

# Rights and Ranks

## Public Pulse on Constitutional Priorities



## Introduction

Can some rights hold more significance for an individual than others? The relative importance of rights has sparked extensive legal and philosophical debates. Globally, such discussions have led to the establishment of certain inalienable human rights. These rights encompass the right to life, due process, freedom from slavery, and protection against torture (Farer 1992; United Nations 1966). The designation of some rights as inalienable and others as alienable constructs a hierarchy of rights (Weil 1983; Shelton 2006).

The Constitution of India also delineates a hierarchy of rights, marked by its distinctive nuances. It presents a four-fold classifications of rights: non-derogable, fundamental, constitutional, and legal.<sup>12</sup> Fundamental Rights are integral to the Constitution’s “basic structure”, and the legislature has limited powers to amend them.<sup>13</sup> Specifically, under Article 32, the Supreme Court has original jurisdiction to address breaches of Fundamental Rights, whereas, for other rights, it holds appellate jurisdiction. It can be argued that within this framework, constitutional rights, especially Fundamental Rights, occupy a superior position compared to legal rights (Klein 2008).

Part III of the Constitution, assuring Fundamental Rights to all citizens, has been amended several times since its adoption in 1947, altering the original hierarchy of rights. For instance, the legislature reclassified the Right to Property from a Fundamental Right to a Constitutional right.<sup>14</sup> They also elevated the Right to Education (Article 21A)—previously a component of the Directive Principles of State Policy (DPSP)—to a Fundamental Right.<sup>15</sup>

These amendments, typically proposed in the name of social justice and the welfare of marginalised sections, are crucial for actualising the right to life as guaranteed by Article 21 (Rao 2008). However, others like Palkhivala (1974) contend that such amendments signify a gradual erosion of the rule of law and individual freedoms, serving as a vehicle for advancing a statist ideology and prioritising certain rights over others (Rajagopalan 2015a).

While scholars remain divided on the issue, the key question that emerges is whether the public’s conception of “hierarchy” of rights aligns with that of the State. Is there a disconnect between them? Through qualitative interviews, this paper explores whether there are any disparities between legislative intentions and public perceptions. Our paper focuses on people’s relationship with the Right to Freedom under Article 19(1). We examine the extent to which the perceptions of Indian citizens regarding the Right to Freedom coincide with the hierarchy encoded in the Constitution.

This paper is structured into three sections. The initial section establishes the context by exploring the constitutional framework and the prevailing discourse on the hierarchy of rights. It emphasises the existing gaps in literature, particularly the scarcity of citizen-centric perspectives on understanding rights. The second section is devoted to insights gleaned from the field, exploring individuals’ comprehension of rights and limitations and their comparative valuation of different rights. In discussing these rights, we also probe the significance individuals attribute to these rights. We finally explain our methodology.

## Context of the Constitution of India

Part III of the Constitution enshrines Fundamental Rights for all citizens, encompassing the Right to Equality (Articles 14-18), the Right to Freedom (Articles 19-22), the Right against Exploitation (Articles 23-24), the Right to Freedom of Religion (Articles 25-28), Cultural and Educational Rights

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12. The difference between these rights is explained in the following sections.

13. The Basic Structure of the Constitution encompasses certain indispensable features that are immune to legislative alterations through constitutional amendments. The concept of the basic structure doctrine evolved in India during the 1960s and 1970s, culminating in the landmark case of *Kesavananda Bharati v. State of Kerala*. With the formal adoption of this doctrine, the Supreme Court of India retains the authority to scrutinise and invalidate any amendments perceived as infringing upon the basic structure. Courts delineate the elements of this structure on a case-by-case basis.

14. Right to Property was removed from Fundamental Rights (Article 19(1)(f) to legal rights (Article 300-A) by the Forty-fourth Amendment.

15. 86th Amendment shifted Articles 45 and 39(f) from the Directive Principles of State Policy (DPSPs), which are non-judicial in court to Part III, Fundamental Rights, under Article 21A.

(Articles 29-31), and the Right to Constitutional Remedies (Article 32). These rights are justiciable under Article 32, allowing aggrieved individuals to directly approach the Supreme Court of India for redress. Article 32 is thus considered a Fundamental Right in itself, serving as a protective shield for other Fundamental Rights (Rakshit 1999). Further, per Article 13, the Supreme Court has the authority to deem any law or executive order unconstitutional if it conflicts with Fundamental Rights (Rakshit 1999). However, Fundamental Rights are not absolute; the Government retains the right to impose reasonable and fair restrictions when necessary.<sup>16</sup>

In addition to Fundamental Rights, Indian citizens are endowed with legal and constitutional rights. However, the protections and original jurisdiction for appeals against infringements differ from those associated with Fundamental Rights. The Supreme Court operates under three jurisdictions: original, appellate, and advisory. It exercises original jurisdiction in matters related to infringements of Fundamental Rights under Article 32. Its appellate jurisdiction applies to all other rights, i.e., it can only review appeals against lower courts' decisions on rights other than Fundamental Rights.<sup>17</sup>

High Courts, under Article 226, have original jurisdiction to address appeals concerning constitutional and Fundamental Rights and exercise appellate jurisdiction per Article 227 over cases from lower courts or tribunals. Thus, for constitutional rights violations, aggrieved individuals must approach the High Court, while legal rights violations are first addressed in subordinate courts like District Courts.<sup>18</sup>

Constitutional and legal rights are not part of the Constitution's "basic structure", and lack the robust judicial protection against executive actions that Fundamental Rights enjoy (Singh 2006). Therefore, within India's comprehensive rights framework, Fundamental Rights command a superior standing compared to other rights.

The composition of Fundamental Rights has undergone several modifications since independence. While some rights have been elevated from DPSPs to Part III of the Constitution of India, others have been devolved from the Fundamental Rights status. Before 1978, the Right to Property (Article 19(1)(f)), now a constitutional right under Article 300A, held the status of a Fundamental Right in India. However, a series of amendments, from the First to the Forty-Forth, progressively weakened this right, rendering it more susceptible to State appropriation for public purposes (Singh 2006). Additionally, the Right to Education (Article 21A), currently a Fundamental Right, was initially part of the DPSPs under Articles 45 and 39(f).<sup>19</sup> Rajagopalan (2015) posits that the discord between socialist planning and constitutional limitations prompted numerous amendments, contributing to a decline in the rule of law and facilitating the advancement of socialist policies.

## Competing Theories on Hierarchy of Rights

The prevailing discourse on the hierarchy of rights is diverse and adopts varying frames for analysis. International legal debates often employ the concept of non-derogability to examine human rights. Non-derogable rights are immutable and must be upheld under all circumstances (Farer 1992). They encompass human rights such as the right to life, physical safety, due process, freedom from slavery, and protection against torture.

Non-derogable rights may be either absolute or non-absolute.<sup>20</sup> For instance, the prohibition of slavery is an absolute right, but the right to life is not. This distinction means that the State can impose a death sentence after presenting a valid reason and adhering to due process.

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16. The basis to impose reasonable restrictions is laid out in Article 19(2) to Article 19(6). If a right is violated, an individual can appeal in the court for the restoration of their rights. The Court typically applies the test of proportionality to assess whether the restriction/violation was justified.

17. All rights that have been conferred to the citizens and enshrined in the Constitution of India but are not under Part III of the Constitution are said to be constitutional rights. For example, Article 300A (Right to Property) is a constitutional right. Amendment to constitutional rights can be brought by amending the Constitution.

18. The laws which are passed by the State legislatures or the Parliament are the source of legal rights. They do not form a part of the Constitution and can be amended by the legislature through the ordinary law making process.

19. The socio-economic positive rights are included in Part IV of the Constitution, known as the DPSPs. These are non-justiciable rights which are not enforceable by the court.

20. Absolute rights are ones that the State cannot restrict or derogate under any circumstances, whereas non-absolute rights can be restricted by the State, after following a due process of law.

In India, non-derogability was integrated into the Constitution by amending Article 359. This Amendment fortified Articles 20 and 21 as non-derogable, ensuring that these rights remain inviolable, even during national emergencies (Tripathi 2011).<sup>21</sup>

However, the designation of certain rights as non-derogable suggests that other rights can be reasonably curtailed by the State. Weil (1983) contends that the principle of non-derogability empowers States to bifurcate norms into those of “greater” and “lesser” importance. This encourages courts to make generalised decisions favoring non-derogable rights, overlooking the specific facts or unique circumstances of a case (Klein 2008). Klein (2008) further posits that non-derogability may provide the State with a pretext to infringe upon other rights in non-emergency contexts.

The concept of non-derogable rights is deeply rooted in John Locke’s theory of natural rights (Locke 1884). He posited that individuals possess certain inalienable rights. These “natural rights” are not conferred by the State but, exist prior to its formation (Locke 1884). He asserted that the primary role of the State is to safeguard these “natural rights”, which serve as the foundation for other civil rights.

Several scholars have conceptualised the hierarchy of rights differently from Locke. While Locke’s theory of natural rights focuses predominantly on negative rights, other human rights theories encompass both positive and negative rights (Shue 1980; Bay 1982; Howard 1983).<sup>22</sup> Shue (1980) posits that the right to subsistence is a “basic right”, alongside the conventionally recognised right to physical security. Others scholars like Bay (1982) integrate Maslow’s hierarchy of needs into a socio-legal framework, creating a needs-based approach to rights. However, this approach attempts to make subjective concepts of needs and wants objective, and defines abstract qualities like human excellence as universal aspirations. The theory also presupposes “higher” needs and prescribes an ideal State of being (Fitzgerald 1985).

Existing literature either presents a case against a State-centric view of hierarchy of rights (Weil 1983; Klein 2008), or proposes hierarchical frameworks for theoretical exploration (Locke 1884; Shue 1980; Bay 1982; Howard 1983). Most studies overlook the citizen’s perspective: what rights people value and why.

A notable exception is a study that employed the Critical Incident Technique (CIT), for examining people’s valuation of rights (Montgomery 2002). However, CIT’s reliance on narratives of rights deprivation, to establish hierarchy may not account for variations in participants’ recall and interpretation (Flanagan 1954). Further, the relationship between experiences of rights deprivation and their perceived hierarchy rests on assumptions that are not clearly explained.

There is limited research exploring the hierarchy of rights from a citizen-centric viewpoint. We address this gap by conducting qualitative interviews with individuals from diverse professional and socio-economic backgrounds. We examine citizens’ perceptions of rights and assess their alignment with amendments to Fundamental Rights under Article 19(1) of the Constitution of India.<sup>23</sup>

## Findings from the Field

This section examines the data collected from the field on how people value and understand the Right to Freedom. The first subsection discusses how respondents understood the Right to Freedom and connected it with the idea of choice and autonomy. It also analyses how respondents prioritise one right over others and view restrictions for themselves versus for others differently.

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21. Article 20(1) establishes that individuals cannot be found guilty unless they contravene a law that was in effect when the alleged act was committed. Moreover, they cannot face a punishment more severe than what was authorised by the law in place at the time of the offence. Article 20(2) ensures that no person can be subjected to multiple prosecutions and punishments for the same offence. Additionally, Clause (3) of Article 20 guarantees that individuals accused of a crime cannot be forced to provide a self-incriminating testimony. The dissenting opinion of Justice Khanna in *A.D.M. Jabalpur v. S. Shukla*, 1976 is considered to be cornerstone of non-derogability in the Constitution.

22. Negative rights are those that prevent the State from doing certain actions; for example, the right to life. A positive right is one which requires the State to provide something; for example, the right to education.

23. Throughout the paper, Article 19(1) refers to all rights that were part of this Article since it was first enforced in 1950, till 2023. This includes the former Fundamental Right to Property and the Right to Form Co-operative Societies (added later via the Ninety-Seventh Amendment.)

The second subsection describes the rights which are valued most within Article 19(1). It involves a discussion on how people perceive various rights and freedoms, including property rights, freedom of speech and expression, freedom to reside anywhere in the country, and the freedom to practise any profession.

## **Rights, interests, and priorities: perspectives on individual freedom**

We began our interviews by enquiring—“What does having a right mean to you?”. In response to this, respondents used terms like autonomy, choice, liberty, equity, security, safety, and freedom. Irrespective of their backgrounds, people emphasised the importance of having the autonomy to safeguard their rights from undue State interference. In addition, respondents were also asked about their opinion on restrictions that limit their exercise of rights. Respondents used keywords like “vague”, “arbitrary”, “unclear”, and “excuses” to indicate what restriction meant for them.

However, respondents placed varying degrees of importance on different freedoms. The case study questions in part three showed that none of the respondents valued all rights equally. Some rights were given more priority than others. For some it was linked to how frequently they were exercising that right in their daily life while for others it served other interests. For example, a 24-year-old journalist vehemently opposed restrictions on freedom of expression, asserting that such restrictions were “inappropriate” and that, “even if someone expresses themselves crudely, they should still have the right to do so”. However, the same respondent agreed to the imposition of harsher restrictions on the freedom of association. Similarly, a 40-year-old member of the Resident Welfare Association (RWA) opposed restrictions on freedom to reside anywhere, arguing that tax-paying citizens of the country should not be subject to any constraints. However, they did not oppose restrictions on other rights, such as the right to form associations or assemble.

The varying degrees of value people assign to different kinds of rights indicates a link between individuals’ interests and the rights they value. If a right serves an important interest, the tolerance for restricting such a right is lower. This correlation between rights and interests has also been observed by Raz (1992). He contends that generally, what one has a right to is also something that serves one’s interest. He asserts that individual rights generally align with personal interests.

## **Balancing rights and restrictions: public and personal rights**

A recurrent theme emerged in our interviews: people are more likely to accept restrictions on other’s rights than for themselves. This was evident when respondents were asked to elaborate on the kind of restrictions they would support on other people’s exercise of rights.

Respondents provided several grounds for restricting the freedom of others. One reason cited by majority of the respondents included the importance of avoiding harm while exercising one’s rights. Harm seems to be the lowest common denominator for balancing a conflict of rights. However, the interpretations of harm varied from respondent to respondent. Respondents conflated the concepts of offensiveness, offence, and incitement of violence. They did not distinguish between hurting someone’s sentiment, threatening public order, or inciting violence.

J. S. Mill (1858) establishes a clear demarcation between what can be called “offensive” and what is an “offence”. He argues that speech may only be restricted if it directly and unequivocally violates rights; arguing that mere offence to people does not suffice as grounds for curtailing speech. In contrast to the respondents who used offensive and offence interchangeably, Mill’s stance underscores the importance of maintaining a clear distinction between these concepts. He asserts that while speech causing offence may be uncomfortable, it does not pose a direct threat to the rights or safety of others in the same way that actual violence or incitement to violence does.

Conversely, when respondents were presented with hypothetical scenarios where they would face restrictions on their rights, they displayed a markedly greater reluctance.

The biggest contrast in this regard was how differently people viewed freedom of speech and expression for themselves and for others. Respondents who had earlier supported restrictions for others on the

grounds of offensiveness, viewed this restriction differently when placed in hypothetical scenarios. They perceived restrictions as a means of curtailment of their freedom.

For example, when asked about the grounds of restrictions on freedom of speech and expression, a 35-year-old photojournalist talked about how misinformation should be avoided and how people should be careful about respecting others' freedom. However, when placed in a hypothetical scenario, wherein the authorities make it mandatory for him to get his newspaper fact-checked before publishing, he thought of this to be a form of censorship and was strictly against it. This disparity may be attributed to the "self-serving bias", a phenomenon studied by Alicke and Sedikides (2009). It refers to the tendency for individuals to interpret information and make decisions in a way that favours their self-interest.

Alternatively, it could stem from an inability to relate to abstract rights and restrictions presented in section two of the questionnaire. When restrictions are seen in the abstract and non-applicable to oneself, people are less likely to relate. Their views may change in hypothetical scenarios because they seem more concrete and real.

The comparative analysis of respondents' views on restrictions underscores the nuanced interplay between acceptance of restrictions for others as opposed to for oneself. For instance, respondents seem to be pro-speech for themselves but not as much for others. They use offensiveness, offence, and violence interchangeably when laying grounds for imposing restrictions on others. However, when talking about themselves, they propose less restrictive conditions for meeting the same end.

## Comparative Analysis of Freedoms

In this section, we delve into people's valuation of freedom and discuss the rights they value more. We have also analysed the reasons they provide for valuing a certain right. As mentioned before, people preferred to have fewer restrictions on the rights they value more.

We find that the rights that people valued more include, the Right to Property, freedom of speech and expression, the Right to Practise any Profession, and the Right to Reside in any part of the country. They valued property and considered personal ownership crucial for sustenance. Freedom of expression was viewed as an intrinsic part of a democratic system and freedom to reside anywhere was viewed as part of national identity. People also valued rights which were related to their livelihood.

### Property rights: what does property mean to people

Majority of the respondents valued their Right to Property more than other rights, such as freedom to assemble, freedom of movement, or freedom to form associations or unions. They saw other rights such as right to reside anywhere and the right to practise any profession to be connected to property. Owning property, they argued, ensured livelihood, security, and the freedom to choose where to settle, thus safeguarding individual autonomy and agency. This sentiment was observed among both propertied and non-propertied individuals.<sup>24</sup>

Individuals from diverse economic backgrounds, including a 35-year-old cab driver, a 52-year-old street busker, a 45-year-old migrant labourer, a 51-year-old Micro, Small and Medium Enterprises (MSME) owner, and a 60-year-old architect emphasised the importance of autonomy over their property and the need for it to be free from Government interference. Echoing this sentiment, a street busker shared how permissions from the State on buying or selling property should not be mandated. Per him, an individual inherently deserves autonomy over their property. Similarly, a farmer from Haryana emphasised that "property ownership is important for a meaningful life".

In line with our analysis, Howard-Hassman (2013) argues that the right to own property ensures other economic freedoms like the right to food, and the sustenance of an individual. The right to property thereby complements other rights and enables individuals to live with dignity.

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<sup>24</sup> Property throughout the course of the interviews referred to immovable property and propertied individuals referred to those who own any kind of immovable property.

## Disconnect between the Constitution and people's perspective on property rights

Prior to 1978, people had a Fundamental Right to “acquire, hold and dispose of property” under Article 19(1)(f) of the Constitution, along with the safeguard of Article 31 which guaranteed people the Right to Fair Compensation (Singh 2006). However, the Forty-Forth Constitution Amendment in 1978 altered the status of the Right to Property by relegating it from a Fundamental Right to a constitutional right under Article 300A, and deleted Article 31 from the Constitution (Sankaranarayanan 2011; Singh 2006).

Such an erosion of the right restricts aggrieved people's ability to appeal to the Supreme Court to restore their rights. Further, it restricts the judiciary's ability to uphold the Right to Property against the State's takeover, since it does not come under the “basic structure” of the Constitution (Singh 2006). In a landmark judgment the Kerala High Court, addressing the issue of adequate compensation, said that the “various amendments in the Constitution will stand defeated if it is held that Article 300A envisions payment of adequate compensation for the deprivation of property to the owner”.<sup>25</sup> The same stance about compensation and State takeover can also be seen in Supreme Court's order in the *Jilubhai* case where it States that the judiciary cannot be used as a tool to reintroduce adequate compensation to Article 300A.<sup>26</sup> Though, there have been laws which give people the right to fair and transparent compensation, such laws also leave the definition of “public purpose” under the State purview, without judicial review (Singh 2006).<sup>27</sup> While the Right To Fair Compensation and Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 provides for safeguards like a social impact assessment and requirement of consent, it also increases the bureaucratic hurdles and compliances in the way of compensation (Wahi et al. 2017). There is also a risk of undervaluation of the property, especially for land holdings that are big (Ramanathan 2006).

Our study highlighted that the altered importance given to the Right to Property along with the lower protection against inadequate compensation does not resonate with people. Our interviews suggested that people valued the Right to Property most among all rights in Article 19(1).

Regardless of whether the respondents owned property, they saw the acquisition of property by the State as a restriction on their property rights. Most regarded property as a means of safeguarding their livelihood. They did not want State interference in decisions about the sale and purchase of property. They thought it to be a “personal matter” in which the Government's role should only be limited to making such transactions smoother. This is especially in contradiction with the various State agriculture laws in India, which limit the farmer's ability to sell, buy, or lease the farmland (Miranda, Narang, and Krishnan 2022). Instead of easing the process, laws hinder such transactions.

When presented with hypotheticals, the respondents who agreed to the State acquiring their land also demanded fair compensation. Barring two outliers, none of the respondents agreed to give their land without compensation. They prioritise fair compensation based on the market value. This is a crucial finding given that almost 83% of the land acquisition challenges in the Supreme Court were based on cases where no compensation was paid by the government (Wahi et al. 2017). Such a striking contrast between what people want and are given is a telling tale of India's development story.

Some respondents were either unwilling to give their land or wanted another plot of land in exchange for theirs, arguing that land gives them sense of social and economic security. Two respondents, propertied and non-propertied mentioned that they were willing to voluntarily give their land without any compensation. They valued the idea of the “greater good” which can be generated if their land was used for developmental purposes. One of the two respondents was a religious head who owned property, and was generally altruistic, while the other respondent, who did not own property, was a professor who believed that people do not have a right to property.

Respondents saw the acquisition of property for commercial purposes such as building of a mall and developmental purposes such as, building a metro station or hospital, differently. Those who were willing to give their property for commercial purposes with compensation per the market price were also willing to give their land for developmental purposes. However, the reverse was not always true.

25. *Elizabeth Samuel Aron v. State of Kerala* (AIR 1991 Ker 162).

26. *Jilubhai Nanbhai Khachar v. State of Gujarat* (AIR 1995 SC 142).

27. In India, land acquisition is governed by The Right To Fair Compensation And Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013. The Act repealed the The Land Acquisition Act, 1894.

Respondents who were willing to give their property for commercial purposes were fixated on the amount of compensation they would get for the acquisition. Some respondents argued that they should get compensation higher than the market price, if their land is taken for commercial purposes. One of the reasons for this could be that they considered land an integral part of their sense of social security. They either did not see commercial purpose as a part of public good or wanted profit out of the acquisition if it is commercial.

## **Interdependence of rights**

In our interviews, the reason for valuing some rights stemmed from their relationship with other rights. Some rights were considered an important source for other rights. The relationship that various types of rights share with each other has been the subject of discussion. According to Locke, the “natural rights” of life, liberty, and property form the basis for all other civil rights (Locke 1884). Friedman and Friedman (2002) also discuss the connections between political, economic, and human freedom. They contend that economic freedom creates space for the expansion of other freedoms. Bay (1982) applies Maslow’s hierarchy of needs to a socio-legal framework to conceptualise the hierarchy of rights. He makes an argument for the hierarchy of rights based on Maslow’s hierarchy of needs and understanding of the psychological makeup of the individual. According to him, the hierarchy’s foundation and top priority are rights that serve survival needs.

In assessing reasons why certain rights were considered more important than others, our interviews suggested that wherever rights were linked to livelihood, people preferred those rights over others. We found that rights that were thought to be related to providing livelihood to people were given a higher priority. For example, migrants who now lived in Delhi, after having migrated from their native place, saw movement and residence as a means to earn livelihood and hence valued them more. In another instance, a photojournalist who often travelled to capture stories also linked the movement to earning a livelihood and valued it more because of its importance to him. Some respondents also linked the right to property as a safeguard for protecting livelihood. Livelihood seemed to be an important theme that was reflected in various ways depending on the personal experience of the people.

Apart from the freedom to reside and the freedom to movement, which had indirect connections to livelihood, Article 19(1)(g) itself was also given preference as compared to other freedom among respondents. A majority expressed a strong desire for the freedom to choose their profession. While talking about the freedom to choose professions, a 62-year-old activist who was against restrictions on the practising profession mentioned how buyers and sellers share a “socio-economic” relationship with each other. Instead of curbing the right, the government should think about ways of easing such relationships. A street busker shared that “professions through which one earns livelihood can neither be restricted nor banned because they are related to livelihood”. If a profession was legal and did not cause a threat to people, respondents wanted to exercise autonomy over choosing their profession.

## **Expression and residence as India’s core democratic values**

Among the various rights within Article 19(1), freedom of speech and expression was also valued comparatively more than other rights. Respondents closely tied democratic values to the freedom to express themselves. A functioning democracy meant a space to express themselves freely. People between the ages of 19 to 64 stated that they understand freedom of expression to be the capacity to communicate one’s own ideas. Respondents saw restrictions on their freedom of expression as a breach of their freedom and were generally sceptical of authorities who deny them their freedom. Some respondents spoke of how restrictions on freedom of speech should be employed carefully. For example, the 24-year-old journalist said, “These are all derivatives of how a person perceives things...Like what I think translates to freedom would be not the same as somebody who doesn’t come from my background...even if somebody is crude in terms of expression, I do not want them to be restricted”. The idea of freedom of expression should protect the entitlement of citizens to express any political viewpoint, whether that political viewpoint be construed as hate speech or not (Brettschneider 2010). He argues that it is the role of the State to protect and promote free speech while still calling out actions publicly that are against notions of equality.



However, freedom of speech and expression arguably was also contested, in that people valued this freedom more for themselves than for others. While they were sceptical of the restrictions on their freedom of expression for themselves, the same was not true for others. They proposed various grounds for restrictions when talking about the freedom of speech and expression for others. Respondents were pro-speech for themselves but pro-restrictions for others. A detailed analysis of the same and the plausible reasoning behind it is given in the above sections.

Additionally, the freedom to reside and settle anywhere within the country was also valued and seen deeply intertwined with the ideas of diversity and nationhood. Freedom to reside anywhere in India was thought to be crucial for maintaining diversity. People's idea of nationality was heavily derived from their freedom to reside anywhere. On being asked if restrictions were placed on their freedom to reside, an MSME owner from Delhi responded by saying, "What does it mean to be a diverse country then". Another respondent, an architect from Madhya Pradesh who now resides in Delhi shared how the freedom of residence carried the idea of India, "What does it mean to be an Indian otherwise", she added. The right to reside was taken to be a core feature of being a part of India.

In essence, people value freedom of speech and expression and tied it to democratic values. However, individuals tend to prioritise this right more for themselves than for others, implying a complex dynamic. Additionally, the freedom to reside anywhere in the country was intrinsically linked with diversity and national identity, seen as a core aspect of being Indian. These insights emphasise the multifaceted nature of these rights and their central role in shaping citizens' perceptions and experiences in India.

## Conclusion

This study offers a comprehensive understanding of how individuals perceive Fundamental Rights, with a specific focus on the Right to Freedom as enshrined in the Constitution of India. It takes into consideration amendments to the Constitution and seeks to investigate whether people's perception aligns with the evolving constitutional hierarchy. We found that people's view is different from the hierarchy in the Constitution when it comes to the Right to Property. While constitutional amendments have weakened the Right to Property and the judiciary often fails to ensure people are adequately compensated in case the State acquires property, for people fair compensation is key.

People also valued the Right to Free Speech and Expression, and see it being closely tied to a lively and vibrant democracy. It plays a critical role in facilitating democratic engagement, enabling individuals to express their ideas and political perspectives.

We found a divergence in respondents' perceptions regarding restrictions for themselves versus for others. This trend was especially true for the freedom of speech and expression, wherein people were pro-speech for themselves and not as much for others. This disparity may be attributed to a "self-serving bias," which refers to the tendency of individuals to interpret information and make decisions in a way that favours their self-interest. Alternatively, it could stem from a difference in how people relate to a right and the restrictions imposed on it in abstract compared to real-life settings.

This paper highlights the interdependence of rights, particularly those concerning livelihood and property. Respondents frequently prioritise rights that directly contribute to their sustenance. This is in line with Friedman and Friedman's analysis where they argue that economic freedom gives a way to other kinds of freedom (Friedman and Friedman 2002). This exploration of hierarchy of rights under Article 19(1) furthers the ongoing scholarly examination of the hierarchy of rights and can help in making informed policy decisions.

## Methodology

To understand if the citizens' perspective aligns with the evolving constitutional perspective, we conducted mapped perceptions through in-depth qualitative interviews with 26 respondents. Each interview lasted on average between 40 and 45 minutes.

**Sampling method:** To select our sample, we employed purposive and snowball sampling. Through these methods we aimed at selecting a diverse sample with respondents from varying interests and professions.

**Characteristics of our sample:** We interviewed respondents across age groups (19-65 years old). The sample was diverse and included a Journalist, Professor, Artist, Advertiser, Singer, Activist, Street Busker, Religious cleric, Students' Union leader, RWA member, Migrant Labourer, Photojournalist, Migrants, Farmer, and an MSME owner, among others. The research study was conducted in the month of July and took place in Hauz Khas, Panchsheel, Anant Parvat, Karol Bagh, and Khan Market. A few interviews of respondents in Kerala, Chennai, and Bangalore were conducted virtually.

**Pilot:** Since citizens' perspective of hierarchy of rights is relatively understudied, we conducted several pilots to finalise the format and design of our questionnaire. Initially, we employed a Likert Scale to assess the hierarchy of rights, but such an approach did not allow us to capture the rich qualitative insights on why respondents' prefer some rights over others. Additionally, we presented respondents with both emergency and non-emergency scenarios as constraints for assessing rights and preferences. However, this failed to account for what people value under normal circumstances without the pressure of an emergency. Finally, the younger participants in our pilot struggled to relate to emergency situations. We revised our questionnaire to incorporate these insights.

**Questionnaire design:** Our questionnaire has three parts, modelled after the approach adopted by Badrinathan et al. (2021) who collected information on how the ethnic identity of an Indo-American influences their socio-political experiences. The questionnaire is divided into three parts to avoid leading questions and not have different responses feed into each other.

In the first section, we gathered the respondents' demographic information. This included information about their age, gender, occupation, education, income level, religion, property, place of residence, and association membership.<sup>28</sup> The second section captured their opinions on the significance of freedom. The respondents were asked about restrictions that they thought were reasonable to impose on other people's exercise of rights. In the third section, we presented some case studies to the respondents, placing them in hypothetical circumstances, and enquired about the kind of restrictions on their rights they would consider reasonable.

Our hypotheticals included several gradients of restrictions (from mandatory approvals to bans) and reasons (seemingly reasonable and unreasonable) that helped us understand the nature of restrictions that people find acceptable and the extent to which they value a right. The grounds of the restrictions in the case studies were based on the reasonable restrictions included in Part III of the Constitution for each freedom. The second and third sections of the questionnaire helped in drawing comparisons between different rights, while the first section helped in understanding the context of each respondent.

**Confidentiality:** We obtained formal consent from the respondents before initiating the interview. Those who preferred to not have the interview recorded could opt out. Confidentiality and anonymity was maintained for all interviewees.

**Analysis:** The interviews were transcribed using both manual and AI tools (such as Otter.ai). Post the transcription, we thematically coded all the responses.

**Limitation:** Our study is limited to understanding people's perspectives regarding Article 19(1), which prevents us from establishing a comprehensive hierarchy of rights in the Constitution. While our findings offer valuable insights into individual perceptions of rights, it's essential to recognize that these findings should be considered as a starting point for further analysis rather than conclusive evidence of an existing hierarchy.

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<sup>28</sup> For the purpose of this study, the definition of property was limited to immovable property. The General Clauses Act, 1897 Section 3(26) defines immovable property as that which "shall include land, things affixed to earth or permanently fastened to anything affixed to earth, and any benefits arising out of the land".

Given the study's limited scope, we refrain from making any claims about causality between respondents' socioeconomic status and their preferences. It's also important to note that the part of the questionnaire that assessed the valuation of property rights included questions on compensation along with the reasons for State acquisition. Our questionnaire assessed the respondent's attitude towards the acquisition of property and the compensation given for it. We adopted this approach to ensure that the rights are comparable.