UNIT 4- CONSTITUTION OF INDIA

STRUCTURE OF THE UNIT

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4.1. LEARNING OBJECTIVES

This chapter is important with the following objectives.

- To provide ideas about the key components of the Indian Constitution
- To introduce characteristics of the Fundamental Rights and Fundamental Duties
- To elaborate characteristics of the Directive Principles of State Policy
- To introduce the Right to Information Act, 2005 and its provisions

4.2. INTRODUCTION

The previous chapter (Chapter 3) dealt with the Fundamental Rights, Fundamental Duties and the Directive Principles of State Policy. This chapter, therefore, presents the characteristics and significance or importance of these. The chapter also shows the differences between the

Fundamental Rights and the Directive Principles of State Policy. In addition, the chapter discusses latest legislation like the Right to Information (RTI) Act, 2005.

4.3. CHARACTERISTICS OF FUNDAMENTAL RIGHTS

The Fundamental Rights provided under the Constitution of India form one of the important components of the Constitution. These Fundamental Rights have some salient features. Some of these can be highlighted in the following points.

1. Fundamental Rights are Universal: The Articles related to the Fundamental Rights provide that these are universal. No Indian citizen can be discriminated on any ground such as caste, creed, color, sex, religion, language etc; all are equally entitled to enjoy these rights. However, some Fundamental Rights, provided under Articles 21,23,25,27, 28, 31, and 32, are applicable to any person living in the territory of India, while some Fundamental Rights such as under Articles 19 and 29 are entitled to the citizens only.
2. Fundamental Rights are justifiable: Fundamental Rights are justifiable, meaning that if any law made by the legislature or any action of the executive comes into conflict with the Fundamental Rights guaranteed by the Constitution of India, the citizens can move to the judiciary to secure protection. The Supreme Court of India is the supreme guarantor of these rights (Article 32).
3. Fundamental Rights are not absolute: Fundamental Rights are not absolute rights; these are subject to reasonable restrictions. The Constitution or the Parliament can put reasonable restrictions, limiting the scope of these rights.
4. A detailed and comprehensive Bill of Rights: The Constitution of India embodies a detailed and comprehensive charter of rights in Part III, containing 24 Articles. The Constitution of India devotes from Article 12 to 35 to elaborate the Fundamental Rights. Articles 14 to 32 provide the Fundamental Rights, whereas Articles 12, 12, 33,

34, and 35 deal with other necessary explanation and governance of the Rights.

5. Special protection of the Minorities: The Constitution of India provides for special rights to the minorities. Articles 29 and 30 ensure cultural and educational rights of the minorities.

4.4. CHARACTERISTICS OF FUNDAMENTAL DUTIES

The Fundamental Duties, enshrined in the Constitution of India, entail some important characteristics. Some of such characteristics include:

1. The Fundamental Duties of Indian citizens were not original part of the Constitution of India.
2. The 42nd Constitutional Amendment Act, 1976 added these Fundamental Duties in the Constitution of India.
3. The Fundamental Duties are non-justifiable. Nobody can be charged or questioned in case violation or non-compliance of these duties.
4. The Fundamental Duties are meant for the citizens of India, not for the State or its agencies.
5. The Fundamental Duties are some duties prescribed by the Indian Constitution under Article 51A. These work as guidance and reminder for the Indian citizens to render services for the State, society and individuals.

4.5. CHARACTERISTICS OF DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy under Articles 36 to 51 work as positive instructions for the State. Some important characteristics of the Directive Principles of State Policy can be highlighted in the following ways.

1. The Directive Principles of State Policy are integral part and parcel of the Constitution of India. Part IV of the Constitution of India deals with the Directive Principles of State Policy.
2. The Directive Principles of State Policy are more than mere instruction of governance to the State. Article 38 elaborates one of

its prime objectives in these words: “The State shall strive to promote the welfare of the people by securing and 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.”

3. Unlike the Fundamental Rights, the Directive Principles of State Policy are not enforceable by courts.
4. The Directive Principles of State Policy can be divided into some groups such as Gandhian, socialistic, liberal, environmental etc. According to Article 51, the State shall engage in promotion of international peace and security. So, Directive Principles of State Policy are comprehensive guidance for the State.

4.6. SIGNIFICANCE OF FUNDAMENTAL RIGHTS

The Fundamental Rights, guaranteed by the Constitution of India, constitute a valuable part not only of the Constitution but also of civic life in India as they ensure freedom and liberty of all people of the country. Some points of significance of Fundamental Rights can be highlighted in the followings ways.

- Foundation of Indian Democracy: Fundaments Rights ensure democracy in a country. In India, the Fundamental Rights lay down its democratic foundation. According to K. K. Ghai, “The Fundaments Rights incorporated in Part III of the Constitution together constitute a formidable foundation of Indian democracy.”
- Protection of Minority Rights: The Fundaments Rights provide protection to minorities of India by guaranteeing their cultural and education rights. The Constitution of India provides special protection to the minorities. Articles 29 and 30 of the Indian Constitution guarantee to the minorities cultural and educational rights. This is significant preventing the majority from imposing its language and culture on the minorities.
- Building up an Egalitarian Society: Equality guaranteed by the provisions of Fundamental Rights helps India to build up an egalitarian

society. The Fundamental Rights embody provisions for right to equality (Articles 14-18).

- Guarantee of Personal Rights and Liberties: The Constitution of India provides an elaborate mechanism to protect the rights in actual practice. Article 32 makes the Supreme Court of India the ultimate guarantor of Fundamental Rights. When necessary, it can issue writs to enforce the Fundaments Rights.
- Personality Development: Fundaments Rights are essential for an individual to develop his personality to the fullest extent. According to Chief Justice Gajendragadkar, Fundaments Rights enable 'an individual to develop his personality and faculties'.

4.7. SIGNIFICANCE OF FUNDAMENTAL DUTIES

Fundamental Duties are important components of the Constitution of India. Fundamental Rights and Fundamental Duties are closely associated. Some important points of significance of Fundamental Duties are discussed below.

- Protection of Sovereignty of India: Fundamental Duties appeal the citizens of India to render service to the nation when necessary. People of India have to uphold and protect the sovereignty, unity and integrity of India.
- Protection of Public Property: Public properties such as roads are essential for the development of a nation. Fundamental Duties teach the people of India to safeguard public property and abjure violence.
- Enhancing the Spirit of Brotherhood: Fundamental Duties boost up the spirit of brotherhood and sense of commonness among the people of India. Fundamental Duties provide that the people of India would work together to promote harmony and spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities.
- Enrichment of the Nature: The Constitution of India lays down some obligations to its people for promoting the Nature and its resources.

The people of India have to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. This provision of Fundamental Duties contributes to sustainable development of India.

4.7. SIGNIFICANCE OF DIRECTIVE PRINCIPLES OF STATE POLICY

On many grounds, the Directive Principles of State Policy are justified. Their significance can be highlighted in the following points.

- The Directive Principles of State Policy are based on public opinion, meaning that a government cannot ignore them, though these are non-justifiable.
- The Directive Principles of State Policy provide the government the instructions of a welfare state. Article 38 states: “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may as social order in which justice, social, economic and political, shall inform all the institutions of the national life.”
- The Directive Principles of State Policy serve for the people of India as the instrument of measurement of performance of a government. If a government fails to comply with these Principles, people of the country can replace it by another one which they expect to be worthy to fulfill their aspirations instructed in the Directive Principles of State Policy.
- The Directive Principles of State Policy provide the government a continuous guidance for making policies for securing justice. In order to interpret or check constitutionality of any public policy, these Principles may be helpful. The Directive Principles of State Policy can also torch out ambiguities, if any, from the manifesto of the political parties or government.

The Directive Principles of State Policy are closely associated to the State with democracy and welfare-approach. However, proper implementation of the Directive Principles of State Policy is required.

4.8. CRITICISMS AGAINST THE DIRECTIVE PRINCIPLES OF STATE POLICY

There are some criticisms leveled against the Directive Principles of State Policy. Some noticeable criticisms include:

- According to some scholars, the Directive Principles of State Policy lack clarity. Srinivasan observed: "The formulation of the Directive Principles of State Policy can hardly be considered inspiring. It is both vague and repetitive."
- Implementation of the Directive Principles of State Policy depends upon will of the government. So, these are considered as mere declaration. K. T. Shah said that these are 'cheque payable by the bank at its convenience'.
- Critics also argue that non-justifiability of the Directive Principles of State Policy makes these mere abstract principles. M. Anantnarayan observed: "Non-justiceable and abstract Directive Principles which may be safely ignored by the legislator … do not enhance the true prestige of a written Constitution."
- Critics find the Directive Principles of State Policy as unsystematic principles, mixing up vital issues with less important things.
- Therefore, these, according to some critics, become mere promises. Translation of these promises into action requires interest and support from the government. However, the government cannot be forced to implement these as these are non-justifiable. So, Nassiruddin said: "The Directive Principles are no better than New Year Day's resolutions which are broken on the second of January."

Despite these, the Directive Principles of State Policy may work as instruction of governance to the State. For country like India, the Directive Principles of State Policy bear higher value.

4.8. DIFFERENCES BETWEEN THE FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

There are some key differences between the Fundamental Rights and the Directive Principles of State Policy. Some important differences are:

1. The Fundamental Rights are enforceable, whereas the Directive Principles of State Policy are not enforceable. Article 37 of the Constitution lays down that 'the provisions contained in this Part [Part IV] shall not be enforced by any court, but the principles therein laid down, are nevertheless in the governance of the country, and it shall be the duty of the State to apply these principles in making laws'.Implementation of the Directive Principles of State Policy requires proper legislation.
2. Fundamental Rights are negative compared to the Directive Principles of State Policy, which are considered as positive instructions. The Fundamental Rights prohibit the State from doing some works. On the other hand, the Directive Principles of State Policy work as instructions for the State to do certain things. Therefore, Gledhill observed: "Fundamental Rights are injunctions to prohibit the government from doing certain things, the Directive Principles of State Policy are affirmative instructions to the government to do certain things."
3. The Fundamental Rights can be suspended during the proclamation of an Emergency; however, due to non-justifiability, the Directive Principles of State Policy are in a state of perpetual suspended animation till legislation is not made to implement these. After the Emergency, the Fundament Rights get restored without any delay.
4. The Fundamental Rights are subject to reasonable restrictions, whereas the Directive Principles of State Policy are intended to guide the State to promote welfare of the people by securing social, economic and political justice for all. These Principles do not entail

restrictions as applicable in case of the Fundamental Rights; rather, they expand the scope of state-activities.

5. The Fundamental Rights enjoy backup by the Constitution and law, whereas the Directive Principles of State Policy find support from the people as these are concerned to their welfare and development. Eminent writer K. K. Ghai observed: "The Constitution clearly vests the Fundamental Rights in a constitutional and legal basis and makes these enforceable by the Courts. These are binding upon the State. As against this, the Directive Principles have been denied a legal basis by the Constitution."This, however, does not mean that the Directive Principles of State Policy are meaningless.



CHECK YOUR PROGRESS I

Q.1. Write two characteristics of Fundamental Rights enshrined in the Constitution of India.

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Q.2. Write two differences between the Fundamental Rights and the Directive Principles of State Policy.

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4.9. RIGHT TO INFORMATION ACT, 2005

In order to create and ensure an informed citizenry, the Parliament of India enacted the Right to Information Act, 2005. The Right to Information Act, 2005 is one of the advanced legislations enacted by the Parliament of India.

The Preamble of the Right to Information Act, 2005

The Preamble of the RTI Act provides that :

1) whereas the Constitution of India has established democratic Republic; and

2) whereas democracy requires an informed citizenry and transparency of informationwhich are vital to its functioning and also to curtail corruption and to holdGovernments and their instrumentalities accountable to the governed; and
3) whereas revelation of information in actual practice is likely to conflict with otherpublic interests including efficient operations of the Governments, optimum use oflimited fiscal resources and the preservation of confidentiality of sensitiveinformation; and
4) whereas it is necessary to harmonize these conflicting interests while preserving theparamountcy of the democratic ideal;
5) Now, therefore, it is expedient to provide for furnishing certain information tocitizens who desire to have it.

Definitions of Key Term under the Right to Information Act, 2005 : "*Right to Information"*

According to Section 2(j) of the RTI Act, 2005, "Right to Information"means the right to information accessible under this Actwhich is held by or under the control of any public authority.

According to Section 2(f) of the RTI Act, 2005, "Information" means any of the following forms.

- records,
- documents,
- memos,
- e-mails,
- opinions,
- advices,
- press releases,
- circulars,
- orders,
- logbooks,
- contracts,
- reports,
- papers,

- samples,
- models,
- data material held in any electronic form, and
- information relating to any private body which can be accessed by a publicauthority under any other law for the time being in force.

Salient Features of the Right to Information Act, 2005

The "Analysis of the Right to Information Act, 2005" pointed out the following features of the Act in the following ways.

- **Information to the Citizens**

Section 3 of the Right to Information Act, 2005, states that all citizens shall have the right to information subject to the provisions of the Act.

- **Promotion of Transparency and Accountability**

The objective of the Right to Information Act is to secure access to information to allcitizens in order to promote transparency and accountability.

- **Obligations of Public Authorities**

Section 4 of the Right to Information Act provides that:Every public authority shallmaintain all its records duly catalogued and indexed in a manner and the formwhich facilitates the right to information under this Act and ensure that allrecords that are appropriate to be computerized are, within a reasonable time andsubject to availability of resources, computerized and connected through anetwork all over the country on different systems so that access to such recordsis facilitated.

- **Suo Motu (Pro-active) Disclosure of Information**

Under section 4(1)(b) also lays down that public authorities shall take all steps to provide as much informationsuo motu to the public at regular intervals through various means of communicationsincluding internet, so that the public have minimum resort to the use of this Act toobtain information on the items mentioned from (i) to (xvii) of section 4(1)(b) of the RTI Act,like comprehensive detail of the establishment of organization, functions, procedure,rules, powers and duties of its officers and employees, decision making process etc.

- **Disclosure of Reason(s) for Public Decision Making**

It also provides that every publicauthority shall provide reasons for all its administrative or quasi-judicial decisions toaffected persons. Section 4(1)(c) asks all public authorities to publishall relevant facts on policy formulation within their domain and section 4(1)(d) requiresthe public authorities to provide reasons for their administration or quasi-judicialdecisions to affected persons.

Power, Duties and Responsibilities of the Public Information Officer

According to the Right to Information Act, 2005, the powers, duties and responsibilities of the Public Information Officer include:

i) It is the duty of the Public Information Officer (PIO) of the public authority to receive applications from citizens seeking information along with the prescribed fee.

ii) If the information requested for is held by or is a subject matter closely connectedwith the functions of another authority, the PIO shall transfer, within five days thatrequest to the other public authority and inform the applicant immediately.

iii) Any PIO may seek the assistance of any other officer for the proper discharge ofhis/her duties.

iv) Any PIO, on receipt of the request, shall as expeditiously as possible, and in anycase within 30 days of the receipt of the request, either provide the information onpayment of such fee as may be prescribed along with the application or reject therequest for any of the reasons specified in sections 8 or 9.

v) Where the information requested concerns the life or liberty of a person, the sameshall be provided within 48 hours of the receipt of the request. Thus, the PIO is duty bound to provide the information within the stipulated time i.e. ordinarily within 30 days from the receipt of the application or within 48 hours, if the matter concerns the life and liberty of a person.

vi) Where a request has been rejected, the PIO shall communicate to the applicant, thereasons for such rejection, the period within which

the appeal against suchrejection may be preferred, and the particulars of the Appellate Authority.

vii) It is also the responsibility of the PIO to provide the requested information in the form or manner in which it has been requested or demanded, as far as possible.

viii) In allowing partial access, the PIO shall give a notice to the applicant, informing:a) That only part of the record, after severance of the record containinginformation which is exempted from disclosure, is being provided.b) The reasons for the decisions, including any findings on any material, questionof fact, referring to the material on which those findings were based. c) The name and designation of the person giving the information.d) The details of the fees calculated and the amount of fee which the applicant isrequired to deposit etc.

ix) If information sought has been supplied by third party or is treated as confidentialby a third party, the PIO shall give a written notice to third party within 5 daysfrom the receipt of the request and take its representation into consideration.

x) Third party must be given a chance to make a representation before the PIO within10 days from the date of receipt of such notice. It is the duty of the PIO to give written notice to the third party, if information requested was given to the PIO by the third party who treated it as confidential, on the point whether such information should be disclosed to the requestor or not.

xi) PIO is also required to give a notice to the applicant concerning severability of theinformation called, into exempted and non-exempted information and provide non-exemptedinformation to the applicant.

Request to Obtain Information

Section 6 of the Right to Information Act, 2005 provides that:

(1) A person, who desires to obtain any information under this Act, shall make a requestin writing or through electronic means in English or

Hindi or in the official language ofthe area in which the application is being made, accompanying such fee as may beprescribed to:

(a) the Central Public Information Officer or State Public Information Officer, asthe case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant PublicInformation Officer, as the case may be, specifying the particulars of theinformation sought by him or her:Provided that where such request cannot be made in writing, the Central PublicInformation Officer or State Public Information Officer, as the case may be, shall renderall reasonable assistance to the person making the request orally to reduce the same inwriting.

(2) An applicant making request for information shall not be required to give any reasonfor requesting the information or any other personal details except those that may benecessary for contacting him.

(3) This section specifies the manner in which requests may be made by a citizen of Indiato the appropriate authority for obtaining the information. The application may be inwritten or in electronic form. It may also be sent through manual despatch, posts orelectronic means i.e. email, fax etc. It may be in English, Hindi or in the officiallanguage of the area in which such application is made. As per the provisions the choiceof the language would be that of the applicant and PIO concerned cannot force theapplicant to use a particular language. The applicant will have to furnish the details andparticulars of the information sought by him. He may also specify the mode in whichsuch information is required. Moreover, such application would be accompanied withthe prescribed fees except the applicant is below the poverty line in which no fee isrequired to deposit.[1] The prescribed feeof Rs. 10/- under the RTI Act should be enclosed.



CHECK YOUR PROGRESS II

Q.1. Define 'Right to Information' and provide example of it as mentioned under the Right to Information Act, 2005.

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Q.2. Write the full form of 'PIO'.

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4.10. LET US SUM UP

- The Fundamental Rights have some salient features: Fundamental Rights are Universal; Fundamental Rights are justifiable; Fundamental Rights are not absolute, and so on.
- The Fundamental Duties are some duties prescribed by the Indian Constitution under Article 51A.
- The Directive Principles of State Policy under Articles 36 to 51 work as positive instructions for the State.
- Unlike the Fundamental Rights, the Directive Principles of State Policy are not enforceable by courts.
- There are some key differences between the Fundamental Rights and the Directive Principles of State Policy.
- Fundamental Rights are negative compared to the Directive Principles of State Policy, which are considered as positive instructions. The Fundamental Rights prohibit the State from doing some works.
- In order to create and ensure an informed citizenry, the Parliament of India enacted the Right to Information Act, 2005.
- The Right to Information Act, 2005 is revolutionary as it provides the citizens of India the access to official records of the Government of India and other state government.
- There are some exemptions under the RTI Act, 2005.



4.11. FURTHER READINGS

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4.12. ANSWERS TO CHECK YOUR PROGRESS

Answer to the questions in 'Check your progress I'

Answer to Q.1. Two characteristics of Fundamental Rights enshrined in the Constitution of India include: i) Fundamental Rights are justifiable: Fundamental Rights are justifiable, meaning that if any law made by the legislature or any action of the executive comes into conflict with the Fundamental Rights guaranteed by the Constitution of India, the citizens can move to the judiciary to secure protection. The Supreme Court and the High Courts are empowered to issue writs and protect these rights. The Supreme Court of India is the supreme guarantor of these rights (Article 32).

ii) Fundamental Rights are not absolute: Fundamental Rights are not absolute rights; these are subject to reasonable restrictions. The Constitution or the Parliament can put reasonable restrictions, limiting the scope of these rights.

Answer to Q.2. Two key differences between Fundamental Rights and Directive Principles of State Policy include: i) The Fundamental Rights are enforceable, whereas the Directive Principles of State Policy are not enforceable. Implementation of the Directive Principles of State Policy requires proper legislation. However, Article 32 empowers the people of India to approach court if Fundamental Rights are violated.

ii) Fundamental Rights are negative compared to the Directive Principles of State Policy, which are considered as positive instructions. The Fundamental Rights prohibit the State from doing some works. On the other hand, the Directive Principles of State Policy work as instructions for the State to do certain things.

Answer to the questions in 'Check your progress II'

Answer to Q.1. According to Section 2(j) of the RTI Act, 2005, "Right to Information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:(i) inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records etc.

Answer to Q.2. PIO refers to Public Information Officer as defined under the Right to Information Act, 2005.



4.13. MODEL QUESTIONS

Q.1. Write the characteristics of the Fundamental Rights under the Constitution of India.

Q.2. Discuss the key characteristics of the Fundamental Duties incorporated in the Constitution of India.

Q.3. Mention the key characteristics of the Directive Principles of State Policy.

Q.4. "Fundamental Rights are universal." Do you agree with the statement? Justify your stand.

Q.5. Are the Fundamental Rights justifiable? Explain with arguments.

Q.6. "Fundamental Rights are not absolute rights; these are subject to reasonable restrictions." Explain the statement.

Q.7. Which Constitutional Amendment added the Fundamental Duties in the Constitution of India?

Q.8. Which Part of the Constitution of India deals with the Directive Principles of State Policy?

Q.9. Write a note on significance of the Fundamental Rights.

Q.10. Explain the significance of the Fundamental Duties.

Q.11. How do you explain the significance of the Directive Principles of State Policy?

Q.12. Critically examine the drawbacks of the Directive Principles of State Policy.

Q.13. Who said that the Directive Principles of State Policy are the 'cheque payable by the bank at its convenience'? Do you believe this? Justify.

Q.14. How do you counter the criticisms against the Directive Principles of State Policy? Provide arguments.

Q.15. Discuss the key differences between the Directive Principles of State Policy and the Fundamental Rights.

Q.16. Which do you prefer, the Directive Principles of State Policy or the Fundamental Rights? Justify your stand.

Q.17. What do you understand by the 'Right to Information Act, 2005'?

Q.18. Discuss the various Provisions of the Right to Information Act, 2005.

Q.19. Do you think that the Right to Information Act, 2005 enacted by the Parliament of India revolutionary and unique? Justify your position.

Q.20. What are the key objectives of the Right to Information Act, 2005?

Q.21. What is 'Right to Information' as defined in the Right to Information Act, 2005? Provide 5 examples of 'Information' as mentioned in the Act.

Q.22. Discuss the salient features of the Right to Information Act, 2005.

Q.23. What do you understand by the 'suo motu disclosure of information' in the Right to Information Act, 2005?

Q.24. Discuss the power, responsibilities and duties of the PIO as mentioned in the Right to Information Act, 2005.

Q.25. Discuss the provisions related to the 'request to obtain information' under the Right to Information Act, 2005.

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