

# INDIAN POLITY

**BA [POLITICAL SCIENCE]  
First Semester  
(IDE-POL-001-MD-1110)**



**INSTITUTE  
OF DISTANCE  
EDUCATION** **IDE**  
Rajiv Gandhi University

## **RAJIV GANDHI UNIVERSITY**

Arunachal Pradesh, INDIA-791112

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**June 2024**

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Further Information of the Institute of Distance Education courses may be obtained from the University's Office at Rono Hills, Doimukh, Itanagar-791112.

## About the University

Rajiv Gandhi University (formerly Arunachal University) is a premier institution for higher education in the state of Arunachal Pradesh and has completed twenty-five years of its existence. Late Smt. Indira Gandhi, the then Prime Minister of India, laid the foundation stone of the university on 4th February, 1984 at Rono Hills, where the present campus is located.

Since its inception, the university has been trying to achieve excellence and fulfill the objectives as envisaged in the University Act. The university received academic recognition under Section 2(f) from the University Grants Commission on 28th March, 1985 and started functioning from 1st April, 1985. It got financial recognition under section 12-B of the UGC on 25th March, 1994. Since then Rajiv Gandhi University, (then Arunachal University) has carved a niche for itself in the educational scenario of the country following its selection as a University with potential for excellence by a high-level expert committee of the University Grants Commission from among universities in India.

The University was converted into a Central University with effect from 9th April, 2007 as per notification of the Ministry of Human Resource Development, Government of India.

The University is located atop Rono Hills on a picturesque tableland of 302 acres overlooking the river Dikrong. It is 6.5 km from the National Highway 52-A and 25 km from Itanagar, the State capital. The campus is linked with the National Highway by the Dikrong Bridge.

The teaching and research programmes of the University are designed with a view to play a positive role in the socio-economic and cultural development of the State. The University offers Undergraduate, Post-graduate and Ph.D. programmes. The Department of Education also offers the B.Ed. programme.

There are fifteen colleges affiliated to the University. The University has been extending educational facilities to students' from the neighbouring states, particularly Assam. The strength of students in different departments of the University and in affiliated colleges has been steadily increasing.

The faculty members have been actively engaged in research activities with financial support from UGC and other funding agencies. Since inception, a number of proposals on research projects have been sanctioned by various funding agencies to the University. Various departments have organized numerous seminars, workshops and conferences. Many faculty members have participated in national and international conferences and seminars held within the country and abroad. Eminent scholars and distinguished personalities have visited the University and delivered lectures on various disciplines.

The academic year 2000-2001 was a year of consolidation for the University. The switch over from the annual to the semester system took off smoothly and the performance of the students registered a marked improvement. Various syllabi designed by Boards of Post-graduate Studies (BPGS) have been implemented. VSAT facility installed by the ERNET India, New Delhi under the UGC-Infonet program, provides Internet access.

In spite of infrastructural constraints, the University has been maintaining its academic excellence. The University has strictly adhered to the academic calendar, conducted the examinations and declared the results on time. The students from the University have found placements not only in State and Central Government Services, but also in various institutions, industries and organizations. Many students have emerged successful in the National Eligibility Test (NET).

Since inception, the University has made significant progress in teaching, research, innovations in curriculum development and developing infrastructure.

## About IDE

The formal system of higher education in our country is facing the problems of access, limitation of seats, lack of facilities and infrastructure. Academicians from various disciplines opine that it is learning which is more important and not the channel of education. The education through distance mode is an alternative mode of imparting instruction to overcome the problems of access, infrastructure and socio-economic barriers. This will meet the demand for qualitative higher education of millions of people who cannot get admission in the regular system and wish to pursue their education. It also helps interested employed and unemployed men and women to continue with their higher education. Distance education is a distinct approach to impart education to learners who remained away in the space and/or time from the teachers and teaching institutions on account of economic, social and other considerations. Our main aim is to provide higher education opportunities to those who are unable to join regular academic and vocational education programmes in the affiliated colleges of the University and make higher education reach to the doorsteps in rural and geographically remote areas of Arunachal Pradesh in particular and North-eastern part of India in general. In 2008, the Centre for Distance Education has been renamed as —Institute of Distance Education (IDE).<sup>1</sup>

Continuing the endeavor to expand the learning opportunities for distant learners, IDE has introduced Post Graduate Courses in 5 subjects (Education, English, Hindi, History and Political Science) from the Academic Session 2013-14.

The Institute of Distance Education is housed in the Physical Sciences Faculty Building (first floor) next to the University Library. The University campus is 6 kms from NERIST point on National Highway 52A. The University buses ply to NERIST point regularly.

Outstanding Features of Institute of Distance Education:

**i) At Par with Regular Mode**

Eligibility requirements, curricular content, mode of examination and the award of degrees are on par with the colleges affiliated to the Rajiv Gandhi University and the Department(s) of the University.

**ii) Self-Instructional Study Material (SISM)**

The students are provided SISM prepared by the Institute and approved by Distance Education Council (DEC), New Delhi. This will be provided at the time of admission at the IDE or its Study Centres. SISM is provided only in English except Hindi subject.

**iii) Contact and Counseling Programme (CCP)**

The course curriculum of every programme involves counseling in the form of personal contact programme of duration of approximately 7-15 days. The CCP shall not be compulsory for BA. However for professional courses and MA the attendance in CCP will be mandatory.

**iv) Field Training and Project**

For professional course(s) there shall be provision of field training and project writing in the concerned subject.

**v) Medium of Instruction and Examination**

The medium of instruction and examination will be English for all the subjects except for those subjects where the learners will need to write in the respective languages.

**vi) Subject/Counseling Coordinators**

For developing study material, the IDE appoints subject coordinators from within and outside the University. In order to run the PCCP effectively Counseling Coordinators are engaged from the Departments of the University, The Counseling-Coordinators do necessary coordination for involving resource persons in contact and counseling programme and assignment evaluation. The learners can also contact them for clarifying their difficulties in then respective subjects.

# **SYLLABI-BOOK MAPPING TABLE**

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## UNIT-I

### PREAMBLE TO THE CONSTITUTION OF INDIA

#### Structure

- 1.0 Objectives
- 1.1 Introduction
- 1.2 The Preamble
  - 1.2.1 Source of authority
  - 1.2.2 Type of Government
  - 1.2.3 Major Commitments of the Constitution
- 1.3 Let Us Sum Up
- 1.4 Key Words
- 1.5 Check Your Learning
- 1.6 Suggested Readings
- 1.7 Hints/Answers to Questions in Check Your Progress

Preamble literally means an introduction or an opening statement. The constitution of India also begins with a preamble but it is not the integral part of it. The preamble briefly outlines the major contents of a constitution. The Preamble to the Constitution of India outlines the major objectives of the political system. It also contains the ideological basis of the Constitution of India.

#### 2.0 Objectives

After reading this unit, you will be able

- to explain the meaning of the Preamble;
- to describe the ideological base of the Constitution; and
- to identify the major commitments of the Constitution.

#### 2.1 Introduction

Most of the modern constitutions of the world are based on certain ideology or the other. But the Constitution of Indian is not necessarily based on one particular ideology, rather the various shades of ideologies and principles like liberalism, socialism and Gandhian principles are found reflected in it. The French Revolution, the Russian Revolution and the American War of Independence also greatly influenced the western educated members of the Constituent Assembly and hence, many

western concepts are found to be enshrined in our Constitution. Further, the contemporary situations like a century of freedom struggle, trauma of partition and communal riots, famines and poverty also influenced the making of the Indian Constitution. Moreover, there is multiplicity of race, caste, community, religion, region, tribe and language in India. These centrifugal forces had to be contained and the multiplicity of interest had to be accommodated. The socio-political realities of that time greatly influenced the shape of Indian Constitution.

## **1. 2. Preamble**

To know the base of a Constitution, the study of the contents of the Preamble is very much essential. Preamble means an introduction or preliminary statement of a formal document. It expresses the general purpose and principle for which a Constitution stands. So, it is the heart and soul of the Constitution. The Indian Constitution also has a Preamble. It contains the philosophy on which the Constitution is based. The clauses of the Constitution of Indian aim at the realization of the principles mentioned in the Preamble. It is the base of the Constitution and contains the basic principles and objectives of Indian Constitution. For the philosophy underlying the Preamble, we must look back to the historic objective resolution moved by Pandit Nehru which was adopted by the Constituent Assembly. This Resolution of January 22, 1947 inspired the shaping of the Indian Constitution throughout the subsequent stages. The ideal embodied in the said resolution is clearly reflected in the Preamble to the Constitution which summarizes the aims and objects of the Constitution. The Preamble reads as follows:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to Constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC and to secure to all its citizens:- JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and unity and integrity of the nation;

IN OUR CONSTITUENT ASSEMBLY this twenty six day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO ourselves this Constitution”

For a proper appreciation of the aims and aspirations embodied in our Constitution, we must turn to the various expressions contained in the Preamble.

The Preamble can be divided into three parts which deals with

### **1.2.1 Source of authority**

The expression, “We, the people of India.....enact and give to ourselves this Constitution” clearly demonstrates that the people are the ultimate source of authority and the sovereignty of the



nation rests with them. It speaks of popular participation and popular sovereignty. People are the real makers of the Constitution.

### 1.2.2 Type of Government

The words like Sovereign, Socialist, Secular and Democratic Republic speak about the type of political system or government in India. The word *Sovereign* shows that India is independent in its internal as well as external affairs. Sovereignty implies freedom of national action, both internal as well as external. India is free from the control of any other nation. The word Socialism in Indian context means *socialistic pattern* of society and polity where there will be mixed economy and equal opportunities to all. It reflects the fact that India is committed to secure justice to all its citizens by ending all forms of exploitation and by securing equitable distribution of income, resources and wealth. And all these have to be secured by peaceful, democratic and constitutional means. The words *Socialist* and *Secular* were added to the Preamble by the 42<sup>nd</sup> Constitution Amendment Act of 1976. The word *Secular* or *Secular State* means the State protects all religions equally and does not uphold any religion as state religion. The state will not discriminate against anybody on the basis of religion. Everybody will be given equal opportunities to profess, practise and propagate his own religion, faith and belief. In other words, India has adopted secularism by guaranteeing equal freedom to all religions. The expression Democratic denotes that India believes in the principles like *universal adult franchise, equality before law, equal opportunity* and *freedom of speech and expressions*. The Preamble declares India to be a democratic state wherein the authority of the government rests upon the sovereignty of the people; the government is responsible before the people for its acts. The representative and responsible character of the government symbolises the self-rule of the people. The people are sovereign and enjoy fundamental rights and freedoms which are enshrined in the Constitution. The term *Republic* denotes that the head of the State is elected or chosen by the people. India is not ruled by a king or a nominated head of the State; rather India has an elected head of the State, the President, who wields power for a fixed term only. The head of the State does not hold office by virtue of any status or birth.

### Check Your Progress-I

- |    |  |
|----|--|
| 1  | What is Preamble?  |
| 2. | Who is the source of real sovereignty?                                       |
| 3. | What is sovereignty?   |
| 4. | Which words were added to the Preamble by 42nd Constitutional Amendment Act? |

### 1.2.3 Major Commitments of the Constitution

The Constitution of India has its own commitments. The commitments are reflected in the objectives listed in the Preamble to the Constitution. Some important among them are as follows:

- (a) **Justice:** The Preamble aims at securing to all citizens justice - social, economic and political. Though it is not easy to give a precise meaning of the term justice, by and large, it can be stated that the idea of justice is equated with equity and fairness. It is an ethical and moral concept. In simple term, justice implies giving his due share to everybody. *Social justice*, therefore, would mean that all sections of society irrespective caste, creed, sex, place of birth, religion or language, would be treated equally and no one would be discriminated on any of these grounds. The constitution of India prohibits discrimination of any kind. One of the key ideals of the freedom movement was to secure a new social order based on social justice and equality. For this purpose, the constitution grants the right to equality to all its citizens, makes the untouchability a crime and grants special protection to the weaker sections of the society for securing the social equality and justice.

Similarly, *economic justice* would mean that all the natural resources of the country would be equally available to all the citizens and no one would suffer from any undeserved want. There shall not be any discrimination between man and man on the basis of income, wealth and other economic status. The economic justice involves the equal distribution of wealth by removing the concentration and monopolistic control over means of production and distribution of wealth. It aims to secure adequate opportunities to all for earning their livelihood.

The political justice, on the other hand, entitles all citizens equal political rights such as right to vote, right to contest elections and right to hold public office. It stands for the grant of equal political rights without any discrimination on the basis of caste, colour, creed, religion, sex or place of birth. The Preamble provides for liberal democracy in which all the people have equal right to participate in the political process.

- (b) **Liberty:** The Preamble also keeps liberty of thought, expression, belief, faith and worship as its ideals. It means that citizens would be free to follow a religion of their own choice and express their views freely and frankly. The State would not interfere in all these matters. Liberty denotes freedom. Everyone has the freedom to express her view openly. The people can even criticise the policies of the government without fear. Liberty, as promised in the Preamble, has been given to the people in the form of

Fundamental Rights. The Fundamental Rights guarantees the freedom of speech and expression, freedom to form associations and unions and the freedom of religion. Liberty of faith and worship is designed to strengthen the spirit of secularism in India.

- (c) **Equality:** The Preamble also provides for equality of status and opportunity. It implies that all the citizens would be able to make full use of their talents without any discrimination and develop their talents and personality to the maximum extent possible. It speaks of equality before law and equal protection of law without discrimination on the basis of religion, caste, race, sex and place of birth. Equality before law means everyone is equal in the eye of the law irrespective of the status and sex. Equal protection of law means there will be equality of treatment according to the provisions of the law.
- (d) **Fraternity:** Lastly, the Preamble also aims at developing fraternity assuring the dignity of individual and the unity and integrity of the nation. It implies that the constitution of India will strive to develop a sense of brotherhood among the citizens of India without any consideration to his/her or her status in the society. The constitution will also strive to protect the individual dignity of every citizen. Such a brotherhood would also lead to the unity and integrity of the nation. Fraternity seeks to secure a feeling of spiritual and psychological unity without consideration of high or low in the society. The individual dignity of the citizen is very essential to maintain unity and integrity of the nation.

In a nutshell, the Preamble aims at a social order wherein the people would be sovereign. The government would be elected by and accountable to the people. The powers of the government would be restricted by the rights of people and people would have ample opportunities to develop their talents. Though the Preamble is not technically enforceable through courts of law, it is useful in interpreting the various provisions of the Constitution and acts as a beacon in conflicting situations.

#### **Check Your Progress-II**

1. What do you mean by Justice? How many types of justice were prescribed under preamble?
2. What were the prime considerations before the framers of the constitution?

### **1.3 Let Us Sum Up**

Though, preamble is not a part of the Indian Constitution, it serves as a “Key-note” on the “soul” of the constitution of India. In preamble the entire philosophy or the ideological bases of the Indian Constitution have been reflected. It also outlines the major contents of the constitution. The

Supreme Court of India also explained the fact that if any provision of the Indian Constitution is found ambiguous, in that cases the preamble will serve as a keynote to the Indian constitution. Therefore, the preamble of our constitution also contains the basic principles and objectives of the Indian Constitution.

#### 1.4 Key Words

<b>Ideology</b>	:	A set of ideas or beliefs that form the basis of an economic and political theory, a philosophy or political principles held by a group of persons.
<b>Living Document</b>	:	A Constitution is not static or dead. Its provisions keep changing i.e. deleted or added according to the needs of the time.
<b>Mixed economy</b>	:	Where there is co-existence of the private and public enterprises
<b>Popular Sovereignty</b>	:	Power of the people
<b>Unitary Bias</b>	:	To tilt towards the unitary system

#### 1.5 Check Your Learning

1. Discuss the ideological background of Indian Constitution.
2. Examine the aims and objectives of the Indian Constitution as laid down in the Preamble.
3. What do you mean by the term Preamble? Explain the significance of the Preamble of the Indian Constitution.
4. What are the major commitments of Indian Constitution as enshrined in the Preamble?

#### 1.6 Suggested Readings

Basu, D. D.,	:	<i>Introduction to the Constitution of India</i> , Wadhwa and Company, Law Publishers, New Delhi.
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## 1.8 Hints/Answers to Questions in Check Your Progress

### Check Your Progress-I

1. Preamble is the introduction of preface of the Indian Constitution.
2. "We the people" are the source of real sovereignty in India because the constitution of India starts with the word. 'We, the people of India..... and it is also given to ourselves.'
3. Sovereignty means the 'Supreme Will' of the state which implies freedom of national action internal and external.
4. The words 'Socialist' and 'secular' were added to the preamble by the 42nd constitutional Amendment Act of 1976 during the regime of Mrs. Indira Gandhi.

### Check Your Progress-II

2. The prime considerations were to fulfil the needs and aspiration of the people and strive to protect the dignity of the individuals.

## UNIT-II

### FUNDAMENTAL RIGHTS, DUTIES

#### Structure

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Fundamental Rights - History and Importance
- 2.3 An Analysis of Fundamental Rights
  - 2.3.1 Right to Equality - Article 14-18
  - 2.3.2 Right to Freedom - Article 19-22
  - 2.3.3 Right against Exploitation - Article 23-24
  - 2.3.4 Right to Freedom of Religion - Article 25-28
  - 2.3.5 Cultural and Educational Rights - Article 29-30
  - 2.3.6 Right to Constitutional Remedies - Article 32
- 2.4 Writs
- 2.5 Evaluation
- 2.6 Fundamental Duties
- 2.11 Let Us Sum Up
- 2.12 Key Words
- 2.13 Check Your Learning
- 2.14 Suggested Readings
- 2.15 Hints/Answers to Questions in Check Your Progress

#### 2.0 Objectives

After reading this unit, you will be able to

- (i) understand the importance of Fundamental Rights;
- (ii) acquaint yourself with various Fundamental Rights as enshrined in the Constitution;
- (iii) know your Fundamental Duties as a citizen of India

#### 2.1 Introduction

Part III of the Constitution, dealing with Fundamental Rights, constitutes the 'Magnacarta' for the people of India. Nehru in the Constituent Assembly described the contents of Fundamental Rights in its deliberation as the 'Conscience' of the Constitution. Part III of the Constitution contains a very

comprehensive list of the rights which are Justiciable in spite of the fact that the State may impose 'reasonable restrictions' on their use.

The objects of Fundamental Rights are to establish an ordered society by protecting the rights which are fundamental in the governance. The conflict, freedom and authority form an eternal problem in political science. The greatest challenge is to compromise the authority with the liberty of the individual. The state tries to encroach more and more in the name of ordered society, in the Fundamental Rights of the citizens and the citizens remain always apprehensive of the excess interference. How to reconcile individual freedom with State authority? The provisions of the Fundamental Rights in a Constitution aim at reconciliation of individual freedom with State authority. The Fundamental Rights are not absolute and they are to be exercised by the individual for the good of the society.

## **2.2 Fundamental Rights**

**Historical Perspective:** The framers of our Constitution were especially influenced by the 1789 French national Assembly adoption of "the declaration of rights of man". Subsequent adoption and incorporation of a formal bill of rights by the American Constitution came to be regarded as the distinguishing mark of a democratic State. The Irish Constitution of 1935, the post war Constitution of Japan and finally the declaration of Human Rights by the United Nations has influenced the Constitution making all over the world on the issue of Fundamental Rights of the citizens.

The Indian National Congress Passed a resolution in 1927 in Madras which declared that "the basis of the future Constitution of India must be a declaration of Fundamental Rights. It was in the Nehru committee report of 1928 that a suggestion was made for the inclusion of religious and cultural rights as basic rights of citizens. The Simon Commission, which visited India to review India's Constitutional progress, did not favour the idea of inclusion of Fundamental Rights in the Constitution. So was the viewpoint of joint parliamentary committee on Indian Constitutional Reforms (1933-34). The Sapru Committee report on Constitutional Proposals (1945) however, supported the idea of inclusion of rights in our Constitution. Hence, the Fundamental Rights are incorporated in our Constitution in Chapter III, making the beginning of a new era of Political Democracy.

**Importance of Fundamental Rights:** An exhaustive definition of the term 'Fundamental Rights', with its particular reference to the Indian Constitution., is thus furnished by D.D. Basu;" A legal right is an interest which is protected by law and is enforceable in the Courts of law. While an ordinary legal right is protected and enforced by the Ordinary law of the land, a Fundamental Right is one which is protected and guaranteed by the written Constitution of the State. These are called 'fundaments' because while ordinary rights may be changed by the legislature in its ordinary process

of legislation, a Fundamental Right, being guaranteed by the Constitution, cannot be amended by any process shorter than that required for amending the Constitution itself. This makes the position of Fundamental Right very strong.

States never give rights, they only recognise them; Governments never grant rights, they only protect them. Our existence as members of society alone ensures our rights. Fundamental Rights are not 'absolute', they are accompanied by implicit reservations necessary for ensuring the security of the State and the stability of the social order. Since welfare of the individuals as members of society lies in a compromise between their rights as individuals and the interest of the society to which they belong. Society is organised in character and an individual obviously can't have any right apart from what the society concedes. So also is our Fundamental Right. By making them a part of the Constitution, Fundamental Rights are invested with certain sanctity and a status higher than that of ordinary law. So Fundamental Rights are the shield of democracy and justiciable in the Court of Law. They protect the individual against governmental autocracy and against the tyranny of the majority.

One of the important features of the Indian bill of Rights is that it is the most elaborate in the world. It covers an entire chapter (III) of the Constitution running into twenty four Articles (12-35). This unprecedented size is due to not merely to the fact that it contains six different categories of rights, but the fact that the Constitution attempts to define every right in minute details and add to each an elaborate set of limitations and reservations in view of our peculiar socio-economic formation. Fundamental Rights in Indian Constitution covers both negative and positive rights. Negative rights are in fact on the nature of Constitutional restrictions on the State rather than positive privileges extended upon the citizens. Fundamental Rights are legal rights and the Constitution has imposed upon the courts the duty to ensure that the citizen is allowed to exercise his rights without unauthorized intervention. Article 32 confers on every citizen the right to move the State High Court and the Supreme Court by appropriate proceedings for the enforcement of his Fundamental Right through writs provided in Article 32 of our Constitution.

### **2.3 An Analysis of the Fundamental Rights**

The original Constitution itself classified the Fundamental Rights into seven groups. (a) Right to equality, (b) Right to freedom, (c) Right against exploitation, (d) right to freedom of religion, (e) cultural and educational rights, (f) rights to property, (g) right to Constitutional remedies. Of these, the right to property has been eliminated by the 44<sup>th</sup> amendment Act of 1978, so that only six Fundamental Rights now remain. The right to property is now only a legal right. We make an analysis here of six existent rights and the restrictions imposed on them.



### 2.3.1 *Right to equality (Article 14 to 18):*

(i) **Right to equality:** The right to equality is covered mainly by Articles 14-18 of Chapter III although parts of Article 29 and 30 may also be said to be related to this group. Article 14 guarantees to all persons' equality before the law and equal protection of the laws within the territory of India. By ensuring the subjection of all persons to the ordinances law of the land administered by the ordinary courts, this right lays the foundation of the rule of law in India. Equality before the law and equal protection of the laws, however, do not mean that the same law is to be applied to all persons without giving any consideration, difference of circumstances and conditions. It does not prevent classification of persons into groups which may be treated differently, provided the distinction is not made arbitrarily.

The exceptions allowed by the Indian Constitution are: (i) the President or the Governor of a State shall not be answerable to any Court for the exercise and performance of the powers and duties as his office for any act done on purporting to be done by him in the exercise and performance of those powers and duties, (ii) No criminal proceeding whatsoever shall be instituted against President or a Governor in any Court during his term of office, (iii) No civil proceeding in which relief is claimed against the President or the governor of a State shall be instituted during his term of office in any Court in respect of any act done by him. The above immunities, however, shall not bear (a) Impeachment proceedings against the President, (b) suits on other appropriate proceedings against the Government of India on the government of a State. Apart from these Constitutional exceptions, there will of course, remain the exceptions acknowledged by the committee of nations in every civilized country that in favour of foreign sovereigns and ambassadors and high commissioners.

These provisions in Indian Constitution provoked Prof. Jennings to comment that "among equals the law should be equal and should be equally administered, that like should be treated alike". Nor does this right mean that "all persons shall have an absolute equation of positions on status". The purpose of this right has been to see that injustices are not done as much from treating unequal equally as from treating equals unequally.

(ii) **Prohibition of discrimination (Article 15):** This Article of the Indian Constitution says:

- (i) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (ii) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability restriction or condition with regard to
- (iii) Access to shops, public restaurants, hotels and place of public entertainment; or

- (iv) The use of wells, tanks, bathing ghats, roads and place of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- (v) Nothing in this Article shall prevent the State from making any special provision for women and children.
- (vi) Nothing in this Article or in Clause 92 of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled tribes.

**(iii) Equality of opportunity in matters of Public employment (Article 16):**

The Article reads as follows.

Article 16(i). There shall be equality of opportunity for all citizens in matters relating to employment, on appointment to any office under the State. Article 16(2). No citizen shall on ground only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State.

This Article provides for the establishment of the universality of Indian citizenship. Thus Article 16 provides safeguards not only against communal discrimination but also against local discrimination besides discrimination against the weaker sections. However, the Constitution provides certain exceptions to the rule of equality guaranteed by this Article. The only exceptions to the above rule of equality are (a) Residence within the State may be laid down by parliament as a condition for particular classes of appointment under any State or other local authority, (b) the State may reserve any post on appointment on favour of any backward class of citizens who in the opinion of the State, are not adequately represented, (c) offices connected with a religious or dominated institution may be reserved for members professing the particular religion or belonging to the particular denomination to which the institution relates, (d) the claims of the members of the Scheduled castes and Scheduled tribes shall be taken into consideration on the matter of appointment to services and posts under the union and States, as far as may be consistent with the maintenance of efficiency of the administration.

The balance between meritarian and proportional concepts of Equality postulated in Article 16 and Article 15 bring in its wake certain problems, quite apart from the inherent incongruence between them. The general right of Equality of Opportunity (based on the meritarian concept) exists in favour of an individual, whereas protective discrimination exists in favour of collectivities. The former right is enforced by the courts; the latter is based on the policies of legislatures and their implementation by executives. Conflicts arise out of the varying degrees of emphasis placed on these rights by the Judicial and executive organs of the State.

The Supreme Court has held that while Article 16(4) is apparently without any limitation upon the power of reservation conferred by it, it has to be read together with Article 335, which provides that in taking into considerations the claims of the members of Scheduled castes and Scheduled tribes in the making of appointments in connection with the affairs of the Union or a State, the policies of the State should be consistent with the maintenance of efficiency of administration. Thus reservations under Article 16(4) may be made in the exercise of executive power without any legislative support.

Despite constitutional guarantee of 'Equality before the law and Equal protection of the Laws', there remains inequality based on sex in law which the legislatures actively endorse and the courts passively accept. Inequality in law exists not only on that basis, but also among women themselves, depending upon their religion. For in India, law governing the family vary according to the religion of communities. The courts have upheld the legal inequality that exists among women themselves on the basis of reasonable classification.

**(iv) Abolition of Untouchability (Article 17):** Article 17 of the Constitution says - "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law. This Article enacts two declarations - firstly, it announces that 'untouchability' is abolished and its practice in any form is forbidden. Secondly, it declares that the enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law.

The word 'Untouchability' has not however, been defined either in the Constitution or in the above act. It has been assumed that the word has a well-known connotation. The act declares certain acts as offences when done on the ground of 'Untouchability' and prescribes the punishment there of (a) returning admission to any person to public institutions, such as hospital, dispensary, educational institutions, (b) preventing any person from worshipping or offering prayers in any place of public worship, (c) subjecting any person to any disability with regard to access to any shop, public restaurant, hotel or public entertainment or with regard to the use of any reserve tap or any source of water, road, cremation ground or any other place where services are rendered to the public.

The scope of the Act has been enlarged in 1976, by legislating (PCRA) (Protection of Civil Rights Act) by including, within the offence of practising Untouchability, the following:

- (i) Insulting a member of a Scheduled Caste on the ground of Untouchability
- (ii) Preaching Untouchability, directly or indirectly
- (iii) Justifying Untouchability on historical, philosophical or religious grounds or on the ground of tradition of the Caste system.

The penal section has been enhanced by providing that (a) in the case of subsequent convictions, the punishment may range from one to two years of imprisonment; (b) a person convicted on the offence of 'Untouchability' shall be disqualified for election to the Union or State legislature.

(v) **Abolition of titles (Article 18):** The purpose of this article is to avoid creation of social distinctions. A democracy should not create titles and titular glories. This will go against the realization of social equality. Article 18 abolishes all titles. The State is prohibited from conferring titles on any person. The Indian citizens are also not allowed to accept any title from any foreign State without the consent of the President of India. However, the State does not prevent institutions like Universities to confer titles or honour on men of merit. The State is also allowed to confer any distinction or award for social service. This cannot be used as a title. Thus, the award of Bharat Ratna or Padma Vibhushan cannot be used as a title. The government defends them on the ground that they are not titles in the sense that they need not be compulsorily appended to the names of the recipients.

### **2.3.2. Right to freedom (Article 19 to 22):**

One of the most important reasons which made the framers of the constitution to include Fundamental Rights was the experience of excessive executive powers. Article 19-22 of the Constitution guarantee to the citizens of India a set of rights collectively described as the right to freedom. According to M.V. Pylee, "Personal liberty is the most fundamental or Fundamental Rights". Article 19 to 22 deals with different aspects of this basic right. These four Articles form a character of personal liberties, which provide the backbone of the charter of Fundamental Rights.

**The six freedoms (Article 19):** These six freedoms provided by the Article 19 of the Indian Constitution are fundamental freedoms on personal liberties of the Indian citizens. The right to freedom is the most democratic device to check the unlimited powers of the government and guarantee the personal liberty of the citizens.

(a) **Six freedoms:** Article 19 of the Constitution lays down that the citizens shall have the right

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

However, like all other rights, these freedoms are relative, not absolute. The Article first states the rights and then proceeds to empower the State to impose specific restrictions on their exercise. These restrictions are known as reasonable restrictions. Every enjoyment of a right is a reasonable claim to freedom in the exercise of certain activities. The Liberal-Democratic system adopted in India ensures the primacy of political rights over social rights and of social rights over the economic rights.

Freedom of speech and expression is a freedom, which is absolutely necessary in a democracy. The second important freedom guaranteed is the right to hold meeting peacefully without arms. The primary object of the provision is that no interference should be made in public meetings, whether political or social. The citizens are also free to form associations or unions. Law may lay down conditions of forming such associations or unions like their registration, licensing etc. But it cannot disallow the individuals to form associations or unions. The citizens are guaranteed right to move freely throughout the territories of India. There is full movement of citizens from one State to another State. It is a great protection against provincialism or localism which may develop if such freedom is not granted. It is followed also by the right to settle or reside in any part of the territory of India. Lastly they are free to practice any profession or carry out any occupation, trade, or business. Thus the citizens of India are guaranteed ample freedom of life and liberty and are free to pursue their own happiness.

However, these freedoms are not absolute. Article 19(2) further provides that the State can impose 'reasonable restrictions' on the exercise of these rights for the interests of the security of the State, friendly relations with foreign States, public order, decency on modality or in relation to contempt of Court, defamation or incitement to an offence. All the restrictions imposed by the State, whether reasonable or not, are to be decided by the Supreme Court. The intention of the makers of the Constitution is to strike a balance between the absolute freedom guaranteed and the minimum social control necessary. Some critics feel that the expression 'reasonable restrictions' may be elastic terms and widely and recklessly used by the State. These restrictions take away the freedoms which are actually guaranteed to the individuals. The Supreme Court, however, does not accept this view. Interpreting the phrase 'reasonable restrictions', it connotes that the limitation imposed upon a person on enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed and the social control permitted under Article 19, it must be held to be wanting in reasonableness;. Of course, the Court intervenes only when some individual takes the question of the freedom to move the Court, but once the Court is apprised of the matter it has the right to go into all details of the situation for the determination of the reasonableness on the like of it, in the particular case brought before it.

**Protection against Conviction for offences (Article 20):** Article 20 provides protection against arbitrary and excessive punishment to any person who commits an offence. The protection may be dealt with under four categories:

1. A person can be convicted only if he has violated a law which is in force at the particular time.
2. A person cannot be given greater penalty than what might have been given to him under the law that was prevalent when the offence was committed.
3. No person can be prosecuted and punished more than once for the same offence.
4. No person can be compelled to be a witness against himself. These provisions guarantee “the primacy of the law over the passions of man”.

**Protection of life and personal liberty (Article 21):** Article 21, one of the shortest Articles in the Constitution, reads as follows, “No person shall be deprived of his life or personal liberty except according to the procedure established by law.”

This Article implies that the executive shall not be entitled to intervene with the liberty of a citizen without legal justification. Any such action can be justified only with the support of a law. Any such action can be taken only under the procedures established by law. Under our Constitution, personal freedom is secured by the judicial writ of *Habeas Corpus* (Article 32 and 226). Supreme Court has acted as the guardian of the freedom of the person.

Article 21 also does not cover any limitations upon the power of the legislature to impose restriction on the freedoms of a person. It only gives protection to the individual against arbitrary or illegal action on the part of the executive. This implies that the legislature can enact arbitrary laws encroaching upon personal liberty and the validity of such law cannot be challenged in a Court of law on the ground that the law is unreasonable, unsafe or unjust. Thus it may be concluded that personal liberty in India is “a liberty confined and controlled by law”.

**Protection against Arbitrary arrest and detention (Article 22):** Article 22 guarantees certain rights to a person who has been arrested. In the first place, he cannot be detained in custody without being informed, as soon as may be of the grounds of his arrest; secondly, he has the right to consult and be defended by a lawyer of his own choice; thirdly, he must be produced before a magistrate within 24 hours of his arrest and fourthly, he cannot be held in custody beyond this period without the authority of the court. These rights, necessary for the protection of personal freedom, are subject to one important exception. They do not apply to (a) enemy aliens and (b) persons held in custody under a law providing for preventive detention. Preventive detention is one of the most controversial features of the Indian Constitution and constitutes a serious restriction on personal liberty. It has no where

been authoritatively defined, but is used in contradiction to 'punitive detention'. The latter means detention as a punishment for an offence proved in a Court of law. Preventive detention however, is a precautionary measure and involves imprisonment without trial and before any crime has actually been committed.

The Constitution, however, imposes certain safeguards against abuse of the above power. It is these safeguards which constitute Fundamental Rights against arbitrary detention and it is because of these safeguards that 'preventive detention' has found a place in the part of 'Fundamental Rights' in our Constitution. When a person has been arrested under a law of preventive detention: (i) the government is entitled to detain such person in custody only for three months. If it seeks to detain the arrested persons for more than three months, it must obtain a report from the Advisory board who will examine the papers submitted by the government and by the accused as to whether the detention is justified. (ii) The persons so detained shall, as soon as may be, be informed of the grounds of his detention excepting facts which the detaining authority considers to be against the public interest to disclose (iii) the person detained must have the earlier opportunity of making a representation against the order of detention. A law which violates any of the conditions imposed by Article 22, as stated above, is liable to be declared invalid and a detainee shall forthwith be set free if his course of detention is invalidated by the Court.

The preventive detention Act was first passed by parliament in 1950, though the act was invalidated by the Supreme Court in the famous Gopalan case on the grounds that it prohibited the detainee from disclosing the grounds of detention to the Court. Still then in India both the parliament as well as State legislatures have been making several acts for preventive detention from time to time. Some of the important such acts, made by parliament of India are: Preventive Detention Act 1950, Maintenance of Internal Security Act (MISA), 1971, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974, National Security Act, 1980, Terrorist and Disruptive Activities (Prevention) Act (TADA) 1985, and the much debated recent act POTA, 2002. Even the APPOCA, 2002 in Arunachal Pradesh comes under this category. Most of these acts have been misused and have been used for political purposes several times. The MISA was misused to a great extent during the emergency of 1975-76, when around 1,70,000 persons were detained. On the whole, Article 22 of our Constitution continues to be a draconian provision and more accurately a necessary evil.

### **2.3.3. Right against Exploitation (Article 23-24)**

As an adjunct to the guarantee of personal liberty and prohibition of discrimination the Constitution lays down certain provisions to prevent exploitation of the weaker sections of society by unscrupulous individuals or even by the State.

Article 23 says, (i) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this Article shall prevent this State from imposing compulsory service for public purposes and in imposing such service the State shall not make any discrimination on grounds only of religion, race, Caste, or class or any of them.

The Constitution also prohibits forced labour of any form which is similar to *begar* in an indigenous system under which landlords sometimes used to compel their tenants to render more service. The clause does not prohibit bonded labour as punishment for a criminal offence. Nor would it prevent the State from imposing compulsory recruitment or conscription for public purposes, such as military or even social service.

Special provision for the protection of children is made in Article 24 which says “No child below the age of fourteen years, shall be employed to work in any factory or mine or engaged in any other hazardous employment”. It is to be noted that the prohibition imposed by this Article is absolute and does not admit it any exception for the employment of a child in factory or mine or in any other ‘hazardous employment’ in a railways **on port of**. In 1997 the supreme Court directed that the employers of children below 14 years must comply with the provisions of the child labour (Prohibition and regulation) act for providing compensation employment on their parents/guardians and their education.

#### **2.3.4 Right to freedom of Religion (Article 25-28)**

India being a secular state observes an attitude of neutrality and impartiality towards all religions. This attitude of neutrality is secured by the constitution by several provisions. This fundamental right is a necessary constitutional response to treat all our religious faiths in the democratic manner. Significantly this fundamental right firmly declares that India does not have any ‘state religion’.

- (a) **Freedom of conscience and free profession:** practice and propagation of religion: Article 25 of the constitution of India declares that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion, subject to public order, morality and health. At the same time the state can make laws ‘regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice or providing for social welfare and reform or throwing open Hindu religious institutions of a public character to all classes and sections of Hindus. The term Hindu deemed here being to include, Sikhs, Jains and Buddhists, for the purpose of this provision.



Positively this provision guarantees freedom of religion to everybody. Negatively it prohibits the state from compelling any person to practice any particular religion on creed.

- (b) **Freedom to maintain and establish Religious institutions:** Article 26 guarantees different scopes and opportunities for the realization of the provisions enshrined under article 25. In order to make free practice, propaganda and profession of religion meaningful, this Article provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right
- (i) to establish and maintain institutions for religious and charitable purposes
  - (ii) to manage its own affairs in matters of religion
  - (iii) to own and acquire movable and immovable property
  - (iv) to administer such property in accordance with law.
- (c) **Prohibition of taxes for religious purposes:** Article 27 of the Constitution provides that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.
- (d) **Prohibition of religious instructions or educational institution:**

According to Article 28 of the Indian Constitution, no religious instruction can be provided in any educational institution wholly maintained out of State funds. And no person attending an educational institution recognized and aided by the State can be compelled to take part in any religious instruction on worship conducted in it. However, while religious instructions are completely banned, it can be imparted in denominations on missionary institutions subject to the consent of the students and the persons concerned. These rights to freedom of religion enumerated in our Constitution gives a strong foundation to a secular democratic Republic. By the 42<sup>nd</sup> Amendment in 1976, the preamble was amended for the words Sovereign, Democratic, Republic, the words, sovereign, socialist, secular Democratic Republic were substituted. The ambit of the freedom of religion guaranteed by Article 25-28 has been widened by the Judicial interpretations and authenticative pronouncements given by the Supreme Court of India time to time. It has expanded the meaning of Indian secularism when it interprets that State should not be hostile to any religion rather it should be neutral to different religions. This neutrality would be violated if religion is used for political purposes and used by political parties for their benefits and gains. And further, the right to propagate religion in Article 25(i) would not include the right to convert another by means of force, fraud, inducement or allurements. In such a situation the supreme Court pronounced, the State has the right and duty to intervene in all activities of religion which offends against public order, morality and healthy. It also

has given historic verdict in 2002 that the study of religious does not amount to religious instructions. Comparative study of religion is desirable as religion is the foundation for the moral values in a civilized society. However, the Court cautioned against any penal prejudice in the textbook.

### **2.3.5 Cultural and Educational Rights (Article 29 and 30)**

This Fundamental Right is intended to safeguard the cultural and educational rights of the citizens preferably the minorities. According to Article 29, any section of the citizen residing in the territory of India or any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the State on receiving aid out of State funds on grounds only of religion, race, caste, language or any of them

According to Article 30, all minorities are guaranteed cultural freedom. Every minority or section of the people is assured of its right to preserve its language Script and culture. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language. Thus, the State is prohibited to dictate the minorities in their cultural and educational rights. It is to be noted that minorities recognized for the protection of cultural and educational interests also are minority based on religion, community or language. Such recognition is unparalleled in the Constitutions of the world. It is not only the minorities based on religion or language recognized but their language script and culture are also protected and recognized while interpreting the relevant provision of Article 29, the Supreme Court of India in 1965 has ruled that ‘the right to agitate for the protection of the language, including political agitation. It is an absolute right and cannot be subjected to reasonable restriction’.

**No Fundamental Right to properties:** Article 19 (i) (f) of the Constitutional guarantees to all citizens the right to acquire, hold and dispose of property. This Article has been replaced by the 44<sup>th</sup> Amendment act, 1978. The right of property had proved to be perhaps the most controversial of the Fundamental Rights. It had led to a vast amount of litigations. At one stage, it seemed likely to cause a serious clash between parliament and the Supreme Court. Parliament had indeed found it necessary to amend Article 31 thrice in order to limit the power of the Supreme Court to question the validity of legislation for acquisition of property on payment of compensation. Article 31 stated that no person shall be deprived of his property except by law and on payment of compensation. In every country, the State has the right to acquire property for public use without the owner’s consent under the principle of ‘eminent domain’ and to deprive a person of his property in public interest. However, in most countries, the acquisition of property by the State under the principle of ‘eminent domain’ is subject to payment of fair and just compensation. For instance, the Constitution of USA and Australia

formally provide for 'just payment' for acquisition of property and the question whether the compensation is just can be declared by the Court.

However, in Indian Constitution, 'just and fair' in relation to compensation is provided. The amount of compensation to be paid on the principles and the manner for the determination of the compensation shall be specified by the legislature concerned in a law providing for acquisition of property. It was further provided that no such law passed by the legislature of a State authorizing acquisition of property shall have effect unless the President of India has considered and given his assent to it (31 (3)). In short, the Constitution makers felt that the legislature and not the judiciary should have the last word on the question of compensation. The judiciary, however, did not share this view.

In order to uphold the supremacy of Parliament, the Constitution's 44<sup>th</sup> amendment was passed during Janata Party Government. This amendment act abolished the right to property as a Fundamental Right and accordingly omitted the sub-heading "right to property" occurring after Article 30 and Article 31 which guaranteed to every person the right not to be deprived of his properties except by authority of law.

Now, the right to property is no more a Fundamental Right. It has been made a legal right under Article 300 (A), which lays down: "No person shall be deprived of his property save by authority of law". The net result is that if an individual's property is taken away by a public official without legal authority or in excess of the power conferred by law in this behalf, he can no longer have speedy remedy direct from the Supreme Court under Article 32. He shall have to find his remedy from the High Court under Article 226 or by an ordinary law.

The right of legislature to decide finally the amount of compensation for the property acquired by the State is a serious cut in the people's right to property. Since there is no Constitutional remedy against a state act regarding compensation, the people have been left at the mercy of the State and grave injustice may be done to them by the party in power.

### **2.3.6 Right to Constitutional Remedies (Article 32)**

The Constitution of India not only provides for Fundamental Rights but also makes provision for their enforcement. This remedial right is guaranteed under Article 32 which empowers the Supreme Court to uphold the Fundamental Rights and entitle the citizens to go to such Court by appropriate proceedings for the enforcement of their Fundamental Rights. Because the Constitutional experience in all countries shows that the reality of the existence of such rights is tested only on the Court. The idea of providing in the Constitution effective remedies for the enforcement of the Fundamental Rights was present in the minds of the Constitution makers from the very beginning. Accordingly, the right to Constitutional remedy has been included as a Fundamental Right in the

Indian Constitution. Also included in this part are the limitations upon the enforcement of the Fundamental Rights.

Article 32 has been called the ‘corner stone’ of the entire edifice set up by the Constitution. Dr. Ambedkar called it the most important Article in the Constitution. This Article has four sections. The **first** section describes the scope of the right and ensures “the right to move to the Court by appropriate proceedings for the enforcement of the Fundamental Rights. The **second** section deals with the power of the Supreme Court to issue writs in the form of direction or orders in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo-warranto* and *certiorari* whichever may be appropriate for the enforcement of any of the right conferred by this part, the **third** section empowers the parliament to confer power of issue of writs or orders on any other court without prejudice to the power of the Supreme Court in this respect. The Constitution in its Article 226 (1) confers similar power of issuing writs on High Courts within their jurisdiction. The last section of Article 32 deals with the conditions under which this right can be suspended. To quote M.V. Pylee, “The first three sections of the Article 32 taken together make Fundamental Rights under the Constitution real and as such, they form the crowning part of the entire chapter’. Justice Patanjali Shastri also observed “Article 32 provides guaranteed remedies for the enforcement of these rights, and this remedial right is itself made a Fundamental Right by being included in part III. The Supreme Court is thus constituted the protector and guarantor of Fundamental Rights and it can not consistently with the responsibility so laid upon it, refuse to entertain application seeking protection against infringements of such rights” As such Article 32 made the Supreme Court protector and guarantor of the Fundamental Rights, the Supreme Court has both original and appellate jurisdiction over the violation of the Fundamental Right within the territory of India. Only exception is that under Article 359 of the Constitution, the President of India may declare that the right to move any Court for the enforcement of Fundamental Rights shall remain suspended up to a maximum period of the existence of the emergency.

#### **2.4 Provision for the issue of writs**

The Constitution has empowered the Supreme Court to issue writs including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo-warranto*, and *certiorari* for the enforcement of the Fundamental Rights. These writs are like prerogatives writs which can be sought by an aggrieved party without bringing any proceeding or suit. The following are the writs which the Court is empowered to issue:

(i) **Habeas corpus:** Habeas corpus is a Latin term which means ‘you may have the body’. It provides a protection against wrongful detention and arrest of a person. By issuing this writ, the Court directs the detaining authority to present the detained person before the Court and justify the case of his detention or arrest. The different purposes for which the writ of habeas corpus is available are as

follows: (a) for the enforcement of Fundamental Rights, (b) it will also issue where the order of imprisonment or detention is ultra vires the statute which authorizes the imprisonment or detention.

The writ of *habeas corpus* is however not issued in the following cases: (i) where the person against whom the writ is issued or the person who is detained is not within the jurisdiction of the Court, (ii) to secure the release of a person who has been imprisoned by a Court of law on a criminal charge, (iii) to interfere with a proceeding for contempt by a Court of record or by parliament.

**(ii) Mandamus:** The Latin word ‘mandamus’ implies ‘we order’. It commands the person to whom it is addressed to perform some public or quasi-public legal duty, which he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy. It is therefore, clear that mandamus will not issue unless the applicant has a legal right to the performance of legal duty of a public nature and the party against whom the writ is sought bound to perform that duty.

This writ of *mandamus* may be issued (a) for the enforcement of Fundamental Rights. Whenever, a public officer or a government has done some act which violates the Fundamental Right of a person, the Court would issue a writ of mandamus restraining the public officer or the government from enforcing the order, (b) *Mandamus* is available from the High Court for various other purposes (i) to enforce the performance of a statutory duty where a public officer has got the Constitutional or statutory power but refuses to perform. In this case, the Court may issue a mandamus directing him to exercise the power, (iii) to compel a Court or judicial tribunal to exercise its jurisdiction when it has refused to exercise it, (iv) to direct a public officer or the government not to enforce a law, which is unconstitutional.

**(iii) Prohibition:** This is a judicial writ issued by the Supreme Court on a High Court to an inferior Court for the purpose of preventing the inferior Court from usurping a Jurisdiction with which it is not legally vested or in other words to compel Court entrusted with judicial duties to keep themselves within the limit of the jurisdiction. This writ of prohibition differs from the writ of mandamus in that while mandamus commands activity, prohibition commands inactivity. Further while mandamus is available not only against judicial authorities but also against administrative authorities, prohibition as well as certiorari is issued only against judicial or quasi-judicial authorities.

**(iv) Certiorari:** The literal meaning of the word ‘certiorari’ is to be more fully informed of. Certiorari is an old prerogative writ which orders the removal of a case from an inferior Court to a superior Court. It may be used before the trial to prevent an excess or abuse of jurisdiction. It may be invoked also after the trial to quash an order, which has been made without jurisdiction or in defiance of rules of natural justice. The writ of prohibition is the competent of the writ of certiorari. Though prohibition and certiorari are both issued against Courts or tribunals exercising judicial or quasi-

judicial powers, certiorari is issued to quash the order or decision of the tribunal while prohibition is issued to prohibit the tribunal from making the ultravires order or decision. While prohibition is available at an earlier stage, certiorari is available at a larger stage, on similar grounds. The objective of both is to secure that the jurisdiction of an inferior Court or tribunal is properly exercised and that it doesn't usurp the jurisdiction, which it does not possess.

(v) **Quo Warranto:** The writ of quo-warranto is issued to prevent illegal assumption of any public office by anybody till the Court has decided the matter. Literally, "quowarranto" means "by what authority". Suppose, a person who is below 18 years is appointed on any government post, the Court can declare him unfit and the post vacant as he is under aged. What the Court has to consider in issuing the writ of quowarranto is whether there has been usurpation of office of a public nature and an office substantive in character.

The conditions necessary for the issue of a writ of quo-warranto are as follows:

- (i) the office must be public and it must be created by a statute or by the Constitution itself.
- (ii) The office must be a substantive one and not merely the function on employment of a servant at the will and during the pleasure of another.
- (iii) There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such person to that office.

The fundamental basis of the proceedings of a quo-warranto is that the public has an interest to see that an unlawful claimant does not usurp a public office. It is however, a discretionary remedy which the Court may grant or refuse according to the facts and circumstances of each case. Quo-warranto is thus a very powerful instrument for safeguarding against the usurpation of public offices.

## **2.5 Estimation and evaluation of Fundamental Rights**

The chapter on Fundamental Rights in our Constitution has been a subject of criticism both in India and outside even since the commencement of the Constitution. Dr. Ivor Jennings called the chapter as the 'Lawyers paradise'. Some critics maintained the view that practically the citizens do not enjoy much substantial rights. The chapter on Fundamental Rights may be called as 'apology of the Fundamental Rights' or 'limitations on Fundamental Rights'. Some critics point out that the spirit that pervades the whole chapter has been taken away by the extraordinary provisions such as preventive detention, suspension of Article 19 and 32 during emergency etc. These rights are called as double-edged weapons and what they give in one hand taken away in other.'

It is criticized on the ground that it omits a number of important categories of social rights such as the right to work, the right to rest and leisure, right to education and social security etc. These rights are clearly found in the Constitution of communist countries. This criticism is hardly justified and the comparison with communist countries is not very helpful. In these countries, Fundamental Rights declared in the Constitutions are primarily propaganda slogans and the extent of their actual availability depends on the will of the government. They are not judicially guaranteed since the countries are not given the power to enforce them against the executive and legislative authorities. In India, on the contrary, every Fundamental Right is a justifiable right and judicial remedies are available to the citizen for its violation by the government. The framers of the Indian Constitution were, therefore, justified in not declaring rights which the State is not in a position immediately to guarantee in practice. The enforcement of the right to employment, for instance, would not only involve gigantic resources, but a complete control of all economic activities in the country by the State. Neither of these factors is available in India, characterized as the country is by limited resources as mixed economy.

Another point of criticism is that there is a vast gap between the Fundamental Rights guaranteed in the Indian Constitution and limited reality their rights in India today. It is pointed out that the legal costs under the issue of enforcing Fundamental Rights beyond the means of the ordinary citizen of India - the majority of whom are very poor. However, of recent times, with public interest litigation and the establishment of legal aid for the poor, this gap between the rich and the poor is being sought to be reduced. The Fundamental Rights were intended to serve three important purposes namely, (i) to prevent the executive from acting arbitrarily, (ii) to ensure some amount of security and protection to various types of minorities, and (iii) to promote and foster social revolution by establishing the conditions necessary for achieving justice, social, economic and political.

So, Fundamental Rights as contained in Part III of the Constitution, are neither rooted in the doctrine of natural law nor are they based on the theory of 'reserved rights'. They are conferred rights and embody the social values of the present generations. As the social values are not static, the Fundamental Rights are subject to changes and modifications in order to fulfil the aspirations of people in the context of changed conditions and the environment in which they live. It was therefore, not the intention of the father framers to render the rights sacrosanct; otherwise they would not have ventured to strike a balance between or to bring about a reconciliation between them and the need for welfare of society. Rights are dynamic realities and they have never been intended to be impediments to progress, development and advancement.

## 2.6 Fundamental Duties

Duties and rights are the two sides of the same coin. Western States have given prominent place to the rights only and not to the duties in their Constitution. But the Constitution of socialist States, on the contrary, gives equal importance to the Fundamental Rights as well as duties to their citizens. Indian Constitution did not have any chapter on fundamental duties. It was during internal emergency 1975 that the need and necessity of fundamental duty was felt and accordingly a committee under Sardar Swaran Singh was appointed to make recommendations about fundamental duties. The committee emphasized the inclusion of a chapter on fundamental duties in the Constitution. So that people also become conscious of duties as well. The committee recommended to incorporate an eight code of 'fundamental duties' into the Constitution on July 2, 1976 and the same was accepted by the government with minor modifications. Finally, the fundamental duties were incorporated into the Constitution of India by 42<sup>nd</sup> amendment act, 1976. The new Article 51 (A) inserted by this amendment in the part IV of Indian Constitution prescribes a ten point fundamental duties for the citizens of India. As per the provisions of this Article, it shall be the duty of every citizen of India

- (i) To abide by the Constitution and respect the national Flag and the National Anthem;
- (ii) To cherish and follow the noble ideals which inspired our national struggle for freedom;
- (iii) To protect the sovereignty, unity and integrity of India;
- (iv) To defend the country and render national service when called upon to do so;
- (v) 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 of women;
- (vi) To value and preserve the rich heritage of our composite culture;
- (vii) To protect and improve the natural environment, including forest, lakes, rivers and wildlife and to have compassion for living creatures;
- (viii) To develop scientific temper, humanism and the spirit of inquiry and reform;
- (ix) To safeguard public property and abjure violence; and
- (x) To strive towards excellence in all spheres of individual and collective entity, so that the nation constantly rises to higher levels of endeavour and achievement.



The legal utility of the fundamental duties is similar to that of the Directives as they stood in the Constitution of 1949. While the Directives were addressed to the State, without any sanction, so are the Duties addressed to the citizen, without any legal sanction for their violation. The citizen, it is expected, should be his own monitor while exercising and enforcing his Fundamental Rights, remembering that he owes the duties specified in Article 51 (A) to the State and that if he does not care for the duties he should not deserve the rights.

The Fundamental Duties inscribed in the Constitution are mixed bag of expectations and exhortations. Quite a good number of these items are those, which are enforceable today even without their being specifically incorporated in the Constitution. In this category fall the items to abide by the Constitution, respect the National Flag and the National Anthem, to defend the country and render national service when called upon to do so and safeguard public property. Fundamental duties require the citizens to respect the ideals of the Constitution and the institutions it establishes, to promote harmony and spirit of common brotherhood amongst all the people of India irrespective of their religion, language inhabiting different parts of the country and to safeguard the public property and to abjure violence. These are clearly intended to meet certain specific political threats that democracy in India has to contend with. The Indian charter of fundamental duties is unique to include the duty to develop the scientific temper, humanism and the spirit of inquiry and reform. It has been incorporated to eradicate superstitions in which India is deeply soaked. The duties to renounce practices derogatory to the dignity of women and to preserve the rich heritage of India's composite culture are two other moral codes to ennoble the society.

These are, in fact, homilies to be taught in schools and colleges, rather than to be incorporated in the Constitution as fundamental duties. Because there is neither any provision in the Constitution for the direct enforcement of these duties nor any guarantee to prevent their violation. In fact the incorporation of the fundamental duties in the part IV of the Constitution has made them constitutionally weak and non-justifiable in character. However, these duties serve as warnings to reckless citizens against anti-social, anti-national and communal activities. Significantly the Supreme Court has held that since the fundamental duties are obligatory on the part of a citizen, the State should strive to achieve the objectives behind its incorporation in the Constitution.

#### **Check Your Progress-I**

1. What is Fundamental Right?
2. Name the Rights which are Fundamental.
3. What do you mean by Preventive Detention?
4. What is the importance of Rights to Constitutional Remedies?

## 2.7 Let Us Sum Up

The study of fundamental Rights reveals that it is an integral part of the constitution and also necessary for the betterment of the individuals as well as the Indian Citizens. The Fundamental Rights are negative in nature because the state has the right to impose certain reasonable restrictions over the Fundamental Rights. Fundamental Rights in a constitution also aims at reconciliation of individual freedom with state authority. It is also protected by the law and is enforceable in the courts of law.

### 3.12 Key Words

<b>Implicit</b>	:	hidden within
<b>Enforceable</b>	:	that can be enforced by the Court of Law
<b>Untouchability</b>	:	to look down upon a person on ground of social status
<b>Arbitrary</b>	:	forceful; without sanction of the law
<b>Offence</b>	:	crime
<b>Preventive Detention</b>	:	to detain a person to prevent him from committing an offence
<b>Arbitrary Detention</b>	:	forceful arrest and detention
<b>Legal aid</b>	:	legal help

### 3.13 Check Your Learning

1. What do you mean by Fundamental Rights? Discuss Indian Constitution in this regard.
2. Examine the significance of Fundamental Rights in context of contemporary days
3. Write a note on changing notion of Fundamental Rights
4. Write short notes on the following:
  - a) Fundamental Duties
  - b) Writs
  - c) Right to Constitutional Remedies.

### 3.14 Suggested Readings

- Austin, Granville : *The Indian Constitution: Cornerstone of a Nation*, Oxford Universities, London
- Pylee, M. V. : *India's Constitution*, Bombay, 1975.
- Basu, D.D. : *Introduction to the Constitution of India*, Wadhava and Company Law Publishers, Agra, New Delhi.
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- Sack, P. : Legal Technology and Quest for Fraternity: Reflections on Preamble of Indian Constitution. *Journal of the Indian Law Institute*, 32(3), pp. 294-308.

### 3.15 Hints/Answers to Questions in Check Your Progress

#### Check your Progress-I

1. Fundamental Rights are those rights of the individuals which is protected and guaranteed by the written constitution and enforceable in the courts of law.
2. Right to Equality, Art-14 to 18, Right to Freedom, Art- 19 to 22, Right against Exploitation, Art-23 and 24, Right to Freedom of Religion, Art- 25 to 28, Cultural and Educational Rights, Art- 29 to 30, Right to Constitutional Remedies, Art-32.
3. Preventive Detention is a precautionary measure which involves imprisonment without trial and before any crime has actually been committed.

## UNIT III

### DIRECTIVE PRINCIPLES OF STATE POLICY

#### Structure

- 3.0 Objectives
- 3.1 Directive Principle of State Policy - Classification
  - 3.1.1 Socialistic Principles
  - 3.1.2 Gandhian Principles
  - 3.1.3 Liberal Principles
- 3.2 Directive Principle of State Policy and Fundamental Rights - differences
- 3.3 Criticism of Directive Principle of State Policy
- 3.4 Importance of Directive Principle of State Policy
- 3.5 Let Us Sum Up
- 3.6 Key Words
- 3.7 Check Your Learning
- 3.8 Suggested Readings
- 3.9 Hints/Answers to Questions in Check Your Progress

#### 3.0 Objectives

After reading this unit, you will be able to

- (i) understand the importance of Directive Principle of State Policy
- (ii) acquaint yourself with various Directive Principle as enshrined in the Constitution;
- (iii) classify Directive Principles of State Policy and know their features.
- (iv) understand the differences between Directive Principle of State Policy and Fundamental Rights

#### 3.1 Directive Principles of State Policy

The Directive Principles of State Policy embodied in part IV is unique feature of our Constitution. Besides the precedent of the Irish Constitution, the basic inspiration for the Directive Principles chapter came from the concept of a welfare State. Part IV (Articles 36-51) contains the Directive Principles of State Policy; these principles underline the philosophy of democratic socialism with a rich of Gandhian idealism as incorporated into the fundamental law of our country. The interesting point about the inclusion of Directive Principles of State Policy in the Indian Constitution

is that they are not laws in the sense in which the other parts of the Constitution are laws, and in case they are violated the matter cannot be taken to the Courts, since the Courts have no jurisdiction over them.

Sir Ivor Jennings, an eminent authority on Constitutional law, has questioned the utility of incorporating on the Constitution what he called the nineteenth century English philosophy of 'Fabian socialism without the socialism'. Professor K.C. Where, another authority on the Indian Constitution, described them as "paragraphs of generality" and has doubted the usefulness of introducing them in the Constitution. Yet the overwhelming section of public opinion in India and the leading Constitutional authorities in the country have regarded them as an important part of the Constitution in as much as they lay down in clear terms what kind of society India would like to evolve. The framers of the Indian Constitution by making a chapter on Directive Principles of State policy, wanted to use the Constitution as an instrument of social change. The Directive Principles of State Policy are directly connected with the Preamble and paraphrase the objectives laid down there in clear terms. The preamble gives us the fundamental principles on which the Constitution has been founded and the Directive Principles of State policy lay down the fundamental principles according to which the Constitution is to be operated by the State.

The Article included in part IV of the Constitution (Article 36-51) contains certain Directives. It shall be the duty of the State to follow these both in the matter of administration as well as in the making of laws. They embody the aims and objects of the State under the republican Constitution that is a 'Welfare State' and not a mere 'Police State'.

### **Classification of Directive principles**

There are as many as 16 Articles which deal with the Directive Principles of State Policy. Those embrace a wide range of State activity including economic, social, educational, legal and international principles. These principles are not properly classified or legally arranged in the Constitution. For the sake of convenience, Professor M.P. Sharma has grouped these principles ideologically into three categories, namely, the socialistic, Gandhian and Liberal. We may discuss these categories of the Directive Principles in detail:

#### **3.1.1 Socialistic Principles**

The bulk of the Directive Principles aim at shaping a welfare State based on socialistic principles.

- (1) Article 38 declares that the primary concern of the State shall be to promote welfare of the people and create a social order on which justice, social, economic and political, shall be practiced by all the national institutions

- (2) Article 39 of the Constitution calls upon the State to direct its policy towards securing – (a) that the citizens, men and women equally, have the right to an adequate means of livelihood, (b) that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of product to the common detriment, (d) that there is equal pay for equal work for both men and women, (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, (f) that childhood and youth are protected against exploitation and against moral and material abandonment.
- (3) Article 41 ensures the right to work, to education, and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want.
- (4) The State shall make provision for securing just and humane conditions of work as well as maternity relief (Article 42).
- (5) Article 43 provides that the State should endeavour to secure, by suitable legislation on economic organization or in any other way, to all workers agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure, and social and cultural opportunities and in particular, the State shall endeavour to promote cottage industries in rural areas.
- (6) The State is to ensure elimination of inequalities in States and minimization of inequalities in income.
- (7) It is the duty of the State to raise the level of nutrition and the standard of living of its people and also to improve the public health (Article 47).

These Directive Principles undoubtedly embody the objectives of a welfare State and a socialistic pattern of society. This is why Dr. Jennings remarked that, “the ghosts of Sidney and Beatrice will stalk through the text of part IV of the Constitution.”

### **3.1.2 Gandhian Principles**

The father of the nation Mahatma Gandhi had a tremendous influence over the framers of the Constitution. Although he was not a member of the Constituent Assembly, his style of leading the freedom struggle, novel ideology and unique philosophy greatly influenced the framers of the Indian Constitution. As such a good number of Gandhian ideas have been incorporated in the part IV of the Constitution. The Gandhian ideas can be found in the following principles:

1. the State shall organize village panchayats and endow them with such powers as may enable them to function as units of self-governance (Article 40);
2. the state shall promote, with special care, the educational and economic interests of Harijans, Scheduled Castes and Scheduled tribes and other weaker sections of the community (Article 46);
3. the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas;
4. the state shall organize agricultural and animal husbandry on modern scientific lines;
5. the state shall take steps for preserving and improving the cattle and needs and also for prohibiting slaughter of cows and calves and other milk and draught cattle (Article 48); and
6. the state shall bring about prohibition of the consumption, except for medical purposes, of intoxicating drugs and drinks which are injurious to health.

### **3.1.3 Liberal Principles**

The third category of Directive Principles of State Policy contains some general objectives which may be branded as liberal principles. These principles are advocated by the liberal intellectual for the well being of the citizens of India. They include the following principles

- (a) the state shall take steps to provide free and compulsory education for all children below the age of 14 years within a period of 19 years from the commencement of the constitution (Article 45).
- (b) the state shall secure for all citizens a uniform civil code throughout the territory of the country (Article 44).
- (c) the state is to protect every monument or place or object of artistic or historic interest (Article 49)
- (d) the state shall take steps to separate the judiciary from the executive (Article 50)
- (e) the state shall promote national peace and security, maintain just and honourable relations among nations, foster respect for international law and treaty obligation and encourage the settlement of disputes by arbitration (Article 51).

## Changes brought by 42<sup>nd</sup> and 44<sup>th</sup> Amendment Act 1976

By the 42<sup>nd</sup> Amendment, certain changes have been introduced in part IV adding new Directives, to accentuate the socialistic bias of the constitution. This is positive step in the advancement of socialism in the sense of economic justice. These changes are

- (i) In article 39 of the constitution clause (f) has been added which is as follows: “that the children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material advancement”.
- (ii) Article 39 (A) has been inserted to enjoin the state to provide “free legal aid” to the poor and to take other suitable steps to ensure equal justice to all, which is offered by the preamble.
- (iii) Article 43 (A) has been inserted in order to secure the participation of workers in the management of undertakings, establishment on other organizations engaged in any industry.
- (iv) Article 48 (A) has been inserted in order to direct the state to protect and improve the environment and to safeguard the forests and wild life of the country.

A modest attempt to clean the way for the implementation of Directive Principle has been made by the 44<sup>th</sup> constitution amendment. This 44<sup>th</sup> Amendment act was passed in 1978 by the Janata Party Government which formed the government at the centre in March 1977. By this amendment, the right to property was abolished as a Fundamental Right and the provision relating to the right to acquire hold and dispose of property under Article 19(1) (P) was deleted from the chapter on fundamental rights. In this way the obstacles for the implementation of Directive Principles to achieve socio-economic justice were removed. This is a modest attempt to put an end to the controversy regarding the status of the Directive Principles and Fundamental Rights.

### Check Your Progress-II

1. What are the main objectives of Directive Principles of State Policy?
2. Classify the principles in DPSP.
3. Mention the basic changes under the Constitution 42<sup>nd</sup> and 44<sup>th</sup> Amendments Act.



### 3.2 Directive Principles Contrasted with Fundamental Rights

The Directive Principles, however, differ from the Fundamental Rights (Part III of the Constitution) in the following respects:

- (i) The Directives are not enforceable in the courts and do not create any justifiable rights in favour of individuals.
- (ii) The Directives require to be implemented by legislation, so long as there is no directive, neither the state nor an individual can violate any existing law on legal right.
- (iii) The Directives, *per se*, do not confer upon or take away any legislative power from the appropriate legislature: legislative competence must be sought from the legislative lists contained in the 7th Schedule of the Constitution.
- (iv) The Courts cannot declare any law as void on the ground that it contravenes any of the Directive Principles.
- (v) The Courts are not competent to compel the government to carry out any directive or to make any law for that purpose, for example to provide free compulsory education within the time limited by Article 45, or to provide adequate means of livelihood to every citizen.
- (vi) The Fundamental Rights define a negative action on the part of the state and impose upon it the obligation not to interfere with the rights guaranteed to the people; the Directive Principles give some positive powers to the state to do things in the society as a whole even if such action comes in the way of individual rights.
- (vii) The Fundamental Right enforces the political democracy and Directive Principles protects the socio-economic democracy.

### 3.3 Criticism of the Directive Principles of State Policy

The Directive Principles of State Policy are subject to severe criticisms as they impose no legal obligations on the state. Some critics called them as mere pious resolutions or a set of New Year's resolutions. Professor K.T. Shah stated that these principles 'are like a cheque on a bank payable, only when the resources of the bank permit', Professor K.C Wheare describes them as a "manifesto of aims and aspirations". As B.N. Rau said, "The Directive Principles of State Policy are in the nature of moral precepts for the state authorities and are open to the facile criticism that the constitution is not the place for the moral precepts." According to Srinivasan, "the formulation of the Directives of State Policy can hardly be considered inspiring. It is both vague and repetitive. The Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions. It combines rather

incongruously the modern with the old and provisions suggested by the reason and science with provisions based purely on sentiment and prejudice. It is not very clear how India can maintain just and honourable relations among nations. Some critics went to the extent of alleging that these principles are unnatural and unsound in a sovereign state. A sovereign state cannot be restricted by any instruction or direction. There is no point of giving direction to a nation by itself.

### **3.4 Importance of Directive Principles of State Policy**

With all the criticisms levelled against the Directive Principles, they are not without value and effect. These principles are not as useless and vague as they are criticized. But in a democratic country, public opinion is the real force behind these principles. These principles serve as a guide for the legislators and the administrators in India for the discharge of their responsibilities. They impose an obligation on the part of the government to fulfil and bring out reforms proposed by them. The Directive Principles are not enforceable by the courts and, if the government of the day fails to carry out these objectives, no court can make the government ensure them, yet these principles have been declared to be fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws (Article 37).

Professor Alenandrowies has made a strong plea that in as far as the Directive Principles reflect the social and economic policy of the constituent assembly and embody ‘the intentions of the constitution makers, the courts should give the greatest possible weight to the Directive Principles for the purpose of the interpretation of the provisions relating to the fundamental rights’.

Framers of the constitution have acted wisely in not making the means of achieving the ideal rigid by confining them within legal principles. There is, thus, scope for flexibility in the means for the achievement of the ideal inscribed in the Directive Principles. By doing so, they provide an insurance against extremes from right and left. Directive Principles are conceived as essential principles to bring a new social and economic order. They help making India a welfare state. In the words of M.C. Chagla, “If all these principles are carried out, our country would indeed be a heaven on earth.” So these principles do not ‘represent a temporary will of the majority but deliberate wisdom of the nation expressed through constituent assembly. The government can be judged from the observance of these principles. Socio-economic Justice is qualitatively higher than Political Justice. Nehru made it clear in the Constituent Assembly, “There will be no full freedom in this country or in the world as long as there is starvation, hunger, lack of clothing, lack of necessities of life and lack of opportunities of growth for every single human being”.

### **3.5 Let Us Sum Up**

The Directive Principles of State Policy constitute as an integral part of the constitution and also necessary for the betterment of the individuals as well as the Indian Citizens. The Directive

Principles of State Policy are positive in nature because certain positive instructions were given to the state to implement for the betterment of the society as a whole. Directive principles of State policy are not enforceable by the courts, yet these principles have been declared to be fundamental in the governance of the country. We are living in the welfare state, so this is an obligation on the part of the government to fulfil and implement these directives while carrying out its duty.

### 3.6 Key Words

<b>Socialistic Principles</b>	:	the principles that aim at providing social and economic justice and set the path towards the welfare state
<b>Liberalism</b>	:	<i>philosophical ideology to establish individual freedom, consent and equality.</i>
<b>Enforceable</b>	:	that can be enforced by the Court of Law
<b>Amendment</b>	:	an addition or alteration made to a constitution, statute, or legislative bill or resolution
<b>Arbitrary</b>	:	forceful; without sanction of the law

### 3.7 Check Your Learning

1. Analyse the significance of Directive Principles of State policy in Indian Constitution.
2. Write a note on Gandhian principles enshrined in the Part IV of the Indian Constitution.
2. What are the differences between fundamental Rights and Directive Principles of State Policy? Discuss the changing relationship between Fundamental Rights and Directive Principles of State Policy.
4. Examine the relevance of Directive Principles of State Policy.

### 3.8 Suggested Readings

- Austin, Granville : *The Indian Constitution: Cornerstone of a Nation*, Oxford Universities, London
- Pylee, M. V. : *India's Constitution*, Bombay, 1975.
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### 3.9 Hints/Answers to Questions in Check Your Progress

#### Check your Progress

1. Directive Principles of State Policy are those policies which ensure state as welfare state and are not enforceable in the courts of law.
2. Directive principles of state policy is heavily influenced by the noble ideas and philosophy of Gandh.