In this Unit we shall see
• how the demand for various rights grew in the British Period,
• the nature of the rights demanded, and
• the various forms and means by which the rights were sought to be realized.

6.1 INTRODUCTION

The idea that every individual possesses certain ‘inherent rights’ to be exercised ‘equally with others’ developed in India in the course of the freedom struggle. It may indeed be said that the freedom movement in India was predominantly a struggle for rights to equality, freedom and justice, which were denied to the Indian people in colonial subjectivity. The long struggle for equal rights against colonial rule was marked by slow and piecemeal reforms by the rulers. A tiny section of Indians, primarily the propertied and affluent sections, were given limited political rights viz., of voting and sitting in governing bodies. All Indians were, however, subject to innumerable restrictions on their right to freedom and equality under demeaning conditions of
colonial rule. The struggle against colonial rule, thus, forms the context in which the language of rights developed. So, the ideas of equality and freedom as primary conditions of dignified human existence were the moving force behind the freedom struggle. And, it led to the setting up of the Constituent Assembly. The Assembly framed the Constitution of India, which became the source of sovereignty of the people of an independent nation. The rights, which were hitherto denied by colonial rule, became the basic and fundamental rights of the people.

6.2 BACKGROUND OF THE DEMAND FOR RIGHTS

The year 1857 saw the Indians lose their First War of Independence and their direct incorporation into the British Empire as its subjects. The colonial state ruled over India as the representative of the British Crown. The ideals of freedom and equality which were seen as essential values within Britain, were, however, denied to the colonised Indians. In fact, colonial rule was justified on the grounds that the Indian culture, marked by caste and religious loyalties, lacked the conditions in which the values of individual equality and freedom could be understood or applied. Resistance against colonial rule was articulated in the form of demands for rights denied to them. Thus, a range of rights including right to freedom of the press, greater opportunity in senior government jobs including the Indian Civil Service, security of land tenure, rights of the working class etc. were demanded.

6.2.1 Nature of People’s Resistance

Resistance took the form of local struggles by peasants and workers in their immediate surroundings. It also took a more organised form of mass movements viz., the Non-cooperation Movement (1920-22) and the Civil Disobedience Movement (1930-34) under the leadership of Gandhi and the Indian National Congress.

6.2.2 Role Played by the Indian National Congress

In 1930 the Indian National Congress demanded complete independence. In 1931, at Karachi, the Congress adopted the Fundamental Rights Resolution which became the guiding spirit in the formulation of Fundamental Rights in the Constitution of India. While demanding political freedom as the primary condition for realising the rights of the people, the resolution promised to achieve universal adult franchise for all Indians, men and women, education and development for all and social and economic justice for individuals and groups.

In its election manifesto in 1936 before the provincial council elections, the objectives of rights and justice for all were repeated. The last elaboration of Congress policy before the convening of the Constituent Assembly was the manifesto for the provincial elections in the winter of 1945-46, wherein the Congress envisaged a free, democratic and federal state with the ‘fundamental rights and liberties of all its citizens guaranteed in the Constitution’ (S.K. Chaube, Constituent Assembly of India, Delhi, 1973, p.123).

Check Your Progress 1

1. Examine the context in which the demands for rights was first articulated in India.

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6.3 THE CONSTITUTION AND THE DEMAND FOR RIGHTS

6.3.1 Constitution Framing: an Exercise in Self-determination

The demand for framing a constitution for India was really an assertion of self-determination. The Constitution was seen as the source of sovereignty and the rights of the people of India. The British imperial practice has no tradition of a written constitution over and above the ordinary law. Rights of the British subjects are derived from royal grants, parliamentary statutes and the common law. Within the British Empire, for the first time in 1921, the Irish Free State framed a Constitution that included a list of fundamental rights. But, the Irish Constitution was a 'rebel' constitution. The British Parliament did not recognize it. Ireland left the British Empire in 1939.

The idea that the Constitution was the source of people's rights and self-determination of the nation emerged in the context of the freedom struggle. The piecemeal reforms introduced by the British failed to satisfy the aspirations of the people. In its Nagpur session in 1920, the Congress adopted the goal of swaraj and launched a satyagraha in the form of the non-cooperation movement. It became the considered policy of the leaders of the movement not to participate in any reform efforts of the colonial rulers.

6.3.2 Various Efforts to Draft a Constitution

The appointment in 1928 of the Indian Statutory Commission (Simon Commission) to look into the demands for constitutional reforms was considered demeaning as it did not include an Indian representative. The first effort to draft a constitution was made in 1928 when an All-Parties Conference met in Delhi and appointed a committee under the chairmanship of Motilal Nehru to draft a constitution for India. The Nehru Committee recommended a set of fundamental rights which could not be withdrawn by the government. The Simon Commission, however, did not favour the grant of any such rights to Indians. Frustration following the fading out of the Civil Disobedience Movement in 1934, formed the background against which the demand for a constituent assembly was first made.

6.3.3 Demand for a Constituent Assembly

In May 1934, a section of the Indian National Congress revived the Swarajya Party and demanded a Constituent Assembly containing "representatives of all sections of the Indian people". The task of this Constituent Assembly would be to frame an acceptable Constitution as the only means by which the principle of self-determination of India could be applied. The Government of India Act, 1935, which was the outcome of the Statutory Commission Report and the deliberations of the Round Table Conferences in London, did not meet the demands of rights for the Indian people. The Congress rejected the Government of India Act of 1935.

In its Lucknow session in 1936, the Congress declared that the aspirations of the people of India will not be satisfied by a constitution imposed by outsiders. It criticised the reform attempts by the British. It asserted that the 1935 Act curtailed the sovereignty of the people and did not recognise their right to shape and control their political and economic future. In the 1940s, amidst the Second World War and rising discontent in India over India's involvement in it, the demand for a Constituent Assembly as a means to self-determination gained momentum.
1. Describe some of the earlier efforts at drafting a Constitution for free India.
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2. Why was the demand for a Constituent Assembly raised?
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### 6.4 CABINET MISSION PLAN AND THE BIRTH OF THE CONSTITUENT ASSEMBLY

Increasing demands by Indians for a greater say in their own governance led to the acknowledgement by the Viceroy in August 1940, that the framing of the Constitution for India would be ‘primarily the responsibility of Indians themselves’. But this exercise, he said, had to wait till the war was over. This announcement, in what has come to be known as the ‘August Offer’, was followed by the Cripps Mission which promised in its declaration steps for the ‘earliest possible realisation of self-government in India’. It also proposed the setting up of a Constituent Assembly after the war. It may be pointed out here that the freedom movement in India was composed of a variety of strands. While the Indian National Congress emerged as the dominant strand, a number of ideologically divergent strands contended Congress’ vision of free India. In the matter of the institution of the Constituent Assembly as well, fears were expressed that rights of certain groups, particularly the non-Hindus and the scheduled castes, may not be adequately protected in a Constituent Assembly which was dominated by the Congress. Such fears were expressed by the Muslim League, the Scheduled Caste Federation of India and the Justice Party.

#### 6.4.1 Objectives Resolution

The Cabinet Mission visited India in March 1946 and sought to make ‘immediate arrangements’ for Indians to decide the future constitution of India in which all such conflicts could be resolved. The Cabinet Mission Plan, issued in May 1946, offered the opportunity to Indians to make a Constituent Assembly for that purpose. In the ‘Objectives Resolution’ of the Constituent Assembly which is also reflected in the Preamble of the Constitution of India, the Constituent Assembly declared its resolve to constitute India into a sovereign republic. The sovereignty of the Constitution would be derived from the people, who would secure justice, equality and freedom. The Objectives Resolution showed its commitment to democratic ideals by declaring that adequate safeguards would be provided for the rights of minorities, backward and tribal areas, and the depressed and other backward classes.

#### 6.4.2 Advisory Committee and its Subcommittees

The Cabinet Mission had suggested the setting up of an Advisory Committee on the ‘rights of citizens, minorities and tribal and excluded areas’. Its task would be to draw a list of fundamental rights, the clauses for the protection of minorities and a scheme for the administration of the tribal and excluded areas. So, the Constituent Assembly set up an Advisory Committee with Sardar
Vallabhbhai Patel as the chairman. The Advisory Committee, in turn, set up five sub-committees:

- the Subcommittee on Fundamental Rights;
- the Subcommittee on Minority Rights;
- the Subcommittee on Tribal and Excluded Areas in Assam;
- the Subcommittee on Tribal and Excluded Areas in the North-West Frontier; and
- the Subcommittee on Excluded and Partially Excluded areas other than Assam and North — West Frontier.

Of these the fourth sub-committee, that is, the one on the Tribal and Excluded Areas in North West Frontier, was separated from the Constituent Assembly of India after partition. The four other sub-committees submitted their report to the Advisory Committee. The Advisory Committee considered such reports and presented its own reports to the Constituent Assembly of India. The Constituent Assembly thoroughly debated these reports, modified them wherever necessary, and then sent the same to the Drafting Committee. The Drafting Committee, chaired by Dr. B.R. Ambedkar, considered them again and prepared draft articles and clauses for consideration of the Constituent Assembly. These articles and clauses were then debated again, sometimes repeatedly. They were finally passed with modifications wherever necessary. The drawing up of the fundamental rights was the most lively and complex exercise in the Constituent Assembly of India.

Check Your Progress 3

1. How was the formation of the Constituent Assembly set in motion?

2. What steps did the Assembly take to ensure that rights of all sections of the people could be achieved?

6.5 FUNDAMENTAL RIGHTS AND THE CONSTITUENT ASSEMBLY

As stated earlier, the moving force behind the freedom struggle was the idea that every individual possessed certain ‘inherent rights’ which could be exercised ‘equally with others’. The freedom movement in India was predominantly a struggle for rights to equality, freedom and justice which were denied to the Indian people in colonial subjectivity. In this context, the framing of fundamental rights was a significant exercise. The rights embodied the aspirations of the people and also the democratic ideals which the Constituent Assembly set itself in the Objectives Resolution.

6.5.1 Justice, Equality and Freedom

The Objectives Resolution moved by Jawaharlal Nehru in the Constituent Assembly on December 13, 1945 prof. sed to all citizens of India:
Justice, social, economic and political; 
Equality of status, of opportunity, and before the law; and 
Freedom of thought, expression, belief, faith, worship, vocation, association and action, subject 
to law and public morality.
The assurance of such rights in a differentiated society marked by differences of caste, religion 
etc., was undoubtedly complex. The idea was to take into consideration these differences while 
applying the ideals of equality, freedom and justice. To ensure that 'equal enjoyment of rights' 
was not merely a formal statement, steps were to be taken to assure rights so that the 
disadvantaged sections could be given protective safeguards.

6.5.2 Circumstances of Constitution Making

It may be pointed out, however, that constitution making took place under rather difficult 
circumstances. The country was reeling under the post-war depression. The creation of independent 
India was accompanied by partition, communal conflict, loss of lives and arrival of hundreds 
of thousands of refugees from the newly created state of Pakistan. A Communist revolutionary 
programme in West Bengal and the Andhra region raised basic questions regarding the class 
biases of the Indian state and its structures of governance. Amidst such apprehensions about 
communal and class relations, the Constituent Assembly addressed itself to the task of framing 
a constitution assuring the rights and dignity of the people.

6.5.3 Considerations Governing Fundamental Rights

While laying down the specific details of the fundamental rights which were already outlined in 
the Objectives Resolution, there appeared to have been a general consensus that fundamental 
rights of citizens should be uniform, irrespective of race, religion, caste, sex and place of birth. 
There was at the same time a recognition that the minorities and weaker sections of the people 
needed some special safeguards. There was also a consensus that all laws prevalent in the British 
period and inconsistent with the rights to be sanctioned by the Constitution would be void. Nor 
would a future government be permitted to make a law in violation of such rights. The 
Fundamental Rights Subcommittee examined and debated several drafts of the proposed funda-
mental rights. It is significant that the Fundamental Rights Subcommittee worked in close 
association with the Minority Rights Subcommittee. The Advisory Committee to which the 
Fundamental Rights Subcommittee reported took into account both the final report of the 
Fundamental Rights Subcommittee as well as the comments of the Minority Rights Subcommittee.

6.5.4 Existing Precedents

In the process of formulation of fundamental rights existing precedents were also taken into 
consideration. The secretariat of the Constituent Assembly compared the fundamental rights that 
had been granted in several democratic countries of the world and the United Nations Declaration 
on Human Rights adopted on 10 December 1948. Sir B.N. Rau, a senior civil servant and 
Constitutional Advisor to the Constituent Assembly of India, visited several countries. He 
consulted, among others, Eamon de Valera, President of the Irish Republic and a great friend of 
India, as well as Justice Frankfurter of the Supreme Court of the U.S.A.
Check Your Progress 4

1. What was the Objectives Resolution? How do you think it sought to embody the aspirations of all sections of the people?

2. What were the concerns at the time of the formation of the Fundamental Rights? How did the Constitution makers seek to address these concerns?

6.6 ISSUES RELATING TO FUNDAMENTAL RIGHTS: THE DILEMMAS AND THEIR RESOLUTIONS

Thus, while framing the fundamental rights, the Constituent Assembly and its committees faced the challenging task of giving these rights a form and substance which would assure equality and justice for all.

6.6.1 The Form and Substance of Fundamental Rights

There was intense debate within the Fundamental Rights Subcommittee on the form or language of Fundamental Rights. It is important to note here that rights can be worded either negatively or positively. The manner in which rights are worded has important bearing on their legal nature and the role of the state in implementing them. A positively worded right places an obligation on the state to provide the conditions for the exercise of rights. In this case the rights are legally enforceable or justiciable. This essentially means that in case the government fails in its obligation to provide for a right, the courts can intervene and instruct the government to do so. The 1936 constitution of the USSR granted rights in a positive language. The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations also showed preference for positive formulation of rights.

A negatively worded right, on the other hand, sees rights as belonging naturally to the citizens and prohibits the state from taking away such rights. While providing for rights to the people, it does not put the state under a legal obligation to provide the conditions for their exercise. This was the practice followed by liberal democracies since the adoption of fundamental rights by the Constitution of the U.S.A. in 1791.

The dilemma was resolved by the Constituent Assembly in favour of wording the rights positively, giving the judiciary the role of an independent protector of the rights of the people. The people could turn to the courts for redemption if any of their rights was taken away. Members of the Constituent Assembly felt that a justiciable form of rights was necessary to instill a feeling of security among the minority groups and the disadvantaged sections.
6.6.2 Judicial Guarantee of Rights

Arising directly from the above was the dilemma over the role of the judiciary in the guarantee of rights. Those in support of positive rights, notably K.M. Munshi, were in favour of placing fundamental rights under judicial review. Munshi, therefore, made elaborate provisions for constitutional remedies through the Supreme Court. This meant that the court had the power to issue a number of writs to safeguard the rights of citizens as laid down in the Constitution.

6.6.3 Socio-economic Dimension of Rights

An important aspect of the discussions within the Fundamental Rights Subcommittee was the substance of the rights to be guaranteed. Would the Constitution of India, for example, give the people only political rights, as in the USA, or economic rights as well, as was the case in USSR? How would independent India deal with the problems of illiteracy, poverty and exploitation? How would India, for instance, implement land reforms or abolish untouchability? It is significant that in accepting justiciability as an essential aspect of Fundamental Rights, it was felt by members of the Subcommittee that certain rights like right to education, workers' rights, etc., could not be legally enforceable. These rights were seen as being part of social and economic planning. The Subcommittee agreed, therefore to dividing rights into two parts — justiciable rights which came to be incorporated as Fundamental Rights, and non-justiciable rights which were adopted as Directive Principles of State Policy.

6.6.4 How Much Freedom?

The right to freedom was discussed broadly under three heads by the Fundamental Rights Subcommittee: (i) specific freedoms, like those pertaining to freedom of speech and expression etc., (ii) protection of personal liberty and property, and (iii) right to universal adult franchise. Several leading members of the Constituent Assembly were of the opinion that unlimited personal freedom might endanger the security and stability of the country. They pleaded therefore, for restricting the various rights to freedom to preserve law and order, security of the country, to control class and communal conflicts and to protect personal honour and morality. Provision for preventive detention was also made in the Constitution in the interest of law and order and security of the state.

It is interesting that the Karachi Declaration of fundamental rights by the Congress included provision for the right to property. At the same time the Congress, which dominated the Constituent Assembly, was also committed to land reforms and abolition of feudalism. A section of the party wanted to insert the socialist principles of economy into the Constitution. The big landholders and zamindars, however, wanted strict protection of their right to property and sought to ensure that no property could be taken over by the government without paying compensation. Finally, after heated debates, the Right to Property was adopted with certain restrictions.

The Fundamental Rights Committee also adopted the principle of universal adult franchise. Voting rights were given to all above the age of 21 years, irrespective of their caste, religion, gender, education etc. Elections were to be universal, free and secret and controlled by an independent commission. This right was an important manifestation of the citizens' sovereignty and equality.

6.6.5 Rights of Minorities and Religious Freedom

Minority rights and religious freedom were significant issues discussed in the Minorities
Subcommittee and, thereafter, in the Fundamental Rights Subcommittee. Whereas the Constituent Assembly did not explicitly declare India a secular state, religious freedom was given recognition. Religious freedom included the freedom of conscience and the freedom to practice and profess any religion. A distinction was, however, made between freedom of religion pertaining to religious practice and faith on the one hand, and secular affairs like economic, financial and political activities connected with religion and religious institutions on the other. Such secular activities were made subject to state control. The state was permitted to carry out social reform of all sections of the people. Further, the state was allowed to throw open places of Hindu religious worship of public character to all sections of the Hindus, including the Sikhs, the Jains and the Buddhists. The Sikhs were allowed to carry kirpans within the limits of law. The opening up of places of Hindu religious worship was a part of the firm commitment of the Indian national movement to the abolition of untouchability. Since the 1920s, Gandhi had himself taken up the leadership of several temple entry movements. A dignified social existence of the so-called ‘untouchables’ among the Hindus, Sikhs, Jains and the Buddhists was assured through a separate article declaring untouchability an offence and its practice punishable by law.

It is important to point out here that some women members of the Subcommittee on Fundamental Rights opposed the form of religious freedom which gave independence to religious communities to govern their internal matters. Hansa Mehta and Amrit Kaur felt that such freedom would prevent the reform by the government of certain dehumanising practices against women like devdasi and child-marriage which had the backing of religion. Giving religious communities freedom to govern their internal matters has to a large extent limited the scope of intervention by the government to curb practices and norms which are unjust to women.

### 6.6.6 Equality

The chairman of the Drafting Committee, Dr. B.R. Ambedkar was well known for his passion for social and economic equality. It is important to note that there was an almost total agreement on the right to equality in the Constituent Assembly. There was an equal amount of agreement on the need of the backward classes for special treatment in order to enable them to overcome their backwardness.

Difference among members were confined to matters relating to identifying the backward classes, because of the wide variety of castes and tribes in India, and differences in their status. These problems were compounded by the fact that the British Indian provinces and the princely states followed different kinds of categorization. Eventually, the Constituent Assembly left it to the Union Government and the Parliament to identify the Scheduled Castes and the Scheduled Tribes from time to time. The states were permitted to identify other backward classes for special treatment.

### 6.6.7 Minorities

Religious and other minorities acquired special status in the British period. The system of separate electorate followed by the colonial government in India, affirmed their special identities. The Cabinet Mission Plan retained their separate identities through the provision for a sub-committee on minority rights. But the partition of British India altered the picture as the most vocal minority party, the Muslim League, got the Muslim-majority state of Pakistan. Though the partition left more Muslims in India than in Pakistan, the claim to a political status of the Muslim minority in post-partition India was lost. The other minorities did not insist on this status. The Constituent Assembly of India dropped the concept of political minorities but retained the status of cultural minorities. Religious minorities were thus granted cultural and educational rights. But the system
of separate electorate as well as that of reservation was abolished. The Constituent Assembly, however, expanded the concept of minorities to include linguistic minorities.

6.6.8 Backward Classes

The Scheduled Castes and the Scheduled Tribes were granted reservation of seats in the Union and State legislatures because they constituted the most underprivileged classes of society. Provision was made allowing reservation of jobs in the governmental departments and undertakings. Provision was also made allowing reservation of jobs for such backward classes of citizens which, in the opinion of the Government, were not adequately represented in the services. The small Anglo-Indian Community was thus granted reservation in services for two years. Provision was also made for their nomination to the first chambers of the legislatures of the Union and states where, in the opinion of the Government, they were inadequately represented.

6.6.9 Backward Areas

The bulk of the Scheduled Tribes lived in what was generally known as the 'Backward Areas'. Mostly hilly, and containing large forests, they were governed, under the Government of India Act, 1935, as excluded and partially excluded areas. Such areas were exempted from ordinary laws of government and protected from intervention of outsiders to different degrees. The Constituent Assembly brought some of the areas under normal administration and provided for specialized administration of the rest under the Fifth and the Sixth Schedules.

Check Your Progress 5

1. How did the Constituent Assembly resolve the dilemma of the form of Fundamental Rights in the Constitution of India?

2. How was a balance struck in the Constitution among the rights and aspirations of the various sections of the population?

6.7 LET US SUM UP

Rights of the Indian citizens were framed in the Constituent Assembly of India after elaborate discussions and debates. The moving spirit behind the rights was the adherence to the principle of human equality and dignity which was denied to Indians during colonial rule. A commitment to ideas of equality, liberty and justice for all was endorsed in the Objectives Resolutions of the Constituent Assembly. The Fundamental Rights Subcommittee working in association with committees like the Minority Rights Subcommittee was entrusted with the important task of formulating the fundamental rights of the people of India. Though there were differences over the form of rights and their scope, in the final analysis consensus emerged on certain points. For instance, Rights were to be worded positively, and as such would be legally enforceable or
justiciable. The judiciary would be entrusted with the power of judicial review and be the independent protector of the rights of the people. Certain rights like those relating to education and workers' rights were believed to be more in the nature of social and economic policy. These rights were seen as not amenable to legal enforcement. Thus, it turned out that the Fundamental Rights incorporated rights which were political in nature while the Directive Principles comprised the social and economic rights. Rights were granted to all Indians without any discrimination. A balance was, however, sought between the rights of various sections of the population. Religious minorities were given due consideration and special care was taken to provide for advancement of the weaker and backward sections of the society. Scheduled castes and tribes were thus given rights to overcome the disabilities they had suffered historically. Unlimited scope of rights was not preferred. Each right was hedged in with conditions which limited it for reasons of law and order, security and integrity, and public morality etc. of the country.

6.8 KEY WORDS

**Constitution:** Broadly speaking, constitutions are a set of rules which may be written or unwritten. These rules provide the framework for the powers and functions of the various institutions/organs of the government and the relationship between the state and the citizen.

**Constituent Assembly:** A group of people elected, or chosen on the basis of some other representative principle. This group is entrusted with the task of drawing/writing a constitution.

**Preamble** (to the constitution): An introduction setting out the aims and objectives of a Constitution.

**Satyagraha:** The term literally means demand for truth. In Gandhian terminology, the term acquires the significance of a moral force justifying resistance to forces of injustice.

**Sovereign:** Supreme; who does not derive power from any one else and is herself/himself the source of power.

**Swaraj:** The term literally means self-rule, freedom or self-determination.

**Hedged in:** bound

6.9 SOME USEFUL BOOKS

*S.K.Chaube,* Constituent Assembly of India, *PPH, New Delhi, 1973.*


6.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1
1. See Section 6.3. Your answer should focus on nature of people's resistance and role played by the Indian National Congress.
Check Your Progress 2
1. See subsection 6.3.2. Your answers should include references of the Simon Commission and the Nehru Report.
2. See subsection 6.3.3. Your answer should mention the failure of the government of India Act of 1935 to meet the people’s aspirations.

Check Your Progress 3
1. See section 6.4 and subsection 6.4.1. Your answer should refer to the ‘August Offer’ and the Cripps Mission.
2. See subsection 6.4.2. Your answer should refer to the role of the Constituent Assembly’s Advisory Committee and Subcommittees.

Check Your Progress 4
1. See Section 6.5 and subsection 6.5.1.
2. See subsections 6.5.3 and 6.5.4.

Check Your Progress 5
1. See section 6.6.
2. See section 6.6.