

PART III & PART IV

FUNDAMENTAL RIGHTS, DPSP AND FUNDAMENTAL DUTIES

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PART III- FUNDAMENTAL RIGHTS

- The Fundamental Rights are enshrined in **Part III** of the Constitution from **Articles 12 to 35**.
- Part III of the Constitution is rightly described as the **Magna Carta** of India.
- There are certain Rights which are mentioned in the Constitution, but not under Fundamental Rights. Such Rights are called Constitutional Rights. (E.g. Right to Vote)
- There are certain Rights which are available to citizens through laws passed by Legislatures (Centre or State). Such Rights are called Statutory Rights. (E.g. Right to Information)

PART III- FUNDAMENTAL RIGHTS

- The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination.
- The Fundamental Rights are meant for promoting the ideal of political democracy.
- The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land.
- Articles 12 to 35 deal with the fundamental rights.
- The concept of Fundamental rights have been inspired from the American Constitution.
- Only Article 17 and 24 are absolute rights with no restrictions.

FEATURES OF FUNDAMENTAL RIGHTS

- Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
- They are not absolute but qualified. The state can impose reasonable restrictions on them.
- All of them are available against the arbitrary action of the state. However, some of them are also available against the action of private individuals.
- They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.

FEATURES OF FUNDAMENTAL RIGHTS

- They can be suspended during the operation of a **National Emergency** except the rights guaranteed by **Articles 20 and 21**. Further, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emergency) and not on the ground of armed rebellion (i.e., internal emergency).
- The **Right to Property (Article 31)** was deleted from the list of Fundamental Act, 1978. By the 44th Amendment Act, 1978, it is made a normal constitutional right under **Act 300A** in Part XII of the Constitution.

There are six categories of Fundamental Rights :

Right to Equality
(Article 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
(Articles 32 – 35)

ARTICLE 12 **(DEFINITION OF STATE)**

- The term '**State**' has been used in different provisions concerning the fundamental rights. Hence, **Article 12** has defined the term for the purposes of Part III. According to it, the State includes the following:
 - Government and Parliament of India, that is, executive and legislative organs of the Union government.
 - Government and legislature of states, that is, executive and legislative organs of state government.
 - All local authorities, that is, municipalities, panchayats, district boards, improvement trusts, etc.
 - All other authorities, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.
- According to the Supreme Court, even a private body or an agency working as an instrument of the State falls within the meaning of the 'State' under Article 12.

ARTICLE 13 **(DEFINITIONS OF 'LAWS')**

- Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.
- The term '**law**' in Article 13 has been given a wide connotation so as to include the following:
 - a) Permanent laws enacted by the Parliament or the state legislatures;
 - b) Temporary laws like ordinances issued by the president or the state governors;
 - c) Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification; and
 - d) Non-legislative sources of law, that is, custom or usage having the force of law.

ARTICLE 14- 18 (RIGHT TO EQUALITY)

14

- Provides for equality before law or equal protection of law to all persons within the territory

15

- Prohibits 'the state' from discriminating against any citizen on grounds only of religion, race, caste, sex, or place of birth.

16

- Provides for equality of opportunity to all citizens in matters of public employment

17

- Provides for abolition of untouchability

18

- Provides for abolition of titles.

ARTICLE 14

(EQUALITY BEFORE LAW AND EQUAL PROTECTION OF LAWS)

- Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- This provision confers rights on all persons whether citizens or foreigners.
- The word 'person' includes legal persons, viz, statutory corporations, companies, registered societies or any other type of legal person.

EXCEPTIONS TO EQUALITY

- **The President of India and the Governor of States enjoy the following immunities (Article 361):**

1. The President or the Governor is not answerable to any court the exercise and performance of the powers and duties of office.
2. No criminal proceedings shall be instituted or continued against the President or the Governor in any court during his term office.
3. No process for the arrest or imprisonment of the President or Governor shall be issued from any court during his term of office
4. No civil proceedings against the President or the Governor(s) be instituted during his term of office in any court in respect of act done by him in his personal capacity, whether before or after he entered upon his office, until the expiration of two months notice after notice has been delivered to him.

EXCEPTIONS TO EQUALITY

- Any court in respect of anything said or any vote given by him in Parliament or any committee thereof (Article 105).
- No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof (Article 194).
- The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
- The UNO and its agencies enjoy the diplomatic immunity.

ARTICLE 15

(PROHIBITION OF DISCRIMINATION ON CERTAIN GROUNDS)

15 (1)

- No discrimination on grounds only of religion, race, sex or Place of Birth or any of them. Applies exclusively to matters within control of state

15(2)

- Prohibits any discrimination at public places. Objective is to be eradicate the abuse of Hindu Social System. Applies both to State and private individual

15(3)

- Provisions for protection of women & children

15(4)

- Provisions to protect interests of backward classes. Added by 1st Amendment Act 1951

FOUR EXCEPTIONS TO THIS GENERAL RULE OF NON-DISCRIMINATION

- The state is permitted to make any special provision for women and children. For example, reservation of seats for women in local bodies or provision of free education for children.
- The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes. For example, reservation of seats or fee concessions in public educational institutions.

FOUR EXCEPTIONS TO THIS GENERAL RULE OF NON-DISCRIMINATION

- The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions.
- The state is empowered to make any special provision for the advancement of any economically weaker sections of citizens. Further, the state is allowed to make a provision for the reservation of upto 10% of seats for such sections in admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions. This reservation of upto 10% would be in addition to the existing reservations. For this purpose, the economically weaker sections would be notified by the state from time to time on the basis of family income and other indicators of economic disadvantage.

ARTICLE 16

(EQUALITY OF OPPORTUNITY IN PUBLIC EMPLOYMENT)

- Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State.
- No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

THE MANDAL COMMISSION CASE

A nine-judge Bench of the Supreme Court has laid down in **Indra Sawhney's case** (popularly known as the Mandal Commission (Case) regarding reservation in government employment, that:

- Under Article 16 (4) provisions can be made in favor of the backward classes in the matter of employment by Executive orders also.
- The reservations contemplated in Art. 16 (4) should not exceed 50%
- Reservation of posts under Art. 16 (4) is confined to initial appointment only and cannot extend to providing reservation in promotion

ARTICLE 17 (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.
- In 1976, the Untouchability (Offences) Act, 1955 has been comprehensively amended and renamed as the Protection of Civil Rights Act, 1955 to enlarge the scope and make penal provisions more stringent.

ARTICLE 18

(ABOLITION OF TITLES)

Article 18 abolishes titles and makes four provisions in that regard:

1. It prohibits the state from conferring any title (except a military or academic distinction) on any body, whether a citizen or a foreigner.
 2. It prohibits a citizen of India from accepting any title from any foreign state.
 3. 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.
 4. No citizen or foreigner holding any office of profit or trust under the State is to accept any present, emolument or office from or under any foreign State without the consent of the president.
- Hereditary titles of nobility like ***Maharaja, Raj Bahadur, Rai Bahadur, Rai Saheb, Dewan Bahadur***, etc, which were conferred by colonial States are banned by Article 18 as these are against the principle of equal status of all.

ARTICLE 19-22(RIGHT TO FREEDOM)

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- Protection of Six Rights
 - Protection in Respect of Conviction for Offences
 - Protection of Life and Personal Liberty
 - Protection Against Arrest and Detention

ARTICLE 19

(THE 6 FREEDOM RIGHTS)

Protection of Six Rights

- Article 19 guarantees to all citizens the SIX rights. These are:
 1. Right to freedom of speech and expression.
 2. Right to assemble peaceably and without arms.
 3. Right to form associations or unions or co-operative societies.10a
 4. Right to move freely throughout the territory of India.
 5. Right to reside and settle in any part of the territory of India.
 6. Right to practice any profession or to carry on any occupation, trade or business.
- Right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978.

ARTICLE 19

- State can impose restrictions on the freedom of speech in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
- Restriction can be imposed on the right to form associations in the interests of the sovereignty and integrity of India or public order of morality. Restrictions can also be imposed on freedom of movement and reside and settle in the interest of the general public order or morality. Restrictions can also be imposed on freedom of movement and reside and settle in the interest of the general public or for the protection of the interests of any scheduled tribe.
- Freedom of the press is included in the wider freedom of expression which is guaranteed by freedom of expression under Art. 19.

ARTICLE 20

(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 contains three provisions in that direction:
 - a) No *ex-post-facto* law: No person shall be
 - (i) convicted of any offence except for violation of a law in force at the time of the commission of the act, nor
 - (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
 - b) No double jeopardy: No person shall be prosecuted and punished for the same offence more than once.
 - c) No self-incrimination: No person accused of any offence shall be compelled to be a witness against himself.

ARTICLE 21

(PROTECTION OF LIFE AND PERSONAL LIBERTY)

- 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.
- **Article 21 A** declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine. [Ref.: 86th Amendment Act, 2002].

ARTICLE 22 (PROTECTION AGAINST ARREST AND DETENTION)

- No person who is arrested shall be detained in custody without being informed of the ground for such arrest.
- Every person who is arrested and detained in custody is to be produced before the nearest magistrate within a period of twenty-four hours of arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person can be detained in custody beyond that period without the authority of a magistrate.
- The Supreme Court also ruled that the arrest and detention in Article 22 do not cover arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien. They apply only to an act of a criminal or quasi-criminal nature or some activity prejudicial to public interest.

ARTICLE 23 & 24 (RIGHT AGAINST EXPLOITATION)

23

- Prohibition of Traffic in Human Beings and Forced Labour

24

- Prohibition of Employment of Children in Factories, etc.

ARTICLE 23

(PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR)

- Article 23 prohibits traffic in human beings, *begar* (forced labour) and other similar forms of forced labour.
- Any contravention of this provision shall be an offence punishable in accordance with law.
- This right is available to both citizens and non-citizens. It protects the individual not only against the State but also against private persons.
- The expression 'traffic in human beings' include
 - a) selling and buying of men, women and children like goods;
 - b) immoral traffic in women and children, including prostitution;
 - c) *devadasis*; and
 - d) slavery.

ARTICLE 24

(PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES, ETC.)

- Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway. But it does not prohibit their employment in any harmless or innocent work.
- In 1996, the Supreme Court directed the establishment of Child Labour Rehabilitation Welfare Fund in which the offending employer should deposit a fine of ₹20,000 for each child employed by him

ARTICLE 25-28 (RIGHT TO FREEDOM OF RELIGION)

25

- Freedom of Conscience and Free Profession, Practice and Propagation of Religion

26

- Freedom to Manage Religious Affairs

27

- Freedom from Taxation for Promotion of a Religion

28

- Freedom from Attending Religious Instruction

ARTICLE 25

(FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE AND PROPAGATION OF RELIGION)

Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are:

- a) *Freedom of conscience*: Inner freedom of an individual to mold his relation with God or Creatures in whatever way he desires.
- b) *Right to profess*: Declaration of one's religious beliefs and faith openly and freely.
- c) *Right to practice*: Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.
- d) *Right to propagate*: Spread and publicize his/her religious views for the edification of others.

ARTICLE 26 (FREEDOM TO MANAGE RELIGIOUS AFFAIRS)

Article 26 allows every religious denomination or any of its section shall have the following rights:

- Right to establish and maintain institutions for religious and charitable purposes;
- Right to manage its own affairs in matters of religion;
- Right to own and acquire movable and immovable property; and
- Right to administer such property in accordance with law.

ARTICLE 27 **(FREEDOM FROM TAXATION FOR PROMOTION OF A RELIGION)**

- No person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.
- This provision prohibits the State from favouring, patronising and supporting one religion over the other.
- This provision prohibits only levy of a tax and not a fee.
- A fee can be levied on pilgrims to provide them some special service or safety measures. Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

ARTICLE 28

(FREEDOM FROM ATTENDING RELIGIOUS INSTRUCTION)

- No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to attend any religious instruction or worship in that institution without his consent.

ARTICLE 29-30 (CULTURAL AND EDUCATIONAL RIGHTS)

29

- Protection of Interests of Minorities

30

- Right of Minorities to Establish and Administer Educational Institutions

ARTICLE 29 **(PROTECTION OF INTERESTS OF MINORITIES)**

- Any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same.
- 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, or language.
- Article 29 grants protection to both religious minorities as well as linguistic minorities.

ARTICLE 30

(RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS)

- Article 30 grants the following rights to minorities, whether religious or linguistic:
 - a) All minorities shall have the right to establish and administer educational institutions of their choice.
 - b) The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them.
 - c) In granting aid, the State shall not discriminate against any educational institution managed by a minority.

ARTICLE 32-35 (RIGHT TO CONSTITUTIONAL REMEDIES)

- 32 • Writs- Types & Scope
- 33 • ARMED FORCES AND FUNDAMENTAL RIGHTS
- 34 • MARTIAL LAW AND FUNDAMENTAL RIGHTS
- 35 • EFFECTING CERTAIN FUNDAMENTAL RIGHTS

ARTICLE 32 (WRITS- TYPES & SCOPE)

- The Supreme Court (under Article 32) and the high courts (under Article 226) can issue the writs of *habeas corpus*, *mandamus*, *prohibition*, *certiorari* and *quo-warranto*.
- These writs are borrowed from English law where they are known as 'prerogative writs'.



HABEUS CORPUS



- Latin term which literally means '**to have the body of**', i.e. to be produced before the court.
- This kind of writ is issued to protect personal liberty of an individual
- Against arbitrary action of both the state and private individual against the arbitrary action of both state and private individual.
- The aggrieved person can even claim for compensation against such action.

MANDAMUS



- Literally means '**we command**'.
- This kind of writ is issued against a public authority or an inferior courts for compelling the authority to do a particular work that it ought to do but has not done.
- This writ cannot be issued against the President, the Governors and chief justice of a high court acting in judicial capacity
- The writ of *mandamus* cannot be issued against a private individual or body;

PROHIBITION



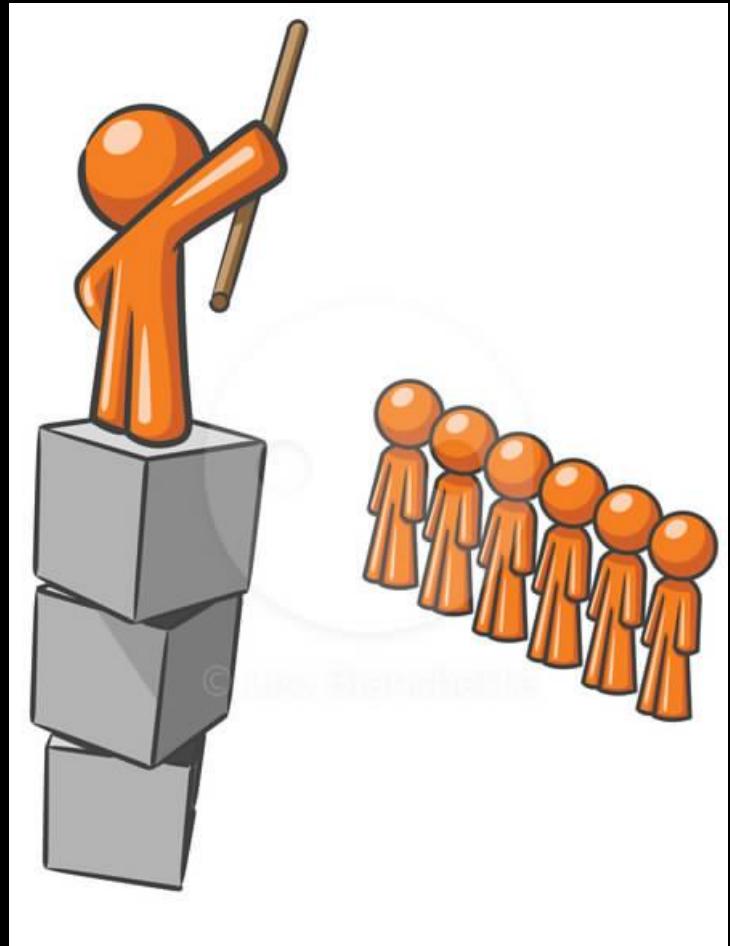
- Literally, it means 'to forbid'.
- This kind of writ is issued by higher courts to the lower courts or quasi-judicial bodies when the latter exceed their judicial authority.
- The writ of prohibition can be issued only against judicial and quasi-judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

CERTIORARI

- “To be Certified”
- This writ is issued to quash the order of a lower court or the decision of a tribunal in excess of its jurisdiction or lack of jurisdiction or error of law.
- Thus, unlike prohibition, which is only preventive, *certiorari* is both preventive as well as curative.



QUO-WARRANTO



- In the literal sense, it means 'by what authority or warrant'.
- It is issued by the court to enquire into the legality of claim of a person to a public office.
- Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

PRESENT POSITION OF RIGHT TO PROPERTY

- Originally, the right to property was one of the seven fundamental rights under Part III of the Constitution. It was dealt by Article 19(1) (f) and Article 31. Article 19(1)(f) guaranteed to every citizen the right to acquire, hold and dispose of property. Article 31, on the other hand, guaranteed to every person, whether citizen or non-citizen, right against deprivation of his property.
- 44th Amendment Act of 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1) (f) and Article 31 from Part III. Instead, the Act inserted a new Article 300A in Part XII under the heading ‘Right to Property’.

PART- IV

Directive Principles of State Policy

WHAT IS DPSP?

- The DPSP are enumerated in Part IV of the Constitution from Articles 36 to 51.
- The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution
- DPSP are in the nature of general directions to the state, where state is expected to incorporate them in policies framing and laws.

FEATURES OF THE DIRECTIVE PRINCIPLES

- These are the constitutional instructions or recommendations to the State in legislative, executive and administrative matters.
- The Directive Principles resemble the 'Instrument of Instructions' enumerated in the Government of India Act of 1935
- The Directive Principles are non-justiciable in nature, that is, they are not legally enforceable by the courts for their violation. Therefore, the government (Central, state and local) cannot be compelled to implement them.

CLASSIFICATION OF THE DIRECTIVE PRINCIPLES

SOCIALIST PRINCIPLES

- Article 38, 39, 39A, 41, 42, 43, 43A, 47

GANDHIAN PRINCIPLES

- Article 40, 43, 43B, 46, 47, 48

LIBERAL-INTELLECTUAL PRINCIPLES

- Article 44, 45, 48, 48A, 50, 51

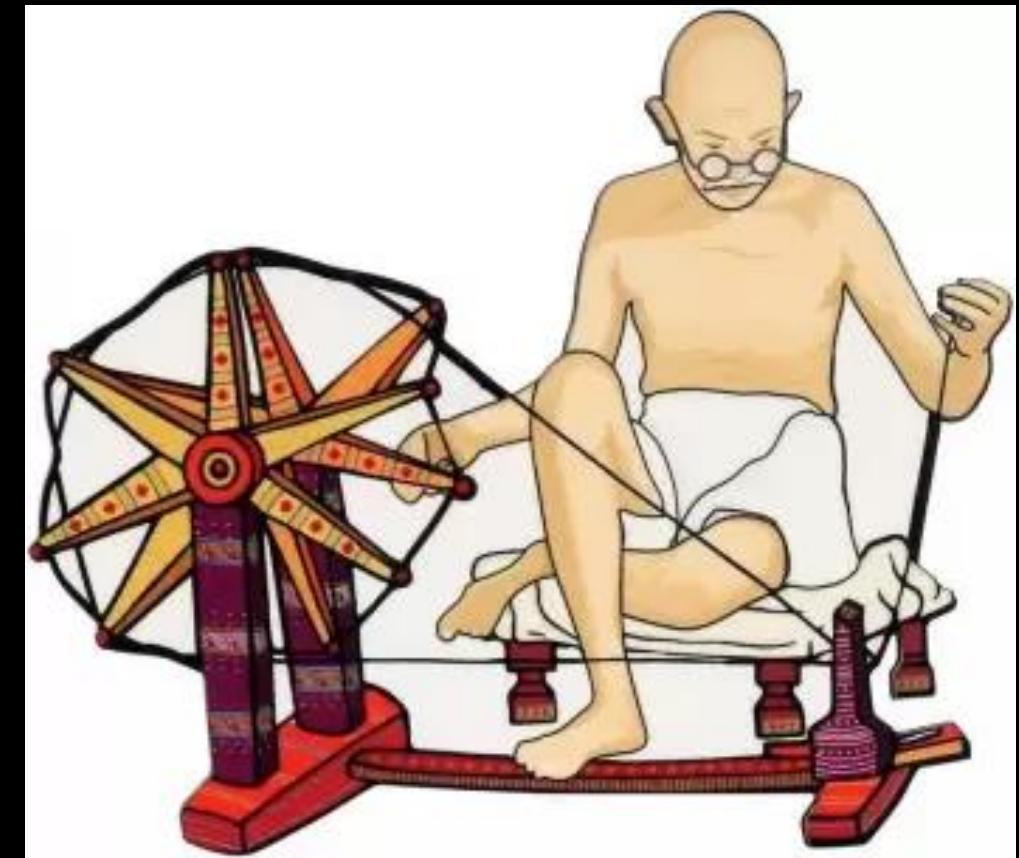
SOCIALISTIC PRINCIPLES

- They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state.



GANDHIAN PRINCIPLES

- They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles.



LIBERAL-INTELLECTUAL PRINCIPLES

- The principles included in this category represent the ideology of liberalism.



IMPLEMENTATION OF DPSP

- Since the commencement of constitution, there have been a number of legislations to implement DPSP.
- Promotion of cottage industries have been one of the main aspects of economic policy of the government and there exists the Khadu and Village Industries Commission for the purpose.
- The recently enacted **MNREGA** reinforces the state's commitment to livelihood to all.
- In case of women and children welfare, the govt. has implemented **Sarva Siksha Abhiyaan, Anganwadi Programme, Maternity related Health Schemes** etc.

DISTINCTION BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

- Fundamental Rights provide the foundation of political democracy in India whereas DPSP spells out the character of social and economic democracy in India.
- Fundamental Rights are justiciable, whereas DPSP are not.
- DPSP are not restricted to any single part of the constitution, whereas FR are restricted to only Part III of the constitution.
- DPSP are dynamic in nature, whereas the FR are static in nature.

FUNDAMENTAL DUTIES

- These are incorporated under **Article 51A (Part IV-A)** of the Indian Constitution
- This article was inserted by the **42nd Amendment Act 1976**
- The Fundamental Duties in Indian Constitution has been inspired by the Constitution of erstwhile USSR.
- They were incorporated in the Constitution by **Swaran Singh Committee**

FUNDAMENTAL DUTIES

To abide by the Constitution and respect its ideals, the institutions, the national flag and the national anthem



Playing of the national anthem before/after a movie

To cherish and follow the noble ideals which inspired our national struggle for freedom



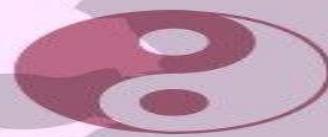
Nehru-bashing, Operation BlueStar, Anna Hazare

To defend the country and render national service when called upon to do so



1962 war - asked volunteers for policemen

To promote harmony & spirit of brotherhood amongst all the people; to renounce practices derogatory to women



MNS doesn't want North Indians in Maharashtra

To value and preserve the rich heritage of our composite culture



Taj Mahal
Red Fort

To uphold and protect the sovereignty, unity, and integrity of India



Triple Talaq
Ram Mandir

To protect, improve & have compassion towards national environment, including forests, lakes, rivers and wildlife



Aarey
Ganga
Tigress Avni

To develop scientific temper, humanism, and the spirit of inquiry and reform



Mission to Mars
RTI

To safeguard public property and to give up violence



Mob fury. Shiv Sena burns down public property - made to pay

To strive towards excellence in all spheres so that the nation constantly rises to higher levels of endeavour



Make in India
Skill India

Parliament passed a Constitution Act, 1976 (42nd Amendment) that inserted 10 Fundamental Duties.

Later, a 11th Fundamental Duty was added by the Constitution Act, 2002 (86th Amendment)

Parent/guardian to provide opportunities for education to the child between the age of 6-14 years



RTE
Anti Child Labour Scholarships

Thank You!!!