UNIT 4 CONSTITUTIONAL PROVISIONS ON HUMAN RIGHTS AND DUTIES

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4.1 INTRODUCTION

You have already studied about the meaning and importance of Human Rights and the struggle for achieving these rights in India during the Colonial period. As the concern for rights and civil liberties had become a part of the national movement, the framers of the Constitution were committed to provide these in the Constitution that guaranteed Liberty, Equality and Justice. They provided in the Constitution two types of rights- one Justifiable and other non-justifiable: the first in Chapter III on Fundamental Rights and the second in Chapter IV as Directive Principles of State Policy. These are more or less similar to Civil and Political Rights and Economic, Social and Cultural Rights provided in the Universal Declaration of Human Rights which you have already read. In this Unit, you will study in detail the types, nature and importance of these rights. You will also read about the types and nature of Human Rights as provided by the Indian Constitution and learn about the methods for enforcement of these rights.

Aims and Objectives

After going through this Unit, you will be able to understand

- the rights provided to citizens and other persons in India by the Constitution of India;
• the nature of rights and limitations attached to these rights;
• the importance of Directive Principles of States Policy;
• the Fundamental duties contained in the Constitution; and
• the mechanisms provided by the Constitution for effective implementation of rights.

4.2 HUMAN RIGHTS IN INDIA

India’s struggle for freedom basically was a struggle for self-determination, for freedom of equality, liberty and justice. These are the core values of the vision of Human Rights. In fact even earlier social reformers have emphasised the values of civil liberties. Western liberal education, growing repressive character of the colonial power and consciousness in various social groups further added to the evolution of demand for rights. The Indian National Congress which spearheaded the National movement throughout emphasised the idea of rights. The struggle against the Rowlatt Act in 1919 was a landmark in the history of civil liberties movement in India.

In 1930 at the time of civil disobedience movement there also emerged the idea of an organised civil rights movement. This took the shape of “Indian Civil Liberties Union” (ICLU) formed in August 1936. Rabindranath Tagore and Sarojini Naidu became the Honorary President and president respectively on the request of Jawaharlal Nehru, who had mooted the idea of ‘ICLU’. During freedom struggle, the defence of civil liberties was not narrowly conceived in terms of one political group or party. It was extended to the defence of all groups without concern about ideological or strategic differences.

4.2.1 The Constituent Assembly

The idea that every individual possessed certain inherent rights was one of the prominent moving spirits of freedom struggle and therefore, the inclusion of rights was considered as an essential part of the Constitution to be framed by the Constituent Assembly of India. This was made amply clear in the objectives resolution moved by Jawaharlal Nehru on 13 December 1946. The resolution promised to all citizens of India:

Justice: Social, economic and political;

Equality: of status, of opportunity and before the law; and

Freedom: of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.

The objectives Contained in the above resolution were later adopted as part of the Preamble of the Constitution.

You will appreciate that in a society full of divisions of caste, religions, tribes, languages etc, as also having a large population of poor, such promises were revolutionary. At the same time mere political legal equality was not sufficient for the deprived sections of society. Therefore, apart from granting freedoms and equality, provisions for providing protective safeguards were also necessary. The Constituent Assembly therefore made provisions for both negative and positive rights as also special provisions for vulnerable sections of the society within rights.

Negative rights refer to freedoms and equality that the State must not encroach upon.
That is State is prohibited from exercising power. Positive rights require State to take active steps towards their realisation. The Constituent Assembly divided the rights into two parts. In chapter III of the Constitution under Fundamental rights were guaranteed primarily negative rights and in chapter IV under Directive Principles of State Policy were provided positive rights. The Preamble, Fundamental Rights and Directive Principles combined the values of freedom, equality and economic and social justice.

4.3 FUNDAMENTAL RIGHTS

The fundamental rights have been provided in part III of the Constitution. These are primarily in the nature of civil and political rights. There are two kinds of rights, some available to all persons living in India and some available only to citizens of India. These rights are justiciable, which means in case of violation of these rights, the citizens can go to courts for enforcement of these rights. The rights as such are Constitutional guarantees. These can be infringed only to the extent provided by the Constitution itself or under conditions of emergency. Originally, the Fundamental rights were provided under seven categories. In 1978, through 44th amendment of the Constitution, one right that is right to property, was deleted from the chapter on rights. As such there are now six categories of Fundamental Rights. These are discussed as below:

4.3.1 Right to Equality

Through Articles 14 to 18, the Constitution provides equality before law, of opportunity, dignity and status.

Article 14 provides that the state shall not deny to any person equality before law or the equal protection of the law within the territory of India. Article 15 prohibits the state to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Prohibition of discrimination is placed also on society as no citizen on any of the above mentioned grounds can be denied access to shops, restaurants, hotels, places of public entertainment, and use of wells, tanks, bathing ghats, roads and places of use of the general public.

The State, however, can make special provisions for women and children. For example men can be denied access to places of bath for women, or adults from entry to parks for children. Article 15 also allows state to make special provisions for the advancement of backward classes of citizens and for Scheduled castes and tribes.

Article 16 provides equality of opportunity for all citizens in respect of public employment. They cannot be deprived of this on grounds only of religion, race, caste, sex, descent, place of birth, residence etc. The State can, however, make special provisions for reservations of jobs for the Scheduled Castes and Tribes as also promotions in jobs. It means denial of opportunity to others in jobs reserved for Scheduled Castes and Tribes. This is known as affirmative action for the welfare of deprived sections.

Article 17 abolishes practice of untouchability in any form. It declares practice of untouchability as a crime punishable in accordance with law. Thus equality of dignity is assured. To provide equality of status Article 18 provides that the state shall not confer any title other than military or academic. No citizen of India shall accept any title from any foreign state. No person other than a citizen, while holding an office of profit, under the state shall, without the consent of the president, accept title from a foreign state.
It thus becomes clear that in India all citizens are equal in all respects. State can discriminate only for welfare of Scheduled castes, Scheduled Tribes and Backward Classes of citizens to provide them justice that was denied to them for centuries.

4.3.2 Right to Freedom

Articles 19 to 22 of the Constitution grant various types of freedoms to persons.

Basic Freedoms

Article 19 guarantees six basic freedoms. These are (i) freedom of speech and expression, (ii) Freedom to assemble peacefully without arms, (iii) Freedom to form associations and unions, (iv) Freedom of movement, (v) Freedom to reside and settle in any part of India, and (vi) Freedom to practice any profession or carry on any occupation, trade or business.

These freedoms, however, are not absolute; clauses 2 to 6 of the Article 19 provide for conditions under which the state can put reasonable restrictions on these freedoms under certain conditions. These are: security of the state, public order, foreign relations, defamation, contempt of court, sovereignty and integrity of India, public morality or incitement to commit an offence.

Protection in respect of Conviction of offences

Article 20 gives to citizens, protection against conviction for offences except for the violation of the law in force, against punishment for the same offence more than once and against forcing a person to be a witness against one self.

Right to Life and Personal Liberty

Article 21 guarantees all persons right to life. According to this, no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life has been expended by the Supreme Court declaring that right to life means a dignified life. The Government of India has also agreed with it and through an amendment of the Constitution, it added Article 21 A guaranteeing the right to education to all children between the age of six and fourteen years. Issues of pollution have also been taken up as affecting the right to life.

Protection in cases of Arrest and Detention

Article 22 provides for right to be informed of the grounds of arrest, right to consult and be defended by a lawyer, right to be presented before a magistrate within 24 hours etc. These rights are, however, withheld from enemy, aliens and persons who are arrested or detained under any law providing for preventive detention.

4.3.3 Right against Exploitation

Articles 23 and 24 provide Right against Exploitation. This right assures guarantee against ‘traffic in human beings’, forced labour, begging etc. Article 24 protects children below the age of 14 from employment in factories, mines, and other hazardous jobs.

4.3.4 Right to Freedom of Religion

Articles 25 and 26 guarantee freedom of Conscience and free profession; practice and propagation of religion, establishment and maintenance of institutions for religious and charitable purposes. These freedoms, however, are subject to public order, morality and
health. It means all individuals and religious groups are free to practice their faith without endangering public order and health.

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 denominations. Article 28 forbids the imparting of religious instructions in educational institutions funded by state. In institutions aided by state, students cannot be forced to attend religious instructions.

The above provisions of Article 25 to 28 make it clear that while all individuals are free to adopt and practice any religion, and all religions are free to flourish according to their established traditions, the state will not promote or favour any particular religion nor will it discriminate against any. It is these provisions that make India a secular country.

### 4.3.5 Cultural and Educational Rights

Articles 29 and 30 protect the interest of minorities in terms of their traditions and languages. Any section of the citizens, residing in the territory of India having a distinct language, script or culture, has the right to conserve the same. No citizen can be denied admission to a State owned or State-aided educational institution on grounds of religion, race, caste or language. Article 30 gives minorities the right to establish and administer educational institutions. This Article also provides that the State cannot discriminate against any educational institution on the ground that it is under the management of a minority.

### 4.3.6 Right to Constitutional Remedies

As you have read in the beginning, the Fundamental Rights are justiciable. For this Article 32 gives right to persons to appeal to courts- both Supreme Court and High Court- in cases of violation of any right. The Courts have been given powers to enforce Rights by appropriate remedies. They can issue writs of habeas corpus (asking the detaining authority to bring a detained person to the court for trial); mandamus (ordering a government to do its duty); prohibition (stopping an authority from violating someone’s right); quo warrant (asking an official body of the authority under which power has been exercised), and certiorari (taking over of a case from a lower court by a higher court).

From the above discussion, you might have understood that Fundamental Rights basically protect individuals against violation of their freedom, liberty and equality by state. These are called negative because the state has been asked not to violate these rights. The Articles 15 and 16 empower the state to initiate positive action also for the welfare of Scheduled Castes, Scheduled Tribes and Backward Classes. In general, Chapter III primarily provides Civil and Political Rights. Chapter IV of the Constitution provides the rights that are positive in nature as State has to provide these through its policies and actions.

### 4.4 DIRECTIVE PRINCIPLES OF STATE POLICY

As already mentioned, the framers of the Constitution were eager to provide both Civil and Political Rights and Economic, Social and Cultural Rights. The second category of rights is provided in chapter IV of the Constitution through Articles 36 to 51. The Directive Principles are special feature of the Indian Constitution. They are essentially aimed at social welfare, especially of the weaker sections of the society. They are different from Fundamental Rights in the sense that they are not enforceable by any court. In fact these are not granted to citizens as rights but are directives to the state, as Article
In terms of rights or policy frameworks, the Directive Principles can be divided into three categories:

(i) Socio-Economic Rights

(ii) The Gandhian principles

(iii) Directives for General Welfare and Governance

4.4.1 Socio-Economic Rights

These principles for Socio-Economic rights and welfare have been provided in Articles 38, 39, 39A, 41 and 42.

Article 38 provides that “The state shall strive to promote the welfare of the people by protecting, as effectively as it may, a social order in which justice, social-economic and political shall inform all the institutions of the national life. It also directs the state to eliminate inequalities in income, status, and opportunity not only among individuals but also among groups of people”.

Article 39 provides that the state shall, in particular, direct its policies for securing the citizens both men and women:

i) Equal right to an adequate means of livelihood;

ii) Equal pay for equal work;

iii) Fair distribution and control of resources so as to serve the common good;

iv) To check that operation of the economic system is in a way that it does not result in the concentration of wealth and means of production to the common detriment.

v) Prevention of health and strength of workers, men and women, and the tender age of children against abuse; and

vi) Opportunities and facilities for children and youth to develop in healthy manner and not to be exploited.

Article 39A provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, so that justice is not denied to any citizen by reason of economic or other disabilities.

Article 41 states that within the limits of its resources the state will make provision for the right to work, to education, and to public assistance to the unemployed, sick, old and disabled; secure just and humane conditions of work and maternity relief; and decent living, wage; raise level of education, standard of living and public health, early childhood care and education of children below the age of six.

Article 43 directs the State to ensure to all workers agricultural, industrial or otherwise, Right to work, right to a living wage and right to such conditions of work as would
ensure a decent standard of life and full enjoyment of social and cultural opportunities. A new Article 43A introduced in 1976, directs the state to ensure the participation of workers in the management of industry and other undertakings.

4.4.2 The Gandhian Principles

Mahatma Gandhi, as a thinker, had a perspective of state, nation and rule. He had vision about the government of state from common man, particularly, villagers’ needs. In the Constitutional Assembly, there were members who considered these views quite relevant for society in India. Some of these were included in the state for implementation. These are as follows:

Article 40 directs the state to organise village Panchayats and to vest them with such powers and authority as may be necessary to enable them to function as units of self-government. This means establishment of Gandhi’s idea of Panchayati Raj. You may be aware that through 73rd Amendment of the Constitution, the Panchayati Raj system has been implemented as a Constitutional provision.

Article 46 provides for the state to promote the educational and economic interests of the Scheduled Castes, Tribes and other weaker sections of the society. It also directs the State to protect these sections from social injustice and from all forms of exploitation.

Article 47 states that the state shall raise the level of nutrition and standard of living of people. It also directs the state to bring about prohibition of intoxicating drinks and drugs, which are injurious to health.

Article 48 is concerned with the preservation and improvement of cattle and prohibition of cow-slaughter. State is also asked to endeavour to organise agriculture and animal husbandry on modern and scientific lines. A new Article 48A introduced in 1976 directs the state to protect and improve the environment and to safeguard the forests and wildlife of the country.

4.4.3 Directives for General Welfare and Governance

The Directive Principles also direct the State to adopt and implement policies for basic education, uniform civil code, independence of judiciary, protection of heritage and promotion of international peace.

Article 44 prescribes for a uniform civil code and directs the State to endeavour to secure to all citizens a uniform code throughout the territory of India.

Article 45 provides that the state shall endeavour to provide, within a period of ten years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of fourteen years. You have already read that with the introduction of Article 21A in Chapter III on Fundamental Rights, this provision of Directive Principles now has been made a Fundamental Right.

Article 49 directs the state to protect, preserve and maintain monuments, places or objects of artistic or historic interest or of national importance. The State is to ensure that these monuments and objects are not spoiled, disfigured, destroyed, removed or exported.

Article 50 directs the state to take steps to separate judiciary from the executive in public service or the state. This has been a colonial legacy for District Magistrates to exercise both executive and judicial powers. This concentration of powers goes against the theory
of checks. Therefore the framers of the Constitution desired the separation of the two. This has been now achieved to an extent.

Article 51 directs the state to formulate its foreign policy keeping in view the principle of world peace and harmonious coexistences of nations. The Article directs the State to shape its foreign policy as to attain the following objectives:

I) Promote international peace and security;

II) Maintain just and honourable relations between nations;

III) Respect for international law and treaty obligations in the dealings of organised people with one another; and

IV) Encourage settlement of international disputes by arbitration.

In the above description of Directive Principles of State Policy, you might have observed that makers of the Constitution wanted to direct the future governments to work for improvement of conditions of masses, provide equality and social justice by formulating and implementing positive actions. You might have also seen that a number of principles are quite similar to Economic, Social and Cultural Rights contained in the Universal Declaration of Human Rights. The Assembly members were conscious of the limitations of the resources available with the government in the early years of independence. Therefore, they did not make Directive Principles as justiceable rights. However, these provisions serve as to inform citizens that they are entitled to these rights. They can, therefore, assess the performance of the governments on the basis of sincerity towards these rights. In recent years even Judiciary has taken a view that in some ways the Directive Principles are as fundamental as Fundamental Rights and therefore need serious attention of the government. The governments have also taken significant measures for effective implementation of these principles. It can be said that Fundamental Rights and Directive Principles are complimentary and supplementary to each other.

4.5 FUNDAMENTAL DUTIES

You have read that rights and duties are closely related. These in fact are considered two sides of the same coin. Gandhi, in particular, on the basis of his belief that every human being was dependent on other human beings, argued that rights flow from duty towards others. He went to the extent of observing that the right to perform one’s duties is the only right that is worth living for and dying for it. It covers all legitimate rights. The framers of the Constitution perhaps thought that the duties of citizens were implied in their being citizens and to some extent, in the restrictions contained on rights in the chapter on Fundamental Rights. In 1975 a committee, under the chairmanship of Swaran Singh to suggest comprehensive changes in the Constitution for better governance of State and welfare of the masses, recommended the inclusion of Fundamental Duties in the Constitution. On the basis of these recommendations through 42nd Amendment, Section 51A of the Constitution in 1976, a new Section Part IV A on Fundamental Duties, has been added in the Constitution.

This Article prescribes the following duties for every citizen of India:

(a) To abide by the Constitution and respect the National Flag and National Anthem;

(b) To cherish and follow the noble ideas, which inspired our national freedom struggle;
(c) To protect sovereignty, unity and integrity of India;

(d) To defend the country;

(e) To promote the spirit of common brotherhood amongst the people of India transcending religious, linguistic, regional, or sectional diversities and laws to renounce practices derogatory to women;

(f) To preserve the rich heritage of our composite culture;

(g) To protect and improve the natural environment;

(h) To develop the scientific temper and spirit of enquiry;

(i) To safeguard public property;

(j) To strive towards excellence in all spheres of individual and collective activity; and

(k) As a parent or guardian to provide opportunities for education to child or ward between the age of six and fourteen years. (This duty was included in Article 51A in 2002 through 86th Amendment of the Constitution as a provision for right to education).

The above-mentioned duties, just like Directive Principles of State Policy, are not justiceable, that is, not enforceable by courts. The Fundamental Duties are in the nature of instructions to citizens. As in the case of Directive Principles, these duties, being part of the Constitution, cannot be ignored. Therefore, while interpreting laws or delivering judgements on concerned issues, the judiciary is expected to keep these duties in view. As far as citizens are concerned, the inclusion of duties in the Constitution reaffirms the principle that a citizen is expected to fulfill certain obligations while enjoying rights. You might have read that Article 29(1) of the Universal Declaration of Human Rights also provides that “Every one has duties to the community in which alone the free and full development of his personality is possible.” As such it is important to keep in mind that the duties and rights go together.

4.6 SUMMARY

In this unit you have read that Indians facing repression under colonial rule were much concerned about human rights as a part of freedom struggle. Therefore the makers of the Constitution committed themselves to provide rights for citizens as guarantees for freedom, equality and liberty. In the Constitution of India two types of rights are provided in chapters III and IV. Chapter III contains Fundamental Rights and chapter IV Directive Principles of State Policy. While Fundamental Rights are justiceable and therefore can be enforced by courts, the Directive Principles are not justiceable. Some of the rights are available to all persons living in India, while some are available only to the citizens of India. Both the chapters on Fundamental Rights and Directive Principles reflect the rights contained in the Universal Declaration of Human Rights. In 1976, through the 42nd Amendment of the Constitution, the provision for Fundamental Duties has also been included in the Constitution to emphasise the idea that citizens have to fulfill certain obligations to claim rights. The provisions for Fundamental Rights and Directive Principles suggest the vision of the Constitution of India for respect for human dignity, equality and justice.
4.7 TERMINAL QUESTIONS

1. How has right to equality been provided in the Constitution of India?
2. Describe the freedoms provided in the chapter on Fundamental Rights.
3. What is the importance of Freedom of Religion? How has this been guaranteed by the Constitution?
4. How can a citizen get his / her Fundamental Rights enforced in case of violation by state?
5. How do the Directive Principles of State Policy reflect the provisions of Economic, Social and Cultural Rights?
6. What is the importance of including Gandhian principles as directives in chapter III of the Constitution?
8. Describe the relevance of inclusion of provision for Fundamental Duties in the Constitution.

SUGGESTED READINGS