



# Constitution of India

## Module 2

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### Module Syllabus

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### Part 3 – Fundamental Rights

#### State

- Mainly includes the three-tier government system (*by Constitution*):
  - Union Government and Parliament of India
  - State 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.
- Any Agency of Government (public or private) (*by supreme Court*)

“The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.”


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### Part 3 – Fundamental Rights

#### Introduction to Fundamental Rights

- Part III of the Constitution is rightly described as the *Magna Carta* of India
- Fundamental Rights in Indian Constitution are **more elaborate** than those found in the Constitution of any other country in the world.
- They **prevent the establishment of an authoritarian rule** in the country, and protect the liberty of the people.
- The Fundamental Rights are named so because they are the **fundamental law of the land**.
- The Rights have their origins in many sources, including *England's Bill of Rights*, the *United States Bill of Rights* and *France's Declaration of the Rights of Man*.

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### Part 3 – Fundamental Rights

- The fundamental rights were included in the constitution because they were considered **essential for the development of the personality** of every individual and to preserve human dignity.
- Poor people may not have the means to do so and therefore, in the public interest, **anyone can commence litigation in the court** on their behalf. This is known as "public interest litigation".
- Judiciary have acted *suo moto* on their own on the basis of media reports.



### Part 3 – Fundamental Rights

#### Classifications

- Based on nature
  - Natural rights (like the right to live, right to self protection)
  - Legal rights (like right to equality, right to education).
- Based on availability
  - For Citizens only
  - For Citizens and aliens
- Character
  - Negative (limiting the authority of state)
  - Positive (confering privileges to persons)



### Part 3 – Fundamental Rights

#### General Nature (features) of Fundamental Rights

1. Some of them are available **only for citizens, some are for aliens** too.
2. The state can **impose reasonable restrictions** on them. However, reasonability of restrictions is to be decided by the Judiciary.
3. They are **justiciable**, i.e., allow persons to approach the judiciary if violated. (directly approach Supreme Court).
4. They can be curtailed or **changed only by "Constitution Amendment Acts"**
5. The six rights can be **suspended only** when emergency is declared on the grounds of war or external aggression (i.e., **external emergency**) and not on the ground of armed rebellion (i.e., internal emergency).
6. Their application can be **restricted while martial law** (Military rule) is in force in any area.



### Part 3 – Fundamental Rights

#### List of Fundamental Rights

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and educational rights
6. Rights to constitutional remedies



Part 3- Fundamental Rights

1. Right to Equality (Articles 14 to 18)

- All are equal before the law and also nobody is above the law. This is called "Rule of Law".
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- Right to access public places, roads, use of water tanks, wells etc. made of State funds.
- All citizens enjoy equal opportunities to take up government employment.
- Untouchability is punishable under law.
- All the 'titles' are abolished. No citizen shall receive titles from another country.
- State is not precluded from making special provisions for women and children or any socially and educationally backward classes of citizens, including the Scheduled Castes and Scheduled Tribes.



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Part 3- Fundamental Rights

2. Right to Freedom (Articles 19 to 22)

- Protection of six rights
  1. Freedom of speech and expression
  2. Freedom to assemble peacefully without arms
  3. Freedom to form associations or unions
  4. Freedom to move freely throughout Indian territory
  5. Freedom to reside and settle in any part of India
  6. Freedom to practice any Profession, Occupation, Trade or Business
- Protection in respect of conviction for offences
  - convicted only if one has committed something against law.
  - A person cannot witness against himself.
  - Cannot be punished twice for the same offence (double jeopardy)




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Part 3- Fundamental Rights

- Right to life and personal liberty
- Right to education (free and compulsory education upto 14 years)
- Protection against arrest
  - 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.
- Law of preventive detention - detention of a person where the evidence against him is not sufficient for his conviction by a court (different from punitive detention). Preventive detention is allowed, however, is subjected to limitations to avoid misuse.



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Part 3- Fundamental Rights

3. Right against Exploitation(Articles 23 to 24)

- Prohibition of human trafficking
  - selling and buying of men, women and children like goods;
  - immoral traffic in women and children, including prostitution
  - slavery.
- Prohibition of forced labour (begar) or labour without remuneration.
- However, it permits the State to impose compulsory service for public purposes, including community service.
- Prohibition of employment of children under 14 years.



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Part 3- Fundamental Rights

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

- Basically **three rights**
  - Freedom of conscience
  - Right to profess/preach one’s religion
  - Right to practice (rituals)
  - Right to propagate (conversion other than forced)
- Right of all **religious denominations to manage their own affairs** in matters of religion, set up institutions, and own, acquire and manage a property.
- No person shall be **compelled to pay any taxes for promoting any religion**.
- **No religious instruction** shall be provided in any educational institution wholly maintained out of State funds.



Part 3- Fundamental Rights

5. Cultural and Educational Rights (Articles 29 to 31)

- **Protection of interests of minorities** – any group has right to keep their language, script and culture.
- **No citizen shall be denied admission** into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
- All minorities, whether based on religion or language, shall have the **right to establish and administer educational institutions** of their choice.



Part 3- Fundamental Rights

6. Right to Constitutional Remedies (Articles 32 to 35)

- 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**.
- The **Supreme Court shall have power to issue directions** or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights.
- It is thus clear that the **Supreme Court** has been constituted as the **defender and guarantor** of the fundamental rights of the citizens.



Part 4 – Directive Principles

Introduction to Directive Principles of State Policy (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.




### Part 4 – Directive Principles

#### Classification of Directive Principles

**1. Socialistic Principles**

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state

- To secure and protect a social order which stands for the welfare of the people (Article 38).
- The State shall direct its policy towards securing: (a) adequate means of livelihood to all citizens, (b) a proper distribution of the material resources of the community for the common good, (c) the prevention of concentration of wealth to the common detriment, (d) equal pay for equal work for both men and women, (e) the protection of the strength and health of workers and avoiding circumstances which force citizens to enter avocations unsuited to their age or strength, (f) protection of childhood and youth against exploitation of moral and material abandonment (Article 39).




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### Part 4 – Directive Principles

#### Classification of Directive Principles

- The State shall secure equal justice and 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 secure just human 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).
- Weaker sections of the society are given a proper care (Article 46).
- To raise the level of nutrition and the standard of living of people and to improve public health (Article 47).



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### Part 4 – Directive Principles

#### Classification of Directive Principles

**2. Gandhian Principles**

These principles are based on Gandhian ideology enunciated during the national movement.

- To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40).
- To promote cottage industries on an individual or co-operation basis in rural areas (Article 43).
- To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies (Article 43B).




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### Part 4 – Directive Principles

#### Classification of Directive Principles

- To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46).
- 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).



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## Part 4 – Directive Principles

### Classification of Directive Principles

#### 3. Liberal – Intellectual Principles

The principles included in this category represent the ideology of Liberalism

- To secure for all citizens a **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 organise **agriculture and animal husbandry** on modern and scientific lines (Article 48).
- To **protect and improve the environment** and to safeguard forests and wild life (Article 48 A).



## Part 4 – Directive Principles

### Classification of Directive Principles

- To **protect monuments**, places and objects of artistic or historic interest which are declared to be of national importance (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; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).



## Part 5 – Fundamental Duties

### Fundamental Duties

- The Fundamental Duties are one's obligations towards the country.
- They were included on 11th December, 1976 by the 42nd Amendment.
- Many of the other major democracies do not contain a table of Fundamental Duties.
- This is inspired from USSR
- This is applicable only for citizens and not aliens.
- They contain just a codification of tasks integral to the Indian way of life.
- There are 11 Fundamental Duties



## Part 5 – Fundamental Duties

### List of Fundamental Duties (Article 51A)

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 transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;



Part 5 – Fundamental Duties

- 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 and to have compassion for living creatures;
- 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; and
- 11. To provide opportunities for education to his child or ward between the age of six and fourteen years. (This duty was added by the 86th Constitutional Amendment Act, 2002.)



END OF MODULE 2

