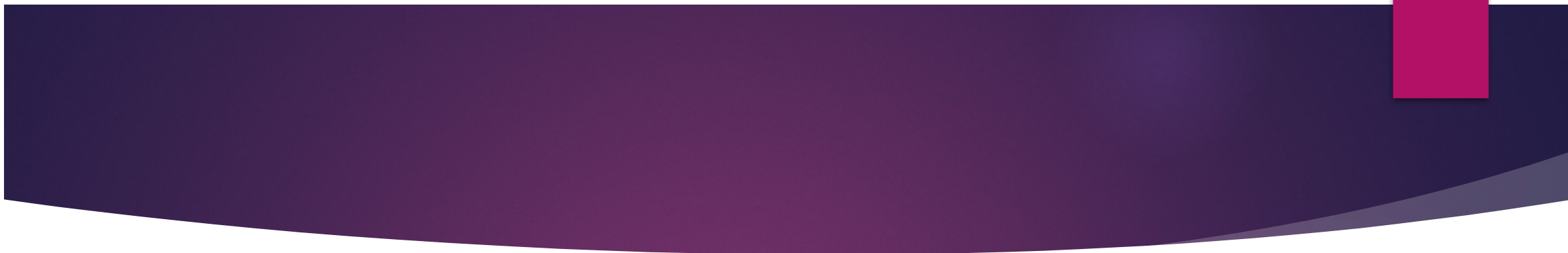


MODULE 2

- ▶ Definition of state, fundamental rights, general nature, classification, right to equality ,right to freedom , right against exploitation
- ▶ Right to freedom of religion, cultural and educational rights, right to constitutional remedies. Protection in respect of conviction for offences
- ▶ Directive principles of state policy, classification of directives, fundamental duties



Constitution

- ▶ It is a set of rules, written and unwritten, that seeks to establish the duties, power and functions of the various institutions of government, regulate the relationships between them and define the relationships between the state and the individual.

DEFINITION OF STATE

- ▶ **Article 12 has defined the term 'State'. According to it, the State includes the following:**
 - 1. Government and Parliament of India.**
 - 2. Government and legislature of states.**
 - 3. All local authorities, that is, municipalities, panchayats, district boards, improvement trusts, etc.**
 - 4. All other authorities, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.**

Fundamental Rights (Article 12-35)

- ▶ Part III of the Constitution is rightly described as the Magna Carta of India.
- ▶ It contains a very long and comprehensive list of 'justiciable' Fundamental Rights.
- ▶ Inspired from the Constitution of USA (i.e., Bill of Rights).
- ▶ The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination.

Nature of Fundamental Rights

- ▶ **The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination.**
- ▶ **They uphold the equality of all individuals.**
- ▶ **The dignity of the individual.**
- ▶ **The larger public interest.**
- ▶ **Unity of the nation.**

Nature of Fundamental Rights

- ▶ **They are defended and guaranteed by the Supreme Court.**
- ▶ **They are ‘fundamental’ also in the sense that they are most essential for the all-round development of the individuals.**
- ▶ **They can be suspended during the operation of a National Emergency.**

Classification of Fundamental Rights

► Originally, the Constitution of India provided for seven Fundamental Rights,

1. Right to Equality (Articles 14-18)

2. Right to Freedom (Articles 19-22)

3. Right against Exploitation (Articles 23-24)

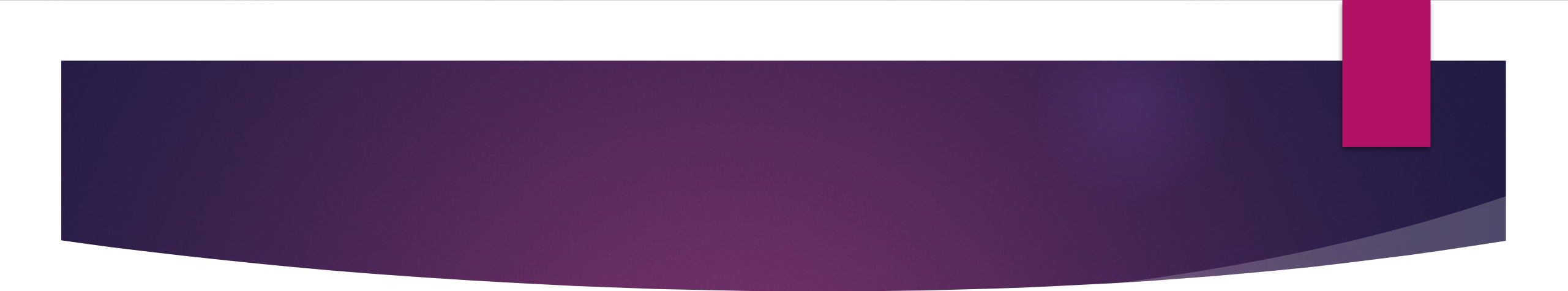
Classification of Fundamental Rights

4. Right to Freedom of Religion (Articles 25-28)

5. Cultural and Educational Rights (Articles 29-30)

6. Right to Property (Article 31)

7. Right to Constitutional Remedies (Article 32)

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- ▶ **However, the right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978.**
 - ▶ **It is made a legal right under Article 300-A in Part XII of the Constitution.**
 - ▶ **So at present, there are only six Fundamental Rights.**

Right to Equality (Articles 14–18)

It implies:

1. Equality before law and equal protection of laws (Article 14)

It means absence of any special privileges in favour of any person. All are equal before the law and also nobody is above the law. This is called “Rule of Law

2. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15)

Right to access public places, roads, use of water tanks, wells etc. made of State funds.

Right to Equality cont...

4. Equality of opportunity in matters of public employment (Article 16):

It means equality of opportunity for all citizens in matters of employment or appointment to any office under the State.

5. Abolition of untouchability and prohibition of its practice (Article 17).

Untouchability is punishable under law

6. Abolition of titles except military and academic (Article 18).

All the 'titles' are abolished. No citizen shall receive titles from another country

Right to Freedom (Articles 19-22)

► **Article 19** guarantees to all citizens the six rights:

- (i) Right to freedom of speech and expression.
- (ii) Right to assemble peaceably and without arms.
- (iii) Right to form associations or unions or co-operative societies.
- (iv) Right to move freely throughout the territory of India.
- (v) Right to reside and settle in any part of the territory of India.
- (vi) Right to practice any profession or to carry on any occupation, trade or business.

Article 20 :

- **Protection in respect of conviction for offences (Article 20).**

Convicted only if one has committed something against law.

Cannot be punished twice for the same offence (double jeopardy)

Article 21 & 21A

➤ **Protection of life and personal liberty (Article 21).**

➤ **Right to elementary education (Article 21A)**

It implies that state shall provide free and compulsory education to all children of the age of 6 - 14 years

Article 22

► Protection against arrest and detention in certain cases (Article 22).

Right to be informed of the ground of arrest

Right to consult and be defended by a lawyer

Right to be produced before a Magistrate within 24 hours of his arrest
(excluding the time of journey).

Right not to be detained for more than 24 hours without the authority of a
Magistrate

Right against Exploitation(Articles 23 to 24)

► Prohibition of traffic in human beings and forced labour (Article 23)

Selling and buying of men, women and children like goods

Immoral traffic in women and children, including prostitution

Devadasis and Slavery.

Prohibition of forced labour (begar) or labour without remuneration.

Article 24

► **Prohibition of employment of children under 14 years (Article 23)**

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

Right to freedom of religion (Article 25-28)

- **Freedom of conscience and free profession, practice and propagation of religion (Article 25)**

It implies the inner freedom of an individual to declare one's religious beliefs and faith openly and freely.

- **Freedom to manage religious affairs (Article 26)**

- **Freedom from payment of taxes for promotion of any religion (Article 27).**

It means that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination

Right to freedom of religion (Article 25-28)

- **Freedom for attending religious instruction or worship in certain educational institutions (Article 28)**

Cultural and Educational Rights (Articles 29-30)

➤ **Protection of language, script and culture of minorities (Article 29)**

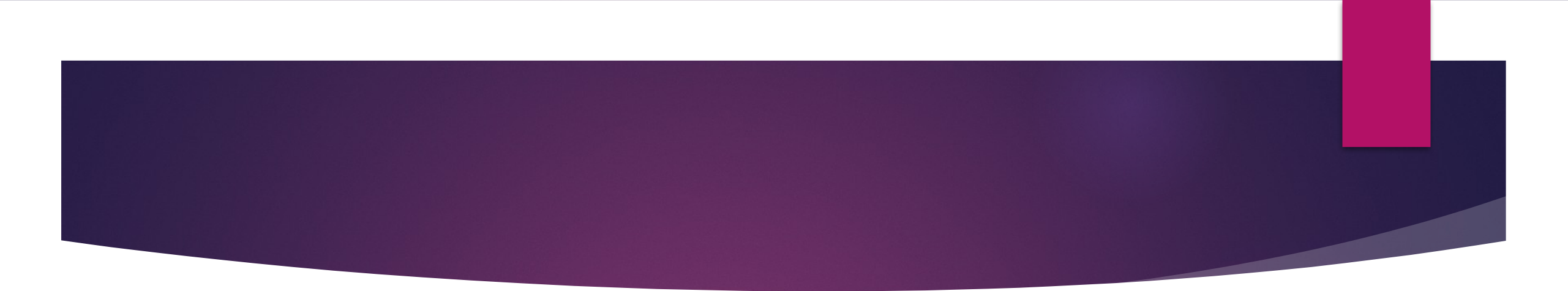
Article 29 provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same.

➤ **Right of minorities to establish and administer educational institutions (Article 30).**

All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

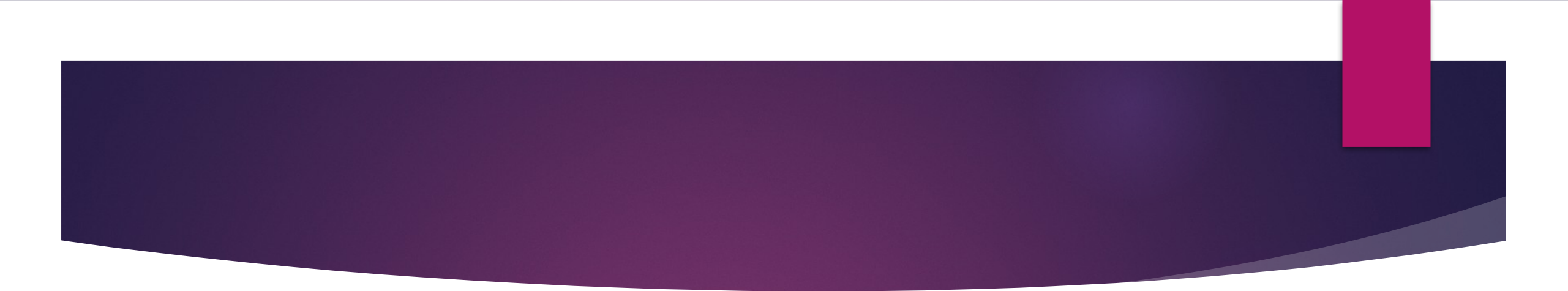
Right to constitutional remedies (Article 32)

- ▶ The Constitution has not only given Fundamental Rights to the citizens of India but also guaranteed them.
- ▶ On any matter relating to a Fundamental Right, a citizen may file a petition in the High Court / Supreme Court. Such petitions are known as Writ Petitions
- ▶ Right to move the Supreme Court for the enforcement of fundamental rights including the writs (writs as extraordinary remedies to uphold the rights and liberties) of
 1. **Habeas corpus**: It is a Latin term which literally means ‘to have the body of’. It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it.



Mandamus : It literally means ‘we command’. It is a command issued by the court to a public official asking him to perform his official duties that he/she has failed or refused to perform.

Prohibition : Literally, it means ‘to forbid’. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction that it does not possess

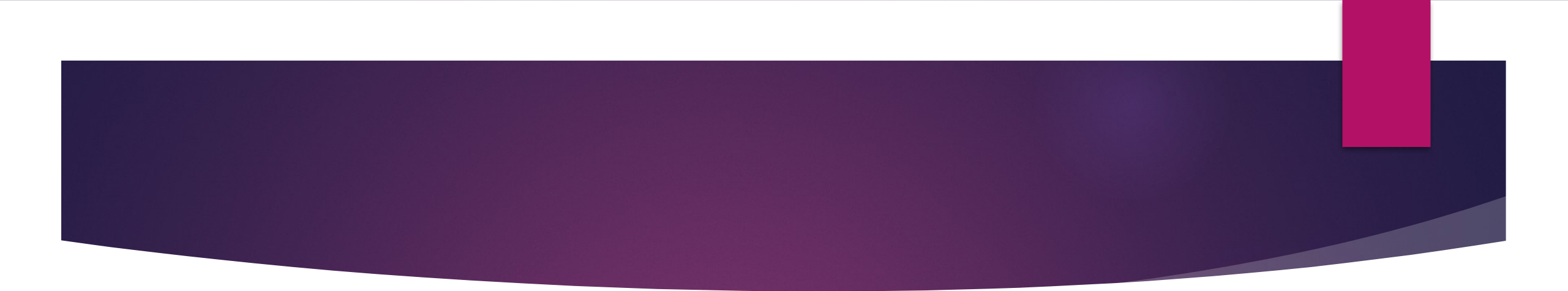


Certiorari: It means ‘to be certified’ or ‘to be informed’. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case.

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.

Directive Principles of State Policy (DPSP) Article 36-51

- ▶ **The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51.**
- ▶ **Constitution has framed certain principles and policies for the aim of “Welfare State”. It has also given certain directions to the state to serve as guidelines. Such guiding principles are known as Directive Principle of State Policy.**
- ▶ **Directive Principles of State Policies are also called as the ‘Instrument of Instructions’.**
- ▶ **These principles are for the good governance of the country.**

- 
- ▶ **These principles cannot be enforced in the courts.**
 - ▶ **Necessary duties and functions to be performed by the State**
 - ▶ **The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution.**
 - ▶ **Dr. B.R. Ambedkar described these principles as ‘novel features’ of the Indian Constitution.**

CLASSIFICATION OF THE DPSP

3 broad categories

1. Socialistic Principles

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

2. Gandhian Principles

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

3. Liberal-intellectual Principles

Article 44,45,48,48A,49,50,51

Socialistic Principles

- ▶ These principles reflect the ideology of socialism.
- ▶ Aims at providing social and economic justice
- ▶ **To promote the welfare of the people (Article 38)**

To promote the welfare of the people by securing a social order permeated by justice—social, economic and political and to minimise inequalities in income, status, facilities and opportunities

Article 39

- (a) The right to adequate means of livelihood for all citizens**
- (b) The equitable distribution of material resources of the community for the common good**
- (c) Prevention of concentration of wealth and means of production**
- (d) Equal pay for equal work for men and women**
- (e) Preservation of the health and strength of workers and children against forcible abuse**
- (f) opportunities for healthy development of children**

Socialistic Principles

- ▶ To promote equal justice and to provide free legal aid to the poor (**Article 39A**)
- ▶ All people should get employment, education and public assistance in the case of unemployment (**Article 41**)
- ▶ To make provision for just and humane conditions of work and maternity relief (**Article 42**)
- ▶ To secure a living wage , a decent standard of life and social and cultural opportunities for all workers (**Article 43**).
- ▶ To raise the level of nutrition and the standard of living of people and to improve public health (**Article 47**).

Gandhian Principles

- ▶ These principles are based on Gandhian ideology.
- ▶ **To organise village panchayats to function as units of self-government (Art 40)**
- ▶ **To promote Village and cottage industries (Article 43)**
- ▶ **To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies (Art43B).**
- ▶ **To promote the educational and economic interests of SCs, STs, and other weaker sections of the society (Article 46)**

Gandhian Principles

- ▶ **To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47)**
- ▶ **To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48)**

Liberal-Intellectual Principles

- ▶ This principles represent the ideology of liberalism.
- ▶ **Uniform Civil Code throughout the country (Article 44)**
- ▶ **To provide early childhood care and education for all children until they complete the age of six years (Article 45)**
- ▶ **To protect and improve the environment and to safeguard forests and wild life (Article 48 A)**

Liberal-Intellectual Principles

- ▶ To protect monuments, places and objects of artistic or historic interest **(Article 49)**
- ▶ To separate the judiciary from the executive in the public services of the State **(Article 50)**.
- ▶ To promote international peace and security and maintain just and honourable relations between nations **(Article 51)**

NEW DPSP

- ▶ **The 42nd Amendment Act of 1976 added four new Directive Principles to the original list.**

They require the State:

- 1. To secure opportunities for healthy development of children (Art 39).**
- 2. To promote equal justice and to provide free legal aid to the poor (Article 39 A).**
- 3. To take steps to secure the participation of workers in the management of industries (Article 43 A).**
- 4. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).**

Fundamental Duties (Article 51A)

- ▶ **The original constitution contained only the fundamental rights and not the fundamental duties.**
- ▶ **Later in 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added.**
- ▶ **The Fundamental Duties in the Indian Constitution are inspired by the Constitution of USSR.**
- ▶ **Swaran Singh Committee suggested the incorporation of eight Fundamental Duties in the Constitution, the 42nd Constitutional Amendment Act (1976) included ten Fundamental Duties.**

LIST OF FUNDAMENTAL DUTIES

- ▶ **According to Article 51A, it shall be the duty of every citizen of India:**
 - 1. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.**
 - 2. To cherish and follow the noble ideals that inspired the national struggle for freedom.**
 - 3. To uphold and protect the sovereignty, unity and integrity of India.**
 - 4. To defend the country and render national service when called upon to do so.**

LIST OF FUNDAMENTAL DUTIES

- 5. To promote harmony and the spirit of common brotherhood amongst all the people of India.**
- 6. To value and preserve the rich heritage of the country's composite culture.**
- 7. To protect and improve the natural environment including forests, lakes, rivers and wildlife.**
- 8. To develop scientific temper, humanism and the spirit of inquiry and reform.**
- 9. To safeguard public property and to abjure violence.**

LIST OF FUNDAMENTAL DUTIES

- 10.** 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.
- 11.** To provide opportunities for education to his child or ward between the age of 6 - 14 years. This duty was added by the 86th Constitutional Amendment Act, 2002.