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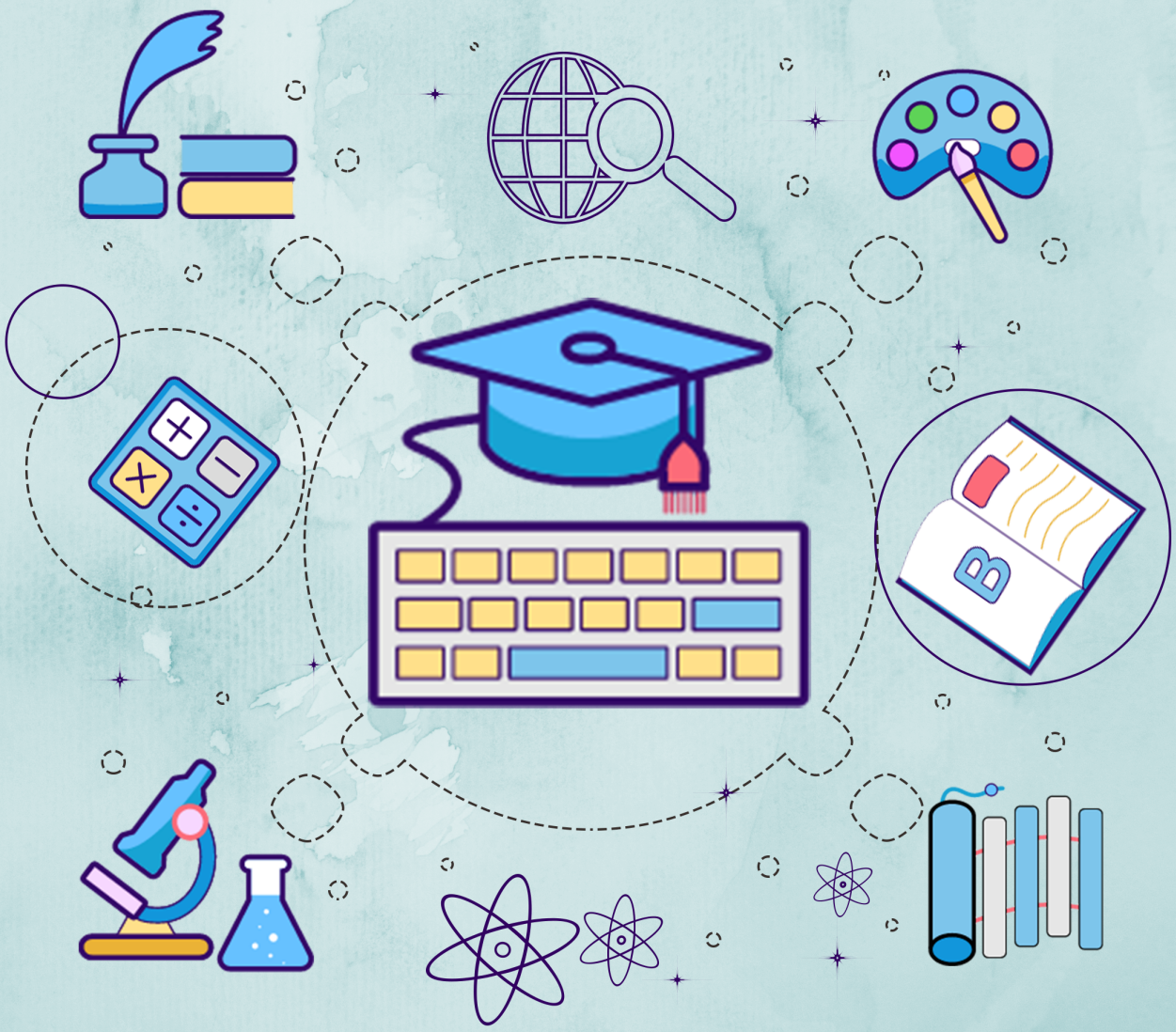

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CONSTITUTION OF INDIA

MODULE II

Syllabus: Definition of State

Fundamental Rights

- **General Nature**
- **Classification**
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  - **Right to Freedom Of Religion**
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Fundamental Duties

Part III of the constitution deals with Fundamental Rights which are the restriction on the powers of the legislature, executive and judiciary that no one can encroach upon this part. In order to define these fundamental rights, the constitution makers have defined "State" in the beginning of this part.

DEFINITION OF STATE

According to Article 12 of the Constitution of India, the term 'State' includes the

(i) *Government and Parliament of India*

(ii) *Government and the Legislature of each of the States*

(iii) *All local or other authorities within the territory of India or under the control of the Government of India.*

FUNDAMENTAL RIGHTS

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, **fundamental rights are enforceable by the courts**, subject to certain conditions.

The fundamental rights are enshrined in Part III of Indian Constitution (Article 12 to Article 35). { Part III of Indian Constitution is considered to be the Magna Carta of India}

CLASSIFICATION OF 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 32–35)

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.**

This was because this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth (property) equitably among the people. Now it is considered as a **legal right under Article 300-A** in Part XII of the Constitution.

GENERAL NATURE (FEATURES) OF FUNDAMENTAL RIGHTS

- Some of the **fundamental rights are available to all citizens** while the rest are for all persons (citizens and foreigners).
- Fundamental rights **are not absolute rights**. They have reasonable restrictions, which means they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
- They are **justiciable**, ie, they are enforceable by courts. People can approach the supreme court directly in case of violation of fundamental rights.
- Fundamental rights can be **amended by the Parliament** by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution.
- Fundamental rights **can be suspended during a national emergency**. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.
- The application of fundamental rights **can be restricted in an area** which has been placed **under martial law** or military rule.

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RIGHT TO EQUALITY (Article 14 – 18)

The right to equality provides for the equal treatment of everyone before the law, prevents discrimination on various grounds, treats everybody as equals in matters of public employment, and abolishes untouchability, and titles.

Article 14 - Equality before the law : This provision states that all citizens will be treated equally before the law and assure equal protection of law within the territory of India.

Article 15 – Prohibition of discrimination : The state shall not discriminate any citizens on the basis of race, religion, caste, place of birth, or gender. All citizens have the right to access public places, roads, use tanks, wells, ghats, etc. that are maintained by the State or that are meant for the public. It also allows the state to make special provisions for women and children and also for backward classes.

Article 16 – Equality of opportunity in matters of public employment: Article 16 provides equal employment opportunities in State service for all citizens.

Article 17 – Prohibits the practice of untouchablity: Untouchability has been abolished and its practice in any form has been made an offence punishable in accordance with the law.

Article 18 – Abolition of Titles: The state shall not grant any titles except those which are academic or military titles. This article provides prohibition of citizens of India from accepting any title from a foreign country. It abolishes titles that were awarded by the British such as Sir, Rai Bahadur, Khan Bahadur, etc. Awards like Padma Shri, Padma Bhushan, Padma Vibhushan, Bharat Ratna and military honours like Ashok Chakra, Param Vir Chakra do not belong to this category.

However, the right to equality is not absolute and the state is free to make special provisions for women and children and take special steps for the advancement of the socially and educationally backward classes of citizens.

RIGHT TO FREEDOM (Article 19 – 22)

The Constitution guarantees the citizens six fundamental freedoms under Article 19 of the Constitution. These include,

Article 19 – Protection of six rights concerning the

- **freedom of Speech and expression**
- **freedom of peaceful assembly without arms**
- **freedom to form association, unions, cooperative societies**
- **freedom of movement throughout the territory of India**
- **freedom to reside and settle in any part of India**
- **freedom to practice any profession, carry on any occupation, trade or business**

But these rights are subjected to certain restrictions on the grounds of state security, public morality and decency and friendly relations with foreign countries. This means that the State has the right to impose reasonable restrictions on them.

❖ **Freedom of speech and expression:** The State guarantees freedom of speech and expression to every person of India. However, the State can impose restrictions on the freedom of speech and expression in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court.

❖ **Freedom to assemble:** The State guarantees every person the freedom to assemble peacefully without arms. However, as above, reasonable restrictions can be imposed in the interests of the sovereignty and integrity of the country and public order.

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- **Freedom to form associations/unions/cooperative societies:** Again, the State can impose restrictions in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court. This freedom gives workers the right to form trade union, which is thus a fundamental right.

  The Police Forces (Restriction of Rights) Act, 1966 prohibits police personnel from forming trade unions. The Constitution also allows the Parliament to pass a law restricting the right to form political association to members of the armed forces, intelligence bureaus, persons employed with telecommunication system.
- **Freedom to move freely:** A citizen of India can move freely throughout the territory of India. But this right can also be restricted on the grounds of security, public order or for protecting the interests of the Scheduled Tribes.
- **Freedom of residence:** Citizens of India have the right to reside in any part of the country. Although restrictions can be imposed on the grounds of security, public order or for protecting the interests of the Scheduled Tribes.
- **Freedom of profession:** All citizens have the right to carry on any trade or profession/occupation, provided the trade or occupation is not illegal or immoral. Also, the law does not prevent the State from making laws related to technical or professional qualifications required for practicing the occupation or trade.

Article 20 - This article deals with the **protection of citizens in respect of conviction for offences**.

Under this, a person cannot be convicted for an act that was committed at a time when the act had not been declared by law as an offence. A person cannot be convicted for the same offence more than once. Also, no person accused of an offence shall be compelled by the State to bear witness against himself.

Article 21 - Right to life and personal liberty.

Article 21 states that no person shall be deprived of his life and personal liberty by the State except as per the procedure established by law. This is the most important right in one sense, because, without this right to life, all other fundamental rights would be meaningless. It is this article that differentiates between a police state and a constitutional state.

Article 21 (A) - This article was introduced by the 86th Constitutional Amendment in 2002. It provides that the State shall provide free and compulsory education to all children between the ages of 6 and 14.

Article 22 - Protection against arrest and detention in certain cases.

This article is applicable to both citizens and non-citizens. This provision extends certain procedural safeguards for individuals in case of an arrest. It comes into the picture after a person has been arrested. It is not a fundamental right against detention and arrest.

Article 22(1) – Any person who is in custody has to be informed as to why he has been arrested. Further, he cannot be denied the right to consult an advocate.

Article 22(2) – The arrested individual should be produced before a judicial magistrate within 24 hours of his arrest.

Article 22(3) – No individual who has been arrested can be kept in custody for more than the period determined by the judicial magistrate.

There are two types of detention: Punitive detention and Preventive detention.

Punitive detention is detention after a trial. **Preventive detention** is detention without trial. The idea behind preventive detention is to prevent an individual from committing a crime. This means that persons can be detained on grounds of suspicion. The rights of people arrested in this manner are governed by preventive detention laws.

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RIGHT AGAINST EXPLOITATION (Article 23 – 24)

Article 23 – This article deals with protection of the weaker sections against exploitation by unfair persons or even the state. It prohibits human trafficking (means selling and buying of men, women and children, immoral trafficking in women , slavery) and forced labour (labour without remuneration). However, it permits the State to impose compulsory service for public purposes, including community service.

Article 24 – This article says that "No child below the age of fourteen years shall be employed to work in any factory or mine or be engaged in any other hazardous employment."

RIGHT TO FREEDOM OF RELIGION (Article 25– 28)

Article 25 – This article guarantees the **freedom of conscience, the freedom to profess, practice and propagate religion to all citizens.** The above mentioned freedoms are subject to public order, health and morality.

Article 26 – This article provides the **freedom to manage religious affairs.** The article says that every religious denomination has the following rights, subject to morality, health and public order. Every religious denomination has the right to form and maintain and manage institutions for religious and charitable needs.

Article 27 – It provides the **freedom as to payment of taxes for promotion of any particular religion.**

Article 28 – It provides the freedom as to attendance at religious instruction or religious worship in certain educational institutions. No religious instructions can be imparted in educational institutions maintained by the state or receiving aid from it.

CULTURAL AND EDUCATIONAL RIGHTS (Article 29– 30)

Article 29 – The constitution permits the minorities to conserve their language, script and culture, and establish and administer educational institutions for this purpose.

Article 30 – It is called the "Charter of Educational Rights". It says that **all religious and linguistic minorities have the right to establish and administer educational institutions of their choice.** The state does not discriminate about providing aid to educational institutions on ground of religion or language. No citizen can be denied admission to any educational institution maintained or aided by the state on grounds only of religion, race, caste or language.

RIGHTS TO CONSTITUTIONAL REMEDIES (Article 32– 35)

This right was described by Dr. B R Ambedkar as the "heart and soul of the Constitution".

Article 32 - This right gives every citizen the right to approach the Supreme Court for the enforcement of his/her fundamental rights is guaranteed.

On any matter relating to a fundamental right, a citizen may file a petition in the Supreme Court. Such petitions are known as Writ Petitions. The supreme court can issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, for the enforcement of any of the rights granted. The parliament can also empower any other court to exercise the right to enforce fundamental rights within its jurisdiction. Even the State High Courts can issue various writs for the enforcement of the Fundamental Rights.

Article 33 – It empowers the Parliament to restrict the fundamental rights of the 'members of the armed forces', paramilitary forces, police forces to ensure the proper discharge of their duties and the maintenance of discipline among them. This power to make laws is granted only on Parliament and not on state legislatures.

Article 34 – It provides the restriction on rights conferred by this part while martial law is in force in any area.

Article 35 – This article lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures.

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DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy (DPSP) has been taken from the Irish constitution. Part 4 of the Indian Constitution consists of all the DPSP (Directive Principles of State Policy). It covers the Articles from 36 to Article 51.

The concept behind the DPSP is to create a 'Welfare State'. In other words, the motive behind the inclusion of DPSP is to establish social and economic democracy in the state. These are some basic principles or instruction or guidelines for the state and are needed to be taken into consideration while coming up with new law. DPSPs are the non-justiciable part of the Constitution which suggests that a person cannot enforce them in the Court.

Article 36 - Defines State as same as Article 12 unless the context otherwise defines.

Article 37 – Application of the principles contained in this part. The provisions contained in this Part shall not be enforceable by any court. 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.

CLASSIFICATION OF DIRECTIVE PRINCIPLES OF STATE POLICY

Based on the content and direction, DPSPs are usually classified into three types-

- **Socialistic Principles**
- **Gandhian Principles**
- **Liberal-Intellectual Principles**

SOCIALISTIC PRINCIPLES

They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to

Article 38 - Promote the welfare of the people by securing a social order and to minimise inequalities in income, status, facilities and opportunities.

Article 39 – The state shall direct its policy towards securing

(a) that all the citizens, men and women equally, have the right to an adequate means of livelihood;
(b) the proper distribution of the material resources of the community for the common good;
(c) the prevention of concentration of wealth and means of production;
(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 children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
(f) Opportunity for the healthy development of children and protect them from exploitation.

Article 39A – The state shall promote equal justice and free legal aid to the poor.

Article 41 - The State shall make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.

Article 42 - The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43 – The state shall secure a living wage, a decent standard of living and social and cultural opportunities for all workers.

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Article 43A – The state shall take steps to secure the participation of workers in the management of industries.

Article 47 - The State shall take steps to raise the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

GANDHIAN PRINCIPLES

Definition: These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state to:

Article 40 - Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government.

Article 43A - Promote cottage industries on an individual or co-operation basis in rural areas.

Article 43B - Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Article 46 - Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation.

Article 47 - The State shall try to bring about prohibition of the consumption of intoxicating drinks and of drugs which are injurious to health except for medicinal purpose.

Article 48 - Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.

LIBERAL INTELLECTUAL PRINCIPLES

Definition: These principles reflect the ideology of liberalism. Under various articles, they direct the state to:

Article 44 – Secure for all citizens a uniform civil code throughout the country.

Article 45 – Provide early childhood care and education for all children until they complete the age of six years.

Article 48 – Organise agriculture and animal husbandry on modern and scientific lines.

Article 48A - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 49 - Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance.

Article 50 - The State shall take steps to separate the judiciary from the executive in the public services of the State.

Article 51 – Promote international peace and security and maintain just and honourable relations between nations; foster respect for international law and treaty obligations; encourage settlement of international disputes.

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FUNDAMENTAL DUTIES

Our Constitution has provided us with various rights and expects us to perform certain duties as a return.

Article 51(A) talks about these Fundamental Duties and has 11 fundamental duties that are expected to be performed by the citizens (there were 10 earlier and 11th was added later by the 86th amendment). The fundamental duties which were added by the 42nd Amendment Act of the Constitution in 1976.

The need of introduction of fundamental duties in our constitution is to protect the sovereignty of our nation and to maintain the unity and integrity of our nation. Rights and duties go hand in hand and cannot be separated at any cost. Fundamental duties and fundamental rights are two sides of a coin which cannot be separated.

List of 11 fundamental duties:

- We need to follow our Constitution and should respect our national flag and national anthem.
- Should cherish and follow the noble ideals of the freedom struggle.
- Uphold and protect the sovereignty and integrity of our nation.
- Defend our nation and provide national services when required.
- Promote harmony and should have the spirit of a common brotherhood amongst all the people of India and renounce practices derogatory to the dignity of women.
- Value and preserve the rich heritage of our culture.
- Protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.
- Develop scientific temper, humanism and the spirit of inquiry and reform.
- Safeguard public property.
- Strive for excellence so that the nation rises to higher levels of endeavour and achievement.
- Provide opportunities for education to his child between the age of six and fourteen years. **This duty was added by the 86th Constitutional Amendment Act, 2002.**

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