

Unit –II

Unit II: Human Rights in India: Development of Human Rights in India – Constituent Assembly and Indian Constitution – Fundamental Rights and its Classification – Directive Principles of State Policy – Fundamental Duties.

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DEVELOPMENT OF HUMAN RIGHTS IN INDIA

Human Rights in Ancient Times

The concept of human right is not from western region. It is the crystallization of the values which are common for all the mankind. The United Declaration of Human Rights (1948) did not come from the leaved suddenly but it's a milestone on the path on which the concept of human right is already travelling for centuries. In fact, the language of human right is the product of European countries but the concept of human rights is as old as the Indian culture. The humans expressed their concern towards human rights and fundamental freedom for all since the Vedic age.

In ancient India, the trace of the concept of human rights can be paved back from the Vedas period of the fifteen century B.C. There are wide range of stories, pronouncements found which showed the way to the concept of human rights. In Vedas, human right is signified with the concept of equality. The Charter of equality of all as defined in the Vedas in the following words-No one is superior inferior all should strive for the interest of all and should progress collectively. Kautilya beautifully sum up the concept of welfare state by saying that the happiness of the state lies in the happiness of his subjects. Under the period, the civil and legal rights first formulated by Manu but also added a number of economic rights. From the fact and stories, it is truly revealed that the society under Vedic period was well stimulated and organized and committed towards human right. In fact, the importance of human rights was well supported by Jainism, Buddhism and other minority religious group. No discussion of human rights and their roots in the ancient period is left without giving the reference of Ashoka. Ashoka inscribes, "All men are my children and just desire for my children that they may enjoy every kind of prosperity and happiness with in this world and in the next, as also as I desire the same for all men". In fact, the king Ashoka worked day and night for the protection of human rights. It's unfortunate that the decline of human rights was witnessed with the decline of Mauryan Empire.

Human Rights in Medieval Times

As medieval period signifies the Muslim era in India. In the pre-Mughal period the series of social, cultural, political and religious rights were existed but with the advent of Mughal, the Hindus were stressed badly. The concept of human rights got lost in the dark. But with the entry of Akbar's (1526-1605) period, once again great regard given to the social, religious and political

rights. In his religious policy, Din-E-Ilahi (divine religion), he tried to preach the idea of secularism and religious tolerance. Similarly, Various religious movements like Bhakti (Hindu) and Sufi (Islamic) made remarkable contribution to the emergence of human rights which at times suppressed by the other Mughal Empires like Aurangzeb, Babar, Humayun etc.

Human Rights in Modern India

This period starts from the advent of British Empire. The process of Indian administration started by the Britishers with the introduction of Regulating Act in the year 1773. Under it, Indian were suppressed by the Britishers completely in context to social, economic, political & religious rights in all the sphere of life. They were told that they did not deserve any rights. Basic rights such as rights to life & livelihood, right to freedom, right to expression, right to equality, right to preach etc. were denied to them. In such a atmosphere, the Indian leaders & people feel that their rights had been lost in the hands of the colonial rule, so they thought of diverting back to fight for their rights. Perhaps the first explicit demand for fundamentals rights appeared in the Constitution of India Bill 1895. The Bill guaranteed every Indian the right to expression, right to equality before law, right to property, right to personal liberty, right to education etc. A series of resolution were passed between 1917 & 1919 for demanding civil rights & equality. Another major development was drafted by “Mrs. Besant’s Common wealth of 1925.” The Bill contained a list of seven fundamental rights –

- (i) Liberty of person.
- (ii) Freedom of conscience & free profession & practice of religion.
- (iii) Free expression of opinion.
- (iv) Free elementary education.
- (v) Use of roads, public places, courts of justice & the like.
- (vi) Equality before the Law, irrespective of consideration of nationality.
- (vii) Equality of the sexes.

The resolution was passed in 1927 which came into effect in May 1928, Motilal Nehru as its Chairman. It is known as Nehru Report which declared that its first concern of Indians was “to secure the fundamental rights that had been denied to them.” Another achievement came in context to fundamental right was the Karachi resolution adopted by the congress session held in March 1931. The decade of 1940’s was generally marked by the emergence of fundamental rights by the increased activities related to in by UN Assembly. The further stage of development of fundamental rights in Indian context was the “Sapra Committee Report” published at the end of 1945. So, after Independence, time to time various laws made, suggestions came from the various committees to enlarge the concept of fundamental rights by covering the entire human race.

CONSTITUENT ASSEMBLY OF INDIA

The Constituent Assembly of India was elected with the objective of forming the Constitution of the country. M N Roy, a supporter of radical democracy and pioneer of the Communist

movement in India, is accredited with the idea for a Constituent Assembly. He proposed it in December 1934.

It was a unicameral body that had 389 elected members which were reduced to 299 after the partition of India to form Pakistan was finalized. The Assembly met for the first time in New Delhi on 9 December 1946, and its last session was held on 24 January 1950.

Background of the Constituent Assembly

- ❖ The following points lists the trail of the development of the constituent assembly of India:
- ❖ In 1934, M N Roy was the first to propose the idea of a constituent assembly. The Indian National Congress made it one of their official demands in 1935.
- ❖ The INC's Lucknow session held on the 16th of April 1936 was presided by Pt. Jawahar Lal Nehru where the official demand for the establishment of the Constituent Assembly was raised.
- ❖ They rejected the proposed idea in the Government of India Act, 1935 as it imposed a Constitution that was not accepted by Indians.
- ❖ It was then when C. Rajagopalachari demanded the setting up of a Constituent Assembly on 15 November 1939 which would be based on adult franchise
- ❖ This demand was accepted by the British in the August Offer of 1940.
- ❖ The elections for the formation of the Assembly were held as directed by the Cabinet Mission plan of 1946
- ❖ These elections were indirect in nature as the members of this assembly were elected by the members of the provincial assemblies. They were elected by the method of a single transferable vote of proportional representation.

Composition and Members of the Constituent Assembly of India

Initially, the number of members was 389. However, once the India-Pakistan partition was officially announced, some of the members of the Assembly left for Pakistan and making the number come down to 299. Out of these 299 members, 229 were from the British provinces and 70 were nominations from the princely states.

- ❖ Dr Sachchidananda Sinha was the first chairman of the Constituent Assembly, put up temporarily.
- ❖ Later, Dr Rajendra Prasad was the first elected President of the Assembly while Harendra Coomar Mookerjee became the first Vice President. BN Rau was the constitutional advisor.

Committees of Constituent Assembly of India and their Chairman

The Indian constitution is the lengthiest written constitution in the world, a fitting feat for one of the biggest democracies in the world. For its smoother and more effective functions, the

members were divided into several committees. The table below lists the several committees of the Constituent Assembly along with their chairmen;

Drafting Committee	Dr. B R Ambedkar
Union Constitution Committee	Jawaharlal Nehru
Union Powers Committee	Jawaharlal Nehru
States Committee	Jawaharlal Nehru
Steering Committee	Dr Rajendra Prasad
Rules of Procedure Committee	Dr Rajendra Prasad
Provincial Constitution Committee	Sardar Vallabhbhai Patel
Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas:	Fundamental Rights Sub-Committee: Acharya Kripalani • Minorities Sub-Committee: H C Mookerjee • Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee: A V Thakkar • North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub Committee: Gopinath Bardoloi

Facts about the Constitution of India

The Constitution of India was an interesting draft. There are some facts about it listed below.

- ❖ It took over 2 years, 11 months and 18 days to frame the Constitution
- ❖ The original drafts of the Constitution were handwritten, not typed or printed. They are currently kept in a helium-filled case within the library of the Parliament as it is an invaluable art effect of our history.
- ❖ Prem Bihari Narain Raizada was the calligraphist who had written the unique copies that defined the Structure of India.
- ❖ The Constitution of India was written in English and Hindi originally.
- ❖ The Constitution of India has a lot of elements that have been borrowed from constitutions of countries all across the globe, like Britain, Ireland, Japan, the USA, South Africa, Germany, Australia, and Canada.
- ❖ The basic structure of the Indian Constitution borrows from the Government of India Act, 1935 drafted by the British Government.
- ❖ It is the world's longest Constitution.
- ❖ The Constitution is not completely federal or unitary, it is more of a federal System with Unitary Features
- ❖ The country follows a bicameral Parliamentary form of government.

Constituent Assembly

The idea of a constituent assembly was put forward for the first time by MN Roy. In 1935, the Indian National Congress (INC), for the first time, officially called for a constituent assembly to frame a constitution for India. In 1938, J Nehru made this emphatic statement regarding the constitution- 'The constitution of free India must be framed, without outside interference, by a constituent assembly elected on the basis of adult franchise'

The demand for a constituent assembly was accepted for the first time by the British through their 'August offer' of 1940. Eventually, a constituent assembly was established under the provisions of the Cabinet Mission plan.

Composition of the Council

It was constituted in 1946

Some of the important aspects related to this are:

- ❖ Total strength of the assembly: 389
- ❖ 296 seats for British India and 93 seats to princely states
- ❖ 292 seats allocated for British India were to be from eleven governor's provinces and four from Chief commissioner's provinces
- ❖ Seats were allocated based in proportion to their respective population.
- ❖ Seats allocated to each British province were to be decided among the three principal communities- Muslims, Sikhs and general
- ❖ Representatives of each communities were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferrable vote
- ❖ Representatives of princely states were to be nominated by head of these princely states.

Remember: Some observations regarding the composition:

- ❖ Partly elected and partly nominated
- ❖ Indirect election by provincial assemblies who themselves were elected on a limited franchise
- ❖ Though indirect mode of election, it included representatives from all sections of the society.

Working of the constituent assembly

- ❖ First meeting was held on December 9, 1946
- ❖ Muslim league did not participate in the first meeting
- ❖ Temporary president in the first meeting: Dr Sachchidanand Sinha
- ❖ After elections were held- Dr Rajendra Prasad and HC Mukherjee were elected as the President and Vice-President of the Assembly respectively.
- ❖ Sir BN Rau was appointed as the constitutional advisor of the assembly

- ❖ Once the Mountbatten plan was passed even members of Muslim league who were part of Indian territory participated in the proceedings of the council
- ❖ Members of princely states who had stayed away from the proceedings initially also participated. Constituent assembly held 11 sessions over two years, 11 months and 18 days
- ❖ Last session of the constituent assembly was held on January 24, 1950.

Objectives resolution

- ❖ It was moved by Nehru in December 1946
- ❖ It laid down the fundamentals and philosophy of the constitutional structure
- ❖ The resolution highlighted the following objectives:
- ❖ Free India will be nothing but a republic
- ❖ The ideal of social, political and economic democracy would be guaranteed to all people
- ❖ The republic would grant Fundamental rights
- ❖ The state would safeguard the rights of the minorities and backward classes

Constituent assembly acted as the temporary legislature until a new one was to be constituted. Some of the functions it performed at this stage were:

Ratification of India's membership of the commonwealth

- ❖ It adopted the national flag
- ❖ It adopted the national anthem
- ❖ Adoption of National song
- ❖ Electing Dr Rajendra Prasad as the first President of India

Committees of the constituent assembly

Several committees were constituted to perform the various tasks associated with framing of the constitution. Some of the major and minor constituent assembly committees are given below:

Major committees

Union Powers committee: presided by J Nehru

Union Constitution committee: president by j Nehru

Provincial constitution committee: Presided by S Patel

Drafting committee: president by Dr BR Ambedkar

Advisory committee on Fundamental Rights, minorities and Tribal and excluded areas- Presided by S Patel. It had following sub-committees:

FR sub-committee: JB Kripalani

Minorities sub-committee: HC Mukherjee

North-East frontier Tribal Areas and Assam excluded and partially excluded areas sub-committee- Gopinath Bardoloi

Excluded and partially excluded areas sub-committee: AV Thakkar

Rule procedure committee: Dr Rajendra Prasad

States committee for negotiating with states: J Nehru

Steering committee: Dr Rajendra Prasad

Minor committees

- ❖ Committee on the functions of the constituent Assembly: GV Mavalankar
- ❖ Order of Business committee: Dr KM Munshi
- ❖ House committee: B Pattabhi Sitaramayya
- ❖ Ad-hoc committee on the National flag: Dr Rajendra Prasad
- ❖ Special committee to examine the draft constitution: Alladi Krishnaswami Ayyar

Drafting committee:

- ❖ It was considered to be the most important committee of the constituent assembly
- ❖ It was chaired by Dr BR Ambedkar
- ❖ He played a pivotal role in drafting the constitution and also in passage of the constitution in the assembly
- ❖ The committee published the first draft of the constitution in February 1948. The second draft was published after incorporating changes suggested by the public in October 1948.

Enactment and enforcement of the constitution

- ❖ Final draft of the constitution was introduced in the assembly in 1948
- ❖ After subsequent readings, the constituent assembly adopted, enacted and gave to themselves the constitution on November 26, 1949
- ❖ Some provisions of the constitution came into force on the above mentioned date. However, most provisions came into force on January 26th, 1950. This date is referred to in the constitution as the 'date of its commencement'. This day is celebrated as 'Republic day' every year
- ❖ This day was chosen by the constitution-makers to pay homage to the 'Purna Swaraj' which started on January 26th, 1930.

Criticism of the constituent assembly

Not a representative body since members were not directly elected

1. It was not a sovereign body since it was established based on British order
2. It consumed unduly long time to make the constitution
3. It was dominated predominantly by congress party.
4. It was dominated by lawyer-politician to a greater degree
5. It was dominated by Hindus predominantly

However, the above criticisms do not hold true picture of the constituent assembly. Though it was indirectly elected, the constituent assembly consisted of people belonging from all section of the Indian society. The time-consuming process considering the challenge of enacting a constitution for a country like India was reasonable. The secular provisions in the constitution

and the sustainability of the constitution definitively prove that the constitution did not give any overt or covert preference to the dominant religion of the land.

FUNDAMENTAL RIGHTS

The Fundamental Rights are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, applied irrespective of race, place of birth, religion, caste, creed, or gender. They are enforceable by the courts, subject to specific restrictions. The Directive Principles of State Policy are guidelines for the framing of laws by the government. These provisions, set out in Part IV of the Constitution, are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing policies and passing laws.

The Fundamental Rights, embodied in Part III of the Constitution, guarantee certain rights to the people and these rights have been considered fundamental for the governance of the country. These rights prevent the State from the encroachment of individual liberty. A group of seven fundamental rights were originally provided by the Constitution. These rights were; right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies. However, the right to property was removed from Part III of the Constitution by the 44th Amendment in 1978. The purpose of the Fundamental Rights is to preserve individual liberty and democratic principles based on equality of all members of society. Dr Ambedkar said that the responsibility of the legislature is not just to provide fundamental rights but also and rather more importantly, to safeguard them.

Meaning of the Fundamental Rights

In every Democratic State, all the citizens have got some rights for the development of life. These rights are given to them by the constitution of that State. They have the force of law behind them. No government can take them away. And if, any government dares to do so, citizens can go to the court to get justice. Only such kind of justifiable rights are called 'Fundamental Rights'. A man's fullest development is not possible without these rights.

Importance of the Fundamental Rights:

The fundamental rights are of great importance as stated below:

1. These rights are necessary for the development of man's life. They assure him of his physical, mental and moral development.
2. Without these rights, we cannot make our life happy and prosperous.
3. The importance of these rights lies in the fact that they have been guaranteed by the Constitution of India. If any government tries to snatch them away, we can go to the court to get justice.

Classification of Fundamental Rights

- The Fundamental Rights are enshrined in Part III of the Constitution (Articles 12-35).
- Part III of the Constitution is described as the Magna Carta of India.
- 'Magna Carta', the Charter of Rights issued by King John of England in 1215 was the first written document relating to the Fundamental Rights of citizens.

The Fundamental Rights: The Constitution of India provides for six Fundamental Rights:

- ❖ Right to equality (Articles 14–18)
 - ❖ Right to freedom (Articles 19–22)
 - ❖ Right against exploitation (Articles 23–24)
 - ❖ Right to freedom of religion (Articles 25–28)
 - ❖ Cultural and educational rights (Articles 29–30)
 - ❖ Right to constitutional remedies (Article 32)
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- Originally the constitution also included Right to property (Article 31). However, it was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978.
 - It is made a legal right under Article 300-A in Part XII of the Constitution.
 - Provision for Laws Violating Fundamental Rights: Article 13 of the Indian constitution declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.
 - This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226). Further, the article declares that a constitutional amendment cannot be challenged (as it is not a law).

Right to Equality (Article 14, 15, 16, 17 and 18): Equality Before Law: Article 14 says that no person shall be denied treatment of equality before the law or the equal protection of the laws within the territory of India.

- The right is extended to all persons whether citizens or foreigners, statutory corporations, companies, registered societies or any other type of legal person.
- Exceptions: As per article 361, the President of India or Governor of states is not answerable to any court for the exercise of their powers/duties and no civil or criminal proceedings can occur or continue against them in any court during their term of office.
- As per article 361-A, no civil or court proceedings can occur for a person for publishing any substantially true report of either House of the Parliament and State Legislature.
- No member of Parliament (article 105) and State Legislature (article 194) shall be liable to any court proceedings in respect of anything said or any vote given by him in Parliament or any committee.
- The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.

Prohibition of Discrimination: Article 15 provides that no citizen shall be discriminated on grounds only of religion, race, caste, sex or place of birth.

- **Exception:** Certain provisions can be made for the women, children, citizens from any socially or educationally backward class for their upliftment (such as reservation and access to free education).

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Equality of Opportunity in Public Employment: Article 16 of the Indian constitution provides for equality of opportunity for all citizens in matters of employment or appointment to any public office.

Exceptions: There are provisions for reservation in appointments or posts for any backward class that is not adequately represented in the state services. Also, an incumbent of a religious or denominational institution may belong to the particular religion or denomination.

Abolition of Untouchability: Article 17 abolishes ‘untouchability’ and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

- A person convicted of the offence of ‘untouchability’ is disqualified for election to the Parliament or state legislature. The acts of offences include:
- Preaching untouchability directly or indirectly.
- Preventing any person from entering any shop, hotel, public place of worship and place of public entertainment.
- Refusing to admit persons in hospitals, educational institutions or hostels established for public benefit.
- Justifying untouchability on traditional, religious, philosophical or other grounds.
- Insulting a person belonging to scheduled caste on the ground of untouchability.

Abolition of Titles: Article 18 of the constitution of India abolishes titles and makes four provisions in that regard:

- It prohibits the state from conferring any title on any citizen or a foreigner (except a military or academic distinction).
- It prohibits a citizen of India from accepting any title from any foreign state.
- A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the President of India.
- No citizen or foreigner holding any office of profit or trust within the territory of India can accept any present, emolument or office from or under any foreign State without the consent of the president.

Right to Freedom (Article 19, 20, 21 and 22):

Protection of 6 Rights: Article 19 guarantees to all citizens the six rights of freedom including:

Right to freedom of speech and expression.

Expressing one's own views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner.

Right to assemble peaceably and without arms.

- Includes the right to hold public meetings, demonstrations and take out processions which can be exercised only on public land.
- It does not protect violent, disorderly and riotous assemblies or strike.

Right to form associations or unions or co-operative societies.

It includes the right to form (and not to form) political parties, companies, partnership firms, societies, clubs, organizations, trade unions or anybody of persons.

Right to move freely throughout the territory of India.

The freedom of movement has two dimensions, viz, internal (right to move inside the country) (article 19) and external (right to move out of the country and right to come back to the country) (article 21).

Right to reside and settle in any part of the territory of India.

The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture and customs of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

Right to practice any profession or to carry on any occupation, trade or business.

It doesn't include the right to carry on a profession that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc.).

- **Protection in Respect of Conviction for Offences: Article 20** grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It provides that:
- No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act or subjected to a penalty greater than that prescribed by the law.
- No person shall be prosecuted and punished for the same offence more than once.
- No person accused of any offence shall be compelled to be a witness against himself.

Protection of Life and Personal Liberty: Article 21 declares that no person shall be deprived of his **life or personal liberty** except according to procedure established by law. This right is available to both citizens and non-citizens.

- The right to life is not merely confined to animal existence or survival but also includes the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living.
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Right to Education: Article 21 (A) declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years.

- This provision makes only elementary education a Fundamental Right and not higher or professional education.
- This provision was added by the **86th Constitutional Amendment Act of 2002**.
- Before the 86th amendment, the Constitution contained a provision for free and compulsory education for children under **Article 45 in Part IV** of the constitution.

Protection against Arrest and Detention: Article 22 grants protection to persons who are arrested or detained.

- Detention is of two types, namely, **punitive** (punishment after trial and conviction) and **preventive** (punishment without trial and conviction).
- The first part of Article 22 deals with the ordinary law and includes:
 - Right to be informed of the grounds of arrest.
 - Right to consult and be defended by a legal practitioner.
 - Right to be produced before a magistrate within 24 hours, excluding the journey time.
 - Right to be released after 24 hours unless the magistrate authorises further detention.
- The second part of Article 22 deals with preventive detention law. Protection under this article is available to both citizens as well as aliens and includes the following:
 - The detention of a person **cannot exceed three months** unless an advisory board (judges of high court) reports sufficient cause for extended detention.
 - The grounds of detention should be communicated to the detenu.
 - The detenu should be afforded an opportunity to make a representation against the detention order.

DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principle of State Policy has been derived from the Irish Constitution and makers of our Indian Constitution have included these principles in Part IV of the constitution from Article 36 to Article 51. These principles were extremely important in the governance of the country which exemplify the hopes and aspirations of the people.

The concept behind the Directive Principles of State Policy is to create a 'Welfare State'. In other words, the motive behind creating the directive policy is not just establishing political democracy rather establishing social and economic democracy in the state. The state must follow these directive principles both in the matter of administration as well as while formulating laws because the Directive Principles aim to create a state where social and economic democracy might flourish. Read the article below to understand the meaning of directive policy clearly.

Meaning of Directive Principle of State Policy

Directive Principles are certain rules, specifically aiming at socio-economic justice, which according to the makers of the Indian Constitution should aim for.

According to Dr. B.R.Ambedkar, the Directive Principles is determined as the "Novel Feature" of the constitution. They aim to provide general instructions, guidelines, or directions to the state. Directive Principle symbolizes the aspiration of people, objectives, and ideals which the Union and State Government must be aware of while formulating laws and policies.

According to the Sanskrit scholar L.M. Singhvi, the Directive Principles of State Policy are stimulating provisions of the Indian Constitution. They exemplify the Philosophy of social justice incorporated in the Indian Constitution. Although Directive Principles are not legally bound by the court, they, however, play a crucial role in the governance of a country. They formulate a code of conduct for the legislative, administrators, and executives of India to implement these responsibilities in compliance with these ideals.

Features of Directive Principles of State Policy

Before jumping to the features of the DPSPs, we should go through the concerned Article mentioned in the Constitution which states down the characteristics of the DPSPs.

Article 37: Application of the principles contained in Part IV. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Thus, the following points signify the features of directive principles of State Policy:

DPSP are Non - Justiciable; Supported By Public Opinion: The Directive Principles are non - justiciable. Legal sanctions do not support Directive Principles. However, these are supported by public opinion which in reality is also the legal sanction behind the law.

DPSP Provides Welfare of People: The Directive Principles strive to enhance the welfare of the people by attaining a social order in which social, economical, and political conditions are informed in all institutions of life as per Article (38) of the Indian Constitution.

DSPS Act as a Yardstick for Measuring Governments Worth: Directive Principles act as a yardstick through which the people should measure the worth of the government. A government that does not implement the Directive Principles can be rejected by the people in favour of the Government by another political party that is expected to provide the required importance and value to the task of attaining Directive Principles.

DSPS are Source of Continuity in Policies: Directive principles are like a source of continuity in policies, in which the Government changes after a few years and every new Government makes different policies and laws of the country. The presence of such guidelines is significant because it ensures that every Government will follow the set of rules in the form of DSPS while formulating its laws.

DSPS are Supplementary To Fundamental Rights: DSPS can be considered as the positive directions for the state which helps in attaining the social and economical dimensions of democracy. DSPS are supplementary to Fundamental rights which grants political rights and other freedom. Directive Principles and Fundamental rights are nothing without each other as one provides social and economical rights whereas the other provides political rights.

DSPS Constitute Policy of Nation: Directive Principle constitutes a policy of the nation. These principles emulate the ideas and views which were there in the mind of drafters while formulating the constitution. This reflects the philosophy behind making the constitution hence providing useful information to the court in interpreting and existing confusion and in turning up with better laws and policies.

Types and Provisions of DPSPs

Though the Constitution of India does not make any kind of classification of the DPSPs, we can classify them as per the classification given by Prof. M.P. Sharma:

Socialistic Principles

These are the principles which are said to be focused on the establishment of the egalitarian society.

Article 38

State to secure a social order for the promotion of welfare of the people

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. (inserted by the 44th Constitutional Amendment Act 1978)

Article 39

The State shall, in particular, direct its policy towards securing

- a) That the citizens, men and women equally, have the right to an adequate means to livelihood;
- b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- d) That there is equal pay for equal work for both men and women;
- e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment (added by the 42nd Amendment 1976).

Article 41

Right to work, to education and to public assistance in certain cases The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42

Provision for just and humane conditions of work and maternity relief The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43

Living wage, etc, for workers The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co operative basis in rural areas.

Article 43A

The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry (added by the 42nd Constitution Amendment Act 1976).

Article 43(B)

The State to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (added by the 97th Constitution Amendment Act 2011).

Gandhian Principles

The principles which are said to be based on the ideology of Gandhi, are known as Gandhian Principles.

Article 40

The state provides for the establishment of Panchayat Raj Institutions and endows them with such powers and authority as may be necessary to enable them to function as units of self government.

Article 43

The State shall endeavour to promote cottage industries on an individual or co operative basis in rural areas

Article 46

The state provides for promotion of educational and economic interests of SCs, STs and other weaker sections and protects them from social injustice and all forms of exploitation.

Article 47

imposes a primary duty on the state to raise the level of nutrition and standard of living, to improve public health and to prohibit consumption of intoxicating drinks and drugs injurious for health except for medicinal purposes.

Article 48

directs the state to provide for the organization of agriculture and animal husbandry and prohibition of cow slaughter.

Liberal Principles:

The principles which are said to be focused on providing equality, freedom as well as liberty in the Governance are said to be known as liberal principles.

Article 39

(A)directs the state to provide to all equal access to justice and free legal aid, by suitable legislations or schemes or in any other way, to ensure that the opportunities for securing justice are not denied to any citizen by any reason of economic or other liabilities (added by the 42nd Constitution Amendment Act 1976).

Article 44 directs the state to provide for establishment of a uniform civil code for the whole country.

Article 45 This article originally provided for free and compulsory education for all children up to the age of 14. The 86th Constitutional Amendment Act 2002 made education a Fundamental Right for children between ages 6 – 14 years, as a consequence of which article 45 was substituted by a new article providing for early child care and education to children.

Article 48 A The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country (added by the 42nd Constitution Amendment Act 1976).

Article 49 It directs the state to provide for protection of National monuments.

Article 50 It directs the state to take steps to separate judiciary from the executive.

Article 51

- a) Promotion of international peace and Security
- b) Just and honourable relations between nations
- c) Respect for international law and treaty obligations
- d) Settlement of international disputes.
- e) International treaties do not automatically become a part of the National Law.

Significance of Directive Principles of State Policy

- ❖ The Directive Principles of State Policy are some instructions to the State for attaining socio-economic development. Directive Principles of State Policy are positive.
- ❖ These principles increase the power and nature of the state. Directive Principles aim to establish a welfare state by securing social and economic justice. These principles rely on social thinking.
- ❖ Directive principles are essential for the socio-economic development of a country because welfare and justice are dual aims of our constitution.
- ❖ Directive principles are significant in the governance of a country. The State should follow these principles for the progress of the country.
- ❖ Directive principles aim to reflect public opinion and their determination. They are incorporated in the constitution to meet the aspiration of the people.
- ❖ Directive Principles aim at establishing a welfare state by securing social and economic justice. These principles rely on social thinking.

Purpose of Directive Principles of State Policy

The purpose of the Directive Principle of State Policy is “Welfare of State”. The Directive Principles are the standards that the Union and State Government must keep in mind while formulating policies or pass a law. They frame certain social, economic, or political principles, suitable to unusual conditions prevailing in India.

Difference between Fundamental Principle of State Policy and Directive Principle of State Policy

Fundamental principles are justiciable whereas Directive principles of state policy are non - justiciable. It means a person cannot appeal to the court if his/her fundamental rights are violated

whereas people cannot appeal to the court if the Government does not implement the directive principles.

Fundamental rights exhibit liberal political democratic policy in India. However, Directive principles make a country a welfare state.

Fundamental Rights are said to be negative because they put restraints on the state. On the other hand, Directive principles are affirmative. They announce the duty of the state to attain certain social and economic objectives.

Fundamental rights safeguard the interest of the individual whereas the Directive Principles of State Policy seek to enhance social economic equality and specifically provide safeguard to weaker and vulnerable sections of society.

Directive Principles of State Policy Enforceability

The enforceability of Directive Principles of State Policy is a significant question in the minds of Indian citizens. The answer to this is that principles are not enforceable as it is a moral obligation upon the State and not a legal obligation. The State is not legally liable if it does not choose to follow DPSP. The same applies to fundamental duties. However, fundamental rights are enforceable. Article 37 of the Constitution states that Part IV of the Constitution shall not be enforceable by any court of law. However, it is important to note that even though the DPSP is not legal by the court, it is justified by itself.

Directive Principles of State Policy are considered to be important in the governance of a country. Dr. B.R. Ambedkar referred to these principles as novel features because of their non-enforceable. It is significant to note that despite being non-enforceable in nature it is not useless as it provides guidelines to attain the concept of welfare of the state.

FUNDAMENTAL DUTIES

As an Indian citizen, certain rights and duties are provided to us. The duty of every citizen is to abide by the laws and perform his/her legal obligations. A person should always be aware of his/her fundamental duties. 11 fundamental duties are laid down by the Indian Constitution.

Origin and scope of fundamental duties

Origin

On the recommendations of the Swaran Singh Committee, the fundamental duties were added by the 42nd Amendment, 1976 in our Indian Constitution. The fundamental duties were originally 10 in numbers but in 2002, the 86th Amendment increased its number to 11. The 11th duty made it compulsory for each and every parent and guardian to provide the educational opportunities to their child who is more than 6 years but less than 14 years of age. These duties are borrowed from the Constitution of Japan.

Scope

Neither there is a direct provision in the Constitution for the enforcement of these duties nor there hardly any legal sanction in order to prevent violation of these duties. These duties are obligatory in nature. The following facts provide for the importance of fundamental duties:

A person should respect the fundamental rights and duties equally because in any case, if the court comes to know that a person who wants his/her rights to be enforced is careless about his/her duties then the court will not be lenient in his/her case.

Any ambiguous statute can be interpreted with the help of fundamental duties.

The court can consider the law reasonable if it gives effect to any of the fundamental duties. In this way, the court can save such law from being declared as unconstitutional.

Fundamental Duties taken from

The fundamental duties are taken from the USSR (Russia) constitution. The addition of fundamental duties in our constitution has brought our constitution aligned with the Article 29(1) of the Universal Declaration of Human Rights and with various provisions of the modern constitution of other countries.

Fundamental Duties

Only one Article that is Article -51A is there in Part-IV-A of the Indian Constitution that deals with fundamental duties. It was added to the Constitution by the 42nd Amendment Act, 1976. For the first time, a code of 11 fundamental duties was provided to the citizens of India. Article 51-A states that it is the duty of every citizen of India:

1. To respect the Constitution, its ideals and institutions, the National Flag and National Anthem—Ideals like liberty, justice, equality, fraternity and institution like executive, the legislature, and the judiciary must be respected by all the citizens of the country. No person should undergo any such practice which violates the spirit of the Constitution and should maintain its dignity. If any person shows disrespect to the National Anthem or to the National Flag then it will be a failure as a citizen of a sovereign nation.
2. The noble ideas that inspire the national struggle to gain independence, one should cherish them— Every citizen must admire and appreciate the noble ideas that inspired the struggle of independence. These ideas focus on making a just society, a united nation with freedom, equality, non-violence, brotherhood, and world peace. A citizen must remain committed to these ideas.
3. One should protect and uphold the sovereignty, unity and integrity of India— This is one of the basic duties that every citizen of India should perform. A united nation is not possible if the unity of the country is jeopardized. Sovereignty lies with the people. Article 19(2) of the Indian Constitution put reasonable restrictions on the freedom of speech and expression in order to safeguard the interest and integrity of India.
4. One should respect the country and render national service when called upon—Every citizen should defend the country against the enemies. All the citizens apart from those

who belong to the army, navy etc should be ready to take up arms in order to protect themselves and the nation whenever the need arises.

5. One should promote harmony as well as the spirit of common brotherhood amongst the citizens of India, transcending religious, linguistic, regional or sectional diversities and to renounce practices that are derogatory to the dignity of the women– Presence of one flag and single citizenship not only reflects the spirit of brotherhood but also directs the citizen to leave behind all the differences and focus on collective activity in all spheres.
6. One should value and preserve the heritage of our composite culture– India’s culture is one of the richest heritages of the earth. So, it is compulsory for every citizen to protect the heritage and pass it on to future generations.
7. One should protect and improve the natural environment including forests, lakes, rivers, wildlife and a citizen should have compassion for living creatures– Under Article 48A this duty is provided as a constitutional provision also. The natural environment is very important and valuable for each and every country. So each and every citizen should make efforts in order to protect it.
8. One should not only develop the scientific temperament and humanism but also the spirit of inquiry and reform– For his/her own development it is necessary for a person to learn from the experiences of others and develop in this fast-changing environment. So one should always try to have a scientific temperament in order to adjust with these changes.
9. One should always safeguard public property and abjure– Due to unnecessary cases of violence that occurs in a country which preach for non-violence, a lot of harm has already been done to the public property. So, it is the duty of every citizen to protect the public property.
10. One should always strive towards excellence in all spheres of life and also for the collective activity so that the nation continues with its endeavour and achievements– In order to ensure that our country rises to a higher level of achievement, it is the basic duty of every citizen to do the work that is given to him/her with excellence. This will definitely lead the country towards the highest possible level of excellence.
11. One should always provide the opportunity of education to his child or ward between the age of six to fourteen years– Free and compulsory education must be provided to the children who belong to 6 to 14 years of age and this has to be ensured by the parents or guardian of such child. This was provided by the 86th Constitutional Amendment Act, 2002.

The features of Fundamental Duties are as follows:

1. Both moral and civic duties have been laid down under the fundamental duties, like, “the Indian citizens should not only cherish the noble ideas that lead to the freedom struggle but they should also respect the Constitution, the National Flag and National Anthem”.
2. Fundamental rights can be applied to foreigners also but the fundamental duties are only restricted to the Indians citizens.

3. The fundamental duties are not enforceable in nature. No legal sanction can be enforced by the government in case of their violation.
4. These duties are also related to Hindu traditions or mythology like paying respect to the country or promoting the spirit of brotherhood.

Fundamental Duties and Indian constitution

The Constitution was adopted in the year 1949, but it did not contain the provisions for fundamental duties. The Parliament of India not only realised the need to insert fundamental duties in the Indian Constitution but it also felt that everyone should perform such duties. A new part, that is Part IVA, was inserted by the 42nd Amendment Act, 1976 which provides for several fundamental duties that need to be followed by the citizens of India.

These duties are considered as “directory” as these duties cannot be enforced through the writ of mandamus because they don’t cast any public duties. Fundamental duties are the basic reminder of our national goals and basic norms of political order. They inspire an individual to inculcate in himself/herself a sense of social responsibility. The Supreme Court said that the fundamental duties can be used to interpret any statute which is uncertain. These duties provide educational and psychological value to the citizens of India. These duties uphold the spirit of Democracy and patriotism.

In the case of Ramlila Maidan Incident, the court held that the word “fundamental” is used in two separate senses in our Indian Constitution. When this word is used for rights then it means that these rights are very essential and any law which will violate the fundamental rights will be declared as void. But when this word is used for the duties then it is used in a normative sense as it sets certain goals before the state which the state should try to achieve.

42nd Amendment 1976

The 42nd Amendment Act, 1976 was approved during the Emergency period. The Indian National Congress which was at that time headed by Indira Gandhi approved this amendment. This amendment was regarded as the most controversial amendment. The provisions that were provided by this amendment act came into force on different dates. Most of the provision came into force on 3 January while others came into force from 1 April 1977. This amendment is also known as “Mini-Constitution” or “Constitution of Indira” because wide changes were brought to the constitution. 11 Fundamental Duties were laid down by the 42nd Amendment.

86th Amendment 2002

Only a few constitutions in the world provide the guidelines stating the obligations and duties of the citizens. To govern the rights and the duties of its citizens, Canada and Britain lay significance on the Common Law and its judicial decision. It is said that one should be taught to

follow fundamental duties at a younger stage because if this will happen then it will not be important to list the duties in the Constitution as it will not affect its implementation.

The Unnikrishnan Judgement provided that all the citizens who are below the age of 14 years have a right to free and compulsory education. Due to an increasing public demand for education, the government worked towards making education a fundamental right. In 2002, an amendment was inserted in Article 51A. Article 51(k) was added after Article 51(j) which stated that it is a fundamental duty of every citizen who is a parent or a guardian to provide opportunities for free and compulsory education to a child who is between 6 years to 14 years of age.

In M.C Mehta (2) vs. Union of India [3] the Supreme Court held the following:

1. It is compulsory for all the educational institutions to organise a teaching lesson of at least one hour a week on the protection and improvement of the natural environment.
2. It is the duty of the Central Government under Article 51-A (g) to introduce this lesson in all the educational institutions.
3. The Central Government should also distribute books free of cost on the same subject in all the institutes.
4. To give rise to the consciousness among the people towards a clean environment, the government should organise 'keep the city clean' week at least once in a year.

Fundamental Duties committees

Swaran Singh Committee

The Chairperson of this committee was Sardar Swaran Singh who was given the responsibility to study the Indian Constitution during the National emergency. After declaring the emergency Indira Gandhi put the responsibility on this committee to study the Constitution and amend it keeping in mind the past experiences. Several changes were incorporated into the Constitution by the government based on the recommendations of the committee.

The need and necessity of fundamental duties was felt during the emergency period. So in 1976, a committee was set up who made the recommendation for the same. The recommendation was made for including a separate chapter in the Indian Constitution under the heading Fundamental Duties. Citizens will be aware of their duties while enjoying their fundamental rights. This suggestion was accepted by the government and a new article that is Article 51A was included in the Indian Constitution which had 10 fundamental duties in it earlier. The government also said that it was a mistake that was made by the original framers of the India Constitution to not to include the fundamental duties at that time. The committee suggested for 8 fundamental duties but the 42nd amendment had 10 duties. Out of all the recommendations, not every recommendation was accepted.

Some of the recommendations that were not accepted are:

1. In case of non-compliance with the fundamental duties, the Parliament can impose penalty or punishment.
2. In a court of law, such punishment or law won't be questioned.
3. Fundamental duties also include the duty to pay taxes which was rejected.

Justice Verma committee

In order to plan a strategy and methodology for working out a programme that was started worldwide for making the fundamental duties enforceable in every type of educational institution and to teach these duties in every school, Justice Verma Committee was established in 1998. The committee took this step because it was aware of the non-operationalization of the Fundamental duties. The committee found that the reason for non-operationalization was due to lack of strategy for its implementation rather than lack of concern.

The committee provided with the provisions like:

1. No person can disrespect the National flag, Constitution of India and the National Anthem under the Prevention of Insults to National Honour Act, 1971.
2. Various criminal laws have been enacted which provide punishment to the people who encourage enmity between people on the grounds of race, religion, language etc.
3. The Protection of Civil Rights Act (1955) provided for punishments in case of any offence related to caste and religion.
4. The imputations and assertions that are prejudicial to the nation's integrity and unity are considered as punishable offences under various sections of the Indian Penal Code, 1860.
5. In order to prevent a communal organisation to be declared as an unlawful association, the Unlawful Activities (Prevention) Act, 1967 was established.
6. If the members of the Parliament or the state legislature indulge in any corrupt practices like asking votes in the name of religion then they will be held liable under the Representation of the People Act, 1951.
7. The Wildlife (Protection) Act, 1972 protect and prohibit the trade in the case of rare and endangered animals.
8. The Forest (Conservation) Act, 1980 was implemented to make sure that Article 51A(g) was properly implemented.

Need for Fundamental Duties

Rights and duties are correlative. The fundamental duties serve as a constant reminder to every citizen while the Constitution specifically conferred on them certain fundamental rights. Certain basic norms of democratic conduct and democratic behaviour must be observed by the citizens. The then ruling party, Congress, claimed that what the framers of the Constitution failed to do is being done now. This omission was rectified by introducing a chapter on citizen's duties towards the nation. In India, people lay more emphasis on rights and not on duty.

This view was wrong. In this country, there has been a tradition of performance of one's duties even in partial disregard of one's rights and privileges. Since time immemorial emphasis was on individual's KARTAVYA which is the performance of one's duties towards society, his/her country and his/her parents. The Geeta and Ramayana also provide that people should perform their duties without caring for their rights.

Traditional duties have been given a constitutional sanction. If one clearly looks in the Constitution not only he/she will discover his/her rights but also the duties. A careful look at the Constitution will definitely solve the question of the people who claim that the Constitution only provides for the rights to the citizen and not the duties of the persons towards the society. The Fundamental Rights that are provided to all the citizens are present in the Preamble of the Indian Constitution like liberty of thought, expression, belief, faith and worship. These are not absolute rights as the state can put reasonable restrictions on them in the interest of society. The remaining Preamble put emphasis on the duties like justice, social, economic and political.

The government in order to create a strong foundation with a strong national character introduced fundamental duties. It not only lay emphasis on human dignity but also creates a feeling of harmony in the community. Our society can only be uplifted if each and every citizen focuses on bridging the gaps that have been created in the society, by performing their duties towards the society. Judicial reforms help in enforcing such duties from time to time because there is no provision in the Indian Constitution for their enforcement. If every person wants their fundamental rights to be realized then everyone should fulfill their duties.

The importance of Fundamental Duties

1. Fundamental duties act as a constant reminder that the citizens while enjoying their fundamental rights should not forget about their duties towards the nation.
2. These duties act as a warning signal for the people against any type of antisocial activities.
3. These duties give a chance to the people to have an active participation in the society rather than being a spectator.
4. These duties promote a sense of discipline and commitment towards the society.
5. The courts can use fundamental duties for determining constitutionality of law. If any law is challenged in court for its constitutional validity and if that law is providing force to any of the fundamental duties then that law will be held reasonable.
6. If the fundamental rights are enforced by a law then in case of its violation the Parliament can impose penalty or punishment for the same.