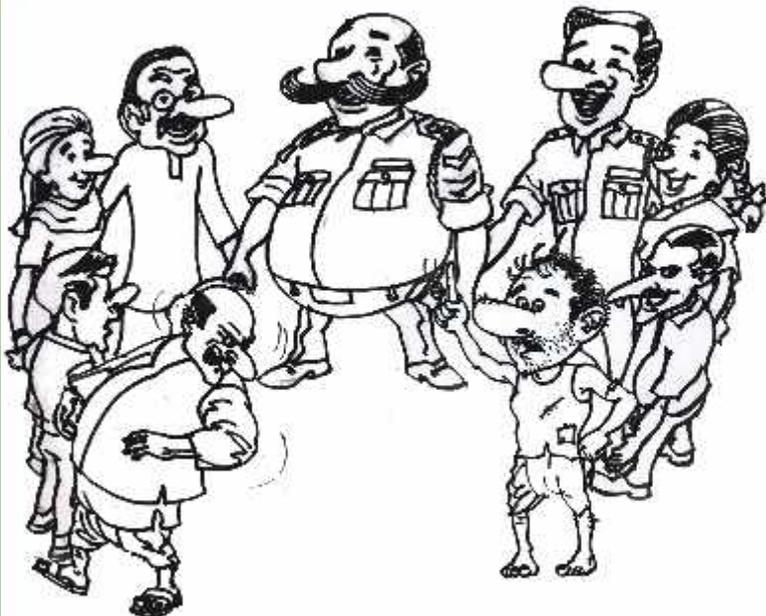


Fundamental Rights



**Police reforms too important to neglect,
too urgent to delay...**

This booklet has been developed by the Multiple Action Research Group (**MARG**) for Commonwealth Human Rights Initiative (**CHRI**). This booklet is a part of a series called Police & You: Know Your Rights.

CHRI is an international, independent, non-profit, non-governmental organization headquartered in New Delhi. Its objectives are to promote the practical realization of human rights in the countries of the Commonwealth. **CHRI** educates on human rights issues and advocates for greater adherence to human rights standards. For more details please visit <http://www.humanrightsinitiative.org>.

MARG works on Socio-legal issues related to poor and marginalized groups. Since its establishment in 1985 under the Societies Registration Act 1860, MARG has worked both at the mass level for simplifying laws and spreading legal awareness and at the level of policy maker for strengthening the law and its implementation. MARG's strength lies in its sustained interactions at the grassroots on a variety of issues cross-cutting urban and rural communities.

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Who am I?

They asked me when I tried to get admission into school (even though I'm a girl...) **“who are you to go to school?”** Again, when I asked at the local ration shop why he was not giving rations to people, he asked me who I was! Once I told the police they can't take away my rickshaw for no reason. Again- **who are you?!!**



I am Ali. Or maybe I am Geeta. Sometimes they call me Kallu. I am also known as John, Lakshmi, Razia, Chhotu, Gudia, Dada, Tambi, doctorsaab,..... But whoever I am, and wherever I am, there are some things that make me feel happy and there are some things that hurt me. When I was a small child, my mother used to give sweets to my brother first and if any were left, she would give them to me. I used to cry. Now I work at a construction site. My employer pays me less than my brother workers. I feel like crying. When I was a child, I worked in a soap factory in a small town. (I am 'Chhotu!'). My employer hardly paid me anything. I worked 16 to 18 hours a day. My hands Used to be full of wounds. I slept on the pavement

Along with other workers, labourers, etc. The policemen would come in the night and beat us with their sticks and ask for money. We used to keep some money for them so that we could save ourselves.

Then I left and went back to my village deep in the forest. There I am Pandu. I have a small piece of land, which has been with my ancestors for generations. I keep hens, a goat and have a small family. Life is better here. But the policemen turn up here too and ask for money. The other day the official from the collector's office came and told us to vacate our lands soon, as they were government property. Government had decided to seal off that part of the forest because we tribals were spoiling the forest and the forest had to be protected from us. Government was going to protect the forest from us!!

I am Sukhwinder. I live in a jhuggi in Delhi and drive an autorickshaw. Rents for houses are high and most of us who live here cannot afford them. But they say government has a policy to relocate people like us to cheaper housing so that we too can live in the city and earn our living. But now they say they are going to remove the shops from this area to build a road. The people around say we don't 'belong' here- we are encroachers and should go back to our villages. My neighbour Faiz from Punjab is a plumber and Banke Ram is a security guard. We all belong here and we are needed here. The police drop in now and then and say we should behave ourselves **or else...**

I often wonder- why are all these things happening **to me?** And sometimes I think I know the answer. The poor will always be treated like this by the 'masters'. And Kallu? When was he ever treated well? His family is in the trade of leather. They are 'mochis' since generations. Kallu is proud of his family. He has a college degree and works in a bank. Yet in his hometown Kallu and his family can't use the village hand pump nor go to the temple. (Kallu isn't allowed to talk so I am speaking for him) But then I look around and see- its not just the poor who suffer. Look at me- Ramesh- who teaches in a college. I often write articles criticizing the local councilor. I hold meetings of citizens to discuss the problems such as roads, water, garbage, etc. The other day the police came to my house saying there was a complaint against me. When I asked what was the complaint, they said I would have to come to the thana. There the police roughed me up and kept me locked up for two whole days. They left me with a warning to stop my activities. My father is scared and has asked me to stop my activities and be like an ordinary citizen.

That's who I am - an ordinary citizen!

The Rule of Law

So many things happen which affect an ordinary citizen. Are people helpless? Are some people allowed to ill-treat others and do as they wish only because they are in a position of power or strength? Is there no way that these things can be stopped from happening and the people protected?



All persons are protected by **the rule of law**. That means, that each and every person in society has to act according to certain norms or standards. The law ensures this. **Law**

means a standard or norm, which is approved by society, and everyone is bound to follow.

Everyone knows that killing someone is bad. But it is the law, which decides what punishment is to be given if someone kills another person. The law decides which act is a crime, as well as how much punishment is to be given and how. No other person can decide this, nor can it be done in any other way.

- » Kishan gets into a fight with Dattu, a big landlord. Dattu gets a fracture. Dattu's brothers decide to beat up Kishan in order to punish him. If they do this, they will also be committing a crime. Only the courts can give punishment to Kishan.
- » Police beat up Kishan mercilessly because they think he has committed a crime. If they do this, they are also committing a crime, because the law does not allow police to beat anyone even if a crime is committed. The law only allows the police to investigate a crime and to catch people who are suspected and bring them before the court. Then the court will decide.
- » Police take no action against Dattu because he is a big landlord. They cannot refuse to take action on this ground, because the law is the same for everyone, whether he is rich, poor or powerful.
- » A senior minister orders the police to stop the investigation against Kishan. The police cannot stop investigation because the law does not allow anyone to interfere in the work of the police even if it is a very senior official, politician, or any other person.
- » The Court gives an order punishing Kishan with life imprisonment. The Court cannot do this. Kishan can only be given the type of punishment which is allowed by the law.

All these things together are called the 'Rule of Law'. This means that **everyone** has to act according to the law - you and I; the landlord and the tenant; the farmer and the land owner; the police and the public; the minister and the citizen - all of us.

How is rule of law ensured?

In our country the rule of law is ensured by having a basic law of the land that is binding on everyone. This law is called **The Constitution of India** and all people have to act according to this. Even the law - makers cannot make laws of their own wish if it goes against the rule of law.

Under the rule of law, some basic rights of each and every person are protected.

The Constitution of India

Article 12. Definition In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Article 13. Laws inconsistent with or in derogation of the fundamental rights -

1. All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
 2. The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
 3. In this article, unless the context otherwise requires,-
 - a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
 - b) "law in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.
- ¹ [(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]

What Are My Fundamental Rights?

Why do I feel bad when I am given unequal treatment ?

Why do I feel bad when someone tortures me? Why do I feel bad when I am not allowed to express my feelings?

Why do I feel bad when I am stopped from going where I want?



Because I am a human being!
Being treated equally, being free from fear and restraint, being able to express myself are things which are basic to me as a human being. Therefore all those things which are basic for a human being must be ensured to me as **RIGHTS**. If someone has a **RIGHT**, it means that someone else must do or not do something.

If I say I have a right to this house, it means that all others are duty bound not to interfere in my ownership, possession or enjoyment of this house. If you buy a ticket to travel on a bus, then the bus driver/conductor have a

In this way, we have many rights which place duties on the state government and on other people.

Many of these rights are such without which we cannot live a proper life. So, these rights are **basic, or fundamental** for a person. **That is why no one, not even the government** is allowed to take away these rights.

The Constitution of India ensures that the government cannot make any law which violates any of our fundamental rights.

The various fundamental rights are also listed clearly. They are:

- » The Right to Equality (Article 14, 15, 16, 17)
- » The Right to Freedom (Article 19)
- » The Right to Life and Personal Liberty (Article 21)
- » The Right against Exploitation (Article 23, 24)
- » The Right to Freedom of Religion (Article 25,26,27,28)
- » Cultural and Educational Rights (Article 29,30)
- » The Right to get protection of all these rights from the Supreme Court (Article 32)

The Right to Equality

Nathu works as a mali (gardner). One day he stole a cycle from the house of a senior official Mr. Ram Prakash. Mr. Ram Prakash called the police and Nathu was arrested. The police beat him up and then took him away to the police station in handcuffs. The police said it is a very serious matter because Nathu has tried to steal from a senior official.



Some days later, the police came to Mr. Ram Prakash's house because his wife complained that he had beaten her severely and she had fractured her arm. The police told his wife that this is a family matter and she should settle it peacefully. They went away without taking any action against Mr. Ram Prakash.

Some people from the neighbourhood asked why the police did not do anything about Ram Prakash's wife. Was this not a more serious matter than Nathu stealing the cycle? The police replied, "Poor and low-class people like Nathu are to be dealt with severely because they often commit crimes. In the other case, the person involved is a senior official. Besides, we do not take the complaints of women seriously because these are common occurrences."

» Equal treatment by the law is one of the most basic rights. A person is not to be treated differently only because he or she is rich, poor, powerful, woman or man, of a particular caste, urban or rural, etc.



- » Stealing is an offence, but Nathu cannot be taken away in handcuffs as only dangerous criminals who may run away can be handcuffed. Handcuffing other persons is arbitrary, that is, it is an extreme action, which is not allowed by the law.
- » The procedure to be followed by the police must be according to what the law says and not who the person is.
- » In a society governed by the rule of law no-one is high or low. That is why titles like "**Rai Bahadur**", "**Raja Saheb**" etc. are not allowed to be given by the government to any person. Equality is also the reason why untouchability is now punishable.
- » Sometimes the law may treat different people differently but that is allowed because if they were treated equally, it would result in injustice. For example, the law tells the police to treat child offenders differently because children are of insufficient understanding and treating them the same as adult offenders would be harmful to them.

The Constitution of India

Article 14:

Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15:

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth -

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
 - (a) access to shops, public restaurants, hotels and places of public entertainment; or
 - (b) the use of wells, tanks, bathing, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.
- (3) Nothing in the Article shall prevent the State from making any special provision for women and children.

- [(4) Nothing in this Article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]
Added in the Constitution (First Amendment) Act, 1951, sec. 2.

Article 16:

Equality of opportunity in matters of public employment. -

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- (3) Nothing in this Article shall prevent Parliament from making any law prescribing, in

regard to a class or classes of employment or appointment to an office 2[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

- (4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

3[(4A) Nothing in this Article shall prevent the State from making any provision for reservation 4[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State.]

5[(4B) Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.]

- (5) Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 17:

Abolition of Untouchability - "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

The Right to Freedom

Every citizen has a right to freedom of different kinds. No human being can survive or live a complete life without these freedoms. These are basic freedoms such as:

- » Freedom of speech and expression
- » Freedom to move freely within the territory of India
- » Freedom to reside and settle
- » Freedom of trade and profession
- » Freedom to form associations
- » Freedom to assemble peacefully and without arms

Each of these freedoms can be limited to a certain extent only. The limit is also prescribed by the Constitution itself. Even a limitation which is allowed should be of a reasonable kind.

Ramesh and Lakshmi are colleagues in a college. They work in the slums of the city and often write articles about the poor living conditions in the slums. They also talk about the corruption in various departments. Once they circulated a pamphlet pointing out the corruption in the Municipal Corporation works. The police came to their house and said that they wanted to search their house and seize the written material.

This is a violation of their right to speech and expression. **Every person has the freedom to express her or his thoughts, feelings and opinions.** This is even more important in a democracy, because people

So it is important for them to voice their opinion about things. People may make speeches, write articles, sing songs and stage plays of their choice without interference from government. Even criticizing government is part of this freedom. This freedom can be limited if it creates a law and order problem. For example, if Ramesh and Lakshmi want to distribute pamphlets saying that the only way to curb corruption is to physically attack a few officers and destroy government property, then they can be stopped. This freedom can be curtailed on the ground of public morality, health, etc.



Similarly, **government cannot stop people from traveling to places of their choice**, of living in places of their choice. Sometimes it may make some restrictions such as, if there is some security problem in that area; or to protect the environment or the people of a particular area. That is why some places are closed for tourists. Certain forests are closed and no activity is allowed there. There are some areas where everyone cannot buy land. This is done in order to protect the local people from losing their land and means of livelihood.

People can follow **professions and trades of their choice**, with certain

limitations. For example, they must qualify according to norms set by the government. A man cannot insist on having a profession of a doctor if he does not have the prescribed degree. No-one can say that they have the right to do trade which is illegal such as smuggling or peddling narcotics and drugs.

Human beings are social animals and like to **form groups with common interests**. Government cannot stop these unless they are being formed for an illegal purpose. Sometimes people form groups like trade unions in order to gain strength for their rights. They may have collective protests and strikes. This is not an illegal purpose even though their strike may sometimes be declared illegal.

Likewise, people must be free to gather together to **hold meetings, stage demonstrations, etc.** But this freedom must be exercised peacefully and without arms. Government may make some rules and restrictions so that people can hold their meetings and assemble with regard to their own and others' safety and convenience. But in no case can government stop people from meeting. If people are stopped or attacked by the police or any other authority without any lawful reason, then their fundamental rights are violated.

Right against exploitation

In every society, some people or groups are weaker because of economic or social reasons. Because of being weak, they get exploited by others who are in a stronger position.

Exploitation means when one person or group of persons makes another person or group of persons do something because of the weak position of the former. It is the duty of the State to protect all its citizens from exploitation. That is why the state has made laws to protect this fundamental right of protection from exploitation.



Jagbandhu is a landless labourer in Orissa. He and his family work on someone else's land. They get just enough grain to survive. They are paid no money. Whenever they need some money for some expenses, they

have to borrow from the landlord. Then the landlord tells them that they are his servants but have to work without payment because they owe him a lot of money. This goes on for generations. Jagbandhu and his family continue to be miserably poor and have to do whatever the landlord says.

Guddu and Mithu live in Ferozabad. They come from a poor family. They are employed by a glass manufacturing factory for very little money. They inhale the glass dust every day for many hours, get very little food and rest, because of which their lungs are affected and they are very weak and sick.

The conditions under which Jagbandhu, Guddu and Mithu live are 'exploitative' and they violate their basic rights as human beings. The government has therefore made laws which forbid practices like these and makes them punishable. There are many laws for the protection and rehabilitation of persons who are exploited in this manner, such as: The Bonded Labour System (Abolition) Act 1976", and "The Child Labour (Prohibition and Regulation) Act 1986", The Protection of Civil Rights Act, 1955 etc.

Right to Freedom of Religion

Every citizen has the freedom to follow a faith of her or his choice and to practice and propagate their religion. People are allowed to establish religious institutions and impart religious teachings freely.

This freedom can be regulated by government for certain things like financial and political activities. Sometimes government may interfere on the grounds that the religious activity is harmful to public health or morality. Besides this, there are some restrictions on imparting religious teachings in educational institutions, which are run with government aid, or are recognized by the government.



Sikhs have established gurudwaras in many parts of the country. This is their fundamental right.

Rita worships in a temple and Fatima reads her Namaz every day. Margaret attends church every Sunday and celebrates Christmas.

All three have a fundamental right to do so. No law can either force them to stop doing so, nor can force them to do so if they don't.

A sect of one religion says that its followers should sacrifice small children in order to please the gods. This is against public morals and will be stopped by government.

One group of Muslims constantly clash with another group over a graveyard, causing a regular problem of public disorder.

Their right to freedom of religion will not be violated if government takes some action to get the graveyard shifted to some other place.

In a government recognized school, children are forced to perform pooja everyday. Those who refuse are threatened with expulsion.

This is against the law and action can be taken against the school if the children or their guardians complain.

Right to Life and Personal Liberty

The most important thing for a human being is preservation of her or his own life. That is why this is the most fundamental of all rights-to be protected against any action of the state which takes this right away. Secondly, a human being wants to live without unnecessary interference from the authorities in order to live a full and meaningful life.

Police arrest Bandu and take him to the police station in connection with a theft of a bicycle. They beat him up so badly that he died.

Police called Nahida to the police station for questioning and kept her there for many hours.

Jacob was in jail for an offence for which he was punished with three years simple imprisonment. The jailor used to make him do hard labour in the jail and would often not give him food.

Article 21:

Protection of life and personal liberty:- No person shall be deprived of his life or personal liberty except according to the procedure established by law.

Kharak Lal is suspected of doing some criminal activities. No

case is filed against him, yet a policeman constantly watches over his movements. He visits his house at all odd hours of the night and day and questions his family about his whereabouts.

The Corporation has stopped cleaning the bastis in a particular area saying that only poor people live there and they don't pay tax. Several children are falling sick because of lack of sanitation.

A big factory is polluting our neighbourhood with the smoke and fumes but the concerned department has not taken any action against it. We are falling sick and getting lung diseases because of this.

Some labourers are employed by the government mining department and made to work in very poor and hazardous conditions where they often get hurt and lose their limbs. No protective measures are taken and no medical aid or compensation is given to them.

What is common to all these situations?

In all these situations, the right to life and personal liberty of all these people is being violated. Government cannot make any law which allows the violation of law in this manner. If any person in the government does something that takes away the rights of people in this way, he or she will be punished by the

law and also made to compensate the person whose life and liberty have been taken away or interfered with.

We all know that the quality of a person's life is very poor if she or he is without even the most basic education. Lack of education may expose a person to further exploitation. Besides, if children study, they are able to have a better life and be protected from performing labour in their early years. But because many people are poor and backward, they do not send their children to school. But to ensure that every child goes to school, it is now a fundamental right of a child between six and fourteen years of age to go to school. This is called the fundamental right to free and compulsory primary education.



Article 21A

Right to Education:- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Remedies for violations of rights

Government is very powerful. It also has to handle many situations and may sometimes violate people's rights in the process. What can a person do if this happens?

There are many remedies available if fundamental rights are violated. We can file civil cases against the persons who have violated the rights. For this we may have to go to our district court and the procedure there is very long and expensive. Sometimes, if the violation is an offence under the law, we can file criminal cases also. But it will be difficult because we have to go through the process of the police. But the most important thing to remember is that **in cases where fundamental rights are violated, we can go straight to the High Court or even the Supreme Court of India** and the courts will give us relief. In fact, the protection of fundamental rights is so important that the **right to approach the Supreme Court in case of a violation is in itself a fundamental right.**

Every state has a High Court. It is usually located at the state capital. Sometimes some judges sit in some other city to make it easier for people to approach it. This is called a 'Bench' of the High Court. The Supreme Court is situated in the capital of India, New Delhi.

The High Courts and the Supreme Courts can issue orders to

any authority even to the highest officials. These orders are called '**writs**'. When we too make an application to these courts asking for such an order to be issued, it is called filing a '**writ petition**'.

Many people will find it difficult to go to the High Court or Supreme Court. In such cases, they can do the following things:

- » Go to the **Legal Services Authority** of their district or state and ask for their help.
- » Approach some person or organisation who is ready to help you to file a case or will file it in your behalf
- » Write a letter addressed to the Chief Justice of your High Court or the Chief Justice of India, telling them about the violation suffered by you. You must be careful to mention all the relevant facts as well as your own name, address, etc. If the Court finds that it appears to be a violation of a fundamental right, it will ask the person who has committed the violation for an explanation. After making a proper enquiry, relief will be given to the person whose rights have been violated.

The Series “**Police & You: Know Your Rights**” includes:

- n First Information
- n Arrest and Detention
- n Police Interrogation
- n Legal Aid Services
- n SC/ST Atrocities Act
- n Bail
- n Fundamental Rights

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Human Rights Division
Government of India