

## CHAPTER 2

# Salient Features of the Constitution—I



### SYLLABUS

#### Salient Features of the Constitution—I

(A) Single Citizenship, Universal Adult Franchise, Fundamental Rights and Fundamental Duties.

Our Constitution has established a democratic society, providing justice to all, irrespective of their social or cultural background. It has many salient features, some of which are given below.

#### SINGLE CITIZENSHIP

The Indian Constitution provides for a Single Citizenship. This means that **all Indians irrespective of the State of their domicile are the citizens of India**. This is unlike the system prevailing in the USA, where one can be a citizen of the New York State as well as an American citizen. In India, a person born in Punjab or in Kerala can only be a citizen of India and not a citizen of the State of their domicile as well. This has been done to ward

off separatist tendencies and promote fraternity and unity among the people.

By the Citizenship (Amendment) Act 2003, the Government of India has granted dual citizenship to all the Persons of Indian Origin (PIOs), who migrated to other countries after January 26, 1950. All privileges of an Indian citizen except the right to vote could be enjoyed by PIOs.

#### UNIVERSAL ADULT FRANCHISE

This means that **all persons of 18 years of age and above have the right to vote irrespective of their caste, colour, religion, etc.** The British had provided for communal electorate under the Acts of 1919 and 1935. The Constitution of Independent India has replaced this system by introducing joint electorate. According to this system, resident voters of a constituency have to vote for the same candidate irrespective of his caste or creed. Similarly, some seats are reserved for candidates from Scheduled Castes and Scheduled Tribes. All people from such constituencies have



All are citizens of India



Right to Vote

to vote for the candidates of the area. This system is aimed at curbing communal polities and fostering communal harmony.

## FUNDAMENTAL RIGHTS

The Fundamental Rights are *basic human rights, which provide the conditions essential for the all-round development of a human being.* They protect people against unjust discrimination among members of the community. They don't make distinctions between human beings based on race, colour, sex, religion or other such considerations.

They give recognition to dignity and equality of all human beings.

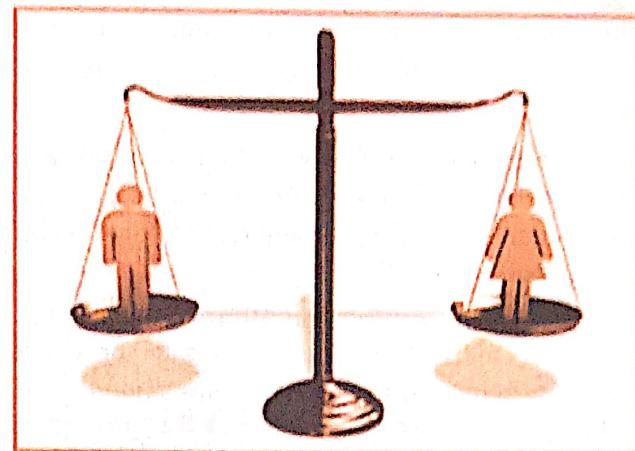
The Fundamental Rights are given in Part-III of the Constitution of India. They are classified into the following categories:

### 1. The Right to Equality—Articles 14 to 18

The success of Indian democracy largely rests on the Right to Equality of citizens. The Right to Equality has political, social and economic components.

(a) **Equality before Law:** Article-14 guarantees both equality before law as well as equality in protection by law irrespective of economic status, caste, colour, creed, religion, or sex. Practice of any kind of discrimination on these accounts makes it a punishable offence.

**Article-15:** Prohibits discrimination on grounds mentioned in Article-14. For example, admission to educational institutions, allotment

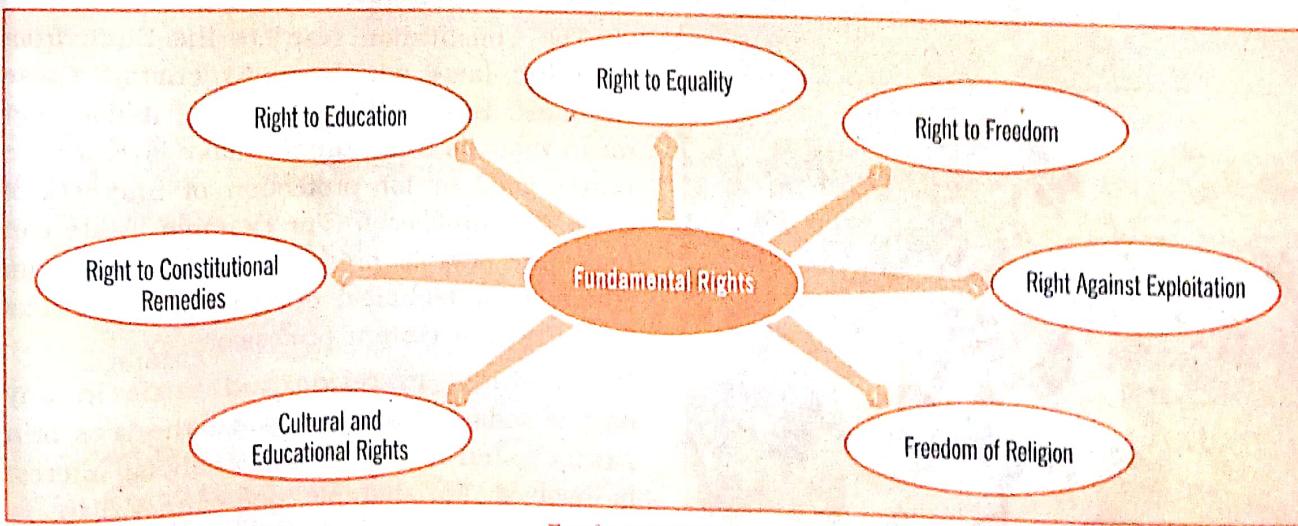


Right to Equality

of shops etc., have to be made without discrimination mentioned in Article-14. This ensures social and economic equality.

(b) **Equality of Opportunity:** Article-16 provides for equality of opportunity for all citizens in matters relating to employment in an office under the Central or State government. It prohibits any sort of discrimination on grounds mentioned in Article-14. It also allows making of reservations of posts in favour of Scheduled Castes and Tribes by passing a law. At present 27 per cent posts in government service are reserved for Other Backward Classes (OBCs), 15 percent for Scheduled Castes and 7.5 per cent for Scheduled Tribes.

(c) **Abolition of Untouchability:** Article-17 abolishes untouchability and its practice in any form. Any person preventing the other from



entering a place of public worship or using a public well, a public transport system, etc. can be punished by law.

(d) **Abolition of Titles:** Article-18 abolishes all titles like *Rai Sahib*, *Khan Bahadur*, *Maharaja*, etc. These titles are considered a negation of equal status for all.

However, titles such as 'Bharat Ratna', etc., given for meritorious public service or other titles in fields of sports, academic honours or military service are not covered by this provision.

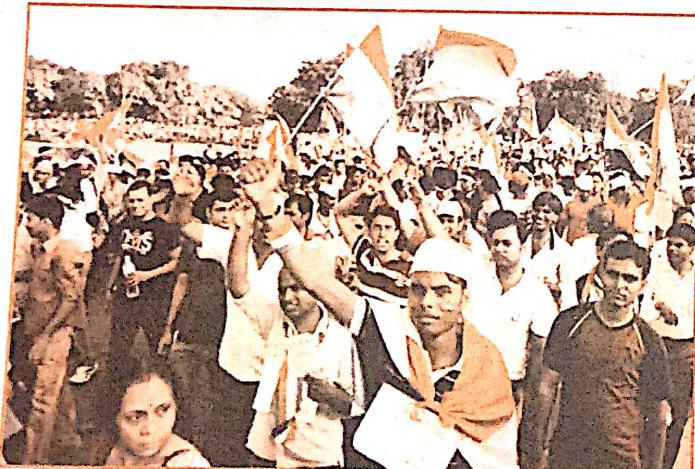
The 42nd Amendment Act, 1976 puts certain restriction on the Right to Equality. A person cannot move the Court if his/her right to equality is restricted to implement the Directive Principles of State Policy.

## 2. Right to Freedom—Articles 19 to 22

This Right is a cluster of six essential freedoms (Article-19) and their protection.

(a) **Under Article-19**, the Constitution guarantees **six basic freedoms** to its Citizens, viz.

- (i) Freedom of speech and expression.
- (ii) Freedom to assemble peacefully without arms.
- (iii) Freedom to form associations and unions.
- (iv) Freedom to move freely throughout India.
- (v) Freedom to reside and settle in any part of India.
- (vi) Freedom to practise any profession, trade or business.



Right to Freedom to Assemble Peacefully

## RIGHT TO INFORMATION

Right to Information (RTI) has been included in Article 19(1) of the Constitution. Right to Information is an implied Fundamental Right. An implied Fundamental Right is the one which is a part of a named Fundamental Right or partakes of the same basic nature and character as that Fundamental Right. Since RTI is implicit in the Right to Freedom of Speech and Expression (Article 19), it is an implied Fundamental Right because if one does not know the facts one cannot speak freely. The Right to Information Act came into force on October 12, 2005. This Act gives the citizens of India the right to:

- (a) seek and receive information from the government and other public authorities.
- (b) ask them certain questions.
- (c) take copies, including certified copies, of documents.
- (d) inspect documents.
- (e) take sample of materials.

Any citizen can file an application under RTI with the Public Information Officers (PIOs), Assistant Public Information Officers (APIOs) and seek the required information.

There is no specific provision in our Constitution guaranteeing the freedom of the Press because freedom of the Press is included in the wider freedom of 'expression' which is guaranteed by Article 19.

The Constitution restricts the State from enacting laws which could curtail these freedoms. But at the same time, it does not mean that the State cannot make laws for the public good or for protection of interests of trade and profession. For example, State can make the laws to prescribe certain minimum educational, technical or other qualifications for entry to a certain profession.

The Right to reside and settle in any part of India cannot go against the laws of a particular territory where larger national interest is involved. For example, one cannot displace Tribal communities and settle in their territory.

## **Supreme Court Declares Right to Privacy - A Fundamental Right**

On August 24, 2017, the Supreme Court of India declared the Right to Privacy as a fundamental right.

### **(a) Right to Privacy - A Fundamental Right**

The Supreme Court confirmed that the right to privacy is a fundamental right that does not need to be separately articulated but can be derived from Articles 14, 19 and 21 of the Constitution. It is a fundamental right about all information of a person and the choice that he/she makes. It protects an individual from the scrutiny of the State in their home, of their movements and over their reproductive choice, choice of partners, food habits, etc.

### **(b) Not an Absolute Right - It is Subjected to Reasonable Restrictions**

The Supreme Court clarified that the fundamental right to privacy is not absolute and will always be subject to reasonable restrictions. The State can impose restrictions on it to protect legitimate State interests but it can only do so by following the points given below:

1. Existence of a law that justifies an encroachment on privacy;
2. A legitimate State need that ensures that the nature of this law falls within the zone of reasonableness and without arbitrary State action; and
3. The means adopted by the State are proportional to the objects and needs sought to be fulfilled by the law.

According to the judgement, the legitimate aims of the state should be "protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits."

### **What Privacy includes**

1. Preservation of personal intimacies, the sanctity of family life, marriage, procreation, home and sexual orientation.
2. A right to be left alone.
3. Safeguards individual autonomy, protecting vital aspects of his/her life.
4. Personal choices governing a way of life are intrinsic to privacy.
5. It recognises plurality and diversity of our culture.

## **Limitations**

**(i) Emergency:** Article-19 can be suspended during Emergency.

**(ii) Not Absolute:** The security of the State and national interest being of paramount interest, reasonable restrictions could be imposed on the implementation of this right.

**(iii) Laws of Parliament:** Legislations like Preventive Detention; Essential Services Maintenance Act (ESMA, a law to ensure the delivery of essential services like public transport, health services, etc., which if obstructed would affect the normal life of the people) impose certain restrictions on the Right to Freedom.

### **(b) Protection in Respect of Conviction for Offences:** Under Article-20 the following protections are available to a citizen:

- (i) Against greater penalty than what is prescribed under the law is prohibited.
- (ii) No one can be punished or prosecuted for the same offence twice.
- (iii) A person cannot be compelled to be a witness in the case where he himself is accused of the offence.

**(c) Protection of Life and Personal Liberty:** Under Article-21 a person cannot be deprived of his life and liberty except in accordance with the law.

**(d) Protection Against Arrest and Detention:** Article-22 gives such rights to the citizens under two different circumstances:

**(i) Ordinary Circumstances:** In the case of arrest under ordinary circumstances, the arrested person has the following rights:

- (a) To be informed of his/her offence.
- (b) To be presented before a magistrate within 24 hours from the time of arrest. Such a person cannot be kept in custody for more than 24 hours without the permission of the magistrate.
- (c) The right to consult a lawyer and prepare for defence at the trial.

**(ii) Preventive Detention:** In case a person is detained under Preventive Detention such a person can be kept in custody for a period of three months without trial. Such a person has the rights as follows.



Protection of Life and Personal Liberty

- (a) Preventive Detention does not mean that a person stands accused. It is only a precautionary measure.
- (b) Detention beyond three months can be extended only by an Advisory Board constituted for the purpose and consisting of a judge of the High Court.
- (c) Grounds of detention have to be specified and the detainee informed of these grounds. The latter also has the right to make representation against the detention order.

#### LIMITATIONS

- (i) **Public interest:** The authority or the State can take recourse to public interest and refuse to disclose the grounds of detention.
- (ii) **Power of the Parliament:** The legislature or the Parliament has the power to specify the maximum period of Preventive Detention.

#### 3. Right Against Exploitation—Articles 23 and 24

This right upholds the dignity of the individual and prohibits exploitation in following respects:

- (i) **Article 23-(a)** freedom from slavery, beggary or other forms of forced labour.
- (b) **Trafficking in human beings** means buying and selling of human beings is prohibited. It also prohibits use of women or girls for immoral purposes.
- (ii) **Article 24** This article prohibits employment of children below the age of 14

years in factories, mines and other hazardous occupations. The practice of bonded labour has also been declared unlawful.

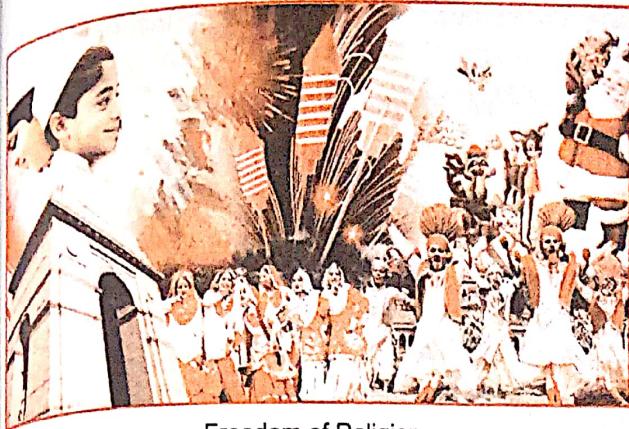
#### 4. Right to Freedom of Religion

Articles 25 to 28 indicate the following:

- 1. All persons are entitled to freedom of conscience and the right to freely profess, practise and propagate their religion.
- 2. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—
  - (a) to establish and maintain institutions for religious and charitable purposes;
  - (b) to manage its own affairs in matters of religion;
  - (c) to own and acquire movable and immovable property; and
  - (d) to administer such property in accordance with law.
- 3. No person shall be compelled to pay taxes for the promotion of a particular religion.
- 4. No religious instruction shall be provided in any institution wholly maintained out of State funds.
- 5. Even though religious instruction may be imparted in educational institutions recognised by or receiving funds from the State, no person attending such institutions shall be compelled to receive that religious instruction without the consent of himself/herself or of his/her guardian (in case the pupil be a minor).



Right Against Exploitation



Freedom of Religion

## 5. Cultural and Educational Rights

**Articles 29 and 30: Protection of Minorities:** Article 29 gives a section of the people or whole of them the right to preserve their distinct language, script and culture. In the matter of admission to any educational institution maintained by the State, admission cannot be denied on grounds of religion, colour, caste, creed or sex.

**Minorities and Educational Institutions:** Article 30 gives all minorities the right to establish and administer the educational institutions of their choice. The State is also prohibited from discriminating against educational institutions in the matter of grants.

## 6. Right to Constitutional Remedies — Article 32

Fundamental Rights are justiciable, i.e., a suit can be filed in a High Court or the Supreme Court if Fundamental Rights are violated.

Article 32 gives the Right to Constitutional Remedies. This Right is given to citizens to move Supreme Court for the enforcement of



Cultural and Educational Rights

other Fundamental Rights conferred on them. Dr. Ambedkar described this article as the "heart and soul of the Constitution." In essence it is not a right but a remedy.

Under this article the Supreme Court and the High Courts (within their respective jurisdiction) are empowered to issue writs. *A writ is a formal written order issued by the Supreme Court and the High Courts to provide legal remedies to individuals who do not obtain adequate protection under ordinary laws.*

As per the Constitution, the enforcement of the Fundamental Rights, issuance of writs, making of laws by the Parliament and suspension of this right under very special circumstances have all been taken care of under different clauses of Article 32. The most important writs are given below.

### IMPORTANT WRITS

**(i) Habeas Corpus:** It means 'to have the body'. By issuing such a writ, the High Court or the Supreme Court can get the body of any person released if it has been unlawfully detained by any person or a group of persons or by the State. This writ is thus a great safeguard for the personal freedom of a citizen.

**(ii) Mandamus:** In Latin it means 'we order'. It is a command or an order from a Superior Court to a lower or an administrative authority to perform a certain duty.

**(iii) Writ of Prohibition:** The Writ of Prohibition is an order issued by a superior court to a lower court to stop proceedings in a case which might be in excess of the jurisdiction of the lower court.



Right to Constitutional Remedy

**(iv) Writ of Certiorari:** This writ is issued by a superior court to a judicial authority desiring "to be informed of what is going on." Though it appears similar to the Writ of Prohibition, there is a difference. Writ of Prohibition is issued when certain proceedings are going on. The Writ of Certiorari is issued after the order has already been passed by the lower court.

**(v) Quo-warranto:** It means "by what order." It is issued when a person has usurped any office. This writ, thus prevents public officers from forcibly or wrongly holding a high public office.

The writs make the Right to Constitutional Remedies the most important and also make it an effective tool for their enforcement. Though presently only the Supreme Court and the High Courts have the power to issue these writs,

the Parliament can confer similar powers on other courts.

### 7. Right to Education

This right has been granted by the Constitution (Eighty-six Amendment) Act, 2002. By this Act a new article 21A has been inserted in the Constitution, which states, "The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine".

### RIGHT TO PROPERTY

Article 31 of the Constitution had earlier empowered the citizens of India to purchase, hold and dispose off movable as well as immovable property as a Fundamental Right. However, in keeping with the socialistic philosophy of the

### Fundamental Rights At a Glance

| <b>The Right</b>                           | <b>Chief Components/Features</b>  |
|--|---|
| <b>1. Right to Equality</b>                | Article 14. Equality before law and equal protection of law.<br>Article 15. Prohibition of discrimination.<br>Article 16. Equality of opportunity in respect of employment.<br>Article 17. Abolition of untouchability.<br>Article 18. Abolition of titles.   |
| <b>2. Right to Freedom</b>                 | Article 19. Freedom of speech, expression, assembly, movement, settlement and profession.<br>Article 20. Protection against conviction for offences.<br>Article 21. Protection of life and liberty.<br>Article 22. Protection against arrest and detention in certain cases.<br>Article 23. Prohibition of traffic in human beings and forced labour.<br>Article 24. Prohibition of employment of children under the age of 14 in factories, mines etc. |
| <b>3. Right Against Exploitation</b>       | Article 25. Freedom of conscience, profession, preaching and propagation.<br>Article 26. Freedom to manage religious affairs.<br>Article 27. Freedom from payment of taxes for promoting particular religion.<br>Article 28. Freedom from attendance at religious instructions in certain educational institutions.   |
| <b>4. Right to Freedom of Religion</b>     | Article 29. Protection of language, script, culture of minorities.<br>Article 30. Right to establish and administer minority educational, social and cultural institutions.   |
| <b>5. Cultural and Educational Rights</b>  | Article 32. Issue of writs (habeas corpus, mandamus, prohibition, certiorari, quo-warranto.)  |
| <b>6. Right to Constitutional Remedies</b> |   |
| <b>7. Right to Education</b>               | Article 21A. Free and compulsory education to all the children of the age of 6 to 14 years.   |

Constitution, the Right to Property was deleted from the list of Fundamental Rights by the 44th Amendment Act 1978. This amendment made the Right to Property (Article 300A) a Legal right.

### CHECK ON ARBITRARY ACTIONS OF THE STATE

The Fundamental Rights secured to the individual are in the nature of limitations or restrictions on the arbitrary actions of the State. Article 13(2) declares that all laws and executive orders in force immediately before the commencement of the Constitution, inconsistent with the fundamental rights are void to the extent of such inconsistency. This article, thus, provides for *judicial review* of all legislations in India. However, the Constitution has empowered the State to make valid exceptions to the rights on the grounds such as security of the State, public order, public morality, etc.

### RESTRICTIONS IMPOSED

Fundamental Rights are not absolute. Reasonable restrictions can be imposed on them because of the general welfare of the society.

1. The Fundamental Rights can be suspended when the President declares a state of Emergency in the country in case of war, external aggression or armed rebellion. Such a suspension of rights is temporary. As soon as the Emergency is over, the rights are restored.

2. For the security of the State and national interest reasonable restrictions on the Fundamental Rights can be imposed. Parliament has the power to modify the application of Fundamental Rights to the members of the Armed Forces, Police Force or intelligence organisations so as to ensure proper discharge of their duties.

3. There are some laws which restrict the use of these rights in public interest. The *Maintenance of Internal Security Act (MISA)*, *Defence of India Rules (DIR)*, *Preventive Detention Act (PDA)*, *the National Security Act 1980 (NSA)*, *Essential Services Maintenance Act (ESMA)*, etc., are made to safeguard the interests of the nation, but they curtail the use of the Fundamental Rights.

### SUSPENSION OF FUNDAMENTAL RIGHTS

The Fundamental rights guaranteed by the Constitution remain suspended, while a

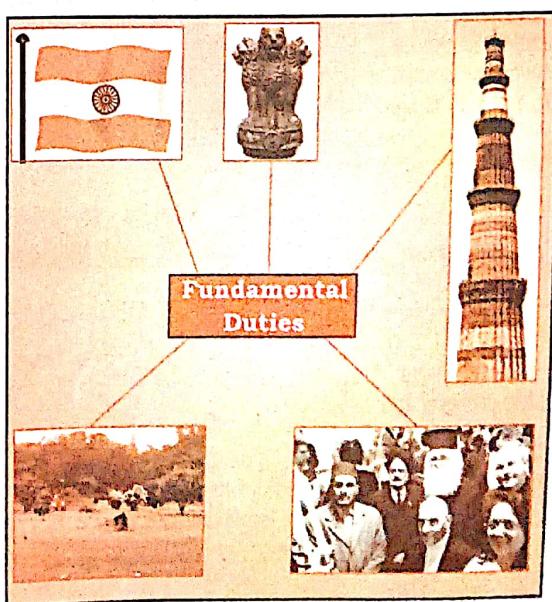
proclamation of Emergency is made by the President under Article 352. As soon as a proclamation of such an emergency is made, the Legislature is free to make any law and the Executive has the liberty to take any action, even though it restricts the right to freedom of speech and expression, assembly, association, movement, residence, profession or occupation. These restrictions remain in effect only as long as the emergency is in operation.

When a proclamation of emergency is in operation, the President may by Order declare that the right to move a court for the enforcement of the Fundamental Rights shall remain suspended. In case of such a situation, the Supreme Court and the High Courts shall be powerless to issue the writs or to make any other order for the enforcement of any fundamental right.

### FUNDAMENTAL DUTIES

Duties and rights go hand-in-hand; there can be no rights in a society where there are no duties. For example, if we have a right to life, it is our duty to respect others' life and not to injure another person. Similarly, the right to freedom implies that we have to maintain a self-restraint and accord similar rights to others which we want for ourselves.

It was in keeping with these ideals in view that Fundamental Duties were incorporated in the Constitution of India.



## KINDS OF DUTIES

The Fundamental Duties were added to the Constitution by the 42nd Amendment Act, 1976 and inserted in Part IV of the Constitution. The Article 51-A of the Constitution states the following ten duties of a citizen:

- (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 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 wildlife, and 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.

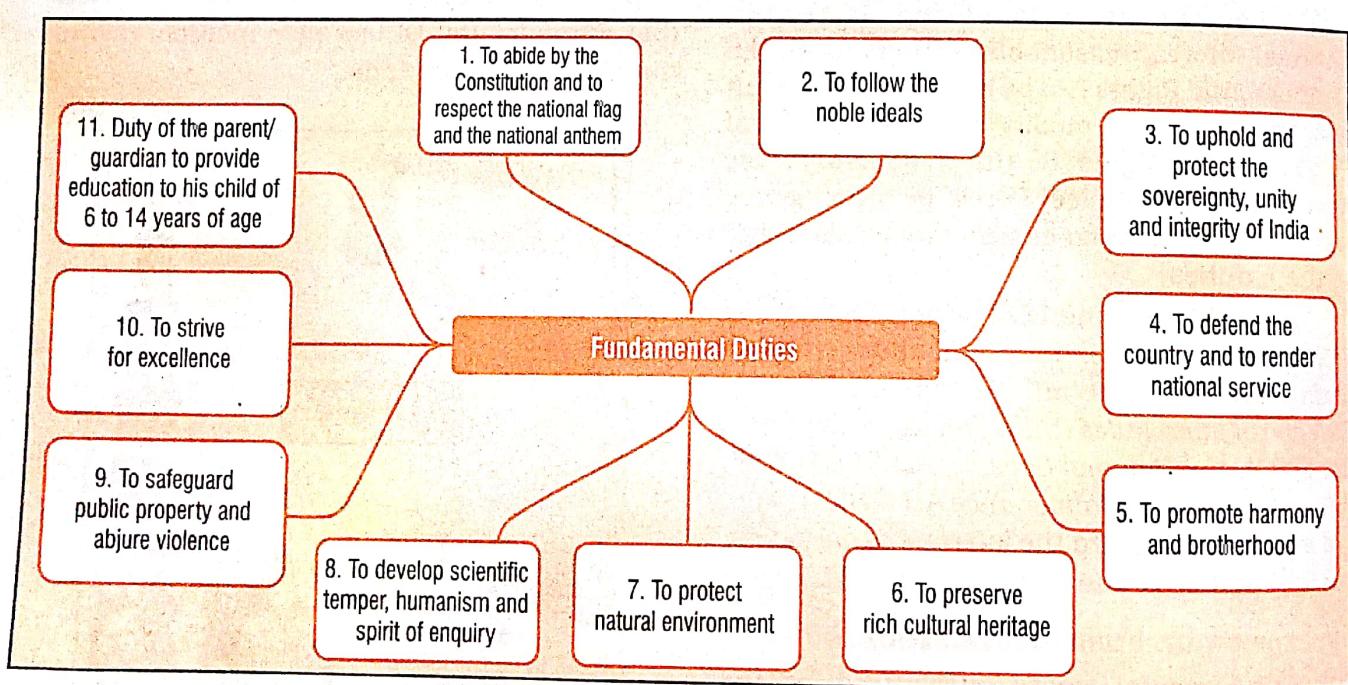
(k) it is the duty of a parent or guardian to provide opportunities for education to his/her child or, as the case may be, ward between the age of six and fourteen years.

The clause (k) was added by the Constitution (Eighty-sixth Amendment) Act, 2002.

## IMPORTANCE OF FUNDAMENTAL DUTIES

The Fundamental Duties are enlisted in the Constitution of India:

1. to make the citizens aware of their social and economic obligations;
2. to warn them to do and not to do certain things in the interest of their country, fellow citizens and themselves;
3. to protect and awaken the people to their cultural heritage;
4. to tame the unruly elements in society;
5. to strengthen national harmony as they stir up patriotism.



## **TERMS TO REMEMBER**

|                                 |   |
|---------------------------------|---|
| <i>Citizenship</i>              | : The right of a person to be legally recognised as a member of the country.  |
| <i>Adult Franchise</i>          | : The right to vote given to persons of 18 years of age and above (adults) irrespective of caste, colour, creed, qualifications, etc. |
| <i>Civil liberties</i>          | : Freedoms of ordinary citizens.  |
| <i>Constitutional Amendment</i> | : Changes, modifications or additions to the Constitution.  |
| <i>Conviction</i>               | : An instance of having committed a criminal offence.   |
| <i>Covenant</i>                 | : A formal agreement.   |
| <i>Communal Riots</i>           | : Riots resulting from friction between two or more communities.  |
| <i>Exploitation</i>             | : Taking unfair advantage of some one.  |
| <i>Justiciable</i>              | : Able to be shown right or reasonable by the judiciary.  |
| <i>Minorities</i>               | : The relatively smaller groups of people.  |
| <i>Reservation</i>              | : An arrangement whereby something is reserved, for example reservation of posts for Other Backward Castes (OBCs).                    |
| <i>Suit</i>                     | : A law suit containing a set of complaints for legal judgement.  |

## EXERCISES

## I. Multiple-Choice Questions

**Choose the correct answers to the questions from the given options.**

## **II. Short Answer Questions**

1. What is meant by the term 'Single Citizenship'?
  2. 'Fundamental Rights are universal in nature.' Explain in one sentence.
  3. How are the Fundamental Rights justiciable?
  4. What is meant by the term 'Right to Equality'?
  5. Mention one Fundamental Right granted to citizens of India.
  6. In the context of Fundamental Rights, give one example that India is a secular state.
  7. What is meant by the term 'Right Against Exploitation'?
  8. By which Act of the Parliament were the Fundamental Duties included in the Constitution? Mention the Fundamental Duty which has been added by the Constitution (86th Amendment) Act, 2002.
  9. To whom can the citizens of India file an application if they wish to seek any information from the government authorities?

### **III. Structured Questions**

1. Explain the following basic features of the Indian Constitution:
  - (a) Single Citizenship.
  - (b) Universal Adult Franchise.
  - (c) Fundamental Rights
2. With reference to the Fundamental Rights answer the following:
  - (a) Why are Fundamental Rights so called?
  - (b) State their three characteristic features.
  - (c) Briefly explain the components of the Right to Equality.
3. With reference to inclusion of Right to Freedom in the Indian Constitution, state the following:
  - (a) State any three freedoms given under Article 19.
  - (b) What do these freedoms imply?
  - (c) Explain the restrictions imposed on these rights.
4. Article 20 provides for Protection in Respect of Conviction for Offences. In this respect answer the following:
  - (a) What protections are available to the citizens against conviction?
  - (b) What is meant by Preventive Detention? State the right of citizens in this respect.
  - (c) Explain the limitations of the Right to Protection.
5. With reference to the Right to Constitutional Remedies, answer the following questions:
  - (a) How has this right been given legal sanction?
  - (b) Why is this right important?
  - (c) Explain any two writs issued by courts for enforcement of this right.
6. With reference to Fundamental Rights, answer the following questions:
  - (a) What are the components of the Right to Education?
  - (b) How is the Right to Information an implied Fundamental Right?
  - (c) Write a short note on Right to Privacy.
7. With reference to the Fundamental Duties, answer the following:
  - (a) What are known as Fundamental Duties?
  - (b) Give any three Fundamental Duties.
  - (c) What is the importance of these Duties?

### **IV. Thinking Skills**

1. Name the writ that will be issued in each of the following circumstances.
  - (a) Against a person holding a public office to which he is not entitled.
  - (b) An order to an administrative authority to perform a certain duty.
  - (c) (i) For the transfer of a case from lower to higher court.  
(ii) To prohibit a lower court from proceeding in a case.
2. Fundamental Rights and Fundamental Duties go hand in hand. If this statement is holistically followed many of our problems would be solved. Give your reply with examples to prove your point.

