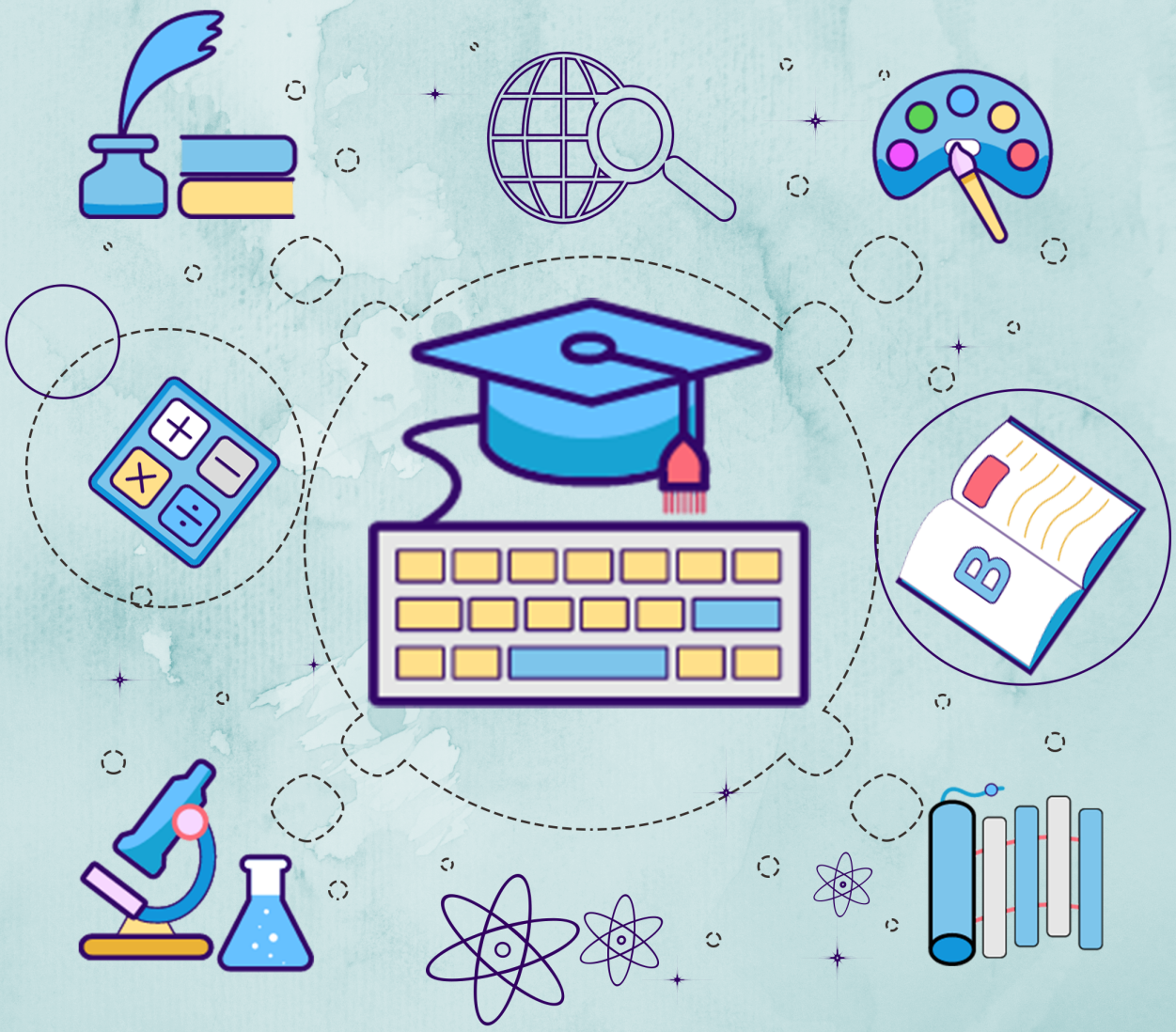
APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY

KeralaNotes



SYLLABUS | STUDY MATERIALS | TEXTBOOK PDF | SOLVED QUESTION PAPERS

www.keralanotes.com

KeralaNotes

KTU S3/S4

CONSTITUTION OF INDIA (MCN 202)

QUESTION BANK

Related Link :

- KTU S4 CSE NOTES 2019 SCHEME
- KTU S4 SYLLABUS CSE COMPUTER SCIENCE
- KTU PREVIOUS QUESTION BANK S4 CSE SOLVED
- KTU CSE TEXTBOOKS S4 B.TECH PDF DOWNLOAD
- KTU S4 CSE NOTES | SYLLABUS | QBANK | TEXTBOOKS DOWNLOAD

www.keralanotes.com

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.

1. Define the State.

The term 'State' has been used in a wider context to include all such agencies, actions of whose can be challenged in the Supreme Court if they violate any of the fundamental rights. And that definition is given in Article 12 of the Indian Constitution.

In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India"

1. Legislative and Executive Organs of the Union Government:

- Indian Government
- Indian Parliament – Lok Sabha, Rajya Sabha

2. Legislative and Executive organs of the State Government:

- State Governments
- State Legislature – Legislative Assembly, Legislative Council of State

3. All local authorities

- Municipalities – Municipal Corporations, Nagar Palika, Nagar Panchayats
- Panchayats – Zila Panchayats, Mandal Panchayats, Gram Panchayats
- District Boards
- Improvement Trusts, etc.

4. Statutory and Non-Statutory Authorities

Statutory Authorities Examples:

- National Human Rights Commission
- National Law Commission
- National Green Tribunal

Non Statutory Authorities Examples

- Lokpal and Lokayuktas
- Central Bureau of Investigation
- Central Vigilance Commission

Article 12 of the Indian Constitution & 'Other Authorities'

The 'Other Authorities' mentioned under Article 12 means all such authorities that lie within the territory of India and are controlled by the government of India through its acts and amendments.

2. What are the features of Fundamental Rights?

- Fundamental rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the SC bypassing the lower courts. He or she should first approach the lower courts.
- Some of the fundamental rights are available to all citizens while the rest are for all persons (citizens and foreigners).
- Fundamental rights are not absolute rights. They have reasonable restrictions, which mean they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
- They are justiciable, implying they are enforceable by courts. People can approach the SC directly in case of violation of fundamental rights.
- Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution.
- Fundamental rights can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.
- The application of fundamental rights can be restricted in an area which has been placed under martial law or military rule.

3. What is directive principle of state policy?

Part IV of the Constitution of India (Article 36–51) contains the Directive Principles of State Policy (DPSP).

These principles aim at ensuring socioeconomic justice to the people and establishing India as a Welfare State. The framers of the Constitution felt that certain policy directions, guidelines or instructions for the governance of the country were required to handle various problems. Legislature, executive and administration of the Independent India were expected to exercise their powers in accordance with the direction and guidelines given in this part of the Constitution.

Directive Principles in the Indian Constitution are taken from the Constitution of Ireland. But the idea and philosophy of these principles can be traced back to French declaration of human rights, American declaration of independence, liberal as well as socialist philosophy of 19th century and our own, Gandhian Concept of Sarvodaya.

The Directive Principles are classified on the basis of their ideological source and objectives. For the sake of making their study convenient, we can broadly place them in four categories, These are;

1. Economic and Social Principles;
2. Directives Based on Gandhian Principles;
3. Directive Principles relating to International Peace; and
4. Miscellaneous.

keralanotes.com

4. Explain and list some important DPSP (Directive principles of state policy)

DPSP's are guidelines or instructions for the governance of the country These directives are instruments of instructions to the Government and they contain a command to the state to promote a welfare state. The Directive Principles are not enforceable in any court, nevertheless, they are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Some of the important directive principles of state policy are:

1. State to secure a social order for the promotion of the welfare of the people, **Article 38**
2. Certain principles of policy to be followed by the state as mentioned in **Article 39.**
3. Equal justice and free legal aid, **Article 39A**
4. Organization of village panchayats, **Article 40**
5. Right to work, education, and to public assistance in certain cases, **Article 41**
6. Uniform Civil Code for the Citizens, **Article 44**

5. List the fundamental duties

The following duties have been listed in Article 51(A) of the Constitution:

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 to improve the natural environment including forests, lakes, rivers and wildlife, 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; and

(k) who is 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.

ESSAY TYPE

6. What are fundamental rights? Examine each of them.

Articles 12-35 of Indian Constitution deal with Fundamental Rights. These human rights are conferred upon the citizens of India for the Constitution tells that these rights are inviolable. Fundamental Rights, unlike ordinary legal rights, are protected and guaranteed by the constitution of the country.

Some of the rights are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.

There are six fundamental rights of Indian Constitution along with the constitutional articles related to them are mentioned below:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

There was one more fundamental right in the Constitution, i.e., the right to property. However, this right was removed from the list of fundamental rights by the 44th Constitutional Amendment. This was because this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth (property) equitably among the people.

Note: The right to property is now a legal right and not a fundamental right.

1. Right to Equality (Articles 14 – 18)

Right to equality guarantees equal rights for everyone, irrespective of religion, gender, caste, race or place of birth. It ensures equal employment opportunities in the government and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc. This right also includes the abolition of titles as well as untouchability.

2. Right to Freedom (Articles 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

keralanotes.com

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.

3. Right against Exploitation (Articles 23 – 24)

This right implies the prohibition of traffic in human beings, beggar, and other forms of forced labour. It also implies the prohibition of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

4. Right to Freedom of Religion (Articles 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.

5. Cultural and educational Rights (Articles 29 – 30)

These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

6. Right to Constitutional Remedies (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.

7. Explain direct principles of state in detail.

Part IV of the Constitution of India (Article 36–51) contains the Directive Principles of State Policy (DPSP).

These principles aim at ensuring socioeconomic justice to the people and establishing India as a Welfare State.

The Directive Principles are classified on the basis of their ideological source and objectives. For the sake of making their study convenient, we can broadly place them in four categories, These are;

1. Economic and Social Principles;
2. Directives Based on Gandhian Principles;
3. Directive Principles relating to International Peace; and
4. Miscellaneous.

1. The Economic and Social Principles India

A large number of Directive Principles are socialistic in nature and dedicated to achieve social and economic welfare of the people with the objective to establish India as a Welfare State. Some of these principles are as follows:

(i) The State shall strive to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political, shall inform all institutions of national life (Article 38).

(ii) Articles 39 says that State shall in particular, direct its policies towards securing:

(a) right to an adequate means of livelihood to all the citizens;

(b) the ownership and control of material resources shall be organised in a manner to serve the common good;

(c) the operation of the economic system does not result in the concentration of the wealth to the common detriment. In other words state shall avoid concentration of wealth in few hands;

(d) equal pay for equal work for both men and women;

(e) the protection of the strength and health of the workers; and

(f) that the childhood and youth are not exploited;

(iii) Article-42 declares that, the State shall make provisions for securing just and humane conditions of work and for maternity relief.

(iv) According to Article-43, the State shall endeavour to secure to all workers a living wage and a decent standard of life, while article 43A says that the State shall take steps to secure the participation of workers in the management of industries.

2. Directives Based on Gandhian Principles

Mahatma Gandhi was the main guiding force during our freedom struggle. He had tremendous influence over the common people as well as framers of the Constitution. There are certain directives principles as aiming at implementing

Gandhian Principles. These are as follows;

(i) State shall take steps to organise village panchayats as units of Self- Government (Article-40)

(ii) The State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas, (Article-43)

(iii) Article-45 provides for free and compulsory education to all children till the age of 14 years. This original provision was amended by 86th Constitutional Amendment Act 2002, it now declares that, "the State shall endeavour to provide early childhood care and education for all children until they complete the age of 14 years." (Article 21-A)

(iv) Article-46 lays down that the State shall promote educational and economic interests of the weaker sections of the people particularly that of the Scheduled Castes (SCs) and Scheduled Tribes (STs) and other weaker sections.

(v) Article-47 states that State shall take steps to improve public health and prohibit consumption of intoxicating drinks and drugs that are injurious to health.

keralanotes.com

(vi) Article-48 says that, State shall take steps to prohibit slaughter of cows, calves and other milk and draught cattle.

3. Directive Principles Relating to International Peace and Security

A year after the end of the Second World War, constitution making process began in India. It was obvious that members of our Constituent Assembly were deeply concerned about international peace and security. Through Directive Principles of State Policy they tried to ensure that Government of free India should render active cooperation for world peace and security.

Article 51 declares that to establish international peace and security the State shall endeavour to–

(i) promote international peace and security;

(ii) maintain just and honourable relations with the nations;

(iii)foster respect for international law and treaty obligations; and

(iv)encourage settlement of international disputes by arbitration.

4. Miscellaneous Directive Principles

The fourth category of Directive Principles Contains some general subjects which are sometimes termed as liberal principles. These are as follows;

(i) Article-44: The State shall endeavour to secure for the citizen a uniform civil code through the territory of India.

(ii) Article-48A: Directs the State to protect and improve the environment and to safeguard the forests and wildlife of the country.

(iii) Article-49: State should protect every monument or place of artistic or historic interest.

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

Application type

8. Explain the relationship between fundamental Rights and Directive Principles of State Policy

Fundamental Rights and Directive Principles of State Policy as enshrined in the **Part III** and **Part IV** of the Constitution of India respectively together comprise the human rights of an individual.

Part III deals with **Fundamental Rights** without which a human being cannot survive in a dignified manner in a civilized society. Fundamental rights are known as basic rights. They are also called individual rights or negative rights and impose negative obligations on the state not to encroach on individual liberty.

Part IV deals with **Directive Principles of State Policy.** They are positive rights and impose positive obligations on the state to not only acknowledge the Fundamental Rights of an individual but also to achieve certain socio-economic goals.

Regarding the constitutional relationship between Fundamental Rights and Directive Principles, the primary distinction between the two relates to their enforceability in the court of law. Part III; Fundamental rights of the Constitution are enforceable against the state but Article 37 expressly provided that Part IV; directive principles are not enforceable in a court.

In the landmark judgment of **State of Madras v. Srimathi Champakam [[1951] SCR 525],** Justice Das stated that directive principles were expressly made unenforceable by Article 37 and therefore could not override the fundamental rights found in Part III, which were enforceable pursuant to **Article 32**. The court opined that fundamental rights were sacrosanct and could not be curtailed by Directive Principles and asserted that the directive principles although important in their own respect were required to adhere to the Fundamental Rights and in the case of conflict **Part III** would prevail over **Part IV.**

However, in later decisions, the courts were of the view that Directive principles and fundamental rights cannot be isolated because there is an interrelation between the two. And to achieve the balance between the two, the court needs to resort to harmonious construction The Supreme Court in the **State of Kerala v. N.M Thomas [(1976) 2 SCC 310],** ruled that the Directive Principles and Fundamental rights should be construed in harmony with each other and every attempt should be made by the court to resolve any apparent inconsistency between them.

The Fundamental right represents civil and political rights and the directive principles embody social and economic rights. Merely because the directive principles are non-justiciable by the judicial process does not mean that they are of subordinate importance. Therefore, it is the duty of the state to achieve the right amount of balance in the wider interests of the public. The Supreme Court ruled this position in **R. Coelho v. State of T.N. [(1999) 7 SCC 580] SC** and said that it is the responsibility of the government to adopt a middle path between individual liberty (Fundamental Rights) and public good (Directive Principles).

9. Examine the scope of freedom of speech and expression underlying the constitution.

Article 19(1)(a) of the Constitution of India guarantees to all its citizens the right to freedom of speech and expression. The law states that, "all citizens shall have the right to freedom of speech and expression". Under **Article 19(2)** "reasonable restrictions can be imposed on the exercise of this right for certain purposes. The freedom of speech under **Article 19(1)(a)** includes the right to express

keralanotes.com

one's views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc. It thus includes the freedom of communication and the right to propagate or publish opinion. But this right is subject to reasonable restrictions being imposed under **Article 19(2)**. Free expression cannot be equated or confused with a license to make unfounded and irresponsible allegations against the judiciary.

It is important to note that a restriction on the freedom of speech of any citizen may be placed as much by an action of the State as by its inaction. Thus, failure on the part of the State to guarantee to all its citizens irrespective of their circumstances and the class to which they belong, the fundamental right to freedom of speech and expression would constitute a violation of **Article 19(1)(a)**.

The fundamental right to freedom of speech and expression is regarded as one of the most basic elements of a healthy democracy for it allows its citizens to participate fully and effectively in the social and political process of the country. In fact, the freedom of speech and expression gives greater scope and meaning to the citizenship of a person extending the concept from the level of basic existence to giving the person a political and social life.

This right is available only to a citizen of India and not to foreign nationals. This right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence.

10. The thumb impression of an accused is taken by the police against his will. He contends that this is a violation of his rights under Art 20(3) of the constitution. Decide.

Article 20(3) provides that no person accused of any offence shall be compelled to be a witness against himself. The right conferred under article 20(3) is also known as protection against self incrimination or right to silence. Self incrimination has been defined as acts or declarations either as testimony at trial or prior to trial by which one implicates himself being involved in a crime.

The Fundamental Right guaranteed under Article 20(3) is a protective umbrella against testimonial compulsion for people who are accused of an offence and are compelled to be a witness against themselves.

This right is based on following assumptions:

• The burden is on the State or the prosecution to prove that the accused is guilty and is involved in crime.

• Till an accused is proved to be guilty, he is presumed to be innocent

• That the right of the accused against self-incrimination, namely, the right to be silent and that he cannot be compelled to incriminate himself.

It is a protection available to a person accused of an offence. It is a protection against compulsion to be a witness against oneself and it is a protection against such "Compulsion" as resulting in his giving evidence against himself.

Giving thumb impressions, or impression of foot or palm or fingers or specimens of writings or exposing body for the purpose of identification are not covered by the expression 'to be a witness' under Article 20(3). For the benefit of the Courts, the Supreme Court has distinguished between the terms "witness" and "furnish evidence", the former including furnishing statements from one's own knowledge and the latter referring to simply presenting documents required by the court under which protection under Article 20(3) cannot be sought.

keralanotes.com