UNIT- I: CONSTITUTIONAL RIGHTS

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1.1. Learning objectives

After going through this unit you will be able to:

- discuss the concept of Fundamental Rights
- classify the Fundamental Rights
- explain the concept of Freedom of Speech and Expression
- analyze constitutional guarantees and limitations on Freedom of Speech and Expression
- discuss the Directive Principles of State Policy

1.2. Introduction

In law, a 'right' is the legal or moral entitlement to do or refrain from doing something, or to obtain or refrain from obtaining an action, thing or recognition in civil society. Rights serve as rules of interaction between people, and, as such, they place constraints and obligations upon the actions of individuals or groups. While 'rights' bear certain obligations, legal or moral, 'Fundamental Rights' are the inalienable rights, i.e., rights that cannot be separated from a man since he is a human being. One such inseparable right is the 'freedom of speech and expression', which is important from the point of view of the media –both print and electronic.

In this unit, you will learn about fundamental rights and its types. You will also learn about the guarantees and limitations as regards 'freedom of speech and expression'. Here we will also introduce you to the concept of the Directive Principles of State Policy that governs *The Constitution of India*. We hope that after going through this unit, you will have the basic understanding of the concept 'Fundamental Rights', 'freedom of speech and expression' and Directive Principles of State Policy.

In the next unit we will discuss the concepts of Emergency, State of Emergency, Parliamentary and Legislative Privileges. We will also explain the different provisions and types of Emergency and the types of Parliamentary and Legislative Privileges under the Constitution of India etc.

1.3. Concept of Fundamental Rights

A fundamental right is a right that has its origin in a country's constitution or that is necessarily implied from the terms of that constitution. The fundamental rights usually include those rights which are considered natural human rights and these rights cannot be taken away from a man simply because he is a human being. As early as 1214 the English people were succeeded in getting a promise from King John to respect the ancient liberties in the form of *Magna Carta* which is a written document. This is the first written document relating to the fundamental rights of citizens. With this the King had to accede to different rights of his subjects from time to time. In 1989 the *Bill of Rights* was written declaring all important rights and liberties of the English citizens. In France, the Declaration of Rights of Men

and the Citizen (1789) was introduced declaring the natural, inalienable and sacred rights of Man. Following the spirit of the English and French examples the Americans incorporated the *Bill of Rights* in their Constitution in 1791, giving the Bill of Rights a Constitutional status for the first time. In the most modern history of mankind, after the World War II there was gross violation of fundamental (human) rights, and there was cry for the protection of fundamental rights. The result was the framing of the United Nations Charter, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights 1966 and gradually there developed the regional systems for protection of these right through the regional legislation namely American Convention on Human Rights 1969, European Convention of Human Rights 1950 and African Charter on Human and people's Rights 1981.

Keeping this background the framers of the *Constitution of India* included a full chapter dealing with fundamental rights. This chapter on fundamental rights is in an elaborated form basically echoes the provisions of the UN Charter. The inclusion of a chapter on the fundamental rights in the *Constitution of India* is a modern democratic trend to safeguard the liberties of individuals in a free society. In India, the fundamental rights were felt necessary to protect the rights and liberties of the people against the possible misuse of the power given by them to their government. They are considered as limitations upon the powers of the government, legislative as well as executive, and they are essential for the preservation of public and private rights. In fact, in India, these fundamental rights represent the basic values of the country since the *Vedic* period. These rights protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest.

These rights are considered fundamental because they are most essential for the attainment by the individual his full intellectual, moral and spiritual status.

1.3.1. Types of Fundamental Rights

During the last three decades, a vast number of human rights have found place in the new constitutions and bills of rights of more than eighty countries. Countries which enacted these new constitutions have had the benefit of all the developments in the human rights law which have been

taking place since 1950. Some rights generally recognised as fundamental world over are: Right to life, Right to marry, Right to procreate, Right to raise children free from unnecessary governmental interference, Right to freedom of association, Right to freedom of expression, Right to equal treatment or equal protection before the law (fair legal procedures), Right to freedom of thought, Right to religious belief, Right to choose when and where to acquire formal education, Right to pursue happiness, Right to privacy, Right to vote etc.

In India, constitutional guarantees for the human rights of our people were one of the persistent demands of our leaders throughout the freedom struggle. By the year 1949, when the Constituent Assembly had completed the drafting of the Fundamental Rights Chapter, it had before it the Universal Declaration of Human Rights, 1948.

1.3.2. Fundamental Rights under the *Constitution of India*

Rights literally mean those freedoms which are essential for personal good as well as for the good of the community. The rights guaranteed under the Constitution of India are fundamental as they have been incorporated into the Fundamental Law of the Land and are enforceable in a court of law. However, this does not mean that they are absolute. The fundamental rights related to press are subject to "reasonable restrictions" and after the National Emergency, in India in 1975, the *Constitution of India* was amended to incorporate the corresponding Fundamental Duties so that the fundamental rights of the citizens and also of the media/press are not misused. The Part III of the *Constitution of India* contains the Fundamental Rights which guarantees civil liberties so that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights. Violations of these rights result in punishments as prescribed in the Indian Penal Code (IPC), subject to direction of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of

race, place of birth, religion, caste, creed, colour or sex. They are enforceable by the courts, subject to certain limitations. These Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights, France's Declaration of the Rights of Man, Irish Constitution etc. The seven fundamental rights under the *Constitution of India* are:

Right to equality (Articles 14-18)

Right to equality is an important right provided under the Constitution. It is the principal foundation of all other rights and liberties, and it guarantees equality before law, social equality and equal access to public areas, equality in matters of public employment, abolition of untouchability, abolition of Titles etc.

Right to freedom (Articles 19-22)

The *Constitution of India* contains the Right to Freedom with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. The Right to Freedom in Article 19 guarantees the following six freedoms:

- *Freedom of speech and expression*, which enables an individual to participate in public activities. The phrase, "freedom of press" has not been used in Article 19, but freedom of expression includes freedom of press. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality.
- *Freedom to assemble peacefully without arms*, on which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.
- *Freedom to form associations or unions* on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.
- *Freedom to move freely throughout the territory of India:* reasonable restrictions can be imposed on this right in the interest of the general public; for example, restrictions may be imposed on movement and travelling, so as to control epidemics.
- *Freedom to reside and settle in any part of the territory of India* which is also subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled

tribes because certain safeguards as are envisaged here seem to be justified to protect the indigenous and tribal peoples from exploitation and coercion.

- *Freedom to practice any profession or to carry on any occupation, trade or business* on which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade.

Right against exploitation (Articles 23-24)

The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely the abolition of trafficking in human beings and forced labor, and abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. Child labour is considered a gross violation of the spirit and provisions of the constitution. Trafficking in humans for the purpose of slave trade or prostitution is also prohibited by law.

Right to freedom of religion (Articles 25-28)

Right to freedom of religion provides religious freedom to all citizens of India. According to the Constitution, all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.

Cultural and educational rights (Articles 29-30)

As India is a country of many languages, religions, and cultures, the Constitution provides special measures, in Articles 29 and 30, to protect the rights of the minorities. Any community which has a language and a script of its own has the right to conserve and develop them. No citizen can be discriminated against for admission in State or State aided institutions. All minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution. But the

right to administer does not mean that the State can not interfere in case of maladministration.

Right to constitutional remedies (Articles 21-35)

Right to constitutional remedies empowers the citizens to go to a court of law in case of any denial of the fundamental rights. For instance, in case of imprisonment, the citizen can ask the court to see if it is according to the provisions of the law of the country. If the court finds that it is not, the person will have to be freed. This procedure of asking the courts to preserve or safeguard the citizens' fundamental rights can be done in various ways. The courts can issue various kinds of *writs*. These writs are *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. When a national or state emergency is declared, this right is suspended by the Central Government.

Right to Life and personal liberty (As per 86th amendment of 2002)

The constitution also guarantees the right to life and personal liberty under Article 20 and 21, with specific provisions in which these rights are applied and enforced:

- Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty. According to Article 20, no one can be awarded punishment which is more than what the law of the land prescribes at that time. Moreover, no person accused of any offence shall be compelled to be a witness against himself. The other principle enshrined in this Article is that no person can be convicted twice for the same offence.
- Protection of life and personal liberty is also stated under right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by law. This means that a person's life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offence.



LET US KNOW

Some Interesting Definitions and Quotes:

- **Right:** Morally good or acceptable; what is correct according to law or a person's duty. – *Oxford Advance Learner's Dictionary*
- **Freedom:** The right to do or say what you want without anyone stopping you. – *Oxford Advance Learner's Dictionary*
- Safeguarding the rights of others is the most noble and beautiful end of a human being. – Kahlil Gibran
- Freedom is not worth having if it does not connote the freedom to err.

  – Mahatma Gandhi
- In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression.

  – Franklin D. Roosevelt
- Freedom of expression - in particular, freedom of the press - guarantees popular participation in the decisions and actions of government, and popular participation is the essence of our democracy.

  – Corazon Aquino

Following important paragraphs are from John Milton, in *Areopagitica: A speech of Mr John Milton for the liberty of unlicensed printing to the Parliament of England* (1644) –

- When as debtors and delinquents may walk abroad without a keeper, but unoffensive books must not stir forth without a visible jailer in their title.
- As good almost kill a man as kill a good book: who kills a man kills a reasonable creature, God's image; but he who destroys a good book, kills reason itself, kills the image of God, as it were, in the eye.
- And though all the winds of doctrine were let loose to play on the earth, so Truth be in the field, we do injuriously by licensing and prohibiting misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse in a free and open encounter?



CHECK YOUR PROGRESS – A

1. What is “Right”?
2. Why “Fundamental Rights” are so called?
3. Which of the Following is not a Fundamental Right?
   (a) Right to equality (b) Right to freedom (c) Right against exploitation (d) Right to freedom of religion (e) Right to Property (f) Cultural and educational rights (g) Right to constitutional remedies (h) Right to Life and personal liberty

1.4. Concept of Freedom of Speech and Expression

Freedom of speech and expression means the right to express one’s own ideas and opinions freely by words of mouth, writing, printing, pictures or any other possible mode. It thus includes the expression of one’s ideas through any communicable medium or visible representation, such as, gesture, signs and the like. It means to speak freely without censorship. The freedom of expression also includes publication and thus, the freedom of press is included in this category. The right to freedom of speech is guaranteed under international law through numerous human-rights instruments, notably under Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights. In practice, the right to freedom of speech is not absolute in any country, although the degree of freedom varies greatly. Industrialized countries also have varying approaches to balance freedom with order. For instance, in the United States, First Amendment to their Constitution grants absolute freedom and on the other hand allows the State to impose limitation when the restriction of this freedom is felt necessary. In almost all liberal democratic countries, free expression is a recognised principle, but it generally comes with some limitations as exceptions.

Freedom of speech and expression is the most basic of all freedoms granted to the citizens of India under Article 19(1)(a). The freedom of speech and that of the press lie at the foundation of a democratic society, for without

free political discussions, no public education is possible, which is so important for the proper functioning of the government. It allows us to express our ideas and thoughts freely through any medium such as print, visual, and voice. One can use any communication medium of visual representation such as signs, pictures, or movies. The freedom of publication is also covered under the freedom of

speech. Freedom of speech serves four purposes:

- Allows an individual to attain self fulfillment.
- Assits in the discovery of truth.
- It strengthen the capacity of a person to make decisions.
- It facilitates a balance between stability and social change.

This right is not only about communicating your ideas to others but also about being able to publish and propagate other people's views as well. The fundamental principle involved here is the "people's right to know". Thus, freedom of speech and expression is linked to the people's right to know.

1.4.1. Constitutional Guarantees and Limitations

The importance of freedom of speech and expression as a basic and valuable characteristic of a society cannot be underestimated. But the freedom of speech and of the press does not give you an absolute right to express without any responsibility. Ever since the first consideration of the idea of 'free speech' came up it has been argued that the right to free speech should be subject to restrictions and exceptions and some traditional restriction on the freedom of speech and expressions emerged which are sometimes considered an assault on this freedom. Restrictions on speech that are sometimes characterised as assaults on freedom of speech include defamation (slander and libel), obscenity, threats, lying in court (perjury), talk that causes contempt of court, speaking about a trial outside the court room after the judge forbids it, speaking publicly without permission, hate speech that is defamatory or causes incitement to violence, noise pollution, speech that contains a copyright infringement, Company secrets (trade secrets), political secrets, classified information sensitive or secret to protect the national interest, lies that cause a crowd to panic or causes clear and present danger, sedition, treason, blasphemy etc.

The *Constitution of India* also confers the Right to Freedom of Speech and Expression, but with certain restrictions as under Article 19 Clause 2, which states that "Nothing shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence." These grounds for reasonable restrictions are in the same language as we find in the international norm and these can be noted under following heads:

- Security of the State
- Friendly relations with foreign States
- Public order
- Decency and morality
- Contempt of court
- Defamation
- Incitement to an offence
- Sovereignty and integrity of India

Reasonable restrictions on these grounds can be imposed only by a duly enacted law and not by executive action.



CHECK YOUR PROGRESS – B

1. What is 'Freedom of speech and expression'?
2. Which Article of the *Constitution of India* governs the 'Freedom of Press'?
3. Which of the Following is not a Reasonable Restriction on 'Freedom of speech and expression' under the *Constitution of India*?
   (a) Security of the State
   (b) Friendly relations with foreign States
   (c) Decency and morality
   (d) Public order
   (e) Incitement to an offence
   (f) Contempt of court
   (g) Defamation
   (h) Protection of indigenous people
   (i) Sovereignty and integrity of India

1.5. Concept of Directive Principles of State Policy

The *Constitution of India* which lays down the basic structure of our nation's polity is built on the foundations of certain fundamental values. The vision of our founding fathers and the aims and objectives which they wanted to achieve through the Constitution are contained in the Preamble, the Fundamental Rights and the Directive Principles of State Policy. These three may be described as the soul of the Constitution.

The Directive Principles of State Policy are guidelines to the central and state governments of India, to be kept in mind while framing laws and policies, even though they are non-justiciable in nature. These provisions, contained in Part IV of the *Constitution of India*, are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. The principles have been inspired by the Directive Principles given in the Constitution of Ireland and also by the principles of Gandhian philosophy; and relate to social justice, economic welfare, foreign policy, and legal and administrative matters. Directive Principles are classified under the following categories:

- Gandhian
- Economic and socialistic
- Political and administrative
- Justice and legal, environmental
- Protection of monuments and
- Peace and security

The Directive Principles of State Policy, embodied in Part IV of the constitution, are directions given to the central and state governments to guide the establishment of a just society in the country. The Directive Principles act as a check on the government; theorised as a yardstick in the hands of the people to measure the performance of the government. If laws are made to give effect to the Directive Principles over Fundamental Rights, they shall not be invalid on the grounds that they take away the Fundamental Rights. In case of a conflict between Fundamental Rights and Directive Principles, the courts shall give more importance to the Directive Principles.

The Directive Principles of State Policy direct the Government to (1) secure all its citizens an adequate means of livelihood (2) make all material resources beneficial to the common good (3) prevent concentration of wealth (4) ensure both men and women get equal pay for equal work (5) prevent child labour (6) make provision for free legal aid to the poor (7) organise village *panchayat*s (8) secure the right to work, education and public assistance to the unemployed, aged, sick and disabled (9) provide maternity relief to working women (10) promote cottage industries (11) secure uniform civil code (12) provide free and compulsory education for children of 14 years of age (13) promote the education and economic condition of the scheduled caste, scheduled tribes and other weaker sections (14) raise the standard of living and improve public health (15) organise agriculture and animal husbandry (16) protect and improve the environment (17) safeguard forests and wildlife (18) protect monuments of historical interest (19) separate judiciary from executive and (20) promote international peace and security.

The Directive Principles commit the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight economic inequality. The State must continually work towards providing an adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, protection against exploitation and reduce the concentration of wealth and means of production from the hands of a few. The State must provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen for reason of economic or other disabilities. The State should work for organisation of village *panchayats*, provide the right to work, education and public assistance in certain cases; as well as the provision of just and humane conditions of work and maternity relief. A living wage and safe working conditions for citizens must be ensured, as must their participation in the management of industries. The State is encouraged to secure a uniform civil code for all citizens, provide free and compulsory education to children, and to work for the economic uplift of scheduled castes, scheduled tribes and other backward classes.

The Directive Principles commit the State to raise the standard of living and improve public health, and organise agriculture and animal husbandry on modern and scientific lines. The State must safeguard the

environment and wildlife of the country. The State must ensure the preservation of monuments and objects of national importance and separation of judiciary from executive in public services. The State must also strive for the maintenance of international peace.

The Directive Principles have been amended to meet definite objectives. Article 45, which ensures provision for free and compulsory education for children, was added by the 86th Amendment Act, 2002. Article 48-A, which ensures Protection of the environment and wildlife, was added by the 42nd Amendment Act, 1976.

1.5.1. Differences between Fundamental Rights and Directive Principles of State Policy

Following are the basic differences between the Fundamental Rights and the Directive Principles of State Policy:

1. The Government cannot take away or abridge the Fundamental Rights. Directive Principles of State Policy are mere instructions to the Government.
2. Fundamental Rights are enforceable in law courts. Directive Principles of State Policy are not enforceable in any court.
3. The Government cannot take policy decisions on the Fundamental Rights. The Government has powers to make policy decisions on the Directive Principles of State Policy.
4. Fundamental Rights strengthen political democracy. The implementation of Directive Principles of State Policy ensures social and economic democracy.
5. Fundamental Rights are natural rights. Directive Principles of State Policy leads to protect human rights.



CHECK YOUR PROGRESS – C

1. What are considered to be the soul of the *Constitution of India*?
2. Directive Principles of State Policy are inspired by the Constitution of which country?

3. Which of the following categories is not covered under the Directive Principles of State Policy?
   (a) Gandhian
   (b) Justice and legal
   (c) Matrimonial and matriarchy
   (d) Public order
   (e) Peace and security
   (f) Political and administrative
   (g) Environmental
   (h) Economic and socialistic
   (i) Protection of monuments

1.6. Let us sum up

In this unit you have been introduced to the basic concepts of Right, Fundamental Rights, Freedom of Speech and Expression and Directive Principles of State Policy. Let us now quickly sum up these concepts.

A 'right' is the legal or moral entitlement to do or refrain from doing something, or to obtain or refrain from obtaining an action, thing or recognition in civil society. While 'rights' bear certain obligations, legal or moral, 'Fundamental Rights' are the inalienable rights, i.e., rights that cannot be separated from a man since he is a human being.

A fundamental right is a right that has its origin in a country's constitution or that is necessarily implied from the terms of that constitution. In India, these fundamental rights represent the basic values of the country since the *Vedic* period. These rights protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest.

Fundamental Rights are enforceable by the courts, subject to certain limitations. The Part III of the *Constitution of India* contains these Fundamental Rights in India. These Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights, France's Declaration of the Rights of Man, Irish Constitution etc. The seven fundamental rights under the *Constitution of India* are: Right to equality, Right to freedom, Right against exploitation, Right to freedom of religion,

Cultural and educational rights, Right to constitutional remedies and Right to Life and personal liberty.

Right to Freedom includes Freedom of speech and expression [Article 19(1)(a)] which means the right to express one's own ideas and opinions freely by words of mouth, writing, printing, pictures or any other possible mode. The freedom of expression also includes publication and thus the freedom of press is included in this category. Right to Freedom of Speech and Expression comes with certain restrictions as under Article 19 Clause 2 and grounds are: Security of the State, Friendly relations with foreign States, Public order, Decency and morality, Contempt of court, Defamation, Incitement to an offence, Sovereignty and integrity of India.

The *Constitution of India* lays down the basic structure of our nation's polity which is contained in the Directive Principles of State Policy (DPSP). These are guidelines to the central and state governments of India, to be kept in mind while framing laws and policies. DPSPs are classified under the following categories: Gandhian, Economic and socialistic, Political and administrative, Justice and legal, Environmental, Protection of monuments and Peace and security.

1.7. Answers to check your progress

A

1. A 'right' is the legal or moral entitlement to do or refrain from doing something, or to obtain or refrain from obtaining an action, thing or recognition in civil society. It bears certain legal and moral obligations.

2. Fundamental Rights' are so called because they inalienable rights, i.e., rights that cannot be separated from a man since he is a human being. These fundamental and naturally inalienable rights allow our basic human qualities to develop that include one's intelligence, talent, thoughts and physical and spiritual needs among others.

3. (e) Right to Property

B

1. Freedom of speech and expression which means the right to express one's own ideas and opinions freely by words of mouth, writing, printing,

pictures or any other possible mode. The freedom of expression also includes publication and thus the freedom of press is included in this category.

2. Article 19(1)(a) of the *Constitution of India* governs the 'Freedom of Press'.

3. (h) Protection of indigenous people.

C

1. The Preamble, the Fundamental Rights and the Directive Principles of State Policy are considered to be as the soul of the Constitution.

2. The Directive Principles of State Policy in the Constitution of India are inspired by the Constitution of Ireland.

3. (c) Matrimonial and matriarchy



1.8. Further Readings

- **Dr. Madabhushi Sridhar:** ***The Law of Expression***
- **Dr. J. N. Pandey :** ***Constitutional Law of India***
- **Ajay Dash:** ***Freedom of Press***



1.9. Possible questions

1. What are Fundamental Rights? Write a note briefly on the origin of Fundamental Rights?
2. What are the Fundamental Rights guaranteed under the Constitution of India? Explain.
3. Explain the Constitutional guarantees and limitations (Reasonable restrictions) on the Freedom of Speech and Expression?
4. Explain the Directive Principles of State Policy which are enumerated under the *Constitution of India*?
5. What are the differences between Fundamental Rights and Directive Principles of State Policy?