

## Session 4: Fundamental duties and Directive Principles of State Policy

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## Emergency Provisions (Article 352-360)

An **emergency may be defined** as “circumstances arising suddenly that calls for immediate action by the public authorities under the powers granted to them.”

Three types of emergencies

1. National Emergency
2. State Emergency
3. Financial Emergency

### Grounds for declaring National emergency.

1. War,
2. External aggression or
3. Internal armed rebellion

### Who declares emergency?

- Article 352 provides that if the **President is ‘satisfied’** on the grounds of emergency, he can issue a **proclamation** to that effect regarding the **whole of India or a part thereof**.
- Sub clause (3) says that president can proclaim emergency only on the **written advice of the cabinet**.
- Must be placed before each house of the **parliament** and **approved within one month**. Otherwise, it will expire.

### Revoking emergency

- If the situation improves then the **President can revoke** the emergency through another proclamation.
- The 44th Amendment of the Constitution provides that a **requisition for the meeting** can be made by **ten per cent or more members** of the Lok Sabha and in that meeting; it can **disapprove or revoke** the emergency by a simple majority.
- The emergency will **immediately become inoperative** in such a case.

### Duration of emergency

- After approval of the parliament, it has to be **renewed every 6 months**.
- If Lok Sabha is dissolved meanwhile, it will be in operation upto 1 month from the first sitting of new Lok Sabha, provided it is approved by the Rajya Sabha
- Any resolution related to Proclamation or renewal must be passed by a special majority (Not less than 2/3<sup>rd</sup> of the members present and voting) as per 44<sup>th</sup> amendment 1978

## **Effect of National emergency**

- 353- Union will use its executive power to give directions to the state
- 353(b) Union can make laws in matters of state list
- 354 Union can **alter distribution of revenue** between centre and state
- The term of Lok Sabha can be extended one year at a time each time.
- Fundamental rights under **article 19 is suspended**. However, rights under articles **20 and 21 are not affected**.

## **State emergency – Article 356**

President can declare a state emergency.

Grounds: In a situation where Government of a state cannot be carried out in accordance with the provisions of the constitution

One receiving the report of Governor or otherwise satisfied.

## **Duration of state emergency**

- Must be approved by both houses of the Parliament within two months.
- The duration can be extended by Parliament for 6 months at a time.
- But can not remain in operation for more than 3 years.

## **Effect of state emergency**

- President shall have all the powers that are exercisable by the Governor in the state.
- State legislature is dissolved.
- Legislative power of the state will be with the parliament.

## **Financial emergency (Article 360)**

- President can declare a financial emergency.
- Grounds: Financial stability of India or any part of the territory is threatened
- Must be approved by both house of the parliament within 2 months.
- So far not declared in India

## Effect of Financial emergency

- Union will give directions to the state regarding maintenance of financial stability.
- Allows reduction in salaries and allowances of any persons serving under the state including the judges of High courts and Supreme courts.
- The money bills shall be reserved for the approval of the president.

## Fundamental duties (Article 51A)

- The section 'Fundamental Duties' was not a part of the original constitution. These were **added** to the Constitution much later by the **42nd Amendment in 1976**.
- There is a major difference between the fundamental rights and the fundamental duties. **The fundamental duties are non-justifiable**, that is no one can be punished in case of their violation or non-compliance.
- The fundamental duties are defined as the **moral obligations of all citizens** to help promote a spirit of patriotism and to uphold the unity of India.
- Originally 10 duties, 11<sup>th</sup> was added under 86<sup>th</sup> Amendment 2002.

## List of the 11 Fundamental duties

1. Abide by the Constitution and respect national flag & National Anthem
2. Follow ideals of the freedom struggle
3. Protect sovereignty & integrity of India.
4. Defend the country and render national services when called upon.
5. Sprit of common brotherhood
6. Preserve composite culture.
7. Preserve natural environment.
8. Develop scientific temper.
9. Safeguard public property.
10. Strive for excellence.
11. Duty of all parents/guardians to send their children in the age group of 6-14 years to school.

## Directive Principles of State Policy (DPSP) – (Article 36-51)

1. These are guidelines for creating a **social order** in which there would be **social, economic and political justice, liberty, equality, brotherhood** and mentioned in the preamble.
2. The objective of directive principle is to create a **welfare state**.
3. These are Policy guidelines.
4. Non-justiciable: Parts of the constitution which cannot be enforced by the Judiciary

### Goals of DPSP

1. Welfare of people – social, economic, political
2. Raising living standard – equitable distribution of resources
3. Promotion of internal peace

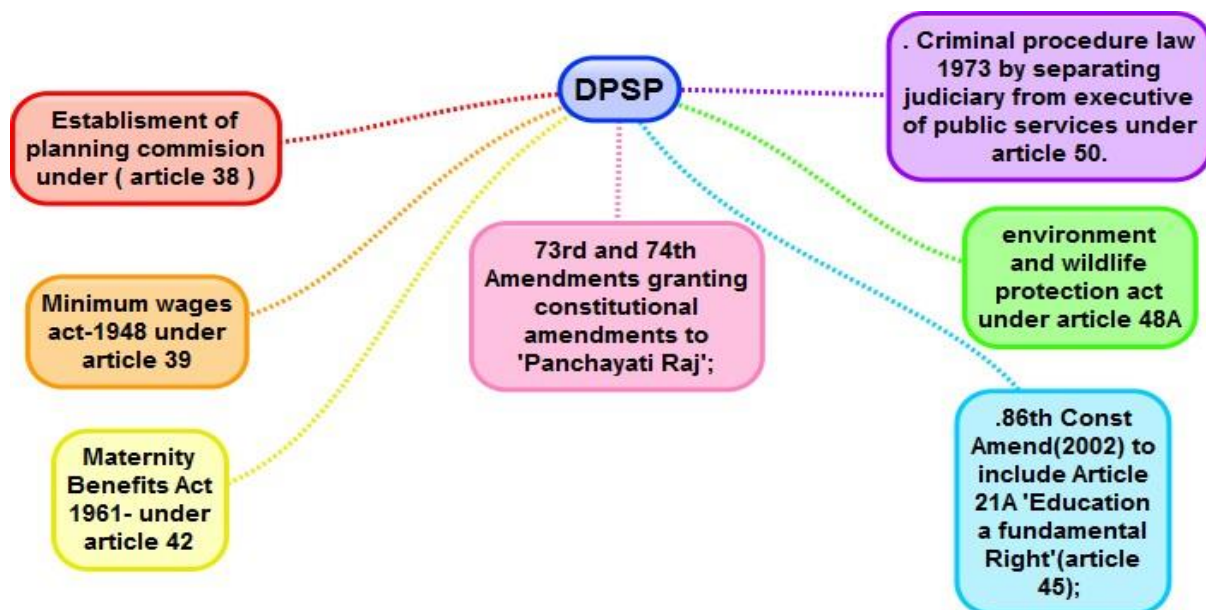
### Examples of DPSP

- To promote Social, Political and Economic **Justice**. ...
- Provide Free **Legal aid**. ...
- Organization of **Panchayats**. ...
- **Welfare** Government schemes. ...
- Securing just and humane work and maternity relief. ...
- **Fair wages** and decent standard of life. ...
- Worker's participation in management.

### Articles of certain Directive Principles

- **40** - Panchayath
- **41** - Maternity relief
- **43** - Cottage Industries
- **44** - Uniform Civil Code
- **47** – Prohibition of Alcohol
- **48** – Preventing slaughter of useful cows
- **50** – Separation of Judiciary from Executive
- **51** – Internal peace and security

Directive Principles are Not Justiciable. But a number of acts are passed by the Parliament to give effect to the objectives of Directive principles. The following figure represents some such Acts



### Differences between DPSP and Fundamental rights

- Fundamental rights are to protect rights of individuals whereas DPSP are to ensure wellbeing of the entire society.
- Fundamental rights are justiciable, but DPSP are non-justiciable.
- Fundamental Rights restrain the state from doing certain things while DPSP prompts the state to do certain things.

## Session 3: Fundamental Rights

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## Fundamental rights

**These are inviolable rights granted to every citizen of India by the constitution.** Any law or executive action cannot take away these rights. Article 12 to 35 of the constitution deals with fundamental rights.

### 6 Categories of Fundamental rights guaranteed by the constitution.

1. Right to Equality.
2. Right to Freedom.
3. Right against Exploitation.
4. Right to Freedom of Religion.
5. Cultural and Educational Rights.
6. Right to Constitutional Remedies.

### Right to equality

1. **Right to equality:** Which includes equality before law, prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles. Right to equality is provided from Article 14 to Article 18 of Indian constitution.
  - I. **Article 14** - says, "The State shall not deny to any person **equality before the law or equal protection of the laws** within the territory of India.
  - II. **Article 15 - Prohibition of discrimination** on grounds of religion, race, caste, sex or place of birth.
  - III. **Article 16** - Article 16 of Indian Constitution ensures equality of opportunity for all citizens in **public employment**. The State cannot make any discrimination on grounds of religion, race, sex, descent, place of birth or residence
  - IV. **Article 17-** Article 17 of Indian Constitution declares the **abolition of untouchability** and prohibit its practice in any form.
  - V. **Article 18** - Article 18 of Constitution of India **prevents the State from conferring of title** → establishment of social equality in India. (a Citizen is also barred from accepting foreign titles).

### Right to Freedom:

It includes freedom of speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation, right to life and liberty, protection in respect to conviction in offences and protection against arrest and detention in certain cases. Right to freedom is provided from Article 19 to 22 of constitution.



## **Right to freedom: Article 19:**

**Everyone has the right to freedom of opinion and expression;** this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

- 19(1)(a) Right to freedom of **speech and expression**
- 19(1)(b) Right to **assemble peacefully** without arms.
- 19(1)(c) Freedom to **form associations**.
- 19(1)(d) **Right to move** freely in territory of India.
- 19(1)(e) **Right to settle** in territory of India.
- 19(1)(g) Freedom of **trade and profession**

## **Ground on which restrictions can be placed on Right to speech and expression.**

Following are the only 7 grounds on which restrictions can be placed on speech and expression.

1. Defamation,
2. contempt of the court,
3. Decency or morality,
4. Security of the state,
5. Friendly relationship between India with other country,
6. Incitement for an offence, public order
7. Maintenance of the sovereignty and integrity of India

## **Article 20: Right to freedom**

This article provides protection against retrospective legislation, double jeopardy and self

- **20(1):** No person shall be convicted of any offence except for violation of a 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. (**Ex-Post-Facto**)
- **20(2):** No person shall be prosecuted and punished for the same offence more than once. (**Double jeopardy**)
- **20(3):** No person accused of any offence shall be compelled to be a witness against himself (**Self-incrimination**)

## Right to freedom (Article 21-22)

- **Article 21: Protection of life and personal liberty:** No person shall be deprived of his life or personal liberty except according to procedure established by law. Includes, right to Privacy
- Article 22: Protection against arbitrary arrest and detention
- (1) No person who is arrested **shall be detained in custody without being informed**, as soon as may be, of the **grounds for such an arrest** nor shall he be denied the right to consult, and to 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.

**Note: Article 20 and 21 can not be suspended even in National emergency.**

## Right against exploitation

**Right against exploitation** prohibits all forms of forced labour, child labour and traffic of human beings. It is provided under Articles 23 and 24 of Indian constitution.

- Article 23 - Article 23 of Indian Constitution declares Prohibition of traffic in human beings and forced labour.
- Article 24 - Article 24 of Indian Constitution states that the employment of children under 14 years in factories or mines, are punishable offences.

## Right to freedom of Religion

**Right to freedom of religion:** Which includes freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes. Article 25 to 28 enumerates the right to freedom of religion.

- Article 25 - Article 25 of Indian of freedom of conscience and free profession, practice and propagation of religion.
- **Article 26** - Article 26 of Indian Constitution specifies the **freedom to manage religious affairs.**
- **Article 27** - Freedom as to payment of taxes for promotion of any particular religion. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religions denomination.
- **Article 28** - Article 28 of Indian Constitution includes freedom as to attendance at religious instruction or religious worship in certain **education institutions.**

## Cultural and Educational Rights

**Cultural and Educational rights** aims to preserve the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice. Article 29 and Article 30 of Indian constitution provides for cultural and educational rights.

- **Article 29** - Protection of interests of minorities – The right to preserve distinct culture, language, script and identity
- **Article 30** - Right of minorities to establish and administer educational institutions.

## Right to Constitutional remedies

- **Right to constitutional remedies:** Which is present for enforcement of Fundamental Rights. It is provided under Article 32 of Indian constitution. If fundamental rights are **obstructed** by any individual, organization or government, the affected person can **directly approach the supreme court or high court.**
  - **Article 32** - When a citizen finds that any of his fundamental rights has been encroached upon, he **can move the supreme court**, which has been empowered to safeguard the fundamental rights of a citizen.
  - This right has been called Soul and heart of the Constitution by BR Ambedkar.
  - If this right is not guaranteed, all the fundamental rights will remain only on paper.

## Right to Education

Right to education (Article 21A) : Right education was added to Article 21 which deals with right life and liberty as an addition – 21A

- Made a fundamental right by **86<sup>th</sup> amendment in 2002.**
- Now the state has a **compulsory obligation to provide free education** to all children between the age of 6 and 14 years.
- Right to Education bill was passed in 2009 and came into force from 1<sup>st</sup> April 2010.

## **The rights are against whom?**

Most of the fundamental rights against actions of the state. Only four fundamental rights are against the actions of state as well as other individuals. These rights are,

- Article 15(2) - Provides that No citizen shall be subject to any kind of discrimination on the basis of his race, religion, place of birth or caste etc.
- Article 17 - Talks about abolition of Untouchability. It devises that anyone practicing Untouchability shall be punished.
- Article 23 - Prohibits trafficking of humans and forced labor.
- Article 24 - Prohibits employment of children in factories amid hazardous place.

## **Are fundamental rights absolute?**

- They are not absolute, in the sense that they can be suspended under National emergency.
- Under normal circumstances, the government cannot take away these rights.
- But if the president of India declares National emergency (if he perceives internal or external threat - article 352), parliament can suspend few or all of the rights for a short period.
- The article 20 and 21 CANNOT be suspended even in National Emergency

## Session 2: Preamble to the Constitution

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## Preamble to the constitution

- Preamble is an introductory section of the document which explains the document's purpose and underlying philosophy.
- Though it comes in the beginning, it was included at the end after thorough discussion.
- Preamble is not legally binding but used to explain and interpret other parts of the constitution.

## Preamble says,

**WE, THE PEOPLE OF INDIA**, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens:

- **JUSTICE**, social, economic and political.
- **LIBERTY** of thought, expression, belief, faith and worship.
- **EQUALITY** of status and of opportunity.

## and to promote among them all

- **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation.
- **IN OUR CONSTITUENT ASSEMBLY** this twenty-sixth day of November 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

Let us now discuss the meaning of the important terms used in the preamble.

## We the people of India ...

- Constitution gets its authority from the people.
- Representatives of all sections of people involved in its preparation.

## Sovereignty

- Complete independence
- No country has the right to interfere in internal or external policies of the state.

## Socialism

- It means a system of government where the means of production and distribution of goods are wholly or partly controlled by the state.
- Industrial, financial, educational, health and other institutions are run by the government.
- Objective is to reduce the gap between the rich and the poor.

## **Secularism**

- Does not mean going against God or lack of belief in God.
- It means state has no religion.
- State protects all religion and does not make discrimination between religions.
- All people enjoy equal status, honour, dignity and rights irrespective of the religion.

## **Democracy**

- For the people, by the people, of the people
- People elect representatives to govern on the basis of Universal Adult Franchise (All persons above the age of 18 can vote to elect the representatives)
- In addition to political democracy, it also includes Social Democracy (Entitlement to social justice and welfare) and economic democracy (equal economic opportunities and rights)

## **Liberty**

- **Freedom of**
  - Thought
  - Expression and
  - Belief
- These are included in Fundamental rights.
- Liberty to live in any part of India.
- Liberty to earn one's own livelihood.

## **Equality**

- Equality before law
- No discrimination allowed on the basis of caste, creed, religion, economic and social status, language and gender.

## **Justice**

- Political justice (Free to vote as well as to contest in election)
- Economic justice (Narrow down the gap between rich and poor)
- Social justice (discrimination on the basis of caste is illegal and punishable)

## **Fraternity**

The Constitution aims to promote a feeling of **fraternity or brotherhood** among all citizens. Fraternity refers to sense of common brotherhood and belonging.

## **Dignity of individual**

**The dignity of individual** is an important concept mentioned in the preamble. Adequate means of livelihood, better conditions of work, a **decent standard of life free from all sorts of exploitation** promote and maintain human dignity.

## **Unity and Integrity of nation**

- Preamble emphasizes unity integrity of the nation. Integrity means being **whole and undivided**. People must stay united to protect the unity and integrity, especially at times of **external attack** or **internal disturbance**.

## **Salient features of the constitution**

### **1. Longest written constitution**

- Ours is a written constitution whereas as Britain has unwritten constitution.
- Our is the longest written constitution whereas USA has the shortest constitution.
- 444 Articles, 12 Schedules, 94 amendments, 1,17,369 Words, 443 Pages

### **2. Drawn from different sources**

- The best is taken from different sources.
- Parliamentary democracy – From British constitution
- Fundamental rights – From constitution of USA
- Emergency powers – From Germany
- Directive principles – From Irish constitution

### **3. Partly flexible, partly rigid**

- Changes can be brought about in the constitution, so it is flexible.
- But Basic structure cannot be changed.
- Changes require an elaborate process (2/3 majority of both houses of parliament and some changes requires ratification by not less than half the state assemblies)



#### **4. Federal in form, Unitary in spirit.**

- The Federal system means decentralization of power. Powers are distributed between the central and state government.
- But central government retains the overall control (Unitary)

#### **5. Parliamentary system with elected president as the head**

- The government (ministers and executives) get their authority from the elected bodies, Parliament, or state assemblies.
- President is elected in indirect election.

#### **6. Universal Adult Franchise**

- Every citizen above the age of 18 can vote in the election. Anybody above the age of 25 can contest for MP or MLA election and anybody over 30 years can contest for MP (Rajya Sabha) or MLC (Vidhana Parishad)

#### **7. Single citizenship**

- All people living in the geographical boundary can have citizenship and can not have citizenship of another at the same time.

#### **8. Independent Judiciary**

- It provides for a single unified judicial system which is independent. (Supreme court, high courts and subordinate courts)

#### **9. Charter of Fundamental rights**

- Part III of our constitution discusses fundamental rights. **These are inviolable rights granted to every citizen of India by the constitution.** Any law or executive action cannot take away these rights.

#### **10. Directive Principles**

- These are **certain ideals** which the framers of the Indian constitution thought the Indian state must try and achieve for national wellbeing.

#### **11. Fundamental duties**

- Added through 42nd amendment.
- These are the obligations of the citizens towards the state and other citizens.

## **Sources from which the Constitution was drawn.**

- Australia: Concurrent list, Joint sitting of two houses of parliament
- Canada: Federal system, Residuary powers, Appointment of Governors, Advisory jurisdiction of Supreme court
- Ireland: Directive principles, nomination of members to Rajya Sabha, Method of election of President
- Japan: Procedure established by Law.
- USSR (Russia): Fundamental duties, Ideals of Justice (social, economic, political)
- UK: Parliamentary system, Rule of Law, Legislative procedure, single citizenship
- USA: Fundamental rights, independent judiciary, Judicial review, Impeachment of President, post of vice president
- Germany: Emergency provision
- France: Republic, Preamble, Liberty, equality, fraternity
- South Africa: Procedure of amendments to constitution, election to Rajya Sabha