

2 Fundamental Rights

The new Constitution of China, like the previous 1954 and 1978 Constitutions,

guarantees certain basic rights and freedom to citizens. In doing this it has amplified and at the same time abolished certain rights enumerated in the previous Constitutions and has made a few additions. The rights so guaranteed are mainly economic, social, personal and political rights.

Economic Rights

1 **Right to work.** The Constitution guarantees all Chinese citizens the right to work. In non-socialist countries, it is not a constitutional right. To ensure this right, the State creates conditions for employment, strengthens labour protection, improves working conditions and, on the basis of expanded production, increases remuneration and social benefits. The State also provides necessary vocational training to citizens before they are employed.

2 **Right to leisure.** As in the erstwhile Soviet Union, the right of the working people to rest is constitutionally guaranteed. This right is ensured by the establishment of fixed working hours, by provision of annual holidays and gradually expanding material facilities for the working people to rest and recuperate.

3 **Right to material security.** The working people of China have the right to maintenance in old age, in sickness and in the event of disability. To ensure this right, the state gradually expands social insurance, social assistance, public health services, co-operative medical services and other services. The state and society make arrangements for the livelihood of disabled military personnel as well as for other disabled and handicapped persons.

4 **Right to education.** Citizens of China have the right and duty to receive education. The state ensures this right through gradual increase of the number of schools and of other cultural and educational institutions and through making primary education universal and compulsory.

Social and Personal Rights

1 **Freedom of scientific research and other cultural activities.** Citizens of China are guaranteed freedom of scientific research, literary and artistic work and other cultural activities. It is the constitutional duty of the state to encourage and assist the creative endeavours of the citizens in these spheres of life.

2 **Equal right to women.** Women and men have equal rights in China in all spheres of their life. Men and women enjoy equal pay for equal work. The state trains and selects cadres from among women.

3 **Right to marriage and family.** The Constitution lays down that marriage shall be based on the free consent of the woman and the man. The state protects marriage, the family, and the mother and child. The constitution specifically states that the "state advocates and encourages family planning".

4 **Freedom of conscience.** Citizens enjoy freedom of religious belief. The State protects normal religious activities. But any religious activity that disrupts public order, harms the health of citizens, or interferes with the

country's educational system is prohibited. Moreover, every citizen has the right to believe in any religion.

5 Right to equality. The right to equality is guaranteed. The Constitution proclaims that all Chinese citizens are equal before the law without distinction of nationality, race, sex, occupation, family background, religious belief, education, property status, etc.

6 Freedom of person and inviolability of homes. The Constitution has guaranteed inviolability of the person and of the home. No one may be arrested except by a court decision or with the sanction of a people's procuratorate. The arrest must be made by a public security organ. Illegal restriction of a citizen's freedom or illegal search of the person of a citizen is prohibited.

No one may, without lawful ground, enter the home against the will of the citizen residing in it.

Political rights and freedoms

All citizens of China, except persons deprived of political rights according to law, have right to vote and to be elected provided they are 18 years old.

Article 35 of the Constitution says: "Citizens of the People's Republic of China enjoy freedom of speech, of the Press, of assembly, of association, of procession and of demonstration". Freedom of speech and expression etc. is constitutionally guaranteed. But the right to strike and the right to "speak out freely, air their views fully, hold great debates and write big character posters" guaranteed by 1978 Constitution have been abolished.

Citizens have the right to criticise and make suggestions to any state organ or official. They can also make to state organs complaints and charges against any State organ or official for violation of the law or dereliction of duty provided the charges are not fabricated or framed up. The State organs must deal with complaints and charges in a responsible manner after ascertaining the facts.

The Constitution declares that no one shall suppress such complaints and charges or retaliate against persons making them. If the citizens suffer losses by any State organs or official they have the right to compensation in accordance with law.

Critical Evaluation

The 1982 Constitution thus guarantees certain basic rights and liberties to the Chinese citizens: economic rights, social rights, political rights and freedoms. According to critics, these **rights are however subject to severe limitations**. The right to work (and the corollary right to receive adequate remuneration) is limited by the fact that China is at the "initial stage of socialism" and fifty per cent of the Chinese economy is market oriented. To overcome the problem of her huge population in terms of employment, China chose a labour-intensive production system but this has led to under-employment and unremunerative employment and inefficient production. The socialist principle, "From each according to his ability, to each according

to work done", has not yet been fully established.

Secondly, the **constitutional guarantee of political rights and freedoms are extremely limited in theory as well as in practice.** Article 5 of the Constitution says "all public organisations....must abide by the Constitution and the law...No organisation or individual may enjoy the privilege of being above the Constitution and the law." But what happens when the Communist Party and the Government are accused for violating the Constitution and the Party and the Government accuse its critics of "illegal acts"? The answer is given in Article 1 which declares the "socialist system as the basic system of the country" and prohibits "sabotage of the socialist system by any organisation or individual." Article 51 states clearly that the exercise by the citizens of their rights and freedom must not run counter to the interests of the state and society. Who is to judge? Not the judiciary. The Communist Party of China, its Politburo consisting of a dozen plus leaders, is the sole judge of whether a citizen has exercised his freedoms in a way threatening the socialist system. A Chinese citizen is thus limited in advance as to the ends for which he or she may use the freedoms of speech and the press.

Though the present Chinese Constitution nowhere mentions the Communist Party, the Preamble does say that the Chinese citizens must adhere to the "people's democratic dictatorship under the leadership of the Communist Party of China". It follows that the citizens can unite in such public organisations (e.g. trade unions, youth organisations, student associations and other societies) as approved by the Communist Party leadership. Thus the **only organisational life that can exist in China, even in theory, is that which receives party approval.**

Other provisions of the bill of rights are likewise limited. There is the right to work but no right to strike which was guaranteed in 1978 Constitution. And there are a number of constitutional duties. In sum, the Constitution not only specifies the purposes for which rights may be employed but, in addition, insists that the promotion of these purposes (as determined) by the Party leadership is among the primary duties of the Chinese citizens.

The nature of political rights and freedoms enjoyed by the Chinese citizens has been revealed by the employment of the army in crushing the 1989 May-June students movement on Tienanmen Square in Beijing. The Chinese students supported by journalists of official media, intellectuals and even workers were yearning for expansion of democracy—freedom of expression, demonstration, freedom from being imprisoned in officially sponsored organisations and eradication of corruption in high places. The movement was entirely peaceful. There was no violation of the Constitution. What they demanded was that members in "all the state organs and functionaries must rely on the support of the people, keep in close touch with them, heed their opinions and suggestions, accept their supervision..." (Article 27). As their demand went unheeded, they demanded the resignation of Prime Minister

Li Peng and Deng Xiaoping, the "paramount leader". That was the crime, in the opinion of the Government, committed by the students.

They were dubbed as "counter revolutionaries" bent on overthrowing the Communist Party and the socialist system. Ironically, critics point out, it was Deng who was dubbed as "capitalist roader" by the 'red' radicals during the Cultural Revolution. And his "economic policy" pursued by the Government is more capitalist than socialist.

3 Fundamental Duties

The Chinese Constitution, while guaranteeing rights to the citizens of the country, also imposes upon them certain duties to the society and the State. Article 33 of the Constitution lays down : every citizen "enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law". Unity of the Chinese citizens' rights and duties in the Constitution is implementation of the principle formulated by Karl Marx : "no rights without duties, no duties without rights".

Thus the Chinese Constitution guarantees a host of economic, social and political rights and personal freedoms to citizens but, at the same time, warns that the exercise of these rights and freedoms must not run counter to the interests of the State and society, or infringe upon the rights and freedoms of other citizens. Article 42 of the Constitution states that every citizen has not only the right to work but also the duty to work. "Work is the glorious duty" of every able bodied citizen who must work honestly in his occupation. Citizens have not only the right but also the duty to receive education. The right to marriage and family is guaranteed. But both husband and wife have the duty to practice family planning. And parents have the duty to educate and rear their minor children. Children who have come of age have also the duty to care for their parents and help them. In addition to the above mentioned duties, the Constitution of China enumerates certain specific duties of the citizens of the country. These duties are :

1. Every Chinese citizen has the duty to safeguard the unity of the country and the unity of all its nationalities.
 2. Every citizen must observe the Constitution and the law.
 3. It is the duty of all citizens to keep State secrets, protect public property, observe labour discipline, maintain public order, and respect social ethics.
 4. It is the duty of every citizen to safeguard the security, honour and interests of the motherland. He must not do such things that may harm the security, honour and interests of the motherland.
 5. Citizens of China have the sacred duty to defend the motherland and resist aggression.
- "It is an honourable duty" of a Chinese citizen to perform military service and join the militia.