



2. Liberty and Rights

In a democracy, citizens have certain rights and duties. When those rights and duties are secured by the State then we can say the people have liberty. Right as a common privilege is given to its citizens by government. Liberty is an essential feature of democracy.

Liberty

In this chapter we will study Liberty as absence of restraints, freedom of choice, and availability of favorable conditions and attainment of happiness. We will also study the negative and positive aspects of liberty and the concept of liberty and rights as given in the Constitution of India.

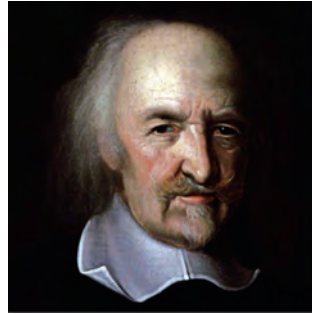
Liberty is also understood as freedom or self-rule. Liberty means freedom. Emancipation from slavery, freedom from autocratic rule, and freedom from foreign rule is liberty. Liberty deals with personal, social and national freedom. Social, economic and political rights which an individual needs for all-round development is also called liberty.



Do you know ?

Freedom from foreign rule is national liberty. Freedom given to an individual for development of one's personality is personal liberty. This is the difference between national and personal liberty.

Nature of Liberty : To understand the nature of Liberty we will have to study the views of the following thinkers.



Thomas Hobbes
(1588-1679)
an English philosopher

liberty. Therefore, according to him absence of restraint is liberty.

John Locke : Locke considers liberty as natural right of an individual. He has explained the concept of liberty within the context of morality. It is morally wrong to hurt the right of life and liberty of any individual. One should enjoy liberty without affecting the principle of equality. Liberty is an integral part of an individual. He has given great importance to



John Locke (1632- 1704)
an English philosopher

liberty. He maintains that all human beings are rational; therefore liberty should be enjoyed rationally. He does not advocate unrestrained freedom. In short, Locke's concept of liberty focuses on absence of restraint and freedom of choice.

Jean Jacques Rousseau : Rousseau looked at liberty from a collective



Jean-Jacques Rousseau
(1712-1778)
a Genevan philosopher

perspective. According to him an individual should keep personal interests aside for social interests. His concept of liberty frees the individual from a class based system and inequality. According to him inequality is an obstacle in the attainment of liberty. He maintains that liberty frees an individual from the hurdles created by the rise of civil and political society. He describes two hurdles on liberty: (i) One which prohibits an individual to think about public interest. (ii) One which is created due to inequality in society.

Rousseau

‘Man is born free but everywhere in chains.’ Rousseau was born in Geneva. He was considered the father of the French Revolution.

Rousseau did not consider liberty as a natural right as advocated by Hobbes and Locke. He believed that the society comes together to protect the life and interest of the individual. Therefore he gave more importance to emancipation from social inequality. He also stressed the freedom of choice and availability of favorable conditions in the concept of liberty.



Jeremy Bentham (1748 -1832)
an English philosopher

Jeremy Bentham : Bentham looked at liberty from the

perspective of attainment of happiness. He considered liberty and happiness as interconnected concepts. To achieve liberty one must gain happiness and eliminate sorrow.

Jeremy Bentham’s principle of liberty : ‘The greatest happiness of greatest numbers’. This is called negative liberty.

John Stuart Mill : Mill has supported individual liberty and opposed unrestrained



John Stuart Mill
(1806-1873)
a British philosopher

controls by the State. His ideas are based on the concept, that ‘man has full control over his body and mind’. These ideas of Mill are relevant even today. His ideas regarding liberty are found in his work ‘On Liberty’.

Two Concepts of Liberty

In his famous essay, ‘Two Concepts of Liberty’, first published in 1958, Isaiah Berlin has discussed about Negative and Positive liberty. Positive liberty emerged from modern liberalism, whereas, negative liberty emerged from classical and neoclassical liberalism. Isaiah Berlin believed that liberty is unrestrained.



Isaiah Berlin (1909- 1997)
Russian-British, philosopher
and historian of ideas.



Do you know ?

Explanation of some terms:

- Liberalism is a political ideology. Its central theme is based on individualism. The core values of liberalism are individualism, rationalism, individual freedom, justice and toleration.
- Classical liberalism is based on a belief of 'minimum government'. In such a system, the role of the state is limited to the maintenance of law and order along with personal security.
- Modern liberalism propounds the importance of the state. State intervention through welfare policies can therefore enlarge liberty by safeguarding individuals from the social evils.
- Neoliberalism has a strong belief in free market economies and individualism. Key neoliberal policies include privatisation, spending cuts in welfare schemes, tax cuts for corporate among others.

Negative Liberty : Negative liberty emerged from classical and neoclassical liberalism. Thoughts of J.S. Mill, Isaiah Berlin, Fredrick Hayek and Robert Nozick have explained negative liberty. Negative liberty opposes all restraints on liberty. It believes that the State should not interfere in the life of an individual. Non interference of the State in the social and economic life of an individual is a characteristic of negative liberty. Any restriction on the freedom of an individual endangers liberty. Therefore, Negative liberty opposes force, terror, coercion and the interference of the State.

Freedom of thought is the base of negative liberty. Jeremy Bentham strongly advocated negative liberty. He argued that an individual knows how to protect his own interest; therefore the State should not bring any obstructions. In his book '*Manual of Political Economy*', he advocated free economy. Similarly, J.S. Mill also spoke of negative liberty in his book '*On Liberty*'. He supported non-interference of socio-political system for the protection of liberty. Mill also pointed out the correlation between the freedom of thought and the freedom of action. He promoted freedom of thought for the development of an individual as negative liberty. But he also calculated the impact of any action on society. He argued that if any action can qualitatively impact on the society rather than an individual; then in such a situation Mill rejects the idea of negative liberty. Therefore Mill's concept of negative liberty is different from Isaiah Berlin.

According to Isaiah Berlin, freedom of action is negative liberty. As per this principle, opportunity to act is important while the action itself is secondary. According to him, the impact of action is not considered important and hence it is not measured. Therefore, this principle does not give importance to quality. For example, this concept does not make a qualitative difference between choosing one's education, profession, or suffer deprivation. He would rather give importance to give opportunity to do these actions than the outcome of the action itself.

Isaiah Berlin has mentioned the following features of negative liberty.

- (i) Individual should have complete freedom of choice. He should not

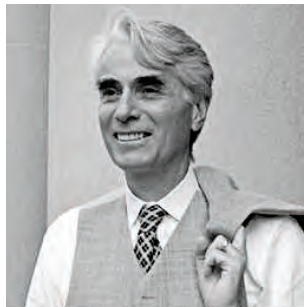
have restraints on choice of alternatives. Opposition to such restraints is a feature of negative liberty.

(ii) Negative Liberty is based on Neo-liberalism

Fredrick Hayek and Robert Nozick have also explained the concept of Negative Liberty. Fredrick Hayek was a neo-liberal thinker and an individualist. He described liberty as a hurdle-less situation. He opposed state interference in an individual's life. He advocated economic freedom. According to him economic freedom is true liberty. There should not be any control or restriction on true liberty.



Friedrich Hayek
(1899-1992)
an Anglo-Austrian
philosopher



Robert Nozick
(1938- 2002)
an American
philosopher.

Robert Nozick is also a neo-liberal thinker. He believed that whenever any restriction is put on an individual without his consent, his liberty is at risk. He advised that liberty should be protected from such restrictions. Hence, he suggested that individual should be free from social, economic and State restrictions.

Isaiah Berlin's statement on Negative liberty : 'I am slave to no man'.

Isaiah Berlin's statement on Positive liberty : 'I am my own master'.

Positive Liberty : Positive liberty is advocated by Rousseau and Herbert Marcuse. The concept of positive liberty has emerged from modern liberalism. The concept of negative liberty cannot appropriately explain the idea of liberty. Modern liberals have advocated that there is a correlation between liberty, equality, justice, fraternity and collective interest. They also state that liberty affects equality and justice.

Positive liberty believes that law guides an individual. It helps an individual to enrich his personality. Rousseau has put forth the concept of Positive liberty because he believed that the obedience to moral laws will enhance liberty. He accepted rational collective interest of the society. State is a sovereign power which represents the 'General Will' hence he supports the idea of state control over individual.

Herbert Marcuse was a neo-Marxist thinker. He advocated positive liberty. According to him workers are unaware of their objectives and needs, hence for achieving liberty they need guidance from senior revolutionaries.

Marcuse has explained his thoughts about positive liberty in his books, 'One Dimensional Man' and 'Eros and Civilisation'. He said, "Scientific and technological development, has increased standard of living but has not reduced inequality in society". This has obstructed cultural development of the society.



Herbert Marcuse
(1898-1979) a German-
American philosopher.

Therefore according to him, American society has lost individual liberty and self-esteem. He argues about positive liberty that an individual is like a bird in a golden cage; who has lost the ability to fly high in the sky. He does not even think of rebelling as he has not experienced the joy of freedom. He advocates collective control as essential in community life, as a principle of positive liberty and hence supports State interference. For example, in order to maintain a pollution free environment, collective action for community good is required. Therefore, use of force is justified for community well-being.

Indian Concept of Liberty

In India, Liberty is understood as emancipation. Traditionally, this is a spiritual idea, salvation or emancipation from the cycle of birth and rebirth is considered as liberty. However, in modern times, liberty is understood as liberation from social constraints.

During British India, the concept of liberty was accepted in three ways,

- (i) The British made some laws for protection of individual's rights and liberties. For example, law of abolition of Sati system. The British propagated and promoted western education which introduced western idea of liberty in India. This influenced the social reformation and Indian freedom struggle in India.
- (ii) Mahatma Phule and Dr. Babasaheb Ambedkar spelt out various dimensions of liberty in India in the context of Indian society. Firstly, liberty means freedom from caste inequality. Secondly, freedom from social constraints was also an important dimension of liberty. Similarly, some

individuals faced a sense of subordination in social life. An end to this subordination is another dimension of liberty. For example, ending of humiliation and insult, gender inequality, superiority-inferiority complex. They also suggested liberation of lower castes from the domination of the upper castes as an essence of liberty.



Mahatma Jyotirao Phule
(1827-1890)
an Indian social activist
and a thinker



Dr. Babasaheb Ambedkar
(1891-1956)
an Indian jurist, economist
and social reformer

- (iii) Mahatma Gandhi accepted the concept of Swaraj as liberty.



Mahatma Gandhi
(1869-1948)
Leader of the Indian
Independence movement

He spelt this out in his work, '*Hind Swaraj*'. The term Swaraj implies a combination of two ideas: Self (Swa) and Rule (Raj). Swaraj means Self-Rule. His concept of Swaraj was comprehensive. Mahatma Gandhi did not accept Swaraj only as freedom from British rule but also as freedom from western cultural domination. Swaraj would mean a freedom from the trampling of humanitarian values. This concept gives more importance to self-governance, self-discipline and human values.

Rights

In order to live, a person must have some rights. Similarly, in order to develop his personality to the best possible extent, he must have some particular rights. Harold Laski defines rights as ‘those conditions of social life without which no man can seek, in general, to be himself at his best’.

Rights can be classified as follows:

- (i) **Natural rights:** Natural rights are parts of human nature and reason. These are universal in character. The right to life and liberty are some examples of natural rights.
- (ii) **Moral rights:** These rights are based on the conscience of the individual and the community. For example, respect for a teacher or an elderly person is a moral right of that person.
- (iii) **Legal rights:** These are granted by the State to the people. They are usually enumerated or codified in law. These rights are not universal, different countries with different governments would specify what rights the people of that country have been granted. Legal rights are enforced by law.

Legal rights are of two types:

- (a) **Civil Rights:** These rights relate to the person and property of the individuals. Right to life, liberty, equality and property are civil rights. Civil rights are protected by the state.
- (b) **Political Rights:** These allow people to take an active part in the political process. These rights include right to vote, right to contest elections, right

to hold public office and right to criticise and oppose the government. Political rights are normally available to citizens in a democratic state.

Preamble to the American Declaration of Independence

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Human Rights

Every human being by virtue of being a human being enjoys certain fundamental rights. These are called Human Rights. We are born with these rights, no one can take away these rights from us. These rights are not conferred by a ruler or by the society, these rights are inalienable. Human rights are natural rights. They are related to the concept of Justice. These rights are universal in nature and are given to all humans without any social discrimination. Human beings need these rights for development of their abilities, intellect and skills. Similarly, these rights are necessary to uphold human dignity and values.

Human rights include right to life, right to livelihood and freedom of expression along with the right to establish an organisation. These rights are dynamic, they develop with changing times, hence today we not only speak about civil and political rights but also discuss about right to information and right to pollution free environment.

United Nations created the Universal

Declaration of Human Rights (UDHR) on 10th December 1948. This declaration tries to combine natural and civil rights and also includes the principles which are essential for mankind like liberty, equality, justice and fraternity.

Do this!

Make a list of the human rights enumerated in the Universal Declaration of Human Rights.

The implementation of human rights requires favourable social, political and economic conditions. Since it is difficult to implement these rights, we find that human rights are violated in the world. African Americans are struggling to get an equal social status in the United States. India continues to experience caste-based discrimination. Women and children are in a vulnerable condition and they appear to be deprived of the rights granted in the Universal Declaration of Human Rights.

Activity : Discuss and make a note of examples of human rights violations.

Concept of Liberty and Rights in the Constitution of India

Part III of the Indian Constitution spells out the Fundamental Rights of Indian citizens. The constitution guarantees the following fundamental rights:

- Right to Equality
- Right to Freedom
- Right Against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies



Do you know ?

Right to Education was introduced as a Fundamental Right by the Constitution (Eighty-sixth Amendment) Act, 2002. This was implemented from 2010.



Do you know ?

The Right to Property was a Fundamental Right in the Indian Constitution. The Constitution (Forty-fourth Amendment) Act, 1978 removed this right as a Fundamental Right and introduced the Right to Property as a Statutory Right in Article 300A.

The Constitution of India combines both, the concept of Positive and Negative Liberty. Article 19 of the constitution of India deals with different types of liberty while Article 21 spells out the limitations on liberty. According to Article 21, no person shall be deprived of his life or personal liberty except according to a procedure established by law. This article does not make any exception or pre-condition for attainment of liberty and thus gives individual freedom the status of human rights. Consequently, both Indian citizens and foreigners may enjoy the Right to Life.

Indian judiciary has interpreted the meaning of rights and liberty in its various judgements. These interpretations become important in the actual implementation in the concept of liberty. For example:

- In the 1963 'Kharak Singh vs The

State of Uttar Pradesh' case, the Supreme Court upheld the Right to Movement throughout the territory of India.

- In the 1981 'Francis Coralie Mullin vs Union Territory of Delhi' case, the Supreme Court spelt out a more comprehensive meaning of liberty. It interpreted the Right to Life as the Right to live with dignity. This included nutritious food, clothing, and shelter, freedom of expression and freedom of movement as fundamental rights.
- In the 1984 'Bandhua Mukti Morcha vs Union of India' case, the Supreme Court interpreted Article 21 in the context of Directive Principles of State Policy. The Court included health care for workers, protection to children from physical abuse, opportunity and facilities for development, good education facility, maternal care and healthy working conditions as dimensions of the concept of liberty.
- In the 1989 'Ramsharan vs Union of India' case, the Supreme Court again interpreted article 21 in a wider context. The court included the protection of tradition, culture and legacy which give meaning to life as concepts of liberty.
- In the 2017 'K. S. Puttaswamy vs. Union of India' case the Supreme Court has declared that the right to privacy is a fundamental right under the Constitution of India.
- Recently, the Supreme Court has included clean and pollution free water and air as aspects of liberty.

Discuss

When we discuss human rights in the Indian context what is more important?

Political and civil rights OR right to food, shelter, clothing, health and education?

Discuss

Read the following.

- I clean my house daily and throw the garbage on the road.
- I take photographs of foreign tourists without asking their permission.
- Some patrons smoke in the cinema theater.

Discuss each of these statements in the context of the Right to Liberty in the classroom.

Do this : Find out various Supreme Court cases that have focused on the rights and liberty of Indian citizens. Discuss them in the classroom.

In this chapter we have seen the meanings of Liberty and Rights and also tried to understand them in the context of India. In the next chapter we would be looking at two other concepts, Equality and Justice.

 **Exercise** 

1. (A) Choose the correct alternative and complete the following statements.

1. The book, 'On Liberty' was written by
(Robert Nozick, Thomas Hobbes, J.S.Mill, Isiah Berlin)
2. The concept of Swaraj was spelt out by
(Mahatma Gandhi, Mahatma Phule, Dr.Ambedkar, Dr.Rajendra Prasad)

(B) Complete the following sentence by using appropriate reason.

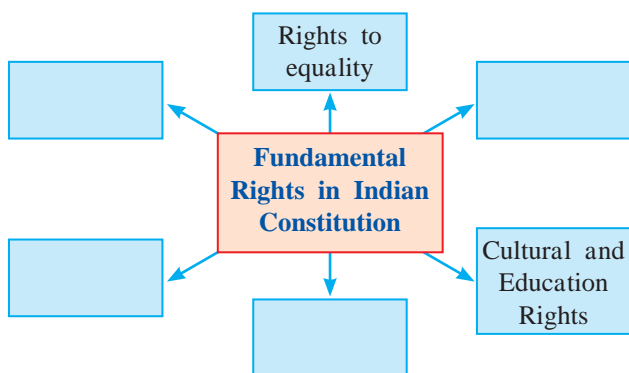
According to Jeremy Bentham, the State should not bring any obstructions in liberty because -

- (a) State does not give liberty.
- (b) individual knows how to protect his own interests.
- (c) liberty is a hurdle-less situation.

(C) State the appropriate concept for the given statement.

1. Fundamental right introduced in Constitution of India by 86th Amendment -
2. Rights based on the conscience of the individual and the community -

2. Complete the concept map.



3. State whether the following statements are true or false with reasons.

Legal rights are not universal.

4. Explain co-relation between the following.

1. Concept of Liberty by Thomas Hobbes and John Locke
2. Constitution of India and Liberty

5. Answer the following.

1. Explain Mahatma Gandhi's idea of liberty.
2. Discuss the concept of Human Rights.
3. Explain Isiah Berlin's concept of Liberty.

6. Answer the following in detail with reference to the given points.

Elaborate the concept of Rights -

- (a) Meaning
- (b) Natural Rights
- (c) Moral Rights
- (d) Legal Rights
- (e) Human Rights

Activity :

Make a list of Civil Rights in India.