Unit 2

Basic Features of the Constitution of India

CHAPTER 1

Salient Features of the Constitution of India

Contents

Learning Outcomes

After the completion of this chapter, the students will be able to:

- Demonstrate understanding of the basic features of Constitution and contrast the various Constitutions around the world
- Recall the historical perspective of the Constitution of India
- Analyse and examine the various writs and their purpose
- Explain the meaning of terminologies used in the preamble of the Constitution
- Distinguish between Fundamental Rights and Directive Principles of State Policy
- Examine the reasoning behind why DPSP are non-justiciable
- Analyze the importance of Fundamental Duties
- List down the process of amendment of the Constitution and examine the basic structure of the Constitution

I. Meaning of the term Constitution

The term Constitution is derived from the Latin term "constitutio" which means 'to establish'. The Oxford Latin Mini Dictionary describes Constitution as a 'body of fundamental principles or established precedents according to which a State or other organization is acknowledged to be governed'.

Wade & Phillips in their book 'Constitution and Administrative Law', state that Constitution of a country seeks to establish its fundamental or basic or apex organs of government and administration, describes their structure, composition, powers and principal functions, defines the inter-relationship of these organs with one another, and regulates their relationship with the people, more particularly the political relationship.

The Constitution of a state lays down the duties, powers and functions of the various organs of government. It establishes relationship among the organs, and the State and its citizens. Hence, a Constitution is an agreed upon document, which 'establishes' the basis on which consenting people shall govern themselves.

II. Definition of the term Constitution

Aristotle (384 - 322 BCE) defined Constitution as 'the way of life which the state has chosen for itself'.

Understood in its modern context, the Constitution of a State may have the following distinctive features:

- It is a body of rules
- It may be in a written or unwritten form
- It determines the powers and responsibilities of state and organs of government
- It may be written in a single document or in several documents
- It determines the rights and duties of the citizens of a State

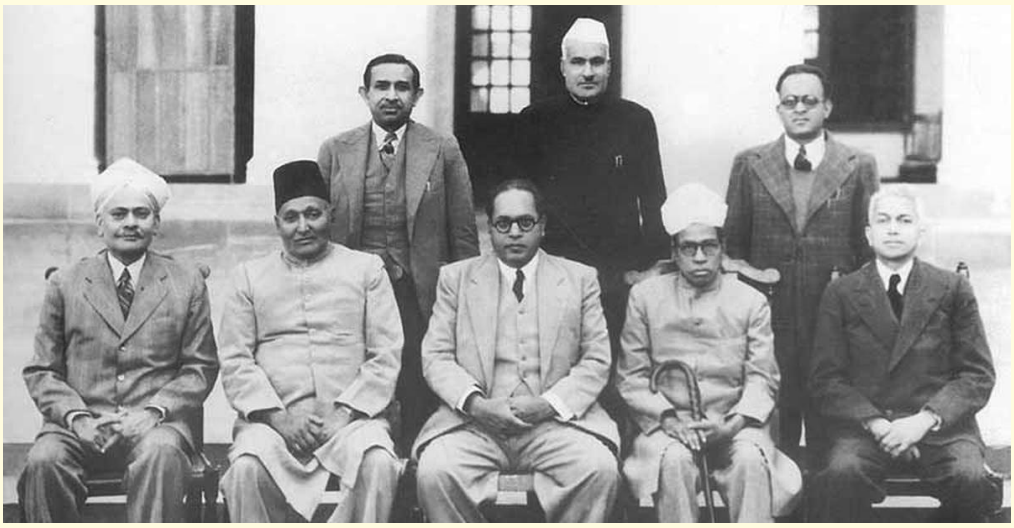
It is the fundamental law of a State. The features of Constitution may vary from state to state. Government of a state operates in accordance with the principles laid down in its Constitution. It helps to maintain law and order in the country. Georg Jellinek (1851-1911) had even argued that in the absence of Constitution, every individual, every institution and even the government will ignore law and as a result, there will be 'reign of anarchy'.

The Constitution of India, which came into effect on 26 January 1950, holds the distinction of being one of the lengthiest Constitutions in the world. This lesson gives insights into various aspects of the Constitution of India.

After World War II, which ended in 1945, India's independence from the British rule was around the corner. During the winter of 1945-46, general elections for India's provincial legislatures or assemblies were held. These legislatures elected the members of the Constituent Assembly that would draft the Constitution of India. Although, in December 1946, the Constituent Assembly was ready in place in New Delhi, the Muslim League's demand for a separate Pakistan delayed its work of creating the new Constitution. On August 15, 1947, after the last Viceroy of British India Lord Louis Mountbatten declared India and Pakistan as two independent countries, the Constituent Assembly continued with its mandate to create the new Constitution for India.

Constituent Assembly

Dr. B.R. Ambedkar is considered to be the principal architect of the Constitution of India. He is known as modern Manu.



Picture Above: Dr. Ambedkar, Chairman, Drafting Committee of Constitution of India with other members. (Sitting from left) Shri. N. Madhavrao, Sayyad Sadulla, Dr. Ambedkar (Chairman), Alladi Krishnaswamy Iyer, Sir Benegal, Narsingh Rao. Standing from left - Shri.S.N. Mukharjee, Jugal Kishor Khanna and Kewal Krishnan. (Aug 29, 1947)

The Constituent Assembly had members mostly from the Congress Party with a few Communists and Independents. In 1885, Allan Octavian Hume, an Englishman had formed the Congress Party to enable Indian participation in the less popular British Government. In 1921, post World War I, Mohandas Karamchand Gandhi (Mahatma Gandhi), assumed the leadership of the Congress party and led the movement for India's independence. Although the Constituent Assembly was largely a one-party body, the Congress Party had arranged for some persons distinguished in law and public affairs to be elected to the Constituent Assembly to contribute to the making of the Constitution. India's first law minister, Bhimrao Ramji Ambedkar, was appointed the Chairman of the Constitution Drafting Committee. Therefore, Dr. Ambedkar has been termed as the principal architect of the Constitution of India. The Constituent Assembly had two roles to play- governance and the framing of the Constitution. In the mornings, it dealt with the governance matters and in the afternoons, it drafted the Constitution.

Sources of the Constitution of India

The framers of the Constitution of India, i.e. the Constituent Assembly, drew upon three sources to draft the Constitution. The first source was the foundation document or the base text- the Government

of India Act of 1935, which was passed by the Parliament in London. This Act was the basis for the government and was in force in India from 1935 until 1950 when the Constitution of India was adopted.

The salient features of the 1935 Act were:

- it provided for a parliamentary system (but the ultimate power was kept with the British);
- it included a wide ranging administrative aspects for the structure of government;
- it created a centralized federal system; and it provided for elections to provincial legislatures or assemblies.

The second source was the constitutions of other countries. They were used mostly with respect to the two chapters of the Constitution namely, the Fundamental Rights and the Directive Principles of State Policy. As is described later in this section, fundamental rights largely deal with civil and political rights of citizens (for example: right to life, freedom of speech and expression) and the Directive Principles deal largely with the economic, social and cultural rights of the citizens (for example: right to health, and livelihood).

The third source was the Objectives Resolution adopted in the December 1946 Assembly session. The Constitution derived its spirit from this source. The Objectives Resolution laid down the philosophy and the Constitution expressed it through its many lengthy and detailed provisions. Jawaharlal Nehru, the first Prime Minister of India, had drafted the Objectives Resolution drawing upon the Congress Party documents of the previous two decades. The Objectives Resolution called for the integrity of the Indian Union and that its authority and power were derived from the Indian people. It stated that all the people should be secured with regards to justice- social, economic and political, equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality. Furthermore, the Objectives Resolution provided for adequate safeguards for minorities, depressed and backward classes, and underdeveloped and tribal areas. The Objectives Resolution can be summarized to consist of three interdependent salient features:

1. Protecting and enhancing national unity and integrity;
2. Establishing the institutions and spirit of democracy; and
3. Promoting a social revolution for the betterment of the citizens.

III. Historical Perspective of Constitution of India

Before independence, India was the part of British colonial empire. Sovereignty of British Crown prevailed over India. Parliament of Britain enacted several legislations for the governance of India.

Some of the significant legislations of the British Parliament responsible for the governance of India were:

- Government of India Act, 1858
- Indian Councils Act, 1861
- Indian Councils Act, 1892
- Indian Councils Act, 1909
- Government of India Act, 1919
- Government of India Act 1935

Picture above: Pt. Jawaharlal Nehru moves the resolution for an independent sovereign republic in the Constituent Assembly in New Delhi.

In the words of Durga Das Basu as stated in his book 'Introduction to the Constitution of India', "Constitution of India draws much of its source from Government of India Act, 1935. The Government of India Act, 1935 has provided the administrative details and language to the provisions of the Constitution".

Unlike the other Government of India Acts, the Act of 1935 referred to India as a federation of Provinces and Indian States. Autonomy to provinces was given effect by dividing legislative and executive powers between the Provinces and the Centre. The Provinces were under the executive authority of Governor appointed by the Crown. Provinces were the autonomous units of administration. Governor exercised the powers on the advice of Ministers, who were in turn responsible to Provincial legislature. Governor was given discretion to carry out certain functions, without being bound by Ministerial advice, subject to the control of the Governor General.

At the Central level, Government of India was under the executive authority of Governor-General. Governor-General was to act on the advice of Ministers of Central legislature, who were in turn responsible to the Central Legislature. The Executive Council formed under Government of India Act, 1919 functioned as the Council of Ministers. Governor-General even had discretionary functions to perform, but subject to the control of Secretary of State.

Government of India assumed the role of Federal Government. The Central legislature was bicameral consisting of Federal Assembly and Council of States. Some of the Provincial legislatures had bicameral legislature and other Provinces had unicameral legislature. The legislative powers and matters were divided between Central Legislature and Provincial Legislatures. The powers assigned to the Central legislatures and provincial legislatures were included in the Federal List and Provincial List respectively. The Centre and Provinces could exercise their combined authority on matters included in the Concurrent List.

Federal List: It dealt with matters such as Currency, External Affairs, Armed Forces, etc. on which only Central legislature had the authority to legislate.

Provincial List: It dealt with matters such as Education, Public Health, and Agriculture, etc. on which only Provincial legislature had the authority to legislate.

Concurrent List: It dealt with matters such as marriage and divorce, criminal Law, civil law and procedure, etc. on which both federal and provincial legislatures had authority to legislate.

The exercise of legislative power was subject to various limitations:

- Governor-General's and Crown's power to veto a bill passed by the legislature.
- Governor-General's power to issue ordinance and permanent acts, when the legislative house was not in session.
- Governor-General's power to suspend legislature, if the proceedings would affect the discharge of his special responsibilities.
- No bill to amend or repeal the law of British Parliament as applicable in India, could be introduced in legislature without the previous sanction of Governor-General. Thus, the Central legislature and similarly the Provincial legislatures were to act under the instructions of Governor-General, Secretary of State and ultimately the sovereign powers of the British Crown. Indians were given very limited rights of self-governance. Growing dissatisfaction over limited governing rights granted to Indians under 1935 Act led to widespread protests. Eventually the Colonial government conceded that the Constitution of India would be framed by an elected Constituent Assembly consisting of Indian people. It was also agreed to establish an independent Constituent Assembly free from outside interference to frame the Constitution of India. On December 9, 1946 the Constituent Assembly, a body elected by members of the provincial legislatures and state legislatures, met for the first time and formally commenced the task of 'Constitution making'.

The Indian Independence Act, 1947

The Indian Independence Act, 1947 enacted by the British Parliament got Royal Assent and came into force on July 18, 1947. The Act provided that from 15 August 1947, referred to as 'appointment date' under Government of India Act, 1935, two independent Dominions, to be known as India and Pakistan would be established. The Constituent Assembly of each Dominion was to have unlimited power to frame, adopt any Constitution. It had all authority to repeal any Act of British Parliament including Indian Independence Act.

LET US PONDER

Various features and parts of the Constitution of India were influenced by the Constitutions of different countries. For instance, separation of powers among the major branches of government was adopted from the Constitution of United States.

Find out the Constitutions from which the following were adopted:

a. The concept of Liberty, Equality and Fraternity

b. The concept of 5 year plans

c. The Directive Principles (socio-economic rights)

d. The concept on which the Supreme Court functions

The Drafting Committee worked under the Chairmanship of Dr. Bhim Rao Ambedkar, the Law Minister from 15 August 1947 to 26 January 1950. After many discussions and deliberations to improve the existing system of administration, geographical compulsions, social and cultural diversities and historical precedents, a proposal on Draft Constitution of India was prepared. The draft received assent from the President of the Assembly, Dr. Rajendra Prasad and was declared passed on 26 November 1949. The Constituent Assembly held 11 sessions and took a period of 2 years, 11 months and 18 days before it signed two copies of the document one in Hindi by the name of 'Bhartiya

Sanvidhan' and another in English 'The Constitution of India'. The original Constitution of India is hand-written with beautiful calligraphy by Prem Behari Narain Raizada. Artists from Shantiniketan including Beohar Rammanohar Sinha and Nandalal Bose adorned each page. The Constitution of India was adopted on 26 November 1949. Some of the provisions were given immediate effect. The bulk of the Constitution only became effective on 26 January 1950. This date is referred to as the date of commencement under Article 394 of the Constitution. Every year 26th January is commemorated as 'Republic Day' in India.

Article 394 states that 'This Article and Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution'.

Bhimrao Ramji Ambedkar, popularly known as Babasaheb Ambedkar, was a social reformer and the principal author of the Constitution of India. Born on April 14, 1891, in Mhow town of Madhya Pradesh, he later inspired the Dalit movement and campaigned against social discrimination. He also served as the law minister of India (1947–51)

IV. Salient Features of The Constitution Of India

A. A Modern Constitution

The Constitution of India drafted in the mid-twentieth century, has assimilated the best features gathered from the existing Constitutions and fashioned to suit the existing conditions and needs of the country.

Article 1(1) declares that India, that is Bharat, shall be a Union of States.

All 552 Indian States within the geographical boundaries of the Dominion of India acceded to the Dominion of India by 15 August, 1947, thus unifying India into a compact State.

Dr. B.R. Ambedkar explained that the use of the word 'Union' instead of 'Federation' has its significance [In record from the Constituent Assembly Debates (C.A.D)] as summarized below:

- Indian Federation is not the result of an agreement between the units. The component units have no freedom to secede from the Union so created.
- The term Union was used 'as symbolic of the determination of the Assembly to maintain the unity of the country' as stated by Supreme Court of India in the case of Hinsa Virrodhak Sangh v. M.M.K. Jamat (2008 SCC33).

To promote the unitary basis of Indian Administration, the Constitution makers added detailed provisions on the distribution of powers and functions between the Union and the States in all aspects whether legislative, administrative or financial and also with regard to inter-state relations, co-ordination and adjudication of disputes amongst the states. Although the system of government is federal, the Constitution enables the federation to transform itself into a unitary state by the assumption of powers of the states by the Union in case of emergencies as described under Part XVIII. Such a combination of federal system and unitary system in the same Constitution is unique in itself.

The term Bharat was adopted by the Constituent Assembly because the country was so known in the ancient times. This was the only name that suited the history and the culture of the country.

Part III of the Constitution of India on Fundamental Rights is inspired by the American Bill of Rights. The system of prerogative writs namely the writs of habeas corpus, mandamus, quowarranto, prohibition and certiorari can be issued by Supreme Court and High Courts to protect fundamental rights and to exercise judicial control over administrative action as guaranteed by the Constitution of India. Some of these aspects are influenced by the British Constitutional Law. Part XX on Amendment of the Constitution is the modified version of U.S. Constitution.

As observed by Dr. Basu in his book Introduction to the Constitution of India, the Constitution-makers adopted the Parliamentary system of government for both the Union and States following the British model, for the primary reason that the people had long experience of this system under the Government of India Acts. The makers deliberately rejected the Presidential form of government as followed in the U.S, apprehending conflicts on account of separation of executive from the legislature, which our infant democracy would not have been able to afford. Unlike the British model, India declared itself as a Republic.

Part IV of the Constitution of India on Directive Principles of State Policy is inspired by the Irish Constitution. Special provisions for promoting freedom of trade and commerce in the country as included in Part XIII are influenced by the Australian system. The Constitution of India is unique in its form and contents. By virtue of the 73rd and 74th Constitution Amendment Act, 1993, Part IX and Schedule XI & XII were added to the Constitution. These amendments provide the framework for the establishment and election of Panchayats and Municipalities. Part XIV of the Constitution contains provisions regarding service matters of personnel appointed to public services under the Union and States, and provisions on the establishment and functions of Public Service Commissions.

Part XIV-A contains provisions on the setting-up and functioning of Administrative Tribunals for the adjudication of matters thereunder. Part XV contains provisions on the conduct of elections and concerned authorities thereof.

B. Lengthiest Written Constitution

Durga Das Basu in his book 'Introduction to the Constitution of India' has stated that "the Constitution of India has the distinction of being the lengthiest, most detailed, elaborate constitutional document the world has so far produced". It consists of 395 Articles (many articles were added subsequently and some were repealed by way of amendments). The additions have

been given alpha numeric enumeration alongside the original article. Originally the Constitution consisted of 8 schedules; now it consists of 12 Schedules.

JUST TO POINT OUT

It took almost three years (two years, eleven months and seventeen days to be precise) for the Constituent Assembly to complete its task of drafting the Constitution for Independent India. It held eleven sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution.

The Constitution of India provides for the organization, structure and functioning of not only Central Government organs, but also of the organs of the State Governments. It contains a detailed framework on fundamental rights, fundamental duties, functions and powers of the Executive, functions and powers of the Parliament, Judiciary and judicial appointments, official language, citizenship, emergency provisions etc. Detailed provisions were incorporated in the Constitution to address issues concerning the Scheduled Castes and Tribes, Backward Classes, Religious and Linguistic Minorities etc.

The Directive Principles of State Policy outlined in Part IV of the Constitution shall not be enforceable in any Court, but nevertheless are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.

India was established as 'Union of States' with a highly centralized federal structure with a strong center in relation with the states. The original preamble provided that India shall be a 'sovereign democratic republic'. It was later, in 1976, that the words 'socialist' and 'secular' were added to the Preamble. The Constitution provides for adult suffrage to allow the citizens to vote and elect their representatives and the government. This ensures common participation of all in a democratic fashion. Other features of the Constitution like creation of democratic political institutions and processes of the parliamentary system, creating an independent judiciary, and stipulating for civil and political, and economic and social rights for people – fulfill the democratic essence and social transformation agenda of the Preamble.

C. Preamble to the Constitution

The Constitution begins with an introductory statement called the preamble. Based on the Objectives Resolution, it lays down the guiding principles and the philosophy for the Constitution. It provides for unity and integrity of the country.

The Constitution of India starts with its Preamble. The Supreme Court of India in the Fundamental Rights Case (Keshavananda Bharati v. Union of India, 1973 SC 1461) held that Preamble does form part of the Constitution. The objectives specified in the Preamble contain the ' basic structure' of the Constitution. The Preamble is the guide to interpret the provisions of the Constitution.

PREMABLE

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

JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT,

ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The Preamble to the Constitution reaffirms that the people of India have adopted, enacted and given to themselves the Constitution. Supreme Court in Charan Lal Sahu v. Union Of India (AIR 1990 SC 1480) popularly known as Bhopal Gas Leak Tragedy Case held that Sovereign denotes that India is not subject to any external authority and that India as a state has the power to legislate on any subject in conformity with Constitutional limitations.

The Preamble to the Constitution states that India's governing system is based on Republican and Democratic principles. In S. R. Bommai v. U.O.I. (AIR 1994 SC 1918), the Supreme Court held that the word 'democratic' signifies that 'India has a responsible parliamentary form of Government, which is accountable to the elected legislature'.

'Republic' denotes that the head of the state is an elected person and not a hereditary monarch. Any Indian without any discrimination as to the caste, creed, and religion can contest for Presidential elections and can occupy the office, provided he fulfills the eligibility conditions as provided by the Constitution. The Preamble seeks to achieve for all citizens, social, economic and political justice; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; fraternity, unity and integrity of the nation.

The Preamble and the Constitutional provisions aim to secure to its citizens equality of status and opportunity in state affairs such as elections, and in state employment without any special privilege or discrimination based on the ground of religion, race, caste, sex, place of birth. The word 'Socialist' was added by the Constitution (forty-second Amendment) Act, 1976. This term is not defined in the Constitution. In general, it means a system under which the means of production and distribution are State owned. The Supreme Court in the case of S.R. Bommai v. Union of India (AIR 1994 SC 1918) held that the principal aim of socialism is to eliminate inequality of income, status, standards of life and to provide a decent standard of life to working people.

The Preamble establishes India as a Secular State. India is a country of multifarious religions, beliefs and sects. Its people profess and practise different religions. But, India as a Union of states has no official religion. There is no state-recognized place of worship. The state does not identify itself with or favour any particular religion. State laws and policies prohibit any discrimination on the grounds of religion. It treats all religious equally and confers protection to citizens to profess, propagate and practise their religions. The word 'Secular' was added by the Constitution (forty-second Amendment) Act, 1976. Even before the Amendment, operation of the concept of secularism was visible in the Fundamental Rights and Directive Principles. This has also been given the status of Basic Structure of the Constitution in Keshavananda Bharati's case.

LET US PONDER

The phrase 'we the people' in the preamble of the Constitution of India emphasizes upon the concept of popular sovereignty as laid down by J. J. Rousseau. It signifies that the power emanates from the people and the political system will be accountable and responsible to the people.

Find out the significance and implied meanings of the following terms used in the preamble:

- Sovereign
- Secular
- Republic
- Socialist
- Democratic

D. Fundamental Rights; Directive Principles of State Policy; Fundamental Duties

(i) Fundamental Rights

In the Constitution of India, the human rights provisions are set out in two chapters. Part III of the Constitution provides for Fundamental Rights, largely of political and civil nature, which are enforceable by a court of law. This chapter was revolutionary as it broke the barriers of the Indian traditional and hierarchical society that did not recognize the principles of individual equality.

The Constitution of India guarantees its people certain basic human rights and freedoms known as 'Fundamental Rights', which are listed in Part III of the Constitution (Articles 12 to 35). These are broadly rights of equality (equality before laws and prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; equality of opportunity in matters of public employment; abolition of untouchability and titles); right to freedom (rights regarding freedom of speech such as freedom of speech and expression, right to free movement, to form associations, to practice any trade or occupation]; protection in respect to conviction for offences; protection of life and personal liberty; protection against arrest and detention in certain cases); right against exploitation, right to freedom of religion; cultural and education rights and right to constitutional remedies. The right to education was inserted as Article 21A vide the Constitution (eighty-sixth Amendment) Act, 2002. Fundamental Rights stated under Article 14 and 21 are even conferred to non-citizens.

JUST TO POINT OUT

Right to property was originally a fundamental right, but after the 44th Amendment Act, 1978, right to property ceased to be a Fundamental right. Instead the right to property is mentioned under 300 A of Constitution of India, stating that no person can be deprived of his property save by law.

The Fundamental Rights guarantee to the people certain basic rights. The legislative and executive actions which infringe upon or violate the Fundamental Rights are declared ultra vires the Constitution. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of fundamental rights under Article 32 and the High Courts under Article 226 of the Constitution. The speedy and effective remedy under Article 32 is itself guaranteed as a Fundamental Right. Therefore, these guaranteed rights are termed justiciable rights.

Given below is the meaning and origin of the word/phrases used for different types of writs and the context in which they are used:

Type of Writ	Origin	Literal Meaning	Purpose of issue
Habeas Corpus	Latin	You may have the body	To produce a person who has been detained, whether in prison or in private custody, before a court and to release him/her if such detention is found illegal.
Mandamus	Latin	We command	A command issued by the court to any public or quasi-public legal body that has refused to perform its legal duty. It is an order by a superior court commanding a person or a public authority to do or forbear to do something in the nature of public duty.
Quowarranto	Latin	By what warrant or authority	It is an order issued by the court to prevent a person from holding office to which he is not entitled and to oust him from that office.
Certiorari	Latin	To be more fully informed	It is a writ issued by a superior court to an inferior court or body exercising judicial or quasi-judicial powers to remove a suit and adjudicate upon the validity of the proceedings or body exercising judicial or quasi-judicial functions.
Prohibition	English	To forbid or to stop	It is issued by a superior court to an inferior court in order to prevent the inferior court from dealing with a matter over which it has no jurisdiction. The aim of this writ is to keep the inferior courts within the limits of their jurisdiction.

Difference between Writ Jurisdiction of Supreme Court and High Court

Difference	Supreme Court	High Court
Purpose	To only enforce fundamental rights	To enforce fundamental rights as well as ordinary legal rights
Power	Article 32 is a fundamental right- the Supreme Court cannot refuse to exercise its power to issue the writs	It is not a fundamental right. High Court may refuse to exercise its power to issue writs

(ii) Directive Principles

The Directive Principles of State Policy are included in Part IV of the Constitution. These are the guiding principles governing state policies in the social sector. They are interpreted as economic and social rights and are classically socialist in nature and fulfil the social revolution agenda of the preamble. The provisions are not enforceable by any court of law, but provide guidance in carrying out and drafting laws regarding human and social development.

Article 37 states that these provisions shall not be enforceable by any court, but the principles laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. These directives put an obligation on the State to take positive action in order to promote the welfare of people.

Article 38 (1) states that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life.

Article 38 (2) states that the State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Some of the important Directive Principles include the right to an adequate means of livelihood for citizens, equal pay for equal work for both men and women, living wages for workers, equal justice and free legal aid, organization of village Panchayats, provision of just and humane conditions of work and maternity relief, uniform civil code for citizens, promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections, duty of the state to raise the level of nutrition and to improve public health, protection and improvement of environment and promotion of international peace and security.

A large number of laws have been enacted and adopted to implement the Directive Principles of State Policy. Examples include the Legal Services Authority Act, 1987, Right to Free and Compulsory Education, 2009, Child Labour Prohibition Act, 1986, Environment Protection Act, 1986, Wild Life Protection Act, 1972, Minimum Wages Act, 1948, Equal Pay for Equal Work Act etc.

The Constitution (seventy-third, seventy-fourth Amendment) Acts, 1992 led to the establishment of Panchayati Raj Institutions and Urban Local Bodies based on democratic principles.

Importantly, the Constitution (86th Amendment) Act, 2002 paved way for introduction of Right to Education for children in the age group of 6 to 14 years as a Fundamental Right.

The Supreme Court of India while interpreting Constitutional provisions elevated some Directive Principles to the status of Fundamental Rights, for instance;

- Right to Equal pay for Equal work in Randhir Singh v. U.O.I. (AIR 1982 SC 879);
- Right to Clean and Healthy Environment in the case of M.C Mehta v. Kamal Nath, (AIR 2000 SC 1997);
- Right to Free Legal Aid in the case of Hussainara Khatoon v. Home secretary (AIR 1979 SC 1369).

On the question of inter-relationship between Fundamental Rights and Directive Principles, the Supreme Court in Kesavananda Bharti case held that 'Fundamental Rights and Directive Principles constitute the conscience of the Constitution…There is no antithesis between the Fundamental Rights and Directive Principles… and one supplements the other'.

In Ashok Kumar Thakur v. Union of India (2008 (6) SCC 1) Supreme Court held that no distinction can be made between the two sets of rights. The Fundamental Rights represents the Political and Civil Rights and the Directive Principles embody Social and Economic Rights. Merely because the directive principles are non-justiciable by the judicial process, it does not mean that they are of subordinate importance.

Enforcement of the Directive Principle of State Policy under the Constitution of India: In the case of Randhir Singh v. Union of India & others, the Hon'ble Supreme Court in its judgment enforced one of the directive principles of state policy. The relevant part of the Supreme Court judgment reads as follows :

"8. ……..Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a directive principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court, have to be read into the fundamental rights as a matter of interpretation.

Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State……

Construing Articles 14 and 16 in the light of the Preamble and Article 39(d) we are of the view that the principle 'Equal pay for Equal work' is 'deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification, though these drawing the different scales of pay do identical work under the same employer."

Difference between Fundamental Rights and Directive Principles of State Policy

Fundamental Rights	Directive Principles of State Policy
Part III of the Constitution of India contains the Fundamental Rights. They are given in Articles 12-35 of the Constitution of India.	Part IV of the Constitution of India contains Directive Principles of State Policy. They are given in Articles 36-51 of the Constitution of India.
These are basic, inalienable rights that are guaranteed to Indian citizens by the Constitution of India.	Directive Principles of the Constitution of India are the guidelines to be followed by the Government while framing policies.
They are civil and political in nature, *i.e.* they help the citizens in enjoying their life under a government.	They are social and economic in nature.
Fundamental Rights are justiciable as they can be enforced legally by the courts by way of writs.	Directive Principles are not justiciable as they cannot be enforced by the courts if there is a violation. They can be enforced either by passing a legislation or by judicial process where they are linked to a fundamental right and hence its status is elevated.
The concept of Fundamental Rights was borrowed from the Constitution of the United States of America.	The concept of Directive Principles of State Policy was borrowed from the Constitution of Ireland which was in turn copied from the Constitution of Spain.

(iii) Fundamental Duties – Article 51A

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;

b. to cherish and follow the noble ideals which inspired our national struggle for freedom;

c. to uphold and protect the sovereignty, unity and integrity of India;

d. to defend the country and render 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 practice derogatory to the dignity of women;

f. to value and preserve the rich heritage of our composite culture;

g. to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures;

h. to develop the scientific temper, humanism and the spirit of inquiry and reform;

i. to safeguard public property and to abjure violence;

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;

k. to provide opportunities for education to his/her child or, as the case may be, ward between age of 6 and 14 years;

l. who is a parent or guardian to provide opportunity for education to his child or as the case may be, and between the age of six and fourteen years. (inserted by 86th constitution amendment act 2002).

The Constitution (forty-second Amendment) Act, 1976 added Part IV-A, Article 51-A on Fundamental Duties of citizens, to the Constitution. These are eleven in number.

There is no provision in the Constitution to enforce Fundamental Duties. Supreme Court in Bijoe Emmanuel v. State of Kerala (AIR 1987 SC 478) held that duties imposed on the citizens may be enforced through the enactment of legislations. For example 'The Prevention of Insult to National Honours Act, 1971'punishes a person who insults the national honours. These duties are read along with Fundamental Rights. As stated by the Supreme Court in Mohan Kumar v. Union of India (AIR 1992 SC 1), the courts may also enforce the duties while balancing and harmonizing them with the Fundamental Rights.

LET US PONDER

- Till date there have been quite a few significant amendments in the constitution. Find out about 10 amendments, in groups.
- Compare and discuss each individual amendment and how it relates to the people of India.

E. Constitutional Provision for Amendment of the Constitution of India

- Part XX of the Constitution of India provides in detail the procedure for amendment of the Constitution. Article 368 specifies the powers of the Parliament to amend the Constitution and lays down the procedure. There is no limitation on the constituent power of the Parliament for amending by adding, removing or improving the provisions in the Constitution.
- The initial step of an Amendment is the introduction of a Bill for the purpose in either House of Parliament. The bill has to be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of that House present and voting. The Bill is then sent for President's assent.
- Some amendments also require to be ratified by the Legislature of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
- The Supreme Court in the case of Kesavananda Bharti v. State of Kerala (AIR 1973 SC 1461) case has restrained the powers of Parliament to amend the Constitution of India in respect of its Basic Structure.

F. Adult Suffrage

Article 326 confers on the citizens of India the right to vote in the general elections to the House of People and to the Legislative Assemblies of States. Every citizen who is not less than 18 years of age (reduced from 21 years by the Constitution (Sixty-first Amendment Act, 1988) and otherwise not disqualified under the Constitution or any other law on the grounds of unsoundness of mind, non- residence, crime or corrupt or illegal practice shall be entitled to be registered as a voter at any such election. There is one general electoral roll for every territorial constituency, as stated in Article 325 of the Constitution, for election to either House of Parliament or to the House or Houses of State Legislature. This Article further specifies that no person shall be ineligible for inclusion to the electoral roll on the grounds only of religion, race caste sex or any of them.

- Articles 330 and 332 provide for reservation of seats for the Scheduled Castes and Scheduled Tribes, in the House of People and Legislative Assemblies respectively; and
- Article 331 provides for representation for members of the Anglo-Indian community in the House of People.
- In the case of Indira Nehru Gandhi v. Raj Narain (AIR 1975 SC 2299), popularly known as Election case, right to free and fair elections has been declared to constitute the Basic Structure of the Constitution.

G. Single Citizenship

The Constitution of India provides single citizenship to its citizens. Part II of the Constitution of India contains provisions regarding citizenship at the commencement of the Constitution and other matters. The Citizenship Act 1955 provides that citizenship can be acquired by way of birth, descent or registration. (The Act also provides for citizenship by naturalization and by incorporation of territory.) The citizens of India enjoy political and civil rights enshrined under the Constitution such as the right to vote, right to contest elections, right to hold high offices such as that of the President, Vice President, Governor, Judges, subject to satisfaction of other criteria prescribed for the purpose. No citizen can be denied employment in any State on the grounds of being non- resident of that State.

There are **four ways** in which Indian citizenship can be acquired: **birth, descent, registration and naturalisation**. The provisions are listed under the **Citizenship Act, 1955**.

- **By Birth:** Every person who takes birth in India and whose parents are not illegal migrants are entitled to Citizenship by birth.
- **By Registration:** Citizenship can also be acquired by registration. It usually requires residence of atleast 7 years.
- **By Descent:** If either of the parents is a citizen of India.
- **By Naturalisation:** A person can acquire citizenship by naturalisation if he/she is ordinarily resident of India for 12 years.

H. Independent Judiciary

Another notable feature of the Constitution of India is its provisions which uphold the independence of the judiciary from the influence of other organs of the Government. The Judiciary functions in accordance with the set principles of the Constitution. This topic has been dealt with in the preceding chapters.

I. Emergency Provisions

- The Constitution makers also foresaw that there could be situations when the government could not be run as in ordinary times. To cope with such situations, Part XVIII of the Constitution elaborates on emergency provisions.
- The President, who is advised by the Cabinet of ministers at the center, proclaims the state of emergency. Accordingly, the President is concerned to declare three types of emergencies:-
  - Emergency caused by war, external aggression or armed rebellion [Aricle 352]
  - Emergency arising out of the failure of constitutional machinery in states [Article 356 & 365]
  - Financial emergency [Article 360].
- The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- During an emergency, the central government becomes all-powerful and the states go under total control of the centre.
- This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.

J. Federal in form Unitary in character

- The Constitution of India establishes a federal system of government.
- It contains all the usual features of a federation, such as two governments, division of powers, written constitution, the supremacy of the constitution, the rigidity of the Constitution, independent judiciary and bicameralism.
- However, the Indian Constitution also contains a large number of unitary or non-federal features, such as a strong Centre, single Constitution, appointment of state governor by the Centre, all-India services, integrated judiciary, and so on.
- Moreover, the term 'Federation' has nowhere been used in the Constitution.
- Article 1, describes India as a 'Union of States' which implies two things:

- Indian Federation is not the result of an agreement by the states.
- No state has the right to secede from the federation.

K. Division of Power- Centre- State Relations

Various articles and schedules of the Constitution lay down rules about the powers of the central and the state governments as well as the relations between them.

The Seventh Schedule contains three legislative lists: Union list, State list, and the Concurrent list. These three lists define the legislative jurisdictions.

The central government has the exclusive legislative authority to frame laws over matters listed in the Union list. There are 99 items in the Union list that include foreign affairs, defense, armed forces, communications, posts and telegraph, foreign trade etc.

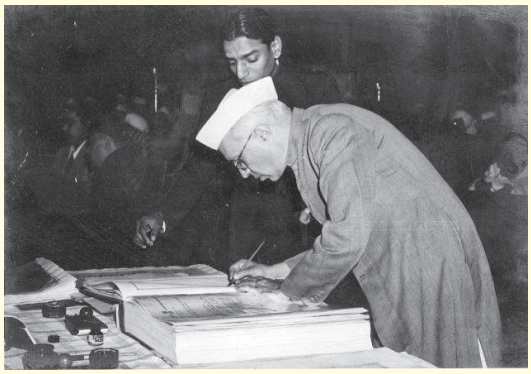
The state governments ordinarily have the authority on matters stated in the State list. There are exceptional situations however, such as emergency, national interest, and international trade when the Centre can legislate on matters of the State list. There are 61 subjects in the State list that include public order, police, administration of justice, prison, local governments, agriculture and so on.

Both Parliament and State legislatures have powers over matters enumerated in the Concurrent list. However, the Parliament has supremacy in this list. It comprises of 52 items and includes criminal and civil procedure, marriage and divorce, economic and special planning, trade unions, electricity, newspapers, books, education, population control and family planning and so on.

Residuary items rest with the center.

L. Schedules to the Constitution

Originally there were eight schedules but now there are 12 Schedules attached to the Constitution of India. They provide necessary administrative details to the functioning of the organs of Government. These Schedules are amendable by Parliament.



Picture Above: Pt. Jawaharlal Nehru was the first one to sign on the Constitution of India.

LET US PONDER

Did you ever get an opportunity to read the Constitution of India? If not, have you heard of some of the above parts in it? Being a citizen of India, don't you think it is not late for you to know at least some details, if not all about it? Don't you think that you should have a copy of the Constitution of India in your home for your reading and reference as well as for your family members?

V. Exercises

Based on your understanding, answer the following questions:

Q-1 Briefly write the facts/ observation of the court with regards to the following cases-

1. Charan Lal Sahu v. Union of India
2. S.R. Bommai v. Union of India
3. Randhir Singh v. U.O.I
4. M.C Mehta v. Kamal Nath
5. Ashok Kumar Thakur v. Union of India

Q-2 Write brief notes on-

1. Fundamental Rights
2. Fundamental Duties
3. Preamble
4. Directive Principles of State Policy

Q-3 Give one point of difference between the following –

1. Unicameral and Bicameral legislature
2. Fundamental rights and Fundamental duties
3. Sovereign and Secular
4. Article 32 and Article 226
5. Original and Advisory jurisdiction of the Supreme Court

Q-4 Answer the following questions briefly-

1. Why would one term the Constitution of India as a 'living document'?
2. Briefly describe the three sources of the Constitution of India.
3. How was the Constituent Assembly formed? What was its purpose?
4. When can the President of India proclaim a state of emergency? What happens during such a situation?
5. Can the Basic structure of the Constitution be amended? Why/ why not?

Q-5 Answer the following questions in about 200 words

1. Describe any six features of the Constitution of India.
2. What is the importance of Fundamental Rights in a democratic country like India?

Q-6 When can the President run the country in a unitary fashion? What are the three conditions under which it can happen? Explain.

Q-7 Ajit was arrested by the police without giving any ground nor was he granted other basic rights behind the bars. Identify and explain the remedy available to him.

Q-8 On the question of interrelationship between Fundamental rights and Directive Principles, the Supreme court in a landmark judgement held that 'Fundamental rights and Directive Principles constitute the conscience of the Constitution'.

In light of the above passage, answer the following questions:

1. What are Fundamental rights and Directive Principles?
2. Which is the landmark judgment mentioned by the Supreme Court?
3. Evaluate the inter-relationship between Fundamental rights and Directive Principles.

Q-9 You may identify the invocation of particular writ remedy from the judgments of the Supreme Court of India or any High Court.

Activity

Divide the class into 4 groups and assign following tasks to each group:

Group 1: Try and find out at least 5 more people associated with the making of the Constitution and prepare a presentation on their contribution.

Group 2: Write a brief biography of any two out of the ten contributors mentioned above.

Group 3: Enact a dialogue between the members of the Constitution drafting committee after they have finished the task. (Focus on their excitement, apprehensions and other such feelings).

Group 4: A panel discussion on the importance and significance of a written and living constitution. (A living Constitution is the one that can be amended).

CHAPTER 2

Administrative Law

Contents

Learning Outcomes

After the completion of this chapter, the students will be able to:

- Interpret the meaning of administrative law
- Differentiate between Administrative law and Constitutional law
- State reasons for growth of administrative law as a separate discipline
- Explain and identify the types of administrative actions
- Critically evaluate the concept of rule of law
- Explain the Droit system

I. Background

History tells us that societies and civilizations can survive without science and technology but not without administration. Administrative Law aims to ensure that the policies, rules, regulations and legislations formulated for public good are not misused.

II. Administrative Law and Constitutional Law: Key Differences

Before the 21st century, Administrative Law was considered a part of Constitutional Law. However, there has been a clear distinction in the subject matter of their respective studies in recent times. Administrative law aims to keep a check on the actions of the Government when dealing with the procedures affecting the rights of citizens. On the other hand, Constitutional law clarifies the scope of rights and duties of citizens and the Government. For example, how elections are held, Parliament is formed, the powers of the Parliament and of the different branches of the State. These are essentially the key questions in the scheme of any democratic constitution. Whereas, when a Minister is finally appointed and his actions affect the general public good, then we can categorize the study of these actions as a core constituent of Administrative Law.

III. Reasons for Growth, Development and Study of Administrative Law

In the 21st century, developing countries like India expect a very proactive State for their own welfare. The welfare quotient in the administration cannot solely be vested in the legislature. This is impossible in practical terms as Governance as a whole will cease to function, if for all kinds of administrative actions, the sanction of the legislature is compulsorily required.

This need for delegation is often pointed out as the single most important factor which has led to the growth of Administrative Law. Moreover, if we were to examine the scheme of our Constitution, while defining 'State', Article 12 of the Constitution of India mentions 'any other authority'. Hence, 'any other authorities' includes authorities created by law, authorities which are agencies and instrumentalities of the State or authorities which are essentially discharging public functions which have an impact on the common people, are all part of the State.

For example, an NGO being funded by the Government- whose control vests with the Government- its functions are akin to the Government's functions; in this case such an NGO would be considered as 'State' for the purpose of Article 12 of the Constitution.

IV. Types of Administrative Action

Administrative action can be of four types:

Administrative Legislative Action

Wherein the administration puts on the hat of the legislature simply because it is not practically possible for any legislature in the world to legislate so perfectly that their laws are able to cover the possibility of all kinds of conflicts which can arise out of a decision even if the Members of Parliament sit for all days in a year. Administrative legislative action includes rule-making action as well as delegated legislation.

Quasi-judicial action or administrative adjudicatory action

In these cases, the administration performs functions which can be put under the judicial domain as there is some adjudication on legal rights of the individuals involved in the matter. Eg-Tribunals

Simply Administrative Action

Of all the actions undertaken by administrative authorities, other than the two types of actions mentioned above, the rest are called 'Administrative Actions' which essentially deal with execution of crucial administrative decisions. In administrative action, there is discretion to the administrative authority (that is,the authority has the right to exercise his/her own understanding and discretion in dealing with the matter).

Ministerial Action/Purely Administrative action

Actions which are copybook action and actions in which no discretion is vested with the authority (that is there is only one way of performing that action), such action will be called purely administrative action or ministerial action. For example, the statute which created a University mandates that the University open a bank account with a given Bank Y. This is a purely administrative action or a ministerial action as there is no scope of any discretion in its performance.

Hence, as is clear from the aforesaid classification, it would be wrong to say that Administrative Law deals only with the execution of policies or that it is only procedural in nature. In contemporary times, it can be called a full-fledged discipline which is very substantive in nature.

V. Fundamental Principle of Administrative Law: Rule of Law

It essentially deals with the doctrine of constitutional morality which states that even in doing something legal, an administrative action must always be fair and reasonable. For example, University guidelines read that you can appoint any person as the Professor of Law. No other qualification as such is laid down. University appoints a person who has no qualification of Law and has no teaching experience. Hence in this case, it is the principle of administrative morality which operates and vitiates the said appointment.

Rule of law is an essential tool to protect the freedom and dignity of individuals against organized powers. In the landmark ruling by the Supreme Court of India in Keshavananda Bharti v. State of Kerala, 'rule of law' was categorized as a 'basic structure' of the Constitution. Basic structure means those basic characters/attributes which are enshrined in the heart of the Constitution and which cannot be repealed/ replaced by any Parliament. Hence, it is a bundle of characteristics of the Constitution of India which can never lose their relevance and can never be derogated.

There was opposition to the doctrine in the days of monarchy as it limits the powers of the monarch or king to change laws and rules according to his own fancy. Hence, rule of law as a principle is essentially based only in democratic societies and is not a known feature of monarchies.

In a democratic society, fundamental principles of Administrative Law are: transparency or openness, the principle of participation, of impartiality and objectivity, reasoned decisions, legality, effective review of administrative rules and administrative decisions, accountability and non-arbitrariness. All these principles are broadly encompassed under the

1. Rule of law
2. Doctrine of separation of powers
3. Principles of natural justice.

Since we have dealt with Doctrine of separation of powers and principles of natural justice, here we will focus on Rule of Law. For recapitulation let's recall the two concepts;

Separation of power

'Separation of powers' was meant to create divisions within the Government setup to create better administration within the State.

Separation of powers refers to the division of a state's government into branches, each with separate, independent powers and responsibilities, so that the powers of one branch are not in conflict with those of the other branches. The typical division is into three branches: a legislature, an executive, and a judiciary, which is the triaspolitica model. It can be contrasted with the fusion of powers in parliamentary and semi-presidential systems, where the executive and legislative branches overlap.

The intention behind a system of separated powers is to prevent the concentration of power by providing for checks and balances. The separation of powers model is often imprecisely and metonymically used interchangeably with the triaspolitica principle. While the triaspolitica model is a common type of separation, there are governments that have more or fewer than three branches.

Principles of Natural Justice

Natural justice is an expression of English common law, and involves a procedural requirement of fairness. The principles of natural justice have great significance in the study of Administrative law. It is also known as substantial justice or fundamental justice or Universal justice or fair play in action. The principles of natural justice are not embodied rules and are not codified. They are judge made rules and are regarded as counterpart of the American procedural due process.

Mr. Justice Bhagwati called principles of natural justice as fair play in action. Article 14 and 21 of the Indian Constitution has strengthened the concept of natural justice.

Basis of the application of the principle of natural justice:

The principles of natural justice, originated from common law in England are based on two Latin maxims, (which were drawn from jus natural).

In simple words, English law recognizes two principles of natural justice as stated below-

1. NemoJudex in causasua or Nemodebetessejudex in propriacausa or Rule against bias (No man shall be a judge in his own cause).
2. Audi Alterampartem or the rule of fair hearing (hear the other side).

Rule against bias or bias of interest- the term bias means anything which tends to or may be regarded as tending to cause such a person to decide a case otherwise than on evidence must be held to be biased. In simple words, bias means deciding a case otherwise than on the principles of evidence.

This principle is based on the following rules

1. No one should be a judge in his own cause.
2. Justice should not only be done, but manifestly and undoubtedly be seen to be done.

The above rules make it clear that judiciary must be free from bias and should deliver pure and impartial justice. Judges must act judicially and decide the case without considering anything other than the principles of evidence.

Kinds of Bias: The rule against bias may be classified under the following three heads:

1. Pecuniary bias
2. Personal bias
3. Bias as to subject matter.

1. Pecuniary Bias

Pecuniary bias arises, when the adjudicator/ judge has monetary/ economic interest in the subject matter of the dispute/ case. The judge, while deciding a case should not have any pecuniary or economic interest. In other words, pecuniary interest in the subject matter of litigation disqualifies a person from acting as a judge.

2. Personal Bias

Personal bias arises from near and dear i.e. from friendship, relationship, business or professional association. Such relationship disqualifies a person from acting as a judge.

3. Bias as to subject matter (official bias)

Any interest or prejudice will disqualify a judge from hearing the case. When the adjudicator or the judge has general interest in the subject matter in dispute on account of his association with the administration or private body, he will be disqualified on the ground of bias if he has intimately identified himself with the issues in dispute. To disqualify on the ground there must be intimate and direct connection between the adjudicator and the issues in dispute.

2. Audi alterampartem or the rule of fair hearing (hear the other side)

The second fundamental principle of natural justice is audialterampartem or the rule of fair

hearing. It means no one shall be condemned unheard i.e. there must be fairness on the part of the deciding authority.

According to this principle, reasonable opportunity must be given to a person before taking any action against him. This rule insists that the affected person must be given an opportunity to produce evidence in support of his case. He should disclose the evidence to be utilized against him and should be given an opportunity to rebut the evidence produced by the other party.

Essentials of fair hearing

To constitute fair hearing, the following ingredients are to be satisfied-

1. Notice
2. Hearing

1. **Notice:** There is a duty on the part of the deciding authority to give notice to a person before taking any action against him. The notice must be reasonable and must contain the time, place, nature of hearing and other particulars.
2. **Hearing:** Fair hearing in its full sense means that a person against whom an order to his prejudice is passed should be informed of the charges against him, be given an opportunity to submit his explanation thereto, have a right to know the evidence both oral and documentary, by which the matter is proposed to be decided and to have the witnesses examined in his presence and have the right to cross examine them and to lead his own evidence both oral and documentary in his defence. It is a code of procedure, which has no definite content, but varies with the facts and circumstances of the case.

Ingredients of fair hearing: a hearing will be treated as fair hearing if the following conditions are satisfied:

1. Adjudicating authority receives all the relevant material produced by the individual
2. The adjudicating authority discloses to the individual concerned evidence or material which it wishes to use against him
3. The adjudicating authority provides the person concerned an opportunity to rebut the evidence or material which they said authority wants to use against him

Maneka Gandhi Vs Union of India-

In Maneka Gandhi's case, the petitioner's passport was confiscated by the Union Government under Section 10(3)(c) of the Passport Act, 1967. The provision under which impoundment took place authorizes the central government to carry out the same if it was necessary for the interest of the general public at large. But the government did not provide any reasons for carrying out the same.

The petitioner filed a writ petition under Article 32 of the Constitution which mentioned the following things:

1. Section 10(3)(c) of the Passport Act, 1967 was in violation with Article 14 of the Constitution for it vested excessive discretionary powers in the hand of the passport authority.
2. Section 10(3)(c) did not align with the principles of natural justice because it did not provide any space for allowing the passport holder to be heard.
3. There was a lack of reasonable procedure by Section 10(3)(c) which also led to the same contravening with Article 21 of the Constitution.

4. Section 10(3)(c) was also in violation with Article 19(1)(a) and(g).

The Supreme Court highlighted that the subject-matter of Article 21 of the Constitution does not promote unfair procedures to carry out the execution of the same and the principle of reasonability which is an essential requirement of equality as provided in Article 14 which is supposed to be adopted in context with Article 21 was violated. Therefore, along with the breach of the provided statutory provisions, there was also a contravention of the principles of natural justice as infused in the doctrine of Audi AlteramPartem commonly means that both sides should be heard. The court laid down certain aspects that need to be fulfilled before a person is said to be deprived of personal liberty guaranteed in Article 21 of the Constitution. They are:

1. Presence of a valid law.
2. The law must also consist of a procedure to carry it out.
3. The procedure must be fair, just and reasonable by nature.
4. The element of reasonability can be said to be satisfied if the requirements of Article 14 and Article 19 of the Constitution are aligned with.

The court did not generally quash the contravening grounds for then the administrative efficacy would have been hampered along with the necessity of the Passport Act. The court was with the observance that fair procedure cannot be ignored to maintain administrative efficiency rather it should strike a balance in order to provide equal importance to both. This led to the development of the concept of post-decisional hearing. Although in this case passport was returned to the petitioner on socio-economic grounds, in further cases that followed the Maneka Gandhi case, the concept of post decisional hearing was given preference. Article 14 and Article 21 of the Constitution are the two provisions that keep the principles of natural justice intact in the Indian Constitution. They also establish Dicey's concept of the rule of law.

Post decisional hearing

Post decisional hearing can be identified as a harmonizing tool to balance between administrative efficacy and fair procedures governing an individual. Post decisional hearing was not brought about to overpower pre-decisional hearing but to supplement the latter whenever the case demands. The usage of post-decisional hearing is restricted to exceptional usage only. Such exceptional grounds are likely to include deprivation of property, liberty, livelihood or any other public interest that any individual can demand and is relevant by nature.

The Maneka Gandhi case gave rise to the principle as the case was in conflict with statute and the principle of natural justice and it became relevant for the court to decide as to whom to prefer more. Although a prior hearing is always better than subsequent hearing, the latter is preferred over no hearing at all. The fact that supports post decisional hearing is the speedy disposal of cases and remedying of injustice. Post decisional hearing is, therefore, a demand when immediate decisions are to be taken in light of the public interest. In the case of post decisional hearing, an individual is provided with an opportunity to be heard after a decision has been adopted by the concerned authorities within a specific time frame.

The important feature that is required to be highlighted by this kind of hearing is that the decision taken by the concerned authorities are not permanent and final by nature rather, a tentative one for without the parties being heard, the final decision cannot be taken as it goes against the Principles of Natural Justice. As the conflict between pre-decisional hearing and that of post decisional hearing rises, the courts developed a test, which is divided into three parts to determine which is mandated when. They are:

1) The public interests that are involved need to be considered.

2) Association of the risks that are involved in allowing the adoption of pre-decisional hearing needs to be taken care of along with taking care of the values of the Constitution that are involved.

3) Government's administrative and economic implications.

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Did you know?

India's Vedas, Smritis and Upanishads are all texts which perpetuate the ideals of fair administration (dharma) and hence, rule of law.

VI. Droit System

Droit Administrative Law

Under the French system of administration of justice a landmark event occurred when Napoleon took over the power of administration and became the Consul General in the late eighteenth century. To exercise the judicial powers, there existed the King's court called Conseil Du Roi. This Court only played an advisory role to the King. Ordinary Courts on the other hand were much neglected and their salary was dependent on the fee collected.

As a competitor to the King's court, Ordinary Courts started developing an attitude of putting breaks on schemes and programmes of the Government. Hence, the reforms brought about by Napoleon had two objectives, namely to usher in as quickly as possible, socio-economic movements in the country and in this process, if there is any dispute between an individual and the Government departments, it should be decided as quickly as possible. Hence, the Court was disallowed from putting a spanner in the wheels of administration.

Likewise, the King's powers were also curtailed and the King's court was abolished. The new system evolved a paradigm shift from conventional judicial decision making. Special Courts had been established to expeditiously dispose the matter pending by this system. France had evolved a dual system of justice operating on the same land, governing the same set of people in the same constituency. While an all private parties' dispute found its way in the civil court, a dispute between a private individual and Government departments nearly always went to the administrative courts.

The highest administrative court was Counseil de' Etat. Initially, when this system was established, direct filing of cases was not allowed. The court could only entertain the petition when the Minister had forwarded the same to the court and the decision of the court could have only been of advisory value for the minister.

Although there have been theoretical objections to the Droit system, it is often considered far more efficient than its contemporary common law system.

Napoléon Bonaparte, (born August 15, 1769 —died May 5, 1821) was the French general, first consul, and emperor of the French and one of the most celebrated personages in the history of the West. He revolutionized military organization and training; sponsored the Napoleonic Code, the prototype of later civil-law codes; reorganized education; and established the long-lived Concordat with the papacy. Napoleon's many reforms left a lasting mark on the institutions of France and of much of western Europe. But his driving passion was the military expansion of French dominion, and he was almost unanimously revered during his lifetime and until the end of the Second Empire under his nephew Napoleon III as one of history's great heroes.