UNIT 4: FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES OF INDIAN CITIZENS

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4.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- describe the meaning of Fundamental Rights incorporated in the Indian Constitution
- discuss the types and features of Fundamental Rights
- explain the restrictions of Fundamental Rights
- describe the Fundamental Duties incorporated in the Indian Constitution

4.2 INTRODUCTION

This unit introduces you to the Fundamental Rights of Indian citizens. There are six Fundamental Rights of Indian citizens incorporated in Part III of the Indian Constitution. These rights are unique in the sense that without these, no one can lead a free and independent life. Therefore, the framers of the Indian Constitution provided some Fundamental Rights for Indian citizens.

Democracy can not work if the people do not have rights. Inclusion of Fundamental Rights prevents the government. from becoming despotic. Fundamental Rights are essential for moral and material development of the people also. People can develop their best self and personality through these rights. Though these rights are guaranteed by the Constitution, yet the state can take back these rights temporarily during proclamation of emergency to maintain public order, security and so on. At the same time these rights are justifiable also. The courts can protect and safeguard them, if someone's rights are violated. After all, Fundamental Rights are indispensable for the full development of the human personality. Besides, this unit introduces you to Fundamental Duties of Indian citizens. These duties are enshrined in Part IV of the Constitution. These duties are some responsibilities or obligations of the citizens which they need to carry out for the peace and prosperity of the nation.

4.3 MEANING OF FUNDAMENTAL RIGHTS

Fundamental Rights fulfil some basic and essential conditions of good life for human progress. These are fundamental in the sense that in the absence of these rights citizens cannot develop their personality and their own self. These rights are not the same as ordinary rights of citizen. Fundamental Rights are enshrined in the Constitution. These are constitutionally protected and guaranteed to the citizens while ordinary rights are protected by the ordinary law of the country. Fundamental Rights are inviolable in ordinary situation. Only under reasonable circumstances, these rights are suspended temporarily. Right to Life, Freedom of Speech and Expression, Right to Equality, Right to Religion, Right to Personal Liberty, Right to Education are some important Fundamental Rights of Indian citizen .Every state incorporates these Fundamental Rights in their own Constitution and citizens can enjoy them . If anybody's Fundamental Rights are violated by force he or she can go to the court seeking legal assistance for restoration of their rights. Democratic countries like India, Japan, USA, France, Switzerland and many other countries enlisted some Fundamental Rights for their citizens. These are basic rights of individuals without which

democracy becomes meaningless. The Constitution of India has embodied a number of Fundamental Rights in Part III. Citizens can enjoy these rights within some definite limitations.

4.3.1 Features of Fundamental Rights

Necessary features of Fundamental Rights are as follows:

- Fundamental Rights are an indispensable part of our Constitution. Twenty-four articles are enjoined with these Fundamental Rights. Parliament can amend Fundamental Rights by a special procedure.
- While essentially, Fundamental Rights are available to Indian citizens alone, some Fundamental Rights such as the right to life and liberty and the right to religious freedom are available to both citizens and aliens.
- Fundamental Rights are not absolute. Citizens can enjoy them only within some reasonable restrictions imposed on these rights by the Constitution. Fundamental Rights without prescribed conditions may disrupt public order.
- Fundamental Rights are suspendable during the time of emergency and rights of the citizen are curtailed temporarily except right to life and personal liberty (Article 20 and Article 21)
- Fundamental Rights are justiciable also. A citizen can go to the court for enforcement of his or her Fundamental Rights in case of their violation.Under Article 32 and Article 226 of the Indian Constitution, a citizen can approach the Supreme Court and High Court respectively in this regard.
- Fundamental Rights are amendable also. Parliament can amend these rights by a special procedure.
- Fundamental Rights aim at balancing collective interests with individual interests.
- Fundamental Rights are superior to ordinary law of the land. They are conferred a special sanctity.

- Some Fundamental Rights are positive while some others are negative in nature. Certain provisions of Part III of the Indian Constitution are of the nature of prohibitions as they place constitutional limitations on the authority of the state. For instance, no authority of the State can deny to any person equality before the law or the equal protection of the laws.This actually may be termed as a negative right.On the other hand, other rights such as the Right to Freedom, etc., could be termed as positive rights.

4.3.2 Types of Fundamental Rights

There are six types of Fundamental Rights in our Constitution

I. Right to Equality (Article 14 – Article 18)
II Right to Freedom (Articles 19 – Article 22)
III Right against Exploitation (Articles 23 – Article 24)
IV Right to Freedom of Religion (Articles 25 – Article 28)
V Cultural and Educational Rights (Articles 29 – Article 30)
VI Right to Constitutional Remedies (Article 32)



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Right to Property, which was a fundamental right has been eliminated from the list of Fundamental Rights by the Forty-Fourth Constitution Amendment Act, 1978, and abolished it as the country intends to promote the socialistic objectives. So, now it is an ordinary legal right.

The six categories of Fundamental Rights are discussed below:

I. RIGHT TO EQUALITY (Article 14 – Article 18): It implies equality before the law and equal protection of the laws within the territory of India. No man is above the law of the land. Every person is subject to the ordinary law and amenable to the jurisdiction of the ordinary tribunals. Any discrimination is prohibited and equality of opportunity in matters of public employment under the State is ensured. There is

no distinction between officials and private citizen and no discrimination on the basis of caste, creed, religion, sex, etc is allowed. But right to equality does not mean absolute equality or universal application . Some exceptions are allowed by the Indian Constitution and these limitations are as follows :

- the President of India or the Governor of a State shall not be answerable to any court for the power exercised or act done by him or her.
- no criminal proceeding shall be instituted against the President or the Governor during his or her term of office
- exemption from taxes on certain classes of property
- imposition of taxes upon different trades and professions
- making special provisions for women and children
- making special provisions for advancement of any socially, economically and educationally backward classes like Schedued Castes and Scheduled Tribes including special employment opportunities, which is called protective discrimination.

II. RIGHT TO FREEDOM (Article 19 – Article 22): This right is a most significant and important right for the citizens. This right confers some positive rights to promote the ideal of liberty. Article 19 guarantees six freedoms to all citizens. These are mentioned below:

As per Article 19 (1), all citizens shall have the right -

(a) to freedom of speech and expression ;
(b) to assemble peacefully and without arms ;
(c) to form associations or unions ;
(d) to move freely throughout the territory of India ;
(e) to reside and settle in any part of the territory of India ; and
(g) to practice any profession , or to carry on any occupation, trade or business

Article 20 and 21 guarantee the right to life, dignity and status. Under Article 20, no person accused of any offence shall be compelled to be a witness against himself. Similarly, under Article 21, no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 22 provides some safeguards against arbitrary

arrest and detention.

Like the Right to Equality, Right to Freedom is not absolute. The State can impose reasonable restrictions upon these rights incorporated in Article-19 to maintain a balance between individual liberty and social control. When a proclamation of emergency is made under Article 352, provisions of Article-19 itself remain suspended (Art. 358)

III. **RIGHT AGAINST EXPLOITATION (Article 23 – Article 24):** The Indian Constitution recognizes the dignity of the individual against any form of exploitation either by the State or by the privileged section of the society. Therefore, Right against Exploitation prohibits traffic in human beings and forced labour and employment of children in factories, mines or in any other 'hazardous employment'. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Artcle 24)

The provisions of Article 23 and Article 24 are absolute and the State is firm on maintaining the dignity and status of the individual against any form of exploitation.

IV. **RIGHT TO FREEDOM OF RELIGION (Article 25- Article 28):** The Indian Constitution has adopted a secular ideology and declared India as a ***secular*** state which maintains an attitude of neutrality and impartiality towards all religions. There is no state religion in India. The state will neither establish a religion of its own nor confer any special patronage upon any particular religion. Every person is guaranteed the freedom of conscience and freedom to profess, practice and propagate his own religion subject to public order, morality and health . Every religious group has been given the freedom to manage religious affairs, own and acquire movable and immovable property and administer such property in accordance with the law. The Right to Religion is also subject to certain limitations. The State has the right and duty to intervene if any religious activity creates public disorder, immorality and so on.



Secular: Secular means an attitude of impartiality and neutrality towards all religions.

V. **CULTURAL AND EDUCATIONAL RIGHTS (Article 29 – Article 30):**

The Constitution of India guarantees cultural and educational rights for all sections of people irrespective of their religious, racial and cultural diversities. These rights are non-political in nature. To preserve the religious and cultural interests of each community, the Constitution of India incorporated these cultural and educational rights under Article 29 and Article 30. Article 29 guarantees to every minority or section of the people to preserve its language, script and culture notwithstanding the provisions of Article 343 under which the official language of the union shall be Hindi in Devanagari script. The State shall not impose upon any minority group any culture other than the community's own culture Article 29(1). Clause (2) of Article 29 provides that no citizen may be denied admission to State and State aided educational institutions on the grounds only of religion, race, caste or language. Article 30 provides that all communities shall have the right to establish and administer educational institutions of its choice and the state shall not discriminate against them in making grants on grounds of religion, race or language. This is implicit in the right conferred by Article 30 (1)- the right to impart instruction in their own institutions to the children of their own community in their own language.

This right has also some limitations. The State can regulate the affairs of such educational institutions in the interest of efficiency of instruction, discipline, morality and public order.

VI. RIGHT TO CONSTITUTIONAL REMEDIES (Article 32): A right without remedy is a meaningless formality. The Indian Constitution enumerates various rights to its citizen and in order to make these rights effective, it includes some means or remedies in the form of the Right to Constitutional Remedies under Article 32. Article 32 guarantees to every citizen the right to move the Supreme Court or High Courts for enforcement of Fundamental Rights by constitutional means. Both the Supreme Court under Article 32 and the High Courts under Article 226 can issue necessary ***writs*** for the purpose. When a citizen feels that his or her Fundamental Rights have been violated, he can move the court for the redressal of the same. The Supreme

Writ: A formal written order issued by the courts.

Habeas Corpus:
It is a writ issued by the court against wrongful detention of a person and produce him before the court to know the ground osf imprisonment.

Mandamus: Mandamus means a command issued by the courts against individual officers in order to compel them to perform some public or quasi-public legal duty which is obligatory on their part.

Prohibition: It is a writ issued primarily to prevent an inferior court from exceeding its jurisdiction

Quo Warranto:
It is a writ restraining a person from acting in an office to which he is not entitled and may also declare the office to be vacant.

Certiorari: It is a writ which orders the removal of a suit or case from an inferior court to a superior court.

Court under Article 32 and the High Court under Article 226 may issue writs including ***habeas corpus***, ***mandamus, prohibition, quo-warranto*** and ***certiorari*** to safeguard the Fundamental Rights. These are some instruments and means to make Fundamental Rights more effective. The courts have the power to enforce Fundamental Rights by issuing these writs against any authority of the State. The Indian Constitution lays down that any act of the executive or of the legislature which violates Fundamental Rights shall be void and the courts are empowered to declare it as void (Art. 13). Thus, the Constitution of India has made the judiciary "the protector and guarantor of Fundamental Rights". On the other hand, this constitutional right is the "heart and soul" of the Constitution as only it can make Fundamental Rights effective.

However the right to move the court for protection of Fundamental Rights may be suspended during an emergency except those rights provided by Article 20 and Article 21.



LET US KNOW

The 86th Constitution Amendment Act was passed in December, 2002 whereby a new Article, namely, Article 21 A, was inserted in the Constitution of India after Article 21. As per the new Article, "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." Thus, the Right to Education is now a Fundamental Right which has been accorded the same legal status as the Right to Life under Article 21.Subsequently, the Right of Children to Free and Compulsory Education Act, 2009 was passed. As per the Act, every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his or her neighbourhood.

4.3.3 Restrictions on Fundamental Rights

Though the Constitution of India guarantees all these Fundamental Rights for the citizen, yet there are some limitations and exceptions to these rights also. A citizen cannot enjoy Fundamental Rights absolutely or at will. Within some constitutional limitations, citizens can enjoy their rights. The Constitution of India imposes some reasonable restrictions upon enjoyment of these rights, so that public order, morality and health remain intact. The Constitution always aims at balancing collective interests with individual interests .For example, the Right to Freedom of Religion is subject to restrictions imposed by the State in the interest of public order, morality and health so that the freedom of religion may not be abused. Similarly Rights guaranteed by Article 19 does not mean absolute liberty . Absolute individual rights cannot be guaranteed by any modern state. Therefore our Constitution has empowered the State to impose reasonable restrictions as may be necessary in the larger interests of the community . Our Constitution always attempts "to strike a balance between individual liberty and social control" and to establish a welfare state where collective interests get prominence over individual interests.Freedom of speech and expression [Art.19(1)(a)] is subject to reasonable restrictions imposed by the State relating to defamation, contempt of court, decency or morality, security of the state, friendly relations with foreign states , incitement to an offence, public order, maintenance of the sovereignty and integrity of India . Freedom of Assembly [Art.19(1)(b)] is also subject to reasonable restrictions imposed by the State in that the assembly must be peaceful and without arms in the interest of public order. Freedom of press which is included in the wider freedom of expression is also subject to reasonable limitations and the State can impose restrictions upon freedom of press in the larger interests of the state or for the prevention of contempt of court, defamation or incitement to an offence.



CHECK YOUR PROGRESS

Q 1: Fundamental Rights are mentioned in which part of Indian Constitution?

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Q 2: Fundamental Rights are justiciable. (True/False)

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Q 3: Fundamental Rights are amendable. (True/False)

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Q 4: Fundamental Rights are absolute. (True/False)

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Q 5: In which Article of the Indian Constitution, the Right to life and personal liberty is mentioned ?

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Q 6: Describe the Right to Constitutional Remedies. (within 50 words)

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4.4 FUNDAMENTAL DUTIES

When the Constitution came into force in 1950, no Fundamental Duties were enshrined in the Constitution of India. By the 42nd Amendment to the Constitution of India in 1976, ten Fundamental Duties have been added to our Constitution. With the passage of the 86th Amendment Act, 2002, there are presently eleven Fundamental Duties. These duties are important and necessary for the vital interests of our country. These Fundamental Duties are covered by Article 51 A incorporated in a new chapter, Part IV-A of the Constitution. Under this Article, it shall be the duty of every citizen of India –

(a) to abide by the Constitution and respect its ideals and institutions, the

National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India ;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India ;

(f) to value and 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 inquiry ;

(i) to safeguard public property and abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

(k) to provide opportunities for education to children between 6-14 years of age, and duty as parents to ensure that such opportunities are being awarded to their child or wa rd.

Fundamental Duties are like some noble advice of which some are civic duties and others are moral duties. They are not legally binding upon the citizens and even the courts can not enforce them. So, Fundamental Duties are not enforceable by the courts of our country. Fundamental Duties are not enforceable by the courts of our country. No one can be punished if he or she does not perform his or her duties. Though there is no legal force behind these duties, yet they are an integral part of the Constitution of India. The Fundamental Duties are of great educative value and have a moral impact upon the citizens. Allegiance to the Fundamental Duties enshrined in the Constitution is considered necessary for the progress, peace and prosperity of the country.

Though there is no provision in the Constitution for direct enforcement of any of these duties nor for any sanction to prevent their violation, yet some Fundamental Duties are enforceable by the courts of the country. Duties like abide by the Constitution, respect the National Flag and the

National Anthem, to defend the country and render National service when called upon to do so and safeguard public property etc. fall in this category and the courts can enforce them if it find reasonable relation with laws of the country. But there are some inherent draw backs of these Fundamental Duties. Actually Fundamental Duties are not binding upon the citizen. Duties inscribed in the Constitution are not exhaustive, while some duties are ambiguous. So, common people could not understand them. Yet these duties are important for National interest of our country. These duties have sanctity of its own. Besides these duties have moral and educative value upon citizen of our country. People fells that for proper enjoyment of rights, duties must be performed in a well manner. Because rights and duties are related to each other. Every right implies a corresponding duty towards individual and social welfare. Rights can not be separated from duties and vice-versa . Therefore, both rights and duties are important for the prosperity of the country in a similar manner.



CHECK YOUR PROGRESS

Q 7: Fundamental Duties are inscribed in:

(a) Part III (b) Part IV-A (c) Part V of the Constitution

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Q 8: By which Constitutional amendment, Fundamental Duties are incorporated in the Indian Constitution.

(a) 42nd amendment (b) 44th amendment (c) 73rd amendment

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Q 9: How many Fundamental Duties are incorporated in the Indian Constitution?

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Q 10: Mention any two Fundamental Duties?

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4.5 LET US SUM UP

- Fundamental Rights fulfil some basic and essential conditions of good life for human progress. These are fundamental in the sense that in the absence of these rights citizens cannot develop their personality and their own self.
- The Constitution of India has embodied a number of Fundamental Rights in Part III. There are six types of Fundamental Rights in our Constitution including the Right to Equality (Article 14 – Article 18), the Right to Freedom (Articles 19 – Article 22), the Right against Exploitation (Articles 23 – Article 24), the Right to Freedom of Religion (Articles 25 – Article 28), Cultural and Educational Rights (Articles 29 – Article 30) and the Right to Constitutional Remedies (Article 32)
- Fundamental Rights are not absolute. Therefore within some reasonable restrictions citizens can enjoy them.
- Fundamental Rights are justifiable also. A citizen can go to the court for enforcement of his Fundamental Rights if some one violates them. Under Article 32 and Article 226 of the Indian Constitution, a citizen can approach the Supreme Court and High Court respectively in this regard.
- The 42nd Amendment to the Constitution of India in 1976, added ten Fundamental Duties to the Constitution of India. Presently, with the passage of the 86th Amendent Act, 2002, there are eleven Fundamental Duties. Fundamental Duties are covered by Article 51 A incorporated in a new chapter, Part IV-A of the Constitution.
- Fundamental Duties are not enforceable by the courts of our country. Though there is no legal force behind these duties, yet they are an integral part of the Constitution of India. Allegiance to the Fundamental Duties enshrined in the Constitution is considered necessary for the progress, peace and prosperity of the country.



4.6 FURTHER READING

1) Chander, Prakash.(2000). *Indian Government and Politics*. New Delhi :Cosmos Bookhive Pvt. Ltd.

2) Ghai, K. K.(2007). *Indian Government and Politics*. New Delhi: Kalyani Publishers.

3) Kapur, Anup Chand and Misra, K. K. (2006). *Select Constitutions*.New Delhi : S. Chand and Company.

4) Pylee, M, V. (2006). *Constitutional Government in India.* New Delhi:S. Chand and Company.



4.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Part-III, Art. 12-35

Ans to Q No 2: True

Ans to Q No 3: True

Ans to Q No 4: False

Ans to Q No 5: Article 21

Ans to Q No 6: Right to Constitutional Remedies (Article 32): Article 32 guarantees to every citizen the right to move the Supreme court or High court for enforcement of Fundamental Rights by Constitutional means. Both the Supreme Court under Article 32 and the High Courts under Article 226 can issue necessary writs for the purpose in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari. These are some instruments and means to make Fundamental Rights more effective. This Constitutional right is the "heart and soul" of the Constitution as it can only make Fundamental

Rights effective. However the right to move the court for protection of Fundamental Rights may be suspended during an emergency except those rights provided by Article 20 and Article 21.

Ans to Q No 7: Part-IV.A

Ans to Q No 8: 42nd amendment

Ans to Q No 9: ten

Ans to Q No 10: (i) to abide by the Constitution and respect the National Flag and the National Anthem,

(ii) to cherish and follow the noble ideals which inspired our national struggle for freedom.



4.8 MODEL QUESTIONS

A) Very Short Questions

Q 1: Under which Article of the Indian Constitution, a citizen can move the Supreme Court or High Courts for enforcement of Fundamental Rights by constitutional means?

Q 2: Mention any two grounds on which the Freedom of speech and expression (Art.19-1-A) is subject to reasonable restrictions.

Q 3: Fundamental Duties are covered by which Article of the Indian Constitution?

Q 4: By which constitutional amendment has Fundamental Duties been added to our Constitution?

B) Short Questions (Answer each question in about 150 words)

Q 1: Write briefly about the Right to Equality.

Q 2: Explain any six features of Fundamental Rights.

Q 3: Discuss the restrictions on Fundmental Rights.

Q 4: Write a short note on the necessity of Fundamental Duties.

C) Long Questions (Answer each question in about 300-500 words)

Q 1: Explain the meaning of Fundamental Rights.Discuss the various features of Fundamental Rights and the restrictions imposed on them.

Q 2: What are the various types of Fundamental Rights included in the Indian Constitution? Explain any four Fundamental Rights.

Q 3: Present a discussion on the Fundamental Duties incorporated in the Indian Constitution.

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