UNIT 3 : GUARANTEES UNDER THE INDIAN CONSTITUTION

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3.1. LEARNING OBJECTIVES

This chapter discusses Fundamental Rights, Fundamental Duties and Directive Principles of State Policy provided in the Constitution of India. These are important components of our Constitution. Thus, this chapter intends to fulfill the following objectives.

- To introduce the Fundamental Rights
- To make aware of the Fundamental Rights
- To develop a sense of the Fundamental Duties
- To introduce the Directive Principles of State Policy

3.2. INTRODUCTION

The Constitution of India is characterized by its provisions on Fundamental Rights. Fundamental Rights form integral part of India's democratic set-up. These are intended to contribute to the overall development of an individual's personality. The Constitution of India embodies some Fundamental Rights in Part III of the Constitution. India borrowed the idea of Fundamental Rights from the Constitution of United States of America.

The chapter discusses the Fundamental Duties of the Indian citizens. The chapter also deals with Directive Principles of State Policy enshrined in Part IV of the Indian Constitution.

3.3. GUARANTEES UNDER THE INDIAN CONSTITUTION : FUNDAMENTAL RIGHTS

The Constitution of India incorporates Part III fully devoted to Fundamental Rights. All the Indians can enjoy these rights. However, during the time emergencies, restrictions can be made upon these Fundamental Rights. Initially, there were seven Fundamental Rights provided in the Indian Constitution. However, the 44th Constitutional Amendment Act, 1978 deleted the Right to Property from the list of the Fundamental Rights in the Constitution of India. The 44th Constitutional Amendment Act, 1978 made it a legal right by inserting Article 300A in the Constitution. This Article says: "No person shall be deprived of his property saved by authority of law." Now, the Constitution of India embodies six Fundamental Rights. These include:

- Right to Equality (Articles 14-18)
- Right to Freedom (Articles 19-22)
- Right against Exploitation (Articles 23-24)
- Right to Freedom of Religion (Articles 25-28)
- Cultural and Educational Rights (Articles 29-30)
- Right to Constitutional Remedies (Article 32)

3.3.1. RIGHT TO EQUALITY

The Constitution of India provides the Right to Equality to all the citizens of India. These rights are included under Articles 14 to 18 of the Indian Constitution. Article 14 says: "The State shall not deny any person equality before the law or equal protection of the laws within the territory of India."

Article 15 lays down that: (1) "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subjected to any disability, liability, restriction or condition with regard to –

(a) access to shops, public restaurants, hotels, places of public entertainment or

(b) the use of wells, tanks, bathing *ghats,* roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this Article shall prevent the State from making any special provision for women and children

(4) Nothing in this Article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

The terms 'equality before the law' implies that all Indian citizens shall be subject to the same laws, same judiciary and same legal procedures, and that there shall be no discrimination on grounds of wealth, status or position. On the other hand, the words 'equal protection of the law' means that every citizen of India shall be given the same treatment in similar circumstances, both in the matter of privileges conferred and obligations imposed by the law.

Article 15 lays down that the State shall not discriminate against any citizen on grounds only of religion, caste, race, sex, place of birth or any of them. However, Clause 3 of the Article 15 provides that the above condition would not "prevent the State from making any special provision for women and children". Likewise, Clause 4 of the Article 15 provides that the provisions of Article 15(1) shall not prevent the State from making any special arrangement for the advancement of any socially and educationally backward classes or for the Scheduled Castes and the Scheduled Tribes.

Article 16 states that : (1) "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State."

However, there are some exceptions which can be made under Article 16 as specified by the Supreme Court of India. For instance, Clause 3 of the Article 16 provides that the Parliament can pass a law prescribing residence within the State as a condition for particular classes of employment or appointment to an office under the State or any local authority. Clause 5 of the Article 16 lays down that offices connected with a religious or denominational institution may be reserved only for persons professing a particular religion or belonging to a particular denomination.

Article 17 abolishes untouchability and its practice, in any form, is forbidden. This Article provides that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. With a view to abolish untouchability from society, the Parliament passed the Untouchability (Offences) Act, 1955. This Act had been amended and renamed in 1977 as the Protection of Civil Rights Act. This Act provides for punishment if anybody engages in refusing admission to hospitals, educational institutions, places of public entertainment and public worship. It also provides for punishment if anybody refuses to sell goods or give services to anybody on ground of untouchability.

Article 18 of the Constitution of India provides for abolition of titles. The Article lays down: "(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State."

3.3.2. RIGHT TO FREEDOM

Articles 19 to 22 of the Indian Constitution deal with the Right to Freedom. Article 19 enumerates the following freedoms.

(a) Freedom of speech and expression;

(b) Freedom of peaceful assembly without arms;

(c) Freedom to form associations or unions[1];

(d) Freedom to move freely throughout the territory of India'

(e) Freedom to reside and settle in any part of the territory of India;

(f) [This is no longer a Fundamental Right. Sub-clause (f) was deleted by the 44th Constitutional Amendment Act, 1978. This was related to the Freedom of acquiring, holding and disposing of Property.];

(g) Freedom to practice any profession, or to carry on any occupation, trade or business.

These rights are important for the citizens of independent democratic India. For instance, under the Freedom of Speech and Expression (sub-clause – a), the citizens of India enjoy freedom to think and express their views, to propagate and disseminate their opinion, to write or publish their ideas. Therefore, even the minorities can enjoy the right to discuss, disagree and debate.

However, these rights are not absolute. The State can impose reasonable restrictions upon these under Article 19 in the Clauses from (2) to (6). For instance, Article 19 in Clause (2) states that the Right to Freedom of Speech and Expression shall not affect the operation of any existing law or prevent the State from making any law in so far as such a law imposed reasonable restrictions on this right in the interest of the security of the State, friendly relations with foreign States, decency or morality, or in relation to contempt of court, or incitement to an offence.

Article 20 states that: (1) No person shall be convicted of any offence except for violation of the law in force at the time of the Commission of the act charged as an offence, nor be subjected to a penalty greater than that

which might have been inflicted under the law in force at the time of the Commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Article 21 of the Indian Constitution provides for protection of life and protects personal liberty of an individual. Article 21 says: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Under this Article, it is clear that no person can be deprived of his right to live or personal liberty without legal justification established by law. Subsequent interpretation by the judiciary enlarged the scope of the rights inserted in Article 21 and included rights of livelihood, good health, clean environment, humanitarian treatment during imprisonment etc.

In addition, the 86th Constitutional Amendment Act, 2002 inserted Article 21A, which provides for Right to Education at elementary level as a Fundamental Right. Article 21A says: "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."

Article 22 of the Constitution of India 'provides for protection of individuals against arrest and detention in certain cases. Article 22 says: (1) No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in Clauses (1) and (2) shall apply: (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months. Any detention for a longer period (more than three months) must be authorized by an advisory board consisting of persons who are, or have been, qualified to be appointed as Judges of a High Court.

3.3.3. RIGHT AGAINST EXPLOITATION

Articles 23 and 24 of the Indian Constitution deal with the Right against Exploitation. Article 23 states: (1) "Traffic in human beings and beggar and other forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

Thus, under Article 23, traffic in human beings and beggar and other forms of forced labour are prohibited.

Article 24 of the Constitution of India states: "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."

3.3.4. RIGHT TO FREEDOM OF RELIGION

Articles 25 to 28 of the Indian Constitution provide the Right to Freedom of Religion. These Articles are significant as they endorse secular characteristics of India, leading to protection of rights of the religious minority.

Article 25, which guarantees freedom of conscience and free profession, practice and propagation of religion, states that: "(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion.

(2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any 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 the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

Article 26 of the Indian Constitution is related to Freedom to Manage Religious Institutions. This Article upholds: "Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –

(1) To establish and maintain institutions for religious and charitable purposes;

(2) To manage its own affairs in matters of religion;

(3) To own and acquire movable and immovable property; and,

(4) To administer such property in accordance with law."

Article 27 deals with the Freedom as to Payment of Taxes for Promotion of any Particular Religion. This Article reads: "No person shall be compelled to pay any taxes, the proceeds of which specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denominations."

Article 28 is associated to the Freedom as to Attendance at Religious Instruction or Religious Worship in Certain Educational Institutions. This Article states: "(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in Clause (1) shall apply to educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institutions.

(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or if such person is a minor, his guardian has given his consent thereto."



CHECK YOUR PROGRESS – 1:

Q.1. Which Part of the Indian Constitution deals with the Fundamental Rights?

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Q.2. Is Right to Property a Fundamental Right in the Constitution of India?

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Q.3. Which Article(s) of Indian Constitution deals/deal with the Right to Freedom?

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3.3.5. CULTURAL AND EDUCATIONAL RIGHTS

The Constitution of India, under Articles 29 and 30, guarantees cultural and educational rights to the citizens of India. Article 29 states: "(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

The State shall protect the cultural identity of Indian citizens only within the territory of India. It also guarantees interests of the minorities in India.

Article 30 provides the minorities the right to establish and administer educational institutions. Article 30 says: "(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is under the management of a minority, whether based on religion or language."

3.3.6. RIGHT TO CONSTITUTIONAL REMEDIES

Article 32 of the Indian Constitution deals with the Right to Constitutional Remedies. This Fundamental Right is significant to guarantee other Fundamental Rights against their infringement. A person, if any of the Fundamental Rights conferred by the Constitution of India under Part III is violated, can move to seek constitutional safeguards guaranteed by the Article 32 dealing with Right to Constitutional Remedies.

Article 32 provides: "(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari,* whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by Clauses (1) and (2), the Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2).

(4) The right guaranteed by this Article shall not be suspended except as otherwise provided for by this Constitution."

These provisions have made the Supreme Court of India the guarantor and protector of the Fundamental Rights. Under Article 226, the High Courts are also empowered to issue certain writs. It is important to note that the Right to Constitutional Remedies conferred by Article 32 shall not be suspended except during a proclamation of Emergency by the President of India (Article 359).

3.4. INDIAN CONSTITUTION AND FUNDAMENTAL DUTIES

Originally, the Constitution of India, which came into force on 26th January, 1950 did not incorporate any provision on Fundamental Duties. Following the recommendations of Swaran Singh Committee, the 42nd

Constitutional Amendment Act, 1976 added the Fundamental Duties to the Constitution of India under Article 51A. Initially, under Article 51A, there were ten Fundamental Duties for the citizens of India. However, there are eleven Fundamental Duties now. The 86th Constitutional Amendment Act, 2002 incorporated the 11th Fundamental Duties in the list of Fundamental Duties in the Constitution of India. The Fundamental Duties are placed in Part IV-A of the Constitution of India. Every Indian citizen is expected to render these duties. Unlike the Fundamental Rights, the Fundamental Duties are non-justifiable.

The following are the Fundamental Duties to the citizens of India.

1. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
2. To cherish and follow the noble ideals which inspired our national struggle for freedom;
3. To uphold and protect the sovereignty, unity and integrity of India;
4. To defend the country and render national service when called upon to do so;
5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
6. To value and preserve the rich heritage of our composite culture;
7. To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
8. To develop the scientific temper, humanism and the spirit of inquiry and reform;
9. To safeguard public property and to abjure violence;
10. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement; and,
11. Every citizen who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.



CHECK YOUR PROGRESS – 2:

Q.1. Write two writs that the Constitution of India authorizes the Supreme Court to use under the Right to Constitutional Remedies.

Q.2. Write two Fundamental Duties that the Constitution of India expects to be rendered by the Citizens.

Q.3. Which Article of India Constitution empowers the High Courts to issue certain writs?

3.5. INDIAN CONSTITUTION AND DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Constitution of India deals with the Directive Principles of State Policy. The Directive Principles of State Policy work as instruction manual for the State of India. Articles 36 to 51 embody these Directive Principles of State Policy which direct the State to engage in promoting the welfare of the people of India by securing socio-economic and political justice for all. The Directive Principles of State Policy are considered as instructions to the State to work towards realizing the Ideals of social, economic and political justice to secure liberty, equality and fraternity and unity. However, these Principles are non-justifiable.

Article 36 provides the definition of 'State', having the same meaning as in Part III. Article 37 says that it is the responsibility of the State to render services following the Directive Principles of State Policy; however, these cannot be enforced by court of law.

The Directive Principles of State Policy includea set of instructions to State which can be classified as Gandhian, socio-economic, legal, political, administrative, environmental, liberal and international. The Directive Principles of State Policy embody the following principles.

1. The State shall strive to promote the welfare of the people by securing a social order (Article 38);

2. The State shall provide adequate means of livelihood to men and women equally; secure equitable distribution of material resources of the community with a view to ensure common good; provide equal pay for equal work for both men and women; protect the health and strength of workers both men and women, and ensure that the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and, ensure that children are provided opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and moral and material abandonment (Article 39);
3. The State shall secure that the operation of the legal system promotes justice, on basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are denied to any citizen by reason of economic or other disabilities (Article 39A);
4. The State shall take steps to organize village panchayats, and endow with them such powers and authority as may be necessary to enable them to function as units of self-government (Article 40);
5. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved wants (Article 41);
6. The State shall make provision for securing just and humane conditions of work and for maternity relief (Article 42);
7. The State shall try to secure, by suitable legislation or economic organization or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to

promote cottage industries on an individual or co-operative basis in rural areas (Article 43);

8. The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertaking, establishments or other organization engaged in any industry (Article 43A);
9. The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India (Article 44);
10. The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years (Article 45);
11. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation (Article 46);
12. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious o health (Article 47);
13. The State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle (Article 48);
14. The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country (Article 48A);
15. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by the Parliament to be of national importance, from

spoliation, disfigurement, destruction, removal, disposal or export, as the case may (Article 49);

16. The State shall take steps to separate the judiciary from the executive in the public services of the State (Article 50);
17. The State shall endeavor to promote international peace and security; maintain just and honorable relations between nations; foster respect for international law and treaty obligations in the dealings of organized people with one another; and, encourage settlement of international disputes by arbitration (Article 51).



3.6. LET US SUM UP

The chapter can be summed up in the following points.

- The Constitution of India is characterized by its provisions on Fundamental Rights.
- Fundamental Rights form integral part of India's democratic set-up.
- The Constitution of India embodies some Fundamental Rights in Part III of the Constitution.
- Initially, there were seven Fundamental Rights provided in the Indian Constitution.
- However, the 44th Constitutional Amendment Act, 1978 deleted the Right to Property from the list of the Fundamental Rights in the Constitution of India.
- The 44th Constitutional Amendment Act, 1978 made the Right to Property a legal right by inserting Article 300A in the Constitution.
- Now, the Constitution of India embodies six Fundamental Rights. These include: (1) Right to Equality (Articles 14-18); (2) Right to Freedom (Articles 19-22); (3) Right against Exploitation (Articles 23-24); (4) Right to Freedom of Religion (Articles 25-28); (5) Cultural and Educational Rights (Articles 29-30); and, (6) Right to Constitutional Remedies (Article 32).
- Originally, the Constitution of India, which came into force on 26th January, 1950 did not incorporate any provision on Fundamental Duties.

- Following the recommendations of Swaran Singh Committee, the 42nd Constitutional Amendment Act, 1976 added the Fundamental Duties to the Constitution of India under Article 51A.
- Initially, under Article 51A, there were ten Fundamental Duties for the citizens of India. However, there are eleven Fundamental Duties now.
- The 86th Constitutional Amendment Act, 2002 incorporated the 11th Fundamental Duties in the list of Fundamental Duties in the Constitution of India.
- Part IV of the Constitution of India deals with the Directive Principles of State Policy.
- The Directive Principles of State Policy work as instruction manual for the State of India.
- Articles 36 to 51 embody these Directive Principles of State Policy which direct the State to engage in promoting the welfare of the people of India by securing socio-economic and political justice for all.
- The Directive Principles of State Policy are considered as instructions to the State to work towards realizing the Ideals of social, economic and political justice to secure liberty, equality and fraternity and unity. However, these Principles are non-justifiable.



3.7. FURTHER READINGS

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3.8 ANSWERS TO CHECK YOUR PROGRESS



CHECK YOUR PROGRESS – 1:

Ans. to Q.1: Part III of the Indian Constitution deals with the Fundamental Rights.

Ans. To Q.2: Right to Property is no longer a Fundamental Right under the Constitution of India. The 44th Constitutional Amendment Act, 1978 deleted the Right to Property from the list of the Fundamental Rights in the Constitution of India.

Ans. To Q.3: Articles 19 to 22 of the Indian Constitution deal with the Right to Freedom.



Check your progress – 2:

Ans. to Q.1: Two writs that the Constitution of India authorizes the Supreme Court to use under the Right to Constitutional Remedies are: *habeas corpus, mandamus*.

Ans. To Q.2: Two Fundamental Duties of Indian citizens include: (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.

Ans. To Q.3: Under Article 226, the High Courts are empowered to issue certain writs.



3.9. MODEL QUESTIONS

Q.1. Discuss the provisions related to the Right to Equality as provided by the Constitution of India.

Q.2. Elaborate the provisions related to the Right against Exploitation.

Q.3. Examine the Right to Freedom provided by the Constitution of India. Why is the Right to Freedom important for the citizens of India?

Q.4. Analyze the Right to Constitutional Remedies and mention the writs that the Supreme Court can use when necessary.

Q.5. Write an essay on Cultural and Educational Rights as guaranteed by the Constitution of India.

Q.6. Discuss the Right to Religion. Do you think that this Right is vital for upholding secularism in India?

Q.7. Discuss the provisions of Indian Constitution related to the Fundamental Duties. Why are these important?

Q.8. Examine the Directive Principles of State Policy as instructions to the State of India.

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