

MODULE 2

DEFINITION OF STATE

The organization of social life which exercises sovereign power in behalf of the people. Or it is a body of people occupying a definite territory and politically organized under one government.

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.**

Local authorities mean – Panchayat, Municipalities, District Courts, Improvement trusts etc.

However, the term ‘**other authorities**’ create some problem in interpretation, the Supreme Court said that other authorities means those authorities or body created by the Constitution or by **statue** and **power** is conferred on them, such as LIC, GIC, Rajasthan Electricity Board, DDA, RBI, SEBI, IOC, ONGC, HP, SAIL, GAIL, BHEL etc. are state.

According to Article 12 of the Constitution of India, the term ‘State’ can be used to denote the union and state governments, the Parliament and state legislatures and all local or other authorities within the territory of India or under the control of the Indian government.

Over the period of time, the Supreme Court has explained the ambit of ‘State’ to include Corporation such as LIC and ONGC since they perform tasks “very close to governmental or sovereign functions.” In fact, the term ‘State’ also accommodates any authority that’s created by the Constitution of India and has the power to make laws. It need not perform governmental or sovereign functions.

FUNDAMENTAL RIGHTS-MEANING AND IMPORTANCE

Rights are rules of interaction between people. They place constraints and obligations upon the actions of the state and individuals or groups. Rights are defined as claims

of an individual that are essential for the development of his or her own self and that are recognized by society or State. These are legal, social, or ethical principles of freedom or entitlement and are the fundamental normative rules about what is allowed to people or owed to people, according to some legal system, social convention, or ethical theory. Rights are often considered fundamental to civilization, being regarded as established pillars of society and culture.

Rights are claims that are essential for the existence and development of individuals. In that sense there will a long list of rights. Whereas all these are recognized by the society, some of the most important rights are recognized by the State and enshrined in the Constitution. Such rights are called fundamental rights. These rights are fundamental because of two reasons. First, these are mentioned in the Constitution which guarantees them and the second, these are justifiable, i.e. enforceable through courts. Being justifiable means that in case of their violation, the individual can approach courts for their protection. If a government enacts a law that restricts any of these rights, it will be declared invalid by courts.

Fundamental Rights are individual rights and without them democracy is meaningless, Fundamental Rights cannot be violated under all circumstances. A society cannot develop or proper effectively without Fundamental Rights. Fundamental Rights are given to the individuals mostly against the state because state is supported to be the biggest violator of individual rights. However, some of the articles has been designed to protect the individuals not only from the state but also from other individuals. Fundamental Right is called Fundamental because it is most important pride for and wholistic development of personality of the individual. It is also called as fundamental because a person can directly move to Supreme Court in case of its violation.

- **The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35.**
- **Part III of the Constitution is rightly described as the *Magna Carta* of India.**
- **It contains a very long and comprehensive list of ‘justifiable’ 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.
- Prevent the establishment of an authoritarian and despotic rule in the country.
- 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)
 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)
- 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)

Right to equality is very important in a society like ours. The purpose of this right is to establish the rule of law where all the citizens should be treated equal before the law. It has five provisions (Articles 14–18) to provide for equality before law or for the protection of law

to all the persons in India and also to prohibit discrimination on the grounds of religion, race, caste, sex or place of birth.

It implies:

- 1. Equality before law and equal protection of laws (Article 14) :** The Constitution guarantees that all citizens will be equal before law. It means that everyone will be equally protected by the laws of the country. No person is above law. It means that if two persons commit the same crime, both of them will get the same punishment without any discrimination. Or **It means absence of any special privileges in favors of any person.**
- 2. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15):** The State cannot discriminate against a citizen on the basis of religion, race, caste, sex or place of birth. This is necessary to bring about social equality. Every citizen of India has equal access to shops, restaurants, and places of public entertainment or in the use of wells, tanks or roads without any discrimination.
- 3. 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. The State cannot discriminate against anyone in the matter of public employment. All citizens can apply and become employees of the State. Merits and qualifications will be the basis of employment. However, there are some exceptions to this right. There is a special provision for the reservation of posts for citizens belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes (OBCs)
- 4. Abolition of untouchability and prohibition of its practice (Article 17).**
- 5. Abolition of titles except military and academic (Article 18). : :** All the British titles like Sir (Knighthood) or Rai Bahadur which were given to the British loyalists during the British rule, have been abolished because they created distinctions of artificial nature. However, the President of India can confer civil and military awards to those who have rendered meritorious service to the nation in different fields. The civil awards such as Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri and the military awards like Veer Chakra, Paramveer Chakra, Ashok Chakra are conferred

RIGHT TO FREEDOM (ARTICLES 19–22)

The Constitution of India provides Right to Freedom to all its citizens. This Right is stipulated under Articles 19-22. The following are the four categories of Rights to Freedom.

1. Six Freedoms: Article 19 of the Constitution provides for the following six freedoms:

- (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.**

2. Protection in respect of conviction for offences (Article 20) : No one can be convicted for an act that was not an offence at the time of its commission, and no one can be given punishment greater than what was provided in the law prevalent at the time of its commission. Also, no one can be prosecuted and punished for the same offence more than once and can be forced to give witness against his or her own self.

3. Protection of life and personal liberty (Article 21): no one can be deprived of his or her life or personal liberty except according to the procedure established by law.

4. 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

5. Protection against arrest and detention in certain cases (Article 22): whenever a person is arrested, he or she should be informed, as soon as it is possible, of the grounds for arrest and should be allowed to consult and to be defended by a legal practitioner of his or her choice. Moreover, the arrested person must be produced before the nearest magistrate within 24 hours of such an arrest excepting a person who has been arrested under preventive detention law. The case of the person arrested under preventive detention law has also to be referred to an Advisory Board within a period of three months of his or her arrest.

RIGHT AGAINST EXPLOITATION (ARTICLES 23–24)

- (a) **Prohibition of traffic in human beings and forced labour (Article 23):** It prohibits traffic in human beings, forced labour. The ‘traffic in human beings’ include
- **Selling and buying of men, women and children like goods;**
 - **Immoral traffic in women and children, including prostitution;**
 - **Devadasis and**
 - **Slavery**

(b) Prohibition of employment of children in factories, etc. (Article 24). 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. This right aims at eliminating one of the most serious problems, child labour, that India has been facing since ages. Children are assets of the society. It is their basic right to enjoy a happy childhood and get education.

RIGHT TO FREEDOM OF RELIGION (ARTICLE 25–28)

- 1. 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.
- 2. Freedom to manage religious affairs (Article 26).** : : Subject to public order, morality and health, every religious group 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. 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. No person shall be compelled to pay any tax, the proceeds of which are specifically used in payment of expenses the incurred on the promotion or maintenance of any particular religion or religious sect.
- 4. Freedom for attending religious instruction or worship in certain educational institutions (Article 28)**

Cultural and Educational Rights (Articles 29–30)

India is the largest democracy in the world having diversity of culture, scripts, languages and religions. The minorities are also equally important for its successful working. Therefore, protection of language, culture and religion of the minorities becomes essential so that the minorities may not feel neglected or undermined under the impact of the majority rule. In Articles 29-30 two major provisions have been made:

(a) 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.

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

Right to constitutional remedies (Article 32)

Since Fundamental Rights are justiciable, they are just like guarantees. They are enforceable, as every individual has the right to seek the help from courts, if they are violated. But in reality it is not so. Encroachment or violation of Fundamental Right in our day to day life is a matter of great concern. our Constitution provides legal remedies for the protection of our Fundamental Rights. This is called the Right to Constitutional Remedies stipulated in Article 32. When any of our rights are violated, we can seek justice through courts. We can directly approach the Supreme Court that can issue directions, orders or writs(**writs as extraordinary remedies to uphold the rights and liberties**) for the enforcement of Fundamental Rights.

- **Right to move the Supreme Court for the enforcement of fundamental rights including the writs 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.
 2. **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
 3. **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
 4. **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.
 5. **Quo warrant**o (Article 32): 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)

- The **Directive Principles of State Policy of India** are the guidelines or principles given to the institutes governing the State of India. These provide Part IV (Article 36-51) of the Constitution of India, are not enforceable by any court, but the principles laid down there in 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. The principles have been inspired by the Directive Principles given in the Constitution of Ireland(which had copied it from the Spanish Constitution.) which are related to social justice, economic welfare, foreign policy, and legal and administrative matters. Dr. B.R. Ambedkar described these principles as ‘novel features’ of the Indian Constitution.

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Characteristics

While debating on DPSP in the Constituent Assembly, Dr. Ambedkar stated on 19 November 1948 as given below highlighting that the DPSP shall be the basis of future governance of the country.

It is the intention of this Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country.

Directive Principles of State Policy aim to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state. Though the Directive Principles are non-justifiable rights of the people but fundamental in the governance of the country, it shall be the duty of the State to apply these principles in making laws per Article 37. Besides, all executive agencies of union and states should also be guided by these principles. Even the judiciary has to keep them in mind in deciding cases.

- **It denotes the ideals that the State should keep in mind while formulating policies and enacting laws.**
- **The Directive Principles resemble the ‘Instrument of Instructions’**
- **It promotes the concept of a ‘welfare state’ and not that of a ‘police state’**
- **They are not legally enforceable by the courts.**

CLASSIFICATION OF THE DPSP

Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-

1. **Socialistic Principles**
2. **Gandhian Principles**
3. **Liberal-intellectual Principles**

The details of the three types of DPSPs are given below:

Socialistic Principles

These principles reflect the ideology of socialism. They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:

- **To promote the welfare of the people (Article 38)** by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities
- **To promote equal justice and to provide free legal aid to the poor (Art 39)**
- **Equitable distribution of material resources of the community for the common good (Art 39)**
- **Prevention of concentration of wealth (Art 39)**
- **Equal pay for equal work for men and women (Art 39)**
- In cases of unemployment, old age, sickness and disablement, secure citizens: (**Article 41**)

Right to work

Right to education

Right to public assistance,

- **Make provision for just and humane conditions of work and maternity relief (Article 42)**
 - **To secure a living wage, a decent standard of life (Art 43)**
 - **To secure the right to work, to education (Art 43)**

Gandhian Principles

- **These principles are based on Gandhian ideology** used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state **To organise village panchayats to function as units of self-government (Article 40)**
- **To promote Village and cottage industries (Art 43)**

- **To promote the educational and economic interests of SCs, STs, and other weaker sections of the society (Art 46)**
- **To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47)**
- **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. Under various articles, they direct the state to:

- **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)**
- **To protect monuments, places and objects of artistic or historic interest (Article 49)**
- **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 (Article 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

- A duty is something that someone is expected or required to do. The society expects the citizens to do certain things which are collectively known as duties. Some such important duties have been incorporated in the Indian Constitution also. **The original constitution contained only the fundamental rights and not the fundamental duties. Later in 1976, 11 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.**

Nature of Fundamental Duties

These duties are in the nature of a code of conduct. Since they are unjusticiable, there is no legal sanction behind them. As you will find, a few of these duties are vague. For example, a common citizen may not understand what is meant by 'composite culture', 'rich heritage' 'humanism', or 'excellence in all spheres of individual and collective activities'. They will realize the importance of these duties only when these terms are simplified. A demand has been made from time to time to revise the present list, simplify their language and make them more realistic and meaningful and add some urgently required more realistic 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.
 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.**
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**