

Module – II

FUNDAMENTAL RIGHTS, DUTIES AND DIRECTIVE PRINCIPLES :

Fundamental Rights and its Restriction and limitations in different complex situations - Directive Principles of State Policy (DPSP) & its present relevance in our society with examples- Fundamental Duties and its Scope and significance in nation building - Right to Information Act 2005.

FUNDAMENTAL RIGHTS & DUTIES

Fundamental Rights of Constitution of India

Meaning of the Fundamental Rights: The fundamental rights are defined as basic human freedoms that every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens irrespective of race, place of birth, religion, caste or gender. The Part III of the Constitution of India gives a detailed description on a charter of rights called the 'Fundamental Rights'. These fundamental rights guarantee civil freedom to all the citizens of India to allow them to live in peace and harmony.

In every Democratic State, all the citizens have got some rights for the development of life. These rights are given to them by the constitution of that State. Fundamental Rights are essential human rights that are offered to every citizen irrespective of caste, race, creed, place of birth, religion or gender. These are equal to freedoms and these rights are essential for personal good and the society at large. They have the force of law behind them. No government can take them away. And if, any government tries to do so, citizens can go to the court to get justice. Only such rights are called 'Fundamental Rights'. A man's development is not possible without these rights.

Importance of the Fundamental Rights:

The fundamental rights are of great importance as stated below:

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

Classification of Fundamental Rights: The citizens of India enjoy the following fundamental rights:

SIX FUNDAMENTAL RIGHTS

The Right to EQUALITY

The Right to FREEDOM

The Right to Freedom from EXPLOITATION

The Right to FREEDOM OF RELIGION

Cultural and EDUCATIONAL Rights

The Right to CONSTITUTIONAL REMEDIES

RIGHT TO EQUALITY (Article 14-18)

(i) **Equality before Law:-** Article 14 of the constitution guarantees that all citizens shall be equally protected by the laws of the country

(ii) **Social equality and equal access to public areas :-** Article 15 of the constitution states that no person shall be discriminated on the basis of caste, colour, language etc. Every person shall have equal access to public places like public parks, museums, wells, bathing ghats and temples etc. However, the State may make any special provision for women and children.

(iii) **Equality in matters of public employment :-** Article 16 of the constitution lays down that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs.

(iv) **Abolition of untouchability:-** Article 17 of the constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law.

(v) **Abolition of Titles :-** Article 18 of the constitution prohibits the State from conferring any titles. Citizens of India cannot accept titles from a foreign State.

RIGHT TO FREEDOM (Article 19-22)

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens.

The freedom right includes many rights such as:

- Freedom of speech
- Freedom of expression
- Freedom of assembly without arms
- Freedom of association
- Freedom to practise any profession
- Freedom to reside in any part of the country .

Some of these rights are subject to certain conditions 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.

RIGHT AGAINST EXPLOITATION (Article 23-24)

The abolition of trafficking in human beings and Begar (forced labour) Abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. Begar, practised in the past by landlords, has been declared a crime and is punishable by law. Trafficking in humans for the purpose of slave trade or prostitution is also prohibited by law.

RIGHT TO FREEDOM OF RELIGION (Article 25-28)

This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.

CULTURAL & EDUCATIONAL RIGHTS (Articles 29 & 30)

Any community which has a language and a script of its own has the right to conserve and develop it. All minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture.

RIGHT TO CONSTITUTIONAL REMEDIES (Article 32)

The Constitution guarantees remedies if citizens' fundamental rights are violated. The government cannot infringe upon or curb anyone's rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights.

Limitations of Fundamental Rights: The fundamental rights do not include important social and economic rights that are also important for individuals to lead a quality life.

- The right to social security, the right to labour, and the right to employment are not considered fundamental rights. Other countries like China provide such rights.
- Fundamental rights are subject to suspension during the operation of a national emergency (except for the fundamental rights defined under Articles 20 and 21).

- Citizens of the country will be deprived of their fundamental rights if a national emergency is declared.
- Ordinary people often don't have the experience or financial means to go through the judicial processes to have their fundamental rights enforced by the law.
- The judicial process is also expensive and complex and sometimes beyond the reach of ordinary people.

Fundamental Duties

Fundamental duties are defined as moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. Originally, the constitution of India did not contain any list of fundamental duties. In other words, enjoyment of fundamental rights was not conditional on the performance of fundamental duties.

The Fundamental Duties of Indian Citizens were added as Article 51-A by the 42nd Amendment, 1976. These are non-justifiable i.e. their compliance cannot be enforced by law, but serves as moral responsibility on the citizens. Originally 10 Fundamental Duties, 11th Fundamental Duty was added by 86th Amendment in 2002. At Present we have 11 Fundamental Duties. Fundamental rights and Fundamental duties are correlated. Either of them cannot be ignored. **Art. 51A, Part IVA** of the Indian Constitution, specifies the list of fundamental duties of the citizens. It says "it shall be the duty of every citizen of India:

- (a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) To cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) To uphold and protect the sovereignty, unity and integrity of India;
- (d) To defend the country and render national service when called upon to do so;
- (e) 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;
- (f) To value and preserve the rich heritage of our composite culture;
- (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) To develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) To safeguard public property and to abjure violence;
- (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
- (k) It is the duty of every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years. (added by 86th Amendment in 2002)

Directive Principles of State Policy

Directive Principles, contained in Part IV of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country.

Directive Principles of State Policy are in the form of instructions/guidelines to the governments at the centre as well as states. Though these principles are non-justifiable, they are fundamental in the

governance of the country. The idea of Directive Principles of State Policy has been taken from the Irish Republic. They were incorporated in our Constitution in order to provide economic justice and to avoid concentration of wealth in the hands of a few people. Therefore, no government can afford to ignore them. They are in fact, the directives to the future governments to incorporate them in the decisions and policies to be formulated by them.

Directive Principles of State Policy have been grouped into four categories. These are: (1) the economic and social principles, (2) the Gandhian principles, (3) Principles and Policies relating to international peace and security and (4) miscellaneous.

The Economic and Social Principles

The state shall endeavour to achieve Social and Economic welfare of the people by:

- (1) Providing adequate means of livelihood for both men and women.
- (2) Reorganizing the economic system in a way to avoid concentration of wealth in few hands.
- (3) Securing equal pay for equal work for both men and women.
- (4) Securing suitable employment and healthy working conditions for men, women and children.
- (5) Guarding the children against exploitation and moral degradation.
- (6) Making effective provisions for securing the right to work, education and public assistance in case of unemployment, old age, sickness and disablement.
- (7) Making provisions for securing just and humane conditions of work and for maternity relief.
- (8) Taking steps to secure the participation of workers in the management of undertakings etc.
- (9) Promoting education and economic interests of working sections of the people especially the SCs and STs.
- (10) Securing for all the workers reasonable leisure and cultural opportunities.
- (11) Making efforts to raise the standard of living and public health.
- (12) Providing early childhood care and education to all children until they complete the age of 6 years.

The Gandhian Principles

There are certain principles, based on the ideals advocated by Mahatma Gandhi. These Principles are as follows: -

- (1) To organize village Panchayats.
- (2) To promote cottage industries in rural areas.
- (3) To prohibit intoxicating drinks and drugs that are injurious to health.
- (4) To preserve and improve the breeds of the cattle and prohibit slaughter of cows, calves and other milch and draught animals

Directive Principles of State Policy Relating To International Peace and Security:

India should render active cooperation for world peace and security and for that the state shall endeavour to : -

- (1) Promote international peace and security.
- (2) Maintain just and honourable relations between nations.
- (3) Foster respect for international laws and treaty obligations.
- (4) Encourage settlements of international disputes by mutual agreement.

Miscellaneous

The Directive Principles in this category call upon the state : -

- (1) To secure for all Indians a uniform civil code.
- (2) To protect historical monuments.
- (3) To save environment from pollution and protect wild life.
- (4) To make arrangements for disbursement of free legal justice through suitable legislation

RIGHT TO INFORMATION ACT, 2005

The right to information is implicitly guaranteed by the Constitution. However, with a view to set out a practical regime for the citizens to secure information as a matter of right, the Indian Parliament enacted the Right to Information Act, 2005. This law was passed by Parliament on 15 June 2005 and came fully into force on 12 October 2005. This law is very comprehensive and covers almost all matters of governance. This Law has a wide reach, being applicable to Government at all levels- Union, State and Local as well as to the recipients of substantial government funds.

Object of the Right to Information Act

The basic object of the Right to Information Act is to empower the citizens, to promote transparency and accountability in the working of the Government, to contain corruption, and to enhance people's participation in democratic process thereby making our democracy work for the people in a real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

What is Information?

Information is any material in any form. It includes records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form. It also includes information relating to any private body which can be accessed by the public authority under any law for the time being in force.

What is a Public Authority?

A "public authority" is any authority or body or institution of self government established or constituted by or under the Constitution; or by any other law made by the Parliament or a State Legislature; or by notification issued or order made by the Central Government or a State Government. The bodies owned, controlled or substantially financed by the Central Government or a State Government are also public authorities. Non-Government organisations substantially financed by the Central Government or a State Government also fall within the definition of public authority. The substantial financing by the Central Government or a State Government may be direct or indirect. The Act does not define substantial financing. Various courts/Information Commissions have been deciding on this issue on case to case basis, depending upon the merits of each case.

Method of Seeking Information

A citizen, who desires to obtain any information under the Act, should make an application to the Central Public Information Officer (CPIO) of the concerned public authority in writing in English or Hindi or in the official language of the area in which the application is made. The applicant can send the application by post or through electronic means or can deliver it personally in the office of the public authority. The application can also be sent through a Central Assistant Public Information Officer appointed by the Department of Post at sub-divisional level or other sub-district level.

Public Information Officer

Public authorities have designated some of its officers as Public Information Officers. They are responsible to give information to a person who seeks information under the RTI Act.

Assistant Public Information Officer

These are the officers at sub-divisional level to whom a person can give his RTI application or appeal. These officers send the application or appeal to the Public Information Officer of the public authority or the concerned appellate authority. An Assistant Public Information Officer is not responsible to supply the information.

The Assistant Public Information Officers appointed by the Department of Posts in various post offices are working as Assistant Public Information Officers for all the public authorities under the Government of India.

Right to Information under the Act

A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copies of documents or records; and taking certified samples of material held by the public authority or held under the control of the public authority. It is important to note that only such information can be supplied under the Act that is available and existing and is held by the public authority or is held under the control of the public authority. The Public Information Officer is not supposed to create information that is not a part of the record of the public authority. The Public Information Officer is also not required to furnish information which require drawing of inference and/or making of assumptions; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions. A citizen has a right to obtain information from a public authority in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs provided such information is already stored in a computer or in any other device.

The information to the applicant should ordinarily be provided in the form in which it is sought. However, if the supply of information sought in a particular form would disproportionately divert the resources of the public authority or may cause harm to the safety or preservation of the records, supply of information in that form may be denied.

In some cases, the applicants expect the Public Information Officer to give information in some particular proforma devised by them on the plea that they have a right to get information in the form in which it is sought. It need be noted that the provision in the Act simply means that if the information is sought in the form of photocopy, it shall be provided in the form of photocopy, or if it is sought in the form of a floppy or in any other electronic mode, it shall be provided in that form, subject to the conditions given in the Act. It does not mean that the PIO shall re-shape the information.

Some Information Seekers request the Public Information Officers to cull out information from some document(s) and give such extracted information to them. A citizen has a right to get 'material' from a public authority which is held by or under the control of that public authority. The Act, however, does not require the Public Information Officer to deduce some conclusion from the 'material' and supply the 'conclusion' so deduced to the applicant. It means that the Public Information Officer is required to supply the 'material' in the form as held by the public authority, but not to do research on behalf of the citizen to deduce anything from the material and then supply it to him.

Right to Information Vis-a-Vis other Acts

The RTI Act has over-riding effect vis-à-vis other laws. It implies that if any of the provisions of the RTI Act are not consistent with any other law for the time being in force including the Official Secrets Act, 1923, the provisions of the RTI Act would have effect.

Supply of Information to Associations, etc

The Act gives the right to information only to the citizens of India. It does not make provision for giving information to Corporations, Associations, Companies etc. which are legal entities/persons, but not citizens. However, if an application is made by an employee or office-bearer of any Corporation, Association, Company, NGO etc. indicating his name and such employee/office bearer is a citizen of India; information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation etc.

Fee for Seeking Information

A citizen who desires to seek some information from a public authority is required to send, along with the application, a demand draft or a bankers cheque or an Indian Postal Order of Rs.10/- (Rupees ten), payable to the Accounts Officer of the public authority as fee prescribed for seeking information. The payment of fee can also be made by way of cash to the public authority or to the Assistant Public Information Officer, against a proper receipt. The payment of fee to the Central Ministries/departments can also be made online through internet banking of State Bank of India or through Master/Visa Debit/credit cards. The applicant may also be required to pay further fee towards the cost of providing the information, details of which shall be intimated to the applicant by the PIO as prescribed by the Right to Information Rules, 2012. Rates of fee as prescribed in the Rules are given below:

- (a) Rupees two (Rs. 2/-) for each page (in A-3 or smaller size paper) ;
- (b) Actual cost or price of a photocopy in larger size paper;
- (c) Actual cost or price for samples or models;
- (d) Rupees fifty (Rs.50/-) per diskette or floppy; and
- (e) Price fixed for a publication or rupees two per page of photocopy for extracts from the publication.
- (f) So much of postal charges involved in supply of information that exceeds fifty rupees.

19. A citizen has a right to inspect the records of a public authority. For inspection of records, the public authority shall charge no fee for the first hour. But a fee of rupees five (Rs.5/-) for each subsequent hour (or fraction thereof) shall be charged.

20. If the applicant belongs to the below poverty line (BPL) category, he is not required to pay any fee. However, he should submit a proof in support of his claim as belonging to the below poverty line category. The application not accompanied by the prescribed fee of Rs.10/- or proof of the applicant's belonging to below poverty line category, as the case may be, shall not be a valid application under the Act. It may be pointed out that there is no bar on the public authority to supply information in response to such applications. However, provisions of Act would not apply to such cases.

Format of Application

There is no prescribed format of application for seeking information. The application can be made on plain paper. The applicant should mention the address at which the information is required to be sent. The information seeker is not required to give reasons for seeking information.

Information Exempted From Disclosure

Sub-section (1) of section 8 and section 9 of the Act enumerate the types of information which is exempt from disclosure. Sub-section (2) of section 8, however, provides that information exempted under sub-section (1) or exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure overweighs the harm to the protected interests.

The information which, in normal course, is exempt from disclosure under subsection (1) of Section 8 of the Act would cease to be exempted if 20 years have lapsed after occurrence of the incident to

which the information relates. However, the following types of information would continue to be exempt and there would be no obligation, even after lapse of 20 years, to give any citizen-

(i) Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;

(ii) Information, the disclosure of which would cause a breach of privilege of Parliament or State Legislature; or

(iii) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section(1) of Section 8 of the Act.

Record Retention Schedule and the Act

The Act does not require the public authorities to retain records for indefinite period. The records need be retained as per the record retention schedule applicable to the concerned public authority.

Assistance Available to the Applicant

If a person is unable to make a request in writing, he may seek the help of the Public Information Officer to write his application and the Public Information Officer should render him reasonable assistance. Where a decision is taken to give access to a sensorily disabled person to any document, the Public Information Officer, shall provide such assistance to the person as may be appropriate for inspection.

Time Period for Supply of Information

In normal course, information to an applicant shall be supplied within 30 days from the receipt of application by the public authority. If information sought concerns the life or liberty of a person, it shall be supplied within 48 hours. Further details in this regard are given in part IV viz. 'For the Public Information Officers.'

Appeals

If an applicant is not supplied information within the prescribed time of thirty days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the Public Information Officer. Such an appeal should be filed within a period of thirty days from the date on which the limit of 30 days of supply of information is expired or from the date on which the information or decision of the Public Information Officer is received. The appellate authority of the public authority shall dispose of the appeal within a period of thirty days or in exceptional cases within 45 days of the receipt of the appeal.

If the first appellate authority fails to pass an order on the appeal within the prescribed period or if the appellant is not satisfied with the order of the first appellate authority, he may prefer a second appeal with the Information Commission within ninety days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

Complaints

If any person is unable to submit a request to a Public Information Officer either by reason that such an officer has not been appointed by the concerned public authority; or the Assistant Public Information Officer has refused to accept his or her application or appeal for forwarding the same to the Public Information Officer or the appellate authority, as the case may be; or he has been refused access to any information requested by him under the RTI Act; or he has not been given a response to a request for information within the time limit specified in the Act; or he has been required to pay an amount of fee which he considers unreasonable; or he believes that he has been given incomplete, misleading or false information, he can make a complaint to the Information Commission.

Third Party Information

Third party in relation to the Act means a person other than the citizen making a request for information. The definition of third party includes a public authority other than the public authority to which the request has been made.

Disclosure of Third Party Information

Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Such information should not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. In regard to third party information which the third party has treated as confidential, the Public Information Officer should follow the procedure as given in part IV viz. '**FOR PUBLIC INFORMATION OFFICERS**'. The third party should be given full opportunity to put his case for non-disclosure if he desires that the information should not be disclosed.

RTI ONLINE

Department of Personnel & Training has launched a web portal namely RTI online with URL www.rtionline.gov.in for all Central Ministries/Departments. This is a facility for the Indian citizens to file RTI applications and first appeals online to all Central Ministries /Departments. The prescribed RTI fees can also be paid online. Reply to the RTI applications and first appeals received online can also be given online by the respective PIOs/FAAs.

Compilation of OMs and notifications on RTI

Department of Personnel and Training has launched an online compilation of its Office Memorandums and Notifications on Right to Information Act, 2005, with topic based search facility. This compilation is available on the website of the Department namely www.persmin.nic.in and is beneficial to all the stake holders.
