

**COURSE TITLE: BASIC HUMAN
RIGHTS
SEMESTER IV**

COURSE CODE : BTHM403

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UNIT IV-

Content –

- Human rights in Indian constitution and law: -
 - i) The Constitution of India: Preamble
 - ii) Fundamental rights
 - iii) Directive principles of state policy
 - vi) Fundamental duties
 - v) some other provisions.

THE CONSTITUTION OF INDIA :PREAMBLE

○ History:-

- The constitution of India was adopted on the **26th of Nov, in the year 1949.**
- However, it came into effect on the **26th January, 1950.**
- 26th January is celebrated as the **Republic Day of India.**
- **In 1928, the All Parties Conference convened a committee in Lucknow** to prepare the constitution of India, which was **known as the Nehru Report.**
- The Constitution was drawn from a no. of sources.
- Mindful of India's needs and conditions, its framework borrowed from previous legislation such as the **Government of India Act 1958, India Councils Acts 1861, 1892, and 1909 etc.**
- The Constitution of India repealed the **Indian Independence Act, 1947**, and became effective on **26th January 1950.**



THE CONSTITUTION OF INDIA :PREAMBLE

- **Drafting Committee:-**
- The constitution was drafted by the constituent assembly, which was elected by members of provincial assemblies.
- The 389-member assembly.
- **Dr. B. R. Ambedkar**, a wise constitutional expert and the **father of the Constitution of India**, was present at the assembly.



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THE CONSTITUTION OF INDIA :PREAMBLE

○ Structure:-

- The India Constitution is the **world's largest for a sovereign nation.**
- Previously, the enactment had **395 articles in 22 parts and 8 schedules.**
- It is the longest active constitution **after the constitution of Alabama in the world.**
- At present, the constitution has **a preamble and 470 articles, which are grouped into 25 parts, with 12 schedules and five appendices.**
- It has been amended **104 times**; the latest amendment became effective on **25 January 2020.**



THE CONSTITUTION OF INDIA :PREAMBLE

○ **Structure:-**

- The document lays down the framework
- that defines
 - The fundamental political code,
 - structure,
 - procedure,
 - powers, and
 - duties of government institutions, and
- sets out
 - fundamental rights,
 - directive principles, and
 - The duties of a citizen.



THE CONSTITUTION OF INDIA :PREAMBLE

- **Preamble word is derived from the Latin word Preambulus, means**
 - To go before or in simple words introduction.
- **In any Act, there is a preamble, which is an Introductory statement**
 - Purpose Philosophy Uses
 - Ideas and Appreciation
 - Principles Objectives.
- Preamble is like a blueprint of any Act.
- So if you see the preamble, you will get all the things of the Act in the preamble.



THE CONSTITUTION OF INDIA :PREAMBLE

○ Who drafted the Preamble?

- **Pandit Jawaharlal Nehru**, in front of the Constituent Assembly, presented a draft.
- What should the constitution be?
- What right, liberties, and this is the objective of the resolution given on **13 December 1946**.



THE CONSTITUTION OF INDIA :PREAMBLE

○ Who drafted the Preamble?

- Once only the preamble is modified after the 42nd Amendment Act, Socialist, Secular, and Integrity words are added.
- The first line we see in the Preamble, **“We the People of India”** establishes the power and source of the Indian constitution.
- This line explains that the constitution is made by the Indian people only and not by any other source or outside power.



THE CONSTITUTION OF INDIA :PREAMBLE

- **How-** On behalf of the people in the Indian Constituent Assembly, the constitution is made.
- **Nature:-** *Sovereign, Socialist, Democratic, Republic, Secular.* These words define the nature of the Indian Constitution.
- **Objectives:-**Justice Equality Liberty Fraternity this establish objective of Indian Constitution.
- **The Indian Constitution was adopted on 26th November 1949.**



THE CONSTITUTION OF INDIA :PREAMBLE

○ Sovereign:-

- India is an independent country.
- Internal matters are solved by themselves only, with no interference from any other external power or sources.

○ Socialist:-

- Added this word through **the 42nd Amendment Act.**
- The government has full or partial control over the means of production, but the word **Socialist in the preamble is used by the philosophy of Mahatma Gandhi and Jawaharlal Nehru's inspiration.**
- **The object of establishing a welfare state is to remove poverty, ignorance, inequality, and disadvantages.**



THE CONSTITUTION OF INDIA :PREAMBLE

○ Secular:-

- Means State has no religion. In some countries, **secular is anti-religion or opposed to religion as defined.**
 - For eg. In France, you cannot practice religion publicly, and in some other states, they cannot practice religion privately.
- But India has taken secularism positively.
- **There is positive secularism.** The state has no religion, but individually, you can practice your own or any other religion.
- Practice profess or propagate the religion and , can manage the religious institution also.



THE CONSTITUTION OF INDIA :PREAMBLE

○ **Democracy:-**

- **Demo means People and cracy mean rule. Rule of the people.**
- **Government will be formed by the will of the people or the authority of the people.**
- **In India, there is Indirect democracy, also called a representative form of democracy.**
- **After the age of 18, everyone has the right to vote.**



THE CONSTITUTION OF INDIA :PREAMBLE

○ Republic:-

- The **Prime Minister and the President of India** are both elected heads.
- So this is the **opposite of a Monarchy**.
- The **Head of State is elected** and not nominated by heredity.
 - (eg:- Super 30) The king's son is the king only.
- **Art 368 Parliament has the *Power of Amendment to the Constitution*.**



FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

- **The fundamental rights guaranteed by the Constitution of India are in Part III.**
- They are enforceable; they can be divided into the following.
 - Right to Equality –(14-18)
 - Art 14-Equality before Law.
 - Art 15-No discrimination on the basis of religion, race, caste, sex, place of birth or any of them.
 - Art 16- Equal opportunity relating to employment in any office under the state.
 - **The state makes reservations in favour of any backward classes of citizens.**
 - **The religious or denominational institution may be reserved for members professing any particular religion.**



FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

- Right to Equality –(14-18)
 - -Art 17-Abolishes un-touchability and forbid its practice in any form.
 - Art 18-Abolishes the conferment of titles by the state.



FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

- Right To Freedom-(Art 19)
 1. Freedom of speech and expression.
 2. Freedom of assembly.
 3. Freedom to form associations and unions.
 4. Freedom to move freely throughout India.
 5. Freedom to reside and settle in any part of India.
 6. Freedom to acquire property.
 7. Freedom to practice any Profession.



FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

- Protection against conviction -(Art 20)
 - No arrest without a violation of the law.
 - No punishment for the same offence and
 - compelled to be a witness against himself



FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

- Right To Life and personal liberty-(Art 21)
- Right to education – Art 21A
- Protection against arrest and detention -(Art 22)
- Rights against exploitation- Art (23 and 24)
 - Traffic in beggars and forced labour is prohibited.
 - No child below the age of 14 years can work in a factory.



FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

- Right to Freedom of Religion-Art(25- 28)
 - Art 25- Right to practice, profess, and propagate religion.
 - Art 26- Right to manage religious affairs.
 - Art 27- No compulsion to pay taxes on the portion of religious denomination
 - Art 28- Provide educational services wholly maintained out of state funds



FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

- Cultural and Educational rights-(Art 29-30).
 - Art 29-Protection of the interests of minorities.
 - Art 30- confers rights on minorities to establish educational institutions of their choice.



FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

- Right to Constitutional Remedy- Art 32.
 - Guarantees a right to move the Supreme Court for the enforcement of fundamental rights and empower directions, orders, or writs in the nature of habeas corpus, mandamus, prohibition, certiorari, and quo warranto.



DIRECTIVE PRINCIPLES OF STATE POLICY.

- The directive principles of state policy, contained in **Part IV of the Constitution**, embody socio-economic goals which the nation is expected to achieve.
- They are not enforceable in a court of law.
- It is a **duty of the state to apply these principles** when framing laws.



DIRECTIVE PRINCIPLES OF STATE POLICY

- Art 36-51
 - **Art 38-** social order to promote welfare of the people.
 - **Art 38(d)-** equal pay for equal work.
 - **Art 39-** Health and strength of workers are not abused
 - **Art 40-** Taking steps to organize village panchayats.



DIRECTIVE PRINCIPLES OF STATE POLICY

○ Art 36-51

- **Art 41-** Making provision related securing right to work, old age, sickness, education, disablement
- **Art 42-** Making provisions for securing just and humane conditions of work and for maternity relief.
- **Art 43-** Securing all workers, work, living wage condition of work standard of life and full enjoyment leisure and social and cultural opportunities.



DIRECTIVE PRINCIPLES OF STATE POLICY

- Art 36-51
 - **Art 44-** securing Uniform civil code.
 - **Art 45-** Provision for early childhood education until age of six.
 - **Art 46-** Promoting educational and economic interests of the Scheduled castes and scheduled Tribes and other weaker section.
 - **Art 47-** Raising the level of nutrition and std of living and improvement of public health.



DIRECTIVE PRINCIPLES OF STATE POLICY

- Art 36-51
 - **Art 48-** Organizing agriculture and animal husbandry on modern and scientific lines.
 - **Art 49-** Protecting monuments objects and places of artistic of historic interest.
 - **Art 50-** Taking steps to separate the judiciary from the executive in public services.
 - **Art 51-** Protection of international peace and security maintaining just and honorable relations between nations.



FUNDAMENTAL DUTIES IN THE INDIAN CONSTITUTION

- Human Duties- duty is an obligation which person should follow.
- If state has given rights then some duties we have to follow.
 - Duty to respect family and society and other recognized communities and international communities.
 - Duty to serve his national community.
 - Duty to abide by the constitution and respect national flag and National Anthem
 - To uphold and protect sovereignty unity and integrity.



FUNDAMENTAL DUTIES IN THE INDIAN CONSTITUTION

- If state has given rights then some duties we have to follow.
 - To protect and improve environment like forest lakes rivers and wild life.
 - Duty of parent to provide opportunities for education to his child between age of six to fourteen.
 - Duty to pay taxes.
 - Duty to obey laws.
 - Duty to protect public property.
 - Duty to Vote.
 - Duty to resist if laws are immoral laws are bad.



SOME OTHER PROVISIONS:-

- The supreme court and various High Courts have, in numerous cases stepped into avert or cure a violation of Human Rights.
- Case Law:-D.K. Basu Vs State Of West Bengal.
 - This case is related to custodial violence.
 - A telegram addressed to the chief justice of India drew the attention of the Supreme Court to cases of widespread custodial torture and custodial deaths in jails and police lock-ups..
 - The telegram was converted into writ petition and the apex court laid down eleven guidelines to be followed in all cases of arrest and detention.



SOME OTHER PROVISIONS:-

- Case Law:- L.K.Koolwal Vs State of Rajasthan (AIR 1988 Raj 2)
 - This case is related to responsibility and duty of state and as well citizen.
 - Where the petitioner prayed for a writ of mandamus to be issued to the Jaipur municipality to discharge its primary duty and remove the filth rubbish, night soil, odor and other noxious and offensive matter which resulted in an acute sanitation problem and health hazard for Jaipur citizens.
 - High Court held that while Art 51A(g) is ordinarily duty of citizens, it creates a right in favor of citizens to move the Court to enforce the state to perform its duties.
 - The Court therefore gave the administration six months to clean up the entire city of Jaipur dismissing the plea of lack of staff and of funds.



SOME OTHER PROVISIONS:-

- Case Law:- Biranganga Religious Society Vs State Of Calcutta.(1996)
 - This case is related to Right to sleep and
 - Right not to hear is a right to life with personal liberty.
 - Calcutta High Court held that the indiscriminate use of microphones and loudspeakers during daily Poojas' and other religious activities violates a citizens right to sleep and his right not to hear is included right in right to life with personal liberty.



SOME OTHER PROVISIONS:-

- Case law:- Murli Deora Vs Union Of India (AIR 2002 SC 40)
 - Right to clean Environment and good health.
 - Held that non-smokers have right to be protected against the adverse effects of “Passive smoking” this justifying a ban on smoking in public places.



SOME OTHER PROVISIONS:-

- Case Law:- M.C. Mehta Vs Union of India (Taj Mahal Case) 1997
 - Right to clean Environment.
 - The SC ordered industries in the TTZ (Taj Trapezium Zone) to stop functioning and relocate to alternate sites as they were polluting the atmosphere by using coal and coke as industrial fuel.



SOME OTHER PROVISIONS:-

- The supreme court and various High Courts have, in numerous cases stepped into avert or cure a violation of Human Rights.
- Case Law:- Randhir Singh Vs Union Of India.
 - This case related to equal pay for equal work.
 - Equal pay for equal work concept was introduced in this case.



SOME OTHER PROVISIONS:-

- Case Law:- Bijoe Emmanuel & others Vs State of Kerala (1986).
 - This case also known as National Anthem case and
 - Right not to say is a fundamental right .
 - **Case :** National Anthem was mandatory to sing all students but Bijoe and his 2 sister denied to sing a National Anthem.
 - Because these 3 students say that they belong to Jehovan's Witnessed and there religion won't allow to do any other religion prayer.
 - So they are restituted from school.
 - And there parents challenge this freedom not to say in High Court.
 - **Decision :** High Court held that it is the fundamental duty to sing National Anthem but they insulted National Anthem, But Supreme Court say that in fact other were singing that time they were quite with respect if Right to speech is FR then Right not to speak is also a FR.
 - They didn't insulted NA.



SOME OTHER PROVISIONS:-

- Case Law:- Rudal Shah Vs State of Bihar.(1983)
 - This case is based on Power to compensation.
 - **Case :** Rudal Shah was arrested in detention.
 - He was acquitted but then also he was in the jail for 14 years.
 - Then he filed petition for the compensation medical treatment claim, Ex-gracious out of grace, and illegal detention.
 - **Decision :** Supreme Court held that Art 21 is violated. State must repair the damage which has done by its officers and compensation should be given of Rs 30,000/- and apart from this which Rs 5000/- has paid. He can filed another petition for compensation.



SOME OTHER PROVISIONS:-

- Case Law:- Husainara Khatoon Vs Home secretary of Bihar(1979)
 - This case is based on Right to speedy trial and free legal aid.
 - **Case :** There are many people under trials languishing in Bihar jail.
 - In bailable offence also people were arrested and no trial is on because of poverty and no knowledge about that.
 - One retired officer went to supervise the jails in Bihar that time he saw the conditions of under trial people was not good.
 - **Result :** So this news came in local news paper and SC convert that news in Writ and held that to get the speedy trial and free legal aid should be given to the people whose is needy.



SOME OTHER PROVISIONS:-

- Case Law:- Sheela Barse Vs State Of Mharashtra (1983).
 - This case is based on Protection to women Prisoners in Lock-Ups.
 - **Case :** Sheela Barse was a jourlist she took interviewed 15 women prisoners then she came to know that women were tortured very much, in any way like physical assault or violence, try to rape, molest, no toilet in police lokups.
 - **Decision :** SC held that guidelines with respect to protection of women prisoners in lockups.
 - 4-5 police lockups selected in reasonably good localities where only females prisoners should be kept.
 - Guarded by females only constable. There should not be male suspect with female suspect.
 - Interrogation of females should be carried out only in presence pf female officers/constables.



SOME OTHER PROVISIONS:-

- **Case Law:-** Mohini Jain Vs State Of Kerala.(1989).
 - This case is related to Right to Education Art 21A.
- **Case :** Karnataka State Gov issued a Notice in 1989 u/sec5(1) of the Karnataka Educational Institution (Prohibition of Capitation fee) Act1984 fixing the tuition fee, other fees and deposits to be charged from the students by the private Medical colleges in the State.
 - Gov seat Rs 2000
 - Other than Gov seats Rs 25000
 - Outside Of Karnataka students Rs 60000
 - Mohini was from Merrot (UP) applied admission under Gov quota. But she is categorized in non resident of Karnataka student. And she has to pay Rs 60000 plus 5 years Bank guarantee and capitation fees also.Mohini denied admission she don't have money to pay she requested to take Gov quota fees.
 - After filing a petition by Mohini Jain, College explain how they spent
 - 5 Lakh Rupees on one student for 5 years.
- **Decison:-** Art 38 39(a)(f) 41 and 45 talks about education. And UDHR access to life shelter and literacy. Right to education is the part of Right to Life and it is the right of Mohini Jain. Education is charity and duty also. Affordable education should be given.



SOME OTHER PROVISIONS:-

- Case Law:- Sunil Batra Vs Delhi Administration case
- This case is related to Prisoners Right
 - **Case :** Sunil Batra was convicted and death sentence was given him. He wrote a letter to SC that officer of jail was torturing him as well as other accused and people who are relative of the accused comes to meet them the officer of jails are bribing them for money. SC convert that letter in Writ petition.
 - **Decision :** SC said that they have jurisdiction to handle this type of matters. And Took steps for Jail reforms, and prisoner rights. As Prisoners rights are not protected and erroneous officer of jail should be punished and fined.



SOME OTHER PROVISIONS:-

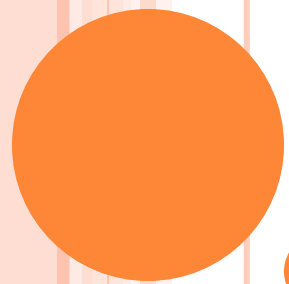
- Case Law:- Vishaka Vs State of Rajasthan (1997)
- This case is related to Sexual Harassment on working place.
 - In Rajasthan a Women named Bhawanri Devi was working as a social worker through gov machinery for restraint of child marriage. But people of that village were opposing this Bhanwari devi and brutally raped her. Case stands up and the accused were acquitted. Then 5 NGO's of Rajasthan together filed a petition and in this case SC gave guideline for working women sexual harassment. Special committee and grievance redressal should be there in work places.



OTHER MEASURES FOR THE PROTECTION OF HUMAN RIGHTS INCLUDE THE FOLLOWING.

1. The Scheduled Castes and the Scheduled Tribes (Prevention Of Atrocities) Act, 1989.
2. The Protection of Civil Rights Act, 1955.
3. The National Commission For Minorities Act, 1992.
4. The National Commission For Women Act, 1990.
5. The National Commission For Safai karmacharis Act 1993
6. The person with disabilities (Equal Opportunities, Protection of
7. Rights And Full Participation) Act 1995.
8. The National Commission For Backward Classes Act, 1993.
9. The Scheduled Tribes And Traditional Forest Dwellers (Recognition Of Forest Rights) Act. 2006 (No 2of 2007)





END OF UNIT 4