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## UNIT 4 FUNDAMENTAL RIGHTS\*

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### 4.0 OBJECTIVES

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After reading this unit, you will be able to:

- Trace historical background of Fundamental Rights;
- Explain their salient features;
- Describe Six Important Fundamental Rights; and
- Discuss reasonable restrictions on Fundamental Rights.

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### 4.1 INTRODUCTION

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In Unit 3, you have read that the preamble to Indian constitution is about the resolution of Indians (“We, the People of India”) for securing freedom, equality, justice, security, dignity to all citizens. These commitments have been incorporated as Fundamental Rights and Directive Principles of the State Policy in the Part III and Part IV of the constitution respectively. You will read about Directive Policy of State Policy (DPSPs) in Unit 5. The Fundamental Rights are justiciable. It means that if Fundamental Rights of citizen or persons are violated, she/he can approach the court for their protection. But as you will read in Unit 5, Directive Principles of State Policy are non-justiciable. It means that if the state does not follow the provisions of Directive Principles of State Policy, a citizen can not approach court claiming them.

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## 4.2 HISTORICAL BACKGROUND

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

### 4.2.1 The Commonwealth of India Bill, 1925

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

### 4.2.2 The Nehru Report, 1928

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

### 4.2.3 The Sapru Report, 1945

The Sapru Committee was assigned the task of doing spadework for making constitution for future India. The Committee consisted of thirty members. It was known as Sapru Committee after the name of its chairman, Tej Bahadur Sapru, an eminent lawyer. The report was published in 1945. The Sapru Committee is

distinguished for making two suggestions about rights. One, it made distinction between justiciable rights and non-justiciable rights. Two, it suggested that rights of the minorities must be protected.

#### 4.2.4 The Sub-Committee on Fundamental Rights

You have read in unit 1, the Constituent Assembly had constituted various committees to give suggestions for inclusion in the constitution. One such committee was to give suggestions about Fundamental Rights, minority Rights and Tribal and Excluded Areas. It was headed by Sardar Ballabhbhai Patel. This Committee was divided into sub-committees. One such sub-committee was also on Fundamental Rights. The Fundamental Right sub-committee or the Rights sub-committee as it was known was headed by J.B. Kripalani. This committee had representation of diverse sections of society, including women – Amrit Kaur and Hansa Mehta. An important decision which the Right sub-committee took was to include the Fundamental Rights as justiciable right. The suggestions of the Rights sub-committee were incorporated as Fundamental Rights in Part III of the Constitution after they were discussed in the Constituent Assembly.

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### 4.3 SALIENT FEATURES OF FUNDAMENTAL RIGHTS

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The important features of Fundamental Rights are:

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

#### Check Your Progress Exercise 1

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

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

1) What was Commonwealth Bill of 1925?

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

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#### **4.4 THE SIX FUNDAMENTAL RIGHTS**

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

##### **4.4.1 Right to Equality**

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

Article 16 guarantees equality of opportunity for all citizens in public employment and prohibits ineligibility of or discrimination against, a citizen in respect of employment or office under the state on grounds of religion, race, caste, descent, place of birth, residence or any of them. Article 17 abolishes untouchability and prohibits its practice in any form. The enforcement of any disability arising out of untouchability is punishable by law. According to Article 18, no title other than military and academic distinction shall be conferred by the state. No citizen

of India shall accept any title from a foreign state. No person holding an office of profit or trust under the state shall accept a gift or present or emolument or office of any kind from or under a foreign state.

#### 4.4.2 Right to Freedom

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

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

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

#### 4.4.3 Right against Exploitation

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

#### 4.4.4 Right to Freedom of Religion

Article 25 entitles all persons equally to freedom of conscience and right to freely profess, practice and propagate religion. But the freedoms are subject to public

order, morality and health, and to other provisions of part III of the constitution. Nothing in this article shall affect the operation of any existing law or prevent the state from making a law-

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

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

#### 4.4.5 Cultural and Educational Rights

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

#### 4.4.6 Right to Constitutional Remedies

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

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

*Mandamus*: *Mandamus* means a command. It is an order issued to an authority or a person to do the duty mandated to it by law which it has refused to perform. *Mandamus* is not granted against the President, Governor of the state, the high court or supreme court judges. It is not issued against a private individual or body.

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

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

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

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## 4.5 THE BASIC STRUCTRE DOCTRINE

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

### Check Your Progress Exercise 2

- Note:** 1) Use the space below for your answers
- 2) Check your answers with the model answers given at the end of this unit.

1) What are the six Fundamental Rights?

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2) What is Basic Structure Doctrine?

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**4.6 REASONABLE RESTRICTIONS ON FUNDAMENTAL RIGHTS**

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

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

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**4.7 LET US SUM UP**

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

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**4.8 REFERENCES**

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## 4.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress Exercise 1

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

### Check Your Progress Exercise 2

- 1) The six Fundamental Rights are: right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and rights to constitutional remedies.
- 2) The Basic Structure Doctrine

The Basic Structure Doctrine denotes that the basic structure of the constitution, which includes among some other provisions, the Fundamental Rights. It was propounded in Keshavanand Bharati case in 1973.