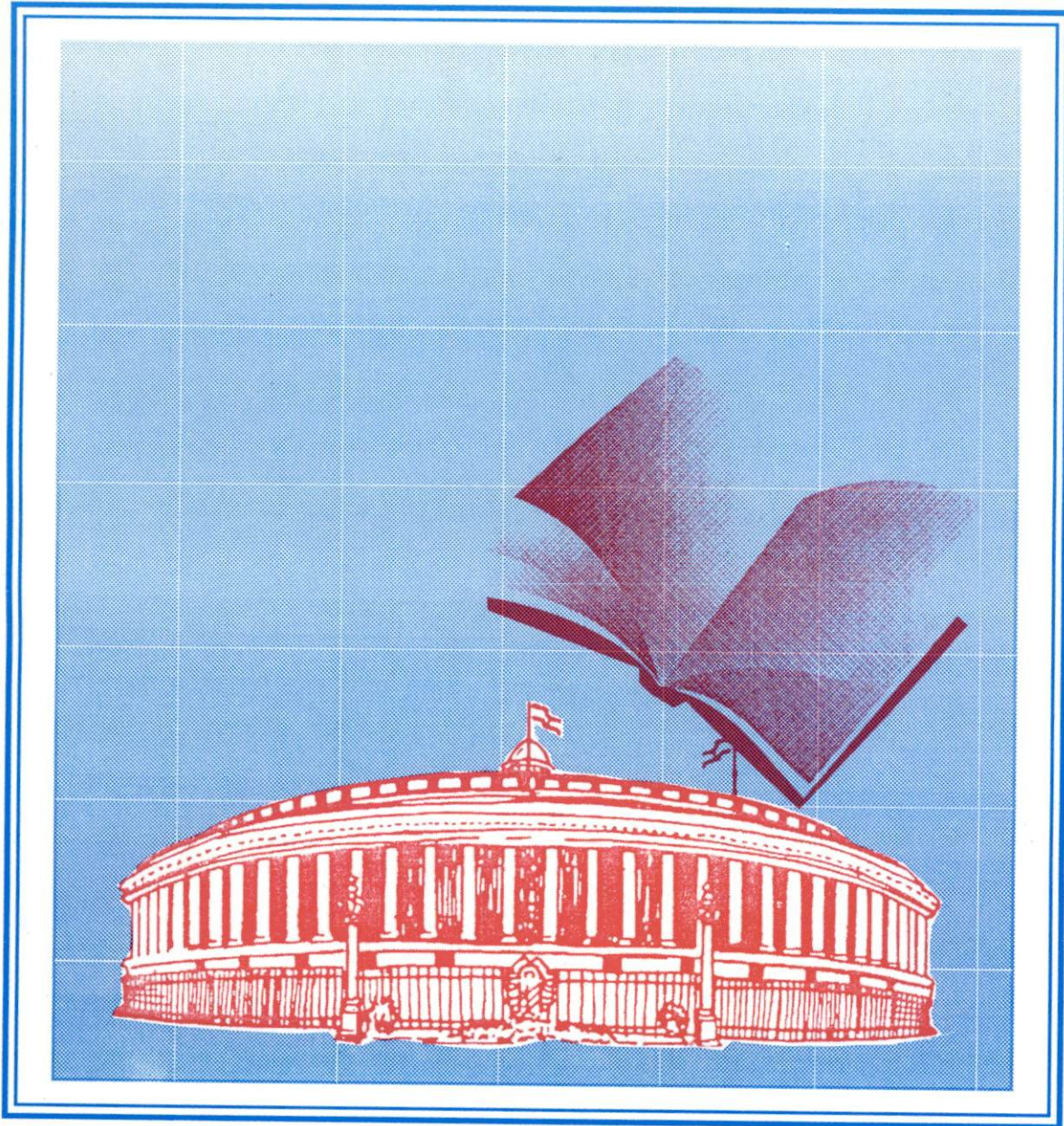




POLITICAL SCIENCE
MA [PREVIOUS]
Course III

1634



KARNATAKA STATE OPEN UNIVERSITY
Manasagangothri, Mysore - 570 006

Block - 2

ಉನ್ನತ ಶಿಕ್ಷಣಕ್ಕಾಗಿ ಇರುವ ಅವಕಾಶಗಳನ್ನು ಹೆಚ್ಚಿಸುವುದಕ್ಕೆ ಮತ್ತು ಶಿಕ್ಷಣವನ್ನು ಪ್ರಜಾತಂತ್ರೀಕರಿಸುವುದಕ್ಕೆ ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯ ವ್ಯವಸ್ಥೆಯನ್ನು ಆರಂಭಿಸಲಾಗಿದೆ.

ರಾಷ್ಟ್ರೀಯ ಶಿಕ್ಷಣ ನೀತಿ 1986

The Open University system has been initiated in order to augment opportunities for higher education and as instrument of democratizing education.

National Education Policy 1986

ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯವು ದೂರಶಿಕ್ಷಣ ಪದ್ಧತಿಯಲ್ಲಿ ಬಹುಮಾಧ್ಯಮಗಳನ್ನು ಉಪಯೋಗಿಸುತ್ತದೆ.ವಿದ್ಯಾಕಾಂಕ್ಷಿಗಳನ್ನು ಚ್ಚಾನ ಸಂಪಾದನೆಗಾಗಿ ಕಲಿಕಾ ಕೇಂದ್ರಕ್ಕೆ ಕೊಂಡೊಯ್ಯುವ ಬದಲು, ಚ್ಚಾನ ಸಂಪತ್ತನ್ನು ವಿದ್ಯೆ ಕಲಿಯುವವರ ಬಳಿ ಕೊಂಡೊಯ್ಯುವ ವಾಹಕವಾಗಿದೆ.

ಡಾ. ಕುಳಂದೈಸ್ವಾಮಿ

"The Open University system makes use of Multimedia in distance education system. it is vehicle which transports knowledge to the place of learners rather than transport to the place of learning.

Dr. Kulandai Swamy

ವಿಶ್ವಮಾನವ ಸಂದೇಶ

ಪ್ರತಿಯೊಂದು ಮಗುವು ಹುಟ್ಟುತ್ತಲೇ - ವಿಶ್ವಮಾನವ. ಬೆಳೆಯುತ್ತಾ ನಾವು ಅದನ್ನು 'ಅಲ್ಪ ಮಾನವ'ನನ್ನಾಗಿ ಮಾಡುತ್ತೇವೆ. ಮತ್ತೆ ಅದನ್ನು 'ವಿಶ್ವಮಾನವ'ನನ್ನಾಗಿ ಮಾಡುವುದೇ ವಿದ್ಯೆಯ ಕರ್ತವ್ಯವಾಗಬೇಕು.

ಮನುಜ ಮತ, ವಿಶ್ವ ಪಥ, ಸರ್ವೋದಯ, ಸಮನ್ವಯ, ಪೂರ್ಣದೃಷ್ಟಿ ಈ ಪಂಚಮಂತ್ರ ಇನ್ನು ಮುಂದಿನ ದೃಷ್ಟಿಯಾಗಬೇಕಾಗಿದೆ. ಅಂದರೆ, ನಮಗೆ ಇನ್ನು ಬೇಕಾದುದು ಆ ಮತ ಈ ಮತ ಅಲ್ಲ; ಮನುಜ ಮತ. ಆ ಪಥ ಈ ಪಥ ಅಲ್ಲ; ವಿಶ್ವ ಪಥ. ಆ ಒಬ್ಬರ ಉದಯ ಮಾತ್ರವಲ್ಲ; ಸರ್ವರ ಸರ್ವಸ್ವರದ ಉದಯ. ಪರಸ್ಪರ ವಿಮುಖವಾಗಿ ಸಿಡಿದು ಹೋಗುವುದಲ್ಲ; ಸಮನ್ವಯಗೊಳ್ಳುವುದು. ಸಂಕುಚಿತ ಮತದ ಆಂಶಿಕ ದೃಷ್ಟಿ ಅಲ್ಲ; ಭೌತಿಕ ಪಾರಮಾರ್ಥಿಕ ಎಂಬ ಭಿನ್ನದೃಷ್ಟಿ ಅಲ್ಲ; ಎಲ್ಲವನ್ನು ಭಗವದ್ ದೃಷ್ಟಿಯಿಂದ ಕಾಣುವ ಪೂರ್ಣದೃಷ್ಟಿ.

ಕುವೆಂಪು

Gospel of Universal Man

Every Child, at birth, is the universal man. But, as it grows, we turn it into "a petty man". It should be the function of education to turn it again into the enlightened "universal man".

The Religion of Humanity, the Universal Path, the Welfare of All, Reconciliation, the Integral Vision- these *five mantras* should become View of the Future. In other words, what we want henceforth is not this religion or that religion, but the Religion of Humanity ; not this path or that path, but the Universal Path ; not the well-being of this individual or that individual, but the Welfare of All ; not turning away and breaking off from one another, but reconciling and uniting in concord and harmony ; and, above all, not the partial view of a narrow creed, not the dual outlook of the material and the spiritual, but the Integral Vision of seeing all things with the eye of the Divine.

Kuvempu



**Karnataka State
Open University**

**Political Science
Course III**

Block

2

Introduction

Unit 5

Fundamental Rights

1 to 31

Unit 6

Directive Principles of State Policy

33 to 46

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Block - II Introduction

Block - II consists of 2 units from 5 to 6. Unit - 5 explains the Fundamental Rights. Unit - 6 explains Directive Principles of State Policy.

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Block – II

Unit –5 Fundamental Rights

Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Nature
- 5.3 Characteristics
- 5.4 General provision
- 5.5 Types of Fundamental Rights
 - 5.5.1 Right to Equality
 - 5.5.2 Right to Freedom
 - 5.5.3 Right against Exploitation
 - 5.5.4 Right to Freedom of Religion
 - 5.5.5 Cultural and Educational Right
 - 5.5.6 Right to constitutional Remedies
 - 5.5.7 Right to Property
- 5.6 Criticism of Fundamental Rights
- 5.7 Fundamental Duties
- 5.8 Let us Sum up
- 5.9 Some Useful Books
- 5.10 Answer to check your progress

5.0 Objectives

- After going through this unit you will be able to
- Understand the nature and significance of fundamental rights
 - Explain the characteristics of fundamental rights
 - Describe different types of fundamental rights
 - Give critical appraisal of fundamental rights
 - Point out the fundamental duties

5.1 Introduction

Fundamental rights may be defined as an interest protected by the higher law of the country. They find their sanction in the constitutional provisions. So they have a sanctified place in the basic law of the land that prohibits unreasonable interference of State in their exercise or enjoyment.

Fundamental Rights are one of the important features of the Indian constitution. They are the basis for the political democracy of our state. Several factors have influenced in the incorporation of Fundamental Rights in our constitution. The cabinet mission plan also suggested to appoint an Advisory Committee on Fundamental Rights and Minority Rights. Consequently the constituent Assembly appointed a special committee under the chairmanship of Sardar Vallabhabai Patel to deal with the problem of Fundamental Rights. This committee again appointed a subcommittee headed by J.B. Kripalani to prepare the scheme of fundamental rights and minority safeguards.

On the basis of the report submitted by the Drafting committee of the constituent Assembly prepared a chapter on Fundamental Rights.

5.2 Nature

1. In the list of Fundamental Rights, some Rights are applicable only to citizen of India. For example equality of opportunity in matters of public employment, protection from discrimination

on any ground freedom of speech, assembly, expression, movement, residence, property and profession, and cultural and educational rights. On the other hand some of the fundamental rights are available to any person living in this country whether Indian or foreigner. For example – equality before law and its equal double punishment and self incrimination protection of life and personal liberty against any action without authority of any law.

2. Fundamental Rights are not absolute. State can place reasonable restrictions on their use and enjoyment. The parliament may make law as per the needs of the times to limit the exercise of these rights. The president has the power to suspend these rights, including life and personal liberty during national emergency.
3. Our constitution contains list of fundamental rights along with the provision for judicial review without the rule of Judicial supremacy our fundamental rights are not immutable, they are subject to amendment. Parliament may make any amendment on part III of the constitution containing the list of fundamental rights.

5.3 Characteristic

The following are some of the special characteristics of Fundamental Rights.

1. Based on Experience

Fundamental rights are essential for the development and growth of the personality of individual. They enable the individuals to lead their life with dignity and honour. So fundamental rights are based on human experience and they make human life prosperous.

2. Most elaborate

The Indian constitution has the most elaborate declaration of Fundamental Rights. They are dealt with in 24 Articles into eight sections. These articles and sections deal with general provision and

different categories.

3. Not absolute

Fundamental Rights are not absolute in nature. The constitution of India imposed several restrictions on the enjoyment of these rights. The citizens have to enjoy these rights subject to sovereignty, integrity and security of the state, international relations decency or morality.

4. Judicial

The Fundamental Rights are Justiable in nature. If any of these fundamental rights is violated, the individual affected is entitled to move the supreme court and high court for the protection and enforcement of these rights. The Supreme Court may declare a law passed by parliament or state legislature in India or the orders issued by any executive authority as null and void, if these are found to be inconsistent with the rights granted by the constitution. The Judiciary is thus the guardian of the Fundamental Rights granted by the constitution.

5. Subject to suspension

The Fundamental Rights can be restricted or suspended. According to Article 33 of the constitution, parliament may by law determine to what extent any of the Fundamental Rights shall, in their application to the members of the armed forces, or the forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Apart from this, the president of India may suspend the operation of all Fundamental Rights through Article 359 when a national emergency is proclaimed by him.

6. Distinction between Aliens and citizens

A distinction is maintained between citizens and aliens in regard to the utility of these rights. While such rights as equality before law, religious freedom, etc, are available to the citizens and aliens alike, rights like freedom of speech and assembly, cultural and educational

freedom are restricted only to the citizens of India.

7. Supremacy over all laws

Fundamental Rights are considered as supreme over the ordinary laws or enactments made by the parliament or the executive. Constitution clearly stated that all laws in force in the territory of India immediately before 26th January, 1950 shall be void to the extent of their inconsistency. Similarly the laws made after 26th January 1950. if they are inconsistent with the fundamental rights are not valid. If any part of that law is against the spirit of any of the fundamental rights, it cannot be implemented. Thus fundamental rights were made Supreme over all other laws or acts in our country.

8. Provision for the enforcement of rights

Another important feature of fundamental rights is a special constitutional provision for their enforcement. Article 32 of our constitution conferred considerable powers upon the Supreme Court. The Supreme Court of India acts as the custodian of the fundamental rights. Whenever and what ever fundamental rights of a person are infringed or taken away by any authority including the governmental agencies, the Supreme Court rescues the affected persons and takes all steps for restoring the fundamental rights. On the basis of written petition of the aggrieved person the Supreme Court or High Court issues writs or order or directions for enforcing the enjoyment of fundamental rights.

9. Coercive in nature

Fundamental Rights are coercive in nature. Violation of the fundamental rights will be considered as an offence. No person, agency or department of government is followed to encroach into the fundamental rights of the citizens. If an individual or an institution confiscates, takes away or encroaches into one's rights, the Judicial organisations hear such petitions, provide justice and punish the offenders. This coercive nature of fundamental rights acts as a barrier against the despotic behaviour of governmental departments.

10. Fundamental rights are amendable

The parliament can make changes in the fundamental rights through an amendment to the constitution. Such an amendment, however requires the majority of the total membership as well as $\frac{2}{3}$ majority of the members present and voting.

Check Your Progress - 1

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1) Briefly discuss the Nature of the fundamental rights.

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2) Describe the Characteristics of the fundamental rights

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5.4 General Provisions of the Fundamental Rights

The Chapter III of the constitution which enumerates the fundamental rights are more elaborate than those of any other existing written constitution and cover a wide range of topics. Article 12 and 13 do not contain any fundamental rights. They deal only with certain

explanations and prohibitions important for dealing with fundamental rights.

Article 12 defines the term 'state' as it applies to the provisions of the chapter. According to it, state includes executive legislation of centre and all local bodies and other authorities within the territory of India or under the control of the government of India. The definition is made so comprehensive that it includes every governmental authority, legislative or executive, central, state or local and the rights are guaranteed against violation by everyone of those authorities.

Article 13 has two important aspects. On the one hand, it invalidates commencement of the constitution in so far as they were inconsistent with the fundamental rights. On the other hand it imposes a prohibition upon the state to make any law while takes away or abridges the rights conferred by the constitution. In case any law is made in contravention of this provision, such law would be invalid to the extent of its inconsistency with any of the rights guaranteed. In addition to Article 12 and 13 Articles 33, 34 and 35 also contain general provisions.

5.5 Types of Fundamental Rights

Part III of the constitution enumerates the fundamental rights. It contains six groups of fundamental rights. Previously seven groups of fundamental rights were included in the constitution. The 44th amendment deleted the right to property from the list of fundamental rights. Altogether these rights are explained in 24 articles from 12 to 35. They are analysed as follows.

1. Right to equality (Articles 14 to 18)
2. Right to Freedom (Articles 19 to 22)
3. Right against exploitation (Articles 23-24)
4. Right to Religion (Article 25-28)
5. Cultural and Educational right (Articles 29-30)
6. Right to constitutional Remedies (Articles 32)

5.5.1 Right to Equality (Articles 14 to 18)

Right to equality is the first and important right. It consists of five articles, each one explains respectively equality before law, prohibition of discrimination, Equality of opportunity in public employment, abolition of untouchability and abolition of titles. These are five important privileges possessed and enjoyed by the Indian citizens.

Article 14 declares that the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India. The first expression equality before law has been taken from the Irish constitution. The second expression equal protection of the laws has been taken from the American constitution. It may be mentioned here that the preamble to the constitution speaks of equality of status and opportunity and this article 14 gives effect to that principle enshrined in the constitution. The constitution clearly provides that the state shall not deny to any person equality before law and equal protection of law while equality before law is somewhat negative concept implying the absence of any special privilege to an individual or class of individuals, equal protection of law is a more positive concept implying equality of treatment in equal circumstances.

The constitution has allowed limitations on this article. One of the important limitations is that no criminal proceeding what so ever shall be instituted or continued against the president or a governor in any court during his term of office. The state is empowered to classify the persons on rational basis in the interest of public peace, order, security and stability of the country. Similarly the state could implement different laws for the welfare of the people living in various parts of the country. It establishes special courts for enquiring into the specific offences of anti-social elements. It can make and enforce special laws for some areas. It can grant immunities to certain persons in certain situations.

Article 15 clause (1) provide that the state shall not discriminate against any citizens on grounds only of religion, race,

caste, sex, place birth or any of them Article 15 clause (2) states that no citizen that 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

- a) access to shops, public restaurants, hotels and places of public entertainment or
- b) the use of wells, tanks, bathing ghats, roads, places pf public resort maintained wholly or partly out of state funds or dedicated to the use of the general public.

Article 15 clause (3) and (4) provide two exemptions for the application of clause (1) and (2). Clause (3) provides state to make any special provision for women and children by making certain laws and by enforcing welfare programs. Similarly clause (4) empowers the state to provide protective discriminations for the advancement of any socially and educationally backward classes of citizens or scheduled castes and scheduled tribes.

The word 'only' in clause (1) is of great significance. It means that other things being equal, the race, the caste etc. of a citizens shall not be a ground of preference or disability. If there is any other ground for discrimination, such a discrimination could not be held illegal. For example women may be considered more suitable for the job of nurse while they may not be considered eligible for employment in heavy industries. Such discrimination would be quite legal, because it is based on a ground other than sex.

Article 16 guarantees equality of opportunity in matters of public employment.

Clause-(1) of this article provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

Clause-(2) prohibits discrimination between citizens in employment or appointment matters on grounds only of religion,

race, caste, sex, descent, place of birth or residence.

Clause-(3) empowers the parliament to make a law prescribing any requirement as residence within a state or union territory with regard to class or classes of employment or appointment to an office under the government or a local or other authority, within a state or union territory.

Clause-(4) provides that the state has the power to reserve certain categories of posts in favour of any backward area adequate representation in public service.

Clause-(5) further provides that offices connected with any religious denomination may be reserved only for persons professing a particular denomination, Nothing in this article shall prevent the union parliament from prescribing certain requisites like physical fitness, entrance test and interview.

Article 17 has abolished untouchability 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.

Untouchability has been as a scourge on the Hindu social system. For centuries people of the so-called low castes were put to untold misery which they silently suffered. Mahatma Gandhi called these people Harijan or people of God. His vision for the establishment of Ramrajya included the abolition of the inhuman systems of untouchability. Article 17 accepts the Gandhian ideal by abolishing untouchability and its practice in any form.

Article 35 (a) empowers parliament to prescribe punishment for those acts declared to be offences under part III fundamental rights of the constitution. By virtue of this power, parliament has enacted the untouchability Act in 1955. The Act declares certain acts as offences when committed on the ground of untouchability and prescribes punishment for the same. A few of these offences are refusal to admit any person to public institutions such as hospital, educational

institution preventing any person from worshipping in any place of public worship and subjecting one to any disability with regard to access to any shop, public entertainment or hotel or with regard to the such of any well, reservoir or road or cremation ground.

Article 18 guarantees right to equality among the citizens by completely abolishing one's right of receiving awards, titles or degrees from other countries without the prior permission of the native government.

Clause-(1) of this Article provides that the state shall not confer any title except decoration of military or academic distinction.

Clause-(2) of this Article strictly not allowea any citizen to accept or receive any title from any foreign state.

Clause-(3) of this Article those persons who are not citizens of India and who hold office of profit or trust under the state shall not accept title from a foreign state without the consent of the president.

Clause-(4) under this Article those persons who hold any office of profit under the state shall not accept any presents or gifts, emolument or office of any kind from any foreign state without the consent of the president of India.

Thus this Article on the one hand forbids from conferring any title other than military and academic and on the other hand it imposes a duty on the citizen not to accept any title from any foreign state without the prior consent of the president of India. In 1954 the Government of India decided to confer titles like Bharat Ratna, padma Vibushana, Padma Bhusana and Padmasri to those persons who rendered meritorious social service. This practice was continued upto 1977. But the Janata government abolished it in 1977. Again with the return of congress rule in 1980, this practice was revived.

Check Your Progress - 2

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1) Discuss the general provision of the Fundamental Rights.

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2) Explain the importance of Right to equality

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5.5.2 Right to Freedom (19-22)

Right to freedom is of tremendous significance in the democratic fabric of our country. With a guarantee of personal liberties it occupies the most important place in the list of fundamental rights.

This right consists of four Articles. These Articles relate to the

- a) freedom of speech, expression etc Article (19)
- b) protection against conviction etc Article (20)
- c) protection of life and personal liberty Article (21)
- d) protection against arrest and detention Article (22)

These articles are discussed below.

Freedom of speech, expression etc Article – 19

Article 19 dealing with the protection to the seven valuable freedoms says all the citizens shall have the right

- a) to freedom of speech and expression
- b) to assemble peacefully and without arms
- c) to form Associations or unions
- d) to move freely throughout the territory of India
- e) to reside and settle in any part of the territory of India
- f) to acquire, hold and dispose off property
- g) to practice any profession or to carry on any occupation, trade or business.

But freedom to acquire, hold and dispose of property was deleted from the above by various constitutional amendments. As a result the citizens enjoy only six freedoms.

Article 19 (1) (a) guarantees freedom of speech and expression. A citizen in India can speak freely and give full expression to his thoughts concerning any subject. He can speak to anyone and address a group of people. He may put his thoughts on paper and write books or articles in newspapers and magazines. He may freely speak on political affairs and may criticize government for its acts of commission and omission.

The freedom of press is an essential condition of democracy. But this right is not specifically mentioned in the constitution. The freedom of press is implied in clause (1) (a) of Article 19. Since the freedom of the press is only an incident of the freedom of speech and expression, it applies only to citizens Non-citizens cannot claim rights under Article 19. Therefore a foreigner running a newspaper cannot claim the freedom of the press as a fundamental right. However he may claim it as an ordinary legal right. In a number of cases the Supreme Court has upheld the freedom of press as implied in the freedom of speech and expression. For example *Eastern Newspaper VS. Union of India*, (AIR 1958, Schedule 578)

The right to freedom of speech and expression is not absolute. It is subject to reasonable restriction as laid down in clause (2) of Article 19. It should not go against the security of the state, friendly relation with foreign states, disturb peace and public order, violate accepted principles of decency and morality, commit contempt of court or parliament, defame and provoke and incite people to crime and open rebellion.

Article 19 (1) (b) guarantees the right to assemble peacefully and without arms. Freedom of speech and expression is meaningless in the absence of the right to assemble or to hold meetings for discussions. Democracy is based on peaceful discussion and therefore it is made clear that those who hold meetings shall bear no arms.

The right to assemble peacefully and without arms is subject to reasonable restrictions. The right shall not affect the operation of any existing law as far as it imposes restrictions, in the interest of the sovereignty and integrity of India or public order or morality.

Article 19 (1) (c) guarantees the right to form association and unions. Literary groups, cultural associations, sports clubs, religious associations, trade unions and religious types of other associations may be formed and may function freely provided their aims and activities are not against law.

This right can be restricted by the state in the interest of preserving the sovereignty and integrity of India or public order and morality.

Article 19 (1) (d) guarantees the right to move freely throughout the territory of India. No legislature can pass laws arbitrarily restricting the free movement of citizens from one state to another and from one place to another.

This right is subject to restrictions as laid down in clause 95) of the Article 19. The right does not prevent the state from making any law imposing reasonable restriction either in the interests of the general public or for the protection of the interests of any scheduled Tribe.

Article 19 (1) (c) guarantees the right to reside and settle in any part of the territory of India. No legislature can pass any law compelling a citizen to reside or settle at a place against his will

This right is also subject to reasonable restriction as given in clause (5) of Article 19.

Article 19 clause (g) guarantees right to practice any profession or to carryout any occupation, trade, or business of his choice. No Legislature can pass laws arbitrarily compelling a citizen to follow any profession.

This right is also subject to reasonable restrictions which may be imposed as laid down in clause (5) of the Article 19.

It may be noted that Article 358 and 359 enable the president to suspend the fundamental rights during emergency.

Protection against conviction (Article 20)

Article –20 deals with protection in respect of conviction for offences. It says

1. No person shall be convicted of any offence except for violation of law in force at the time of commissions of the act charged as an offence, nor subjected to a penalty greater than that which might have been inflicted under the law in force at time of the commission of the offence.
2. No person shall be prosecuted and punished for the same offence more than once.
3. No person accused of an offence shall be compelled to be a witness against himself.

This article is applicable to all persons and not to citizens only.

Clause (1) of Article 20 makes it clear that there shall be no ex post facto legislation in India. An ex post facto law is a law that makes an action done before the passing of the law and which was innocent when done crime and punishes that action. So an ex post facto law is a retractive criminal legislation Clause (2) of Article 20

was interpreted to mean that if a person was once prosecuted and punished for an offence, he could not be prosecuted again. But if, for the first time, no punishment was imposed and only prosecution was made the person will be prosecuted and punished again. Clause (3) of Article 20, extends protection to the persons involved only in criminal proceedings before a court of law. Here the word 'person' includes 'corporations' also. It may be noted that this Article can be suspended during emergency.

Protection of life and personal liberty (Article 21)

Article 21 deals with protection of life and personal liberty. It says "No person shall be deprived of his life and personal liberty except according to procedure established by law". In the phrase, procedure established by law, the word law was interpreted to mean a state made law' and not a law arising out of the rules of natural justice. The Supreme Court in 1950 in the Gopalan Vs State of Madras stated that a citizen was deprived of his personal liberty only by strictly following the procedure established by law. In the same case, it maintained that personal liberty means freedom from physical restraint of person by incarceration.

Protection against arrest and detention (Article – 22)

This Article deals with protection against arrest and detention in certain cases. It also prescribes the procedure to be followed when a person has been arrested and held in custody without trial. It mentioned the following points.

1. No person who is arrested shall be detained in custody without being informed as soon as may be of the ground for such arrest. No person shall be denied the right to consult and the be defended by a legal practitioner of his choice.
2. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary

for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

3. Nothing in clause 1 and 2 shall apply
 - a) to any person who for the time being is an enemy or
 - b) to any person who is arrested or detained under any law providing for preventive detention.
4. No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless an Advisory Board consisting of person who are, or have been, or are qualified to be appointed as judges of a High Court. Similarly the state can detain a person in accordance with the provisions of a law made by parliament under sub-clauses (a) and (b) of clause (7) when a person is detained, he must be communicated or intimated by the concerned authority about the grounds on which he has been arrested.

Check Your Progress - 3

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1) Critically examine the right to freedom.

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5.5.3 Right against Exploitation (Article 23 & 24)

Articles 23 and 24 guarantee to the citizens of the right against exploitation. Exploitation means utilization of persons for one's own ends. The social conditions in pre-independent India were not conducive for the development of harmonious relations between people. Various evil practices like beggary, traffic in human beings, devadasi system, bonded labour, untouchability etc. were prevalent during that period. So the makers of the constitution resolved to do away with all these inhuman and uncivilized practices. Articles 23 and 24 make specific provisions to deal with problems which go contrary to the dignity of the individual and the interests of children of tender age.

Article 23 (1) provides that traffic in human beings and beggary and other similar forms of forced labour are prohibited. Any contravention of this provision is considered as an offence punished according to law. Article 23 (2) provides that the State could impose compulsory service for public purpose. But the State is not allowed to impose discrimination on the grounds only of religion, race, caste or class or any of them. The parliament passed several acts abolishing beggary and other evil practices. Suppression of Traffic in Women and Girls Act, 1958 is an example of such measures.

Article 24 lays down that 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. This article helps in improving the physical and mental activities of children. It is distressing to note that in spite of the constitutional prohibition against employment of children and women, exploitation still continues in many parts of the country even today.

5.5.4 Right to Religion (Article 25 to 28)

This right guarantees the right to freedom of religion to all persons, citizens as well as aliens. It enable the State to adopt, secularism and propagate secular ideas in religious matters. It also

transforms our country as a secular state.

Article 25 guarantees freedom of conscience and religion. It allows the persons to possess and enjoy the right to profess, practice and propagate religion of his or her liking. However, the same article empowers the state to impose restrictions on the religious freedoms of persons on the grounds of

1. public order, morality and health
2. regularly or restricting any economic financial, political or other secular activity which is associated with religious practice
3. social welfare or reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 26 guarantees every religious denomination or a section there of with the right to

1. establish and maintain institution for religious and charitable purposes
2. manage its own affairs in matters of religious.
3. own any movable and immovable property and
4. administer such property in accordance with law.

Every person has to enjoy this rights under certain reasonable restriction like interest of public order, morality and health. The right to manage religious affairs implies the right to determine what rites and observances are essential according to its religion and in what manner and for what purposes its income is to be spent and its property to be utilised. The right to administer property implies the right to own, acquire and dispose of property.

Article 27 guarantees freedom as to payment of taxes for promotion of any particular religion.

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 religious denomination.

This Article prohibits the state to impose and collect a tax, the proceeds of which are spent for the promotion of religions. However, it does not prevent the state in charging a fee for the services rendered to the particular persons of a particular faith.

Article 28 guarantees the freedom as to attendance at religious instruction or religious worship in certain educational institutions. It says

1. No religious instruction shall be provided in any educational institutions wholly maintained out of state funds.
2. However, this Article is not applicable to an educational institution which is administered by an endowment or trust maintained requiring religious instruction under clause (2) and clause (3) of this Article
3. No person attending any educational institution recognized by the state or receiving aid of state funds, shall be required to take part in any religious instructions that may be imparted in such institution or in any premises attached there.

Thus right to freedom of religious and conscience is provided both to the minorities such as Muslims, Parsis, Jews, Christians, Sikhs etc. who accorded constitutional protection for preserving and promoting their religious sentiments and institutions.

Check Your Progress - 4

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1) Write a brief note on right against Exploitation

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2) Explain the right to freedom of religion

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5.5.5 Cultural and Educational rights (Articles 29/30)

India is a multilingual state consisting of diverse religions, races and cultures. In order to achieve unity in diversity and to create confidence among the minorities the makers of the constitution provided this right.

Article 29 lays down that any section of the citizens residing in Indian territory having distinct language, script or culture of its own shall have the right to preserve the same. Clause (2) of this article lays down that no citizen shall be denied admission by any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them. However the state can impose other restrictions such as age, physical fitness, educational qualifications, conduct etc, in educational and employment matters. Beside the state under clause (4) of Article 15 can reserve a minimum number of seats for the members of the backward class or for the scheduled castes and scheduled castes and scheduled tribes.

Article 30 authorises the minorities to establish and administer educational institutions of their choice. Clause (2) of this article states that state shall not show discrimination between minority run educational institutions and educational institutions in granting aid. The minority communities are given complete freedom to preserve, promote and maintain their distinct language script and culture by establishing educational institutions. The minorities are provided the right to admit students according to their own rules and regulation.

State has no power to prevent them from admitting students of other linguistic groups. It cannot compel them to admit students selected by it. But, in August 2003 supreme court gave the verdict that state can fill up 50% of seats in technical colleges.

The minorities enjoy discretionary powers in choosing their own governing body and to select their own employees in educational institutions. Further they are also allowed to decide the medium of instruction. However, the state can impose reasonable restrictions over the affairs of minority institutions. It can prescribe the educational qualifications of the teachers. It can take steps for the proper functioning of the minority institutions by auditing the accounting. Thus this Article provides protection to the minorities in maintaining their own educational institutions.

5.5.6 Right to constitutional remedies (Article 32-35)

Article 32 provides remedies when any of the fundamental rights mentioned in part III of the constitution is violated. It provides that

1. a person can move the supreme court by appropriate proceedings for the enforcement of the fundamental rights if violated.
2. the supreme court can issue directions or orders or writs which-ever may be appropriate for the enforcement of any of the rights.
3. without affecting the powers of the supreme court in this respect, parliament can empower any other court to exercise all or some of these powers within the local limits and
4. the rights guaranteed by this article shall not be suspended except as otherwise provided in the constitution.

Articles 32 and 226 empower the Supreme Court and High Courts respectively to issue orders, directions and prerogative writs for the enforcement of fundamental rights. The writs are of five kinds

- 1) **Habeas Corpus:** The word 'habeas corpus' literally means 'to have a body'. This writ is an order calling upon the person who has been detained wrongfully. It directs the detaining authority to present the detained person before the court and justify his detention.
- 2) **Mandamus:** Mandamus means a command. It demands some activity on the part of the person to whom it is addressed. It commands him to perform some public or quasi-public legal duty which he was refused to perform and the performance of which cannot be enforced by any other legal remedy. This writ is issued not only against individuals, but also against the government and subordinate courts.
- 3) **Prohibition:** This writ is issued by the Supreme Court or High Courts to an lower courts forbidding the latter to jurisdiction or to usurp a jurisdiction with which it is not legally vested. In other words, the object of the writ is to compel lower courts to keep themselves within limits of the jurisdiction while mandamus commands activity, prohibition commands inactivity. While mandamus is available not only against judicial authorities, prohibition is issued only against judicial or quasi judicial authorities.
- 4) **Certiorari:** Certiorari means to certify; it is an order issued to quash the order of a court during the pendency of the proceedings and before the order is made. Certiorari can be issued only after the order has made. The object of both is to make sure that the lower courts or tribunals exercise their powers properly and that it does not usurp the jurisdiction which it does not possess.
- 5) **Quo warrants:** Quo warranto means 'under what authority'. It is a proceeding whereby the court enquire into the legality of the claim which a party asserts to a public office, and to court him from its enjoyment if the claim be not well founded.

The fundamental basis of this writ is that the public has an interest to see that an unlawful claimant does not usurp a public office.

Article 32A has been inserted by the 42nd constitutional amendment Act and takes away the power of the supreme court to consider the constitutional validity of a state law under Article 32, unless the validity of a union law is also questioned.

The constitutional remedy offered by Article 32 is of immense value. Commenting on this articles, Dr. B.R. Ambedkar said in the constituent assembly; "If I was asked to name any particular Article of the constitution as the most important, an Article without which this constitution would be a nullity, I would not refer to any other Article except this one. It is the very soul of the constitution and the very heart of it'.

Article 33 provides that parliament by making laws, could define as to what extent any of the rights conferred by part III would in their application to the members of the armed forces or the forces charged with the maintenance of public order be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Article 33 enables parliament to modify the application of the fundamental rights to the members of the armed forces and police forces so as to ensure proper discharge of their duties and maintenance of discipline amongst them. Accordingly parliament enacted the Army Act (1950), Airforce Act (1950), Navy Act (1957), providing that some of the fundamental rights included in part III of the constitution shall not extend to members of Indian Army, Airforce and Navy. These persons are not to be members of any trade or labour union, society or association and they are not to address any meeting or take part in any demonstration for political or other purpose. Nor are they to communicate with the press or publish any book or documents such provisions provide for

the restrictions of the fundamental rights.

Article 34 provides that fundamental rights could be restricted or abridged for the persons in the regions where martial law is in force. It empowers the president to indemnify any person in the service of union or state government in respect of any act done by him in connection with the maintenance and restoration of order in any area within territory of India where martial law is in force.

Article 35 states that parliament could make laws applicable to the armed forces and central government employees in regard to the enjoyment of fundamental rights.

Check Your Progress - 5

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Discuss the importance of Right to constitutional remedies as embodied in the Institution.

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5.5.7 Right to property (Article 31)

The constitution of India, originally provided the Right to property through Articles 19 and 31. But it has been one of the most controversial of all the fundamental rights provided in the Constitution. Under articles 19 every citizen is assured of the right to acquire, hold and dispose property, subject to reasonable restriction imposed

by law in the interests of general good. Article 31 provides that no person shall be deprived of his property save by the authority of law, that property shall be compulsorily acquired or requisitioned save for public purpose and by the authority of law which provides compensation for the property so acquired and such law should either fix the amount of compensation or should specify the principles on which the compensation is to be determined and given.

This right to property has become relative because the state can acquire property of any citizen or institution in the interest of public welfare after compensation is paid. It is a restricted right because the citizen cannot have any permanent claim to property and use it as he likes which he has earned through his own efforts and enterprise, or inherited from his forefathers.

Even before the 25th Amendment (1972) which took away the right to compensation from article -31 (2) and inherited Article 31©, the right to property was limited and flexible and so framed as not to interfere with the requirements of equality and other interest. In fact, it declared that the right to property was no more a justifiable matter under the constitution

Finally, the 44th constitutional Amendment Act deleted the right to property from the list of fundamental rights. Therefore, the right to property in its present form is only a legal right, subject to the laws of parliament.

5.6 Criticism

Fundamental rights reflect the independent and individualist oriented ideas of our freedom fighters and constitution makers. Since these rights are legal, coercive, negative and unencroachable, they act as a means for promoting the personality of individual citizens and for curbing the despotism of the government. In spite of their meritorious nature and significance, these rights have been criticized by many on several grounds.

1. Fundamental rights are very difficult to understand because their nature and purpose are based upon many exceptions, explanations and qualifications
2. Fundamentals rights granted by the constitution have been hedged by so many restrictions and limitations that they virtually become ineffective. These limitations have the effect of depriving the rights in all reality. One of the critics suggested that the chapter on fundamental should be renamed as "limitations of Fundamental rights". However the very circumstances in which our country got freedom emphasizes the need to spell out restrictions.
3. The remedies provided for protection of fundamental rights are very expensive and beyond the capacity of common man. As a result only the rich people can seek legal protection against violation of their fundamental rights. Thus the critics feel that the right benefits only a few in the country, mainly the rich. The majority poor are unable to fight for their rights. However, recently with the public interest litigations and the establishment of legal aid for the poor, this gap between the poor and rich is being sought to be reduced.
4. It is criticized that our constitution mentions only a few. Fundamental rights such as the right to work, right to employment etc. were not included in the list of fundamental rights.
5. The language used in regard to the explanation of fundamental rights is beyond the comprehension of the common man. Even the eminent lawyers and judges face difficulty in analyzing and interpreting some provisions relating to the fundamental rights. So it is aptly described that the Indian constitution is a "paradise for lawyers".
6. The making and implementation of certain laws relating to preventive detention, National security, maintenance of internal

security etc., totally negates individual liberty. Thus some writers rightly describe that our constitution gives fundamental rights with one hand and with the other hand takes them away. But they also state that such exceptions and limitations are necessary in the larger interests of nation.

In spite of the criticism, fundamental rights are considered as the jewel of our constitution. The progress of state depends not only on the implementation of welfare state scheme, but on the enjoyment of fundamental rights. The constitution expert M. V. Pylee describes that the chapter on fundamental rights, remains a formidable bulwark of individual liberty, a code of conduct and a strong and sustained basis of Indian democracy.

5.7 Fundamental Duties

Rights and duties are interdependent. They go together. Duties without rights leads to slavery. Rights without duties create condition of anarchy in the society. An ideal citizen of a democracy must be conscious of his rights as well as his duties. Originally the constitution of India did not contain any provisions relating to the duties. The 42nd constitutional amendment Act, 1976 introduced a list of 10 Fundamental duties of citizens in the Constitution on India. These duties have been incorporated in part IV A, Article 51A. The duties contained in 51A states that it shall be the duty of every citizen of India.

1. to abide by the constitution and respect its ideals and institutions, the national flag and the national anthem.
2. to cherish and follow the noble ideals which inspired our national struggle for freedom.
3. to uphold and protect the sovereignty, unity and integrity of India.
4. to defend the country and render service when called upon to do so.

5. to promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional diversities, to renounce practices derogatory to the dignity of women.
6. to value and preserve the rich heritage of our composite culture
7. to protect and improve the natural environment including forest, wild life and to have compassion for living creatures
8. to develop scientific temper, humanism and spirit of inquiry and reform
9. to safeguard public property and abjure violence.
10. to strive for excellence in all sphere of individual and collective activity.

It is to be noted that the fundamental duties are not a part of fundamental rights. These duties are appended to the chapter on Directive principles of state policy. Like the directive principles, these duties are not enforceable and justifiable in the court of law. Most of the duties are social and etical by nature. In the road to nation building and all round progress, it is necessary to have a great measure of discipline and order from the citizens.

Check Your Progress - 6

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Write a note on the Right to Property

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2. Point out the criticisms of Fundamental Rights

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3. Elaborate the fundamental duties.

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5.8 Let us Sum up

In this unit we learnt the nature, characteristic, types, right to property, criticism and Fundamental Duties.

In the final analysis, the Fundamental Rights, despite the constitutional guarantees remain a reality so long as the people want to enjoy them. As has been observed no law can make the people enjoy their freedom, if they do not want it and, no law can deny liberty to the people if they really want it. Because of poverty, unemployment, illiteracy and ignorance, a majority of people today are giving less importance to freedom compared to economic equality. Therefore what we can have in conclusion is that freedom is

essentially the making of an individual while the constitution is only a body of rules and regulations which can not be implemented without the will and determination of the people.

5.9 Key words

- Justiciable - which comes under the jurisdiction of the court
Writ - A form of written command given by the court.
POTA - prevention of terrorist Act
MISA - maintenance of internal security Act.

5.10 Some Useful Books

- M.V. Pylee : India's Constitution
J.C. Johari : Indian Government and Politics
D.D. Bagre : Introduction to the Constitution of India.

5.11 Answer to check Your Progress

Check Your Progress – 1

See section – 2

See section –3

Check your Progress – 2

See section –4

See section – 5.1

Check your progress – 3

See section – 5.2

Check your progress – 4

See section – 5.3

See Section 5.4

Check Your Progress – 5

See Section – 5.6

Check your progress – 6

See Section – 5.7

See Section – 6

See Section - 7

NOTES

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Unit -6 Directive principles of State Policy

Structure

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Historical Background
- 6.3 Meaning and Nature
- 6.4 Enumeration of Directive principles
 - 6.4.1 Socialistic principles
 - 6.4.2 Liberal principles
 - 6.4.3 Gandhian Principles
- 6.5 Implementation and Politicisation of D.P
- 6.6 Importance or significance of D.P
- 6.7 Directive principles and Fundamental Rights
- 6.8 Evaluation of Directive Principles
- 6.9 Let us Sum up
- 6.10 Key words
- 6.11 Some useful books
- 6.12 Answer to check your progress

6.0 Objectives

After going through this unit you will be able to

- Explain the basic ideas behind the D.P
- Describe the meaning and nature of D.P
- List the various principles
- Examine the implementation of the D.P
- Evaluate the present position of the D.P

6.1 Introduction

The Directive principles are a novel feature of the constitution. They are incorporated and analysed in part IV from Articles 36 to 51 in Indian constitution. They are in the nature of directives or instructions to the governments at the centre and in the state. Fundamental Rights help the citizens to develop their personality by utilizing the various opportunities available at their disposal, Directive Principles enable the state authorities to achieve certain social and economic goals. The makers of the constitution strongly felt the need for making and implementing welfare programmes for improving the weaker sections in the country.

6.2 Historical Background

The constitution makers were influenced by the Irish constitution which embodies a chapter on "Directive Principles of Social Policy". The Irish themselves had taken this policy from the Spanish constitution. Apart from these principles, charter of the United Nations and Human Rights also influenced the makers of the constitution.

The idea of constitutional declaration of directive principles had found its expression in the 1931 Karachi resolution of Indian National Congress. Later on, after India became independent and the constituent Assembly was formed, there was a need to include the directive principles in the constitution. In the constituent Assembly the members of the Fundamental rights committee were very much

influenced by the political thinking of their time. Most of the constitutions of their time had Directive principles. Fabianism and Gandhian way of life also had their influence on the constitution makers. Naturally large number of members of the constituent assembly such as Dr. B.R. Ambedkar, K.T. Shah, Alladi Krishna swamy Ayyer and many others pleaded for the inclusion of Directive principles in the constitution.

6.3 Nature of the D.P

The Directive principles constitute very comprehensive political social and economic programmes for a modern democratic state. In enlisting these directives the framers of the constitution wanted to give certain directives to the future legislature and executive to show in what manner they have to execute the legislative and executive power. The nature of the directive principles can be known from the following points.

1. Non-coerciveness

Non-coerciveness means that failure to implement these principles does not lead to an offence and punishment. No citizen can sue the state accusing it of non-implementation of these principles.

2. Positive in nature

Directive principles are positive in nature. They enlarge the sphere of state activity. The state could make and issue any order, directive or law for implementing these principles

3. Non-political nature

Directive principles have to be implemented by the governments at the centre and in the states irrespective of party or political considerations. The political parties which assume office and hold power at different levels of government have to take steps for implementing these principles, because these principles are welfare-state oriented.

4. Advisory in nature

These principles provide certain guidelines and advise the government authorities to follow such principles. Governmental authorities have discretionary powers to follow these principles. It may be noted that the failure to implement these principles will bring the downfall of the government. Hence the political failure of the party in power depends to a great extent on the way of implementation of these principles.

5. Collective welfare

Directive principles aim at the promotion of the collective welfare of citizens. They consist of several well defined and pre-determined goals for achieving the welfare of all. The progress of the nation in internal and international spheres depends on the nature and method of implementation of the principles. They are like golden means for providing political democracy, for achieving economic equality and for securing social harmony of the society

6. Popular support

The makers of our constitution have prepared these principles in such a way as to suit the needs of the average man. They have framed these principles due to the profound influence of Mahatma Gandhi, Jawaharlal Nehru and other eminent leaders.

7. Non-mandatory

The governments may or may not take steps to implementing these principles. Failure in implementing these principles does not lead to punishment. At the same time, no one can give direction or bring pressure on the government for implementing these principles. The governments possess the discretionary powers in implementing these principles.

It is noted that the Directive principles of state policy constitute an important part of the constitution for through them the constitution seeks to achieve the ideal of democratic welfare state set out in the preamble and to bring about social and economic equality

Check Your Progress - 1

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Explain the historical background of D.P.

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2. Discuss the nature of D.P

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6.4 Enumeration of Directive Principles

The Directive principles are enumerated and explained in part IV of the constitution from Articles 36 to 51. But actually these principles are mentioned in Articles from 39 to 51. Even these principles are not explained in a systematic manner. In order to understand the comprehensiveness of the Directive Principles and for the convenience of study, we may classify them into three related groups viz. socialistic, Gandhian and liberal principles.

6.4.1 Socialistic principles

1. To direct the state towards securing adequate means of livelihood to all citizens
2. To secure and protect a social order which stands for the welfare of the people.
3. To distribute properly the material resources of the community for the common good
4. To prevent the concentration of wealth to the common detriment.
5. To give equal pay for equal work for both men and women.
6. To protect the strength and health of the workers
7. To protect children and youth against exploitation
8. To secure the right to work, education and public assistance in case of unemployed, sick, etc.
9. To secure just and human conditions of work and maternity relief
10. To secure proper wages, a decent standard of life, leisure and cultural opportunities for people
11. To promote the education and economic interest of SC, ST and other weaker sections.
12. To raise the level of nutrition and the standard of living of its people and the improvement of public health.

The above objectives embody the main tenets of socialistic pattern of society.

6.4.2 Gandhian principles

The Directive principles which intend to give shape to Gandhian ideals are

1. To organize village panchayats and endow them with suitable powers.
2. To prohibit intoxicating liquor and drugs
3. To promote cottage industries on an individual or co-operative

basis in rural areas.

4. To promote the economic and the educational interests of the weaker sections, particularly that of scheduled caste and scheduled tribes.
5. To organize agriculture and animal husbandry on modern scientific lines.
6. To prohibit cow slaughter.

6.4.3 Liberal Principles

These principles are based on liberal thinking and emphasize the need for the following:

1. to secure a uniform civil code applicable to the entire country
2. to provide free and compulsory education to all children under fourteen years
3. to bring about separation of the Judiciary from the executive
4. to endeavour to secure
 - i) the promotion of international peace and security
 - ii) the maintenance of just and honourable relations with all nations
 - iii) the settlement of international disputes through arbitration.

Apart from the above mentioned directives, the 42nd Amendment to the constitution added the following new directive principles.

1. Free legal aid to economically backward classes.
2. protection of workers in the management of organisation in any industry.
3. protection and improvement of environment
4. safeguarding of forests and wild life.

6.5 Implementation and politicisation of D.P

The implementation of directive principles did not attract much political and legal controversy in 1950s partly because of their democratic and social nature. For example directives like the

implementation of prohibition, introduction of panchayath raj system and separation of judiciary from executive did not create any tensions. However the situation had undergone a radical change since 1967. The electoral defeat of congress party in a number of states and its reduced strength in the Loksabha had made the congress leadership switch over to more radical policies. Some of them were bank nationalization, abolition of privileges and purses of princes, speedy implementation of land reforms, adoption of reservation laws. This step necessitated a series of constitutional amendments. One should remember in this context that the congress party adopted more radical economic policies whenever it felt insecure in retaining power and mobilising electoral support; for example the 20 point programme.

Today all political parties have come to the conclusion that in order to win the support of the masses, adoption of radical policies is inevitable like unanimous support of all political parties to the reservation policy.

6.6 Importance or Significance

The directive principles are fundamental in the governance of the country. Whichever party comes to power it has to oblige and implement these principles. So these principles have a common political manifesto.

The constitution of India embodies the ideal of welfare state. It resolved to provide Indian citizens with liberty, equality, fraternity and justice. The Directive principles serve as the best means for realizing these objects.

Directive principles serve as a test for the performance of the government. The future of the party in power is linked with the implementation of these principles. The citizens judge the performance of the government in regard to the extent of the implementation of these principles. The citizens will favour only those parties which sincerely make efforts and achieve results by implementing these principles.

The Directive principles create a favorable atmosphere for enjoying fundamental rights. While fundamental rights stand for political democracy, directive principles symbolize economic democracy. Political democracy in the absence of economic democracy is meaningless.

The Directive principles ensure stability and continuity in our national and international policies. These principles prescribe certain norms which are essential for the political stability and continuity of the government. They have to be implemented by any political party that forms the government.

Thus the inclusion of Directive principles in our constitution is of great significance. Our constitution declared that these principles are fundamental in the governance of the country.

Check Your Progress - 2

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Name the categories of Directive principles

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2. Discuss the significance of the D.P

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6.7 Directive principles and Fundamental Rights

The fundamental Rights and Directive principles are two more important features of our constitution. These two important features of the constitution seem to resemble outwardly each other in so far as they aim at securing the common good of the people but, there are vital differences between the two.

1. Fundamental Rights are guaranteed by our constitution. They are enforced by the judicial organisations in our country.

Directive principles aim at the promotion of the welfare of the people. But they are not enforced by the Judiciary.

2. Fundamental Rights are negative in nature. They impose several restrictions on the government in relation to the people. Governments are not allowed to interfere in the rights of the citizens

Directive Principles are positive in nature. They extend the activities of the state in different spheres. The state may enact a law, order or directive in the name of the principles.

3. Fundamental rights aim at the promotion of interests of individuals.

Directive principles aim at the promotion of the welfare of the society.

4. Fundamental Rights are mandatory in nature. No individual, institution or agency including government shall interfere or cause restraints to the rights enjoyed by a citizen.

Directive principles are not coercive in nature. The various governments implement these principles depending upon the availability of fund.

5. When there arises a conflict between fundamental rights and directive principles.

Directive principles precede over the fundamental rights. The constitution was amended for several times to this effect.

After forty-second constitutional amendment act, Directive principles are given priority over the fundamental rights.

6. Fundamental rights help in transforming India into politically democratic state.

Directive principles make India as a socially and economically democratic state.

7. Fundamental Rights have legal significance and sanctions.

Directive principles have only moral significance and moral and political sanctions.

In spite of the above differences, both together constitute the soul of the constitution. It is clearly understood that there is no essential dichotomy between the fundamental rights and directive principles.

6.8 Evaluation of Directive Principles

The Directive principles, as we have discussed in the above are at best pious declarations. Their ineffectiveness has been criticized in many ways. They are;

1. Lack of legal force

Since the directive principles have no legal obligations, they are not effective

2. Vague principles

Most of the directive principles are vague and indefinite. They

do not reflect any particular philosophy or ideology.

3. Unsound principles

Some of the principles are unsound. For example take the case of prohibition. If it is implemented faithfully it drains the national economy, deprives the revenues and make them spend crores of rupees in maintaining a department for the implementation of prohibition policy.

4. No means of specified for implementation

No mention has been made in the constitution as to how to implement these principles

5. Constant source of litigations

Ever since the presentation of the constitution the implementation of the Directive principles has come into conflict with the fundamental rights and several judgments of the supreme court have only led to the non-implementation of these directives.

6. Conservative in nature

The makers of the constitution incorporated these principles on the basis of political experience of England of the nineteenth century. As a result these principles involve conservative character. Hence these principles require suitable changes with the changing times.

Despite the drawback and the constitutional problems in implementing these principles, their importance in the context of our socio-economic problems cannot be minimized.

Check Your Progress - 3

Note: 1) Use the space given below for your answer.

2) Also check your answer with the clue given at the end of the Unit.

1. Discuss the relation between fundamental Rights and Directive principles

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2. Point out the criticisms made against the directive principles.

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6.9 Let us Sum up

We cannot deny the importance and the urgent need for the implementation of Directive principles whose objectives are bridging the gap between the rich and the poor, securing for the people proper wages and extending free and compulsory education. Rapid industrialization and the extension of educational facilities are the two main feature of modernization. They cannot be achieved in a country where the people are socially backward and economically poor, without the state participation. Many steps have been taken by the

state to implement these principles. But still much has to be done in this direction. These directive principles aim at establishing the welfare state in India.

6.10 Key words

Justifiable	-	Enforceable by Judiciary
Non-justifiable	-	Not enforceable by judiciary
Milch cattle	-	cattle giving milk
Fabianism	-	Socialism should be achieved through non-revolutionary means.

6.11 Some useful books

D.D. Basu	:	Introduction to the constitution of India.
M.V. Pylee	:	India's constitution
A.C. Kapoor	:	Select Constitutions
J.C. Johari	:	Indian Government and Politics
A.R. Avasti	:	Indian Government and Politics.

6.13 Answer to check Your progress

Check Your progress -1

See section 2

See section 3

Check Your progress -2

See section 4

See section 6

Check Your progress -3

See section 7

See section 8

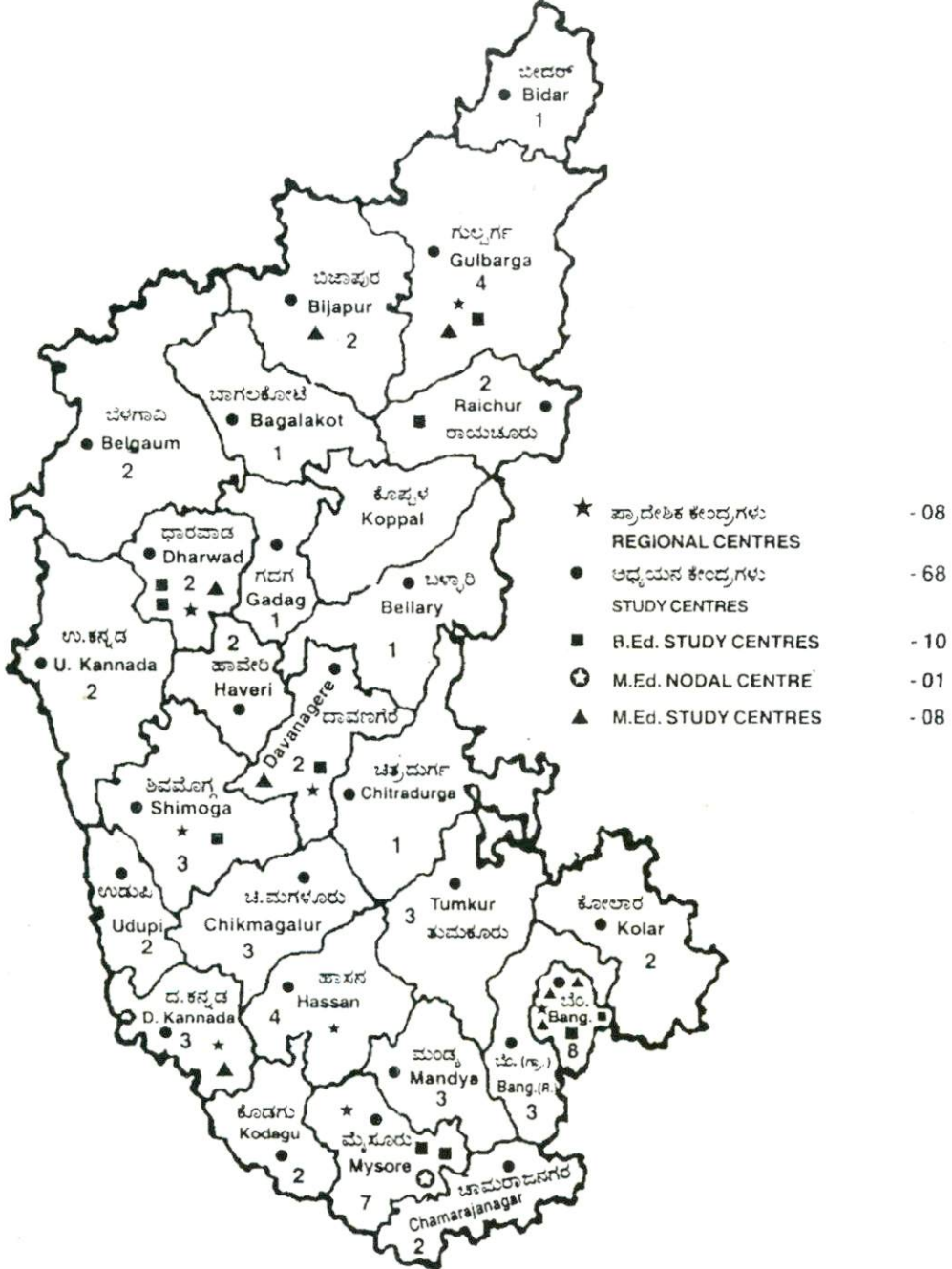
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ಕರ್ನಾಟಕ ರಾಜ್ಯ ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯದ ಪ್ರಾದೇಶಿಕ ಹಾಗೂ ಅಧ್ಯಯನ ಕೇಂದ್ರಗಳು
Regional and Study Centres of Karnataka State Open University



(ನಮೂದಿಸಿರುವ ಅಂಕಿ - ಜಿಲ್ಲೆಯಲ್ಲಿರುವ ಒಟ್ಟು ಅಧ್ಯಯನ ಕೇಂದ್ರಗಳ ಸಂಖ್ಯೆಯನ್ನು ಸೂಚಿಸುತ್ತದೆ.)
(The Number indicate the total number of study Centres existing in that districts.)

