UNIT 5 CONSTITUTIONAL MANDATES (PRINCIPLES)

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5.1 INTRODUCTION

The Constitution is the basic law of the land. It designs the structure, powers and functions of the state and rights and duties of its citizens. In fact “it is a document having a special sanctity which sets out the framework and the principal functions of the organs of the Government of a State and declares the principles governing the operation of those organs”. Constitution is necessary for several reasons. According to Gilchrist “the Constitution of a state is body of laws, written or unwritten which determines the organisation of the Government, the distribution of powers to the various organs of the Government and the general principles of which these powers are to be exercised”. The Constitution guarantees certain fundamental rights and freedoms to the people of the country to enable them to realise their expectations and fulfill their aspirations. It lays down values for the state in the form of directive principles to carry its vision, mission and commission.

In India we have a Constitution of our own. The very important fact is that the Constitution of India is not the product of a political revolution alone but of the continuous efforts, research and deliberations made by eminent scholars and prominent representatives of the people. Rome is not built in a day so is the Indian Constitution. The struggle for independence was thus over by 15th August, 1947. One of the important tasks undertaken by independent India was framing of a new Constitution. To fulfill this objective the Constituent Assembly appointed various committees to deal with different aspects of the Constitution. On August, 29th, 1947 a Drafting Committee of 7 members was set up under the chairmanship of Dr. B.R. Ambedkar. The Draft Constitution was submitted and published in January, 1948. The people of India were given 8 months to discuss the draft and propose amendments. As many as 7,635 amendments were proposed and 2,473 were actually discussed. The Constituent Assembly held 11 sessions. The Draft Constitution was considered for 114 days. In all, the Constituent Assembly sat
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for 2 years 11 months and 18 days. The net result is the Constitution of India. The New Constitution of India was adopted by the Constituent Assembly on 26 November, 1949 and came into force on 26 January, 1950.

5.2 OBJECTIVES

After reading this unit, you should be able to:

- explain the meaning, object and purpose of the Constitution;
- study the basic principles of the Indian Constitution;
- explain the constitutional mandates or principles;
- explain the constitutional principles with reference to Criminal Justice System;
- enable the learner to have an overall view of the Indian Constitution; and
- explain the interpretations given by the Supreme Court and High Courts in granting the remedies for the violation of the basic human rights of the citizens.

5.3 SALIENT FEATURES OF THE INDIAN CONSTITUTION

The Indian Constitution is considered as one of the best Constitutions in the world. The salient features of the Indian Constitution are discussed as follows:

- A written Constitution: The Constitution may be written or unwritten. In the United Kingdom there is no written Constitution in the form of a single statute. However, it consists of partly common law, partly conventional law and partly statutory law. The framers of the Indian Constitution felt that it will be practically impossible to maintain the supremacy of the Constitution, unless the terms of the Constitution have been reduced to writing. Therefore, we have a detailed written Constitution.

- An instrument of social change: India is a vast society with multiplicity of religions, languages, and ethnic groups spread over a wide geographical area. Provisions for change of the Constitution are made with a view to overcome the difficulties which may be encountered in future in the working of the Constitution. It is true that no generation has monopoly of wisdom. The future generation has every right to mould the machinery of the Government according to their requirements. Therefore, our Indian Constitution is a living document. Every care is taken to change the provisions of the Constitution according to the needs of the day without defiling its basic structure.

- Lengthiest and the most detailed Constitution: The Indian Constitution is the lengthiest and a detailed written document in the World. At present it consists of 395 articles divided into 22 parts and 12 schedules. Since ours is a modern Constitution in the world the framers of the Constitution have gained experience from working of the common law and continental legal systems in the world. The framers of the Constitution wanted to incorporate
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good provisions of those Constitutions in order to prevent defects, demerits and loopholes that may come in the smooth working of the Indian Constitution. As a result the Constitution became a detailed polity in the world.

- **Parliamentary form of Government:** In the Parliamentary form of Government the President is the Constitutional head of the State and real executive powers are exercised by the council of ministers. The Prime Minister and council of ministers are collectively responsible to the house of people. Same is the case in the state, where Chief Minister and council of ministers are directly responsible to the legislative assembly. Therefore, the parliamentary system of Govt. is called responsible Government.

- **Federal Constitution with strong unitary qualities:** The Constitutions are either unitary or federal. Under the Unitary Constitution the powers of the Government are centralised in one Government that is known as Central Government. But in a federal Constitution there is a division of powers between the centre and states. Both Centre and State are independent in their respective spheres. India is a federation with a strong centre. The essential features of the federal Constitution are: dual polity, distribution of powers, written Constitution, supremacy of the Constitution, rigidity of the Constitution and judicial review. Dr. B.R. Ambedkar observed “I think it is agreed that our Constitution notwithstanding the many provisions which are contained in it whereby Centre has been given powers to override the provinces (States) nonetheless, is a federal Constitution.” It is viewed that the framers of the Indian Constitution intended that our Constitution should be federal in normal circumstances, but in emergencies it acquires the status of unitary qualities to prevent centripetal and centrifugal tendencies.

- **Rigid and flexible:** The framers of the Indian Constitution were keen to avoid excessive rigidity and complete flexibility of the Indian Constitution. We can understand this concept with the help of the statement given by Pandit Jawaharlal Nehru which reads “while we want this Constitution to be as solid and permanent as we can make it, there is no permanence in the Constitution. There should be a certain flexibility. If you make anything rigid and permanent you stop the nation’s growth, of a living, vital, organic people……… . In any event, we could not make the Constitution so rigid that it cannot be adopted to changing conditions. When the world is in a period of transition what we may do today may not be wholly applicable to tomorrow.” Article 368 of the Indian Constitution empowers the Parliament to make amendments without changing the basic structure of the Constitution.

- **Fundamental Rights:** Fundamental rights are essential to protect the rights and liberties of the people against the arbitrariness of the Government. According to *Maneka Gandhi’s case* fundamental rights represent the basic values enshrined by the people of this country (India) since the *vedic* times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They wave a pattern of guarantee on the basic structure of the human rights, and impose negative obligations on the State not to encroach on individual’s liberty in its various dimensions”. It is true that fundamental rights are essential for the attainment of individual liberty, intellectual, moral
and spiritual status. These rights are guaranteed from Articles 12 to 35 under Chapter-III of the Indian Constitution. They are as follows: Right to equality (Arts. 14 to 18), Right to freedom (Arts. 19 to 22), Right against exploitation (Arts. 23 to 24), Right to freedom of religion (Arts. 25 to 28), Cultural and Educational Rights (Arts. 29 to 30) and Right to Constitutional remedies (Arts. 31 to 35). The 44th Constitutional amendment has abolished the right to property as a fundamental right and incorporated as legal and Constitutional right under Article 300 A of the Constitution.

- **Directive principles of State Policy:** Part-IV (Articles 36 to 51) of the Constitution relates to the Directive Principles of State Policy. It sets forth the ideals and objectives to be achieved by the State for setting up a welfare State. The aims and objectives of the welfare State are to bring common good and to secure to all its citizens social justice and economic justice. These principles are drawn with the inspiration of the Irish Constitution.

- **Independence of Judiciary:** Just enumeration of fundamental rights in the Constitution without proper remedy will not serve any purpose. The very existence of a fundamental right depends upon the remedy for its enforcement. For this purpose an independent and impartial judiciary with a power of Judicial review has been established under the Constitution. Judiciary is a guardian and custodian of the rights of the citizens. Further, it plays a dynamic and important role in determining the limits and limitations of the other two organs of the State.

- **Rule of Law:** The expression rule of law has been derived from the French phrase ‘la principe de legalaite’, i.e. a government based on the principles of law. The object of the law is to maintain public order by defining the powers of the government, its servants and institutions and by directing them to exercise their power within their limits. The law, thus, provides protection to individuals from unlawful action of the government and its officers.

- **National Unity and Single Citizenship:** Though India is a federation, in order to protect national unity, integrity the Constitution provides single Citizenship for the whole of India. There is no state citizenship. Every Indian is the citizen of India and enjoys all the privileges and rights provided under the Constitution.

Please answer the following Self Assessment Question.

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<th>Self Assessment Question</th>
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<tr>
<td>1) a) The Indian Constitution is consisting of ............................................. number of Articles.</td>
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<tr>
<td>b) Part IV of the Indian Constitution deals with ............................................. .................................................................</td>
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### 5.4 CONSTITUTIONAL MANDATES

The basic principles or constitutional mandates can be traced from the preamble, fundamental rights, directive principles of state policy, other relevant portions of the Constitution and judicial precedents. The Preamble is an introduction to the Constitution to understand the intention, purpose and object of making of the
Constitution. The Constitution-makers gave to the preamble “the place of pride”. In *re Beruhari union’s* case the Supreme Court held that the preamble is a key to open the mind of the makers, and shows general purpose for which they made several provisions in the Constitution.

The object behind incorporation of fundamental rights in Chapter-III of the Constitution is to establish a Government of law and not of men. In short to say to establish the rule of law. The idea of welfare state can be achieved only if the Government makes an endeavour to implement the objectives enshrined in the Preamble and Directive Principles of State Policy. The Supreme Court and High Courts in India played a dynamic and significant role in expanding the horizons of the Constitutional principles. The basic Constitutional principles are discussed here under:

- **Justice:** Justice includes social, economic and political. The high ideals of the Constitution of India are adumbrated in its preamble which proposes to secure to all its citizens, trilogy of Justice-social, economic and political. The same ideals are incorporated in the Directive Principles of State Policy. Here the state is under an obligation to strive to promote the welfare of the people by securing social order. Social justice is governed by valid moral principles. In a pluralistic society like India the main problem is not of equality and equal freedom to all, but the problem is that certain classes of people have to be given some preferential treatment in access to public resources which is called access to justice.

- **Liberty:** For any organised society civil liberties are a pre-condition. Liberty includes thought, expression, belief, faith and worship. Every citizen has right to express his conviction and opinion freely by words of mouth, writing, printing, pictures or any other mode of representation. It helps an individual to attain self fulfillment and discovery of truth. Article 19 of the Constitution guarantees to the citizens of India the following six freedoms: Freedom of speech and expression, Freedom of assembly, Freedom to form association, Freedom of movement, Freedom to reside and settle and Freedom of profession, occupation, trade or business. These six freedoms are not absolute but subject reasonable restrictions provided under the Constitution.

- **Equality:** Article 14 states that “the State shall not deny to any person equality before the law and equal protection of laws within the territory of India”. The nature of this right is not mere individual right of admonition to the State. This right is of two ways, 1) Equality before law and 2) the Equal protection of laws. It is similar to Article 7 of Universal Declaration of Human Rights. “Equality before law” is derived from English Common Law. It is a negative concept. It says that there is no special privilege in favour of any person, all are equally subject to the ordinary law of the land. It is developed from the Dicey’s concept of ‘Rule of law’. Whereas “Equal protection of laws” is a positive concept taken from 14th amendment of the USA Constitution. It means, among equals the law should be equally applicable and equally administered. That means ‘like should be treated alike’. Therefore Article 14 permits reasonable classification of persons, objects and transactions. In *E.P Rayappa’s* Case the Supreme Court held that equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned with traditional and doctrinaire limits. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment.
The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence”. Article 14 provides equality in general whereas Articles 15 & 16 provides equality in specific cases like access to public places and public employment by recognising the doctrine of compensatory discrimination.

The constitutional policy of compensatory discrimination is based upon the notion that certain social groups in India were inherently unequal and were victims of social discrimination from the time immemorial. Therefore, they need special protection in public life and public employment.

- **Fraternity**: The object of fraternity is to ensure dignity of individual and the unity and integrity of the nation. We are living in a pluralistic society with different languages, religions, cultures, denominations, etc. Fraternity reflects all these groups should live in perfect harmony and brotherhood, i.e. unity in diversity.

- **Sovereignty**: The term sovereignty has been drawn from the Latin word ‘supremus’ which means paramount or supreme. To say that the state (country) free to conduct its administration and formulate its social and economic policies according to the requirements. It can resolve differences between various groups or associations within its jurisdiction. Further, the state is free to conduct its external relations as it likes without interference from any outside power or authority. The Indian Constitution accorded such sovereign authority to India i.e. Bharath.

- **Socialist and Secular**: Socialism stands for equality. In the capitalistic society social and economic inequalities will prevail. Socialism is a means for the removal of extreme inequalities by preventing concentration of wealth in the hands of few. Further, socialism ensures distribution of public resources to all sections of people irrespective of their status.

Ours is a secular Constitution by accepting the concept of unity in diversity. In fact in a secular country, there is no state religion, state is neutral in the matters of religion and state shall not promote or propagate any religion either directly or indirectly. State’s interference in religion is only to coordinate the secular matters of the religion.

- **Democratic and Republic**: In democracy the ultimate sovereignty is vested with the people. In democracy the citizens of the country shall participate in making of the law of the country either by directly or through their representatives. Indian democracy is a representative democracy.

The term Republic signifies that there shall be an elected head of the state who will be the chief executive of the country. Republic is against the concept of hereditary monarch. The President of India, unlike the British King is not a hereditary monarch. But an elected person chosen for a limited period.

- **Supremacy of the Constitution**: The founding fathers of the Constitution made the Indian Constitution supreme law of the land. The concept of the ‘king can do no wrong’ is not applicable to Indian democracy. All functionaries of the state are under the Constitution and subject to the Constitution. This supremacy is conferred through the will of the people.
• **Judicial Review:** The most important function of judiciary under a written Constitution is to keep all authorities within the constitutional limits. This function is performed by way of judicial review. Article 13 provides for the ‘judicial review’ of all legislations in India, past as well as future. This power has been conferred on the Supreme Court and High Courts under Articles 32 and 226 respectively to declare any law unconstitutional, if it is inconsistent with the provisions of Part-III of the Constitution.

5.5 **CONSTITUTIONAL MANDATES AND WELFARE STATE**

The purpose of the fundamental rights is to protect individuals and to ensure certain basic, inalienable human, and natural rights against any arbitrary action of the state. The purpose of the Directive Principles is to fix certain social and economic goals to be achieved by the State to promote welfare of the people. The Directive Principles of State Policy enshrined in the Constitution from Article 36 to 51 may be classified into three groups and described as under:

• **Social and Economic Character**
  1) Social order based on justice.
  2) Equal right of men and women to adequate means of livelihood.
  3) Distribution of ownership and control of material resources of the community to the common good.
  4) To ensure that the economic system should not result in concentration of wealth and means of production to common detriment.
  5) Equal pay for equal work for both men and women.
  6) To protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter avocation unsuited to their age or strength.
  7) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment.

• **Social Security Character**
  1) Participation of workers in management of Industries.
  2) Right to work, education and public assistance in certain cases.
  3) Just and human conditions of work.
  4) Living wage for workers.
  5) Provision for child care and education to children below the age of six years.
  6) Duty to raise the standards of living and improvement of health.
  7) Promotion of educational and economic interest of weaker sections.
  8) Equal justice and free legal aid to economically backward classes.
Community Welfare Character

1) Uniform Civil Code
2) Organisation of agriculture and animal husbandry
3) Protection and improvement of forests and wild life
4) Protection of monuments and places and objects of national importance
5) Separation of Judiciary from Executive
6) Promotion of International Peace and Security
7) Organisation of Village Panchayats

Please answer the following Self Assessment Question.

Self Assessment Question
2) What is the purpose of Directive Principles of State Policy?

Part-IV-A was added by the 42nd Amendment, 1976 by incorporating Article 51-A. This concept was taken from the Constitution of erstwhile USSR. The socialist countries lay great emphasis on the duties of citizens. It does not mean that the people of other countries behave in an irresponsible manner. The preamble of the Indian Constitution secures to all the citizens “liberty of thought, expression, belief, faith and worship”. These are the fundamental rights of the citizens. The rest of preamble emphasizes only the duties.

“Justice, social, economic and political”. In addition to this, the fundamental rights guaranteed by the Constitution are not absolute. The state is empowered to impose reasonable restrictions in the interest of society. Therefore, Article 51-A is an express mention which is implicit in the Constitution. Article 51-A says that it shall be the duty of every citizen of India:

- To abide by the Constitution and respect its ideal and institutions, the National Flag and National Anthem.
- To cherish and follow the noble ideals which inspired our national struggle for freedom.
- To uphold and protect the sovereignty, unity and integrity of India.
- To defend the country and refer national service when called upon to do so.
• 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.
• To value and preserve the right heritage of our composite culture.
• To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creature.
• To develop the scientific temper, humanism and the spirit of inquiry and reform.
• To safeguard public property and to abjure violence.
• To strive towards excellence in all spheres of individual and collective activity to that the nation constantly rises to higher levels of endeavour and achievements.
• To provide opportunity for education to his child or as the case may be, ward between age of 6 and 14 years.

5.7 CONSTITUTIONAL MANDATE AND CRIMINAL JUSTICE SYSTEM

Principles of natural justice is a constitutional mandate. The term natural justice may be equated with procedural fairness, or fair play in action. It is concerned with procedure and it seeks to ensure that the procedure must be just, fair and reasonable. It may be regarded as the counter part of American “Due Process”, which intended to prevent mis-carriage of justice. There are two fundamental principles of natural justice explained as under:

Nemo judex in re sua: It means no one should be a judge in his own Cause. What it really implies is that judge should be unbiased and impartial. If he has any kind of interest in the subject-matter or outcome of the dispute, he is not fit to be the Judge of that matter. Bias disqualifies a person from acting as a Judge.

Audi alteram partem: It means hear the other side or hear both sides or no person should be condemned unheard. It consists of two components, namely i) Notice and ii) Hearing. To put it differently, no decision affecting the interest of a party should be made unless he has been given due notice and afforded reasonable opportunity of being heard. The opportunity should be fair and adequate and not formal and sham. What is a fair hearing will depend upon the facts and circumstances of each case.

Articles 20, 21 and 22 of the Indian Constitution guarantee very important natural rights of persons, accused persons and arrested persons. These three articles are the basis for growth and development of jurisprudence in criminal administration of justice.

i) Rights of the Accused Person: Article 20 guarantees three important rights to the accused person. They are explained as follows:

• Protection against Ex-post facto laws: Ex-post facto law is that a law has retrospective effect to past acts. For example, a law is passed today declaring an act is an offence by prescribing a punishment. If the same
law and the same punishment is applied for yesterday’s act (retrospectively) it is called ex-post facto law. The Indian Constitution prohibits ex-post facto laws. We can understand this concept under Article 20(1) which reads as “No person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence”. The intention and purpose of this provision is to enable the state to pass criminal law and punish the accused with prospective effect.

- **Protection against Double Jeopardy**: The expression Double Jeopardy means punishing a person twice for the same offence. This is against the principles of common law which says that no one shall be put twice in peril for the same offence. Article 20(2) of the Indian Constitution states that “No person shall be prosecuted and punished for the same offence more than once”.

- **Freedom from self incrimination**: The expression self incrimination means conveying information based upon personal knowledge of the person or giving information involving himself to be the prime part taken in the offence. Freedom from self incrimination means no person shall be compelled to give evidence against himself. This is also called as rule against testimonial compulsion. Criminal Justice system requires free and fair trial. This right is guaranteed to the accused under Article 20(3) which states that “No person accused of any offence shall be compelled to be a witness against himself”.

**ii) Protection of life and personal liberty**: Liberty is the root of civilized living. The term liberty has been derived from the Latin word ‘liber’ which means freedom. In this sense liberty is often said to consist in fulfilling one’s own desire. But liberty is presumed to have three forms: the personal or civil liberty of an individual, the political liberty of the citizens and the economic liberty of the working class. Article 21 of the Indian Constitution guarantees life and personal liberty which reads as: “No person shall be deprived of life or personal liberty except according to the procedure established by the law.” According to the Constitution preservation of human life is of paramount importance.

**To Whom available**: Article 21 guarantees the right to life and personal liberty to all persons (Citizens or non-citizens). Thus, the right to life and personal liberty guaranteed by Article 21 is available not only to citizens but also to non-citizens.

**Against Whom available**: The protection of Article 21 is available only where a person is deprived of his life or personal liberty by the State. Article 21, thus, applies only to the deprivation of life and personal liberty by the State and, therefore, a person whose right to life or personal liberty is infringed by private individual is required to seek his remedy under ordinary law. (Vidya Verma v. Shiv Narain, AIR 1956 SC 108).

- **Right to life and Indian Courts**: Justice P.N. Bhagawati in Francis Corolie Mullin case observed that, “the question which arises is whether the right to life is limited only to protection of limb or faculty, or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely,
bare necessaries of life such as adequate nutrition, clothing and shelter over the head, facilities for reading, writing and expressing oneself in diverse form, freely moving about and mixing and co-mingling with fellow human beings.” Therefore, the expression is not confined to mere freedom from bodily restraint and that liberty under law extended to the full range of the conduct which the individual was free to pursue. From 1950-2010 the Constitutional Courts in India expanded the horizons of Article 21 of the Constitution to protect, preserve and safeguard the life and liberty of an individual.

- **Right to Privacy**: In *R.Rajagopal v. State of Tamil Nadu* ((1994) 6 SCC 632) popularly know as Auto Shankar Case, the Supreme Court has expressly held that the right to privacy or the right to be let alone is guaranteed by Article 21 of the Constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. one can publish any thing concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be, violating the right of the person concerned and would be, violating the right of the person concerned and would be liable in an action for damages.

In *State of Maharashtra v. Madhulkar Narain*, ( AIR 1991 SC 207) it has been held that the right to privacy is available even to a woman of easy virtue and no one can invade her privacy. In this case a police inspector visited the house of one Banubai in uniform and demanded to have sexual intercourse with her. On refusing he tried to have sex by force. She raised a hue and cry. When he was prosecuted, he told the court that she was a lady of easy virtues and therefore her evidence was not to be relied. The Court rejected the argument and held him liable for violating her right to privacy under Article 21 of the Constitution. (*Govind v. State of Madhya Pradesh AIR 1975 SC 1378*).

- **Right to Legal Aid**: In *M.H.Hoskot v. State of Maharashtra* (AIR 1978 SC 1548) the Supreme Court laid down that right to free legal aid at the cost of the State to an accused, who could not afford legal services for reasons of poverty, indigence or incommunicado situation, is part of fair, just and reasonable procedure implicit in Article 21. Free legal aid to the indigent has been declared to be a State’s duty and not government charity.

In *Hussainara Khatoon v. Home Secretary* (AIR 1979 SC 1377), *Khatri v. State of Bihar* (AIR 1981 SC 928) Bhagawati, J. speaking for the Supreme Court emphasized that the right to free legal services was clearly an essential ingredient for reasonable, fair and just procedure, for a person accused of an offence and that it must be held implicit in the guarantee of Article 21.

The Constitutional obligation to provide free legal services to an indigent accused, does not arise only when the trial commences but also commences when he is for the first time produced before the Magistrate. That is the stage at which an accused person needs competent legal advice and representation. The Court further held that the Magistrate or the sessions Judge, before whom the accused appears, is under an obligation to inform the accused that if he is unable to engage a lawyer, he is entitled to obtain free legal services at the cost of the State.
• **Right to Speedy Trial:** In *Hussainiara Khatoon v. Home Secretary* (AIR 1979 SC 1360), Supreme Court held the procedure would be reasonable, only when it ensures, reasonable and quick trial and the reasonable expeditious trial in an integral and essential part of the fundamental rights to life and personal liberty in Article 21.

• **Right against Solitary Confinement:** In *Sunil Batra v. Delhi Administration*, the court observed that by imposing solitary confinement there is a total deprivation of comraderie (friendship) amongst co-prisoners coming and talking and being talked to, it would offend Article 21 of the Constitution. The liberty to move, mix, mingle, talk, share company with co-prisoners if substantially curtailed, would be violative of Article 21, unless the curtailment has backing of the law.

• **Right against Hand Cuffing**: “Hand cuffing has been held to be prima facie inhuman and therefore unreasonable, over harsh and at the first flush, arbitrary”. It has been held to be unwarranted and violative of Article 21. The court thus directed the Union of India to issue appropriate guidelines in this regard (*Aeltemesh Rein v. Union of India*, AIR 1988 SC 1768)

In *Prem Shankar v. Delhi Administration* (AIR 1980 SC 1535) the Supreme Court, by majority, struck down para 26.22 of the Punjab Police Rules, 1934, as violative of Article 14, 19 and 21. Para 26.22 of the Rules provided that every under trial who has been accused of a non-bailable offence punishable with more than three years prison term would be routinely handcuffed. The Court ruled that hand cuffing should be resorted to only when there was “clear and present danger of escape” of the accused under trial, breaking out of police control. In extreme circumstances, the application of iron is not ruled out. But in such circumstances the escorting authority must record contemporaneously, the reasons for doing so.

• **Right against in-human treatment**: The Constitution is against the use of third degree methods by Police. According to Justice Krishna Iyar, Human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials.

• **Right against delayed execution**: In *Triveni Ben v State of Gujarat*, the supreme court held that undue delay in execution of death sentence will entitle the condemned prisoner to approach the court for conversion of death sentence into life imprisonment, but before conversion the court will examine the nature of the delay and the circumstances of the case.

• **Compensation in fake encounters**: In *People’s Union of Civil Liberties v. Union of India*, the supreme Court, held that killing of persons in fake encounter was a clear violation of right to life guaranteed under the Article 21 of the Constitution. In this case the court awarded rupees one lakhs as compensation for the dependents of the deceased.

• **Compensation to rape victims**: In *Delhi Domestic Working Woman’s Forum v. Union of India*, the supreme court examined a public litigation case. According to the facts of this case 4 domestic woman servants were
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iii) Safeguards against arbitrary arrest and detention: Article 22 guarantees the following safeguards against arrest or detention made under the ordinary law relating to the commission of offences. They are discussed as under:

- **Right to be informed of grounds of arrest**: Article 22(1) requires that any person who is arrested should be informed the grounds of arrest. The object is to enable the person arrested to know as to why and under what offence he has been arrested. It is to afford the earliest opportunity to remove any mistake or mis-apprehension or mis-understanding in the mind of the authority making the arrest. The grounds for the arrest are to be informed to enable the detenu to prepare for his defence and to move the court of law for a Writ of *habeas corpus* or for bail.

- **Right to be defended by a lawyer of his own choice**: Article 22(1) further guarantees to the arrested person to consult a legal practitioner of his choice. This right belongs to the arrested person not only at pre-trial stage but also at the trial before the court. Supreme Court in a number of cases held that it is the constitutional right of every accused person under Article 21, who is unable to engage a lawyer and secure legal service an account of reasons such as indigence or incommunicado situation, to have free legal services at state’s expenses.

- **Right to be produced before a Magistrate**: Article 22(2) provides that “every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate.” The right to be produced before the nearest Magistrate is guaranteed with a view to avoid any miscarriage of justice. It is with the object to correct and approve the executive action of arresting person(police). It has been held that the magistrate must apply his judicial mind to determine whether the arrest is regular or legal and in accordance with the law. The Magistrate therefore, while authorising the extension of arrest must not act mechanically He has to judicially scrutinise circumstances and if satisfied can order the detention of the accused in police custody.

- **No detention beyond 24 hours**: Article 22(2) further mandates that the arrested person shall not be detained in custody beyond 24 hours without the authority of a Magistrate. It means that if the police fail to produce the arrested person before the nearest Magistrate within 24 hours, the said detention shall be deemed to be illegal. However, the safeguard guaranteed under Article 22 is subject to some exceptions provided under the Constitution.
Please answer the following Self Assessment Question.

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<tr>
<th>Self Assessment Question</th>
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<tbody>
<tr>
<td>3) True or False</td>
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<tr>
<td>a) No person shall be compelled to give evidence against himself ( )</td>
</tr>
<tr>
<td>b) Right to legal aid is not a fundamental right ( )</td>
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<tr>
<td>c) No detention beyond 24 hours ( )</td>
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## 5.8 CONSTITUTIONAL MANDATES AND WRITS

Article 32 does not merely confer power on the court to issue a direction, order or writ for the enforcement of the fundamental rights but it also lays a Constitutional obligation on this court to protect the fundamental rights of the people and for that purpose this court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce fundamental rights, the Supreme Court may issue writs like *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari*.

Apart from this, under Article 226 every High Court shall have power, through the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari* or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose.

- **Habeas corpus**: Any one who is wrongfully arrested or illegally detained can apply for writ of *habeas corpus* to the supreme court under Article 32 or to a high court under Article 226 of the Constitution. A writ of *habeas corpus* is available in all cases of wrongful deprivation of personal liberty. It may be issued against any person or authority who has illegally detained, arrested or confined the detenu or prisoner. It may be issued against the person who has actual or physical custody or even constructive custody of the prisoner. It can also be issued to an authority who has control over the imprisonment who can order the release of the prisoner.

- **Mandamus**: The writ of *mandamus* is a command issued to direct any person, corporation, inferior court, or government requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty. *Mandamus* can be invoked against any public authority. *Mandamus* commands activity.

- **Prohibition**: A writ of prohibition is a writ directed to an inferior court or tribunal forbidding such court or tribunal from continuing proceedings in it in excess of its jurisdiction or in contravention of the laws of the land. The jurisdiction for the grant of the writ of the prohibition is primarily supervisory and the object of that is to restrain courts or inferior tribunals from excising jurisdiction which they do not posses at all or else to prevent them from exceeding the limits of their jurisdiction. In other words, the object is to confine the courts or tribunals of inferior or limited jurisdiction within their bounds.
- **Certiorari**: When an inferior court or tribunal takes up for hearing the matter over which it has no jurisdiction and gives a decision, the party aggrieved can move to the supreme court for a writ of certiorari and on that an order will be made quashing the decision on the ground of want of jurisdiction.

- **Co-warranto**: Means “by what authority”. The writ of quo warranto can be issued against the holder of a public office. The writ calls upon him to show to the court under what authority he holds the office. If the holder has no authority to hold the office, he can be ousted from its enjoyment. If, on the other hand, he has authority to hold it, the writ of quo warranto protects him from being deprived of the same.

### 5.9 SUMMARY

- The Indian Constitution does not provide only for the structure of governance but also provides for requirements of diversified social values. A Constitution can perform many functions in a modern state. One of these tasks is to serve as a deposit for a cluster of a society’s fundamental political values. Despite so many odds, the Indian Constitution has successfully sowed seeds of socio-economic revolution. The Judiciary has also contributed a lot for development of constitutional jurisprudence by exhibiting its active role in interpretation and enforcement of the Constitution. A social change, which is indispensable to realise the dreams of the founding fathers of Indian constitution, has been successful to some extent due to employment of the theory of implied rights with directives which have been conjunctively read with fundamental rights.

### 5.10 TERMINAL QUESTIONS

1) What is the meaning of the Constitution?
2) Define Equality under Article 14.
3) What is the meaning of Audi alteram partem.
4) When can the writ of Mandamus be granted?

### 5.11 ANSWERS AND HINTS

**Self Assessment Questions**
1) a) 395 b) Directive Principles of State Policy
2) The purpose of Directive Principles of State Policy is to achieve socio-economic goals of the governance of the country.
3) a) True b) False c) True

**Terminal Questions**
1) Refer to Section 5.1
2) Refer to Section 5.4
3) Refer to Section 5.7
4) Refer to Section 5.8
5.12 REFERENCES AND SUGGESTED READINGS


