



Fundamental Rights

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'Fundamental Right' is the modern name for what has been traditionally known as 'natural right'.

*Justice Subba Rao,
Former Chief Justice of India in Golak Nath v. State of Punjab
(MANU/SC/0029/1967)*

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‘Fundamental Rights’: What Does It Mean?

Every individual has certain basic inalienable rights and it is the function of the State to protect, preserve and nourish these rights.

They are the rights or freedoms which are necessary for overall development of a person.

Part III of the Indian Constitution guarantees, protects, preserves and nourishes these rights in India.

Some of these rights are available to every person, irrespective of his/her nationality, while some of them are available exclusively to the citizens of India.

These rights are freedoms guaranteed but these freedoms are not absolute, but are justifiable.

‘Justifiable’ means enforceable in the Court of law.

Did you know?

The fundamental rights differ from an ordinary legal right in a way that the legal rights are protected and enforced by ordinary law which the Parliament has enacted deriving its power from the Constitution.

On the contrary the fundamental rights are guaranteed and protected by the Constitution and any person can directly approach the Supreme Court, under Article 32, or the High Court, under Article 226, for enforcing such rights.

Basic Fundamental Rights

- Right to Equality (Article 14 to 18)
- Right to Freedom (Article 19 to 22)
- Right Against Exploitation (Article 23 to 24)
- Right to Freedom of Religion (Article 25 to 28)
- Right to Cultural and Educational Rights (Article 29 to 30)
- Right to Constitutional Remedies (Article 32)

‘Article 21A’ of the Constitution which guarantees the fundamental right to education was inserted in the Constitution in the year 2002 vide 86th amendment to the Constitution.

Did you know?

Undefined But Recognised Constitutional Rights

(The list is not exhaustive)

- Right to Dignity
- Right to Privacy
- Right to Fair Labour Practices
- Right to Healthy Environment
- Right to Protection of Environment
- Right to Adequate Housing
- Right to Healthcare
- Right to Food
- Right to Clean Water
- Right to Social Security
- Right to Sleep
- Right to Information
- Right to Go Abroad
- Right Against Solitary Confinement
- Right of Prisoners Against Bar Fetters
- Right to Legal Aid
- Right to Speedy Trial
- Right Against Handcuffing
- Right Against Custodial Violence
- Right Against Public Hanging
- Right to Shelter
- Right to Doctor's Assistance at Government Hospitals
- Right to Freedom from Torture
- Right to Reputation
- Right to Earn a Livelihood

Fundamental Rights Are Not Absolute

No right is per se absolute in nature.

All rights, whether recognised by constitution or otherwise, are subject to certain reasonable limitations or restrictions.

The restrictions imposed on fundamental rights strike a balance between individual rights and State's interest.

Even the basic 'right to life' can be taken away in accordance with the procedure established by law.

However, any such restriction limiting the scope of fundamental rights must pass the 'test of reasonableness'.

Such restrictions or limitations should not be arbitrary, artificial or evasive.

Such restrictions must also be just, fair and reasonable.

'Article 13' makes all laws and administrative actions which abridges or tends to abridge the fundamental rights *ipso facto* null and void.

Did you know?

Suspension of Fundamental Rights

In case of proclamation of emergency by the President under Article 352 of the Constitution, all the fundamental freedoms guaranteed under Article 19 gets suspended automatically.

An emergency under Article 352 can be proclaimed on grounds of armed rebellion, war or external aggression.

In case of proclamation of emergency under Article 352 of the Constitution, the President is empowered to suspend the right to move any court for enforcement of fundamental rights.

However, the suspension of the right to move court does not cover the rights guaranteed under Article 20 & 21 of the Constitution.

Importantly, such suspension of the right to move court does not operate automatically and the President has to specifically order such suspension.

State: Definition

The Constitution cast the onerous obligation of protecting and guaranteeing the fundamental rights of every individual upon the State.

Article 12 of the Constitution defines the term 'State'.

State includes:

Government of the Union;

Government of each State;

The Parliament of India;

The Legislature of each State;

All local and other authorities within the territory of India or under the control of Government of India.

Did you know?

Corporation may or may not amount to 'State' under Article 12 depending on the below mentioned factors:

- It would be a 'State' if it is wholly controlled by the Government in its policy-making and in discharge of its function.
- It would be a 'State' if the entire share capital is held by Government.
- It would be a 'State' if it discharges functions of public importance which makes it an instrumentality of Government.
- It may or may not be a 'State' if the Corporation established by statute has no shares or shareholders but if its administration is in hands of Board of Directors appointed by the Government.

Right to Equality

Constitutional Provision: Article 14

It says that the State shall not deny to any person equality before law and equal protection of the laws.

Right to Equality has three dimensions:

Equality before the law

Rule of law

Equal protection of the laws

Dimensions of Equality

'Equality before the law' means that the State must not accord special privilege to any person.

The concept works on the principle 'be you ever so high, the law is above you' and establishes the rule that 'all are equal in the eyes of law'.

'Rule of law' means that no man is above law and that every person is subject to the jurisdiction of ordinary Courts.

'Equal protection of the laws' directs the State to give equal treatment to those who are in equal circumstances.

It doesn't mean that the same law shall be made applicable to all throughout the territory of India without any regard to the difference in circumstances.

It means that the same law is applicable to those who are similarly placed.

Dicey's Concept of the Rule of Law

It says that "no man is above the law and everyone, whatever his condition or rank is, is subject to the ordinary laws of the land".

It means 'absence of arbitrary power of the government' and absolute supremacy of the law.

It means everyone will be charged equally to the same law and be subject to the same law courts. Governments and citizens will obey the same law and no special treatment will be given to anyone.

The rule of law indicates that the general principles of the constitution are the result of judicial decisions of the courts in England.

Rights such as right to speak in public, freedom to organize a public meeting and right to vote are guaranteed by a written constitution in most countries but in England, it is not so.

Doctrine of Classification

The Courts have evolved the principle that if some differentiation is based on rational classification, it is not regarded as discrimination.

However, any such classification must be just, fair and reasonable and based on an intelligible differentia and it must not be arbitrary, artificial and evasive.

Article 14 permits reasonable classification but prohibits class legislation.

The rule of natural hearing is implicit in Article 14 which prescribes that 'no person shall be condemned unheard and every person shall be given a reasonable opportunity of being heard'. This principle is based on the maxim '*audi alterem partem*' and is applicable to both judicial and quasi-judicial proceedings.

Did you know?

Prohibition of Discrimination on Religion

Constitutional Provision: Article 15

It prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth or any of them.

Its object is to foster national identity and to set right the wrong and misplaced social practices in the Country.

This Article is applicable only to the citizens.

It says that religion, race etc., alone cannot be grounds for discrimination, but such classifications coupled with some other reasonable grounds can be a ground for discrimination.

Principles Laid Down Under Article 15

Article 15(1): State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth or any of them.

Article 15(2): No citizen shall be subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment, the use of well, tanks, bathing ghats, roads and places of public resort only on the grounds mentioned hereinabove.

Article 15(3): State is empowered to make special provisions for women and children.

Article 15(4): State is empowered to make special provisions in favour of Socially and Educationally Backward Class of Citizens and Scheduled Castes & Scheduled Tribes.

'Article 15(4)' of the Constitution which speaks for special provisions in favour of Socially and Educationally Backward Class of Citizens and Scheduled Castes & Scheduled Tribes was added by the Constitution (First Amendment) Act, 1951.

Did you know?

Equal Opportunity in Public Employment

Constitutional Provision: Article 16

It speaks for equality of opportunity in matters relating to employment to only offices under the State.

It commands that there shall be no discrimination on grounds only of religion, race, caste, sex or place of birth or any of them in matters relating to employment.

It also empowers the State to make reservation of posts in Government jobs in favour of backward class of citizens who have not been adequately represented.

It also empowers the State to make reservation in matters of promotion of SCs and STs citizens.

Article 16(4) permits reservation as being an exception to the Constitutional principle of right to equality enshrined in Article 16(1).

The Supreme Court of India has ruled in ***Indra Sawhney v. Union of India*** **MANU/SC/0104/1993 (Mandal case)** that “the total reservation for SC/ST and other backward classes or special categories should not exceed 50 percent.”

Did you know?

Abolition of Untouchability, Titles

Constitutional Provision: Article 17 and 18

Article 17 lays down that untouchability is abolished and its practice in any form is forbidden.

The enforcement of any disability arising out of untouchability shall be an offence.

Article 18 prohibits the State to confer titles on anybody whether a citizen or a non-citizen.

However, military and academic distinctions are exempted from the prohibition.

Protection of Civil Rights Act, 1955 was enacted to prescribe punishment for the preaching and practice of "Untouchability" for the enforcement of any disability arising therefrom. The Act repealed the Untouchability (Offences) Act, 1955 which was the governing law on this subject prior to its enactment in the year 1955.

Did you know?

Protection of Basic Freedoms

Freedom of Speech and Expression

Freedom to Assemble

Freedom to Form Associations and Unions

Freedom of Movement

Freedom of Residence

Freedom of profession, occupation, trade
of business

Article 19 of
the
Constitution
of India.

Freedom of Speech and Expression

It is the foundation on which a successful democracy is based.

It includes right to express one's own convictions and opinions freely by words, writings, pictures and the likes.

It means expression of ideas through any medium of communication or visible representation.

It connotes freedom of press and liberty of circulation.

It includes liberty to propagate one's own opinion, belief.

It also includes the right to information.

These freedoms are subject to certain reasonable restrictions enumerated under Article 19 (2).

Freedom to Assemble

It guarantees to the citizens the right to assemble peaceably.

Such an assembly must be peaceful and without arms.

It includes the right to hold meetings, demonstrations and to take out processions.

It does not sanction the meeting of any unlawful assembly.

An assembly of five or more persons becomes unlawful when the common object of the persons composing the assembly is to:

1. overpower the Government or any public servant in the exercise of his lawful powers,
2. take possession of any property,
3. resist the execution of any law,
4. compel a person to do what he is legally not bound to do or omit what he is legally bound to do,
5. commit any criminal trespass.

[Section 141 of the Indian Penal Code, 1860]

Freedom to Form Associations & Unions

It provides the freedom to form associations or unions which enables the formation of political parties, trade unions etc.,

Right to form associations includes the right not to be compelled to join an association.

Right to strike is not a fundamental right and the same can be controlled by appropriate legislation.

Such a right is subjected to certain reasonable restrictions as enumerated under Article 19(4).

Freedom of Movement

It guarantees the right to move freely throughout the territory of India.

It includes the right to move from one part of the country to the other.

Such a freedom can be restricted on the grounds of interest of general public or for the protection of the interest of any Scheduled Tribes.

The reasonable restrictions are enumerated under Article 19(5).

Freedom of Residence

It guarantees the right to reside and settle in any part of the territory of India.

Right to reside and right to move freely go hand in hand.

Such a freedom can be restricted on the grounds of interest of general public or for the protection of the Scheduled Tribes.

The reasonable restrictions are enumerated under Article 19(5).

Freedom of Profession, Trade, Occupation or Business

It guarantees the freedom to practice any profession, carry on any occupation, trade or business.

However, such profession, occupation, trade or business must not be illegal and it must be commercial in nature.

Such a freedom can be restricted on the grounds of interest of general public or the State.

The reasonable restrictions are enumerated under Article 19(6).

Fundamental Freedoms & Their Restrictions

Freedom of speech & expression [Article 19 (1) (a)]	<ul style="list-style-type: none"> • Sovereignty & integrity of India • Security of the State • Friendly relations with foreign friends • Public Order • Decency • Morality • Contempt of Court • Defamation • Incitement of an offence [Article 19(2)]
Freedom to assemble peaceably and without arms [Article 19 (1) (b)]	<ul style="list-style-type: none"> • Sovereignty & integrity of India • Public Order [Article 19(3)]
Freedom to Form Associations and Unions [Article 19 (1) (c)]	<ul style="list-style-type: none"> • Sovereignty & integrity of India • Public Order • Morality[Article 19(4)]
Freedom to move freely throughout the territory of India [Article 19 (1) (d)]	<ul style="list-style-type: none"> • In the interest of general public • For the protection of the interests of any Scheduled Tribes [Article 19(5)]
Freedom to reside and settle in any part of the territory of India [Article 19 (1) (e)]	
Freedom of profession, occupation, trade of business [Article 19 (1) (g)]	<ul style="list-style-type: none"> • In the interest of general public • Prescribing professional or technical qualifications for practising any profession etc., • Carrying on of any business by the State to the complete or partial exclusion of citizens [Article 19(6)]

Protection in Respect of Conviction for Offences

Constitutional Provision: Article 20

It guarantees three basic protections to every person who are connected with conviction of offences:

1. Ex post facto law
2. Double jeopardy
3. Prohibition against self-incrimination

Confession by an accused while in custody is not admissible unless made in the immediate presence of the Magistrate.

Did you know?

Ex post facto law

It says that no person shall be convicted of any offence except for the violation of a law for the time being in force.

It also says that no person shall be subject to a penalty greater than that which might have been inflicted under the law in force.

An act which is in violation of law must be declared as an offence by any law in force at the time of commission of such act.

Double Jeopardy

It says that no person shall be convicted twice for the same offence.

The protection extends not only to conviction, but to prosecution also. As such, no person shall be prosecuted and punished for the same offence more than once.

The rule of double jeopardy comes into picture only when prosecution and punishment is for an identical offence.

Prohibition Against Self-incrimination

It says that no person shall be compelled to be a witness against himself.

It is a right available to a person who is accused of an offence.

It is basically a protection against compulsion to be a witness.

However, the protection is available only when a person is compelled to give evidence 'against himself'.

Right to Life and Personal Liberty

Constitutional Provision: Article 21

This safeguard is available to both the citizens and the non-citizens.

It says, "No person shall be deprived of his life and personal liberty except according to the procedure established by law".

Article 14, 19, 21 are not mutually exclusive and are interlinked.

A rule or a law prescribing procedure for deprivation of rights guaranteed under Article 21 must satisfy the test of reasonableness or the test of Article 14, 19, 21.

The expression 'personal liberty' is of widest amplitude and should not receive narrow interpretation by the Court of law.

It includes the 'right to live with human dignity and all that goes along with it'.

Right to livelihood, to food, to shelter, to privacy, to health, to education, to healthy environment, to free legal aid, to speedy trial are some of the derivatives of Article 21 which is now well recognised by the Supreme Court of India.

Did you know?

Prohibition Against Arrest and Detention in Certain Cases

Constitutional Provision: Article 22

It prescribes the procedure to be followed while arresting any person and when a person is in preventive detention.

Since both 'arrest' and 'detention' tends to interfere with the person's right to life with liberty, the procedure regulating such arrest and detention must be prescribed by law and it must be just, fair and reasonable.

No preventive detention law shall provide for detention for a period longer than 3 months.

Article 21A guarantees the right to free and compulsory education to all children between the age of 6 to 14 years.

Did you know?

Basic Rights of a Arrested Person

Right to be informed about the grounds of arrest.

Right to consult a lawyer of his choice.

Right to be produced before the Magistrate within 24 hours of arrest.

Article 22 of
the
Constitution
of India.

Right Against Exploitation

Constitutional Provision: Article 23 and 24

Article 23 prohibits trafficking in human beings and forced labour.

Article 24 prohibits employment of children in factories etc.

Trafficking in human beings means 'buying and selling' of human beings and includes immoral trafficking in women and children for immoral or other purposes.

Article 24 is in accordance with the directive principles under Article 39 which states that the State is under an obligation to ensure the health and strength of workers.

It prohibits employment of children below the age of fourteen years in any factory, mine or other hazardous engagement.

In India, trafficking in human beings is regulated by the Immoral Traffic (Prevention) Act, 1956 which declares it as a punishable offence.

The operating law on prohibition of employment of children in hazardous employment is the Child Labour (Prohibition and Regulation) Act, 1986.

Did you know?

Right to Freedom of Religion

Constitutional Provision: Article 25-28

The Preamble to the Indian Constitution declares India to be a Secular State.

State is under an obligation to treat all religions and religious denominations alike.

Article 25: It includes the freedom of conscience and free profession practice and propagation of religion.

Article 26: It includes the freedom to manage religious affairs.

Article 27: It includes freedom as to payment of taxes for promotion of any particular religion.

Article 28: It includes freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Cultural and Educational Rights

Constitutional Provision: Article 29-30

Article 29: It protects the interest of minorities.

Article 28: It guarantees the right of minorities to establish and administer educational institutions.

It provides the right to any section of the citizens having a distinct language, culture or script of its own to conserve the same.

It also provides the right to establish and manage educational institutions to minorities.

However, no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Right to Constitutional Remedies

Constitutional Provision: Article 32-35

Article 32 is the heart and soul of the Indian Constitution.

It guarantees the right to move the Supreme Court for enforcement of fundamental rights.

The Supreme Court has the power to issue directions or orders of writs which may include writs in the nature of
habeas corpus,
mandamus,
certiorari,
prohibition and
quo warranto.

Right to Constitutional Remedies

Article 32 can only be suspended in accordance with the provisions established by the Constitution itself and not otherwise.

The right to enforce a fundamental right is itself a fundamental right by virtue of Article 32.

The writ jurisdiction of Supreme Court can only be invoked in cases of violation of a fundamental right.

A Public Interest Litigation (PIL) may also be filed under Article 32 by any public spirited person for enforcement of any fundamental right that affects the public at large.

Thank You!

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Fundamental Duties

Sub: Political Concepts and Indian Political System

What are fundamental Duties?

- Fundamental duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India.
- These duties set in part IV-A of the Constitution.
- They are held by the Supreme Court to be obligatory for all citizens.



History



- The fundamental duties were included in the constitution by the 42nd amendment act 1976.
- It incorporated the fundamental duties by inserting a new article 51A below article 51 which belongs to Part IV-A.
- The recommendations were passed in 1976 and came into effect on 3rd January, 1977.

History

- Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002.
- These duties were meant to bring our Constitution in line with the Universal Declaration of Human Rights and the Constitutions of Japan, China, and USSR.
- It was adopted based on the recommendations of the SWARAN SINGH Committee.

Swaran Singh Committee

- Swaran Singh Committee was constituted by the Government of India earlier in 1976.
- The objective of this committee was to study the questions of amending the constitution in the light of past experiences faced by the constitution.
- The committee was constituted by Indira Gandhi soon after emergency was imposed in the country.

Swaran Singh Committee

- The 42nd amendment act which is also called “Mini Constitution” amended many articles and even the Preamble was a result of the recommendations of this committee
- The 10 fundamental duties in the constitution were also added as per the recommendations of Sardar Swaran Singh committee.

Inspiration

- The inspiration for the Part IV A was the constitution of USSR.
- It is because USSR constitution directs that law, maintenance or labor discipline and honesty should be observed in the performance of public duties and also directs to respect the rules of the socialist community.

Inspiration

- U.S.S.R. constitution in this way emphasizes more on the citizens' duties and imposes upon the people some definite duties towards society and state.
- Such fundamental duties are not seen in the constitution of the U.S.A., Australia, Canada and among other democratic constitution of world except for Japan where we find mention of certain duties of the citizens similar to that present in our constitution.

Inspiration

- This is because, in all these countries the citizens are imbued with a high sense of patriotism as a result of education, training in the elementary duties and obligations of citizenship.
- In contrast to this, it is generally argued that in India, people lay emphasis only on rights and it is often criticized that the Indians know only rights but not duties.
- This was primarily the reason as to why the fundamental duties were incorporated in the constitution in 1976 as per some experts.

The Duties

The fundamental duties of every citizen of India according to the Constitution are:

1. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
2. To cherish and follow the noble ideals which inspired our national struggle for freedom;



The Duties

- 3.To uphold and protect the sovereignty, unity and integrity of India;
- 4.To defend the country and render national service when called upon to do so;
- 5.To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

The Duties

- 6. to value and preserve the rich heritage of our composite culture;
- 7. to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- 8. to develop the scientific temper, humanism and the spirit of inquiry and reform;

The Duties

- 9. To safeguard public property and to abjure violence;
- 10. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement;
- 11. Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years

Importance

- The fundamental duties constitute a constant reminder to the citizens that they have duties in building up a free, egalitarian, healthy and responsible society.
- These are expected to act as damper to reckless and anti-social activities on the part of some individuals.
- India being a multi-racial and multi-religious nation can prosper only when the citizens of this country respect its integrity and promotes cultural harmony by doing their duties as citizen of the nation.

Importance

- Environmental pollution has become a great cause of concern. These duties remind us to keep our environment free from pollutants.
- The inclusion of providing opportunity for education for children as a fundamental duty is a big step forward towards safeguard of human-rights and abolition of social injustices

Non-enforceable and non-justiciable nature

- As the state offers the citizens fundamental rights, it is the fundamental duty of each citizen of India to further national integration and contribute towards a better society.
- There is a major difference between the fundamental rights and the fundamental duties.
- Unlike fundamental rights, fundamental duties are non-justifiable.

Non-enforceable and non-justiciable nature

- This means that no one can be punished in case of their violation or non-compliance of any fundamental duty.
- Similarly these duties are non-enforceable in nature.
- That is no court can or any government body can directly enforce any of these duties on any particular citizen legally.

Non-enforceable and non-justiciable nature

- But if the State makes a law to prohibit any act or conduct in violation of any of the duties, the courts would uphold that as a reasonable restriction on the relevant fundamental right.
- For instance, a person who burns our national flag, in violation of the duty in Art. 51 A, cannot assert that it was burnt by way of demonstration against the Government should be protected by the freedom of expression right.



Non-enforceable and non-justiciable nature

- In this respect, the Fundamental Duties are similar to that of the Directive principles as they stood in the Constitution of 1949.
- The directive principles lay down some high ideals to be followed by the state whereas the fundamental duties lay high ideals for the citizen.
- Here too, in both cases, violation does not invite any punishment.

Utility and Significance

- The section 'Fundamental Duties' was not a part of the original constitution.
- These were added to the Constitution much later.
- The idea behind incorporation of fundamental duties was to remind the citizens of the country that they have certain obligations towards the country and society.

Utility and Significance

- The three most important items in the list of Fundamental Duties are:

1. those requiring the citizens to respect the ideals of the Constitution and the institutions it establishes,
2. to promote harmony and the spirit of common brotherhood amongst all the people of India professing different religions, speaking different languages and
3. to safeguard the public property and to abjure violence.

Conclusion

- These fundamental duties are not mere expressions of pious platitudes. Courts will certainly take cognizance of laws seeking to give effect to fundamental duties.
- Rights and duties are reciprocal and interdependent; they are the two aspects of the same thing or two sides of same coin



Conclusion

- And for the enjoyment of valuable fundamental rights, firstly we need to obey our fundamental duties seriously, as a law-abiding citizen, and must realise that he has certain duties towards the Nation to achieve the objective of Part IV-A that is National integrity and respect because as Salmond said,

“there can be no right, without a corresponding duty.”

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THANK
YOU!



Directive principles of state policy

- Enumerated in part IV of constitution from articles 36 to 51.
- The framers of the constitution borrowed this idea from Irish constitution of 1937, which was copied from Spanish constitution.

Features

- State should keep these principles in mind while formulating policies and enacting laws.
- It resembles the “Instrument of instructions” enumerated in Government of India Act, 1935.
- It constitute a very comprehensive economic, social and political program for the state. Aim is to have ‘welfare state’ and not ‘Police state’.
- Non justiciable in nature, They are not legally enforceable by court for their violation.
- It helps the court in examining and determining the constitutional validity of a law.
- If a law aims to achieve directive principle then court finds it reasonable.

Classification of directive principles

Three broad categories

- Socialistic Principles
- Gandhian Principles
- Liberal-Intellectual Principles

Socialistic Principles

The socialist and economic principles always aim to shape our country into a Welfare State. They direct the state:

1. To promote the welfare of the people by securing a social order permeated by justice and to minimize inequalities in income, status, facilities and opportunities (Article 38).
2. To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children (Article 39).

3. To promote equal justice and to provide free legal aid to the poor (Article 39 A).
4. To secure to right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement(Article 41).
5. To make provision for just and humane conditions of work and maternity relief (Article 42).
6. To secure a living wage, a decent standard of life and social and cultural opportunities for all workers (Article 43).
7. To take steps to secure the participation of workers in the management of industries (Article 43 A).
8. The raise the level of nutrition and the standard of living of people and to improve public health (Article 47).

Gandhian Principles

- These principles are based on Gandhian ideology. In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles. They require the states:
 1. To organize village panchayats and endows them with necessary powers and authority to enable them to function as units of self government.
 2. To promote cottage industries on an individual or cooperation basis in rural area(Article 43).
 3. To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies(Article 43A).

4. To promote educational and economic interests of the weaker sections of the people particularly SCs, STs to protect them from social injustice and exploitation. (Article 46)

5. To prohibit the consumption of intoxicating drinks drugs which are injurious to health (Article 47).

6. To prohibit the slaughter of cows and other useful cattle to improve their breeds.

Liberal-intellectual Principles

The principles included in this category represent the ideology of liberalism. They direct the states:

- To secure for all citizens a uniform civil code throughout the country(Article 44).
- To provide environment safeguarding forest and wild life of the country
- To protect, preserve and maintain places of national historical importance
- To separate the judiciary from executive in public services of life
- To promote international peace and security and maintain honorable relations between nations.

Criticism of the directive principles

- No legal force :- Directive principles have been criticized mainly because of their non-justiciable nature.
- **Illogically arranged** :- Critics often say that directives are not arranged in a logical manner based on consistent philosophy.
- **Conservative** :- They are suitable in India in the middle of twentieth century but that may not be the case in twenty-first century.
- **Constitutional conflict**:- It can lead to conflict like between President and Prime Minister.
- For ex. PM passes a bill in parliament but president may reject it on non compliance of these principles.

UTILITY OF DIRECTIVE PRINCIPLES

- In spite of the above criticisms and shortcomings the Directive principles are necessary appendage to the Constitutions.
- According to M C Setalvad, the former Attorney General of India, the Directive Principles, although confer no legal rights and create no legal remedies are significant and useful in the following ways:
 1. They are like an “Instrument of Instructions” addressed to all authorities in the Indian Union.
 2. They have served as useful beacon-lights to the courts in exercising their power of judicial review.
 3. They form the dominating background to all state action.

The Directives also play the following roles:

- They facilitate stability and continuity in domestic and foreign policies in political, economic and social spheres in spite of the changes of the party in power.
- They are supplementary to the fundamental rights of the citizens.
- Their implementation creates a favorable atmosphere for the full and proper enjoyment of the fundamental rights by the citizens.
- They enable the opposition to exercise influence and control over the operations of the government.

Thank you

FEDERAL STRUCTURE AND DISTRIBUTION OF POWER

Federal Government	Unitary Government
1) Dual Government (National, Regional)	1) Single Government
2) Written Constitution	2) Constitution may be written (France) or unwritten (Britain)
3) Division of power between national and regional Government	3) No division of power. All power with national government.
4) Supremacy of the constitution	4) Constitution may be supreme (Japan) may not be supreme (Britain)
5) Independent judiciary	5) Judiciary may or may not be independent
6) Bicameral legislature	6) Legislature may be bicameral(Britain) or unicameral(China)

Federal features of the constitution

1) **Dual polity**

- The constitution establishes a dual polity consisting union of centre and state.
- Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by constitution.
- The union government deals with defense, foreign affairs, currency, communication and so on while state government look after matter of regional and local importance like order, agriculture, health, local government etc.

2) **Written constitution**

- The constitution is not only a written document but also lengthiest constitution of India.
- Originally it contained a preamble, 395 Articles and 8 schedules. At present it consists a preamble , 465 Articles and 12 schedules.

3) **Division of powers**

- The constitution divided the powers between the centre and states in terms of union list, state list and concurrent list I seventh schedule.
- The union list consists of **100 subjects**, state list **61 subjects** and concurrent list **52 subjects**.
- Both centre and state can make laws on subject of concurrent list but in case of conflict central law prevails.

4) **Supremacy of the constitution**

- The constitution is the supreme law of land and both laws enacted by the centre and state must confirm to its provisions.
- Otherwise they can be declared invalid by the supreme court or high court through their power of judicial review.

5) **Rigid constitution**

- Method of amendment is rigid to division of power and supremacy of constitution.
- Those provisions which are concerned with federal structure (centre-state relations) can be amended only by central and state governments. (It requires special majority and approval of half of state legislatures.)

6) **Independent judiciary**

- The constitution establishes an independent judiciary headed by supreme court for two purposes.
- 1) To protect supremacy of constitution by power of judicial review.
- 2) To settle the dispute between centre and states or between states.

7) **Bicameralism**

- The constitution provides for a bicameral legislature consisting of an upper house and lower house.
- The Rajya Sabha represents the states of Indian federation while the lok Sabha represents people of India as a whole.
- The Rajya Sabha is required to maintain the federal equilibrium by protecting the interests of state against undue interference of the centre.

Unitary (Non-federal) features of the constitution

1) Strong Centre

- The division of power is in favor of centre and highly inequitable from the federal angle.
- The union list consists more subjects and important subjects and also centre has overriding authority over concurrent list.

2) States not indestructible (An indestructible union of destructible states) States in India have no right to territorial integrity.

- The parliament can by unilateral action change the area, boundaries and name of any state.
- Moreover, it requires only a simple majority and not a special majority.

3) Single Constitution

- Usually, in a federation, the states have the right to frame their own constitution separate from the center. In India no such power is given to states.
- The constitution of India includes constitution of center and state both.

4) **Flexibility of constitution**

- The process of amending the constitution is less rigid than what is found in other federations.
- The bulk of the constitution can be amended by the unilateral action of parliament, either by simple or by special majority.
- Power to initiate an amendment to the constitution lies only with centre.

5) **No equality of state representation**

- The states are given the representation in Rajya Sabha on the basis of population. Hence, the membership varies from 1 to 31.
- In the US American senate has 100 members, two from each state(Principle of equality of representation).

6) Emergency Provisions

- The constitution stipulates three kind of emergencies – National, state and financial.
- During an emergency, the central government becomes all powerful and states go into total control of centre.
- It converts federal structure into unitary.

7) Single citizenship

- In spite of dual polity, the constitution of India , like that of canada, adopted the system of single citizenship.
- There is only one citizenship and no separate state citizenship like US, Switzerland and Australia.

8) Integrated Judiciary

- Integrated judicial system with supreme court at the top and states high court below it.
- Single system of courts enforces both central and state laws.
- In US federal laws are enforced by federal judiciary and state laws by state judiciary.

9) **All India services**

- In US, the federal government and state governments have their separate public services. In India also, the centre and states have their separate public services.
- But, in addition, there are all Indian services (IAS, IPS, IFS) which are common to both centre and states. The members of these services are recruited and trained by centre which also possesses ultimate control over them.

10) **Integrated audit machinery**

- The Comptroller and Auditors General of India audits the account of both centre and state governments.
- But his appointment and removal is done by president without consulting states.
- Hence, this office restricts financial autonomy of states.

11) Parliament's authority over state list

- The states do not have exclusive control over the list of subjects.
- The parliament is empowered to legislate on any of subject of state list if Rajya Sabha passes a resolution to that effect in national interest.

12) Appointment of Governors

- The governor who is the head of state is appointed by president.
- He acts as an agent of the centre and through him centre exercise control over the states.

13) Integrated election machinery

- The election commission conducts elections for states and centre.
- This body is constituted by president and states have no say in matter.

14) Veto over state bills

- The governor is empowered to reserve certain type of bills passed by state legislature for consideration of president.
- The president can withhold his assent to such bills and he has absolute veto.

Legislative relations between centre and states

Article 245 to 255 in part 11 of the constitution deal with legislative relations between the centre and states.

1) Territorial extent of central and state legislation

- The parliament can make laws for the whole or any part of territory of India. It includes both states and union territories.
- A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable to outside the state.
- The parliament can alone make 'Extra-territorial' legislation. Thus the laws of parliament are also applicable to the Indian citizens and their property in any part of world.

2) Distribution of legislative subjects

- The parliament has exclusive powers to make laws with respect to any of the matters enumerated in union list.
- The list has at present 100 subjects like defense, banking, foreign affairs, currency, atomic energy, insurance, communication , inter-state trade, commerce, audit and so on.
- The state legislature has at present 61 subjects like public order, police, public health, sanitation, agriculture, prisons, local government, fisheries, markets, theaters, gambling so on.

- According to concurrent list both parliament and state legislature can make laws on 52 subjects at present. For ex. Criminal law and procedure, civil procedure, marriage and divorce, population control, family planning, electricity, labor welfare etc.
- The power to make laws with respect to residuary subjects (matters which are not listed in any of three subjects) is given to parliament.

3) Parliament legislation in the state field

- The constitution empowers the parliament to make laws on any matter enumerated in state laws under following extraordinary circumstances.

3.1 When Rajyasabha passes a resolution

- If the Rajyasabha declares that it is necessary in the national interest that parliament should make laws on the matter of state list, the parliament becomes competent to make law on this matter.
- Such laws must be passed by two third of the members present and voting.

3.2 During a national emergency

- During the time of national emergency, parliament has power to make laws on state matters.
- The laws become inoperative the six months of end of emergency.

3.3 When state makes a request

- When the legislature of two or more states pass resolutions requesting parliament to enact laws on a matter in the state list, then parliament can make laws for regulating that matter.
- A law so enacted applies only to states which have passed the resolution.

3.4 To implement international agreements

- The parliament can make laws on any matter in the state list for implementing the international treaties, agreements or conventions.
- The agreement enables the central government to fulfill its international obligations and commitments.

3.5 During president's rule

- When the president's rule is imposed in a state the parliament becomes empowered to make laws with respect to any matter in the state list.
- A law made by the parliament continues to be operative even after the end of president rule. However, new state legislation can change it.

4. Centre's control over state legislation

- The constitution empowers the centre to exercise control over the state's legislative matter in following ways

4.1 The governor can reserve certain types of bills passed by state legislative for the consideration of president. The president enjoys absolute veto over them.

4.2 Bills on certain matter enumerated in the state list can be introduced in the state legislature only with previous sanction of the president. (Bills imposing restriction on freedom of trade and commerce)

4.3 The president can direct the states to reserve money bills and other financial bills for his consideration during financial emergency.

THANK YOU

LOCAL SELF GOVERNMENT PANCHAYATI RAJ

INTRODUCTION:

- The term Panchayati Raj in India signifies the system of rural local self-government.
- It has been established in all the states of India by the Act of the state legislatures to build democracy at the grass root level.
- It was constitutionalized through the 73rd Constitutional Amendment Act of 1992.

History of Local Administration:

- The village panchayat as a system of administration began in the British days, as they offer to satisfy the demands for local autonomy.
- They opened up the governance of the lowest level to the citizens
- The government of India Act 1935 also authorizes the provinces to enact legislation.
- Later, the conceptualization of the system of local self-government of India took place through the formation and effort of following four important committees from the year 1957 to 1986:
 - 1. Balwant Rai Mehta Committee (1957)
 - 2. Ashok Mehta Committee (1977)
 - 3. G V K Rao Committee (1985)
 - 4. L M Singhvi Committee (1986)

Panchayat and Municipality

- Panchayat Municipality are the generic terms for the governing body at the local level
- Both exist as three-tier System at the lower, intermediate and upper levels.
- The 73rd Constitutional Amendment Act provides for a Gram Sabha as the foundation of the Panchayat Raj system.
- It is essentially a village assembly consisting of all the registered voters in the area of the Panchayat.
- The State has the power to determine what kind of powers it can exercise, and which functions it has to perform at the village level.
- The 74th Constitutional Amendment Act provides for three types of Municipalities :
 - Nagar Panchayat for a transitional area between a rural and urban area.
 - Municipal Council for a small urban area
 - Municipal Corporation for a large urban area

- Municipalities represent urban local self-government'
- Most of the provisions of the two acts are parallel, differing only in the fact that they are being applied to either a Panchayat or a Municipality respectively.
- Each Gram Sabha is the meeting of a particular constituency called ward.
- Each ward has a representative chosen from among the people themselves by direct election.
- The chairperson of the panchayat or Municipality at the intermediate and distinct level are elected from among these representatives at the immediately lower level by indirect election.

1.

Elections Held in the Local Government Bodies

- All seats of representatives of local bodies are filled by people chosen through direct elections.
- The conduct of elections is vested in the hands of the State Election Commission.
- The Chairpersons at the intermediate and district levels shall be elected indirectly from among the elected representatives at the immediately lower level.
- At the lowest level, the Chairperson still be elected in a mode defined by the state legislature.
- Seats are reserved for Scheduled Cast and Scheduled Tribe proportional to their population.
- Out of these reserved seats, not less than one-third shall be further reserved for women.
- There should try a blanket reservation of one-third seats for women in all the constituencies taken together too (which can include the already reserved seats for SC and ST).
- The Acts bar the interference of courts in any issue relating to the election to local bodies.

Qualifications Needed to be a Member of the Panchayat or Municipality

- Any person who is qualified to be a member of the state legislature is eligible to be a member of the Panchayat or Municipality.
- But he shall not be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years This means that unlike the state legislature, a person needs to attain only 21 years of age to be a member of panchayat/Municipality.
- The local governing bodies are elected for a term of five years.
- Fresh elections should be conducted before the expiry of the five-year term.
- If the Panchayat/Municipality is dissolved before the expiry of its term, elections shall be conducted within six months and the new Panchayat/Municipality will hold office for the remainder of the term if the term has more than six months duration.

THANKS