UNIT 3 CONSTITUTIONAL VISION: FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

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3.0 OBJECTIVES

This unit deals with the nature and scope of rights incorporated in the Constitution of India. After going through this unit you will:

- understand the background of incorporation of rights in the Constitution of India;
- nature and types of rights;
- differences between Fundamental Rights and Directives Principles of State Policy; and
- scope and limitation of the rights provided in the Constitution.

3.1 INTRODUCTION

You have already studied that the concept of Rights is a western contribution, more specifically, a contribution of the Enlightenment in Europe in the 17th and the 18th
centuries. Its emergence signified the end of blind faith in any superhuman agency and the growth of faith in mankind’s rational faculties, its ability to build its own future. Of course, there are two views of rights: (1) The view that a man/woman is naturally entitled to rights as the conditions of his/her development and fulfilment of aspirations. (2) The view that a man/woman enjoys rights as member of society and by fulfilling his/her obligations/duties to it.

It was in Britain that, in 1628, the first Petition of Rights was submitted to the monarch and it was in Britain that a Declaration of Rights was issued by the King in Parliament in 1689. Yet Britain does not formally have any consolidated document on Fundamental Rights. The British people are, formally, subjects of the British Crown. They only enjoy the Rule of Law at the favour of the Crown.

Neither did the Indian subjects of the British Crown have any Fundamental Rights before Independence. Fundamental Rights came to the Indians only in 1950 with the proclamation of the Republican Constitution of the country. It is only in a republican country that rights can be guaranteed in a written form because a republic is a country that belongs to its people and not to any ruler.

The United States of America was the first country in the world to codify the fundamental rights of the citizens. Because of the influence of the natural rights theory these rights were put in a negative form – to tell the state to desist from violating those rights that, naturally, belonged to the citizens. At the beginning of the twentieth century the US Supreme Court assumed the power to protect those rights by means of judicial review. In India, after attainment of independence, the rights were given an important place in the Constitution of India. In this unit we will read about nature of these rights.

3.2 CONSTITUENT ASSEMBLY AND RIGHTS

You have read in the last unit that concern for rights and civil liberties had become a part of the national movement. Also when the Constitution of India was being framed the United Nations General Assembly had adopted the Universal Declaration of Human Rights signifying the International Communities concern for those. At the same time as a result of Socialist ideas having become popular with the emergence of Soviet Union and People of former colonial societies looking for socio-economic transformation idea of rights was no more limited to civil liberties but it was also concerned with the fulfilment of basic material needs required for the survival of human beings in a dignified manner. This vision was also brought in the national movement of India, As such the political leaders of India had committed themselves to guaranteeing fundamental rights to Indians in a constitution. The Objectives Resolution moved by Jawaharlal Nehru in the Constituent Assembly on December 13, 1946 promised to all citizens of India:

Justice, social, economic and political;

Equality of status, of opportunity and before law; and

Freedom of thoughts, expression, belief, faith, worship, association and action, subject to law and public order.

Later these promises were made part of the preamble of the Constitution. The Constituent Assembly of India, after long deliberations, constructed those rights. It framed several rights in the traditional, negative form. However, several rights required
the state to act positively. It was, at the same time, realized that, while the state could be prevented from interfering with the negative rights of the citizens by the courts, there was no way to force it to enforce all the positive rights in a satisfactory way. There was, ultimately, the question of capacity of the state. Therefore, the Constituent Assembly divided the rights into two parts. In Part III of the Constitution the negative rights were put, in Part IV were put the positive rights in the form of Directive Principles of State Policy. In framing the Directive Principles of State Policy the Constituent Assembly of India followed the example of the Irish republican constitution.

There is a second kind of rights that are termed by the Supreme Court of India, in the case of Bishamber v. the State of Uttar Pradesh (1981) as constitutional rights. The most important of such rights is the right to be registered as a voter (Articles 325 and 326 of the Constitution). Right to vote is not a fundamental right but the right to be registered a voter is a constitutional right. The other important constitutional right is the right to property that was removed from Part III of the Constitution (Fundamental Rights) by the 44th Amendment to the Constitution in 1978 but now forms Article 300A.

The Constituent Assembly gave the Supreme Court of India and the High Courts of the states the power to issue writs against violation of (the negative) fundamental rights. The rights in Part IV were properly speaking, principles, that were declared as important too, in a political way, and the governments were warned that the principles laid down in this part were fundamental to governance (Article 37).

It is important to note that while in many constitutions like that of the United States rights are only mentioned, in the Indian Constitution these are properly framed. Similarly while in U.S. and some other constitutions the rights were stated in crisp, unqualified language in Indian Constitutional restrictions on rights are also provided. Whatever conditions are attached to such rights in the public interest are spelt out by the judiciary. In the large body of the Indian Constitution most of the fundamental rights are stated in qualified terms, like ‘subject to public order’ (Article 25) or ‘nothing in this Article shall prevent the state from making any law’ (Article 16). This does not mean that the Indian judiciary has no creative role to play in respect of fundamental rights. It is frequently required to interpret the Articles on fundamental rights in the light of the qualifications attached to the Articles.

Another difference of the Indian Constitution with the US Constitution is that the Indian Constitution provides for not only individual rights but also group rights. The US Constitution grants only individual rights. The group rights in the Indian Constitution are confined to cultural and educational spheres.

The most important difference between the Indian and the US Constitutions is that, whereas the constitution makers of the USA were guided by the eighteenth century laissez faire doctrine, the constitution makers of India were guided by a welfarist doctrine. This positive, reformist and welfarist, approach to the Constitution was reflected most in the Parts III and IV on fundamental rights and directive principles.

### 3.3 IMPORTANT CHARACTERISTICS

In the first place, the fundamental rights that were asserted were not only against arbitrary state intervention; they were also against social discrimination among people. Thus, Article 17 abolished untouchability and made it an offence punishable in
accordance with law. So was prohibited traffic in human beings and begar (unpaid labour) and similar forms of forced labour, that were made punishable in accordance with law [Article 23 (1)].

In the second place, the Constitution made some enabling provisions for the state authorizing it to take special measures for the welfare of the members of the backward classes, the Scheduled Castes and the Scheduled Tribes [Article 15(4)] and to reserve appointments and posts in services of the state [Article 16(4)].

3.3.1 Flexibility of Rights

Power to amend the Constitution including fundamental rights and powers of judiciary to protect fundamental rights and interpret the constitution have made fundamental rights flexible provisions to an extent. Some amendments in the Constitution have led to the expansion of economic opportunities of the weaker sections of the country whereas some have limited the scope of rights. At the same time through its judgements judiciary has widened the scope of rights.

It should be noted further that the difference between the fundamental rights and the directive principles of the Indian Constitution has not remained watertight. The 25th Amendment to the Constitution in 1971 laid down that any law giving effect to some clauses of Article 39 (in Directive Principles) would not be void because of its conflict with any of the Fundamental Rights granted in Part III. The 42nd Amendment in 1976 generalized this exception with regard to any of the directive principles of state policy. The 96th Amendment in 2002 virtually transferred Article 45 from Part IV to Part III in the form of Article 21A (free and compulsory education to children up to 14 years).

This transfer of course does not automatically ensure free and compulsory education of all children. Article 21A says that ‘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.’ In fact for a long time free primary education is being provided by the state in all parts of the country within its capacity. Article 21A, therefore, may be regarded simply as constitutionalization of an existing practice.

Almost an opposite trend is visible with regard to property. Originally, the Constitution provided for the right to property to all citizens except for the right of the state to acquire property for public purpose (with compensation). The requirements of the land reform programme of the Government led to numerous amendments of the Article right from the first year of the republic until it was removed from Part III of the Constitution to form a new chapter (Chapter IV) of Part XII that deals with ‘Finance, Property, Contracts and Suits,’ by the 44th Amendment in 1978. In 1982 the Supreme Court held that right to property is no more a fundamental right, but it is a constitutional right (Bishamber v. The State of Uttar Pradesh, 1981).

Over the years, however, there has been an increase in restrictions on personal freedoms because of considerations of security of the state.

3.3.2 Laws and Rights

According to Article 13 all old laws inconsistent with the rights conferred in Part III would be void and the state shall not enact any law taking away these rights. However, the state has been enabled to pass laws for the acquisition of estates (Article 31A). Further, any law included in the Ninth Schedule since the first amendment
of the Constitution in 1951 and the laws giving effect to any of the Directive Principles of State Policy (since the 42nd Amendment in 1976) have been saved. All such savings are, however, subject to judicial review as per a number of judgements of the Supreme Court of India.

Further, as it has already been said, the Articles in this part have themselves created scope of judicial interpretation.

Check Your Progress 1
1) Why did Constituent Assembly give importance to issue of rights?

2) In what aspects Indian System of rights differ from some other Constitutions?

3) Describe two important characteristics of the system of rights in the Constitution.

4) How do Directive Principles of State Policy differ from Fundamental Rights?

3.4 SCOPE OF THE FUNDAMENTAL RIGHTS

There are two kinds of right, some available to all persons living in India and some available only to citizens.

Following the 44th Amendment the Fundamental Rights in Part III of the Constitution come under six heads:

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

3.4.1 Right to Equality

The state shall not deny any person equality before the law or equal protection of law to any citizen (Article 14). This means that no one is above the law or has a special privilege under the law. At the same time everyone is to be equally treated by law.

The state shall not discriminate against any citizen on ground only of race, religion, caste, sex or place of birth, and no citizen shall be discriminated against in the use of public places and public utilities on the same grounds. However, the state can make special provision for women, children and any socially and educationally backward class (Article 15). There shall be equality of opportunity in respect of public employment for all citizens and they may not be deprived of equal opportunities on grounds only of religion, race, caste, sex, descent or place of birth. However, the state can make special provision for reservation of posts for members of any backward class or citizens not adequately represented in the services or for the Scheduled Castes and Scheduled Tribes. The state may make provision for reservation in promotions for members of the Scheduled Castes and the Scheduled Tribes (Article 16).

Untouchability is abolished and punishable by law (Article 17). The state shall not confer any title other than military or academic. No citizen shall accept any title from a foreign state. No person other than a citizen, while holding an office of profit under the state, shall, without the consent of the President, accept a title from a foreign state. No person holding an office of profit under the state shall, without the consent of the President, accept any gift or emolument from a foreign state (Article 18).

3.4.2 Right to Freedom

Article 19 confers, on all citizens, freedom

a) of speech and expression subject to reasonable restrictions imposed by laws in the interest of sovereignty and integrity of India, the security of the state, friendly relations with the foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence;

b) to assemble peaceably and without arms subject to reasonable restrictions imposed by law in the interest of the sovereignty and integrity of India or public order;

c) to form associations or unions subject to reasonable restrictions imposed by law in the interest of the sovereignty and integrity of India, public order or morality;

d) to move freely throughout the territory of India or reside in any part of India subject to reasonable restrictions imposed by law in the interests of the general public or the protection of interests of any Scheduled Tribe; and

e) to practise any profession or to carry on any occupation, trade or business subject to reasonable restrictions imposed by law in public interest.
Articles 20 and 22, together, provide for protection in respect of conviction for offences beyond law and detention without trial to all persons except in the case of preventive detention primarily for political reasons. Article 21 forbids the deprivation of the life and personal liberty of all persons except according to procedure established by law.

A new Article (Article 21A) promises the right to education to all children of the age between six and fourteen.

3.4.3 Right against Exploitation

Traffic in human beings and forced labour, like begging, are prohibited though the state may impose compulsory service for public purposes without discrimination (Article 23). Children below the age of 14 may not be employed in factories, mines, and other hazardous jobs (Article 24).

3.4.4 Right to Freedom of Religion

Subject to public order, morality, and health, all persons are equally entitled to freedom of conscience and the right to profess, practise and propagate religion [Article 25(1)]. However, the state can legislate on economic, financial, political, and other secular activities associated with a religious practice [Article 25(2)]. The state can also legislate for social welfare and reform, and to throw open Hindu religious institutions of public character to all sections of the Hindus [Article 25(3)].

Article 25 is the foundation of Indian secularism, not only because it guarantees religious freedom of individuals and equality of all religions, it also makes a clear distinction of religious affairs of the people, and the secular activities of the state. The state is entitled to regulate the secular activities, including the economic, financial, and political. The state is entitled to undertake social welfare and social reform of all sections of the people. In respect of throwing open of the religious institutions of public character, however, the state power is confined to the Hindus. In this respect, the Hindu will include followers of the Sikh, the Jaina, and the Buddhist religions.

This last stipulation will be understood only if read together with Article 17 that prohibits untouchability, an evil consequence of the caste system. Untouchability exists among the Hindus. The Jainas also have a kind of caste system and are vulnerable to untouchability while several ‘untouchable’ castes have converted themselves to Buddhism. At the back of this provision there is a strong tradition of the temple entry movement since the 1920s.

Article 26 provides to all religious denomination the right to set up and manage their religious institutions, to acquire and manage property subject to public order, morality, and health. Article 27 forbids the imposition of any tax for the exclusive benefit of any particular religion. Article 28 forbids the imparting of religious institutions wholly funded by the state. In other schools students may not be forced to attend religious instructions.

3.4.5 Cultural and Educational Rights

These are aimed at the benefits of the minorities. Any section of people in India or any part of it has the right to preserve their language, script and culture. No citizens shall be denied admission into a school, maintained or aided by the state on the
3.4.6 Right to Constitutional Remedies

The Supreme Court has been given power to enforce the Fundamental Rights by appropriate remedies to their violation. It can issue writs of *habeas corpus* (commanding the detaining authorities to bring a detained person to the court for trial), *mandamus* (ordering a government to do its duty), prohibition (stopping an authority from violating someone's right), *quo warranto* (asking an official body of the authority under which a power has been exercised), and *certiorari* (taking over a case from a lower court by a higher court) towards this objective (Article 32). Article 226 of the Constitution has granted the same powers to the State High Courts also.

3.5 DIRECTIVE PRINCIPLES OF STATE POLICY

As has been mentioned earlier that the Directive Principles of State Policy are a special feature of the Indian Constitution. They do not restrict the power of the state, they add to the state's responsibility, thereby indirectly enhance its powers. Essentially, they are aimed at social welfare, particularly, of the weaker sections of the Indian people.

3.5.1 The Specific Principles

The state shall strive to reduce inequalities of income, status, facilities, and opportunities not only among individuals but also among groups residing in different areas and pursuing different occupations.

The state shall, in particular, try to secure to all citizens the right to an adequate means of livelihood, distribution of ownership and control of material resources of the community so as to best serve the common good; resist concentration of wealth and the means of production against common detriment; secure for men and women equal pay for equal work; secure improvement of health and strength of workers; and free and dignified growth of children.

The state shall take steps to organize and empower village *panchayats*; secure participation of workers in the management of industries; frame a uniform civil code; secure separation of judiciary and executive.

Within the limits of its resources the state will make provision for the rights to work, to education and to public assistance to the unemployed, sick, old and disabled; secure just and humane conditions of work and maternity relief; and decent living wage; raise level of education, standard of living and public health; early childhood care and education of children below the age of six.

For improvement of agriculture and animal husbandry try to improve the breeds and prohibit slaughter of calves, cows, and other milch and draught cattle. It will try to improve environment, protect forest cover and wild life.
It will try to preserve monuments, and places and objects of historical interests. Finally, it will endeavour to promote international peace and cooperation.

**Check Your Progress 2**

1) Describe the Right to Equality as provided in the Constitution of India.

2) What freedoms have been provided to citizens and what restrictions have been placed on them?

3) How does the Constitution of India ensure secularism?

4) Describe the specific principle contained in the Directive Principles of State Policy.

### 3.6 FUNDAMENTAL DUTIES

Following the recommendations of Swaran Singh Committee, a new section, Part IV A, on Fundamental Duties, was added to the Constitution. It consists of a single Article (51 A) containing a charter of ten Fundamental Duties for citizens. The legal status of Fundamental Duties is quite similar to Directive Principles, which as we know, are instructions addressed to the State, and it is not legally bound to follow these instructions. The Fundamental Duties are also in the nature of instructions but addressed to the citizens; they too have no legal sanction in the sense that the State is not expected to monitor the citizens to see if the duties are being carried out.

The underlying principle of Fundamental Duties appears to be that the individual exercising their rights must respect the rights of other members of the community. Thus, a person cannot injure the religious sentiments of another person by way of
speech or writing and assert that they are protected by their right to freedom of expression under Article 19. Although there are no provisions in the Constitution for their enforcement, any law seeking to prohibit the violation of Fundamental Duties can be upheld by the Courts, even if the law restricts a Fundamental Right. We may also point out here that under the provisions of Article 31C, a law seeking to implement the Directive Principles, and imposing in the process a restriction of a Fundamental Right, would similarly be upheld by the Courts.

3.6.1 Implication of Inclusion of Fundamental Duties

Before coming to the specific duties listed in the section on Fundamental Duties, let us examine the implications of its inclusion. The insertion of a specific section on duties lays down some obligations which a citizen is expected to fulfill while enjoying their Fundamental Rights. It also declares adherence to Article 29(1) of the Universal Declaration of Human Rights which holds that ‘Everyone has duties to the community in which alone the free and full development of his personality is possible’. The Constitutions of Japan, USSR and China have separate charters on Rights.

It may be mentioned, however, that irrespective of the specific duties added by Article 51 A, the Constitution shows an expectation of ‘responsible’ participation by the people. It inheres, for example, in the promise which the ‘people of India’ make in the Preamble, to each other and to the nation. Thus, the pledge to constitute India into a ‘Sovereign, Socialist, Secular, Democratic Republic’ involves ‘securing to all its citizens’ justice, liberty, equality and fraternity. This in turn is geared towards achieving the ‘dignity of the individual’ and ‘national integrity’.

Most Fundamental Rights provided by the Constitution are an expression of this ‘solemn resolve’ of the people of India as declared in the Preamble. They include, therefore, a corresponding duty so that the aims of equality, liberty, justice etc. are secured in a manner that the dignity of the individual is not affronted and national integrity not compromised. The various rights to freedom in the Constitution would, for example, involve corresponding duties whereby the exercise of this right does not encroach on similar rights of others or endangers national security, public order, etc. Also, the Directive Principles which aim at building a just society also give expression to the promise which the people of India made to each other in the Preamble. Even before the insertion of Article 51 A, therefore, the Supreme Court observed that it was ‘fallacy to think that under our Constitution there are only rights on the citizens. The mandate of our Constitution is to build a welfare society and that object may be achieved to the extent that Directive Principles are implemented by legislation’ (Chandra Bhawan vs. State of Mysore, 1970, S.C. 2042.).

3.6.2 Range and Type of Duties

The duties which are incorporated in the India Constitution by the Forty Second Amendment range from asking individuals to develop their personalities to seeking a meaningful role for the nation in the world order. Some of these duties enjoining individuals to strive towards ‘excellence’ and developing ‘scientific temper’ or safeguarding ‘public property’ appear generally to instill sincerity and responsibility. A general slant is, however, towards imbibing a sense of national commonality. It is thus a duty of every citizen of India to respect symbols of national unity like the national flag, the constitution and the National Anthem, and source of common heritage like the ‘national struggle for freedom’ and the tradition of ‘composite culture’. Citizens are also expected to preserve the ‘sovereignty’ and ‘unity’ of the country not
3.7 LET US SUM UP

During colonial period Indians were subjected to denial of rights in various ways. The idea of guaranteed rights, therefore, became one of the moving forces in the freedom struggle. In this background inclusion of rights in the Constituent Assembly was almost a forgone conclusion. Though there were differences over the form of rights and their scope, there was consensus about their inclusion. The Assembly finally included in the Constitution two sets of rights in two parts – III and IV one justiciable – Fundamental Rights and other non-justiciable – Directive Principles of State Policy. While the first set of rights can be equated primarily with civil and political rights placing restrictions on the state not to interfere in the liberty and equality of citizens the other set that is Directive Principles can be understood in the nature of economic, social and cultural rights asking the state to adopt positive measures to fulfill citizens needs for a dignified life.

Constitution empowers the Judiciary to protect Fundamental rights. Of course rights are not totally unrestricted. State can suspend or reduce these in the interest of country’s security, social order, health etc. Judiciary, however, has placed limitations on the powers of the state in this regard. At the same time by powers to amend the constitution available to Parliament and interpret the constitution and review the legislative and executive actions available to judiciary there has come both limitations and widening of the scope of rights. The Indian Constitution thus provided a detailed vision of rights, machinery for their protection and promotion and a balance between individuals rights and society good and state’s security.

3.8 ANSWERS TO CHECK YOUR PROGRESS

EXERCISES

Check Your Progress 1

1) During colonial period Indians were denied basic rights. Early social reformers and nationalist leaders were quite influenced by the idea of rights. Demand and movement for civil liberties and rights had become part of national movement.

2) Indian Constitution describes rights in clear and comprehensive manner: limitations on rights are prescribed in the chapter on Fundamental rights. Indian constitution not only provides for individual rights but also group rights.

3) Explain characteristics of Flexibility and relationship between Law and Rights. See sub-sections 3.3.1 and 3.3.2.

4) Fundamental Rights are primarily civil and political rights, and negative in nature. These are justiciable. Directive Principles provide for positive economic, social and cultural rights but are non-justiciable.

Check Your Progress 2

1) See sub-section 3.4.1.
2) Freedoms of Speech and expression, To assemble peaceably and without arms, to form associations and unions, to move freely through out the territory of India or reside in any part of India, and to practice any profession or carry on any occupation trade etc. For restrictions on these freedoms report sub-section 3.4.2.

3) By granting freedom of religion and prohibiting state to favour any religion see sub-section 3.4.4.

4) Write on the basis of sub-section 3.5.1.

3.9 SUGGESTED READINGS


