

BLOCK 2
INDIAN CONSTITUTION



BLOCK 2 INTRODUCTION

Constitution of India guarantees security of rights of all individuals, promotion of fraternity among them and ensures unity and integrity of nation. Purpose of this block is to introduce you to the provisions dealing with the basic features of the constitution, rights and duties of the people, relationships among them, and about the directives which the constitution gives to the state (government) to device policies for their welfare. These themes are discussed in three units of this block. Unit 4 discusses the basic features of the constitution. Units 5 is about Fundamental Rights. Unit 6 deals Directive Principles of the State Policy and Fundamental Duties of citizens.



UNIT 4 BASIC FEATURES*

Structure

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Government of India Act, 1935
- 4.3 Constituent Assembly
- 4.4 Essential Features
 - 4.4.1 Sovereign, Democratic, Republic
 - 4.4.2 Union of States
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- 4.5 Emergency Provisions
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- 4.8 Let Us Sum Up
- 4.9 References
- 4.10 Answers to Check Your Progress Exercises

4.0 OBJECTIVES

In this Unit we shall discuss the salient features of the Indian Constitution in the backdrop of the relevant events that preceded the coming into force of the Constitution. After going through this unit you should be able to:

- List out the essential features of the Indian Constitution; and
- Highlight the significance of the salient features.

4.1 INTRODUCTION

The constitution of India is the will of the people of the country. It sets the broad functional parameters of governance. The Constitution was prepared after lengthy deliberations in the Constituent Assembly, which began on 6 December 1946 and came into force on 26 January 1950. The precursor to the Indian Constitution was the Government of India Act of 1935.

*Dr. P.V. Ramana, Formerly Research Fellow, Institute of Defence Studies and Analysis, New Delhi. This unit is adopted from BPSE-212, unit 6.

4.2 GOVERNMENT OF INDIA ACT, 1935

The 1935 Act was the product of the Report of a Joint Select Committee that was discussed in the British Parliament before finally receiving the assent of the Queen, on 2 August 1935. Some of the features of the 1935 Act, with modification though, were later incorporated in the Constitution of India. These include a federal structure in the form of a Union government and State Government(s) (Centre and State(s), and the division of powers between them (Union List, State List and Concurrent List) bicameral Legislature – the Lower House and the Upper House (Lok Sabha and Rajya Sabha at the Union level; and State Legislative Assembly and State Legislative Council, at the State level), Federal Court (the Supreme Court).

4.3 CONSTITUENT ASSEMBLY

For the purpose of writing a constitution, a Constituent Assembly was convened. Constitution making was no easy task. The Constitution had to live up to the aspirations of the people who had been exposed to several centuries of injustice, social exploitation and discrimination, as well as two centuries of colonial dominance. Moreover, if it were to be applicable and acceptable to diverse religious, political and regional sections, it had to embody their interests. The motto with which the constitution-making exercise was undertaken was ‘consensus’ rather than the ‘majority principle’. In this, representatives from diverse ideological backgrounds, and several of them with a legal background, worked together. At the head of the exercise was Dr. Rajendra Prasad, a veteran of the freedom movement who was later to hold the office of the president of India for two successive terms, and the leading light was the first Prime Minister of Independent India, Jawaharlal Nehru. Renowned members of the Assembly included T T Krishnamachari, Dr. B R Ambedkar, Alladi Krishna Swami Iyer and Gopalaswami Aiyangar, Shyama Prasad Mukherji, J B Kriplani, Vallabhai Patel and Pattabhi Sitaramayya.

There were to be 381 members in the Constituent Assembly. They represented the various political parties and belonged to the Congress Party, Communist Party of India, Praja Party, Krishak Praja Party, Scheduled Castes Federation, Non-Congress Sikhs, Unionist Muslims and Provinces and the Princely States were also represented in the Assembly.

The provisions of the Constitution were extensively debated upon in the several Committees that were formed for the purpose before being presented to the Assembly for its consideration. On the basis of the deliberations in the Assembly, the Drafting Committee, which was constituted on 29 August 1947, prepared the draft text of the Constitution. Dr. B R Ambedkar was the chairman of the Drafting Committee. The final document, after making amendments to the draft Constitution, as signed on 26 November 1949, and two months later it came into force.

It is, indeed, creditable that the Members of the Constituent Assembly completed the exercise of preparing a Constitution within a period of three years while it took many more years for other countries to have their first Constitution. Also, it goes to the credit of the country and is a testimony to the broad vision of the Constitution makers that the Constitution of India was never abrogated, and a

new one introduced. The Indian Constitution was never seriously questioned since the time it came into force. The changing requirements were attended to through affecting amendments to the Constitution while its essential features were retained; they occasionally came under strain, though.

4.4 ESSENTIAL FEATURES

The essential features of the Constitution of India are as follows: The Constitution is supreme; The sovereignty of India cannot be surrendered or pledged; India is Republic and cannot be turned into a monarchy; Democracy is a way of life than merely providing for adult franchise; Secularism and independent judiciary are two pedestals of this democracy. Amendments to the Constitution can be made without altering its essentials. We shall discuss some of these features.

4.4.1 Sovereign, Democratic, Republic

The ‘Preamble’ to the Constitution declares that the people of the country are the sovereigns. In other words, ‘Sovereignty’ rests in the people and is exercised through the institutions that have been created for that purpose. The sovereignty of the country can not be pledged, i.e., India can not be turned into a colony or a dependency of another country. The entire course of the Freedom Movement was on this quintessential principle of sovereignty.

In the Preamble it is also stated that the country shall be a Republic and shall adhere to a democratic form of government. In Republic there is no scope for a Monarch to reign over the people, but the people themselves rule the county through their elected representatives.

4.4.2 Union of States

An important feature of the Constitution is that it has constituted India as a Union of States (Art 1). There is also scope in the Constitution to create new States as well as to admit new ones. Notable example of these are the formation of States, for the first time after independence in 1956 by bifurcating some of the then existing States on a linguistic basis-Andhra Pradesh, Tamil Nadu, Karnataka and Kerala. Through the bifurcation of the Bombay State Maharashtra and Gujarat were formed. More recently, in the year 2000, three new States – Uttaranchal, Chhattisgarh and Jharkhand – were created. An example of the admission of new States into the Indian Union is the admission of Sikkim, in 1975, till then a protectorate of India, into the some of the Princely States were yet not ready by the time the Constitution would come into force to become part of India. The Nizam’s State of Hyderabad is one such example. And, besides, there were French and Portuguese colonies – Pondicherry and Goa that remained to be integrated with India. On August 5, 2019 the State of Jammu and Kashmir was bifurcated into two union-territories – Jammu and Kashmir and Laddhakh.

4.4.3 Fundamental Rights

The Fundamental Rights provided for in the Constitution could be summarised as Right to Equality, Right to Freedom, Right Against Exploitation, Right to Religion, Cultural and Educational Rights and the Right to Constitutional Remedies. The Right to Property was made a legal right through the Forty Fourth Constitutional Amendment Act, and is hence, not a Fundamental Right now. In

the large interests of the country, the property belonging to any person can be acquired by paying a ‘compensation.’

The Fundamental Rights are enshrined in Part III of the Constitution, and their implementation is guaranteed by the Supreme Court. In other words, Fundamental Rights are justice able. Indeed, some of the Fundamental Rights, it might be noted, are applicable only to the citizens of the country and not to foreigners. Article 20, Article 21 and Article 22 are, however, applicable to all. At the same time, it should also be borne in mind that what is applicable is the ‘restriction’ on the Right.

Except during an ‘Emergency’, Fundamental Rights cannot be suspended. However, even during an Emergency Article 20 and Article 21 cannot be withheld. The Constitution was amended by the Forty Fourth Amendment Act and through Article 359-1A it was stated that Article 20 and Article 21 cannot be suspended even when a proclamation of Emergency is in operation.

Right to Freedom

The Constitution also ensures the Right to Freedom under Articles 19 to 22. Article 19 guarantees the right to freedom of speech and expression, right to peaceful assembly, right to form associations, right to visit and reside’ in any part of the country and the right to profess and practice ones religion. These rights too, are subject to any reasonable restrictions that can be imposed by the state under clauses 2 to 6 of Article 19.

Article 20 guarantees that no person shall be punished on the basis of laws that are enacted after a crime has been committed (protection from *ex post facto* laws). Protection from being punished more than once for the same offence (protection from ‘double jeopardy’) and protection from standing trial against oneself (protection from self-incrimination). Article 21 ensures the protection of ‘personal life and liberty’. In other words, the state does not have the right to take away the life of a person, except through the procedure established by law. Article 22 prohibits detention of person’s without trial. However, preventive detention of a person up to three months and, in some cases, beyond that is permitted.

Right to Equality

Article 14, guarantees the Right to Equality before the Law and the Right to Equal Protection of the Laws. In other words, this article ensures that all persons can be tried in a court of law and every person can approach the courts for justice and that no person shall be discriminated against in the application of laws, nor can any person claim special privileges and favouritism.

Article 15 guarantees protection from discrimination on the basis of ‘religion, race, caste, sex or place of birth’. and provides for equal access to and thus the Right against Discrimination. It also, however, states clearly that the state can make special provisions for the uplift of certain categories of people like socially and culturally backward classes and Scheduled Castes and Scheduled Tribes. An example in this context is the reservation provided in educational institutions and in the public services to the disadvantages sections of the society. As one commentator observed, “the framers of the Indian Constitution sought to shape an overarching a) adequate means of livelihood for all,(b) distribution of wealth

and control over it, rather than concentration, in the common good, (c) equal pay for equal work for both men and women (d) non-abuse of the health of all workers and (e) the protection of the children of the country from exploitation and their growth in an atmosphere of freedom and dignity.

Article 16 provides for the Right to Equality of Opportunity in employment. Continuing with its desire to ensure equality of all citizens, the Constitution also abolished 'Untouchability' whose practice is a crime under Art 17, while Article 18 abolished Titles.

4.4.4 Directive Principles of State Policy

The Directive Principles of States Policy (DPSP) are an adaptation from the Irish Constitution. These are broad guidelines which have to be borne in mind while enacting laws and implementing them. Unlike the Fundamental Rights, the DPSP are not justiceable. Simplistically understood the DPSP have a 'welfare' connotation. The Constitution does not provide for their guarantee and, therefore, their enforcement can not be questioned in a court of law.

Fundamental Rights and the DPSP "together, not individually" form the core of the Constitution; "the true conscience". The DPSP prescribes that the state shall ensure.

4.4.5 Fundamental Duties

The Fundamental Duties enshrined in the Constitution are intended to obligate all the citizens to strive for the common benefit of all. They are expected to respect the Constitution, National Tri-colour and the Anthem. They are called upon to strive for upholding the unity and integrity of the country and work for a harmonious society setting aside all divisive tendencies. The citizens of the country have a duty to protect its resources both natural and material and work towards higher levels of achievement.

4.4.6 The Union: Executive, Legislature and Judiciary

There are, as all students of Political Sciences know, three organs or branches of government, i.e., legislature, executive and judiciary. A harmonious functioning among the three is vital for the furtherance of a country.

Legislature

At its Independence, India chose to adopt a parliamentary form of government. In such a form of government, the President is the Head of the State while real executive power is exercised by the Head of Government, the Prime Minister, in association with his Council of Ministers, all of who are collectively responsible to Parliament.

Executive

In India, the legislature and the executive are drawn from one another, while the judiciary is an independent body. The legislature comprises of the House of People (Lok Sabha), Council of States and the President of India. A member of the Union Council of Ministers has necessarily to be a member of either of the lower house, the Lok Sabha or the Upper house, the Rajya Sabha.

President

Both the houses of Parliament and the legislatures in the States elect the President by means of a 'single transferable vote'. The office of the President, its functions, powers tenure, method of election and re-election, impeachment, and the qualifications required to hold the office are enunciated in Articles 52 to 62. All activities of the state are carried out in the name of the President as the executive power is vested in the President (Art 52). As in the United States, in India, too, the President is the Supreme Commander of the Armed Forces. The President summons both the houses of Parliament and addresses its joint sessions. He has the power to remit sentences and grant reprieve. He appoints all the important functionaries of the state such as the Prime Minister and the Council of Ministers, Judges of the Supreme Court and High Courts, the Attorney General, Governors of States, Chairpersons of Commissions like the Election Commission of India and heads of organisations like the Comptroller and Auditor General of India (C & AG).

The Union Council of Ministers

It need to be kept in mind that there is a difference between the Cabinet and the Council of Ministers; the Cabinet is composed of Ministers of Cabinet rank and Ministers of State, while the Council also includes the Deputy Ministers. The Council of Ministers is collectively responsible to Parliament. Activities of the Ministries are brought under scrutiny by the opposition during the two-hour long Question Hour at the beginning of each day of the Session in Parliament. The Council of Ministers makes recommendations to the President, in what is called 'aids and advises', in the affairs of the country. Important among the recommendations that we should be aware are those relating to dissolution of the Lok Sabha, declaring war or declaring a 'state of Emergency'.

Legislature/Parliament

The Indian Parliament is the supreme law-making body of the country. It is a bicameral legislature as in the United Kingdom, the United States and several other countries. The upper house is known in Hindi as the Rajya Sabha and in English as the Council of States. It comprises the Chairman, who is also the Vice-President of India, the elected members and 12 nominated members, each holding a term of six years, with one-third of its membership retiring every two years.

A significant aspect and point of difference between the Rajya Sabha and its equivalent, the American Senate is that the membership of each State in it is proportional to its population, whose legislative assembly elects the members of the Rajya Sabha. Thus, all States of the Indian Union do not send an equal number of representatives. The lower house of Parliament is the House of the People, better known as the Lok Sabha. Its members are elected for single, term of five years or less directly by all eligible voters by means of 'universal adult suffrage' from territorially delimited constituencies.

The Rajya Sabha has little power over money bills. These can not be introduced in the Rajya Sabha. It has to return such bills to the Lok Sabha with its recommendations within 14 days, and it is for the Lok Sabha to accept or reject any of its recommendations. In case of a deadlock over a non-money bill between the Lok Sabha and the Rajya Sabha, the President convenes a joint sitting of the two houses to debate and vote on the bill.

A bill takes the form of an Act only after the President gives his assent to the same. The President is empowered to withhold assent to a bill passed by both houses of Parliament or refer it to Parliament with his suggestions. There have been very few occasions when the President withheld his assent, but of course, on the premise that the bill ran in contradiction with 'public opinion'. One such instance was the Postal Bill that was thought to be infringing on the privacy of the people.

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with model answers given at the end of the unit.

1) What rights do Article 20 and 21 deal with? Can these rights be restricted or temporarily suspended?

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2) The Union Cabinet consists of

- a) The prime minister, Ministers of Cabinet rank and Ministers of State.
- b) Cabinet rank Ministers and Ministers of State
- c) Prime Minister and Cabinet rank Ministers

Judiciary

The third and very important organ of the government is the Judiciary. The Highest court of appeal is the Supreme Court. The Supreme Court has both appellate and original jurisdiction as do the High Courts in the respective States.

The Supreme Court is the custodian of the Constitution. Laws enacted by the legislature can be declared invalid by the Supreme Court, if it is of the opinion that they are not in conformity with the provisions of the Constitution. This power is known as the power of 'judicial review'. Besides, the Supreme Court and the high Courts can also issue writs to the government and its agencies. A well-known example is the Writ of *Habeas Corpus*. By pleading for the issuance of such a writ an applicant asks the Supreme Court to direct the concerned police authorities to present before the court a person who is missing and is believed to be under their custody.

The President of India appoints all Judges of the Supreme Court and High Courts and the Chief Justices. The Constitution also clearly lays down the procedure for impeaching the Judges and Parliament alone can impeach a judge of the Supreme Court.

The supreme Court and Parliament have on occasion entered into a tug of war. This was finally resolved with the Constitution Amendment Act stating that the Supreme Court has the power.

4.5 EMERGENCY PROVISIONS

Emergency Provisions are enshrined in Part XVIII of the Constitution under Articles 352 to 360. There are three types of Emergency that can be declared: External aggression or armed rebellion (Article 352): Emergency was declared under this provision for the first time in the wake of the war with China on October 26, 1962. It continued upto January 10, 1968. Another proclamation of emergency took place on December 3, 1971, in the wake of the India-Pakistan war. During its continuation, a third Emergency was declared was on June, 1975. It was revoked in 1977. Critics argue that the third emergency was intended more to retain Mrs. Indira Gandhi in power than there was the actual threat. It was the darkest period for Indian democracy as there were arbitrary detentions, for a prolonged period of time and accusations of widespread infringement of Fundamental Rights.

4.5.1 General Emergency

An emergency can be proclaimed when the security of the country is under threat or is under the danger of a threat from hostile countries during times of war or only to state whether an Act was in contravention of the provisions of the Constitution or not.

4.5.2 Declaration of Constitutional Emergency

The most contentious and abused emergency provision is Article 356. If the President receives a report from the Governor of a state stating that the constitutional machinery has broken down or that the administration of the State can no longer be carried out in accordance with the provisions laid down in the Constitution of India, and emergency can be declared in that State. The President may do so even if he is otherwise satisfied of a constitutional breakdown in a State. The provision allows dismissing the State government and bringing it under President's Rule or Central Rule. Under such a condition, the Governor of the State assumes all functions and carries out the administration in the State, on behalf of the President, i.e. the Centre, with the aid of his advisors appointed by the President upon the recommendation of the Union Council of Ministers.

There were several instances when Article 356 was brought into force in various State. The first instance of dismissing a State government by invoking Article 356 even while it continued to enjoy the confidence of the State Legislature occurred in 1959, in Kerala, when the Communist government of the day was dismissed. It generated a major controversy and it was argued that it was a wrong decision as the government commanded a majority on the State Assembly. On

the other hand, the supporters of the decision held that public dissatisfaction manifest in the form of agitation against the government and its policies was reason enough to conclude that there, indeed, was a break down of law and order, and, hence, it was correct to impose President's Rule.

Other instances include the dismissal of State governments en masse twice, in 1977 after the Janata Party swept the general elections and subsequently in 1979 when the Congress Party returned to power. Other contentious occasions on which invoking the provision was resorted are in 1984 in Andhra Pradesh and later in Karnataka when the S R Bommai government was dismissed, and the court later subsequently held that the decision was incorrect.

4.5.3 Financial Emergency

Financial emergency can be declared under Article 360 in conditions in which the financial stability or credit of the country or any part of the country is threatened. However, as provided for in the Forty Fourth Constitutional Amendment Act of 1978, such a proclamation needs to be approved by the both the Lok Sabha and the Rajya Sabha within two months from the date of its proclamation, or, if the Lok Sabha is at that time dissolved, within 30 days from the date it (the new house) reconstituted.

4.6 FEDERALISM

At the time of Independence the diversity of the country was such that the Constitution makers, thought it fit to have a strong Union government (Centre) within a federal framework. Provisions related to Centre-State relations are enumerated in Part XI of the Constitution. The Indian Constitution provides for governments with specified powers in the various States, too. India's Constitution thus has both centralizing and de-centralising features.

For more than a decade and a half after Independence, the Centre and the States had almost no problems. Scholars attribute this to the existence of Congress governments in most of the States in the country as well as at the Centre, the towering personality of the then Prime Minister, Jawaharlal Nehru, and also the leadership in the States as well as at the Centre that was less prone to schism, but guided more by idealism. The balance in relations tilted more in favour of the Centre when Indira Gandhi was the Prime Minister of the country. This was due not only to the Emergency that was imposed in 1975, but also because of weak leaders at the State-level whose survival in political power was dependent on the clout that they could wield at the Central level.

By the 1990s, at least a few of the States exercise greater leverage vis-a-vis the Centre. A Central government that lacked an absolute majority in Parliament had to depend on the support of its regional allies – the Dravida Munnetra Kazhagam and the All- India Anna DravidaMunnetraKazhagam, National Conference in Jammu and Kashmir, the AsomGana Parishad in Assam, and the more recent splinter groups of the erstwhile Janata Party that have established themselves in the different States.

4.6.1 Centre-State Relations

Problems in Centre-State relations came to the fore after non-Congress government came to power in several States – Orissa, West Bengal, Kerala, Punjab, Uttar Pradesh and Bihar in the late 1960s.

Financial Relations

Another contentious issue is the sharing of financial resources between the Centre and the States and allocation of Central grants to various States. While States have since long been demanding the allocation of larger portions, a new proposition suggested allocation on the ‘basis of performance’.

Governor’s Rule

Yet another point of difference is the ‘imposition of Governor’s Rule on a state and his/her role while in office, besides that of his/her abrupt removal. Governors are generally appointed with the concurrence of the Chief Minister of the concerned State, and the Sarkaria Commission, too, in 1988, recommended the same. The recommendation, however, has not always been adhered to. The Sarkaria Commission sought to herald co-operative federalism.

4.7 RELATIVE FLEXIBILITY

According to several scholars, a Constitution is a living document and, hence, it has to reflect the changing times. An amendment to the Preamble made the principle of secularism an integral feature of the Constitution.

When a Constitution is amended it is expected that it would bring a change for the better. In other words, it would ‘give more’ than ‘take away any’. Article 368 together with other articles, empowers Parliament to make amendments to the Constitutions. In fact, the occasion for debate, on what the fundamental features of the Constitution are, was created when certain amendments were made to the Constitution. The amendment procedure laid down in the Constitution is both rigid and soft for different articles. While some need only a simple majority, most need a majority of two-thirds present and voting in both the Houses of Parliament and the assent of the President. The toughest amendment procedure prescribed requires, besides the two-thirds present and voting and requirement, also the consent of at least half the number of Legislatures in States in the country. And further more, it also requires the assent of the President.

Two of the most vehemently contested aspects were: one, the authority of Parliament to effect amendment itself to any article of the Constitution; and two, on who holds supremacy of decision over and amendment.

While the Indian Parliament held that it was the supreme authority and had, therefore the right to amend any article in the Constitution, its critics said it was the Constitution that is supreme and not Parliament, whose creation Parliament was as much any other institution. It was, in the final analysis, resolved that Parliament is rightfully authorised to amend the Constitution, but only so long as it did not amend the ‘basic features of the Constitution. Besides, the Supreme Court has the power to decide whether and amendment to constitution, indeed, were against the basic features of the Constitutions or not.

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with model answers given at the end of the unit.

1) Examine the Parliament's powers to amend the Constitution of India.

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2) Can the Indian Parliament amend the basic structure of the Constitution?

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4.8 LET US SUM UP

The Indian Constitution is a successful document and it has sought to foster the best democratic tradition. The tradition that it had established had the resilience to correct occasional anomalies, which itself is proof of its success. The Constitution incorporates federalism, guarantees the fundamental rights of the people of the country, a system of checks and balances through the institutions of President, Council of Ministers, etc.

4.9 REFERENCES

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4.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) Article 20 guarantees fair trial and Article 21 protects an individual's life and liberty.

- 2) a) The Prime Minister, Minister of Cabinet rank and Minister of State

Check Your Progress 2

- 1) Parliament can amend some article of the constitution with a simple majority, but most amendments require the approval of two-thirds of the members sitting and voting and the assent of the President. A few even require the additional consent of at least half of state legislatures.
- 2) Since the Constitution and not the Parliament is supreme, the Parliament cannot amend or alter the basic feature of the Constitution.



UNIT 5 FUNDAMENTAL RIGHTS*

Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Historical Background
 - 5.2.1 The Commonwealth Bill of 1925
 - 5.2.2 The Nehru Report of 1928
 - 5.2.3 The Sapru Report of 1945
 - 5.2.4 Sub-committee on Fundamental Rights
- 5.3 Salient Features of the Fundamental Rights
- 5.4 The Six Fundamental Rights
 - 5.4.1 Right to Equality
 - 5.4.2 Right to Freedom
 - 5.4.3 Right against Exploitation
 - 5.4.4 Right to Freedom of Religion
 - 5.4.5 Cultural and Educational Rights
 - 5.4.6 Right to Constitutional Remedies
- 5.5 The Basic Structure Doctrine
- 5.6 Reasonable Restrictions on Fundamental Rights
- 5.7 Let Us Sum Up
- 5.8 References
- 5.9 Answers to Check Your Progress Exercise

5.0 OBJECTIVES

After reading this unit, you will be able to explain.

- Historical background of Fundamental Rights;
- Their Salient Features;
- Six Important Fundamental Rights; and
- Reasonable restrictions on Fundamental Rights.

5.1 INTRODUCTION

The preamble to Indian constitution is about the resolution of Indians (“We, the People of India”) for securing freedom, equality, justice, security, dignity to all citizens. These commitments have been incorporated as Fundamental Rights and Directive Principles of the State Policy the Part III and the Part IV respectively. The Fundamental Rights are justiciable. It means that if Fundamental Rights of citizen or persons are violated, she/he can approach the court for their protection. They are different from the Directive Principles of the State Policy which are non-justiciable. It means that if state does not follow the provisions of the Directive Principles of the State Policy, a citizen can not approach court claiming them.

*(Adopted from BPSC-102, Unit 4), Divya Rani, Consultant, Faculty of Political Science, IGNOU, New Delhi

5.2 HISTORICAL BACKGROUND

The notion of rights which finally came to be known as Fundamental Rights in Indian constitution evolved from the nineteenth century. Galvine Austin opines that the concept of Fundamental Rights was implicit in the formation of the Indian National Congress in 1885, in which Indians wanted the same rights and privileges that the British enjoyed in India and in England. Some of these rights were included in the documents such as the Constitution of India Bill, 1895. This bill sought for Indians rights such as free speech, imprisonment only by competent authority, and free State education. In the following period, attempts were made from quarters asking the British government to grant rights to Indian. These demands were made in resolutions by the Indian National Congress between 1917 and 1919, in several bills and in committee reports. The Commonwealth Bill of India Bill 1925 drafted by Annie Basent, the Nehru Report 1928, Sapru Report of 1945, and Sub-Committee of the Constituent Assembly on Fundamental Rights.

5.2.1 The Commonwealth of India Bill, 1925

The Commonwealth of India Bill demanded seven Fundamental Rights for Indians. Among these rights included: individual liberty, freedom of conscience, free expression of opinion, free assembly, and equality before law. The Bill also had provisions for right to free elementary education, equal right to use roads, court of justice and all other places of business or resort dedicated to public.

5.2.2 The Nehru Report, 1928

The printing of the Commonwealth Bill was followed by the visit of Simon Commission in 1927, which aimed to study the possibility of introducing constitutional reforms in India. In response to the Simon Commission, the Congress passed a resolution to set up committee in its forty-third annual session held at Madras for the purpose of drafting of “a Swaraj Constitution for India”. A declaration of rights was to be the basis of this draft constitution. The task to draft the constitution was assigned to a committee. This committee came to be known as Nehru committee after its chairman, Motilal Nehru. The Nehru report underlined the need for securing Fundamental Rights that had been denied to them by the colonial government. Indeed, the Fundamental Rights in the Nehru report were reiteration of the rights mentioned in the Commonwealth Bill of India Bill, about which you have read above. This report underlined prominently the need to protect minority rights. The Congress party in its session in 1931 held at Karachi Resolution highlighted the need to end exploitation of masses and to make economic freedom intertwined with the political freedom. It suggested that suitable legislations should be made to safeguard the interests of working classes.

5.2.3 The Sapru Report of 1945

The Sapru Committee was assigned the task of doing spadework for making constitution for future India. The Committee consisted of thirty members. It was known as Sapru Committee after the name of its chairman, Tej Bahadur Sapru, an

eminent lawyer. The report was published in 1945. The Sapru Committee is distinguished for making two suggestions about rights. One, it made distinction between justiciable rights and non-justiciable rights. Two, it suggested that rights of the minorities must be protected.

5.2.4 Sub-Committee on Fundamental Rights

The Constituent Assembly had constituted various committees to give suggestions for inclusion in the constitution. One such committee was to give suggestions about Fundamental Rights, Minority Rights and Tribal and Excluded Areas. It was headed by Sardar Ballabhbai Patel. This Committee was divided into sub-committees. One such sub-committee was also on Fundamental Rights. The Fundamental Right sub-committee or the Rights sub-committee as it was known was headed by J.B. Kripalani. This committee had representation of diverse sections of society, including women such as Amrit Kaur and Hansa Mehta. An important decision which the Right sub-committee took was to include the Fundamental Rights as justiciable right. The suggestions of the Rights sub-committee were incorporated as Fundamental Rights in Part III of the Constitution after they were discussed in the Constituent Assembly.

5.3 SALIENT FEATURES OF THE FUNDAMENTAL RIGHTS

The important features of the Fundamental Rights are:

- i) ‘All are equal before the law’. It means that all citizens are equal under law. They have equal the right to freedom of religion, assembly, association, and movement. No person is to be deprived of his life, liberty, or property, except in accordance with the law.
- ii) Minorities are allowed to protect and conserve their language, script, and culture. Fundamental Rights primarily protect individuals and minority groups from arbitrary, prejudicial state action. Three of the articles have been designed to protect the individual against the action of other private citizens. Article 17 abolishes untouchability; Article 15(2) lays down that no citizen shall suffer any disability in the use of shops, restaurants, wells, roads, and other public places on account of his religion, race, caste, sex, or place of birth; Article 23 prohibits forced labour- which, although it had been practiced by the state, was more commonly a case of landowner versus peasant.
- iii) Various means are provided whereby the citizens can move the Supreme Court and other courts for the enforcement of the Fundamental Rights. There are two different mechanisms of enforcement of Fundamental Rights: first judicial review and second writs against a public authority violating a person’s rights. Both the remedies operate through Article 32.
- iv) The Fundamental Rights are both natural as well as legal.

Check Your Progress Exercise 1

- Note:** i) Use the space below for your answers.
ii) Check your answers with the model answer given at the end of this unit.

1) What was Commonwealth Bill of 1925?

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2) What were the important features of Nehru Report and Sapru Report?

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5.4 THE SIX FUNDAMENTAL RIGHTS

The original Constitution (1950) had seven Fundamental Rights. But after the passage of the 44th Amendment in 1978, there are now six Fundamental Rights. This Amendment deleted the seventh fundamental right, viz., right to property (Art. 31) from the list of Fundamental Rights. In sub-sections below, you will read about the six Fundamental Rights:

5.4.1 Right to Equality

Articles 14 to 18 deal with different aspects of right to equality. Article 14 states that the state shall not deny to any person equality before the law and equal protection of law within the territory of India. It, thus, provides equality before to every person without discriminating on grounds of religion, race, caste, sex or place of birth. Articles 15, 16, 17 and 18 relate to socio-economic equality. Article 15 prohibits state from discriminating against any person on grounds only of religion, race, caste, sex, place of birth or any of them. However, the state can make special policies of protective discrimination for welfare of women, children, socially and educationally backward classes, and SCs and STs. It also prohibits discrimination or restriction to any person from access to shops, public restaurant, hotels and places of public entertainment, or use of wells, tanks, bathing ghats, roads and places of public restaurant which are maintained wholly or partly out of state funds or which are dedicated to the use of general public.

Article 16 guarantees equality of opportunity for all citizens in public employment and prohibits ineligibility of or discrimination against, a citizen in respect of employment or office under the state on grounds of religion, race, caste, descent, place of birth, residence or any of them. However, the state may reserve offices

which relate to religious or denominations for members professing the concerned religions or denominations. Article 17 abolishes untouchability and prohibits its practice in any form. The enforcement of any disability arising out of untouchability is punishable by law. According to Article 18, no title other than military and academic distinction shall be conferred by the state. No citizen of India shall accept any title from a foreign state. No person holding an office of profit or trust under the state shall accept a gift or present or emolument or office of any kind from or under a foreign state.

5.4.2 Right to Freedom

Right to freedom are given in Articles 19 to 22. The right to freedom is not an absolute right. It is subject to 'reasonable restrictions' that may be imposed by law. The Article 19 guarantees the following rights:

- i) Freedom of speech and expression: its main concern is the interests of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality or in the relation of contempt of court, defamation or incitement to an offence;
- ii) to assemble peacefully and without arms: it is qualified by the interests of security and integrity of India or public order;
- iii) to form associations and unions: it is qualified by the interests of sovereignty and integrity of India, or public or morality. It also includes "cooperative societies" that was added by 97th Amendment in 2012;
- iv) to move freely throughout the territory of India: general interests of the public or the protection of interests of the scheduled tribes;
- v) to reside and settle in any part of the territory of India; and
- vi) to practise any profession, or to carry on any occupation, trade or business: it is qualified by professionals' qualification needed for practising them and the power of the state or a corporation owned or controlled by the state to the total or partial exclusion of citizen.

The Articles 20, 21 and 22 assure personal freedom of persons. Central to them, indeed central to all the Fundamental Rights, is the right to life and personal liberty. In 2002, judiciary interpreted this right in a creative way. Right to life is now seen as a right to life of dignity and fulfilment. Moreover, the 86th Amendment in 2002 further added Article 21 A to the constitution that authorises the state to provide free and compulsory education to children between the ages of six and fourteen in such manner that the state may determine. Earlier it was present in the Article 45 of the directive principles of state policy. Article 20 provides a fair trial and freedom from arbitrary conviction by the state. No person can be convicted except for the violation of an offence under the law prevalent at the time of the commission of the act charged as an offence. Article 22 and its different clauses provide protection against Arrest and Detention in certain cases.

5.4.3 Right against Exploitation

The Indian constitution guaranteed right against exploitation in Articles 23 and 24. Article 23 prohibits traffic in human beings and beggar (unpaid labour) and other similar forms of forced labour. According to Article 24, no child below the age of fourteen shall be employed in the factory, mine or hazardous occupations.

5.4.4 Right to Freedom of Religion

Article 25 entitles all persons equally to freedom of conscience and right to freely profess, practice and propagate religion. But the freedoms are subject to public order, morality and health, and to other provisions of part III of the constitution. Nothing in this article shall affect the operation of any existing law or prevent the state from making a law-

- a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- b) providing for social welfare and reform or throwing of Hindu religious institutions of a public character to all classes and sections of the Hindus.

Freedom of conscience is strengthened by two articles, i.e., Articles 27 and 28. Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious domination. Article 28 prohibits religious instructions in any educational institution wholly maintained by state funds unless such an institution, even though administered by state, has been set up under an endowment or trust which requires that religious instructions be imparted in them.

5.4.5 Cultural and Educational Rights

Articles 29 and 30 are about cultural and educational rights. Article 29 grants any section of the citizens residing in the territory of India or any part of it, possessing a distinct language, script or culture of its own, right to conserve it. No citizen shall be denied admission into an educational institution maintained by the state or receiving aid out of state funds on the basis of religion, race, caste, language or any of them. According to the Article 30, all minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice.

5.4.6 Right to Constitutional Remedies

According to Article 32, the Indian Constitution has certain provisions which give powers to the courts to enforce Fundamental Rights. The devices through which the courts protect Fundamental Rights are known as writs or judicial processes. These writs or judicial process are: *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. The Supreme Court may issue directions or orders or writs to enforce Fundamental Rights. The meanings of the writs are mentioned below:

Habeas corpus: It means “to have the body”. This writ protects the right to life and personal liberty (Article 21). It can be issued by the courts to any authority which has detained a person without trial to produce him to the court for trial. It challenges the executive if it has detained anyone against the authority of law. It can also challenge a law under which the detention has been made if that law is unconstitutional. The court can free a persons if she/he is detained illegally. Disobedience to this writ is met with punishment for contempt of court.

Mandamus: *Mandamus* means a command. It is an order issued to an authority or a person to do the duty mandated to it by law which it has refused to perform.

Mandamus is not granted against the President, Governor of the state, the high court or supreme court judges. It is not issued against a private individual or body.

Prohibition: It is a writ issued by a higher court – the Supreme Court or a high court to an inferior court. It prohibits the latter from continuing proceedings to hear a case which is beyond the jurisdiction.

Certiorari: By this writ the Supreme Court, and the High Courts may call for the record of a case from a lower court or semi-judicial body on an allegation of an excess of jurisdiction.

Quo Warranto: by this writ the court asks a person or body of persons under which authority it is in a public office created by the constitution or a statute.

5.5 THE BASIC STRUCTURE DOCTRINE

According to the Basic Structure Doctrine, the Parliament can not change through amendments the basic features of the constitution, which include Fundamental Rights along with judicial review, secularism and parliamentary democracy. This doctrine emerged from the Supreme Court judgement in March 1973 about *Kesavanad Bharati vs. State of Kerala* case. In this case, His Holiness Kesavanand Bharati Spripadagalvanu, leader of a *math* in Kerala challenged in the Supreme Court the decision of Kerala government about taking over the private land as part of land reforms programme. In its judgement about this case, the Supreme Court pronounced that basic structure of the constitution, i.e., Fundamental Rights can not be changed. However, the court also held that right to property did not constitute basic structure of the Constitution. The 44th Amendment, 1978 removed the right to property as Fundamental Rights. As Fundamental Rights are enforceable, the courts have a special responsibility to protect them. The courts protect Fundamental Rights by issuing writs. Prior to *Kesavanad Bharati* case, the Supreme Court protected Fundamental Rights in *Golakhnath vs. State of Punjab* case (1967). In this case, the court restricted Parliament from curtailing any Fundamental Right. In *Indira Gandh vs. Raj Narayan* case in 1975, the Supreme Court used Basic Structure doctrine to strike down the 39th Constitutional Amendment made, which sought to place elections of President, Vice-President, Prime Minister and Speaker of Lok Sabha beyond the purview of judicial review.

Check Your Progress Exercise 2

Note: i) Use the space below for your answers.

ii) Check your answers with the model answers given at the end of this unit.

1) What are the six parts of Fundamental Rights?

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2) What is Basic Structure Doctrine?

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5.6 REASONABLE RESTRICTIONS ON FUNDAMENTAL RIGHTS

Indian constitution has provided a safety net to all sections and groups through various articles especially regarding Fundamental Rights of the citizens and the persons. However, the Fundamental Rights are not absolute. They are subject to reasonable restriction. The state can put restrictions on right to freedom for protection of sovereignty and security of the country; for maintenance of public order by imposing curfew and morality; and for maintaining friendly relations with other countries. The state can also put reasonable restriction of right to equality by devising welfare policies for marginalised sections of society such as women, children, socially and educationally backward classes, Scheduled Castes and Scheduled Tribes.

Article 33 empowers Parliament the power to restrict or abrogate the application of Fundamental rights in relation to armed forces or the forces, police, etc. This article is meant to instil discipline among the forces whose duties are related to maintenance of public order and sensitive subjects. According to Article 32, a person has fundamental right to approach the Supreme court but not the high court to seek constitutional remedies for enforcement of Fundamental Rights. High Court may decline to hear a petition seeking constitutional remedies.

5.7 LET US SUM UP

Fundamental Rights are given in Part III of the Constitution. They are essential conditions for development of human beings. They provide freedom, equality, security and dignity to all persons and citizens without discriminating on grounds of religion, race, caste, gender, place of origin, descent. They are justiciable. Their violation can be challenged in the court of law. In India, realization to have Fundamental Rights which finally were included in the Constitution grew from the nineteenth century. As per the Basic Structure Doctrine, the Fundamental Rights represent basic structure of the constitution. They cannot be amended. The courts can enforce the Fundamental Rights with the devices known as writs.

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5.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) The Commonwealth Bill of 1925 laid down that individual liberty, freedom of conscience, free expression of opinion, free assembly, and equality before the law was to be ensured. The Bill also demanded right to free elementary education, equal right to use roads, court of justice and all other places of business or resort dedicated to public.
- 2) Nehru Report was a report prepared by a committee headed by Motilal Nehru in 1928. It was assigned the task of preparing draft of a constitution of India. The committee emphasized the need for securing Fundamental Rights to Indians including the minority rights. The Sapru Report made two important suggestions: to make distinction between justiciable rights and non-justiciable rights, and to ensure the minorities' rights.

Check Your Progress Exercise 2

- 1) The six parts of Fundamental Rights are: the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the rights to constitutional remedies.
- 2) The Basic Structure Doctrine denotes that basic structure of the constitution, which includes among some other provisions, the Fundamental Right. It was propounded in Keshavanand Bharati case in 1973.

UNIT 6 DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES*

Structure

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Genesis of Directive Principles of State Policy and Fundamental Duties
 - 6.2.1 Evolution of Fundamental Duties
- 6.3 Fundamental Duties of Indian Citizens
- 6.4 Amendments to the Directive Principles of State Policy and Fundamental Duties
- 6.5 Execution of Directive Principles of State Policy and Fundamental Duties
- 6.6 Limitations of the Directive Principles of State Policy and Fundamental Duties
- 6.7 Let Us Sum Up
- 6.8 References
- 6.9 Answers to Check Your Progress Exercises

6.0 OBJECTIVES

This Unit deals with the Directive Principles of the State Policy and Fundamental Duties. It explains the genesis, characteristics, and limitations of the Directive Principles of State Policy and Fundamental Duties outlined in the Constitution. After reading this unit, you will be able to:

- Understand Directive Principles of State Policy and Fundamental Duties
- Explain Amendments to Directive Principles of State Policy and Fundamental Duties; and
- Limitation of Directive Principles of State Policy and Fundamental Duties

6.1 INTRODUCTION

In unit 5, you have read justiciable rights, i.e. Fundamental Rights. In this unit, you will read non-justiciable rights, i.e. Directive Principles of State Policies and about Fundamental Duties. Directive Principles are the directions given by the constitution to the state for the welfare of citizens of India. The Directive Principles of State Policy are mentioned in Articles 36-51, Part IV of the Constitution. Their main purpose is to achieve social and economic development of all sections of the society, aiming to set up an egalitarian society. In Granville Austin's views, Directive Principles of State Policy have been helpful in achieving the constitutional goals of social, economic and political justice to all. On the other hand, Indian constitution contains not only positive laws but also describes some duties of state as well as citizens. These duties are incorporated in the Part

6.2 GENESIS OF DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES

As you have read in unit 5, the Fundamental Rights were incorporated in the Constitution according to the suggestions of Rights Sub-committee of the Constituent Assembly. Apart from giving suggestions on the Fundamental Rights, this Sub-committee gave suggestions on Directive Principles of State Policy. Indeed, there has been a debate in the Constituent Assembly whether the rights should be divided into two parts – justiciable and non-justiciable or Fundamental Rights and Directive Principles of State Policy. They provide directives or instructions to the state to introduce policies about the welfare of different sections of the society. Granville states that four members played decisive role in framing Directive Principles of State Policy – B.N. Rau, A.K. Ayyar, B.R. Ambedkar and K.T. Shah. Among them B.N. Rau was “the most influential”.

The origin of Directive Principles of State Policy can be traced to Karachi Resolution, and socialist and nationalist ideas which were prevalent from the 1920s in India. As you have read in unit 5, Sapru Committee suggested that rights should be divided between two parts – justiciable and non-justiciable. Even the Right Sub-Committee made these suggestions. At the time of discussion on Directive Principles of State Policy in India, the inclusion of provisions about the state’s role in social and economic development of society was not an exception to India. In the opinion of Granville Austin, they attracted “a wide range of Assembly members”. Hindu outlook and Gandhian ideas also influenced the decision to include provisions of social, economic and political development of people. After serious deliberations, the Constituent Assembly included Directive Principles of State Policy in Part IV in the Constitution. A list of Directive Principles of State Policy is given below.

Directive Principles of State Policy – Part IV

Articles No.	Subject-Matter
36.	Definition of the State
37.	Application of the principles contained in this part
38.	State to secure a social order for the promotion of welfare of the people
39.	Certain principles of policy to be followed by the State
39 A.	Equal Justice and free legal aid
40.	Organization of village panchayats
41.	Right to work, to education and to public assistance in certain cases
42.	Provisions for just and humane conditions of work and maternity relief
43.	Living wages, etc., for workers

43 A.	Participation of workers in the management of industries
43 B.	Promotion of co-operative societies
44.	Uniform civil code for the citizens
45.	Promotion for early childhood care and education to children below the age of six years
46.	Promotion of educational and economic interests of Scheduled Castes, Schedules Tribes and other weaker sections
47.	Duty of the State to raise the level of nutrition and the standard of living and to improve public health
48.	Organization of agricultural and animal husbandry
48 A.	Protection and improvement of environment and safeguarding of forests and wildlife
49.	Protection of monuments and places and objects of national importance
50.	Separation of Judiciary from Executive
51.	Promotion of international peace and security

Durga Das Basu classifies the Directive Principles of State Policy into three groups. First, certain ideals, which the members of the Constituent Assembly expected the state to achieve. These ideals especially, were economic. Second, certain directions to the Legislatures and the Executive which they were expected to follow for exercising exercise their legislative and executive powers. Third, certain rights of the citizens were not be enforceable by the Courts like the Fundamental Rights, but which could be implemented by the state through it legislative and administrative policies.

Apart from the articles mentioned in Part IV of the constitution, there are some other articles in the constitution which enjoin on the state to make certain policies for people and non-justiciable in nature. Such articles are Articles 335, 350A and 351. According to Article 335 the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of the Union of a State. Article 350 A suggests that every state and every local authority within state will provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups. Article 351 enjoins the Union to promote the spread of Hindi language and to develop it so that it may serve as a medium of expression of all elements of the composite culture of India.

6.2.1 Evolution of Fundamental Duties

When the constitution was adopted, there was no provision on Fundamental Duties. It was incorporated into the constitution in the late 1970s. However, Article 33 provided for some Fundamental Duties mainly for armed forces and police as they were supposed to maintain discipline and perform their duties. The 42nd Amendment of 1976 has introduced Fundamental Duties in the

Constitution. According to this amendment, the people (including police personnel and armed forces) were expected to perform certain Fundamental Duties. The 42nd Constitutional Amendment was made according to the recommendations of the Swaran Singh Committee Report. The Swaran Singh Committee was set up in 1976 by Indira Gandhi Government. Sardar Swaran Singh was the Chairman of the Committee. The Committee had recommended to include a new part in the Constitution of India on the Fundamental Duties of the Indian citizen. Based on the recommendations of the committee, government brought some changes to the constitution through 42nd amendment of the constitution and that came into effect on 3 January, 1977. These duties are further expanded in the 86th Constitutional Amendment in 2002. The Fundamental Duties are enshrined in Article-51A have similarity with Article 29(1) of the Universal Declaration of Human Rights which states “everyone has duties to the community in which alone the free and full development of his personality is possible”. There are 11 Fundamental Duties of the citizens of India which have been discussed in the following section.

6.3 FUNDAMENTAL DUTIES OF INDIAN CITIZENS

Article 51 A of Part IVA has listed the following Fundamental Duties of Indian Citizens:

- a) To abide by the constitution and respect its ideals and institutions, national flag and the national anthem;
- b) To cherish and follow the noble ideals which inspired our national struggle for freedom;
- c) To uphold and protect the sovereignty, unity and integrity of India;
- d) To defend the country and render national service when called upon to do so;
- e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women;
- f) To preserve and value the rich heritage of our composite culture;
- g) To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;
- h) To develop the scientific temper, humanism and spirit of inquiry and reform;
- i) To safeguard public property and abjure violence;
- j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- k) To provide opportunities by a parent or guardian for education to his/her child or, as the case may be, to the ward between the age of six to fourteen years.

6.4 AMENDMENTS TO DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES

Some new clauses were added through constitutional amendments to the existent articles in the Directive Policy. These amendments made the list of articles about Directive Principles of State Policy more inclusive of social welfare. The 42nd Amendment Act of 1976 added four new subjects that required the State to secure healthy development of children (Article 39), to promote equal justice and to provide free legal aid to the poor (Article 39 A), to secure participation of workers in the management of industries (Article 43 A), to protect the environment, forests and wildlife (Article 48 A). The 44th Amendment Act of 1978 added the Article 38 that required the State to minimize inequalities in income, status, facilities and opportunities. The 86th Amendment Act of 2002 brought changes in both DPSP and Fundamental Duties. In DPSP, it modified the content of Article 45 which required the State to provide early childhood care and education for all children until they complete the age of 6 years and was directed in making education a fundamental right under Article 21 A. In Fundamental Duties, it made parents or guardians of children from 6-14 years of age to provide education to them. The 97th Amendment Act of 2011 added Article 43 B in DPSP, which required the State to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Check Your Progress Exercises 1

- Note:** i) Use the space below for your answers.
ii) Check your answers with model answers given at the end of the unit.

1) What are the Fundamental Duties of the citizens of India?

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2) Trace the origin of Directive Principles of State Policy.

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6.5 EXECUTION OF DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES

Since Independence, various central state and governments in India have enacted several acts, launched schemes and programmes, and set up commissions according to Directive Principles of State Policy. The Planning Commission (which has been abolished and replaced by Niti Aayog) through its Five-Year Plans aimed to bring about social and economic equity and justice. Introduction of land reforms in several states which included as Zamindari Abolition, tenancy reforms, ceilings on land holdings, cooperative farming reduced inequalities in agrarian rural society. The governments introduced several measures to help the underprivileged sections. Such measures included acts to protect the interests of the poor: ensuring minimum wages to workers, protecting contract workers, providing free legal aid to the poor, abolition of child labour, abolition of bonded labour, resolution of industrial disputes, etc. For helping women these measures included: acts about maternity benefits and equal remuneration was enacted to protect the interests of women. The government passed acts for protection of wildlife and conservation of forest and set up central and state pollution boards to protect environment. The government set up Khadi and Village Industries Board, Handlooms and Handicrafts Boards to develop cottage industries. It enacted laws for protection of ancient and historical monuments and archaeological sites and remains, and places of national importance. To protect the interests of Reservation of seats for SCs, STs and OBCs. Reservations have been given to them in government jobs and political institutions government and representative, and enacted laws for protection of civil rights and for prevention their social exploitation. Establishment of village panchayats and reservations for weaker sections in them has empowered them. Programmes such as Community Development Programme, Hill Area Development Programme, Minimum Needs Programme, IRDP (Integrated Rural Development Programmes), MGNREGA (Mahatma Gandhi National Rural Employment Guarantee Act) and NRHM (National Rural Health Mission), etc. have resulted in social and economic inclusion of people. For executing DPSP efficiently central and state governments have made several acts. There are many recommendations made by Verma committee to make Fundamental Duties effective. This committee was established under the chairmanship of Justice J S Verma which is famously known as Fundamental Duties of the Citizens Committee (1999). This committee was a response to a notice issued by Supreme Court of India to the Government of India regarding its plan to teach Duties to the citizen of the country. The Verma Committee made the following recommendations:

- a) Fundamental Duties will raise standards of the citizen in public life. Therefore, every individual entity should obey and promote these duties.
- b) Public office holders should avoid selfishness or nepotism. Their foremost priority must be to serve public interests rather than individual interests.
- c) Integrity will be the main principle in the functioning of the public office.
- d) Holders of public office must be accountable for their decisions and actions to the public.

- e) They should be as open as possible about all the decisions and actions were taken by them.
- f) Public officials will maintain honesty while in office.
- g) Leadership is very important in the sense that holders of public office should promote these principles by leadership skill and set an example.

For strengthening the Fundamental Duties, the Verma Committee had identified few existing acts by which a proper implementation of such duties can be accomplished. These are: the Representation of People Act (1951); The Unlawful Activities Protection Act (1967); The Protection of Civil Rights Act (1955) in which the person who preach and practice untouchability must be punished in accordance with the act; the Wildlife Protection Act (1972); The Prevention of Insults to National Honour Act (1971); and the Forest Conservation Act (1980).

Ensuring the effective fulfilment of duties, the Supreme Court of India has issued directions to governments to create encouraging environment and the apex court, directed Central Government in August 2003 to implement the recommendations of the National Commission to Review the Working of the Constitution (2000) and Verma Committee (1999).

6.6 LIMITATIONS OF DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES

The main limitation of Directive Principles of State Policy is that state is not legally bound to implement them. This is despite the fact that the state has moral duty to implement them. Exemption of Directive Principles from being justiciable may make the state vulnerable to the pressure of politically and economically influential groups in the society. Some members of the Constituent Assembly underlined the limitations, especially regarding their being non-justiciable. K.T.Shah commented that the limitation would make Directive Principles of State Policy 'pious wishes'. T.T. Krishnamachari described them as "a veritable dustbin of sentiment". K.Santhanam, member of the Constituent Assembly, asserted that the Directives could lead to constitutional conflicts between the Centre and States, Prime Minister and President, Governor and Chief Minister in terms of direction, guidance, legislation, assent, enforcement with regard to the problem of non-compliance and discretion. Fundamental Duties are non-enforceable and non-justiciable like DPSP and these constraints have limited the duties as no citizen can be punished by a court for their violation. In this aspect both DPSP and Fundamental Duties are same in nature. This characteristic of Duties differentiates India's Fundamental Duties from the other countries' Duties. In USSR, Yugoslavia, Republic of China, Poland, Czechoslovakia, Netherland, Japan, Democratic Republic of Vietnam and Albania, Fundamental Duties are legally enforceable. Fundamental Duties have ethical, social and economic significance. It is important for every citizen to perform his/her Duties to claim their Rights. The consciousness and realization to fulfil Fundamental duties have increased in Indian in past some decades. The court and civil society organizations, political parties and governments have also underlined the significance of Fundamentals Duties for overall development of society.

6.7 LET US SUM UP

Directive Principles of State Policy are provisions which give direction or instructions to the state to enact policies for social, economic and political empowerment of people and Fundamental Duties assign duties to the citizen that help them to grow morally and ethically. They seek to establish an egalitarian society. Both are different from Fundamental Rights in the sense they are non-justiciable while the Fundamental Rights are justiciable. It is state's duty to take care of Citizen's duties. Rights can be protected if every citizen adheres to their Fundamental Duties. However, despite being non-justiciable DPSP and Fundamental Duties both play a very important role in safeguarding the constitutional values.

Check Your Progress Exercises 2

Note: i) Use the space below for your answers.

ii) Check your answers with model answers given at the end of the unit.

1) What are the limitations of the Directive Principles of the State Policy and Fundamental Duties?

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6.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

1. Article 51 A of Part IVA has listed 11 Fundamental Duties of Indian Citizens that has given in subsection 6.3.

- 2) Trace of Directive Principles of State Policy first appeared in Karachi resolution of the Congress in 1931 and can be linked to general atmosphere prevailing since the 1920s where ideas of socialism became popular, and to Hindu outlook and Gandhian principles. Sapru Report also made suggestions to distinguish between justiciable and non-justiciable rights. These suggestions were also made by the Rights sub-committee of the Constituent Assembly. They were finally accepted by the Constituent Assembly and incorporated in Part IV of the Constitution.

Check Your Exercise 2

- 1) Directive Principles of State Policy and Fundamental Duties are not legally binding on the state and citizens, though it is the moral duty of the state to implement them. The state can be vulnerable to public pressure to implement DPSP or to not implement them.

