



JAGAT GURU NANAK DEV PUNJAB STATE OPEN UNIVERSITY, PATIALA

(Established by Act No. 19 of 2019 of the Legislature of State of Punjab)

**The Motto of the University
(SEWA)**

SKILL ENHANCEMENT

EMPLOYABILITY

WISDOM

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**Bachelor of Computer Applications (BCA)
Course Name: Human Rights and Duties
Course Code: BCA-2-VEC-2**

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SELF-INSTRUCTIONAL



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PREFACE

Jagat Guru Nanak Dev Punjab State Open University, Patiala was established in Decembar 2019 by Act 19 of the Legislature of State of Punjab. It is the first and only Open Universit of the State, entrusted with the responsibility of making higher education accessible to all especially to those sections of society who do not have the means, time or opportunity to pursue regular education.

In keeping with the nature of an Open University, this University provides a flexible education system to suit every need. The time given to complete a programme is double the duration of a regular mode programme. Well-designed study material has been prepared in consultation with experts in their respective fields.

The University offers programmes which have been designed to provide relevant, skill-based and employability-enhancing education. The study material provided in this booklet is self instructional, with self-assessment exercises, and recommendations for further readings. The syllabus has been divided in sections, and provided as units for simplification.

The Learner Support Centres/Study Centres are located in the Government and Government aided colleges of Punjab, to enable students to make use of reading facilities, and for curriculum-based counselling and practicals. We, at the University, welcome you to be a part of this institution of knowledge.

Prof. G. S. Batra,
Dean Academic Affairs

BACHELOR OF COMPUTER APPLICATIONS (BCA)
SEMESTER-II
BCA-2-VEC-2: HUMAN RIGHTS AND DUTIES

MAX MARKS:100

EXTERNAL:70

INTERNAL:30

CREDITS:4

PASS:40%

Objective: The objective of the course is to impart Learners basic knowledge about human rights as well as duties, and to enable them to meet challenges of human rights violations.

INSTRUCTIONS FOR THE PAPER SETTER/EXAMINER:

1. The syllabus prescribed should be strictly adhered to.
2. The question paper will consist of three sections: A, B, and C. Sections A and B will have four questions each from the respective sections of the syllabus and will carry 10 marks each. The candidates will attempt two questions from each section.
3. Section C will have fifteen short answer questions covering the entire syllabus. Each question will carry 3 marks. Candidates will attempt any 10 questions from this section.
4. The examiner shall give a clear instruction to the candidates to attempt questions only at one place and only once. Second or subsequent attempts, unless the earlier ones have been crossed out, shall not be evaluated.
5. The duration of each paper will be three hours.

INSTRUCTIONS FOR THE CANDIDATES: Candidates are required to attempt any two questions each from the sections A, and B of the question paper, and any ten short answer questions from Section C. They have to attempt questions only at one place and only once. Second or subsequent attempts, unless the earlier ones have been crossed out, shall not be evaluated.

Course: Human Rights and Duties	
Course Code: BCA-2-VEC-2	
Course Outcomes (COs) After the completion of this course, the students will be able to:	
CO1	Gain a comprehensive understanding of human rights principles, including the Universal Declaration of Human Rights and other relevant international and regional instruments.
CO2	Understand the legal frameworks and mechanisms for protecting human rights at the international, regional, and national levels.
CO3	Understand the historical development of human rights concepts and movements, including key events and figures.
CO4	Analyze human rights issues and challenges, including discrimination, inequality, and violations of human rights.
CO5	Develop skills in advocating for human rights and engaging in activism to promote and protect human rights.

Section A
(Introduction to Human Rights)

Unit I- Foundational Aspects: Meaning, Characteristics; Classification; Generations of Human Rights.

Unit II- Constitutional-Legal Recognition in India: Fundamental Rights; Directive Principles of State Policy.

Section B
(Introduction to Human Duties)

Unit I- Conceptual Perspective: Meaning, Nature & Characteristics of Human Duties; Classification of Human Duties; Relevance of Human Duties.

Unit II- Recognition to Human Duties in India: Fundamental Duties in Indian Constitution Part IV A.

Suggested Readings:

1. United Nations. The United Nations and Human Rights 1945-1995. Geneva: United Nations Blue Books Series, Vol. VII, 1996.
2. Sastry, S. N. Introduction to Human Rights and Duties. Pune: University of Pune Press, 2011.
3. Mertus, Julie. The United Nations and Human Rights-A Guide for a New Era. London: Routledge, 2009.
4. Donnelly, Jack. Universal Human Rights in Theory and Practice. New York: Cornell University Press, 2013.
5. Hammarberg, Thomas. Taking Duties Seriously- Individual Duties in International Humanitarian Law. Versoix: International Council on Human Policy, 1999.
6. Miller P. Frederic, et al. Fundamental Rights, Directive Principles and Fundamental Duties in India. New York: VDM Publishing, 2009.
7. Deol, Satnam Singh. Human Rights in India-Theory and Practice. New Delhi: Serials Publications, 2011.

BACHELOR OF COMPUTER APPLICATIONS (BCA)

SEMESTER-II

COURSE: HUMAN RIGHTS AND DUTIES

**UNIT 1: MEANING; CHARACTERISTICS; CLASSIFICATION; GENERATIONS
OF HUMAN RIGHTS**

STRUCTURE

1.0 Objectives

1.1 Introduction

1.2 Defining Human Rights

1.3 Nature of Human Rights

1.4 Check your Progress - I

1.5 Classification of Human Rights

1.5.1 Classification from Social Sciences Point of View

1.5.2 Classification from Enforceability Point of View

1.5.3 Classification from Historical Point of View

1.5.4 Classification on the Basis of Individual and collective rights

1.5.5 Classification from Philosophical Perspective

1.6 Check your Progress - II

1.7 Three Generations of Rights

1.7.1 First Generation Rights

1.7.2 Second Generation Rights

1.7.3 Third Generation Rights

1.8 Summary

1.9 References

1.10 Further Readings

1.11 Model Questions

1.0 OBJECTIVES:

The objective of this lesson is to demonstrate an understanding of the meaning and nature of human rights. It further provides details about various types of classification of human rights. It will also apprise the reader with the historical evolution of human rights as three generations of rights.

1.1 INTRODUCTION:

In last few decades human rights have come to the centre stage within the theory and practice of international law and politics. Human rights are an integral part of every human being and form an integral part of the social cultural fabric of mankind. These are essential rights which every human being requires to lead a dignified life. Rights are the touch stones of political legitimacy. Their possession by citizens of a state qualifies it as a democratic and non-democratic state. Rights as a Bosanquet stated “is a claim recognised by the society and enforced by the state”. The society recognises the claims of individual but it is the coercive sanction of the state that gives the right the legal recognition. Leski stated that “Rights in fact are those conditions of social life without which no man can see in general to be himself at his best”. He further added “every state is known by the rights it maintains”. According to Article 1 of the Universal Declaration of Human Rights “All human beings are born free and equal in dignity and rights.” This substantiate the fact that everyone is entitled to these rights irrespective of their caste, class, race, religion, gender, place of birth, or any other consideration. These are rights that allow us to develop fully and use our human qualities, our intelligence, our talents and our conscience to satisfy our spiritual and other needs. The purpose of this chapter is to give a brief outline of the meaning, nature and scope of human rights. It will also elaborate how various rights have been classified internationally.

1.2 DEFINING HUMAN RIGHTS:

The concept of human rights is based on the belief that every human being is entitled to enjoy her/his rights without discrimination. Various academicians and Jurists have defined Human Rights differently. **Milne** argues that “Human rights are simply what every human being owes to every other human being and as such represent universal moral obligations. These rights can be summarised as the right to life, to freedom from unprovoked violence and arbitrary coercion, to be dealt with honestly, to receive aid in distress, and to be respected as a human person”. Some of the other definitions of human rights have been mentioned below.

Susan Moller Okin states that human rights is “*a claim to something (whether a freedom, a good, or a benefit) of crucial importance for human life*”.

According to the United Nations Centre for Human Rights: “*Human Rights could be defined as those rights which are inherent in our nature and without which we cannot live as human beings*”.

According to DD Basu: “*Human rights are those minimum rights which every individual must have against state or other public authorities by virtue of his being a member of human family, irrespective of any other consideration*”.

According to MH Beg (former Chief Justice of India): “*Human Rights imply justice, equality and freedom from arbitrary and discriminatory treatment. These cannot be subordinated to the interest of the rulers. No one can be subjected to coercion for holding particular religious beliefs. The doctrine of national sovereignty cannot justify violation of human rights*”.

A very comprehensive definition of human rights has been found in the **Protection of Human Rights Act, 1993**. According to this Act “*Human Rights mean the rights relating to life, liberty, equality and dignity of individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India*”.

1.3 NATURE OF HUMAN RIGHTS:

The concept of Human Rights defines basic dignity and worth of human being and his or her most fundamental entitlement. The denial of human rights and fundamental freedoms not only is an individual and personal tragedy but also creates conditions of social and political unrest sowing the seeds of violence and conflict within and between society and Nations. The key characteristics of human rights are:

- **Universal:** These rights are called universal in nature as every human being is equally entitled to these human rights. The entry into force of the UN Charter on 24 October 1945 marked the formal recognition of human rights as a universal principle, and compliance with human rights was mentioned in the Preamble and in Articles 55 and 56 as a principle to be upheld by all states. In 1948, it was followed by the adoption of the Universal Declaration of Human Rights (UDHR), and in 1966 by the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The UDHR emphasized on the universality of human rights. Its universality is underlined by the fact that in 1948 it was formulated and agreed upon not only by Western states, but also by representatives from countries such as China, the Soviet Union, Chile, and Lebanon. It was moreover adopted without any objection: no votes against and only eight abstentions. The preamble of UDHR proclaimed that Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations and has been reasserted in many international human rights conventions, declarations, and resolutions.
- **Inalienable:** Human rights are inalienable. It means that they cannot be taken away, except in specific situations and according to due process. The inalienability of human rights has a base in the principle of natural rights. The state is the protector of these rights. All human being are entitled to these rights just by virtue of being born as a human being.
- **Indivisible and Interdependent:** The various Declarations and Conventions on human rights have provided a comprehensive list of rights including civil and political rights as well as economic, social and cultural rights. However, it has to be understood that all these are indivisible and interdependent. This means that one set of rights cannot be enjoyed fully without the other For example, right to effectively participate in the local self-government in India may seem to be a civil and political right of women; however, its effective enforcement lies in the ensuring economic, social and cultural rights to women. Similarly, violating economic, social and cultural rights can negatively affect many other rights. The interdependence of various human rights was also stressed upon in the Vienna Declaration and Programme of Action (1993). As stated in the 1993 Vienna Declaration and Programme of Action: ‘All human rights are universal, indivisible and interdependent and interrelated. The international community must treat

human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.’

- **Human Rights are not absolute:** Human beings are social animal and we live in civic society and there are certain restrictions in the enjoyment of various rights and freedoms. Human rights are not absolute in nature and there are certain restrictions imposed on the enjoyment of these rights for greater public good. However, all these restrictions must be based on the principle of natural justice.
- **Dynamic and Subjective:** Human rights are not static. As human rights deal with human beings, the understanding and scope of human rights keep on changing with the changing socio-cultural milieu. This makes the human rights dynamic as well as subjective.

1.4 CHECK YOUR PROGRESS I:

- (a) **Do you agree that human rights are interrelated? Explain by giving an example from your day-to-day experiences.**
- (b) **If human rights are universal, what leads to enjoyment of these rights only by few? Introspect.**

1.5 CLASSIFICATION OF RIGHTS:

Though all human rights are indivisible and interrelated, the human rights have been classified in a number of ways by various scholars. Some of the major classification of human rights has been discussed below.

(a) Classification from Social Sciences Point of View:

(i) Civil and Political Rights:

Civil rights are those rights which provide opportunity to each person to lead a civilized social life. Civil rights are attached to people simply because they are human beings. They're guarantees of equal social opportunities and protection under the law, regardless of race, religion, or other characteristics. These rights have been listed in the first eighteen articles of the UDHR. Later on these rights were made legally binding for the State Parties through International Covenant on Civil and Political Rights. Some of these rights are: right to freedom from torture; right to a fair trial; the right to freedom of assembly and association; the right to freedom of thought, conscience and religion; the right to freedom of expression; the right to effective remedy; the right to privacy; right to liberty and security; right to asylum; right to freedom from discrimination etc.

Political rights are those rights by virtue of which citizens get a chance in the political process. These enable citizens to take an active part in the political process. The degree of political freedom enjoyed by the citizens of a country has two prerequisites. The first one is whether the Constitution of the country extends these political rights to individuals and the second one is how effectively the people are able to enjoy these rights in reality. The second issue is equally relevant from human rights perspective as it ensures that the State is able to provide the rights mentioned in the Constitution to the citizens in actual sense. Articles 19 to 21 in UDHR enumerated various political rights. These rights were later codified in the ICCPR.

These rights include: right to vote; to get elected; a right to hold public office and right to criticize.

(ii) Economic, Social and Cultural Rights

Economic and social rights are human rights that relate to the ability of a person to live with dignity and participate fully in the society. These rights provide the conditions necessary for prosperity and wellbeing. Social rights often deal with the allocation and distribution of resources. Social rights are primarily private rights requiring government intervention and sacrifice, rather than a negative right that implicates government inaction. The economic and social rights have been listed in Articles 22 to 26 of the UDHR, and were further developed and set out as binding treaty norms in the ICESCR. Economic rights refer, for example: right to property; the right to work; the right to a fair wage; a reasonable limitation of working hours; and trade union rights. Social rights are those rights necessary for an adequate standard of living, including rights to health; shelter, food, social care, and the right to education. These rights have been enumerated under Articles 6 to 14 in the ICESCR.

Cultural Rights are rights related to art and culture, both understood in a large sense. The objective of these rights is to guarantee that people and communities have an access to culture and can participate in the culture of their choice. Cultural rights are human rights that aim at assuring the enjoyment of culture and its components in conditions of equality, human dignity and non-discrimination. They are rights related to themes such as language; cultural and artistic production; participation in cultural life; cultural heritage; intellectual property rights; author's rights; minorities and access to culture, among others. The UDHR lists cultural rights in Articles 27 and 28: the right to participate freely in the cultural life of the community, the right to share in scientific advancement and the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author. These rights have also been mentioned in Article 15 of ICESCR and Article 27 of ICCPR.

(b) Classification from Enforceability Point of View:

In general understanding, civil and political rights are called 'Negative' rights as enjoyment of these rights require the non-intervention of the state (negative obligation) while economic, social and cultural rights are called 'positive rights' as these rights can be enjoyed by the people through active intervention on the part of the state (positive obligations). In other words, negative rights entail an obligation for the state to refrain from certain actions, while positive rights oblige it to provide certain guarantees.

There has always been a dichotomy between civil and political rights, and economic, social and cultural rights. As civil and political rights can be expressed in very precise language, imposing merely negative obligations which do not require resources for their implementation, these rights are easily enforceable. On the other hand, economic, social and cultural rights are considered to be expressed in vague terms, imposing only positive obligations conditional on the existence of resources and therefore involving a progressive realisation. As a consequence of these alleged differences, it has been argued that civil and political rights are justiciable whereas economic, social and cultural rights are not. In other

words, this view holds that only violations of civil and political rights can be adjudicated by judicial or similar bodies, while economic, social and cultural rights are 'by their nature' non-justiciable. However, in the last one decade, economic, social and cultural rights have been re-examined. Various international documents have stressed upon the indivisibility and interdependency of human rights.

(c) Classification from Historical Point of View:

Human rights, both conceptually and practically are hardly new. The rules for the protection of human rights may be traced as far back as in the Babylonian laws. Babylonian King Hammurabi issued a set of laws to his people which are called Hammurabi's codes. The codes though offered harsh punishments, it provided standards by which Babylonian could order their lives and treat one another. The historical evolution of human rights is also rooted in ancient art and in philosophical concepts of natural law and natural rights. The basic principles of human rights can be found in all religious traditions, ancient and modern, as well as in all philosophical traditions dating from the ancient text of the Upanishads and the early Buddhist and the later in the writings of Plato, Saint Thomas Aquinas and the enlightenment philosophers. The term civil and political rights however evolved lately specifically in 13th century in English common law with the introduction of Magna Carta in the year 1215. Although the Charter applied to privileged elite, gradually the concept was broadened to include all Englishman in the Bill of Rights in 1689 and eventually all citizens. The political and economic rights of people recognised under English laws laid the groundwork for the French Declaration of the Rights of Man and of the Citizens (1789) and the US Bill of Rights (1791).

The Second World War was a turning point in the history of human rights. The problem of the Holocaust accompanied by the perception that the world's nations needed to unite to prevent another catastrophe led to the foundation of United Nations in 1945. Shortly after this, a committee chaired by former US first lady Eleanor Roosevelt set to work to draft the Universal Declaration of Human Rights. The task was completed in 1948 and was proclaimed by General Assembly on December 10, 1948 making that day International Human Rights Day. The declaration was later divided into two treaties known as International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. These two documents got ratified and came into force in 1976. Besides this international legal framework, various regional mechanisms have been established in various regions across the world to protect and promote human rights.

(d) Classification on the Basis of Individual and collective rights

Although the fundamental purpose of human rights is the protection and development of the individual (individual rights), some of these rights are exercised by people in groups (collective rights). Freedom of association and assembly, freedom of religion and, more especially, the freedom to form or join a trade union, fall into this category. The collective element is even more evident when human rights are linked specifically to membership of a certain group, such as the right of members of ethnic and cultural minorities to preserve their own language and culture. One must make a distinction between two types of rights, which are usually called collective rights: individual rights enjoyed in association with others, and the rights of a collective. The most notable example of a collective human right is the right to self-

determination, which is regarded as being vested in peoples rather than in individuals (Articles 1 ICCPR and ICESCR). The recognition of the right to self-determination as a human right is grounded in the fact that it is seen as a necessary precondition for the development of the individual. It is generally accepted that collective rights may not infringe on universally accepted individual rights, such as the right to life and freedom from torture.

(e) Classification from Philosophical Perspective

One way of classifying human rights is from philosophical point of view. It can come under two major heads that is in liberal sense and strict sense. Theological theory of human rights as well as theory of natural law can be broadly considered as theories from liberal perspective. The reason for the same is that theological theory is based on the perception that source of human rights is God or religious scriptures. Similarly the natural rights theory is based on the perception that source of human rights is nature. Both these theories are highly un-codified and lead to subjectivity and different interpretation which can vary from person to person. On the other hand, the concept of positive law can be considered as a theory in strict sense. According to the legal positivism, the source of human rights is law. The positive law is the foundation of the present day codified concept of human rights. In today's world all the human rights which have been provided through the constitution or under international law are considered to be the codification of human rights in true sense. Though there is no denying to the fact that human rights exist even if there is no codified law to enforce the same. As stated earlier state is not the provider of these rights, in fact state is the protector of these rights. Another major theory in the strict sense can be the Marxian concept of human rights. The entire struggle of communism has been a struggle for human rights and to abolish economic exploitation of the proletariat by the bourgeois. The Marxian Communism propagated for the classless society. The state has been considered duty-bound to abolish the economic exploitation and human right should prevail in society for all without any discrimination.

1.6 CHECK YOUR PROGRESS II:

- 1. Which right is more crucial for a person: right to vote or right to employment? Justify your answer.**
- 2. What make Directive Principles of State Policy in India non enforceable in India?**

1.7 THREE GENERATIONS OF RIGHTS:

Framework of human rights is often described in terms of generations of rights. The division of human rights into three generations was first proposed by Karel Vasak at the International Institute of Human Rights in Strasbourg.

(a) First Generation Rights:

The formalisation of civil and political rights sometimes termed as first generation rights began in England with the Magna Carta (1215) and the Bill of Rights (1689). Civil and Political Rights are often referred to as negative rights because they came to protect the individual against the state. These are related to liberty and refer fundamentally to civil and political rights. These rights represent the first generation of subjective rights, and more precisely those rights that refer to personal autonomy of the individual and the rights that enable citizen participation

in a society. The rights of this generation are mainly political and civil rights and freedoms. Rights such as freedom of speech, free choice of residence and freedom of religion are among the first generation rights. The first generation of rights is generally about the person against political power and typically, maintains the originality of the human. This has been considered in article 2 to 21 of the Universal Declaration of Human Rights. Martin Golding called these rights as “selective” rights which mostly deal with the concepts of freedom and choice. They are the same traditional freedoms and citizenship privileges which have been formed as political and civil rights. The first generation rights mainly match the Liberalism Tradition; because these are the inalienable rights of people which have immunity against aggression of common goods and state authority; the point emphasized by Liberalism. In the modern age, these rights have found their consecration in constitutions and in the laws of most countries, as well as in international documents.

(b) Second Generation Rights:

The second generation rights are related to equality, including economic, social and cultural rights. The second generation of rights, against the first generation of rights requires institutional support from the state, the first generation rights can be exercised independently and singular. The state must intervene through legislation to create an institutional system that allows the exercise of these second generation rights. Rights such as education, dwelling, hygienic protection, employment and an appropriate level of living, are considered as the rights of second generation. The rights of second generation guarantee an active life along with health. These rights are also called “welfare” rights. On the contrary to the rights of first generation which generally emphasize non-intervention of the government and non-existence of obstacles (negative freedom), rights of second generation not only stress the nonexistence of obstacles, but also demand facilities and necessities from government (positive freedom). The basic idea of such division is that, the rights of first generation are ascertained by avoiding any action and rights of second generation by doing some actions; but the most important commonality between these two generations, is the emphasis of both on humanity of everybody or in other words, the rightfulness of human.

(c) Third Generation Rights:

Third generation rights came to the fore in the second half of the 20th century as more Nations became independent and the western centric colonial perspective weakened. The establishment of the third generation is the result of new needs of human. The developing human, international, social procedure and moralizing the international rights and human rights and also weaknesses of the first and second generations led to appearance of the third generation of human rights. The rights of third generation or unity rights do not talk about human; but put emphasis on the universal citizen. In contrast with the first and second generations which are products of theories (liberalists and socialists), the third generation of rights is the result of human experience and human life realities that has caused them to form. For instance, environmental pollution became an issue of grave concern after the Second World War and due to unsustainable production and consumption patterns. Hence, right to clean environment emerged as a third generation right.

In this generation of rights, the beneficiaries are society and social groups. The most important features of the third generation of rights are: establishing a powerful feeling among members of the universal society, putting emphasis on subjects higher than the geographical

areas or special economic and political systems, and specifying the rights which are made as the results of human presence in the human society. Most instances of the third generation of human rights (collective/solidarity rights) are: development right, peace right, right of human in choosing his destiny, right to have a healthy environment, right to human common wealth, right to philanthropic aids and the right to communication.

The rights in this category cannot be exerted individually, but only by groups of people. The third generation rights require not only the need to create an institutional support by the State, but, as in the case of second generation rights, they need to restrict the first generation of rights, through a so called “positive discrimination”, in the sense that these rights, like the rights of any minority, require a limitation of rights of first generation. The environmental law allows social groups to live in a healthy environment, clean, without harmful agents to health but, at the same time, imposes a number of limitations on the rights of first or second generation, like owning a forest. The only third generation right which so far has been given an official human rights status - apart from the right to self-determination, which is of longer standing - is the right to development. The Declaration on the Right to Development, adopted by the UN General Assembly on 4 December 1986, and the 1993 Vienna Declaration and Programme of Action (Paragraph I, 10) recognizes right to development. The Vienna Declaration confirms the right to development as a collective as well as an individual right, individuals being regarded as the primary subjects of development.

While the classification of rights into ‘generations’ has the virtue of incorporating communal and collective rights, thereby overcoming the individualist moral theory in which human rights are grounded, it has been criticised for not being historically accurate and for establishing a sharp distinction between all human rights. Indeed, the concept of generations of rights is at odds with the Teheran Proclamation and the Vienna Declaration and Programme of Action, which establish that all rights are indivisible, interdependent and interrelated.

1.8 SUMMARY

Human rights are the vehicles for human solidarity because they are the claims that all people are entitled to make and the obligations and responsibilities that all people share. Moreover, human rights allow us to generalize across national borders and across social settings. Human rights encompasses soft rights such as right to education for freedom from poverty and hard rights which fall under criminal law such as right not to be tortured. Humans have equal rights to enjoy political and civil freedom, to have economic and social security, to participate in community and family life, to have an education and to benefit from scientific research. In addition, humans have equal rights to dignity and to self-determination; to have their own distinctive identity and personality; to participate in culture; and to express themselves through their faith ideology and concessions. These two principles: the right to equality and the right to human uniqueness motivate our discussion and frame our purposes. The pursuit and achievement of human rights need to be considered as woven into social life at all levels including the local community and national laws and policies and international relations.

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1.10 FURTHER READINGS

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1.11 MODEL QUESTIONS

1. What do you understand by the term human rights?
2. Do you agree that human rights are Universal rights?
3. Why human rights are not absolute?
4. Name any four historical events which are significant for the growth of human rights.
5. What is the difference between individual and collective rights?
6. Who gave the concept of three generations of rights?
7. Why third generation rights are called solidarity rights?

BACHELOR OF COMPUTER APPLICATIONS (BCA)
SEMESTER-II
COURSE: HUMAN RIGHTS AND DUTIES

Unit 2: Fundamental Rights and Directive Principles of State Policy

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2.0 OBJECTIVES:

The objective of this lesson is to get a better understanding of Indian Constitution. It further provides details about various rights provided under Fundamental Rights and Directive Principles of State Policy in Indian Constitution.

2.1 INTRODUCTION:

The Constitution of any country is the political document which is adopted by the people of that country or is given to them showing what system of the government they are having in that country. Our Constitution proclaims to have been adopted and enacted and given by its own people to themselves. It is in pursuance of a solemn resolution to constitute India into a sovereign, socialist, secular, democratic republic. The constituent assembly which drafted the Constitution of India was constituted under the cabinet mission plan in 1956. It consisted of several national leaders such as Dr Rajendra Prasad, Pt Jawahar Lal Nehru, Dr BR Ambedkar. Dr Rajendra Prasad was the Chairman of this constituent assembly. On November 26, 1949 the new Constitution was finally adopted by the constituent assembly. The Constitution of India is supreme. Belief in the secularism, socialism and in peace and progress are the commitments given by our Constitution. The Constitution of India is the largest constitution in the world (initially 395 articles and 8 schedules). The Indian Constitution as Granville Austin states is “first and foremost a social document”. The core of its commitment to a fundamental change in the social order lies in the sections of Fundamental Rights and the Directive Principles of State Policy. In this lesson we will learn about two major parts of the Constitution that is Part III, which deals with Fundamental Rights and Part IV which deals with Directive Principles of State Policy

2.2 FUNDAMENTAL RIGHTS:

The Fundamental Rights reflect both India's assimilation to western liberal tradition and its desire for the political freedom it was denied under colonial rule. The Fundamental Rights, embodied in Part III of the Constitution, guarantee to each citizen basic, substantive and procedural protection against the state. These rights are fundamental in the sense that they have been incorporated in the Constitution of India. They are fundamental in the sense that they are justiciable rights and enforceable by the courts and are available to all citizens.

Provisions of Part III of the Indian Constitution which enumerates the Fundamental Rights are more elaborate than those of any other existing written constitution relating to Fundamental Rights. It covers a wide range of topics. The Constitution itself classifies the fundamental rights in six groups as follows:

- (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 (Articles 32)

The original Constitution had seven groups of rights. Of these, the right to property was eliminated by the 44th Constitutional Amendment Act 1978 so only six rights now remain as fundamental rights. These six rights have been discussed below.

(a) **Right to Equality:** Articles 14 to 18 of the Indian Constitution deal with the right to equality. Equality is one of the basic postulates of democracy and is therefore rightly made the foundation of Indian polity by the Constitution.

- (i) **Equality before law** (Article 14 of the Constitution) provides that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Equality before the law is an expression of English common law, while equal protection of laws poses its origin to the American Constitution. Both the expression seems to be identical but in fact they mean different things. While equality before the law is somewhat negative concept implying the absence of any special privilege in favour of an individual and the equal subjection of all classes of the ordinary. Equal protection of the law is a more positive concept, implying equality of treatment in equal circumstances. **Equal protection of laws** would mean that among equals, the law should be equal and equally administered. That is like should be treated alike. In other words, it means the right to equal treatment in similar circumstances both in the privilege conferred and in the liabilities imposed by the law. It does not mean that every person should be taxed equally, but that person under the same character should be taxed by the same standard.
- (ii) **Prohibition of Discrimination:** Article 15 (1) prohibits discrimination based on the place of birth, religion, race, caste or sex. Certain provisions can be made for the women, children, and citizens from any socially or educationally backward class for their upliftment (such as reservation and access to free education). However, it has to be understood that it cannot be read as prohibiting discrimination based on residence. Residence as a qualification for certain purposes such as employment may not be classed as discrimination based on caste and place of birth. The significance of the Article is that it guarantees against every form of discrimination by the state on the basis of religion, race, caste or sex. It also strikes at the root of provincialism of prohibiting discrimination based upon one’s place of birth. It also goes well with the ideal of the single citizenship which the Constitution establishes for the entire country.
- (iii) **Equality of opportunity in matters of public employment:** Article 16 guarantees equality of opportunity in matters of public employment. The state is prohibited from showing any discrimination against any citizen on ground of religion, caste, sex, and place of birth or residence. The only exceptions to the above rule of equality are:
 - Residence within the state may be laid down by the Parliament as a condition for particular classes of employment or appointment under any state or other local authority;
 - The state may reserve any post of appointment in favour of any backward class of citizens who, in the opinion of the state, are not adequately represented in the services under the state;

- The claim of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration in the matter of appointment to services and force under the Union and the states, as far as may be consistent with the maintenance of efficiency of the administration (Article 335).
- (iv) **Abolition of Untouchability:** Article 17 abolishes untouchability and its practice in any form is made an offence punishable under the law. Parliament is authorised to make a law describing the punishment for this offence under Article 35 and in exercise of this power, Parliament has enacted the Untouchability Offences Act, 1955, which has been amended and renamed in 1976 as the Protection of Civil Rights Act. The acts of offences include:
- Preaching untouchability directly or indirectly.
 - Preventing any person from entering any shop, hotel, public place of worship and place of public entertainment.
 - Refusing to admit persons in hospitals, educational institutions or hostels established for public benefit.
 - Justifying untouchability on traditional, religious, philosophical or other grounds.
 - Insulting a person belonging to Scheduled Caste on the ground of untouchability.
- (v) **Abolition of titles:** In India, the practice of British government conferring the number of titles every year mostly on their political supporters and government officers, had already created a peculiar class of nobility among the people. It was difficult for independent India to recognise and accept these titles apart from consideration of the merit of those who had them. Article 18 abolishes all titles and the state is prohibited from conferring titles on any person. The only exception made to the strict rule of non-recognition of title is that provided in favour of academic or military distinctions and it has made four provisions in this regard:
- It prohibits the state from conferring any title on any citizen or a foreigner (except a military or academic distinction).
 - It prohibits a citizen of India from accepting any title from any foreign state.
 - A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the President of India.
 - No citizen or foreigner holding any office of profit or trust within the territory of India can accept any present, emolument or office from or under any foreign State without the consent of the president.

(b) Right to Freedom: Personal liberty is one of the fundamental human rights in Indian Constitution. Article 19 to 22 deal with the different aspect of this fundamental right.

Taken together these four articles form a charter of personal liberty which provides the backbone of the chapter on fundamental rights.

- (i) **Fundamental Freedoms:** There were seven freedoms under our original Constitution. Later on, one of them ‘the right to acquire, hold and dispose of property’ was omitted by the Constitutional 44th Amendment Act 1978 leaving only six freedoms in that Article. These are:
- **Freedom of speech and expression:** Expressing one’s own views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner.
 - **Right to assemble peaceably and without arms:** It includes the right to hold public meetings, demonstrations and take out processions which can be exercised only on public land. It does not protect violent, disorderly and riotous assemblies or strike.
 - **Freedom of association:** It includes the right to form political parties, companies, partnership firms, societies, clubs, organisations or trade unions.
 - **Freedom of movement:** The freedom of movement has two dimensions, viz, internal (right to move inside the country) (article 19) and external (right to move out of the country and right to come back to the country) (article 21).
 - **Right to reside and settle in any part of the territory of India:** Though the citizens have right to reside and settle in any part of the territory of India, the right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture and customs of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.
 - **Freedom of profession, occupation, trade or business:** It doesn’t include the right to carry on a profession that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc.).
- (ii) **Protection in Respect of Conviction for Offences: Article 20** grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It provides that:
- 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 or subjected to a penalty greater than that prescribed by the law.
 - No person shall be prosecuted and punished for the same offence more than once.
 - No person accused of any offence shall be compelled to be a witness against himself.
- (iii) **Protection of Life and Personal Liberty: Article 21** declares that no person shall be deprived of his **life or personal liberty** except according to the procedure established by law. This right is available to both citizens and non-citizens. The right to life is not merely confined to animal existence or survival but also includes the right to live with human dignity and all those aspects of life which go to make a man’s life meaningful, complete and worth living.

(iv) **Right to Education: Article 21 (A)** declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years. This provision makes only elementary education a Fundamental Right and not higher or professional education. This provision was added by the **86th Constitutional Amendment Act of 2002**. Before the 86th amendment, the Constitution contained a provision for free and compulsory education for children under **Article 45 in Part IV** of the Constitution.

(v) **Protection against Arrest and Detention:** Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely, **punitive** (punishment after trial and conviction) and **preventive** (punishment without trial and conviction). The first part of Article 22 deals with the ordinary law and includes: Right to be informed of the grounds of arrest; Right to consult and be defended by a legal practitioner; Right to be produced before a magistrate within 24 hours, excluding the journey time and Right to be released after 24 hours unless the magistrate authorises further detention.

The second part of Article 22 deals with preventive detention law. Protection under this article is available to both citizens as well as aliens and includes: the detention of a person **cannot exceed three months** unless an advisory board (judges of high court) reports sufficient cause for extended detention; the grounds of detention should be communicated to the detained person and the detained should be afforded an opportunity to make a representation against the detention order.

(c) Right Against Exploitation:

Articles 23 and 24 deal with right against discrimination. This right seeks to ban trafficking in human beings, begar or any other form of forced labour. Employment of children below 14 years of age in any factory or mine or other risky occupation is also prohibited by law. Exploitation means misuse of services of others with the help of force. In India, prior to the promulgation of the Constitution, services of backward communities and weaker sections of the society were used without any payment. This was known as a practice of begar. For instance, in villages, landless labours were supposed to work for the most part of the year on the jagirs without any compensation in cash or kind. The Constitution has, therefore, abolished this practice. The Constitution also prohibits forced labour. A bold step towards the abolition of forced labour and the economic and physical exploitation of the weaker sections of the people has been taken by the enactment of the Bonded Labour System Abolition Act, 1976 by Indian parliament.

(d) Right to Freedom of Religion:

India is a secular state. A state which observes an attitude of neutrality and impartiality towards all religions. The attitude of impartiality is secured by the Constitution of India under Article 25 to 28. Article 25 states that all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion. There are only three restrictions to the freedom of religion namely: public order, morality and health.

Article 26 is, in fact, a corollary to Article 25 and guarantees the freedom to manage religious affairs. According to this, every religious denomination is given the right:

- to establish and maintain Institutions for religious and charitable purposes;
- to manage its own affairs in matter of religion;
- to own and acquire movable and immovable property; and
- to administer such property in accordance with law.

Article 27 provides an additional protection to religious activity by exempting funds appropriated towards the promotion or maintenance of any particular religion from the payment of taxes. Article 28 prohibits religious instruction in any educational institution wholly maintained out of state funds whether such instruction is given by the state or by any other body. Even though religious instruction be imparted in educational institutions recognised by or receiving aid from the state, no person attending such institution shall be compelled to receive that religious instruction without the consent of himself/herself or of his/her Guardian (in the case of a minor). Thus while the secular character of the state is demonstrated by all state educational institutions, private or denominational institutions, even when they receive state aid, are given freedom to maintain their religious character.

(e) Cultural and Educational rights:

The Constitution provides that a minority shall have the right to conserve its own language, script, literature and culture. Admission to any state aided educational institution shall not be refused to anybody on grounds of religion, race, caste or language under Article 29. Article 30 provides that all minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The state shall not in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. With the guarantee of these rights, the Constitution ensures the protection of the rights of the minorities.

(f) The right to Constitutional Remedies:

The right to constitutional remedy is covered under article 32 of the Indian Constitution. This article guarantees the individual the right to move the Supreme Court by appropriate proceedings for the enforcement of his/ her fundamental rights. The Supreme Court is empowered to issue directions or orders or writs including writs in the nature of *Habeas Corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever it considers appropriate. Further, without prejudice to the powers of the Supreme Court, the Parliament may by law, empower any other Court to exercise within the local limits of its jurisdiction or any of its powers exercisable by the Supreme Court. The right to constitutional remedies may be suspended as provided by the Constitution under article 353 and 359.

The inclusion of a detailed scheme of fundamental rights in the Constitution marks the culmination of a long and sustained desire of the Indians to be bestowed with the basic liberties of free and happy life. These rights, therefore, have been given a very esteemed

position in the constitutional law of the country, for, all laws in force in the territory of India immediately before 26 January 1950, and all legislations enacted thereafter, have to conform to the provisions of Part III of the Constitution. Moreover, the scope of the fundamental rights are wide enough to encompass practically all those rights which human ingenuity has found to be essential for the development and growth of the personalities of the citizens of the country. Significantly, the focus of attention of the framers in this regard was on the citizens mainly, if not exclusively, as many of these rights are not guaranteed to the aliens.

2.3: CHECK YOUR PROGRESS 1:

- (a) **Which Fundamental right is most significant according to you?**
(b) **Exploitation is worst form of human rights exploitation? Try to understand it from the perspective of child labour in India.**

2.4 DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Constitution (Articles 36 to 51) provides the Directive Principles of State Policy. These principles may be classified under several groups. It shall be the duty of the state to follow these principles both in the manner of Administration as well as in the making of laws. They embody the object of the state under the republican constitution, namely, that it is to be a welfare state and not a mere police state. Most of these directives, aim at the establishment of the economic and social democracy which is pledged for in the Preamble of Indian Constitution. The framers of the Constitution were influenced most by the Constitution of the Irish Republic which embodies a chapter on Directive Principles of State Policy. A number of these principles are entirely Indian and Gandhian in nature like setting up of village panchayats and cottage industries, prohibition, protection against cow slaughter etc. Dr Ambedkar called Directive Principles of State Policy as a novel feature of the Constitution of India. These Directive principles are in the nature of general directions or instructions to the state. They embody the objectives and ideals which Union and State governments must bear in mind while formulating policy and making laws.

Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-Welfare State Principles, Gandhian Principles and Liberal-Intellectual Principles. The DPSPs have been discussed below under these three principles

- (a) **Welfare State Principles:** They are the principles that aim at providing social and economic justice and set the path towards the welfare state.
- (i) **Article 38:** Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities.
- (ii) **Article 39:** Secure citizens:
- Right to adequate means of livelihood for all citizens
 - Equitable distribution of material resources of the community for the common good
 - Prevention of concentration of wealth and means of production

- Equal pay for equal work for men and women
 - Preservation of the health and strength of workers and children against forcible abuse
 - Opportunities for the healthy development of children
- (iii) **Article 39A:** Promote equal justice and free legal aid to the poor
- (iv) **Article 41:** In cases of unemployment, old age, sickness and disablement, secure citizens: Right to work, Right to education and Right to public assistance.
- (v) **Article 42:** Make provision for just and humane conditions of work and maternity relief.
- (vi) **Article 43:** Secure a living wage, a decent standard of living and social and cultural opportunities for all workers.
- (vii) **Article 43A:** Take steps to secure the participation of workers in the management of industries.
- (viii) **Article 47:** Raise the level of nutrition and the standard of living of people and to improve public health
- (b) **Gandhian Principles:** These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement.
- (i) **Article 40:** Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government.
- (ii) **Article 43:** Promote cottage industries on an individual or co-operation basis in rural areas.
- (iii) **Article 43B:** Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
- (iv) **Article 46:** Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation.
- (v) **Article 47:** Prohibit the consumption of intoxicating drinks and drugs which are injurious to health.
- (vi) **Article 48:** Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.
- (c) **Liberal-Intellectual Principles:** These principles reflect the ideology of liberalism.
- (i) **Article 44:** Secure for all citizens a uniform civil code throughout the country.
- (ii) **Article 45:** Provide early childhood care and education for all children until they complete the age of six years.
- (iii) **Article 48:** Organise agriculture and animal husbandry on modern and scientific lines.
- (iv) **Article 49:** Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance
- (v) **Article 50:** Separate the judiciary from the executive in the public services of the State.

- (vi) **Article 51:** Promote international peace and security and maintain just and honourable relations between nations; Foster respect for international law and treaty obligations and Encourage settlement of international disputes by arbitration.

42nd Amendment Act, 1976 added four new Directive Principles in the list i.e.

- To secure opportunities for the healthy development of children (**Article 39**);
- To promote equal justice and to provide free legal aid to the poor (**Article 39A**);
- To take steps to secure the participation of workers in the management of industries (**Article 43A**) and
- To protect and improve the environment and to safeguard forests and wildlife (**Article 48A**).

A perusal of various principles reveals interesting features regarding the scope and diversity of the directive principles. As pointed out earlier, provision of directive principles afforded various shades of perspectives an opportunity to provide their ideals a place in the Constitution. First, the substantive numbers of directive principles are aimed at the establishment of a welfare state by bringing about a subtle socio-economic transformation in the country. Second, a large number of directive principles aspire to implement the Gandhian principles of social life. Last, certain directive principles deal with the streamlining of governance in the country and promotion of international peace.

2.5 CHECK YOUR PROGRESS-II

- **How Gandhian Ideology played a significant role while framing DPSP?**
- **The DPSP are called less enforceable than Fundamental Rights in India? Do you agree with this belief?**

2.6 SUMMARY

The Directive Principles of State Policy and the Fundamental Rights constitute the most important features of Indian Constitution. The Directive Principles, the fundamental in the Governance of the country, are not enforceable by any court in terms of the express provision of article 37 of the Constitution while Fundamental Rights are enforceable by the Supreme Court and the high courts in terms of the express provision of Article 32 and 226 of the Indian Constitution. In the well-known case A. K. Gopalan vs the State of Madras (1950) Fundamental Rights were held as paramount. In case of conflict between Directive principles and Fundamental Rights the latter are enforceable by the courts. This shows the dichotomy between these two. However both constitute essential features of the constitution. Although these two may appear in the Constitution as distant entity, the leaders of freedom struggle had drawn no distinction between the positive and negative obligations of the state. Both types of rights had developed as a common demand products of the national and social revolutions of their almost inseparable inter twinning and of the character of Indian politics itself. In the words of Mr Justice Deshpande, “the Constitution is not only a legal but also a social and political document. Its legal aspect namely the Fundamental Rights is enforceable by the individual through writ

petitions and otherwise in the courts. Its social aspect can, however, be amended only by legislation to carry out the objectives of the Directive Principles of State Policy”.

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2.9 MODEL QUESTIONS

Q 1: What is the significance of Fundamental Rights in protecting and promoting human rights in India?

Q 2: How right to freedom has been incorporated into Indian Constitution?

Q 3: Which Fundamental Right according to you is the most significant and why?

Q 4: Why Directive Principles of State Policy were incorporated in the Indian Constitution?

Q 5: Name the Gandhian Principles provided under DPSP.

Q 6: Do you feel that DPSP are less effective than Fundamental Rights? Justify your answer.

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**UNIT 3: MEANING, NATURE & CHARACTERISTICS OF HUMAN DUTIES;
CLASSIFICATION OF HUMAN DUTIES; RELATIONSHIP BETWEEN RIGHTS
AND DUTIES**

STRUCTURE

3.0 Objectives

3.1 Introduction

3.2 Meaning

3.3 Nature & Characteristics of Human Duties

3.4 Check your Progress- I

3.5 Historical Evolution of the Concept of Human Duty

3.6 Classification of Human Duties

- (a) Moral and Legal Duties
- (b) Positive and Negative Duties
- (c) Primary and Secondary Duties
- (d) Absolute and Relative Duties:
- (e) Classification in African Charter

3.7 Check your Progress-II

3.8 Relationship between Rights and Duties

- (a) Right is a Duty in Itself
- (b) Every Right has a Corresponding Duty
- (c) Rights carry Social Obligations

3.9 Summary

3.10 References

3.11 Further Readings

3.12 Model Questions

3.0 Objectives:

The objective of this lesson is to understand the meaning, nature and characteristics of Human Duties. It further provides details about various types of Classification of Human Duties.

3.1 Introduction:

Everyone has rights, but the very desire to enjoy one's rights also puts an onus on each individual, institution and the state to recognise the responsibility of respecting the rights of others. Responsibility in relation to rights is becoming increasingly significant as the nature and scope of human rights expands and the search for a new global culture of human rights accelerates. In a global village, the Gandhian ideal of "all rights reserved and preserved come from duty well done" resumes renewed significance. Responsibility in the context of human rights has been a subject of debate for long. The notion that individuals, while having particular human rights, also have particular duties in relation to the social entity in which they live have been a constant feature of the United Nation's work and predates the UN Charter's entry into force in 1945.

3.2 Meaning of Human Duties

The concept of Duty arises from fulfillment of a requirement. It arises in several ways and means, such as moral duties, legal duties, parental duties, societal duties, and civil duties etc. However from the point of view of law, duties arise from legal norms or requirements. They have to be discharged, the way it was prescribed. Accordingly, the actions are constituted as right or wrong. The word duty is also said to be derived from the word 'debt' which means 'loan'. Thus duty is a kind of loan which a citizen pays in return for the rights. In this sense, it becomes an obligation. A person is said to have a duty to perform towards other in any matter by being under an obligation to do or not to do something.

- According to **Prof. Dicey**, "a duty is a species of obligation. People obey it due to indolence, deference, sympathy, fear and reason. And due to psychological, social and moral pressures. Most duties are supported by State. The breach of the duty leads to imprisonment or fine."
- **Keeton** defines duty as an act of forbearance which is enforced by the state in respect of a right vested in another and breach of which is a wrong.
- **Salmond** defines duty as roughly speaking an act which one ought to do, an act the opposite of which would be a wrong.
- According to **Frazier**, "To have a duty is, above all, to be subject to a binding, normative requirement. This means that unless there are exculpatory reasons someone who has a duty is required to satisfy it, and can be justifiably criticized for not doing so. Having a duty to do something is like having been given a command by someone who has a right to be obeyed: it must be done".

3.3 Nature and Characteristics of Human Duties

The word obligation commonly referred to as a synonym of duty or vice versa. C. H. Whiteley, for instance, while he does not propose any explicit definitions, says that 'duty' and 'obligation' are approximate synonyms and that "a duty or obligation is a consequence of a contract or undertaking, either explicit or implicit. However strictly speaking there exists a difference

between the two. According to H.L.A. Hart, duty and obligation are distinct to each other. A right exists without any correspondence to an obligation incurred or created at times. What distinguishes obligations from duties is that "they may be voluntarily incurred or created" (whereas duties arise from position, status, and role), and that "they are owed to special persons (who have rights)". This means every time a duty has a connection with the position of person, which is linked with right. Hence, an obligation may not correspond to a duty at all times. It is only usage or practice of referring to write as a synonym of duty. Cicero, an early Roman philosopher who discusses duty in his work "On Duty", suggests that duties can come from four different sources:

- as a result of being a human;
- as a result of one's place in life (one's family, one's country, one's job);
- as a result of one's character;
- as a result of one's own moral expectations for oneself.

Reciprocity plays a key role in Fuller's account of duty. According to him, the existence of duties depends partly on the behavior of others. In particular, it is fair to expect me to act in certain ways only if similar expectations hold with respect to those judging my behavior. In the legal context, citizens have a duty to follow legal rules provided those rules outline a standard that citizens are knowledgeable of, capable of following, and that is actually used to judge their conduct.

3.4 Check your Progress I:

- (a) What is more important according to you: 'Human Duty or Human right?**
- (b) How Prof Dicey denied duty?**

3.5 Historical Evolution of the Concept of Human Duty

Eastern jurisprudence encompasses all the aspects of human behavior within 'Dharma' for which it is said '*Dharmo Rakshati Rakshata*' (respect dharma; dharma will respect you) Dharma in its core involves duties as its subject matter. Even the King is said to have duties falling under Raj dharma. Duties have prevalence and predominance in Eastern Jurisprudence while the right is subservient, collateral and relative in contrast to western jurisprudence. In Bhagwat Geeta, various verses emphasize on the significance of duty by stating that: 'Your right is to work only, but never to the fruit thereof. Let not the fruit of action be your object, nor let your attachment be to inaction'. Though the message apparently talks about the right but here the right itself is in the form of duty to work. In subsequent verse it unequivocally speaks about duty, where the message says: 'Arjuna, perform your duties: dwelling Yoga, relinquishing attachment, and indifferent to success and failure; equanimity is called Yoga'. The jurisprudence of west and Dharma of east is law and/or science of law. Once it is arrived at that jurisprudence is in relation to law, it is imperative to deliberate inter-alia upon the 'Right and Duties' as concept of law (Bhagwat Geeta, verse 47 &48). Mahatma Gandhi also laid great emphasis on performance of duty and has stated that – "The true source of right is duty and if we all discharge our duty, right will not be far to seek. If leaving duty unperformed, we run

after rights, they will escape us like Will-o-the-wisp. The more we pursue them, the farther they will fly”.

3.6 CLASSIFICATION OF HUMAN DUTIES:

The duties can be classified in a number of ways. Some broad classifications of human duties have been discussed below.

(a) Moral and Legal Duties:

Moral duties are those obligations which we should observe but we are not legally bound to observe them. It is our moral duty that we should serve our parents, teachers, brothers and sisters and the relatives. It is the moral duty of every one that he should lend a helping hand to the poor and down-trodden. On the other hand, an individual is legally bound to perform legal duties. A legal duty is adversary of a legal wrong and it is recognized by the law for administration of justice. If he does not perform them, he will be punished by the state. It is an act, the opposite of which is a legal wrong. It is an act recognised as duty by law. Law ensures performance of legal duties and punishes disregard to this duty. For example, it is the legal duty of every citizen to show obedience to the constitution, commands of law and pay taxes regularly and honestly. It is our legal duty to remain loyal to our country. There is a marked difference between legal duties and moral duties. It depends entirely on the conscience of the individual to perform moral duties or not to perform them. A duty may be moral but not legal or legal but not moral, or both at once. For example, the act of not wasting paper is our moral duty but not legal.

(b) Positive and Negative Duties:

When a person is enforced to perform a duty, the duty is called positive duty. Whereas, when the law asks the person from refraining in involving or undertaking a particular act, such duty is called negative duty. For example – to pay debt is a positive duty whereas, not to trespass on third person’s land is a negative duty. In positive duties performance extinguishes both duty and right. A negative duty can never be extinguished by fulfilment. In the words of Dr Zakir Hussain “Duty is not dumb obedience; it is an active desire to fulfil obligations and responsibilities”. Negative duties require that we refrain from harming and injuring others, while positive duty requires that we render assistance to those in distress. The two most plausible positions on this issue can be labelled as ‘conventionalism’ and ‘equivalence’. Conventionalists maintain that we have both negative and positive duties towards others and positive duties are restricted to rendering assistance when doing so involves a minimum expenditure of effort and resources; positive duty requiring a maximum sacrifices are considered supererogatory. Hence our requirement to aid the needy is a duty only if the sacrifices and expenditure of resources on our part is minimal - if it does not place a burden on our basic life interest. Conventionalists also recognise, of course, negative duty towards others. They maintained that violation of negative duties are morally worse acts, other things being equal, than violations of correlated positive duties.

(c) Primary and Secondary Duties

Primary duty is one which doesn’t need to be stated, it exists on its own. A primary duty is that which exists per se and independent of another duty. According to W. D. Ross, people mostly discharge their duties to live up to their promises as goodwill. This means, many a times people perform their duties basing on the advantages and disadvantages. This being the primary

concept of duty, Ross calls individuals to be rational in discharging their duties in a proper manner without harming the interests of others. The duty not to cause personal injury to another is a primary duty. A secondary duty is one which exists only for giving the way to other duties and has no independent existence. The duty to pay damages for the injury already done is a secondary duty.

(d) Absolute and Relative Duties:

Absolute duties are the one which are not followed by a right which means a right is not corollary of a duty in the case of absolute duties, whereas relative duties are the duties which come with a bond and are followed by right. Thus, a relative duty cannot exist without a right. Austin distinguished between absolute and relative duties. According to him, while every right is relative and has a correlative duty, every duty need not necessarily have a correlative right. In Austin's opinion some duties are absolute duties to which no corresponding rights are attached. Austin stated four kinds of absolute duties:

- (i) Duties not regarding persons (those owed to God and the lower animals),
- (ii) Duties owed to persons indefinitely (duties towards the community e.g. Duty not to commit nuisance),
- (iii) Self-regarding duties (duty owed to one self e. g. Duty not to commit suicide or duty not to become intoxicated),
- (iv) Duty towards State.

As indicated above absolute duties are those which have no corresponding or correlative rights. Relative duties are those to which there is a corresponding right in some person or definite body of persons e.g. duty to pay one's debt to the creditor. All these four kinds of absolute duties as mentioned by Austin are really reducible to one head – Duties towards the State. Man's relation to God is a matter of religion and not of law. If the legal system protects certain religious duties with a sanction, then that duty is part of the law and amenable to same analysis as other legal duties. So far as duties towards animals are concerned, if the law prohibits cruelty, one may owe a duty to the State. In case of duties towards the community or the public, duty is merely the correlative of the right inhering in each member of the community. As for self-regarding duties, there cannot be a legal duty owed to oneself. The duty not to commit suicide is not a duty I owe to myself but is part of the criminal law and subject to the same analysis as any other duty imposed by the criminal law. In Austin's view, the duties of the subjects towards the State are absolute. This argument leads to the rejection of the notion that there can be a right-duty relationship between the subject and the state. Austin maintained that when the state imposes a duty on a subject, it is a misuse of language to say that the State has a corresponding legal right. The state has physical power. The exercise of a legal right is regulated, whereas the power of the sovereign is not. Austin's thesis of 'absolute duties' is generally rejected in modern times.

Salmond did not support this concept of absolute and relative duties. According to Salmond, all duties are relative and there can be no absolute duties, for there must be a right in another when one is under a duty. He believed there is no duty without a right. Salmond also believed that no right can exist without a corresponding duty. Every right or duty involves a bond of a legal obligation by which two or more persons are bound together. Thus, there can be no duty unless there is someone to whom it is due; there can be no right unless is someone from whom

it is claimed, and there can be no wrong unless there is someone who is wronged, that is to say, someone whose right has been violated.

However, Prof. C.K.Allen supported Austin's view. He was of the view that where the State imposes duties in virtue of its sovereign character, the duties are absolute without correlative rights in the State. For example, a State compels children to go to school, or to be vaccinated, prohibits the sale of liquor. In these cases there are no corresponding rights. According to Allen, the duties imposed by the criminal law are absolute duties. Duty is the correlative of a right which can be understood as an obligation to do something. It is an act whose opposite would be wrong. Whenever law ascribes duty to a person, a corresponding right also exists with the person on whom the duty is imposed. Hibbert also refers to absolute and relative duties. The former duties are owed only to the state, breach of which is generally called a crime, and the remedy, therefore, is punishment. The latter kind of duties is owed to any person other than the one who is imposing them, the breach of which is called a civil injury which is redressable by compensation to the injured party.

(e) Classification in African Charter:

The African Charter under Chapter II deals with the duties of the individuals of the Contracting Parties in detailed manner. These duties are as follows:

- Duty towards his family and society, the State other legally recognized communities and international communities (Article 27, Para 1).
- Duty to respect and consider his fellow beings without discrimination and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance (Article 28).
- Duty to preserve the harmonious development of the family and to work for the cohesion and respect of the family, to respect his parents at all times, to maintain them in case of need (Article 29).
- Duty to serve his national community (Article 29).
- Duty not to compromise the security of the State whose national of resident he is (Article 29).
- Duty to preserve and strengthen social and nation security (Article 29).
- Duty to preserve and strengthen the national independence and the territorial integrity of his country (Article 29).
- Duty to work to the best of his abilities and competence, and to pay taxes imposed by law in interest of the society.
- Duty to preserve and strengthen positive African cultural values in his relations with other members of the society (Article 29).
- Duty to contribute at all times to the promotion and achievement of African unity (Article 29)

3.7 CHECK YOUR PROGRESS-II

- (a) Give one example of moral and legal duty each.
(b) What was Austin's view o duties.

3.8 RELATIONSHIP BETWEEN RIGHTS AND DUTIES:

It is commonly held that rights "correlate" with duties. By this is usually meant at least that rights imply duties (even if not all duties imply rights) and also that claims of individual rights need not be recognized unless backed by proof that corresponding obligations obtain. Such a doctrine of correlativity also forms part of the view that rights must be understood or analysed in terms of duty or obligation. The relationship between rights and duties has been elaborated below.

(a) Right is a Duty in Itself:

Rights and duties are closely related and cannot be separated from one another. Both go side by side. These are the two sides of the same coin. One's right is one's duty also. If a citizen wants to exercise and enjoy a right, he must also know, realize and concede that others also have a similar right, and as such he must not temper with a similar rights of others. It becomes the duty of every citizen to exercise his rights in a manner which must not be prejudicial to the free exercise of the same rights by others. For example if I have the right to move freely in any part of the country or express my views freely, than others have also the same rights. Therefore, I must also let others exercise their rights properly. At the same time, I must not misuse my rights to the detriment of others. If the state gives the right to life to a citizen, it also imposes an obligation on him to not to expose his life to dangers, as well as to respect the life of others. If I have a right to work and earn, it is also my duty to recognize the same right of others. Rights are not the monopoly of a single individual. Everybody gets these equally. This means that "others also have the same rights which I have, and it is my duty to see that others also enjoy their rights." Laski has rightly said that one man's right is also his duty. It is my duty to respect the rights of others as well as the duty to use my rights in the interest of society.

(b) Every right has a Corresponding Duty

Rights can be enjoyed only in the world of duties. For every right there is corresponding duty. When the people fail to discharge their duties properly, the rights become meaningless. A right, belonging to one person, imposes a corresponding duty on others to give due respect to his right. If I have the right to property, then correspondingly it becomes the duty of others not to steal, take away or interfere with my property. And if anybody tries to curtail or abridge my right then I can seek the protection of the laws of the state and get the culprit suitably punished. Rights are to be enjoyed by all citizens living in a social setup. If disregard is shown to the rights of some by others, then confusion or chaos will follow in which nobody would be able to exercise his rights. If I have a right to live then it is the duty of others to let me enjoy this right properly. In fact, in the observance of such a duty lies the right of others to live. Besides this non-interference in and acceptance or recognition of others' rights bestow upon you the similar rights. In this way, we find that one's right is another's duty. I can enjoy my rights only if the others allow me to do the same. I have the right to life and it is the duty of others to respect my life and not to cause any harm to me.

(c) Rights carry Social Obligations:

Since it is the state which grants, maintains and protects the rights of individuals, individuals too has a duty towards the state. He has to be loyal to the state. We must obey the laws of the state and be always prepared to sacrifice everything for the sovereignty and integrity of the state. It is also expected that citizens would use their rights in a befitting manner. There improper exercise may prove harmful and dangerous to the society and to the political system.

If the right to speech is exercised to the extent of provoking or instigating others to revolt against the political system, then anarchy would prevail which would ultimately endanger the rights of all the citizens. Rights are, therefore, to be enjoyed in a democratic spirit and at no point of time the public good should be ignored. It is only in the society that people get their rights. Therefore, they have a duty towards society which protects their rights. An individual must not keep on furthering his own interest at the cost of the general interest of the society. He must try to contribute his best to the common good because he cannot enjoy rights independent of society.

3.9 SUMMARY:

Then the question is how the duties have to be performed? The answer lies in our culture and that is, 'the duty is to be performed not only for the sake of the duty but with a feeling that it is a sacred entrustment by almighty and for breach of the same, the individual is answerable to his own conscience'. When such concept of duty is engrained in the minds of people, the country is bound to progress. There are number of factors which retard the progress of duties. These are lack of values, education, poverty and corruption and require to be tackled on war footing. For this, social attitudes of the people have to be changed. The parents, teachers, civil servants, professional and those who are engaged in administration of justice have to act as role models so that the people may learn and imbibe the concept of duty from them. Rights and duties are the very important elements of law. Their administration of justice, in most part, consists of the enforcement of rights and the fulfilment of duties. Rights and duties are correlated to each other in such a way that one cannot be conceived of without other. In other words, the existence of the one depends on the existence of the other. When we speak about the right, it correlates to a duty upon another individual, employer, government, authority. In other words, the right of one is an obligation of another. Thus right is always against someone upon whom the correlative duty is imposed. In the same way, duty is always towards someone in whom the core relative right vests. There are some jurists who do not agree to this view. They say that there can be duties without a corresponding right. They call such duties as absolute duties. The duties which are always correlated with the right are called the relative duties. Thus we find that the rights and duties are closely related to and dependent on each other. One cannot exist without the other. They are the two aspects of the same thing. If there are rights, they are there because certain duties are performed. Rights imply duties and one cannot be even conceived of without the other.

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3.12 MODEL QUESTIONS

Q 1: Define the term Human Duty.

Q 2: What is the nature of human duties?

Q 3: What is the difference between moral and legal duty?

Q 4: Do you agree with Austin that there is a difference between absolute and relative duty?

Justify your answer.

Q 5: What is the role of an individual while performing negative and positive duties?

BACHELOR OF COMPUTER APPLICATIONS (BCA)
SEMESTER-II
COURSE: HUMAN RIGHTS AND DUTIES

UNIT 4: FUNDAMENTAL DUTIES IN INDIAN CONSTITUTION

STRUCTURE

- 4.0 Objectives**
- 4.1 Introduction**
- 4.2 Historical Evolution**
- 4.3 Fundamental Duties in Indian Constitution**
- 4.4 Check your Progress-I**
- 4.5 Enforceability of Fundamental Duties**
- 4.6 Relevance of Fundamental Duties**
- 4.7 Summary**
- 4.8 References**
- 4.9 Further Readings**
- 4.10 Model Questions**

4.0 OBJECTIVES:

The objective of this lesson is to discuss the scope and significance of Fundamental Duties provided under Part IV in the Indian Constitution. Besides studying the historical development of the concept of Fundamental Duties in Indian Constitution, it will also discuss the enforceability of these duties by referring to various case laws.

4.1 INTRODUCTION:

Constitution being supreme in itself creates the fundamental right with remedy to enforce them under Article 32 or 226 of the Constitution of India. The right may be that of citizens and/or aliens. The corresponding duty is with the state. The right is enforceable against the state and/or against the instrumentalities of state as the case may be. Likewise Directive principles though were said to be non-justiciable but their justiciability in some situations has not been ruled out. Likewise the Constitution creates some aspect of democratic process and also provides mechanism for compliance. The said mechanism may be by a constitutional process itself or through statute (s). The fundamental Duties are the latest addition to the Constitution, making such duties explicit. Among the various constitutions in Indian Sub-Continent some duties on citizens are inbuilt in the Constitution while in others they are by law, custom and/ or precedent. Impregnating the high sounding and zealously guarded domain of fundamental rights with a moderate dose of ethical citizenship responsibilities, the fundamental duties were inserted in

the Constitution in 1976 through the Constitution's Forty-second Amendment. Placed in Part IV-A of the Constitution under Article 51-A, the set of ten fundamental duties is supposed to be only moral exhortation to the citizens of the country to inculcate a sense of patriotic and sensible citizenship, without any legal justiciability.

The inclusion of Fundamental Duties brought our Constitution in line with article 29 (1) of the Universal Declaration of Human Rights which states that "Everyone has duties to the community in which alone the free and full development of his personality is possible" and with provisions in several modern Constitutions of other countries. Similarly, the constitution of many other countries has enumerated many duties of the citizens. For instance, Article 17 of the Constitution of Morocco of December 1962, Article 48(1) of the Constitution of Somalia of July 1960, Article 16 of the Constitution of Tunisia of June 1959, Article 44 of the Constitution of UAR of March 1964, Article 102 of the Constitution of People's Republic of China of September 1954, Article 48 of the Constitution of State of Kuwait of November 1962 emphasize duties of citizens, in particular the duty to pay taxes and to contribute to the public exchequer according to his capacity. The concept of Fundamental duties was taken in Indian Constitution from the former USSR. Fundamental duties are intended to serve as a constant reminder to every citizen that while the constitution specifically conferred on them certain Fundamental Rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour because rights and duties are co-relative.

4.2: HISTORICAL EVOLUTION:

Mahatma Gandhi always emphasized on the relevance of duties in an individual's life. He always stated that: '*the true source of rights is duty, if we all discharge our duties, rights will not be far to seek*'. However, the fundamental duties were not part of the Indian Constitution when it came into effect on 26 January 1950. After laying down fundamental rights, it goes on to say that '*all these rights shall be contingent on the performance of the following fundamental duties*'. It is interesting to note that while fundamental rights were given immense constitutional importance in both the historical constitutions and the constituent assembly debates, there were only few instances when members of the Constituent Assembly deliberated upon the Gandhian idea on rights and duties. Fundamental duties became part of the Constitution as Part – IV A through the 42nd amendment in 1976. The then Prime Minister Mrs Indira Gandhi set up a committee chaired by then-External Affairs Minister Swaran Singh '*to study the question of amendment of the Constitution in the light of experience...*' The All India Congress Committee (AICC) suggested to the Swaran Singh Committee to '*formulate some proposals for inclusion in the Constitution certain fundamental duties and obligations which every citizen owes to the nation...*'. The Committee suggested that steps needed to be taken to ensure that the individual did not overlook his duties while in exercise of his Fundamental Rights. The Committee then drew up a list of fundamental duties. By November 1976, both Houses of Parliament passed the 42nd amendment, which included a new fundamental duties chapter to the Constitution containing ten duties. The rationale behind introducing the 42nd amendment was that the Constitution is a living document that evolves with the society. Considering the erosion of culture and ethics at that time, the parliamentarians thought it best to introduce Part IV-A to spell out explicitly the implicit characteristics of our Constitution. According to them, incorporating these duties would be helpful in removing the

difficulties that create hindrance in social-economic revolution of removing poverty, diseases and inequality of opportunity. In 2002, one more duty was added to the list. It said that 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 year*'. This lesson will study these Fundamental Duties in detail.

4.3: FUNDAMENTAL DUTIES IN INDIA

The Directive Principles of State Policy and Fundamental Duties are sections of the Constitution of India that prescribe the fundamental obligations of the State to its citizens and the duties of the citizens to the State. 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. These duties, set out in Part IV–A of the Constitution concern individuals and the nation. Citizens are morally obligated by the Constitution to perform these duties. The Fundamental Duties are however, not legally enforceable, i.e. without any legal sanction in case of their violation or non-compliance. Each Fundamental Duty along with its significance as elaborated by the Kerala Legal Services Authority has been discussed below.

It shall be the duty of every citizen of India:

- (a) **To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem:** It is the Fundamental Duty of every citizen to respect the National Flag and to desist from any act which would subject it to ridicule or that which would diminish its value. The Fundamental Duty to respect the National Flag is augmented by separate statutes enacted to ensure that National symbols including the National Flag are respected and honoured. Violation of those legal mandates would attract punishment. Just as the National Flag, our National Anthem evokes in us patriotic fervour and reminds us of the diversity, unity and integrity of our great Nation. The National Anthem too commands respect and the Constitution makes it the Fundamental Duty of every citizen to respect the National Anthem. Whenever the National Anthem is sung in public, respect to the same is to be demonstrated either by standing up respectfully or by joining in the singing. Intentionally preventing or causing disturbance to any assembly engaged in singing the National Anthem is a punishable offence.
- (b) **To cherish and follow the noble ideals which inspired our national struggle for freedom:** India's freedom struggle is unique when compared to other freedom struggles across the world. The Constitution deems it to be the Fundamental Duty of every citizen of India to retain, cherish and follow all those ideals and principles which were the bedrock of our freedom struggle.
- (c) **To uphold and protect the sovereignty, unity and integrity of India:** To cherish the noble ideals of India as a sovereign, socialist, secular, democratic, republic, its sovereignty, unity and integrity should not be allowed to be eroded. The Constitution envisages each citizen to realize this fact as his basic duty and act accordingly.
- (d) **To defend the country and render national service when called upon to do so:** Every citizen is liable to serve the nation in such emergent situation for protection of the vegetation, livestock and natural resources. It is one of the Fundamental Duties as per the Constitution. We shall wholeheartedly take pledge to serve the Nation in

emergent situation for defending the Nation and for rendering national service when called upon to do so.

- (e) **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:** We find every facet of diversity in our country – be it geographical, linguistic, social, cultural or religious – and such diversity or heterogeneity is often described as an amazing peculiarity of our country by those who have seriously studied the Indian history and culture. In order to achieve harmony and common brotherhood, the status of women, who account for almost fifty per cent of the population, also has to be seriously considered. The Indian citizen should realize and recognize that women are entitled to equality and dignity in all spheres of life. It is, in fact, a pre-condition for the natural growth of humanity, and formation of unity, in our society.
- (f) **To value and preserve the rich heritage of our composite culture:** Compassion and equality are the two fundamental tenets of Indian culture, and citizens have a duty to strengthen those ideals in our society by following them and nurturing them in all spheres of their personal life.
- (g) **To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures:** A country that protects and preserves environment, birds and animals alone will have wholesome development. Human beings and Nation are irreparable from environment. Uncontrolled exploitation of natural and common resources is a serious danger to the existence of the country. So is annihilation of other living creatures. Hence, protection of environment is imperative for the national development.
- (h) **To develop the scientific temper, humanism and the spirit of inquiry and reform:** Constitutional goal is not only confined to build a strong and permanent Nation. It also strives to ensure that her citizens are intellectually superior. Scientific temper, humanism and the spirit of inquiry and reform are fundamental to individual development.
- (i) **To safeguard public property and to abjure violence:** Every citizen of our country has the obligation to protect public property and it is not the responsibility of the public authorities alone. Article 51A (i) has identified the said responsibility of a citizen as his important and key constitutional obligation. Our Constitution mandates that each and every citizen has an obligation and bounden duty to stay away from violent protests and also from committing damage to public properties.
- (j) **To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement:** This is a Fundamental Duty which mandates that we have to go all out, selfless, for raising our standards in every activity in which we are engaged so that our achievements will be a part of the national achievement. Excellence in common parlance means surpassing merit and virtues. Article 51(A) (j) requires every citizen to perform his duties in a more superior way or in way that the citizen has surpassed in performance of his duties. In *Dr. Dasarathi v. State of Andhra Pradesh*, the Court held that it is the duty of every citizen to constantly strive towards excellence in the various spheres of

life and continuously make relentless efforts to achieve accolades and that is how the nation as a collective body of its citizens will constantly move towards new levels of excellence.

- (k) 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:** It is the duty of every parent or the guardian to provide opportunities to the child for educating him and make him understand the complexities of life, need for education and also to guide him so that he/she can choose his/her own path to contribute his/her best to the development of the Nation. Article 51A(k) is sufficiently supported and supplemented by Article 21A of the Indian Constitution which provides that “the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine”.

4.4 CHECK YOUR PROGRESS-I

- (a) Explain the Fundamental Duty “To uphold and protect the sovereignty, unity and integrity of India”.**
- (b) What does Article 51A(k) talk about?**

4.5 RELEVANCE OF FUNDAMENTAL DUTIES

The Fundamental Rights, the Directive Principles of State Policy the Fundamental Duties in must be read together to understand the spirit of Indian Constitution. The Fundamental duties are essentially taken from the Indian tradition, mythology, religions and practices. Essentially these were the duties that are the codification of tasks integral to the Indian way of life. These are statutory duties, not enforceable by law, but a court may take them into account while adjudicating on a matter. The idea behind their incorporation was to emphasise the obligation of the citizen in exchange for the Fundamental Rights that he or she enjoys. It reminds every citizen that besides being conscious about our rights, we should also comply with our duties.

The fundamental duties are reflection of the ancient developed concepts of east but least adhered in modern era. Some are mere declaratory, while few can be treated as remedial duties and some others as hybrid of declaratory and remedial duties. The declaratory duties declare the right without providing any remedy for its breach. The remedial duties create the duties and/or affirm the duties with remedy for the breach either in same statute or in already existing statute. For hybrid duties remedy may address only to part of breach and not whole of the duties. Applying this criteria, the declaratory duties fall under Article 51-A(b),(d),(f),(h) & (j) while remedial duties seem to be covered by Article 51-A(c),(e) & (g) . The duties referred to as hybrid are the amalgam of both the declaratory and remedial duties falling under 51-A (a) & (i).

Some of the duties and their breach do create a statutory offence for prosecution. For example the breach of remedial duties under 51-A(c), (e) & (g) constitute offences under Indian Penal Code and like law, besides this, the breach of duty under 51-A(k) is again strengthened by Section-10 of the Right to Free and Compulsory Education Act, 2009 where it says ‘It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school’. The remedy for breach is provided in Chapter VI of the Act read with Article 21-A of the constitution of

India. The remedy is curative and not punitive, perhaps in view of the delicate relations. But for declaratory duties in other areas, there does not seem to be any corresponding remedial statute whether curative or punitive to prevent the breach and/or punishment for any deviation. In the words of Austin: “*There do exist laws which may not be command but still are within the province of jurisprudence*”. To this category he refers to declaratory or explanatory laws, laws to repeal laws, besides laws of imperfect obligation meaning the law which does not have sanction. The analytical approach can make declaratory duties as not a law while the remedial duties as perfect law with sanctions in other statutes. The hybrid duties fall under both the arenas.

It is the basic principle of jurisprudence that every right has a correlative duty and every duty has a correlative right. But the rule is not absolute. It is subject to certain exceptions in the sense that a person may have a right, but there may not be a correlative duty. Though these duties are not obligatory in nature and no legal sanction is attached to the violation or non-performance of Fundamental Duties and there is neither specific provision for enforceability nor any specific prohibition; these Fundamental Duties have an inherent element of compulsion regarding compliance. Out of the eleven clauses in article 51A, six comprise of positive duties and the other five are more in the nature of negative duties. Clauses (b), (d), (f), (h) and (j) require the citizens to perform these Fundamental Duties actively. It is said that by their nature, it is not practicable to enforce the Fundamental Duties and they must be left to the will and aspiration of the citizens. However, in the case of citizens holding public office, each and all Fundamental Duties can be enforced by suitable legislation and departmental rules of conduct.

4.6: ENFORCEABILITY OF FUNDAMENTAL DUTIES

The Indian Penal Code does not cover all the breaches of Fundamental Duties, but provides criminal remedy for breach at 51-A (c), (e) & (i) related to the sovereignty, unity and integrity of India, harmony and the spirit of common brotherhood, besides, practices derogatory to the dignity of women. As far as Articles 51-A (e) & (k) are concerned, law exists for the protection of environment including compassion for living creatures and also for safeguarding public property and to abjure violence, besides the Right to Education Act . The provisions for criminal remedy towards 51-A (c), (e) & (i) is covered in respective statutes especially the Indian Penal Code while those for environment referred to in 51-A(g) have the remedy under the Environmental Protection Act ,1986. Besides this, the remedy in part for Fundamental Duties under 51-A(a), is covered by respective Acts of parliament relating to National Flag and the National Anthem. There seems no remedy for the breach under Article 51-A b),(d),(f),(h) & (j). Even for those Articles of Fundamental Duties where remedy is provided in statutes, they appear to cover the acts /omissions of gravity making such acts / omissions an offence which can be put under trial by court of law as bailable / non-bailable and summon/warrant case. Accordingly difficulties do emerge as far as burden of proof and components of offence are concerned. Firstly motive and intention is to be established and secondly burden of proof on the person in whom right vests and/or collectively resides. Keeping all this aside, there is a need for adopting curative measures for inculcating duties instead directly adopting coercive measures except in exceptional cases squarely and clearly satisfying the components of offence. All this depends on gravity of breach of duty. Thus a need arises to make the act as an

actionable wrong of a 'civil misconduct' desired to be cured rather punished. Accordingly, innovative solutions may be carved out.

As discussed above, Fundamental Duties play a key role in the interpretation of various statutes. Although, the judiciary restrained itself from enforcing these duties initially but the recent trend in judicial decision shows that judiciary is actively enforcing these duties. The Supreme Court through various judgements has made these duties enforceable. For example in *M.C. Mehta v. Union of India* (1988), the Supreme Court has held that to enforce Article 51-A (g) of Indian Constitution i.e. "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures", it is the duty of the Central Government to introduce compulsory teaching of lessons at least for one hour in a week on protection and improvement of natural environment in all the educational institution of the country.

In *AIIMS Students Union v. AIIMS*, The Supreme Court emphasized on the significance of Fundamental Duties provided in Article 51-A and struck down the institutional reservation of 33% in AIIMS coupled with 50% reservation discipline wise by stating that fundamental duties, though not enforceable by a writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. In case of doubt, peoples' wish as expressed through Article 51-A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty-second Amendment and they are equally important like fundamental rights.

Fundamental Duties help in the interpretation of the law/statues made by the legislature. It is held in many cases that the need for Fundamental Duties in interpreting the Fundamental Right is pivotal. In the case of *Mohan Kumar Singhania v. Union of India*, a governmental decision to give utmost importance to the training programme of the Indian Administrative Service selectees was upheld by deriving support from Article 51-A (i) of the Constitution, holding that the governmental decision was in consonance with one of the fundamental duties. The court held that statues made according to Article 51(A) of our Constitution are valid. The Court further stated that one should resort to Article 51-A in situations where the constitutionality of any legislation has been questioned and need to be determined.

In *Chandra Bhawan Boarding v. State of Mysore*, the Supreme court made the following observation prior to the insertion of Article 51-A: "It is a fallacy to think that in our Constitution, there are only rights and no duties. The provisions in Part IV enables the legislature to build a welfare society and that object may be achieved to the extent the Directive Principles are implemented by legislation."

In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, a complete ban and closing of mining operation carried on in Mussoorie hills was held to be sustainable by deriving support from the fundamental duty as enshrined in Article 51-A (g) of the Constitution. The court held that preservation of the environment and keeping the ecological balance unaffected is a task which not only government but also every citizen must undertake. It is a social obligation of the state as well as of the individuals.

The scope of the article 51A was extended in *Ashoka Kumar Thakur v UOI*, Justice Bhandari said that "State is all the citizens placed together and hence though article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen

of India is the collective duty of the State” and also the Court held that it is the duty of State to make sure that free education is given to children between the age of six to fourteen years and compulsory duty of parents or guardians to give education to their respective wards (children). In the case of *KRK Vara Prasad v UOI*, the High Court has said that the Constitution commands the citizens of India to follow the duties enumerated under the article 51A of PART – IV A.

The purpose behind having fundamental duties was explained by the committee headed by Justice J.S. Verma in its report (1999): “*In order to strike the balance between the citizen’s demands and the civil society’s claims, it is necessary to educate and update citizens regarding their social and civil responsibilities. This would help shape the modern civil society*”.

On analysing the case laws of the Supreme Court and different High Courts, it can be seen that the interpretations so made are not in line with the main purpose with which these duties were introduced, i.e., to deal with the anti-national activities in the nation. Rather, judiciary is stepping forward to enforce these duties in a manner that it ends up curtailing the Fundamental Rights of other citizens. The fundamental duties provided in the Constitution are not enforceable by law but they are to be made enforceable by the citizens themselves. An onerous responsibility is, thus, cast upon the citizens and they can either make or mar the destiny of this country. As the citizen is going to be answerable to his own conscience, his inner sense should be developed to such an extent that he may himself perform the duty without fear of any sanction or reminder.

4.7: SUMMARY

There is a need to make the Fundamental Duties obligatory for all citizens, subject to the State enforcing the same by means of a valid law, or else the law stands in a very disadvantageous position. The Supreme Court has finally, issued directions to the State in this regard, with a view towards making the provisions effective and enabling a citizens to properly perform their duties properly.

Though not justiciable and therefore, with little consequence in practical terms, the provision of fundamental duties was opposed by many people who also brought out several inconsistencies in these duties. For instance, one of the fundamental duties asks every citizen of the country to develop a scientific temper and spirit of enquiry. But with bulk of the people still illiterate, how is it possible to imbibe the habit of thinking with clarity and precision if they are unable to get the basic inputs of such thinking. The duties ought to be respected otherwise law becomes paper tiger when it loses the sanction and enforcement. As such the fundamental duties to be the form of law ought to have sanction in whatsoever form. To make India great, emphasis must be laid to inculcate obedience to duty. Nevertheless, the fundamental duties have become a part of the Constitution and despite their non-justiciability; they continue to exercise some sort of social and collective restriction on those who are fond of enjoying unfettered rights without discharging even an iota of duty to the society and the nation. For the proper enforcement of duties, it is necessary that it should be known to all. This should be done by a systematic and intensive education of people that is by publicity or by making it a part of education.

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4.10: MODEL QUESTIONS:

1. What is the significance of Fundamental Duties?
2. Whether Fundamental Duties are enforceable or not? Justify your answer by referring to various case laws.
3. When were Fundamental Duties added in Indian Constitution?
4. Discuss the Fundamental Duties provided in Indian Constitution in detail.
5. Discuss the ideology behind introducing the concept of Fundamental Duties in Indian Constitution.