and provide labour to build houses. It is the responsibility of the Municipal Corporation to provide space for people to settle. Since nearly fifty percent of the population of Mumbai lives on unauthorised land there is a great failure on the part of the planning authorities to provide adequate and lawful space for people. If they are forcibly removed from the pavements then it is a violation of their fundamental right of freedom to settle in any place in India.

In 1985 the Supreme Court reached a decision, saying "... We hold that no person has the right to encroach, by erecting a structure or otherwise on footpaths, pavements or any other place reserved or earmarked for a public purpose." However, it further ordered the government to make provisions for those people who had been living there for a long time to be settled in a different place before destroying their pavement dwellings.

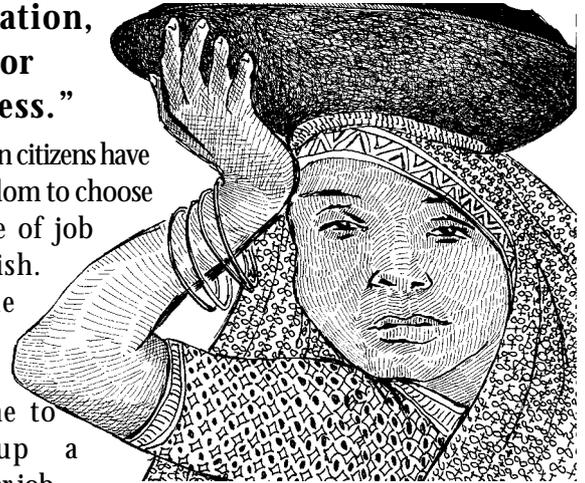
*Why do people want to move and settle in various parts of the country?*

*What is the responsibility of the government to workers who are able to find some work in the city but don't have a proper place to live?*

*If there were no slums in cities, how might this affect the lives of city dwellers?*

### **Freedom to "practice any profession or carry on any occupation, trade or business."**

All Indian citizens have the freedom to choose the type of job they wish. No one should force someone to take up a particular job.



### **"Protection against arrest and detention in certain cases"**

The police may arrest a person if they think the person has committed a serious crime. However, it is everyone's fundamental right to know why they have been arrested and to be produced in court within 24 hours. It is the duty of the police to inform them of the reasons for their arrest.

*What is the difference between the role of the police and that of the court? Can you recall this discussion from the Class 7 chapter on Law - Courts and Justice?*

*Why is it essential that an arrested person be produced in a court within 24 hours?*

## Right to Education

The Parliament has recently passed a new addition to the Constitution (an amendment), the fundamental right to education. It has made education for all children from the age of 6 to 14 a fundamental right. This makes it necessary for the government to arrange for schools and for parents to see to it that their children attend schools regularly. This right has been added because people feel that all children should have the opportunity to study, learn about the world around them, acquire skills to express themselves and make creative contributions to society, and have more opportunities for their future.

*What are the different types of schools you see in your area? Why do you think there are such different types of schools?*

*Are there some children who don't go to school at all? Why?*

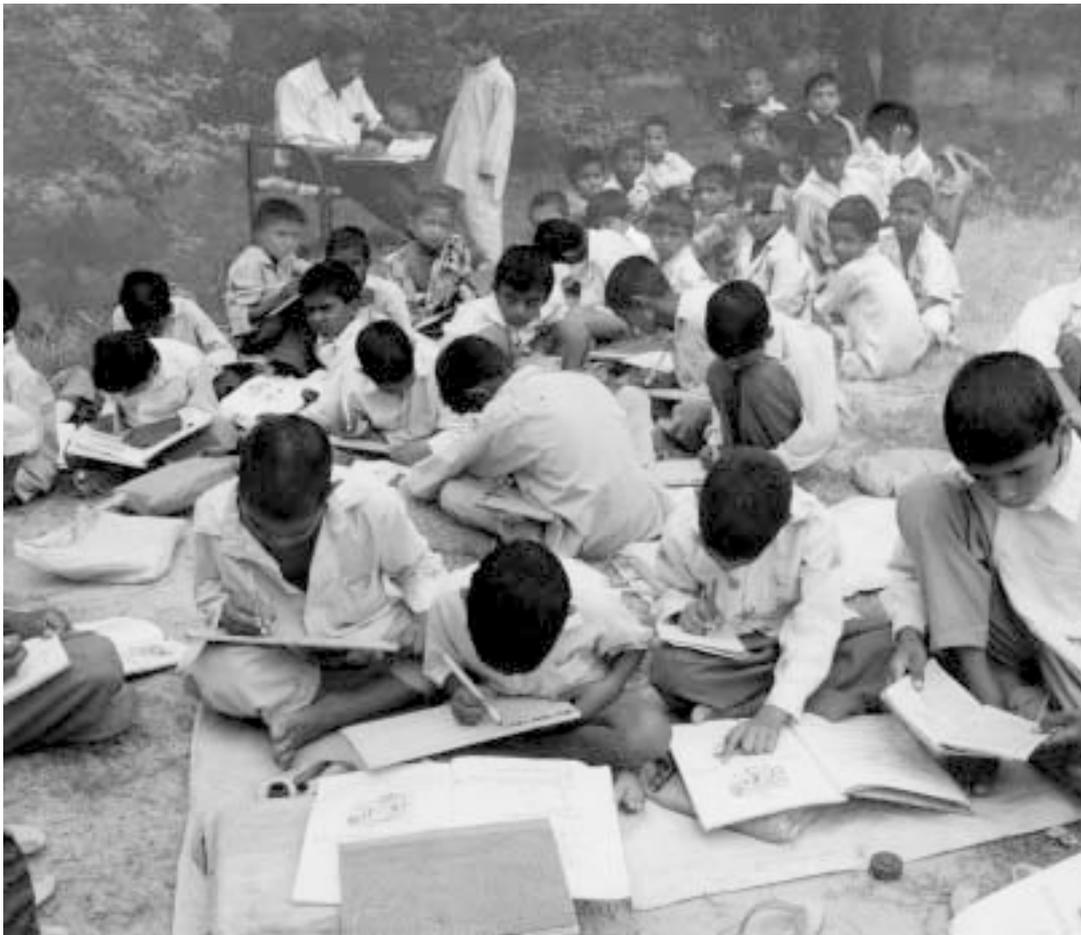
*Are all schools available to all children? Do all children who live around your area really have an equal opportunity to be educated in a similar manner? Discuss.*

## “Protection of life and personal liberty”

Every individual has a right to live and a right to be free. This right is guaranteed in the Constitution as a fundamental right. It is the responsibility of the government to protect the life of all individuals. When there is a threat to our lives, for example in a riot or dacoity, the police have to provide protection. If the police fail to do so we all have the right to fight against this in the court.

Along with protection of life we have the freedom to live our life as we desire. This is the right to personal liberty. However, according to the laws, personal liberty can sometimes be taken away – for example by arresting people, by putting people in jails, etc. In extreme cases, even life can be taken away by a judge awarding a death sentence to a person who has committed murder.

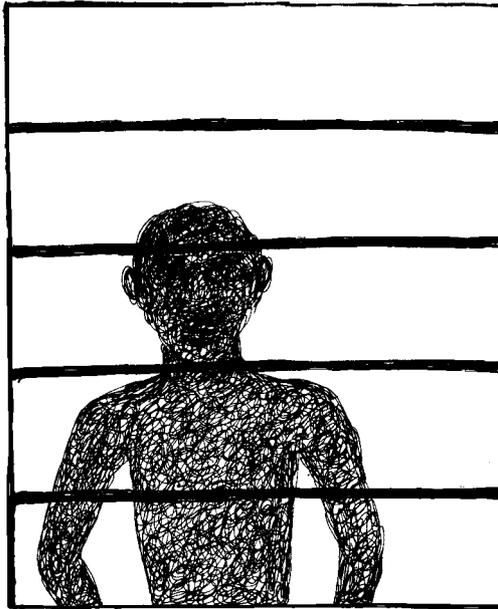
This class in a rural school is being held outdoors because of a shortage of classrooms. Do these children have a right to a classroom?



Let's read about an actual situation where the right to personal liberty had been violated.

## A Case Against Life and Personal Liberty

A sessions judge was hearing a case against a person by the name Bhoma Charan Oraon. Suspecting that Bhoma was suffering from a mental illness, he was sent to a mental asylum for treatment. After Bhoma's stay in the mental asylum for six months, the superintendent of the asylum informed the court that he was well enough to be discharged. The judge however did not take necessary steps to release him. Bhoma had to live there for six more years.



A case was filed against Bhoma's detention in the Supreme Court. It was proved in the court that there was a violation of Bhoma's right to life and personal liberty. The Supreme Court ordered the state government to pay Rs. 15,000 as compensation to Bhoma. The Supreme Court also said in its judgment that "none of these compensations can actually compensate the six years of life that had been lost to Bhoma- who has been turned to a 'living dead' situation."

*Discuss the meaning of the following phrases in your class: personal liberty; mental asylum; living dead.*

*Write in your own words: How was there a violation of Bhoma Charan's right to life and personal liberty?*

*The Preamble to the Constitution says that the Government has to make sure all citizens have certain kinds of liberty. After reading about some of the fundamental rights to freedom, can you explain what the Preamble means by 'liberty'?*

## EXERCISES

1. *How and when was the Constitution written?*
2. *What does the Constitution discuss besides Fundamental Rights?*
3. *Suppose someone has built a house by encroaching on land which is a part of a road. Can that person claim that the house should not be destroyed by the municipal corporation because everyone has a right to settle anywhere in India?*
4. *Suppose the government got a new well dug in a village. If some dalits are stopped from using this well, which Fundamental Rights are being violated?*
5. *What do you think would happen if the Fundamental Right to equality was not in the Constitution?*
6. *A number of years ago some Indian airlines had a rule that air hostesses (women who take care of the needs of passengers on aeroplanes) would lose their jobs if they got married. Was this against their Fundamental Rights? Explain.*