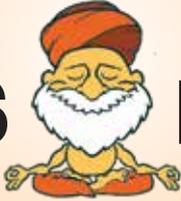
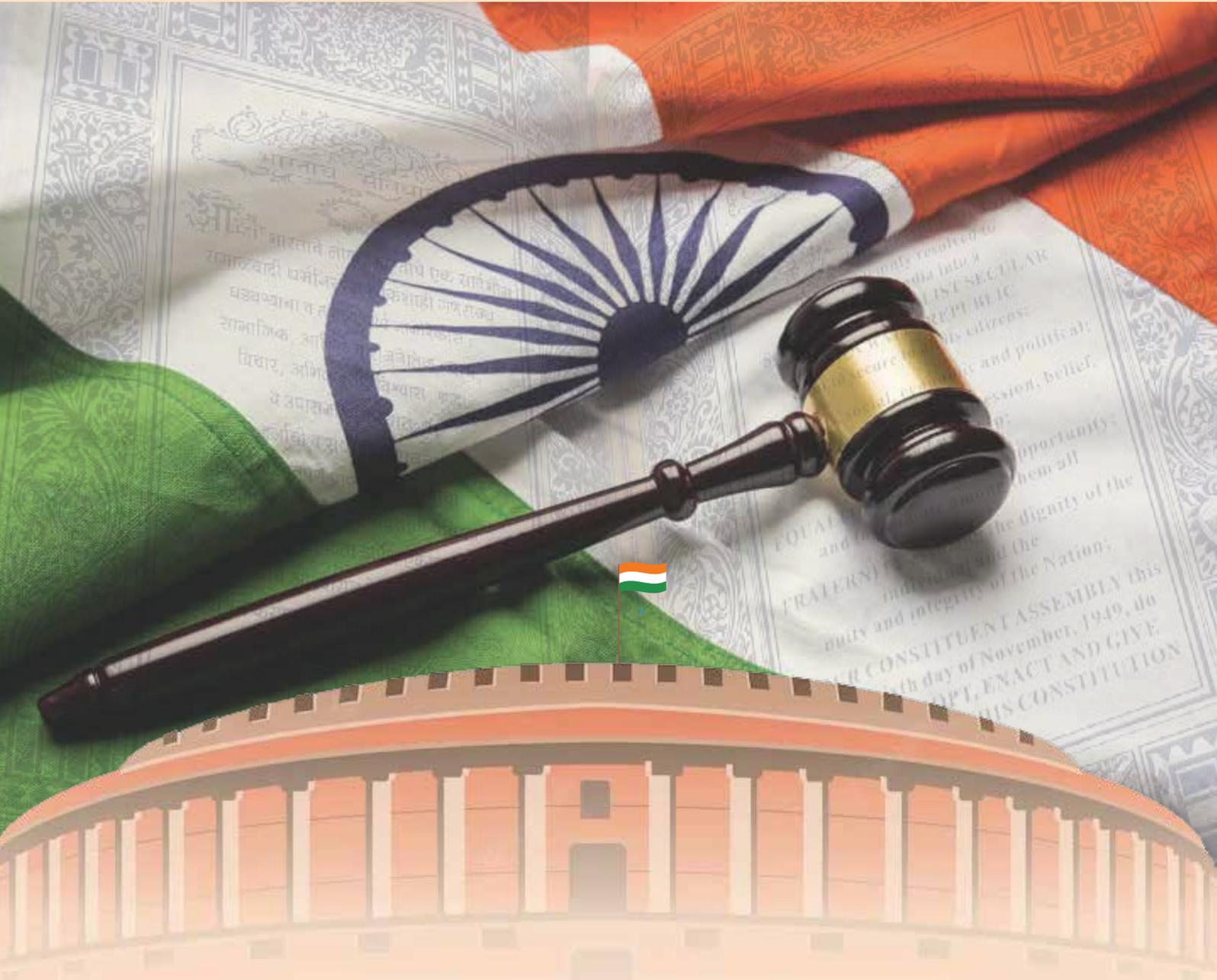


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**The Guru-shishya Parampara Continues...**



**VALUE ADD NOTES (VAN)**

**POLITY**

**(BOOK-1)**

Dear Aspirants,

As the backbone of governance and constitutional understanding, **Polity** holds a central place in the UPSC syllabus. Its relevance cuts across **Prelims, Mains, and the Interview**, making it indispensable for any serious aspirant. Polity builds your understanding of how the State functions—its institutions, rights, responsibilities, and the rule of law—all crucial for a future civil servant.

In the **Prelims**, Polity is a high-scoring and predictable subject. Questions test your grasp over the **Constitution, Parliament, Judiciary, Federalism, Fundamental Rights and Duties**, and more. A solid conceptual foundation and clarity in constitutional provisions often make the difference between selection and elimination.

In the **Mains**, particularly **GS Paper II**, Polity connects static knowledge with current developments—be it debates on constitutional amendments, judicial interventions, electoral reforms, or governance issues. The ability to link **constitutional principles with contemporary affairs** adds significant value to your answers. In the **Interview**, a sound understanding of polity enables you to articulate views on governance, policy, and institutional accountability with confidence and maturity.

To sharpen your preparation, **IASbaba's Value Added Notes (VAN)** for Polity are designed to be your strategic advantage. These notes simplify the vast syllabus into **precise, exam-relevant content**, blending **core constitutional theory with real-time developments**—from landmark judgments and parliamentary proceedings to governance reforms and rights-based legislations.

Our integrated approach with **VAN and expert mentorship** ensures depth as well as clarity. We cover crucial themes such as **Constitutional Bodies, Fundamental Rights, Separation of Powers, Local Governance, Judiciary, Parliament, and Contemporary Legal Developments**, while anchoring them to evolving governance narratives. With **focused revision, case law integration, and answer enrichment tips**, Polity can become your strongest asset in the UPSC journey.

At **IASbaba**, we are committed to helping you translate preparation into performance. Let us decode Polity together—making complex constitutional themes accessible and relevant, and paving the way for your success in the Civil Services.

With warm regards and best wishes,

**Mohan Kumar S**

**Founder, IASbaba**



## Polity

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## INTRODUCTION

It is not important to read multiple sources rather revising the same source for multiple times will make a difference. As far as Polity is concerned, UPSC asks questions from aspects covered in standard books like NCERT, M. Laxmikanth and current affairs.

Current Affairs forms a major part of Prelims and almost 100% in Mains Paper. We are already covering the current affairs part in Babapedia. You should not ignore it at any cost.

The questions in Prelims are a mix of basics and application based but majority of them are anyway discussed in current affairs courtesy to issues like SC Judgments, Articles, Ministry or departments in news. You can smartly prepare all these aspects from current affairs and revise the static aspects of the same from VAN and Laxmikanth too.

### Going through Previous Years Questions (PYQ):

- It should be a consistent exercise and part of your daily schedule to go through PYQs.
- Whatever topics you study in a day, must ensure to cross check the PYQs for the same and get the idea on the dimensions and aspects in which UPSC has already asked questions.
- Do not neglect to practice and master the concepts from PYQs of last 15 years.
- UPSC has been repeating some concepts already asked in previous years and if you are unlucky in this too, then nothing can be more disastrous.

### MAINS SYLLABUS/TOPICS of GS PAPER 2

- Historical underpinnings of Indian constitution
- Evolution & features of Indian constitution,
- Significant provisions and basic structure doctrine.
- Comparison of the Indian constitutional scheme with that of other countries.

This document will guide you with various possible dimensions on which UPSC frames questions in Mains exam. It will help you gauge the issues with its interconnections as well as importance while preparing such topics.

Let us glance through previous years UPSC Mains questions to understand the various dimensions associated with above Topics. It will give you enough idea to approach the issues and understand the broad sphere of coverage to be done. **Note that UPSC Mains questions are truly based on the syllabus that UPSC has given:**

- Examine the need for electoral reforms as suggested by various committees with particular reference to "one nation – one election" principle. (2024)
- "The growth of cabinet system has practically resulted in the marginalisation of the parliamentary supremacy." Elucidate. (2024)
- Compare and contrast the British and Indian approaches to Parliamentary sovereignty (2023)
- Right of movement and residence throughout the territory of India are freely available to the Indian citizens, but these rights are not absolute. " Comment. (2022)
- Discuss the role of the Vice –Presidents of India as the chairman of the Rajya Sabha. (2022)

- ‘Constitutional Morality’ is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of ‘Constitutional Morality’ with the help of relevant judicial decisions. (2021)
- Discuss the desirability of greater representation to women in the higher judiciary to ensure diversity, equity and inclusiveness. (2021)
- Analyse the distinguishing features of the notion of Equality in the Constitutions of the USA and India. (2021)
- Examine the scope of Fundamental Rights in the light of the latest judgment of the Supreme Court on Right to Privacy.
- Discuss each adjective attached to the word ‘Republic’ in the ‘Preamble’. Are they defensible in the present circumstances? (2016)
- What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution? (2016)
- Did the Government of India Act, 1935 lay down a federal constitution? Discuss (2016)

Considering the topics in the UPSC syllabus and previous years’ questions, it is evident that the questions demand deeper understanding of concepts and interlinkages. **We are providing basic templates to help you approach GS Paper 2 questions effectively.**

- You will generally encounter two types of questions from the given topics (as mentioned above).
- The first type is static in nature, such as – *“Did the Government of India Act, 1935 lay down a federal constitution? Discuss.”*
- The second type combines both static and dynamic elements, for example – *“Examine the scope of Fundamental Rights in the light of the latest judgment of the Supreme Court on Right to Privacy.”*
- In GS Paper 2, you should always aim to enrich your answers with relevant examples—be they contemporary or historical.
- This approach enhances your content and deepens your understanding, especially since the core theoretical aspects remain similar to what is studied in Prelims.
- In the Mains exam, your task is to identify the core area of the question, link it with dynamic developments, and structure your answer accordingly.

#### **Thumb Rule- Follow this for all the GS Papers (1 to 4)**

- Prepare at least **two introductions and conclusions** for each key term in the syllabus, including related issues and sub-topics.
- This strategy helps you **tackle questions instantly** without wasting time. You can then focus more on gathering quality content for the body of the answer.
- It’s not very difficult to be prepared with strong introductions and conclusions in advance.
- **Example:** Topics like the *Indian Constitution, Basic Structure, Amendments, and the Preamble* lend themselves well to crisp, ready-made introductions (20–25 words) that can be reused when relevant.
- Similarly, for areas such as *Employment, Poverty, and Economic Development*, you can easily draft effective introductions and conclusions to enhance your answers under time pressure.

**Note- MAINSPEDIA will give you better idea on this. Keep making notes from it.**

## Historical Background of Indian Constitution

This topic is important for both Prelims and Mains. You will encounter this even in Modern History-Coming of Europeans- British Government and its Policies.

### Points to know:

- The British arrived in India in 1600 as traders through the East India Company (EIC), initially with purely commercial interests.
- In 1765, after the Battle of Buxar, Shah Alam II granted the EIC Diwani rights, marking its rise as a territorial power.
- The Revolt of 1857 (Sepoy Mutiny) became a turning point in colonial rule.
- In 1858, the British Crown assumed direct control, ending Company rule and beginning Crown rule.
- Crown rule continued until India's independence on August 15, 1947.

### Why we have to study this chapter?

- This chapter is highly important and frequently featured in UPSC exams—questions appear almost every alternate year in both Prelims and Mains.
- Many features of the Indian Constitution and polity have their roots in British rule, making it essential to understand key historical events that shaped the legal and administrative framework of colonial India.
- Studying these developments is also important as they significantly influenced our Constitution, and as aspirants, it's our moral responsibility to understand the foundations of our nation.
- **Common problem faced by aspirants:**
  - There are so many events, how will I remember?

- There are so many features in each Act. I get confused. 😊
- Polity is boring. I keep forgetting. **“The rate of evaporation is way too high”.**

**Solution:** It is always easy to remember things in story or pictures. Hope it helps:

- First let us observe the above timeline carefully. Can you identify two rules? –

### **THE COMPANY RULE (1773–1858) and THE CROWN RULE (1858–1947)**

- Now, think—what were these "rules"? Although the EIC arrived in 1600, there were no structured regulations initially.
- So, why did Company rule formally begin in 1773? What changed suddenly to require legal control and governance mechanisms?

**Try to remember 3 Acts under these two rules:**

<b>COMPANY RULE (1773–1858)</b>	<b>CROWN RULE (1858–1947)</b>
1. Regulating Act	1. Government of India Acts
2. Pitt's India Act	2. Indian Council Acts
3. Charter Acts	3. Indian Independence Act

### **THE COMPANY RULE (1773–1858)**

By 1773, the East India Company was facing severe financial difficulties due to growing competition from other countries and the struggle to maintain its trade monopoly. The Company was crucial to the British Empire, as it held monopoly rights over trade in India and the East, with many influential individuals as its shareholders.



Now, these shareholders—some of whom were also Parliamentarians—began to question the East India Company's role:

*“What shall we do with this EIC? It's failing to deliver profits and can't meet its obligations. We need to intervene.”*

*“Yes, let's impose some control and oversight—perhaps through a law. Hmm... let's call it the Regulating Act.”*

#### Why this Act is important?

- It was the first step taken by the British Government to control and regulate the affairs of the EIC in India.
- First time, British government recognized the political and administrative functions of the EIC.
- British government laid the foundations of central administration in India.

#### Features of the Act:

The Act allowed the Company to retain its territorial possessions in India but aimed to regulate its activities and administration. Since it did not completely take over power, it was aptly called the '**Regulating Act**'

The Act designated the Governor of Bengal as the '**Governor-General of Bengal**' and created an Executive Council of four members to assist him.



The first such Governor-General was Lord Warren Hastings (1774-1785).

**How to remember?** – Before this Act, the EIC was operating freely in India without any oversight. But with the **Regulating Act**, an executive authority was introduced to control them. The Company

wasn't happy—they started **HATING** him. **HATING** → **HASTING** → **Warren Hastings**, the first Governor-General under the Act!

- Governor of Bengal was made 'Governor-General of Bengal' and Governors of Bombay and Madras presidencies were made his **subordinates**. (So, these governors were also "HATING" him)
- Since he was hated, there were fights throughout the year. To solve this, **the Act provided for establishment of Supreme Court (1774)**.
- Real objective was to control and manage corrupt EIC → so the Act prohibited servants of EIC from engaging in any private trade or accepting bribes and gifts from native.
- The company directors were elected for a period of five years and one-fourth of them were to retire every year. Also, they could not be re-elected.
- The Act told the governing body of the Company i.e., Court of Directors to report all its affairs (revenue, civil, military etc.) to British Government.
- A Supreme Court was established at Calcutta in 1774 with Sir Elijah Impey as the first Chief Justice. Judges were to come from England. It had civil and criminal jurisdiction over the British subjects and **not Indian natives**.

#### Crux: (Regulating Act)

**Regulating Act** passed by British Government → to **control the EIC's unchecked powers** → need for **central administration** → created **Governor-General of Bengal + 4-member Executive Council** → **Madras and Bombay** made subordinate → **Warren Hastings** appointed (EIC started "HATING" him → HASTING) → set up **Supreme Court at Calcutta** → banned **private trade and bribes** → **Court of Directors** to report to British Government.

### So did the Regulating Act help?

- There were loopholes in the Regulating Act, as the **EIC's Court of Directors (COD)** itself was corrupt.
- In **1781**, the British Government summoned the COD to inquire into the issues and attempted to fix the flaws in the Act.
- However, the **COD allegedly bribed officials** and managed to pass the **Act of Settlement (1781)**, persuading the government to remain silent for a few more years.

### Pitt's India Act of 1784

- Again, the British Government wanted to rectify the defects of the Regulating Act of 1773, so they passed Pitt's India Act of 1784.

**Why the name "PITT"?** The then Prime Minister of British was William Pitt.

- The Act knew EIC's COD was corrupt, so it decided to reduce its powers. So, Act distinguished commercial and political functions of the EIC.
- Now, COD will look after commercial functions only and a new body, Board of Control (BOC) will take care of political functions.
- We shall call it "**System of double government**" (COD+BOC)
- The Act empowered BOC to supervise, direct all operations (civil and military) or revenues of the "**British possessions**" in India.
- Hence, British Government was given the supreme control over Company's affairs and its administration in India.

#### **Crux: Pitt's India Act**

Regulating Act of 1773 had defects → Act of Settlement in 1781 → Pitt's India Act 1784 (to rectify the defects)

Commercial and Political functions of EIC was divided → COD to control commercial and BOC

to control Political → BOC was empowered more to look after "British Possessions" → with this, British government gained supreme control over EIC's affairs

Although the Court of Directors (COD) still retained some control over commercial matters, the final push toward centralization in British India came through a series of Charter Acts. The Pitt's India Act of 1784 was the first to officially refer to India as the "British Possessions", signaling a shift in how the British viewed their role in the subcontinent. To formalize and highlight these possessions, the British government began preparing detailed "charts" or formal documents—thus, the legislation that followed came to be known as the Charter Acts.

### Charter Act of 1813

The Charter Act of 1813 passed by the British Parliament renewed the East India Company's charter for another 20 years. This is also called the East India Company Act, 1813.

#### **Background:**

British tradesmen and merchants suffered as a result of Napoleon Bonaparte's Continental System in Europe (which barred the import of British goods into French allies in Europe). As a result, they demanded a share of British trade in Asia and the end of the East India Company's monopoly, to which the company objected.

- Charter act of 1813 ended the monopoly of the East India Company in India. Other British merchants were allowed to trade in India under a strict licensing system. But the company's monopoly in trade with China (Opium trade) and trade in tea with India was kept intact.
- The company's rule was extended to another 20 years.
- This act also gave missionaries freedom to enter India and engage in religious proselytization. In accordance with the Act,

the missionaries were successful in obtaining the appointment of a Bishop for British India, with his headquarters in Calcutta.

- This act regulated the company's territorial revenues and commercial profits. It was asked to keep its territorial and commercial accounts separate.
- There was also a provision that Company should invest Rs. 1 Lakh every year on the education of Indians.
- It empowered the Local Governments in India to impose taxes on persons and to punish those who did not pay them.
- This Act continued the structure of governance but marked a **shift towards state intervention** in Indian social affairs.

#### Charter Act of 1813

- The British Government now decided to bring further centralization in governance. So, instead of the Governor-General of Bengal (GGB), they created the post of Governor-General of India (GGI) to oversee all British-controlled territories in India.
- The Act officially converted GGB into GGI, and vested in him all civil and military authority across British India, making him the sole and supreme executive head.
- The GGI was also given exclusive legislative powers for the entire British India, centralizing law-making under one authority.
- The Governors of Madras and Bombay were now subordinate in legislative matters and lost their independent legislative powers.
- The first GGI was so authoritative that he "BENT" everyone to his will and "KICKED" aside opposition.

→ Lord William Bentinck became the first Governor-General of India.

- The Act ended all commercial operations of the East India Company, converting it into a purely administrative body, working under the direction of the British Crown.
- For the first time, the Act proposed open competition for the recruitment of civil servants, including Indians, marking an early step toward civil service reform.
- However, due to resistance from the Court of Directors, this provision was not implemented.

#### **Crux: Charter Act 1833**

Pitt's India Act introduced the 'Double Government' system → COD handled commercial functions; BOC handled political. The Charter Act of 1833 brought complete centralization → GGB became GGI with both executive and exclusive legislative powers → Governors of Madras and Bombay lost legislative authority. EIC's commercial role ended → It became purely administrative. The Act also attempted open competition for civil services, including Indians → But COD opposed it, so the provision was dropped.

#### Charter Act of 1853

##### Features of the Act

- GGI alone could not do all the work. So, the legislative and executive functions of the Governor-General's council were separated for the first time.
- The Act created a separate GG Legislative Council – called "Indian (Central) Legislative Council." For the first time, local representation was allowed in the Indian (Central) Legislative Council.
- This Indian (Central) Legislative Council acted as a mini-Parliament (on same lines of British Parliament)
- Thus, legislation, for the first time, was treated as a special function of the

government, requiring special machinery and special processes.

- Now, it needed good civil servants to help framing and implement the legislation. This Charter Act of 1853 introduced an open competition system of selection and recruitment of civil servants (**open to Indians also**) – **Macaulay Committee**, the committee on the Indian Civil Service was appointed in 1854.
- This Act extended the Company's rule and allowed it to retain the possession of Indian territories on trust for the British Crown.
- But it did not specify any period, unlike the previous Charters. This was a clear indication that the Company's rule could be terminated at any time the Parliament liked.

#### **Crux: Charter Act 1853**

Charter Act of 1833 gave full powers to GGI = Executive + Legislative → To make things simple, Charter Act of 1853 first time separated Legislative and Executive function → created separate body "Indian (Central) Legislative Council" or mini-Parliament → Act also allowed local representation to this Legislative council → CSE was open to all, including Indians → The Act allowed EIC to retain the possession of Indian territories but for first time, it did not specify particular time → indicating any time Company's rule could be terminated.

From the above events we could see how British Government made steady progress to control EIC affairs and how the government laid foundation for full centralization.

#### **Revolt of 1857 or Sepoy Mutiny**

- By 1857, the British followed an expansionist policy in India. The policies made by GGIs adversely affected every section of the Indian society. This led to one of the important events of Indian

history -- the Revolt of 1857. It was the first rebellion against the East India Company which took the massive form. (There were many causes, which you will study in History)

- So, due to this Mutiny or Revolt, the British decided to enact an act, known as the Act for the Good Government of India.

#### **The Crown Rule (1858-1947)**

- Now all Acts were called as either Government of India (GOI) Acts or Indian Council Acts.

#### **Government of India Act of 1858**

##### **(or Act for the Good Government of India):**

- This Act abolished the East India Company, and transferred the powers of government, territories and revenues to the British Crown. The Company Rule was ended in 1858. The Crown Rule began.

#### **Features of the Act**

- India will be governed by Crown Rule (Her Majesty)
- The designation GGI was changed to Viceroy of India (VOI).
- ***Lord Canning became the first Viceroy of India.***

#### **How to remember?**

- When India's governance was transferred from Company's Rule to Crown's Rule, her Majesty was thinking –

#### **"Who CAN be the best suitable candidate for Viceroy of India?"**

- A person came forward telling "**I CAN**" because my name starts with "CAN". **I am CAN-NING.**

#### **Lord CANNING**

- Government of India Act of 1858 ended the 'system of double government' of Pitt's

India Act of 1784 (i.e., it abolished COD + BOC)

- Instead, it created new office “Secretary of State for India” (SOS) – so COD’s administrative authority and control was given to SOS.
- This SOS was a member of the British cabinet and was responsible ultimately to the British Parliament.
- The Act also created a 15-member Council of India to assist the secretary of state (SOS). However, this Council was an advisory body.
- GOI Act, 1858 was largely confined to the **improvement of the administrative machinery** by which the Indian Government was to be supervised and controlled in England.
- It did not alter in any substantial way the system of government that prevailed in India.

#### Crux GOI 1858

- After 1857 revolt/sepoys mutiny → GOI Act 1858 was enacted to abolish EIC → powers of government, territories and revenues were transferred to the British Crown.
- GGI designation was changed to VOI (Lord Canning was first VOI) → system of double government was ended (No COD+BOC) → instead a new office SOS+15-member Council of India to assist the SOS was created → SOS was vested with complete authority and control over Indian administration.
- GOI, 1858 was intended to bring Good Government in India, alter the system of government in India → by improving the administration machinery → But it did not alter in any substantial way the system of government.

#### Indian Councils Act of 1861, 1892 and 1909

- We had seen that Charter Act of 1853 had created a separate Legislative Council called Indian (Central) Legislative Council.
- After 1857 revolt, the British Government felt the necessity of seeking the cooperation of the Indians in the administration of their country.
- In pursuance of this policy of association, three acts were enacted by the British Parliament.

#### Indian Councils Act of 1861

##### Features of the Act:

- This Act made a **beginning of representative institutions** -- it associated Indians with the law-making process.
- The Act provided that Viceroy should **nominate some Indians as non-official members** of his expanded legislative council.

(In 1862, Lord Canning, the then viceroy, nominated three Indians to his legislative council). (The Raja of Benares, the Maharaja of Patiala and Sir Dinkar Rao).

- **Process of decentralization was initiated:** Legislative powers (legislative devolution) were restored to Bombay and Madras Presidencies.
- It thus **reversed the centralizing tendency** that started from the Regulating Act of 1773.
- This policy of legislative devolution granted almost **complete internal autonomy to the provinces**.
- It also provided for the **establishment of new legislative councils** for Bengal, North-Western Frontier Province (NWFP) and Punjab
- **‘Portfolio’ system was introduced** by Lord Canning – i.e., Indian Councils Act (ICA) 1861 transformed the Viceroy’s executive council into a cabinet run on the portfolio

system. Therefore, six members in the executive council took charge of separate departments.

- **Ordinance making power:** The Act empowered the Viceroy to make ordinance during an emergency. However, the life of such an ordinance was 6 months.

- The act made a limited and indirect provision for the use of election in filling up some of the nonofficial seats both in the Central and provincial legislative councils. **However, the word “election” was, not used in the act.**

#### **Crux: ICA, 1861**

- There was need for Indian cooperation in law making process → so ICA 1861 provided for **“representative institutions”** → VOI should nominate some Indians as non-official members to his Legislative Council
- ICA 1861 provided for **“devolution of legislative powers to provinces”** (Bombay and Madras) → also established new legislative councils for other provinces → **“reversed the policy of centralizing tendency”** it followed.
- ICA 1861 also introduced **“Portfolio system”** → charge of each department was given to members of executive council.
- **“Ordinance making power”** to VOI during emergency.

#### **Crux, ICA, 1892**

- Number of Indian (non-official) members to Legislative Council was increased.
- Functions of Legislative councils were also increased → power to discuss the budget and addressing questions to executive.
- Certain bodies can recommend some Indians to be nominated as non-official members to Central and provincial councils → The Act made a limited and indirect provision for the use of election → but the word “election” was not used.

#### **Indian Councils Act of 1892**

##### **Features:**

- Number of additional Indian (non-official) members in the Central and provincial legislative councils were increased. **However still the official majority were non-Indians.**
- Functions of legislative councils were increased and gave them the **power of discussing the budget** and addressing questions to the executive.
- **Nomination made on the recommendation:** Certain bodies like governors of provinces, Universities, zamindars and chambers could now recommend Indians for the **nomination** of non-official members.

#### **Indian Council Act 1909**

##### **Features:**

- This Act is also known as Morley-Minto Reforms (Lord Morley was Secretary of State and Lord Minto was Viceroy of India)
- Increased the size of Legislative Councils (both central and provincial) from **16 to 60**.
- It **retained official majority** in the Central Legislative Council but **allowed the provincial legislative councils to have Indian non-official majority.**
- Increased the functions of Legislative councils at both levels → **members were allowed to ask supplementary questions, move resolutions on the budget, and so on.**
- It provided **(for the first time)** for the **“association of Indians with the executive Councils”** of the Viceroy and Governors.
- **Satyendra Prasad Sinha** became the first Indian to join the Viceroy's executive council. He was appointed as a **law member.**

- ICA 1909 introduced a **system of communal representation** for Muslims -- concept of '**separate electorate**'.

(Lord Minto came to be known as the Father of Communal Electorate.)

#### Crux, ICA 1909

- 1909 → MOM → Morley-Minto Reforms → System of communal representation or concept of separate electorate was introduced.
- ICA 1909 increased the size of legislative council from 16 to 60 at both central and provincial levels → however majority was maintained in central, provincial councils were allowed to have Indian non-official majority.
- Powers and functions of LC were increased → members can ask supplementary questions, move resolutions on the budget.

#### Government of India Act of 1919

In 1917 **Edwin Samuel Montague**, the then Secretary of state made a historic declaration (called **August Declaration of 1917 or Montague Reforms**) defining the goal of British policies in India.

On August 20, 1917, the British Government declared, for the **first time**, that its objective was the **"gradual introduction of responsible government"** in India.

#### Important excerpt:

"Increasing association of Indians in every branch of administration, and the gradual development of self-governing Institutions with a view to the progressive realisation of responsible governments in India as an Integral part of the British Empire".

The keyword was **Responsible Government** which means that **the rulers must be answerable to the elected representatives.**

The Government of India Act of 1919 was thus enacted, which came into force in 1921. This Act is also known as **Montagu-Chelmsford Reforms** (Montagu was Secretary of state and Lord Chelmsford Viceroy).

#### Features of the Act:

- Demarcation of separate central and provincial subjects:** Central and provincial legislatures can make laws on their **respective list of subjects.**
- Transferred and Reserved Subjects:** Provincial subjects were further divided into two parts - transferred and reserved subjects.
  - Transferred** subjects were to be **administered by the governor** with the aid of ministers **responsible** to the legislative Council
  - Reserved** subjects, on the other hand, were to be administered by the governor and his executive council **without being responsible** to the legislative Council
- Dyarchy or Double rule:** This dual scheme of governance was known as '**dyarchy**' — which means **double rule.**
- Upper House and Lower House:** First time, **bicameralism and direct elections** were introduced in the country. (**Only at Centre**)
- Three of the six** members of the Viceroy's **executive Council should be Indian.**
- Extended communal representation** or separate electorate to **Sikhs, Indian Christians, Anglo-Indians and Europeans.**
- It granted **franchise to a limited number** of people on the basis of property, tax or education.
- It created a **new office of the High Commissioner for India in London** and transferred to him some of the functions hitherto performed by the Secretary of State for India.

- It provided for the establishment of a **public service commission** (Hence, a Central Public Service Commission was set up in 1926 for recruiting civil servants.)
- It separated, for the first time, provincial budgets from the Central budget and authorized the provincial legislatures to enact their budgets.
- It provided for the appointment of a **statutory commission** to inquire into and report on its working after **ten years** of its coming into force.

#### **Crux, GOI 1919**

- August Declaration of 1917 or Montague Declaration → Montague-Chelmsford Reform → **“gradual introduction of responsible government”** in India → more association of Indians in every branch of administration → development of self-governing institutions
- GOI Act 1919 → Montague-Chelmsford Reforms → Separate subject for Centre and Province → Provincial subjects divided into two – Transferred and Reserved subjects → Transferred = Governor + ministers (responsible to Legislative Council) → Reserved = Governor + Executive council (not responsible to Legislative Council) → **“introduction of diarchy” or double rule**
- GOI Act 1919 → Introduction of Upper House and Lower House (bicameralism and direct elections for first time) → Increased Indians association → 3 out of 6 members of the Viceroy’s executive Council should be Indian → Communal representation to other castes → Limited franchise → UPSC → new office of the High Commissioner for India in London (with some of SOS powers) → Decentralisation of Budget → appointment of a statutory commission to report on the condition of India (inquiry report after 10 years)

#### **Simon Commission (1927)**

- The British Government announced the appointment of a seven-member statutory commission **2 years before the schedule**.
- Chairman of the commission was Sir John Simon.
- The statutory commission was set up to report on the condition of India under its new Constitution.
- However, **all the members of the commission were British and hence, all the parties boycotted the commission**.
- The commission submitted its report in 1930

#### **Recommendations of the Commission:**

- Abolition of diarchy in provinces
- Extension of responsible government in provinces
- Establishment of an all-India federation including British India and princely states
- Continuation of Communal Electorates
- Separation of Burma from India
- More autonomy to provinces
- Reorganization and strengthening of police and judiciary.
- Establishment of a Federal Court
- Reforms in the civil services
- Safeguards for minorities and backward classes

To consider the above proposals British Government convened **three round table conferences of the representatives of the British Government, British India and Indian princely states**.

On the basis of these discussions, a **‘White Paper on Constitutional Reforms’** was prepared and submitted for the consideration of the **Joint Select Committee of the British Parliament**. The recommendations of this committee were incorporated (with certain changes) in the next **Government of India Act of 1935**.

### Communal Award (1932)

- In August 1932, Ramsay MacDonald, the British Prime Minister announced Communal Award – to extend separate electorate not only for Muslims, Sikhs, Indian Christians, Anglo- Indians and Europeans **but also extended it to the depressed classes (scheduled castes).**
- Gandhiji undertook fast unto death in Yeravada Jail (Poona) to get the award modified.
- At last, there was an agreement between the leaders of the Congress and the depressed classes.
- The agreement, known as **Poona Pact**, retained the Hindu joint electorate and gave reserved seats to the depressed classes.
- Nearly twice as many seats (147) were reserved for the depressed classes in the legislature than what had been allotted under the Communal Award.

### Government of India Act of 1935

#### Features:

- The Act aimed to introduce responsible government in India, particularly at the provincial level, but fell short of establishing full responsibility at the central level.
- It provided for the **establishment of an All-India Federation** consisting of provinces and princely states as units. (However, the **federation never came into being** as the princely states did not join it.)
- **Act divided powers** – Central list, Provincial list and Concurrent list; **Residue powers to Governor**
- **Abolished 'diarchy'** in the provinces and introduced 'provincial autonomy' in its place.

- Act introduced responsible governments in provinces (i.e. governor was required to act with the advice of ministers responsible to the provincial legislature) – was in operation only from 1937-1939.
- It provided for the adoption of diarchy at the Centre → i.e. Federal subjects be divided into 'transferred' and 'reserved' – But this also never came into operation.
- It introduced bicameralism in six out of eleven provinces.
- Extended separate electorates for depressed classes (scheduled castes), women and labour (workers)
- Abolished the Council of India (which was estd. in GOI, 1958 to assist Secretary of state). Secretary of state was provided with team of advisors
- Establishment of a **Reserve Bank of India** to control the currency and credit of the country
- Federal Public Service Commission(PSC) + Provincial PSC (on lines of UPSC + SPSC)
- Establishment of a **Federal Court (in 1937)**
- **Franchise extension:** 10% of the total population got the voting right.

#### Crux, GOI Act 1935

- The Act aimed to introduce responsible government in India → Proposed an All-India Federation (failed as princely states didn't join) → Created Federal, Provincial, Concurrent, and Residuary Lists (residuary to Viceroy) → Abolished provincial dyarchy → Introduced provincial autonomy → Dyarchy introduced at Centre (not enforced) → Bicameralism in 6 provinces → Extended separate electorates (SCs, women, labour) → Council of India abolished → SOS given advisors → RBI established → Federal and Provincial PSCs created → Federal Court set up in 1937.

### Indian Independence Act of 1947

On June 3, 1947, Lord Mountbatten, the viceroy of India, put forth the partition plan, known as the **Mountbatten Plan**. The plan was **accepted by the Congress and the Muslim League**. Immediate effect was given to the plan by enacting the Indian Independence Act (1947)

- It provided for the **partition of British India** into two independent Dominions—**India and Pakistan**—effective from **August 15, 1947**.
- It **abolished the offices of the Viceroy and Secretary of State for India**.
- The **British Crown's authority** over India lapsed, and Britain would have **no responsibility** with respect to the governance of India or Pakistan.
- It empowered the **Constituent Assemblies** of both Dominions to **frame their own constitutions** and to **repeal any British law**, including the Independence Act itself.
- It **proclaimed the lapse of British paramountcy** over Indian princely states and tribal areas.
- Princely states were given the **freedom to join India, Pakistan, or remain independent**.
- The **Governor-General and provincial governors** became **constitutional heads**, bound to act on the advice of their respective **councils of ministers**.
- Each Dominion's **legislature** was empowered to make **laws with full sovereignty**, including extra-territorial laws.
- Until new constitutions were framed, both Dominions would be governed by the **Government of India Act, 1935**, with necessary modifications.
- **Civil servants and military officers** were allowed to **opt for service** in either Dominion, with **service safeguards** ensured.
- The British monarch ceased to be **Emperor of India** but continued as the **symbolic head of both Dominions** until they became republics.

**Lord Mountbatten became the first governor-general of the new Dominion of India.** He swore in Jawaharlal Nehru as the first prime minister of independent India. The Constituent Assembly of India formed in 1946 became the Parliament of the Indian Dominion.

### Miscellaneous Points

- Lord Warren Hastings created the office of District Collector in 1772, but judicial powers were separated from District collector later by Cornwallis.
- Laws made before Charter Act of 1833 were called Regulations and those made after are called Acts.
- From 1773 to 1858, the British tried for the centralization of power. It was from the 1861 Councils act they shifted towards devolution of power with provinces.
- From the powerful authorities of unchecked executives, the Indian administration developed into a responsible government answerable to the legislature and people.
- The development of portfolio system and budget points to the separation of power.
- Lord Mayo's resolution on financial decentralization visualized the development of local self-government institutions in India (1870).
- Lord Ripon's resolution was hailed as the 'Magna Carta' of local self-government. He is regarded as the 'Father of local self-government in India'.(1882)
- In 1921 the Railway Budget was separated from the General Budget.
- Till 1947, the Government of India functioned under the provisions of the 1919 Act only. **The provisions of 1935 Act relating to Federation and Dyarchy were never implemented.**
- The Executive Council provided by the 1919 Act continued to advise the Viceroy till 1947. The modern executive (Council of Ministers) owes its legacy to the executive council.

- The **Legislative Council** and the **Legislative Assembly** came to be known as **Rajya Sabha** and **Lok Sabha** after independence

#### Some Important Events:

- **1922** – Mahatma Gandhi asserted that India's political destiny should be determined by Indians themselves.
- **May 17, 1927** – At the Bombay session, Motilal Nehru moved a resolution urging the Congress Working Committee to frame a Constitution for India.
- **May 19, 1928** – An All-Party Conference set up a committee under Motilal Nehru to determine constitutional principles.
- **August 10, 1928** – The Nehru Report was submitted, the first Indian attempt to draft a full Constitution.
- **1934** – M.N. Roy proposed the idea of a Constituent Assembly for India.
- **1935** – The Indian National Congress (INC) officially demanded a Constituent Assembly to frame the Constitution.
- **1938** – Jawaharlal Nehru declared that the Constitution must be framed by a Constituent Assembly elected on the basis of adult franchise.
- **1940** – The British Government accepted the demand in principle through the August Offer.
- **1942** – Sir Stafford Cripps came to India with a British proposal for an independent Constitution, to be framed after the war.
- The Cripps Proposal was rejected by the Muslim League, which demanded two separate Constituent Assemblies for Hindus and Muslims.
- **1946** – The Cabinet Mission Plan arrived in India and proposed a single Constituent Assembly, which was largely acceptable to the Muslim League.

### Making of the Indian Constitution

As the demand for a Constituent Assembly gained momentum and the end of British rule became inevitable, the British Government sent a high-level mission to India to discuss the transfer of power and the framing of a new constitutional framework. This led to the arrival of the Cabinet Mission in 1946, which played a crucial role in the formation of the Constituent Assembly—the body that would eventually draft the Constitution of independent India.

#### Cabinet Mission Plan

- The Cabinet Mission consisting of three members (Lord Pethick Lawrence, Sir Stafford Cripps and A V Alexander) arrived in India.
- Constituent Assembly (CA) was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan.

#### Features of the scheme:

- **Allocation of seats based on population:** Each province and princely states were to be allotted seats in proportion to their respective population. **(1 seat for every million population)**
- Seats allocated to each British province were to be decided among the **three principal communities—Muslims, Sikhs and general** (General included all except Muslims and Sikhs), in proportion to their population.
- **Separate electorate:** The representatives of each community were to be elected by members of that community in the provincial legislative assembly.
- Voting was to be by the method of **proportional representation by means of single transferable vote.**

- The representatives of princely states were to be nominated by the heads of the princely states.
- The Constituent Assembly was to be a **partly elected and partly nominated body**.
- **No Adult Franchise and Direct election:** Constituent Assembly was not directly elected by the people of India on the basis of adult franchise.
- The Constituent Assembly **comprised representatives of all sections** of Indian Society—Hindus, Muslims, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs including women of all these sections. It included **all important personalities** (with the **exception of Mahatma Gandhi** and **M Ali Jinnah**).

The elections to the **Constituent Assembly (CA)** were held in **July–August 1946**

#### **Some important facts:**

- **Dr Sachchidanand Sinha**, the oldest member, was elected as the **temporary President** of the Constituent Assembly.
- Later, **Dr Rajendra Prasad** and **Harendra Coomar Mukherjee** were elected as the President and Vice-President of the Assembly respectively.
- Sir B N Rau was appointed as the Constitutional advisor to the Assembly.

Just remember that Dr Rajendra Prasad was the President of Constituent Assembly but not legislative assembly

#### **Cabinet Mission Plan**

- The Objective Resolution was moved by Jawaharlal Nehru on 13th December 1946 in the Constituent Assembly.
- It outlined the **aims and objectives** of the Constitution and served as a **guiding framework** for its drafting.

- It declared India to be an **independent, sovereign republic**.
- It guaranteed **justice—social, economic, and political** to all citizens.
- It ensured **equality of status and opportunity**, and **freedom of thought, expression, belief, faith, worship, vocation, association, and action**.
- It emphasized the protection of the **rights and interests of minorities, tribal and backward communities**, and other weaker sections.
- It aimed to maintain the unity and integrity of the nation while recognizing the autonomy of the constituent units.
- It promoted the goal of establishing international peace and friendly relations with other nations.
- The Resolution was unanimously adopted by the **Assembly on 22nd January 1947**.
- Its ideals were later reflected in the Preamble of the Indian Constitution.

Based on this resolution, our Constitution gave institutional expression to these fundamental commitments: equality, liberty, democracy, sovereignty and a cosmopolitan identity.

(Read Objective Resolution wholly as it's a moral and philosophical document guiding Indian constitution making process)

#### **Indian Independence Act of 1947 made the following changes in the position of the Constitution Assembly (CA)**

- It was made a fully sovereign body to frame Constitution (**A Constituent Body**)
- The act **empowered the CA to abrogate or alter any law** made by the British Parliament in relation to India.
- It also became a **legislative body**.
- **Two separate functions** were assigned -- making of a constitution for free India and enacting of ordinary laws for the country.

- Whenever the Assembly met as the **Constituent body it was chaired by Dr. Rajendra Prasad** and when it met as the **legislative body, it was chaired by G V Mavlankar.**

### ENACTMENT OF THE CONSTITUTION

- **Dr B R Ambedkar introduced the final draft of the Constitution** in the Assembly on November 4, 1948 (first reading)
- Dr B R Ambedkar moved a motion— ‘the Constitution as settled by the Assembly be passed’.
- The **motion on Draft Constitution was declared as passed on November 26, 1949**, and received the signatures of the members and the president.

#### Drafting Committee Members:

1. **Dr. B.R. Ambedkar – Chairman**
2. **N. Gopalaswami Ayyangar – Member**
3. **Alladi Krishnaswami Ayyar – Member**
4. **K.M. Munshi – Member**
5. **Syed Mohammad Saadullah – Member**
6. **N. Madhava Rau (Replaced B.L. Mitter who resigned due to illness) – Member**
7. **T.T. Krishnamachari (Replaced D.P. Khaitan after his death in 1948) – Member**

**The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules. The Preamble was enacted after the entire Constitution was already enacted.** The Preamble also mentions November 26, 1949 as the date on which Constitution as adopted.

#### Dr B R Ambedkar:

- Chairman of Drafting Committee
- ‘Father of the Constitution of India’
- Undisputed leader of the scheduled castes
- ‘Chief architect of the Constitution of India’
- Also known as a ‘Modern Manu’

### ENFORCEMENT OF THE CONSTITUTION

- All the provisions (major part) of the Constitution came into force on January 26, 1950 -- celebrated as the Republic Day. January 26 was specifically chosen as the ‘date of commencement’ of the Constitution because of its historical importance. It was on this day in 1930 that Purna Swaraj day was celebrated, following the resolution of the Lahore Session (December 1929) of the INC.

### Sources of the Indian Constitution – Features Borrowed

#### 1. Government of India Act, 1935

- Federal Structure Of Government, Office Of Governor, Public Service Commissions, Emergency Provisions, Administrative Details, Judiciary Structure, Bicameralism At The Central Level, Provincial Autonomy, Separation Of Powers Between The Centre And Provinces, Instrument Of Instructions.

#### 2. British Constitution

- Parliamentary System Of Government, Rule Of Law, Legislative Procedure, Single Citizenship, Cabinet System, Parliamentary Privileges, Bicameralism, Prerogative Writs, Concept Of Speaker And His Role, Responsibility Of The Executive To The Legislature, First Past The Post Electoral System.

#### 3. US Constitution

- Fundamental Rights, Independence Of Judiciary, Judicial Review, Impeachment Of The President, Removal Process For Supreme Court And High Court Judges, Office Of The Vice-President, Written Constitution, Separation Of Powers, Preamble, Checks And Balances.

**4. Irish Constitution**

- Directive Principles Of State Policy, Nomination Of Members To Rajya Sabha By The President, Method Of Election Of The President, Referendum Provision.

**5. Canadian Constitution**

- Federal System With A Strong Centre, Residuary Powers With The Centre, Appointment Of Governors By The Centre, Advisory Jurisdiction Of The Supreme Court, Quasi-Federal Structure.

**6. Australian Constitution**

- Concurrent List, Freedom Of Trade Commerce And Intercourse Within The Country, Joint Sitting Of Both Houses Of Parliament, Language Of The Preamble, Provisions Related To Centre-State Relations.

**7. Weimar Constitution Of Germany**

- Emergency Provisions, Suspension Of Fundamental Rights During Emergency.

**8. Soviet Constitution (USSR)**

- Fundamental Duties, Ideals Of Justice – Social Economic And Political – In The Preamble, Concept Of Five-Year Plans.

**9. French Constitution**

- Republican Form Of Government, Ideals Of Liberty Equality And Fraternity In The Preamble, Principles Of Secularism.

**10. South African Constitution**

- Procedure For Amendment Of The Constitution, Election Procedure Of Rajya Sabha Members, Concept Of A Constitutional Assembly.

**11. Japanese Constitution**

- Procedure Established By Law, Emphasis On Legalism And Rule-Following.

**First Cabinet of Independent India (1947)**

Name	Portfolio(s)
1. Jawaharlal Nehru	Prime Minister, External Affairs, and Commonwealth Relations
2. Sardar Vallabhbhai Patel	Home Affairs and Information & Broadcasting
3. Dr. Rajendra Prasad	Food and Agriculture
4. Maulana Abul Kalam Azad	Education
5. Dr. B. R. Ambedkar	Law
6. R. K. Shanmukham Chetty	Finance
7. John Mathai	Industries and Supplies
8. Sardar Baldev Singh	Defence
9. C. H. Bhabha	Commerce
10. Jagjivan Ram	Labour
11. Rafi Ahmed Kidwai	Communications
12. Amrit Kaur	Health
13. S. P. Mukherjee	Industry and Supply (resigned in 1950)
14. N. Gopalaswami Ayyangar	Transport and Railways
15. Syama Prasad Mukherjee	Industries and Supplies
16. K. C. Neogy	Relief and Rehabilitation
17. Rajkumari Amrit Kaur	Health

**Committees of Constituent Assembly**

Committee Name	Chairperson
1. Drafting Committee	Dr. B. R. Ambedkar
2. Union Powers Committee	Jawaharlal Nehru
3. Union Constitution Committee	Jawaharlal Nehru
4. Provincial Constitution Committee	Sardar Vallabhbhai Patel
5. Advisory Committee on Fundamental Rights, Minorities, etc.	Sardar Vallabhbhai Patel
6. Fundamental Rights Sub-Committee	J. B. Kripalani
7. Minorities Sub-Committee	H. C. Mookherjee
8. Excluded & Partially Excluded Areas (Assam)	Gopinath Bardoloi
9. Excluded & Partially Excluded Areas (Other Areas)	A. V. Thakkar
10. Rules of Procedure Committee	Dr. Rajendra Prasad
11. States Committee (Negotiating with Princely States)	Jawaharlal Nehru
12. Steering Committee	Dr. Rajendra Prasad
13. Finance and Staff Committee	Dr. Rajendra Prasad
14. Credentials Committee	Alladi Krishnaswami Ayyar
15. House Committee	B. Pattabhi Sitaramayya
16. Language Committee	Moturi Satyanarayana
17. Order of Business Committee	K. M. Munshi

## Practice Questions

### Conceptual Questions

1. Why did the British Parliament pass the Regulating Act of 1773 despite the East India Company being in India since 1600?
2. How did the Pitt's India Act of 1784 introduce the concept of "double government," and what was its significance?
3. In what ways did the Charter Act of 1833 mark a shift towards centralization in British India?
4. How do the Indian Councils Acts of 1861, 1892, and 1909 reflect the British strategy of gradually involving Indians in governance?
5. What was the structure of governance under "Dyarchy" introduced by the Government of India Act of 1919?
6. Why was the Simon Commission of 1927 rejected by Indian political parties and the public?
7. Despite its wide-ranging reforms, why did the Government of India Act of 1935 fall short of meeting Indian aspirations?
8. How did the Indian Independence Act of 1947 transform the Constituent Assembly into a sovereign legislative body?
9. What role did the Objective Resolution play in guiding the framing of the Indian Constitution?
10. Compare the constitutional significance of Lord Canning and Lord Mountbatten in the transfer of power and administrative change.

### One Liner Revision Questions

1. Who was the first Governor-General of India?
2. What year was the Indian Councils Act introducing communal electorates passed?
3. Who chaired the Drafting Committee of the Indian Constitution?
4. Which Act officially ended the East India Company's rule in India?
5. When was the Objective Resolution introduced in the Constituent Assembly?
6. Which constitutional body was set up in 1926 for civil services recruitment?
7. What term refers to the dual governance introduced in provinces by the 1919 Act?
8. Which Act proposed the establishment of an All-India Federation?
9. Which Act extended voting rights to about 10% of the Indian population?
10. Who was the first Indian appointed to the Viceroy's Executive Council?

## Prelims PYQ

1. In India, which one of the following Constitutional Amendments was widely believed to be enacted to overcome the judicial interpretations of the Fundamental Rights? (2023)

- 1st Amendment
- 42nd Amendment
- 44th Amendment
- 86th Amendment

2. Consider the following statements in respect of the Constitution Day: (2023)

- Statement-I:** The Constitution Day is celebrated on 26th November every year to promote constitutional values among citizens.
- Statement-II:** On 26th November, 1949, the Constituent Assembly of India set up a Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar to prepare a Draft Constitution of India.

Which one of the following is correct in respect of the above statements?

- Both Statement-I and Statement-II are correct and Statement-II is the correct explanation for Statement-I
- Both Statement-I and Statement-II are correct and Statement-II is not the correct explanation for Statement-I
- Statement-I is correct but Statement-II is incorrect
- Statement-I is incorrect but Statement-II is correct

3. In the Government of India Act 1919, the functions of Provincial Government were divided into “Reserved” and “Transferred” subjects. Which of the following were treated as “Reserved” subjects? (2022)

- Administration of Justice
- Local Self-Government
- Land Revenue
- Police

Select the correct answer using the code given below:

- 1, 2 and 3

- 2, 3 and 4
- 1, 3 and 4
- 1, 2 and 4

The distribution of powers between the Centre and the States in the Indian Constitution is based on the scheme provided in the: (2012)

- Morley-Minto Reforms, 1909
- Montagu-Chelmsford Act, 1919
- Government of India Act, 1935
- Indian Independence Act, 1947

5. The Constitution (71st Amendment) Act, 1992 amends the Eighth Schedule to the Constitution to include which of the following languages?

- Konkani
- Manipuri
- Nepali
- Maithili

Select the correct answer using the code given below:

- 1, 2 and 3
- 1, 2 and 4
- 1, 3 and 4
- 2, 3 and 4

6. Consider the following pairs:

Party	Leader
1. Bharatiya Jana Sangh	- Dr. Shyama Prasad Mukherjee
2. Socialist Party	- C. Rajagopalachari
3. Congress for Democracy	- Jagjivan Ram
4. Swatantra Party	- Acharya Narendra Dev

How many of the above are correctly matched? (2024)

- Only one
- Only two
- Only three
- All four

7. Who was the Provisional President of the Constituent Assembly before Dr. Rajendra Prasad took over? (2024)

- C. Rajagopalachari
- Dr. B.R. Ambedkar
- T.T. Krishnamachari
- Dr. Sachchidananda Sinha

Question No.	Correct Option
1	(a)
2	(c)
3	(c)
4	(c)
5	(a)
6	(c)
7	(d)

### Mains PYQ

1. Examine the need for the review of the Indian Constitution. (2000) (30 Marks, 250 words)
2. What is a Constitution? What are the main sources of the Indian Constitution? (2007) (30 Marks, 250 words)
3. Do you think there is a need for a review of the Indian Constitution? Justify your view. (2008) (30 Marks, 250 words)
4. Write about the significance of 26th November in the country's polity. (2009) (2 Marks, 20 words)
5. The Supreme Court of India keeps a check on the arbitrary power of the Parliament in amending the Constitution. Discuss critically. (2013) (10 Marks)
6. Did the Government of India Act, 1935 lay down a federal constitution? Discuss. (2016) (12.5 Marks)
7. Do you think the Constitution of India does not accept the principle of strict separation of powers rather it is based on the principle of 'checks and balance'? Explain. (2019) (10 Marks)
8. What can France learn from the Indian Constitution's approach to secularism? (2019) (10 Marks)
9. 'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of 'Constitutional Morality' with the help of relevant judicial decisions. (2021) (10 Marks, 150 words)
10. "The principle of federalism is a basic feature of the Indian Constitution." Discuss this statement in the context of recent trends in Centre-State relations. (2024) (15 Marks, 250 words)

## Schedules

Followings are the schedules in Constitution of India

<b>First Schedule</b>	<ul style="list-style-type: none"> <li>Names of the States and names of Union Territories (UTs)</li> </ul>		
<b>Second Schedule</b>	<ul style="list-style-type: none"> <li>Salary and allowances of President, Governors, Chief Judges, Judges of High Court and Supreme court, Chairman and Deputy Chairman of the Rajya Sabha, Speaker and Deputy Speaker of the Lok Sabha, Comptroller and Auditor General</li> </ul>		
<b>Third Schedule</b>	<ul style="list-style-type: none"> <li>Forms of Oaths and affirmations of candidates for Parliament, Members of Parliament, judges of the Supreme Court and High Courts, CAG, and Ministers and legislators of states</li> </ul>		
<b>Fourth Schedule</b>	<ul style="list-style-type: none"> <li>Allocation of seats in the Rajya Sabha to the states and the union territories.</li> </ul>		
<b>Fifth Schedule</b>	<ul style="list-style-type: none"> <li>Provisions relating to the administration and control of Scheduled Areas and Scheduled Tribes in any state except the four in Sixth Schedule.</li> </ul>		
<b>Sixth Schedule</b>	<ul style="list-style-type: none"> <li>Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram. Provides for formation of Autonomous District Councils</li> </ul>		
<b>Seventh Schedule</b>	<ul style="list-style-type: none"> <li>Division of powers               <ul style="list-style-type: none"> <li>Union List – 97 subjects (originally; currently 100)</li> <li>State List – 66 subjects (originally; currently 61)</li> <li>Concurrent List – 47 subjects (originally; currently 52)</li> </ul> </li> </ul>		
<b>Eighth Schedule</b>	<ul style="list-style-type: none"> <li>List of 22 languages of India recognized by Constitution</li> </ul>		
	1. Assamese	2. Bengali	3. Gujarati
	4. Hindi	5. Kannada	6. Kashmiri
	7. Manipuri	8. Malayalam	9. Konkani
	10. Marathi	11. Nepali	12. Oriya
	13. Punjabi	14. Sanskrit	15. Sindhi
	16. Tamil	17. Telugu	18. Urdu
	19. Santhali	20. Bodo	21. Maithili
	22. Dogri		
	<ul style="list-style-type: none"> <li>Sindhi was added in 1967 by 21 Amendment</li> <li>Konkani, Manipuri and Nepali were added in 1992 by 71 amendment Santhali, Maithili, Bodo and Dogri were added in 2003 by 92 amendment.</li> </ul>		
<b>Ninth Schedule</b>	<ul style="list-style-type: none"> <li>Contains Acts and Regulations dealing with land reforms and abolition of the zamindari system.</li> <li>This schedule was added by the 1st Amendment (1951) to protect the laws included in it from judicial scrutiny on the ground of violation of fundamental rights.</li> </ul>		

	<ul style="list-style-type: none"> <li>• However, In 2007, the SC (in I.R. Coelho v. State of Tamil Nadu) ruled: Laws under this schedule are subject to judicial review if they violate basic structure</li> </ul>
<b>Tenth Schedule</b>	<ul style="list-style-type: none"> <li>• Added by 52nd amendment in 1985. Contains provisions of disqualification of grounds of defection</li> </ul>
<b>Eleventh Schedule</b>	<ul style="list-style-type: none"> <li>• By 73rd amendment in 1992. Contains provisions of Panchayati Raj.</li> <li>• Contains 29 subjects under the jurisdiction of Panchayati Raj Institutions (PRIs)</li> </ul>
<b>Twelfth Schedule</b>	<ul style="list-style-type: none"> <li>• By 74<sup>th</sup> amendment in 1992. Contains provisions of Municipal Corporation.</li> <li>• Contains <b>18 subjects</b> under the jurisdiction of <b>Municipalities</b>.</li> </ul>

*Again, having problem to remember, right??*

**(Schedule 1 – 4)** Imagine how our parents search for a bride/groom

- 1) What is the name of the bride/groom?
- 2) What salary and allowance she/he gets?
- 3) Will she/he take an oath to look after the family?
- 4) Yes, bride/groom confirmed → Allocate a seat for her/him in our family

**(Schedule 5 and 6)** → *Very important for Mains and Prelims*

- 5) Scheduled Areas → throughout the country except Assam, Mizoram, Tripura and Meghalaya
- 6) Tribal Areas- ATM- Me-Kya kar raha hai :P (Applicable only to Assam, Tripura, Mizoram and Meghalaya)
- 7) 007 → James Bond → Centre acts as Bond in Central List; States acts as Bond in States List and both act as Bonds in Concurrent List (Division of power)
- 8) Language
- 9) Acts and Regulations dealing with land reforms and abolition of the zamindari system.
- 10) Disqualification of MLAs or MPs/Anti-defection Law - Important
- 11) (Schedule 11 and 12) – Important
- 12) Panchayati Raj
- 13) Municipalities

**Parts of the Constitution**

Part	Articles	Areas
I	1-4	The Union & its Territories
II	5-11	Citizenship
III	12-35	Fundamental Rights
IV	36-51	Directive Principles of State Policy
IV A	51A	Fundamental Duties (42 <sup>nd</sup> Amendment)
V	52-151	The Union Government
VI	152-237	The State Government
VII	238	Dealt with states in Part B of the First Schedule. Repealed in 1956 by the Seventh Amendment.
VIII	239-241	Union Territories. Article 242 repealed.
IX	243 A-O	The Panchayats
IX-A	243 P-ZG	The Municipalities
X	244-244 A	The Scheduled & Tribal Areas
XI	245-263	Relations between the Union & the States
XII	264-300A	Finance, Property, Contracts & Suits
XIII	301-307	Trade, Commerce & Intercourse within the territory of India
XIV	308-323	Services under the Union & the States
XIV A	323A-323B	Administrative Tribunals (42 <sup>nd</sup> Amendment 1976)
XV	324-329	Elections
XVI	330-342	Special Provisions (Reservations of SC, ST, Anglo Indian etc)
XVII	343-351	Official Language
XVIII	352-360	Emergency Provisions
XIX	361-367	Miscellaneous Provisions (Immunity of President, Legislature etc)
XX	368	Amendment of the Constitution
XXI	369-392	Temporary, Transitional & Special Provision
XXII	393-395	Short Title, Commencement, Authoritative

**Important Cases of the Constitution**

1.	Berubari Case	Preamble not a part of the constitution
2.	Golaknath Case 1967	Supreme court held that the Parliament had no power to amend any of the provisions of Part III (Fundamental rights) The Indira Gandhi government in 1971 carried out the 24 <sup>th</sup> Amendment with a view to assert the right of the parliament to amend any part of the constitution.
3.	Keshvanada Bharti Case	Preamble was a part of the constitution & can be amended by Parliament under Article 368. Parliament can also amend the fundamental rights (Against Golaknath case) but ruled that the parliament cannot destroy the basic structure of the constitution.
4.	Minerval Mills Case 1980	The 42 <sup>nd</sup> . amendment carried out in 1976 gave asserted that parliament had unlimited powers to amend the constitution & tried to accord precedence to Directive principles over fundamental rights. But in the Minerva Mills Case the Supreme court struck down those provisions
5.	Maneka Gandhi Vs Union of India	Right to live is not merely confined to physical existence but includes within its ambit the right to live with human dignity

**Note:**

- **Fifth Schedule** (administration of scheduled areas and scheduled tribes) and **Sixth Schedule** (administration of tribal areas) **can be amended by the Simple majority** of the two Houses of Parliament outside the scope of Article 368.
- **Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority.**
- To amend any of the lists in the Seventh Schedule and Representation of states in Parliament requires this type of amendment. The fourth Schedule contains provisions as to the allocation of seats in the Council of States.

**Features of Indian Constitution****1. Longest Written Constitution**

- The Constitution of India is a written constitution, similar to that of the United States, unlike the unwritten Constitution of the United Kingdom.
- It is also the longest written constitution in the world.

**Why Indian Constitution is the longest of all the written constitutions of the world?**

- (a) Geographical factors, that is, the vastness of the country and its diversity.
- (b) Historical factors, e.g., the influence of the Government of India Act of 1935, which was bulky.
- (c) Single Constitution for both the Centre and the states.
- (d) Dominance of legal luminaries in the Constituent Assembly.
- (e) The Constitution contains not only the fundamental principles of governance but also detailed administrative provisions.
- (f) Those matters which have been left to the ordinary legislation in other modern democratic countries have also been included in the constitutional document itself in India.

**2. Drawn from Various Sources**

- The Constitution of India has borrowed most of its provisions from the

constitutions of various other countries as well as from the Government of India Act of 1935.

**Indian Constitution is a 'borrowed Constitution', a 'patchwork' and contains nothing new and original. Do you agree?**

No, the above statement is not true and is illogical. This is because, the framers of the Constitution made necessary modifications in the features borrowed from other constitutions for their suitability to the Indian conditions, at the same time avoiding their faults.

Dr. B. R. Ambedkar himself addressed this criticism in the **Constituent Assembly**, stating:

"There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution."

**3. Blend of Rigidity and Flexibility**

- Constitutions can be rigid or flexible.
- A rigid Constitution is one that requires a special procedure for its amendment (Ex. American Constitution)
- A flexible constitution is one that can be amended in the same manner as the ordinary laws are made (Ex. British Constitution)
- Indian Constitution is neither rigid nor flexible but a synthesis of both.

**Indian Constitution is neither rigid nor flexible but a synthesis of both. Do you agree? Substantiate your view.**

Yes, Indian Constitution is neither rigid nor flexible but a synthesis of both as some of its provisions require a special procedure for its amendment, while some provisions can be amended in the same manner as the ordinary laws are made.

**Proof:** Article 368 deals with the Powers of the Parliament to amend the Constitution and procedure there for.

**Article 368 provides for two types of amendments:**

- (a) Some provisions can be **amended by a special majority of the Parliament**, i.e., a two-third majority of the members of each House present and voting, and a majority (that is, more than 50 per cent), of the total membership of each House.
- (b) Some other provisions can be amended by a special majority of the Parliament and with the ratification by half of the total states.

At the same time, some provisions of the Constitution can be amended by a simple majority of the Parliament in the manner of ordinary legislative process. **Notably, these amendments do not come under Article 368.**

#### 4. Federal System with Unitary Bias

- The Constitution of India establishes a federal system of government, though the term "federation" is not explicitly used—instead, India is described as a "Union of States" to reflect its indestructible unity.
- While it exhibits classical federal features like a dual government, division of powers, independent judiciary, and bicameralism, it also contains several unitary provisions.
- These include a strong central government, a single Constitution and citizenship, appointment of state

governors by the Centre, the presence of all-India services, and emergency provisions that empower the Centre to override the states.

- Reflecting the **Canadian model of federalism**, India has been described as "quasi-federal", "federal in form but unitary in spirit", and a system with a "centralizing tendency", where cooperative federalism operates within a dominantly unitary framework.

Names given to **Indian federalism** by scholars and experts:

1. **K.C. Wheare** – *Quasi-federal*: Federal in form but unitary in spirit.
2. **Granville Austin** – *Co-operative federalism*: A harmonious balance between the Centre and the states.
3. **Ivor Jennings** – *Federation with a centralizing tendency*: Emphasizing strong central powers.
4. **Paul Appleby** – *Extremely federal* in actual administrative working.

#### 5. Parliamentary Form of Government

- Constitution of India has opted for the British "parliamentary System" of Government rather than American Presidential System of Government
- **Parliamentary system** --> is based on the principle of cooperation and co-ordination between the legislative and executive organs
- **Presidential system** --> is based on the doctrine of separation of powers (i.e. separation of Legislative and Executive organs)

The Constitution establishes the parliamentary system not only at the Centre but also in the states. The features of parliamentary government in India are:

- a) Dual Executive – Nominal head and real head.
- b) Majority Rule – Government by majority party or coalition.
- c) Collective Responsibility – Ministers are accountable to the lower House.
- d) Legislative Membership – Ministers are part of the legislature.
- e) Prime Ministerial Leadership – PM/CM leads the executive.
- f) Dissolution of Lower House – Lok Sabha/Assembly can be dissolved.
- g) Fusion of Powers – Executive and legislature are interconnected
- h) Cabinet System – Real decisions made by senior ministers.
- i) Opposition Role – Ensures accountability and debate

- The framers of the Indian Constitution have “**preferred a proper synthesis**” between the British principle of parliamentary sovereignty and the American principle of judicial supremacy.

#### Meaning -

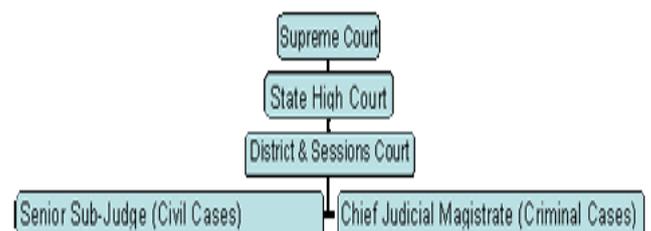
- The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review.
- The Parliament, on the other hand, can amend the major portion of the Constitution through its constituent power.

#### 7. Integrated and Independent Judiciary

Indian Constitution establishes a judicial system that is integrated as well as independent. (Borrowed from US Constitution)

#### What is integrated judicial system?

- Supreme Court stands at the top
- Below it, there are high courts at the state level.
- Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts.



The single system of courts in India enforces both the central laws as well as the state laws, unlike in USA, where the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary.

#### Supreme Court is a:

- Highest court of appeal
- Guarantor of the fundamental rights of the citizens

#### Do you know?

Indian Parliamentary System is largely based on the British pattern, but there are some fundamental differences between the two.

- Indian Parliament is not a sovereign body like the British Parliament.
- Indian State has an elected head (republic) while the British State has hereditary head (monarchy)

In a parliamentary system whether in India or Britain, the role of the Prime Minister has become so significant and crucial that the political scientists like to call it a ‘Prime Ministerial Government’.

#### 6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy

- The “**doctrine of sovereignty of Parliament**” is associated with the British Parliament, while the “**principle of judicial supremacy**” with that of the American Supreme Court.

- Guardian of the Constitution

**Note:** Questions have come regularly from the above section

## 8. Fundamental Rights

**Part III of the Indian Constitution** guarantees six fundamental rights to all the citizens:

- Right to Equality (Articles 14–18),
- Right to Freedom (Articles 19–22),
- Right against Exploitation (Articles 23–24),
- Right to Freedom of Religion (Articles 25–28),
- Cultural and Educational Rights (Articles 29–30), and
- Right to Constitutional Remedies (Article 32).

## 9. Directive Principles of State Policy

- According to Dr B R Ambedkar, the Directive Principles of State Policy is a '**novel feature**' of the Indian Constitution.
- They are enumerated in **Part IV of the Constitution**. They can be classified by experts into three broad categories—socialistic, Gandhian and liberal-intellectual.

## 10. Fundamental Duties

- The original constitution did not provide for the fundamental duties of the citizens.
- These were added during the operation of internal emergency (1975–77) by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the **Swaran Singh Committee**. The 86th Constitutional Amendment Act of 2002 added one more fundamental duty.
- The **Part IV-A of the Constitution** (which consists of only one Article—51-A) specifies the **eleven Fundamental Duties**.

The fundamental duties serve as a reminder to citizens that while enjoying their rights, they have also to be quite conscious of duties they owe to

their country, their society and to their fellow-citizens.

## 11. A Secular State

- Constitution of India stands for a secular state.
- It does not uphold any particular religion as the official religion of the Indian State.

### Which provisions of the Constitution reveal the secular character of the Indian State?

The following provisions of the Constitution reveal the secular character of the Indian State:

- (a) The term 'secular' was added to the Preamble of the Indian Constitution by the 42<sup>nd</sup> Constitutional Amendment Act of 1976.
- (b) The Preamble secures to all citizens of India liberty of belief, faith and worship.
- (c) The State shall not deny to any person equality before the law or equal protection of the laws (Article 14).
- (d) The State shall not discriminate against any citizen on the ground of religion (Article 15).
- (e) Equality of opportunity for all citizens in matters of public employment (Article 16).
- (f) All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).
- (g) Every religious denomination or any of its section shall have the right to manage its religious affairs (Article 26).
- (h) No person shall be compelled to pay any taxes for the promotion of a particular religion (Article 27).
- (i) No religious instruction shall be provided in any educational institution maintained by the State (Article 28).
- (j) Any section of the citizens shall have the right to conserve its distinct language, script or culture (Article 29).

- (k) All minorities shall have the right to establish and administer educational institutions of their choice (Article 30).
- (l) The State shall endeavor to secure for all the citizens a Uniform Civil Code (Article 44).

### Does Indian concept of secularism connote a complete separation between the religion and the state?

- **No**, the Indian concept of secularism does not connote a complete separation between religion and the state.
- While the Western concept of secularism implies a strict separation between the church and the state, this negative concept is not applicable in the Indian context, where society is deeply pluralistic and multi-religious.
- Instead, the Indian Constitution adopts a positive concept of secularism, which means the state maintains an equal distance from all religions, ensuring that every religion is treated with equal respect and protection.
- The Indian state does not identify with or favour any particular religion, but intervenes when necessary to uphold equality, reform, and justice within religious practices—thus reflecting a unique model of secularism suited to India's diverse society.

### 12. Universal Adult Franchise

- The Indian Constitution adopts universal adult franchise as a basis of elections to the Lok Sabha and the state legislative assemblies.
- **Universal adult franchise** - Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth, and so on.

- This principle makes democracy inclusive, promotes equality, and gives a voice to minorities and weaker sections, thereby enhancing their dignity and participation in governance.
- Unlike many other democracies where suffrage was extended gradually—for example, women got the right to vote in the U.S. only in 1920, and in the UK in stages till 1928—India adopted universal adult franchise from the very beginning in 1950, showcasing a bold commitment to democratic ideals despite widespread poverty and illiteracy.

### 13. Single Citizenship

- The **Indian Constitution provides for single citizenship**, meaning that all Indians are citizens of **India only**, regardless of the state or union territory they reside in.
- In contrast, the **United States follows dual citizenship**, where an individual is a **citizen of the United States** as well as a **citizen of the specific state** to which they belong.

### 14. Independent Bodies

The Indian Constitution not only provides for the legislative, executive and judicial organs of the government (Central and state) but also establishes certain independent bodies.

- **Election Commission** to ensure free and fair elections to the Parliament, the state legislatures, the office of President of India and the office of Vice-president of India.
- **Comptroller and Auditor-General of India** to audit the accounts of the Central and state governments. He acts as the guardian of public purse and comments on the legality and propriety of government expenditure.
- **Union Public Service Commission** to conduct examinations for recruitment to all-India services and higher Central

services and to advise the President on disciplinary matters.

- **State Public Service Commission** in every state to conduct examinations for recruitment to state services and to advise the governor on disciplinary matters.

### 15. Emergency Provisions

- Indian Constitution contains elaborate emergency provisions to enable the President to meet any extraordinary situation effectively.

**The Constitution envisages three types of emergencies, namely:**

- National emergency (Article 352)
- State emergency (President's Rule) (Article 356)
- Financial emergency (Article 360)

During an National emergency, the Central Government becomes all-powerful and the states go into the total control of the centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution.

### 16. Three-tier Government

- Originally, the Indian Constitution provided for a dual polity (Centre and the states)
- Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of government (i.e., local) which was not found in any other Constitution of the world.

- Centre, State and Local govts (Panchayati Raj and Municipal corporation)

Part IX of the Constitution provides for a three-tier system of Panchayati raj in every state, that is, panchayats at the village, intermediate and district levels.

Part IX-A of the Constitution provides for three types of municipalities in every state, that is, Nagar Panchayat for a transitional area, municipal council for a smaller urban area and municipal corporation for a larger urban area.

**Note:** Try to remember articles as you read. It's not necessary to remember all but the important ones will be asked in prelims, or you may require it to write in mains answers.

- Understanding the Constitution requires both static knowledge (core articles) and awareness of its dynamic use in current affairs.
- For example, the President issuing an ordinance relates to Article 123, and a proposed shift from Collegium to NJAC ties to Article 368 (constitutional amendment).
- Key provisions like Fundamental Rights, DPSPs, and Fundamental Duties must be memorized, and with regular revision and linking to current events, they become easier to retain and apply.

## Practice Questions

### Conceptual Questions

1. Why is the Indian Constitution considered the lengthiest written Constitution in the world, and what factors contributed to this?
2. How does the Indian Constitution strike a balance between rigidity and flexibility in its amendment process?
3. In what ways does the Indian Constitution establish a federal system with a unitary bias?
4. Why is India described as a “Union of States” and not a “Federation,” and how does this reflect in Centre-State relations?
5. How do Parts III, IV, and IV-A of the Constitution together reflect a balance between rights, responsibilities, and ideals?
6. What is the significance of the Seventh Schedule, and how does it help in the distribution of powers in a federal system?
7. How do the Fifth and Sixth Schedules differ in their treatment of Scheduled and Tribal Areas?
8. Why was the Ninth Schedule created, and what did the Supreme Court's judgment in I.R. Coelho case (2007) imply about its validity?
9. How does the Constitution reflect the idea of a Secular State, and how is the Indian concept different from the Western model?
10. How do the Eleventh and Twelfth Schedules strengthen the third tier of government in India?

### One Liner Revision Questions

1. Which Schedule of the Indian Constitution contains the official languages of India?
2. How many Fundamental Duties are listed under Article 51-A?
3. In which Part of the Constitution are the Directive Principles of State Policy mentioned?
4. What is the total number of Schedules in the Indian Constitution currently?
5. Which Amendment added the anti-defection law to the Constitution, and in which Schedule?
6. Which Schedule deals with the distribution of seats in Rajya Sabha among states?
7. Under which Part and Article is the Right to Constitutional Remedies guaranteed?
8. Which Schedule contains the forms of oath and affirmations for various constitutional posts?
9. Which languages were added to the Eighth Schedule by the 92nd Constitutional Amendment Act, 2003?
10. Which Constitutional Amendment Acts added the Eleventh and Twelfth Schedules?

## Prelims PYQ

1. Which of the following statements are correct about the Constitution of India?

1. Powers of the Municipalities are given in Part IX A of the Constitution.
2. Emergency provisions are given in Part XVIII of the Constitution.
3. Provisions related to the amendment of the Constitution are given in Part XX of the Constitution.

Select the answer using the code given below:

- (a) 1 and 2 only
- (b) 2 and 3 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

The correct answer is: **(d) 1, 2 and 3**

## Preamble

### About Preamble:

- Our Constitution starts with a Preamble.
- Preamble is the introduction to the Constitution.
- Preamble gives an insight into the Philosophy of the Constitution.
- **Preamble is the modified version of the 'Objectives Resolution'** that was moved by Jawaharlal Nehru (we read it above).

### Please Note: Preamble is a Part of Indian Constitution.

- Initially the Preamble was not considered a part of the Constitution and its amendment was not accepted. (In the **Berubari's case 1960**, the Supreme Court held that "Preamble is NOT a part of the constitution")
- However, later in **Kesavananda Bharti v/s state of Kerala 1973** case the Supreme Court ruled that "Preamble is a part of the constitution and can be amended" as any other provisions of the Constitution, provided the basic structure of the constitution is not destroyed.

### Two things should be noted:

- The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.

### PREAMBLE

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

**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 individual and the unity and integrity of the nation.

**IN OUR CONSTITUENT ASSEMBLY** the twenty-sixth day of November, 1949, do, **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION**

- It is non-justiciable, that is, its provisions are not enforceable in courts of law.

The Preamble indicates the source from which the Constitution comes. This source is "we the people of India". The Preamble sets out the aims and aspirations of the people (Justice, Equality, Fraternity, and Secular etc.) and these have been embodied in various provisions of the constitution.

So far Preamble has been amended only once → 42nd Constitutional Amendment, 1976.

The 42nd amendment added three new words to the Preamble:

- **SOCIALIST**
- **SECULAR**
- **INTEGRITY**

### Understanding the Preamble

**WE, THE PEOPLE OF INDIA, have solemnly resolved to constitute India:**

- India declared itself Republic in 1949 and the Preamble enshrines the philosophy that the government is by the people and for the people. The Constitution derives authority from the people (“We the people”).

**SOVEREIGN:** The word implies that India is an independent state and there is no authority above it and it is free to conduct its own affairs, internally and externally.

- In the case of *Synthetic & Chemicals Ltd. v. the State of Uttar Pradesh*, the Supreme Court decided that the word ‘sovereign’ means that the state has the authority over everything within the restrictions given by the Constitution.
- This case proposed that ‘*no country can have its own constitution unless it is not sovereign*’.

**SOCIALIST:** The Word "socialist" was added by the 42nd Constitutional Amendment Act of 1976. By inserting this word, it set a positive direction to the Government in formulating its policies. Indian brand of socialism is a ‘democratic socialism’.

- Democratic socialism holds faith in a ‘mixed economy’ where both public and private sectors co-exist side by side.

- Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity.
- Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards Gandhian socialism.
- In *D.S. Nakara v. Union of India*, the Supreme Court held that ‘the basic purpose of socialism is to provide a decent standard of life to the people living in the country and to protect them from the day they are born till the day they die.’

**SECULAR:** It signifies that India has respect for all religions. All religions have the same status. The word secular appeared at only one article that is Article 25 (2)(a) before it was inserted into the Constitution's Preamble.

- State will protect every religion equally but the **state will not have any foundation on religion**.
- Accordingly, **Articles 25 to 28** (guaranteeing the fundamental right to freedom of religion) have been included in the constitution.
- The term ‘Secular’ was also added by the 42nd Amendment Act, 1976, during the emergency.
- In *S.R. Bommai v. Union of India*, the nine-judge bench of Supreme Court found the concept of secularism as the basic feature of the Constitution.
- In *Bal Patil v. Union of India*, the Supreme Court held that all religions and religious groups must be treated equally and with equal respect.
- In *M.P. Gopalkrishnan Nair v. the State of Kerala*, the Court stated that the secular state is different than an atheist society, which means the state allows every religion and disrespect none.

**DEMOCRATIC:** India has borrowed its present form of democracy from the western world. It

means the Government is responsible to the people of India. (i.e possession of supreme power by the people)

- The Indian Constitution provides for “**representative parliamentary democracy**” under which the executive is responsible to the legislature for all its policies and actions.
- The term ‘**democratic**’ is used in the Preamble in the broader sense embracing not only **political democracy** but also **social and economic democracy**.
- In *Mohan Lal v. District Magistrate of Rai Bareilly*, the Supreme Court stated that Democracy is a philosophical topic related to politics where the people elect their representatives to form a government, where the basic principle is to treat the minority the same way people treat the majority. Every citizen is equal before the law in the democratic form of government.
- In *Union of India v. Association of Democratic Reforms*, the Supreme Court states that the basic requirement of a **successful democracy is awareness of the people**. A democratic form of Government cannot survive without fair elections as fair elections are the soul of democracy. Democracy also improves the way of life by protecting human dignity, equality, and the rule of law.

**REPUBLIC:** The term ‘republic’ in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years.

A republic also means two more things:

- First, vesting political sovereignty in the people and not in a single individual like a king;

- Second, the absence of any privileged class and hence all public offices being opened to every citizen without any discrimination.

**JUSTICE:** Justice in the Preamble means social, political and economic justice

- **Social justice** denotes equal treatment of all citizens without any social distinction.
- **Economic justice** denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring in-equalities in wealth, income, and property.
- **Political justice** implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.

**The ideal of justice—social, economic and political—has been taken from the Russian Revolution (1917).**

**LIBERTY:** Liberty is the essential requirement of democratic and free society.

- The term ‘liberty’ means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.

The ideals of liberty, equality and fraternity in our Preamble have been taken from the **French Revolution (1789–1799)**.

**EQUALITY:** The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality—civic, political and economic.

- This objective is made more explicit by Article 15 which forbids the state to discriminate on any basis such as caste, creed, sex or place of birth.

- Article 15(2) throws all public places to all citizens.
- Article 17 abolishes the untouchability.
- Equality of opportunity in matters of public employment (Article 16).

**FRATERNITY:** Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship.

- The term Fraternity is incorporated from article 1 of **Universal Declaration of Human Rights 1948**.
- Articles 1 and 2 are the foundation blocks of the Universal Declaration of Human rights, with their principles of dignity, liberty, equality and brotherhood.

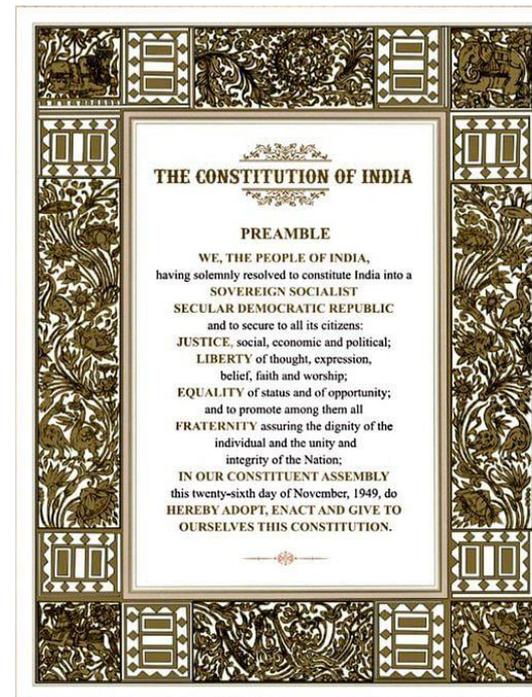
The Preamble declares that fraternity has to assure two things—the dignity of the individual and the unity and integrity of the nation.

**INTEGRITY** :The term ‘**integrity**’ in the Preamble refers to the **territorial and moral unity of the nation**.

- It signifies not just territorial unity but also the **moral integrity** of citizens.
- The word ‘**integrity**’ was added to the Preamble by the **42nd Constitutional Amendment Act, 1976**, during the Emergency period, to emphasize the importance of national unity amidst growing regional, linguistic, and communal tensions.

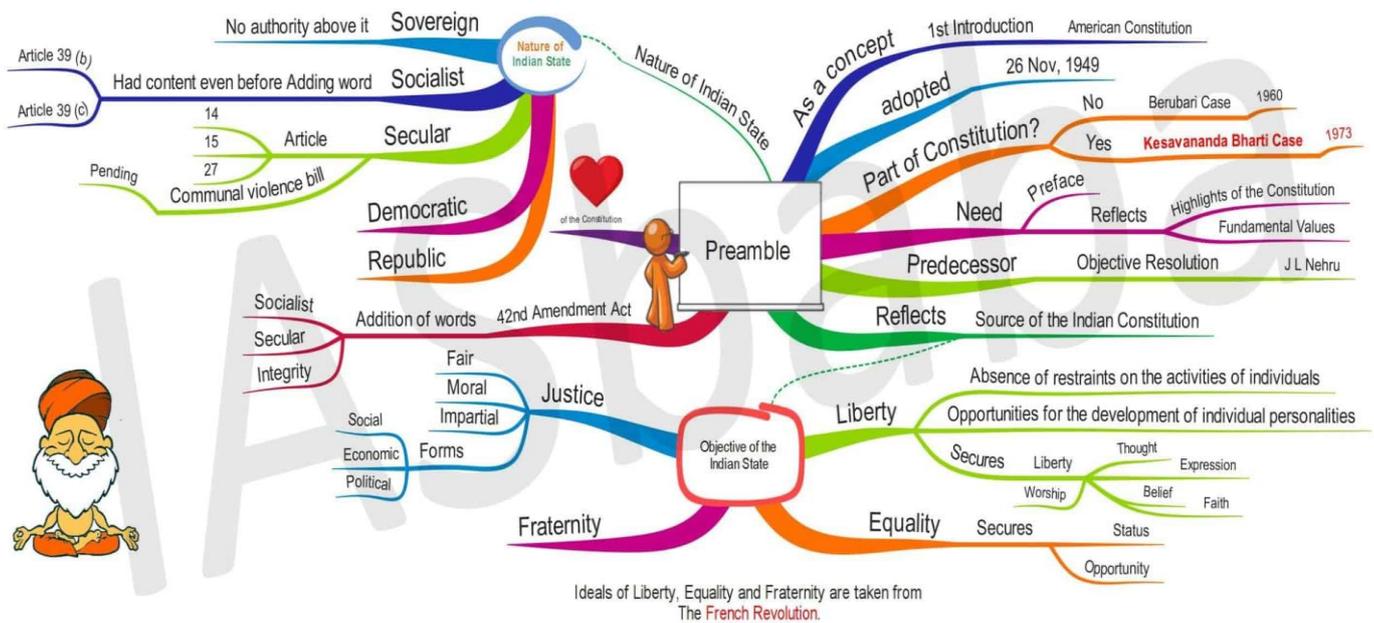
**Why Both 'Unity' and 'Integrity' Are Included:**

- **Unity** refers to the **political and territorial oneness** of the nation — that India is a single entity despite its vast diversity in languages, regions, cultures, and religions. It emphasizes **national solidarity** and freedom from external division.



**Original Preamble**

- **Integrity**, on the other hand, goes beyond geography. It implies **internal cohesion** — the **moral, ethical, and emotional commitment** of citizens to the nation. It stands for **loyalty, honesty, and a shared national purpose**, ensuring that diverse groups remain bound by common values.



### Significance of Preamble:

<https://iasbaba.com/2020/05/mind-maps-preamble-general-studies-2/>

Preamble refers to the preface of the constitution. It embodies the basic philosophy and fundamental values on which Indian Constitution is based i.e., moral, political and religious.

- As it reflects the dreams of the founding fathers of the constitution, SC has held that Preamble is the key to understanding the mind of constitution makers.
- Constituent Assembly member Pandit Thakur Das Bhargava observes ***'The Preamble is soul of the constitution. It is a key to the Constitution'***.
- It acts a philosophical key with –Guide for the state in its functioning whether it is the socialist nature or secular government functioning.
- It directs the state to take appropriate measures to realize the Directive Principles of State Policy. For example, the land ceiling policy was justified by the government at the time as being in line

with the socialist character of the state, as enshrined in the Preamble.

- It aids the judiciary in interpreting laws and delivering judgments by providing philosophical and ideological guidance rooted in the Constitution.

**E.g.,** In recent cases such as Sabarimala and Triple Talaq, the Supreme Court emphasized that secularism and equality, as enshrined in the Preamble, form the core philosophy of the Indian Constitution and must be upheld.

- It serves as a guiding light for Indian citizens in their conduct. For instance, the values of equality and fraternity, as enshrined in the Preamble, encourage citizens to uphold secularism and rise above communal divisions.

Justice Sikri had observed that , ***"It seems to me that the preamble of our Constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble."***

- The Supreme Court has stated that the preamble is a part of the basic structure of

constitution. In the Kesavananda Bharati case (1973), it stated that the preamble can be used as a viewpoint to understand the basis of certain articles of the constitution. These features suggest that the preamble is the philosophical key to the constitution.

- Whenever there is any doubt regarding any provision in the constitution, the Preamble will act as guiding light and can be used for grey area (interpretation).

### Preamble Can be Amended

- Preamble has been amended once in 1976-42<sup>nd</sup> CAA that added three new words- Socialist, Secular, Integrity.

### Important Remarks

#### Ex. CJI DY Chandrachud

"The Preamble is a short but weighty part of the Constitution. It states that 'We, the people of India give to ourselves this Constitution'. *It marks the transition of the people of India from the status of 'subjects' to the status of 'citizens'.*"

"The colonial masters didn't bestow the constitution as a matter of grace, instead it was homegrown. Be guided by Constitutional values, and you will not fail,".

#### Justice Sanjiv Khanna

- Recently, Justice Sanjiv Khanna of the Supreme Court reaffirmed the significance of the Preamble by emphasizing that secularism remains a core element of the Constitution's basic structure.
- While hearing petitions challenging the words "socialist" and "secular" in the Preamble, the Court dismissed the plea, stating that these terms are well-understood by "We, the people of India" and reflect the foundational values of the nation.

## Practice Questions

### Conceptual Questions

1. How does the Preamble reflect the philosophy and vision of the Indian Constitution?
2. In what way is the Preamble a modified version of the Objectives Resolution?
3. How did the Kesavananda Bharati case (1973) change the legal status of the Preamble in the Indian Constitution?
4. Why is the Preamble considered non-justiciable, and what does that imply for its enforceability in courts?
5. Discuss the significance of the words "We, the people of India" in the context of Indian democracy and constitutional authority.
6. What is the distinction between Unity and Integrity as mentioned in the Preamble, and why were both terms included?
7. How does the inclusion of the word "Secular" in the Preamble reinforce the fundamental rights under Articles 25–28?
8. How do the ideals of Justice – Social, Economic, and Political manifest in the Indian governance system?
9. How does the Preamble support the Directive Principles of State Policy (DPSPs)?
10. Explain how the Preamble can serve as a guiding light for interpreting constitutional provisions, especially in contemporary legal cases.

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### One Liner Revision Questions

1. In which landmark case did the Supreme Court declare the Preamble as a part of the Constitution?
2. Which amendment added the words "Socialist", "Secular", and "Integrity" to the Preamble?
3. Which year did the 42nd Constitutional Amendment take place?
4. What does the term "Republic" in the Preamble signify about the head of state?
5. From which foreign constitutions were the ideals of Liberty, Equality, and Fraternity borrowed?
6. Which part of the Constitution ensures Freedom of Religion, as supported by the word "Secular" in the Preamble?
7. What kind of socialism does India follow as reflected in the Preamble?
8. Is the Preamble justiciable in Indian courts?
9. Which case held that the Preamble is not a source of power or limitation upon the legislature?
10. Who moved the Objectives Resolution that later became the basis for the Preamble?

### Prelims PYQ

- 1) 'Economic Justice' as one of the objectives of the Indian Constitution has been provided in: (2013)
  - (a) the Preamble and the Fundamental Rights
  - (b) the Preamble and the Directive Principles of State Policy
  - (c) the Fundamental Rights and the Directive Principles of State Policy
  - (d) None of the above
- 2) Which one of the following objectives is **not** embodied in the Preamble to the Constitution of India? (2017)
  - (a) Liberty of thought
  - (b) Economic liberty
  - (c) Liberty of expression
  - (d) Liberty of belief
- 3) The mind of the makers of the Constitution of India is reflected in which of the following? (2017)
  - (a) The Preamble
  - (b) The Fundamental Rights
  - (c) The Directive Principles of State Policy
  - (d) The Fundamental Duties
- 4) Which one of the following reflects the most appropriate relationship between law and liberty? (2018)
  - (a) If there are more laws, there is less liberty.
  - (b) If there are no laws, there is no liberty.
  - (c) If there is liberty, laws have to be made by the people.
  - (d) If laws are changed too often, liberty is in danger.
- 5) In the context of polity, which one of the following would you accept as the most appropriate definition of liberty? (2019)
  - (a) Protection against the tyranny of political rulers
  - (b) Absence of restraint
  - (c) Opportunity to do whatever one likes
  - (d) Opportunity to develop oneself fully
- 6) The Preamble to the Constitution of India is: (2020)
  - (a) part of the Constitution but has no legal effect
  - (b) not a part of the Constitution and has no legal effect either
  - (c) a part of the Constitution and has the same legal effect as any other part
  - (d) a part of the Constitution but has no legal effect independently of other parts
- 7) What was the exact constitutional status of India on 26th January, 1950? (2021)
  - (a) A democratic Republic
  - (b) A Sovereign Democratic Republic
  - (c) A Sovereign Secular Democratic Republic
  - (d) A Sovereign Socialist Secular Democratic Republic

Question No.	Correct Option
1	(b)
2	(b)
3	(a)
4	(b)
5	(d)
6	(d)
7	(b)

### Mains PYQ

1. What is the significance of a preamble to a constitution? Bring out the philosophy of the Indian polity as enshrined in the Preamble of the Indian Constitution. (2004) (30 Marks, 250 words)
2. Discuss each adjective attached to the word 'Republic' in the 'Preamble'. Are they defensible in the present circumstances? (2016) (2 Marks)

## Philosophy of the Constitution

### The Philosophy of the Indian Constitution

- The Indian Constitution is far more than a legal document — it is the embodiment of a vision, a moral and political compass that guides the democratic journey of the nation. It reflects not only the aspirations of the people at the time of independence but continues to serve as a living document that evolves with the changing needs and values of Indian society.
- The philosophy of the Constitution lies in its commitment to justice, liberty, equality, and fraternity — values enshrined in the Preamble and rooted in centuries of social and political struggle.

### Why Study the Philosophy of the Constitution?

- Understanding the philosophy of the Constitution enables us to appreciate not just what is written in the legal text, but why it is written so.
- The intentions of the framers, as expressed in the Constituent Assembly Debates (CAD), reveal a deep moral and political vision that goes beyond procedural legality.
- These debates offer insights into the conceptual foundations of democracy, rights, citizenship, and justice in the Indian context. Revisiting these deliberations becomes crucial, especially when constitutional values are challenged or misinterpreted in contemporary times.

### The Constitution as a Tool for Democratic Transformation

- The Constitution was crafted not merely to limit state power but to enable transformative politics — to empower

those who were historically marginalized and to reconstruct Indian society along the principles of justice and equality.

- As Pandit Nehru famously noted, the Constituent Assembly was not just a group of legal experts, but a "*nation on the move*," discarding the injustices of the past and forging a new democratic future.

### Core Features and Achievements

#### The Indian Constitution rests on five core features that reflect its philosophical foundation:

1. **Liberal Individualism:** It guarantees a wide range of individual rights, including freedom of expression, religion, and protection from arbitrary arrest. These rights are rooted in the liberal tradition that began with reformers like Raja Rammohan Roy.
2. **Social Justice:** The Constitution uniquely balances individual liberty with social justice. Affirmative action for Scheduled Castes and Scheduled Tribes, Directive Principles of State Policy, and welfare schemes like MGNREGA are direct outcomes of this commitment.
3. **Respect for Diversity:** Recognising India's complex social fabric, the Constitution grants rights to religious and linguistic minorities, including the right to establish educational institutions. Unlike the Western model of secularism based on strict separation, India's model is one of *principled distance*, allowing the state to intervene or abstain depending on the context to uphold justice and equality.
4. **Universal Franchise:** The commitment to adult suffrage, regardless of caste, gender,

or class, was a bold and radical step. Unlike many Western democracies, India adopted universal franchise right from the beginning — a testament to its deep belief in democratic self-rule.

5. **Asymmetric Federalism:** The Constitution anticipates the need to accommodate diverse regional aspirations by allowing special provisions for states like Nagaland under Article 371. This recognition of asymmetry supports both unity and diversity.

### A Confluence of Political Philosophies

**The Indian Constitution synthesizes multiple political ideologies into a coherent framework:**

- **Socialism:** Emphasizing social and economic equality, socialism is reflected in policies promoting redistributive justice and state welfare.
- **Liberalism:** It safeguards civil liberties and democratic freedoms, allowing space for economic reforms and individual rights.
- **Republicanism:** The Constitution abolishes monarchy and upholds popular sovereignty, embedding democratic ideals in governance structures.
- **Federalism:** Despite its unitary tilt, Indian federalism accommodates linguistic, regional, and cultural pluralism.
- **Feminism:** The Constitution embodies gender justice through equality provisions and affirmative actions. However, political parity remains elusive due to entrenched patriarchy.
- **Environmentalism:** With growing emphasis post-UNFCCC, environmental protection is now constitutionally recognized (Article 48A), though it

sometimes conflicts with federal and developmental priorities.

While these philosophies occasionally come into tension — for instance, socialism vs. liberalism, or environmentalism vs. federal autonomy — the Constitution manages to accommodate them, evolving through judicial interpretation, policy innovation, and public discourse.

### Justice as a Foundational Principle

**The concept of Justice — political, social, and economic — is central to the constitutional philosophy:**

- Political Justice ensures inclusive democratic participation through universal franchise and reservations for marginalized groups.
- Economic Justice demands equality in economic opportunities and is advanced through policies like MGNREGA and equal pay for equal work.
- Social Justice seeks to eliminate historical hierarchies and social imbalances via reservation in education and public employment.

As Pandit Nehru noted, political justice builds the democratic polity, while economic and social justice ensure a truly democratic society.

### Criticisms and Limitations

**Despite its achievements, the Constitution has been critiqued on several grounds:**

- **Unwieldiness:** Its detailed nature has made it voluminous, but this has also enabled specificity and clarity.
- **Representation:** The Constituent Assembly was not elected by universal suffrage, but it reflected a wide range of political and social opinions.

- **Alienness:** Some claim it is Western and removed from Indian culture. Yet, it is more accurate to describe it as *innovative borrowing*, blending Indian tradition with global ideals.

Other limitations include its centralized bias, incomplete gender justice, and relegation of socio-economic rights to non-enforceable Directive Principles. Still, none of these undermine the transformative potential or philosophical depth of the document.

### A Living Document of Shared Vision

The Indian Constitution is not just a legal framework — it is a collective national vision, born of struggle and sustained by democratic commitment.

- It fosters a shared moral universe based on liberty, equality, justice, and fraternity. Despite differences and debates, the Preamble continues to guide us, reminding us that it is "We, the people of India" who gave ourselves this Constitution — and it is we who must keep its spirit alive.
- As society evolves, so must the Constitution — but always in the light of the foundational philosophy that has made Indian democracy one of the most resilient in the world.

### Thoughts of Founding Fathers

"We are going to enter a life of contradictions. In politics, we will have equality, and in social and economic life we will have inequality." – Dr. B.R. Ambedkar

"The Constitution is not a mere lawyer's document, it is a vehicle of life, and its spirit is always the spirit of age." – Dr. B.R. Ambedkar

"Democracy is not a form of government, but a form of social organization." – Dr. B.R. Ambedkar

"The Constituent Assembly is not just a gathering of lawyers... it is a nation on the move, throwing away the shell of its past and fashioning for itself a new garment." – Jawaharlal Nehru

"Freedom and power bring responsibility... That responsibility rests upon this Assembly, a sovereign body representing the sovereign people of India." – Jawaharlal Nehru

"It would be in the interest of all to forget that there is anything like majority or minority in this country and that in India, there is only one community — the Indian community." – Sardar Vallabhbhai Patel

"The Assembly has adopted the principle of adult franchise with abundant faith in the common man and the ultimate success of democratic rule." – Alladi Krishnaswami Ayyar

"The Preamble is the horoscopy of our sovereign democratic republic." – K.M. Munshi

"My notion of democracy is that under it, the weakest should have the same opportunity as the strongest." – Mahatma Gandhi

"We wanted the music of the Veena or Sitar, but here we have the music of an English band." – K. Hanumanthaiya

## Practice Questions

### Conceptual Questions

1. How does the Indian Constitution reflect the aspirations and moral vision of the freedom struggle, rather than just legal principles?
2. In what ways does the Indian Constitution function as a tool for democratic transformation, not just limitation of state power?
3. How does the Indian Constitution balance individual liberty with social justice?
4. What is the significance of universal adult franchise in the Indian context, especially when compared to Western democracies?
5. How does asymmetric federalism help maintain both unity and diversity in India?
6. Explain how the Constitution integrates conflicting ideologies like socialism vs liberalism and federalism vs centralization.
7. Why is justice (social, economic, and political) considered the foundational principle of the Constitution?
8. How is Indian secularism different from the Western notion of strict separation of church and state?
9. How do the Directive Principles of State Policy reflect the philosophical goals of the Constitution?
10. Why is the Indian Constitution called a living document and what does it mean in the context of evolving social and political values?

### One Liner Revision Questions

1. Who described the Preamble as the “horoscopy of our sovereign democratic republic”?
2. Which article of the Constitution deals with environmental protection?
3. Name the five core features of constitutional philosophy as discussed in Indian context.
4. Who said, “The Constitution is not a mere lawyer's document; it is a vehicle of life”?
5. What does Article 371 relate to in the Indian Constitution?
6. Who referred to the Constituent Assembly as a “nation on the move”?
7. What ideology is reflected through affirmative action for Scheduled Castes and Tribes?
8. Which Indian leader famously warned about inequality in social and economic life despite political equality?
9. What philosophy does Article 48A of the Constitution promote?
10. Who said, “Democracy is not a form of government, but a form of social organization”?

## Prelims PYQ

1. If a particular area is brought under the Fifth Schedule of the Constitution of India, which one of the following statements best reflects the consequence of it? (2022)

- a) This would prevent the transfer of land of tribal people to non-tribal people.
- b) This would create a local self-governing body in that area.
- c) This would convert that area into the Union Territory.
- d) The State having such areas would be declared a Special Category State.

2. In the context of India, which of the following principles is/are implied institutionally in the parliamentary government? (2013)

- 1. Members of the Cabinet are Members of the Parliament.
- 2. Ministers hold the office till they enjoy confidence in the Parliament.
- 3. The Cabinet is headed by the Head of the State.

Select the correct answer using the code given below:

- a) 1 and 2 only
- b) 3 only
- c) 2 and 3 only
- d) 1, 2 and 3

3. Which one of the following Schedules of the Constitution of India contains provisions regarding anti-defection? (2014)

- (a) Second Schedule
- (b) Fifth Schedule
- (c) Eighth Schedule
- (d) Tenth Schedule

4. The provisions in the Fifth Schedule and Sixth Schedule in the Constitution of India are made in order to: (2015)

- (a) protect the interests of Scheduled Tribes
- (b) determine the boundaries between States
- (c) determine the powers, authority and responsibilities of Panchayats
- (d) protect the interests of all the border States

5. Right to vote and to be elected in India is a (2017)

- a) Fundamental Right
- b) Natural Right
- c) Constitutional Right
- d) Legal Right

6. Out of the following statements, choose the one that brings out the principle underlying the Cabinet form of Government: (2017)

- a) An arrangement for minimising criticism against the Government whose responsibilities are complex and hard to carry out to the satisfaction of all.
- b) A mechanism for speeding up the activities of the Government whose responsibilities are increasing day by day.
- c) A mechanism of parliamentary democracy for ensuring collective responsibility of the Government to the people.
- d) A device for strengthening the hands of the head of the Government whose hold over the people is in a state of decline.

7. Which one of the following is not a feature of Indian federalism? (2017)

- a) There is an independent judiciary in India.
- b) Powers have been clearly divided between the Centre and the States.
- c) The federating units have been given unequal representation in the Rajya Sabha.
- d) It is the result of an agreement among the federating units.

8. The main advantage of the parliamentary form of government is that: (2017)

- a) the executive and legislature work independently.
- b) it provides continuity of policy and is more efficient.
- c) the executive remains responsible to the legislature.
- d) the head of the government cannot be changed without election.

9. Under which Schedule of the Constitution of India can the transfer of tribal land to private parties for mining be declared null and void? (2019)

- a) Third Schedule
- b) Fifth Schedule
- c) Ninth Schedule

d) Twelfth Schedule

**10.** The Ninth Schedule was introduced in the Constitution of India during the prime ministership of: (2019)

- a) Jawaharlal Nehru
- b) Lal Bahadur Shastri
- c) Indira Gandhi
- d) Morarji Desai

**11.** Consider the following statements: (2020)

1. The Constitution of India defines its structure in terms of federalism, secularism, fundamental rights and democracy.
2. The Constitution of India provides for 'Judicial review' to safeguard the citizens' liberties and to preserve the ideals on which the Constitution is based.

Question No.	Correct Option
1	(a)
2	(a)
3	(d)
4	(a)
5	(c)
6	(c)
7	(d)
8	(c)
9	(b)
10	(a)
11	(c)
12	(a)

Which of the statements given above is/are correct?

- a) 1 only
- b) 2 only
- c) Both 1 and 2
- d) Neither 1 nor 2

**12.** Which one of the following in Indian polity is an essential feature that indicates that it is federal in character? (2021)

- a) The independence of the judiciary is safeguarded.
- b) The Union Legislature has elected representatives from constituent units.
- c) The Union Cabinet can have elected representatives from regional parties.
- d) The Fundamental Rights are enforceable by Courts of Law

## Union Territory

**(Articles 1 to 4) under (Part I) of the Constitution deal with the Union and its territory.**

**Article 1 deals with Name and territory of the Union, It mentions:**

- India, that is Bharat, shall be a Union of States.
- The States and the territories thereof shall be as specified in the First Schedule.
- The territory of India shall comprise—
  - the territories of the States;
  - the Union territories specified in the First Schedule; and
  - such other territories as may be acquired

**Article 1 stipulates that “India, i.e., Bharat, shall be a Union of States”.**

**Very important** –Please note: the country is described as ‘Union’ although its Constitution is federal in structure.

**When asked why country is described as ‘Union’, not federation?**

Dr B R Ambedkar replied - "the phrase ‘Union of States’ has been preferred to ‘Federation of States’ for two reasons:

- One, the Indian Federation is not the result of an agreement among the states like the American Federation; and
- Two, the states have no right to secede from the federation. The federation is a Union because it is indestructible.
- The country is an integral whole and divided into different states only for the convenience of administration.”

**Please Note: (Very important)**

- As on today there are 28 states and 8 Union territories in the country.
- The provisions of the Constitution pertaining to the states are applicable to all the states.
- 1<sup>st</sup> Schedule contains the names of the States and UTs.
- 5<sup>th</sup> and 6<sup>th</sup> Schedule of the Constitution contains separate provisions with respect to the administration of scheduled areas and tribal areas within the states.
- States share powers with the Centre as mentioned in the constitution.
- The union territories and the acquired territories are directly administered by the Central government. (Except Delhi and Puducherry)

**Do you know?**

‘Territory of India’ is a wider expression than the ‘Union of India’

Because the latter includes only states while the former includes not only the states but also union territories and territories that may be acquired by the Government of India at any future time.

**Article 2:** Admission or establishment of new States. Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

**Article 2 grants two powers to the Parliament:**

- the power to admit into the Union of India new states; and
- the power to establish new states.

**Please note:**

- The first refers to the admission of states which are already in existence while the

second refers to the establishment of states which were not in existence before.

- Notably, Article 2 relates to the admission or establishment of new states that are not part of the Union of India.

**Article 3:** Formation of new States and alteration of areas, boundaries or names of existing States.

**Parliament may by law:**

- Form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- Increase the area of any State;
- Diminish the area of any State;
- Alter the boundaries of any State;
- Alter the name of any State.

**Article 3** notably relates to the formation of or changes in the existing states of the Union of India.

**However, Article 3 lays down two conditions in this regard:**

- One, a bill contemplating the above changes can be introduced in the Parliament only with the prior recommendation of the President; and
- Two, before recommending the bill, the President has to refer the same to the state legislature concerned for expressing its views within a specified period.

The President (or Parliament) is **not bound** by the views of the state legislature and may either accept or reject them, even if the views are received in time.

Further, it is not necessary to make a fresh reference to the state legislature every time an amendment to the bill is moved and accepted in Parliament.

In case of a union territory, no reference need be made to the concerned legislature to ascertain its views and the Parliament can itself take any action as it deems fit.

**Crux:** Constitution authorizes the Parliament to form new states or alter the areas, boundaries or names of the existing states 'without their consent'. Hence, the territorial integrity or continued existence of any state is not guaranteed by the Constitution. **Therefore, India is rightly described as 'An indestructible union of destructible states.'**

**Article 4:** declares that laws made under Article 2 and 3 are not to be considered as amendments of the Constitution under Article 368.

- Article 4 declares that laws made for admission or establishment of new states (under Article 2) and formation of new states and alteration of areas, boundaries or names of existing states (under Articles 3) are not to be considered as amendments of the Constitution under Article 368.
- This means that such laws can be passed by a simple majority and by the ordinary legislative process.

**Please Note:**

- Indian Territory can be ceded to a foreign state only by amending the Constitution under Article 368.
- However, in the landmark case of *Ram Kishore Sen v. Union of India* (1966), the Supreme Court held that the settlement of a boundary dispute between India and another country does not require a constitutional amendment. Such a settlement can be carried out through executive action, provided it does not involve the cession of Indian territory.

- So only when there is involvement of cession of Indian Territory to a foreign country, amendment is needed.

## EVOLUTION OF STATES AND UNION TERRITORIES

### Integration of Princely States

We have read earlier that Indian Independence Act (1947) gave three options to the princely states –

- Joining India,
- Joining Pakistan or
- Remaining independent

Of the 552 princely states situated within the geographical boundaries of India, 549 joined India and the remaining 3 (**Hyderabad, Junagarh and Kashmir**) refused to join India.

### However, in course of time –

- Hyderabad state was integrated through Police action.(September 1948)
- Junagarh was integrated through referendum.(February 1948)
- Kashmir was integrated through Instrument of Accession. (October 1947)

### Some important points:

- After independence, there were demands from different regions, particularly South India, for reorganization of states on linguistic basis.
- Government of India appointed **S K Dhar Committee** to examine the feasibility for reorganization of states on linguistic basis.
- Dhar Committee recommended the reorganization of states on the basis of administrative convenience rather than linguistic factor.
- This created much resentment and led to the appointment of another committee - **JVP Committee** - consisted of Jawaharlal

Nehru, Vallabhbhai Patel and Pattabhi

Article	Title	Brief Description
Article 1	Name and Territory of the Union	Declares India as a "Union of States"; defines the territory of India.
Article 2	Admission or Establishment of New States	Empowers Parliament to admit or establish new states into the Union on agreed terms.
Article 3	Formation of New States and Alteration of Areas	Parliament can form new states or alter boundaries, names, or areas of existing ones.
Article 4	Laws under Articles 2 and 3	Allows for changes to First and Fourth Schedules; such laws are <b>not constitutional amendments</b> .

Sitaramayya

- JVP committee's report formally rejected language as the basis for reorganisation of states.
- However, the death of **Potti Sriramulu**, a Congress person of standing, after a 56-day hunger strike for the cause of creation of separate Andhra state on linguistic basis -- forced the Government of India to create the first linguistic state, known as Andhra state
- The creation of Andhra state intensified the demand from other regions for creation of states on linguistic basis. This forced the Government of India to appoint Fazl Ali Commission to re-examine the whole question.
- Fazl Ali's report broadly accepted language as the basis of reorganisation of states. But it **rejected** the theory of '**one language–one state**'. Its view was that the **unity of India should be regarded as the primary consideration** in any redrawing of the country's political units.

Four major factors should be taken into account in any scheme of reorganization of states:

1. Preservation and strengthening of the unity and security of the country.
2. Linguistic and cultural homogeneity.
3. Financial, economic and administrative considerations.

4. Planning and promotion of the welfare of the people in each state as well as of the nation as a whole.

### Formation of States and Union Territories

- **Integration of Princely States (1947–1950):** After independence, over 500 princely states were integrated into India through diplomatic efforts, police action (Hyderabad - September 1948), referendums (Junagarh - February 1948), and Instruments of Accession (Kashmir - October 1947).
- **India Becomes a Republic (1950):** On 26 January 1950, the Constitution came into effect, classifying states into Part A, B, C, and D categories.
- **First Linguistic State (1953):** Andhra State was carved out of Madras on 1 October 1953 for Telugu-speaking people.
- **States Reorganisation Act (1956):** Came into force on 1 November 1956; reorganized states on linguistic lines, resulting in 14 States and 6 Union Territories.
- **Renaming of United Provinces (1950):** United Provinces was renamed as Uttar Pradesh, making it the first state to receive a new name.
- **Formation of Gujarat and Maharashtra (1960):** Bombay State was bifurcated into Gujarat and Maharashtra on 1 May 1960.
- **Creation of Nagaland (1963):** Formed on 1 December 1963 to recognize the aspirations of Naga people.
- **Formation of Haryana and Chandigarh (1966):** Haryana was carved out of Punjab on 1 November 1966; Chandigarh became a Union Territory and shared capital.
- **Himachal Pradesh Statehood (1971):** Became a full-fledged state on 25 January 1971.
- **Statehood for Manipur, Tripura, and Meghalaya (1972):** These northeastern states were granted full statehood on 21 January 1972.
- **Sikkim's Unique Journey (1974–1975):** The 35th Constitutional Amendment (1974) made Sikkim an "Associate State." The 36th Amendment (1975) repealed it and made Sikkim the 22nd state on 16 May 1975.
- **Delhi as National Capital Territory (1992):** The 69th Constitutional Amendment Act (1991) designated Delhi as the National Capital Territory of Delhi, with a legislative assembly and special powers.
- **Statehood for Arunachal Pradesh, Mizoram, and Goa (1987):** Arunachal and Mizoram attained statehood on 20 February 1987; Goa became a state on 30 May 1987. Daman and Diu became a UT.
- **Formation of Chhattisgarh, Uttarakhand, and Jharkhand (2000):** Chhattisgarh was created on 1 November, Uttarakhand (then Uttaranchal) on 9 November, and Jharkhand on 15 November 2000.
- **Creation of Telangana (2014):** Telangana became the 29th state of India on 2 June 2014, carved out from Andhra Pradesh.
- **Reorganization of Jammu & Kashmir (2019):** On 31 October 2019, J&K was bifurcated into two Union Territories — Jammu & Kashmir, and Ladakh — following the abrogation of Article 370.
- **Merger of UTs (2020):** Dadra and Nagar Haveli and Daman and Diu were merged into a single Union Territory on 26 January 2020.

## Practice Questions

### Conceptual Questions

1. Why did Dr. B.R. Ambedkar emphasize the term "Union of States" instead of "Federation of States" in Article 1?
2. How is the term "Territory of India" different from "Union of India" under Article 1?
3. What constitutional provisions empower Parliament to alter the boundaries and names of existing states, and how is this process executed?
4. Why are Articles 2 and 3 not considered constitutional amendments under Article 368, despite altering the political map of India?
5. Discuss the constitutional and administrative significance of Union Territories being directly governed by the Centre.
6. How does the formation of linguistic states reflect the Indian Constitution's flexibility in adapting to social demands?
7. What does the phrase "indestructible Union of destructible states" signify about India's federal structure?
8. Why did the Fazl Ali Commission reject the "one language–one state" theory, and what were its key guiding principles?
9. How did the integration of princely states post-1947 reinforce the principle of Indian unity and constitutional supremacy?
10. Why is Article 3 more politically sensitive compared to Article 2, especially in the context of state reorganization?

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### One Liner revision Questions

1. How many states and Union Territories does India have at present?
2. Under which schedule of the Constitution are the names of states and UTs listed?
3. What constitutional amendment designated Delhi as the National Capital Territory?
4. Name the first linguistic state formed in independent India.
5. When was Sikkim officially made the 22nd state of India?
6. Which committee first recommended state reorganization based on administrative convenience, not language?
7. Which constitutional articles (2 & 3) allow Parliament to create new states or alter boundaries?
8. Which year saw the bifurcation of Jammu & Kashmir into two Union Territories?
9. On what date did Dadra and Nagar Haveli merge with Daman and Diu to form a single UT?
10. What are the two conditions required before a bill for altering a state's boundaries or name can be introduced in Parliament?

## Citizenship

**(Articles 5 to 11)** – (Part II) of the Constitution - deals with the provisions of Citizenship

The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):

- Right against discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
- Right to equality of opportunity in the matter of public employment (Article 16).
- Right to freedom of speech and expression, assembly, association, movement, residence and profession (Article 19).
- Cultural and educational rights (Articles 29 and 30).
- Right to vote in elections to the Lok Sabha and state legislative assembly.
- Right to contest for the membership of the Parliament and the state legislature.
- Eligibility to hold certain public offices, that is, President of India, Vice-President of India, judges of the Supreme Court and the high courts, governor of states, attorney general of India and advocate general of states.

**(In India both citizens by birth as well as a naturalized citizen are eligible for the office of President.)**

Along with the above rights, the citizens also owe certain duties towards the Indian State, as for example, paying taxes, respecting the national flag and national anthem, defending the country and so on.

### Some important facts:

- The Constitution deals with the citizenship from Articles 5 to 11.
- However, it only identifies the persons who became citizens of India at its

commencement (i.e., on January 26, 1950).

- It does not deal with the problem of acquisition or loss of citizenship subsequent to its commencement.
- It empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship.
- Accordingly, the Parliament has enacted the Citizenship Act, 1955.
- Therefore, we should know about (Articles 5 to 11) and (Citizenship Act)

According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on 26 January, 1950:

**(Article 5):** A person who had his domicile in India and also fulfilled any one of the three conditions, viz.,

- if he was born in India; or
- if either of his parents was born in India; or
- if he has been ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India

**Articles 6 and 7** deal with two categories of persons, namely, those who were residents in India but had migrated to Pakistan and those who were residents in Pakistan but had migrated to India. Those who migrated from Pakistan to India were divided into two categories:

- those who came before July 19, 1948 and
- those who came after that date.

**(Article 6):** A person who migrated to India from Pakistan became an Indian citizen if he or either of his parents or any of his grandparents was born in undivided India and also fulfilled any one of the

two conditions viz., in case he migrated to India before July 19, 1948, he had been ordinarily resident in India since the date of his migration; or in case he migrated to India on or after July 19, 1948, he had been registered as a citizen of India. But a person could be so registered only if he had been resident in India for six months preceding the date of his application for registration

**(Article 7):** A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen. For this, he had to be resident in India for six months preceding the date of his application for registration.

**(Article 8):** A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing outside India shall become an Indian citizen if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether before or after the commencement of the Constitution. Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship.

**To sum up, these provisions deal with the citizenship of**

- (a) Persons domiciled in India;
- (b) Persons migrated from Pakistan;
- (c) Persons migrated to Pakistan but later returned; and
- (d) Persons of Indian origin residing outside India.

**The other constitutional provisions with respect to the citizenship are as follows:**

1. No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state **(Article 9)**.

2. Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament **(Article 10)**.
3. Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship **(Article 11)**.

### The Citizenship Act, 1955

- A comprehensive law dealing with citizens was passed by Parliament in 1955 in accordance with the powers vested in it by **Article 11 of the Constitution**.
- The provisions of the Act may be broadly divided into three parts, acquisition of citizenship, termination of citizenship and supplemental provisions.

### Acquisition of Citizenship

The Act provides **five modes of acquiring the citizenship of India**. These are:

#### (1) By Birth:

- Every person born in India on or after January 26, 1950 but before June 30, 1987, shall be a citizen of India by birth.
- A person is citizen of India by birth if he/she is born in India on or after July 1, 1987 but at the time of the birth either of his parents was a citizen of India.
- **Note:** The children of foreign diplomats posted in India and enemy aliens cannot acquire the Indian citizenship by birth.

#### (2) By Descent:

- A person born outside India on or after January 26, 1950, shall be citizen of India by descent if his father or mother is a citizen of India at the time of his birth.
- Children of those who are citizens of India by descent, as also children of non-citizens

who are in service under a government in India, may also take advantage of this provision and become Indian citizens by descent, if they so desire, through registration.

(3) **By Registration:** Any person who is not already an Indian citizen by virtue of the provisions of the Constitution or those of this Act can acquire citizenship by registration if that person belongs to any one of the following five categories:

- Persons of Indian origin who are ordinarily resident in India and who have been so resident for at least six months immediately before making an application for registration.
- Persons of Indian origin who are ordinarily resident in any country or place outside undivided India;
- Women who are, or have been, married to citizens of India;
- Minor children of persons who are citizens of India; and
- Persons of full age and capacity who are citizen of the Common wealth countries or the Republic of Ireland.

(4) **By Naturalisation:** Any person who does not come under any of the categories mentioned above can acquire Indian citizenship by naturalisation if his application for the same has been accepted by the Government of India and certificate is granted to him to that effect.

**An applicant for a naturalisation certificate has to satisfy the following conditions:**

- (a) He is not a citizen of a country which prohibits Indians becoming citizens of that country by naturalisation;
- (b) He has renounced the citizenship of the country to which he belonged;

- (c) He has either resided in India or has been in the service of a government in India, normally, for one year immediately prior to the date of application;
- (d) During the seven years preceding the above mentioned one year, he has resided in India or been in the service of a government in India for a period amounting in the aggregate to not less than four years;
- (e) He is of good character;
- (f) He has an adequate knowledge of a language specified in the Constitution;
- (g) If granted a certificate, he intends to reside in India or enter into, or continue in service under a government in India.

The Act provides, however, for a conspicuous exemption under which any or all of the above conditions may be waived in favour of a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally.

Every person to whom a certificate of naturalisation is granted has to take an oath of allegiance solemnly affirming that he will bear true faith and allegiance to the Constitution of India as by law established, and that he will faithfully observe the laws of India and fulfill his duties as a citizen of India.

(5) **By Incorporation of Territory:**

- If any territory becomes part of India, the Government of India, by order, may specify the persons who shall be citizen of India by reason of their connection with that territory.

### Termination of Citizenship

The Act envisages three situations under which a citizen of India may lose his Indian nationality. These are:

a) **By Renunciation:**

- If any citizen of India who is also a national of another country renounces his Indian citizenship through a declaration in the prescribed manner, he ceases to be an Indian citizen of registration of such declaration.
- When a male person ceases to be a citizen of India, every minor child of his also ceases to be a citizen of India. However, such a child may within one year after attaining full age, become Indian citizen by making a declaration of his intention to resume Indian citizenship.

b) **By Termination:**

- Any person who acquired Indian citizenship by naturalisation, registration or otherwise, or he or she voluntarily acquired the citizenship of another country at any time between January 26, 1950, the date of commencement of the Constitution, and December 30, 1955, the date of commencement of this Act, shall have ceased to be a citizen of India from the date of such acquisition.

c) **By Deprivation:**

- The Central Government is empowered to deprive a citizen of his citizenship by issuing an order under the act.
- But, this power of the Government may not be used in case of every citizen; it applies only to those who acquired Indian citizenship by naturalisation or by virtue only of clause (c) of Article 5 of the Constitution or by registration.

The possible **grounds of such deprivation are:**

- Obtaining of a citizenship certificate by means of fraud, false representation, concealment of any material fact;
- Disloyalty of disaffection towards the Constitution shown by act or speech;
- Assisting an enemy with whom India is at war;

- Sentence to imprisonment in any country for a term of not less than two years within the first five years after the acquisition of Indian citizenship and
- Continuous residence outside Indian for a period of seven years without expressing in a prescribed manner his intention to retain his Indian citizenship.
- The Act also provides for reasonable safeguards in order to see that a proper procedure is followed in every case of deprivation of citizenship.

### Single Citizenship

- Indian Constitution provides for only a single citizenship, that is, the Indian citizenship. The citizens in India owe allegiance only to the Union. There is no separate state citizenship.
- The other federal states like USA and Switzerland, on the other hand, adopted the system of double citizenship.
- In USA, each person is not only a citizen of USA but also of the particular state to which he belongs.
- The Constitution of India, like that of Canada, has introduced the system of single citizenship and provided uniform rights (except in few cases) for the people of India to promote the feeling of fraternity and unity among them and to build an integrated Indian nation.

### Overseas Citizen of India (OCI) and Person of Indian Origin (PIO)

- The Indian diaspora will no longer have to get a visa affixed on their passports every time they travel to India as the Union government has decided to do away with the process.
- The government has decided that since the **categories Overseas Citizen of India (OCI) and the Persons of Indian Origin (PIO) were merged few years back**, the OCI card will

suffice to enter the country and hence would require no visa.

- In other words, both OCI and PIO don't need visa to enter the country, only OCI card will suffice.

Carrying a passport will, however, be mandatory (Check and read recent news for more updates on PIO and OCI)

Article	Subject Matter
Article 5	Citizenship at the commencement of the Constitution
Article 6	Rights of citizenship of certain persons who migrated from Pakistan to India
Article 7	Rights of citizenship of certain migrants to Pakistan
Article 8	Rights of citizenship of persons of Indian origin residing outside India
Article 9	Persons voluntarily acquiring citizenship of a foreign state not to be citizens
Article 10	Continuance of rights of citizenship
Article 11	Parliament to regulate the right of citizenship by law

**Exercise for you- Learn about OCI, PIO and NRI?**

### What is Citizenship Act, 1955?

The conferment of a person, as a citizen of India, is governed by Articles 5 to 11 (Part II) of the Constitution of India. The legislation related to this matter is the Citizenship Act 1955, which has been amended by the Citizenship (Amendment) Acts of 1986, 1992, 2003, 2005, 2016 and 2019.

The Act regulates that a person may become an Indian citizen if he is born in India or has Indian parentage or has resided in the country over a period of time. However, illegal migrants are prohibited from acquiring Indian citizenship.

An illegal migrant is a foreigner who:

- enters the country without valid travel documents, like a passport and visa, or
- enters with valid documents, but stays beyond the permitted time period.

Illegal migrants may be imprisoned or deported under the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920. The 1946 and the 1920

Acts empower the central government to regulate the entry, exit and residence of foreigners within India.

The 1955 Act was amended six times — 1986, 1992, 2003, 2005, 2015 and 2019.

**Key Amendments to the Citizenship Act, 1955 (in brief):**

- 1986 Amendment:** Restricted the provision of **citizenship by birth**. A person born in India would be considered a citizen only if **at least one parent** was an Indian citizen at the time of birth.
- 1992 Amendment:** Modified **citizenship by descent** — a person born outside India would be considered a citizen if **either parent** (earlier only the father) was an Indian citizen at the time of birth.
- 2003 Amendment:** Introduced the concept of the **National Register of Citizens (NRC)** and laid the groundwork for the identification of illegal migrants. Also introduced the category of **Overseas Citizens of India (OCI)** for persons of Indian origin living abroad.
- 2005 Amendment:** Expanded the rights and privileges of **OCI cardholders**, such as multiple entry, lifelong visa, and exemption from registration, while still **excluding political rights** and public employment.
- 2015 Amendment:** Merged the **Person of Indian Origin (PIO)** and **OCI** categories to create a **single OCI category**, simplifying the process for overseas Indians.
- 2019 Amendment (CAA):** Allowed **persecuted minorities** — **Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians** — from **Pakistan, Bangladesh, and Afghanistan** to acquire Indian citizenship

even if they had entered India illegally before **31 December 2014**. It also **reduced the residency requirement** for these groups from **11 years to 5 years**. Notably, **Muslims were excluded**, leading to widespread debate and protests.

### Citizenship (Amendment) Act 2019

#### Background:

- CAA 2019 amend the definition of illegal immigrant for Hindu, Sikh, Parsi, Buddhist and Christian immigrants from Pakistan, Afghanistan and Bangladesh, who have lived in India without documentation.
- They will be granted fast-track Indian citizenship in five years.

#### Eligibility:

- Applies to the people who were forced to seek shelter in India due to persecution on the ground of religion.
- The cut-off date was December 31, 2014, which means the applicant should have entered India on or before that date.
- Indian citizenship, under present law, is given either to those born in India or if they have resided in the country for a minimum of 11 years.
- According to the 2019 Act, a foreigner may register as an OCI under the 1955 Act if they are of Indian origin (e.g., a former citizen of India or their descendants) or the spouse of a person of Indian origin.
- The new Act also entitles the OCI cardholders to benefits such as the right to travel to India and to work and study in the country. However, the new law permits the cancellation of OCI registration if the person has violated any law notified by the central government.

#### Govt stand and criticism:

- Centre says these minority groups have come escaping persecution in Muslim-majority nations. However, the logic is not consistent – the act does not protect all religious minorities, nor does it apply to all neighbors.
- The Ahmedia Muslim sect and even Shias face discrimination in Pakistan. Rohingya Muslims and Hindus face persecution in neighbouring Burma, and Hindu and Christian Tamils in neighbouring Sri Lanka.
- The government responds that Muslims can seek refuge in Islamic nations, but has not answered the other questions.

#### Exceptions:

- CAA won't apply to areas under the sixth schedule of the Constitution – which deals with autonomous tribal-dominated regions in Assam, Meghalaya, Tripura and Mizoram.
- The ACT will also not apply to states that have the inner-line permit regime (Arunachal Pradesh, Nagaland, Manipur and Mizoram).

#### How is it different from NRC (National Register for Citizens)?

- The National Register of Citizens or NRC that we saw in Assam targeted illegal immigrants.
- A person had to prove that either they, or their ancestors were in Assam on or before March 24, 1971.
- NRC, which may be extended to the rest of the country, is not based on religion unlike CAA.

#### Why so much opposition? Arguments by opposition:

- The CAA discriminates Muslim identity by declaring India a welcome refuge to all other religious communities.
- It seeks to legally establish Muslims as second-class citizens of India by providing preferential treatment to other groups.
- This violates the Constitution's Article 14, the fundamental right to equality to all persons.
- India was not created on the basis of religion, Pakistan was. Only the Muslim League and the Hindu Right Groups advocated the two-nation theory of Hindu and Muslim nations, which led to Partition.

All the founders of India were committed to a secular state, where all citizens irrespective of religion enjoyed full membership.

Category	NRI (Non-Resident Indian)	PIO (Person of Indian Origin) (now merged with OCI)	OCI (Overseas Citizen of India)
<b>Definition</b>	Indian citizens residing abroad for 182+ days per year	Foreign citizens with Indian ancestry (up to 4 generations)	Foreign citizens of Indian origin (excluding Pakistan & Bangladesh)
<b>Citizenship</b>	Holds <b>Indian citizenship</b>	Holds <b>foreign citizenship</b>	Holds <b>foreign citizenship</b>
<b>Voting Rights</b>	✔ Yes	✘ No	✘ No
<b>Indian Passport</b>	✔ Yes	✘ No	✘ No
<b>Visa Requirement</b>	✘ No (since they are Indian citizens)	✔ Yes (but eligible for long-term visa)	✘ No (lifelong, multiple-entry visa)
<b>Government Jobs</b>	✔ Eligible	✘ Not eligible	✘ Not eligible
<b>Purchase of Property</b>	✔ Allowed (all types)	✔ Allowed (except agricultural land)	✔ Allowed (except agricultural land)
<b>Duration/Validity</b>	N/A (Indian citizens)	Was 15 years (now merged with OCI)	Lifelong (subject to passport renewal)
<b>Parliamentary Representation</b>	✔ Yes	✘ No	✘ No
<b>Current Status</b>	Active	<b>Discontinued</b> (merged with OCI in 2015)	Active

*Difference Between NRI, OCI and PIO*

## Practice Questions

### Conceptual Questions

1. Why does the Indian Constitution provide for single citizenship, and how does it differ from federal systems like the USA?
2. How do Articles 5 to 8 reflect the historical context of Partition and migration?
3. How does the Constitution distinguish between citizenship at the commencement and citizenship acquired post-1950?
4. How do the Citizenship Act, 1955 and its amendments reflect changing notions of national identity and security?
5. Discuss the five methods of acquiring Indian citizenship under the Citizenship Act, 1955, and the logic behind each.
6. What are the grounds for deprivation of Indian citizenship, and why are only certain citizens subject to it?
7. How does Citizenship by naturalization balance openness with national interest?
8. Why is the CAA 2019 controversial, and how does it challenge India's secular democratic principles?
9. Compare the Citizenship Amendment Act (CAA) with the National Register of Citizens (NRC). How are they conceptually and legally different?
10. Discuss the significance of the Fazl Ali Commission's principles (unity, cultural identity, welfare) in today's debates around citizenship and migration.

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### One Liner Revision Questions

1. Which **Articles (5 to 11)** of the Constitution deal with **Citizenship**?
2. Under which **act** is Indian citizenship regulated after 1950?
3. Which **constitutional article** gives Parliament the power to make laws on citizenship?
4. In which **year** was the Citizenship Act passed?
5. What are the **five ways** of acquiring Indian citizenship under the Citizenship Act, 1955?
6. Which amendment introduced the concept of **Overseas Citizen of India (OCI)**?
7. What is the cut-off date for migrants to become eligible for Indian citizenship under the **CAA 2019**?
8. Can OCI cardholders **vote or hold constitutional posts** in India?
9. Under what condition can Indian citizenship be **terminated by deprivation**?
10. What is the key **difference between CAA and NRC**?

## Prelims PYQ

1. With reference to India, consider the following statements: (2021)

1. There is only one citizenship and one domicile.
2. A citizen by birth only can become the Head of State.
3. A foreigner once granted citizenship cannot be deprived of it under any circumstances.

Which of the statements given above is/are correct?

- a) 1 only
- b) 2 only
- c) 1 and 3
- d) 2 and 3

The correct answer is: **(a) 1 only**

## Fundamental Rights

Rights are legal, social, or ethical principles that define what individuals are entitled to or allowed to do. They represent fundamental norms that determine what is just, fair, or owed to people within a legal system, social structure, or moral framework. Rights play a crucial role in disciplines such as law, ethics, and political philosophy, particularly in theories of justice, liberty, and human dignity.

Natural rights are considered "natural" because they are not created by human laws but are believed to arise from human nature or divine will. They are regarded as universal, applying to all people regardless of culture or government, and are often seen as inalienable—meaning they cannot be taken away or surrendered.

**For example**, the right to life is commonly cited as a natural or moral right that every human inherently possesses.

In contrast, legal rights are those that are granted and protected by the laws of a specific society. They are established through customs, statutes, constitutions, or legislative actions. For instance, the right to vote is a legal right available to citizens under the laws of a democratic nation. Legal rights are often referred to as civil rights or statutory

rights, and they can vary across societies and political systems. In this context, citizenship is often described as the "right to have rights", as it forms the basis for claiming legal entitlements within a state.

**Q. Right to vote and to be elected in India is a (2017)**

- a) Fundamental Right
- b) Natural Right
- c) Constitutional Right
- d) Legal Right

**Fundamental Rights** are protected and Guaranteed by the Constitution and they cannot be taken away by an ordinary law enacted by the legislature. If a legal right of a person is violated, he can move to an ordinary court, but if a fundamental right is violated the Constitution provides that the affected person may move to High court or Supreme Court.

## Universal Declaration of Human Rights

The General Assembly, Proclaims the **Universal Declaration of Human Rights** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**The Declaration was adopted by the UN General Assembly in Paris on 10 December 1948.**

**Q. Consider the following:**

1. Right to education
2. Right to equal access to public service
3. Right to food

**Which of the above is/are Human Right/Human Rights under “Universal Declaration of Human Rights”?**

- a) 1 only
- b) 1 and 2 only
- c) 3 only
- d) 1, 2 and 3

In 1925 the Indian National Congress finalized the draft of Commonwealth of India Bill adopting a 'Declaration of Rights.' The **Madras Session** of the Congress held in the year 1927 – demanded incorporation of a 'Declaration of Fundamental Rights' in any future constitutional framework.

The **Karachi Session of the Congress** in 1931 adopted a detailed programme of fundamental rights. The Government of India Act, 1935 was passed without any bill of rights much to the disappointment of the Indian leaders.

It was the 'Sapru Committee' of 1945 that subsequently stressed the need for a written code



of fundamental rights and the Constituent Assembly raised a forceful demand for the inclusion of human rights in the Constitution.

The framers of the Constitution derived inspiration from the Constitution of USA (i.e., Bill of Rights) and adopted Fundamental Rights in Part III of the Constitution from Articles 12 to 35.

Part III of the Constitution (which contains FRs) is rightly described as the 'Magna Carta of India'.

**Fundamental Rights are justiciable** – Thus it allows persons to move the courts for their enforcement, if and when they are violated. The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land.

Fundamental Rights are guaranteed by the Constitution to all persons and legal entities without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation.

### **Establishing ‘A Government of Laws and Not of Men’**

The Constitution listed the rights that would be specially protected and called them ‘fundamental rights.’

These rights are so important that the Constitution has separately listed them and made special provisions for their protection. The Constitution itself ensures that they are not violated by the government.

They promote the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country and protect the liberties and freedoms of the people against the invasion by the State.

They check and balance the tyrannical power of executive and arbitrary law of legislature. In short, they aim at establishing ‘a government of laws and not of men.’

### **Ordinary Rights, Constitutional and Fundamental Rights:**

Rights in a country can broadly be classified into statutory rights, constitutional rights, and fundamental rights. Each category differs in terms of its source, protection, and the process required for alteration or removal.

**Statutory rights** are those that are granted by ordinary laws enacted by the legislature. They are not directly derived from the Constitution but from specific acts passed by the government. These rights are protected and enforced through the regular judicial system. However, because they are based on ordinary legislation, they can be

changed, amended, or repealed by the legislature through a standard law-making process. Their existence and scope depend entirely on the will of the legislature.

**Constitutional rights**, on the other hand, are those that are explicitly provided in the Constitution of a country. These rights enjoy a higher status than statutory rights because they are part of the supreme law of the land. While all fundamental rights are constitutional rights, not all constitutional rights are fundamental rights. Constitutional rights are more stable and secure as they cannot be altered by ordinary legislative procedures. Any change to these rights requires a formal amendment to the Constitution, which usually involves a more complex and rigid process.

**Fundamental rights** are a specific subset of constitutional rights that are considered essential for the development of the individual and the protection of human dignity. These rights are guaranteed by the Constitution and are enforceable by the judiciary. If any law, executive action, or government policy violates or unreasonably restricts a fundamental right, the judiciary has the power to declare it invalid. Thus, the judiciary plays a crucial role in safeguarding fundamental rights from arbitrary actions of the legislature or the executive. These rights form the foundation of democracy and uphold the principles of equality, freedom, and justice.

### **Originally, the Constitution provided for seven Fundamental Rights viz,**

- Right to equality (Articles 14–18)
- Right to freedom (Articles 19–22)
- Right against exploitation (Articles 23–24)
- Right to freedom of religion (Articles 25–28)
- Cultural and educational rights (Articles 29–30)
- Right to property (Article 31)

- Right to constitutional remedies (Article 32)

However, the right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978.

It was made a legal right under Article 300-A in Part XII of the Constitution. So, at present, there are only six Fundamental Rights.

### Fundamental Rights at a Glance

Category	Consists of
1. Right to equality (Articles 14–18)	(a) Equality before law and equal protection of laws (Article 14). (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15). (c) Equality of opportunity in matters of public employment (Article 16). (d) Abolition of untouchability and prohibition of its practice (Article 17). (e) Abolition of titles except military and academic (Article 18).
2. Right to freedom (Articles 19–22)	(a) Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19). (b) Protection in respect of conviction for offences (Article 20). (c) Protection of life and personal liberty (Article 21). (d) Right to elementary education (Article 21A). (e) Protection against arrest and detention in certain cases (Article 22).
3. Right against exploitation (Articles 23–24)	(a) Prohibition of traffic in human beings and forced labour (Article 23). (b) Prohibition of employment of children in factories, etc. (Article 24).
4. Right to freedom of religion (Article 25–28)	(a) Freedom of conscience and free profession, practice and propagation of religion (Article 25). (b) Freedom to manage religious affairs (Article 26). (c) Freedom from payment of taxes for promotion of any religion (Article 27).
5. Cultural and educational rights (Articles 29–30)	(a) Protection of language, script and culture of minorities (Article 29). (b) Right of minorities to establish and administer educational institutions (Article 30).
6. Right to constitutional remedies (Article 32)	Right to move the Supreme Court for the enforcement of fundamental rights including the writs of (i) <i>habeas corpus</i> , (ii) <i>mandamus</i> , (iii) prohibition, (iv) <i>certiorari</i> , and (v) <i>quo war-rento</i> (Article 32).

**Note:** Try to remember according to these divisions. Questions have been asked from here.

Make some story/trick to remember. You can also share a good trick/story to remember this with your friends too.

### FEATURES

1. Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
2. The state can impose restrictions on Fundamental rights. **(They are not absolute but qualified).**
3. Except Fundamental rights guaranteed under **Articles 20 and 21**, remaining Fundamental rights can be suspended during operation of National Emergency.
4. Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression and **not on the grounds of armed rebellion.**

5. Most of the FRs are available **against the arbitrary action of the State.**
6. Some of FRs are **negative in character**, they place limitations on the authority of the State.
7. Some other FRs are **positive in nature**, as they confer certain privileges on the persons.
8. **FRs are defended and guaranteed by the Supreme Court.** Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgment of the high courts.
9. **FRs are not sacrosanct or permanent** --> Meaning, the Parliament can curtail or repeal them. But only by a constitutional amendment act and not by an ordinary act. Moreover, this can be done without affecting the 'basic structure' of the Constitution.
10. Their scope of operation is limited by Article 31A (saving of laws providing for acquisition of estates, etc.), Article 31B (validation of certain acts and regulations included in the 9th Schedule) and Article 31C (saving of laws giving effect to certain directive principles).
11. Article 33 enables the parliament to restrict the application of FR to the members of armed forces, para-military forces, police forces, intelligence agencies and analogous services.
12. Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them. Such a law can be made only by the Parliament and not by state legislatures so that uniformity throughout the country is maintained (Article 35).

### Article 12

Article 12 provides the 'Definition of the State'.

### The "State" includes –

- the Government and Parliament of India
- the government and the state legislature
- all local authorities (municipalities, Panchayati Raj, District boards. etc)
- Other statutory and non-statutory authorities (LIC, ONGC etc.).
- Thus, State has been defined in a wider sense so as to include all its agencies. It is the actions of these agencies that can be challenged in the courts as violating the Fundamental Rights.

According to the Supreme Court, even a private body or an agency working as an instrument of the State falls within the meaning of the 'State' under Article 12.

### Article 12 of the Indian Constitution states that,

- "Definition in this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

### Think

- *Article 12 does not explicitly mention judiciary. However, as judiciary is the guardian of fundamental rights, an obvious question that can arise is 'Can Courts be defined as 'State' under Article 12 of the Indian Constitution?'*

The High Court of Bombay answered this question in the case of *The National Federation of the Blind, Maharashtra & Anr v. The High Court of Judicature of Bombay*, wherein **it held that 'Courts are included within the definition of "State" only on the administrative side while dealing with employees or while taking decisions in**

*administrative capacity and not on the judicial side*’.

#### In the Rupa Ashok Hurra v. Ashok Hurra Case

- SC mentioned that Fundamental Rights cannot be violated by any judicial proceedings and also that Superior Courts of Justice do not fall under the ambit of Article 12.

**Note:** The term ‘other authorities’ in Article 12 has nowhere been defined. Neither in the Constitution nor in the general clauses Act, 1897 nor in any other statute of India.

#### Other Authorities:

- **In Rajasthan Electricity Board v. Mohan Lal**, the **Supreme Court held** that ‘other authorities’ would include all authorities created by the constitution or statute on whom powers are conferred by law. Such statutory authority need not be engaged in performing government or sovereign functions. The court emphasized that it is immaterial that the power conferred on the body is of a commercial nature or not.

#### The court held that if an authority

- Has the power to issue directions and any offense against them is punishable by law
- Has the power to make rules that would have statutory effect
- Is an agency or instrumentality of state for carrying out trade or business which otherwise would have been carried out by the state departments, such authorities would come within the purview of ‘other authorities’ and hence would be considered ‘state’.

**In the case of Sukhdev Singh v. Bhagatram**, the question before the court was ‘whether ONGC (Oil and Natural Gas Corporation), LIC (Life Insurance Corporation of India) and IFC (International Finance Corporation) created by statutes would come under the purview of ‘state’ under Article 12.’

- The court, in this case, followed the test laid down by the court in the case of Rajasthan Electricity Board and held these authorities to be ‘state’ as they came within the meaning of ‘other authorities’ under Article 12.

#### **In Sabhajit Tewary v. Union of India (1975)**

case which was decided by the same Constitution Bench and on the same day as the *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* case. The main issue before the Supreme Court was:

Whether the Council of Scientific and Industrial Research (CSIR), registered under the Societies Registration Act, 1898, falls within the definition of “State” under Article 12 of the Constitution.

- **Court’s Observations:** The Supreme Court laid down two essential conditions for a body to be considered as “State” under Article 12:
  - It must be performing essential state functions, and
  - It must be under the pervasive control of the Government.
- **Decision:** The Court held that CSIR did not satisfy the above criteria and hence, was not a “State” under Article 12.

#### **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (2002)**

- In this landmark case, the Court revisited the decision in Sabhajit Tewary and considered:

- Whether CSIR qualifies as “State” under Article 12, and Whether the earlier decision in Sabhajit Tewary should be overruled.
- **Reevaluation of Precedents:** The Court Analysed the evolution of Article 12 jurisprudence by reviewing:
  - Sukhdev Singh v. Bhagatram (1975)
  - Sabhajit Tewary v. Union of India (1975)
  - Ramana Dayaram Shetty v. International Airport Authority (1979)
  - Ajay Hasia v. Khalid Mujib Sehravardi (1981)

**Test Formulated by the Court:** The Court clarified the test for determining whether a body falls within Article 12:

- “The question in each case would be whether, in light of cumulative facts, the body is financially, functionally and administratively dominated by or under the control of the Government.
- Such control must be specific to the body and must be deep and pervasive. If this is found to be true, the body is a ‘State’ under Article 12.
- However, mere regulatory control—statutory or otherwise—would not suffice.”

The Court also emphasized that the Ajay Hasia test was not a rigid set of principles. Instead, the determination must be based on the facts of each case.

- Importantly, the Court removed ambiguity regarding the statutory origin of a body.
- It held that whether a body is created by statute or otherwise is irrelevant—what matters is the extent of Government control.

**Findings in Respect of CSIR: The Court found that CSIR was:**

- Financially dependent on the Government,
- Functionally guided by the Government, and
- Administratively dominated by Government authorities.
- This deep and pervasive control clearly indicated that CSIR is a State under Article 12.
- As a result, the Court expressly overruled the decision in Sabhajit Tewary and held that a writ petition against CSIR (in this case, the Indian Institute of Chemical Biology, a CSIR unit) was maintainable.

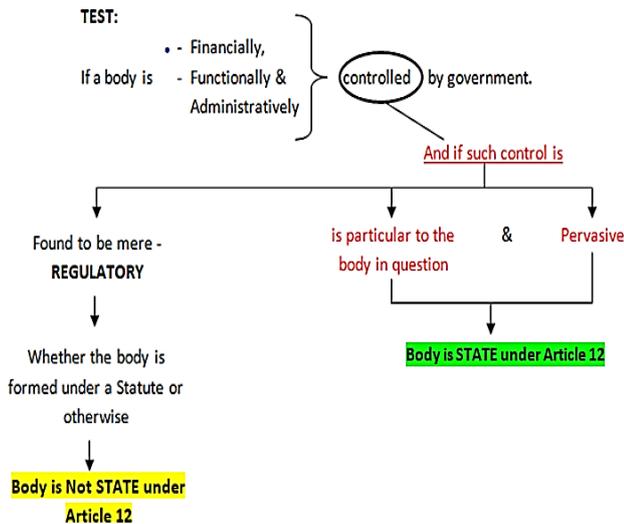
**Zee Telefilms Ltd. v. Union of India (2005)**

- This case brought up the question: Whether the Board of Control for Cricket in India (BCCI) is a “State” under Article 12.
- The Court once again applied the tests laid down in Ajay Hasia and Pradeep Kumar Biswas.

**Upon examining the facts, the Court held that:**

- The control exercised by the Government over BCCI was not deep and pervasive.
- The BCCI, though performing public functions, was an autonomous body and not financially or administratively dominated by the Government.

- Hence, BCCI was not considered a “State” under Article 12.



**Local Authorities:**

**The Supreme Court in the case of Union of India v. R.C. Jain** laid down the test for determining which bodies would be considered as a local authority under the definition of state enshrined under Article 12 of the constitution. The issue in this case broadly was ‘Whether Delhi Development Authority (DDA) is a local authority or not?’ The Court held that if an authority:

- Has a separate legal existence
- Functions in a defined area
- Has the power to raise funds on its own
- Enjoys autonomy i.e., self-rule and
- Is entrusted by statute with functions which are usually entrusted to municipalities, then such authorities would come under ‘local authorities’ and hence would be ‘state’ under Article 12 of the Constitution.

**Article 13**  
**Article 13 -- Laws inconsistent with or in derogation of the fundamental rights.**

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.

It provides for the “**doctrine of judicial review**”.

Supreme Court (according to Article 32) and the high courts (according to Article 226) can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

The term ‘law’ in Article 13 has been given a wide connotation so as to include the following:

- Permanent laws enacted by the Parliament or the state legislatures;
- Temporary laws like ordinances issued by the president or the state governors;
- Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification; and
- Non-legislative sources of law, that is, custom or usage having the force of law

Article 13 declares that a constitutional amendment is not a law and hence cannot be challenged (24<sup>th</sup> amendment act).

However, the Supreme Court held in the Kesavananda Bharati case (1973) that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the ‘**basic structure**’ of the Constitution and hence, can be declared as void.

So according to the constitution a constitutional amendment is not a law. However if a constitutional amendment violates any fundamental right which is part of the basic structure then the SC and HC will have the power to declare such as act as void.

**Please note: The word “Judicial Review” is nowhere mentioned in the Constitution.**

## Do Personal Laws Fall under the Ambit of Article 13?

Yes, personal laws can fall under the ambit of Article 13 of the Indian Constitution, particularly when they are codified or have the force of law in India. Article 13(3)(a) defines "law" to include customs and usages that have the force of law, while Article 13(3)(b) includes laws made by legislatures or other competent authorities. This broad definition opens the door for judicial scrutiny of personal laws, especially when they infringe upon fundamental rights.

Historically, in *State of Bombay v. Narasu Appa Mali* (1951), the Bombay High Court held that personal laws do not fall within the definition of "laws in force" under Article 13. This decision created a long-standing view that personal laws were beyond constitutional challenge unless codified.

However, this view was substantially revisited in *Shayara Bano v. Union of India* (2017), commonly known as the Triple Talaq case. The Supreme Court struck down the practice of instant triple talaq (talaq-e-biddat) among Muslims as unconstitutional. Justice Nariman and Justice U.U. Lalit specifically held that the Muslim Personal Law (Shariat) Application Act, 1937 was a statute and therefore fell under "law in force" under Article 13(3)(b).

Accordingly, they ruled that triple talaq, as sanctioned under this Act, was arbitrary and violated fundamental rights, and hence void under Article 13(1). Justice Nariman also expressly rejected the reasoning in *Narasu Appa Mali*, thereby challenging the earlier exclusion of personal laws from Article 13.

The position was further clarified in *Indian Young Lawyers Association v. State of Kerala* (2018), popularly known as the Sabarimala case. The Supreme Court observed that customs and usages—whether religious or not—that affect

individuals' rights can be tested against fundamental rights.

The Court emphasized that individual dignity and equality are central to the Constitution, and any law, custom, or usage—religious or otherwise—that violates these principles must meet the test of reasonableness, certainty, and continuity.

In this case, the exclusion of women aged 10–50 from entering the Sabarimala temple was held to be discriminatory and violative of constitutional values, thus falling under the purview of Article 13.

In conclusion, while personal laws were initially excluded from judicial review under Article 13, recent Supreme Court judgments have firmly established that **codified personal laws, customs, and usages with legal force are subject to constitutional scrutiny under Article 13.**

**Note**—Personal laws in India are community-specific laws that govern personal matters like marriage, divorce, inheritance, and adoption. These laws are based on religious customs and traditions, with separate codes for Hindus, Muslims, Christians, and other communities, reflecting the country's cultural and religious diversity.

## Article 14-18

### Right to Equality

#### **Article 14: Equality before law and equal protection of laws**

Article 14 says that State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The article 14 aims to establish the "Equality of Status and Opportunity" as embodied in the Preamble of the Constitution.

**Equality before law emphasises that no one is above the law of the land**

**Equality before law:** The absence of any special privileges in favour of any person. This concept ensures the following,

- a) The absence of any special privileges in favour of any person,
- b) The equal subjection of all persons to the ordinary law of the land administered by ordinary law courts, and
- c) No person (whether rich or poor, high, or low, official or non-official) is above the law.

**Note:** Equality before law is taken from the British Constitution.

**Equal Protection of Laws:** The equality of treatment under equal circumstances.

- a) The equality of treatment under equal circumstances, both in the privileges conferred and liabilities imposed by the laws,
- b) The similar application of the same laws to all persons who are similarly situated, and
- c) The like should be treated alike without any discrimination.

**Note:** Equal Protection of Laws is taken from the American Constitution.

The concept of 'equal protection of the laws' requires the State to give special treatment to persons in different situations in order to establish equality amongst all. **It is positive in character.**

For example, providing reservations in education and jobs for socially and educationally disadvantaged groups ensures they have equal opportunities, aligning with the principle of equal protection.

Therefore, the necessary corollary to this would be that equals would be treated equally, whilst unequals would have to be treated unequally.

These provisions confer rights on all persons whether **citizens or foreigners.**

**The word 'person' includes legal persons, viz, statutory corporations, companies, registered societies or any other type of legal person.**

The Supreme Court held that the 'Rule of Law' as embodied in Article 14 is a 'basic feature' of the constitution. Hence, it cannot be destroyed even by an amendment.

### Rule of Law

- The guarantee of equality before the law is an aspect of what A.V Dicey calls the Rule of Law in England. It means that no man is above the law and that every person whatever be his rank or condition is subject to the jurisdiction of ordinary courts. Rule of law require that no person shall be subjected to harsh, uncivilized or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.

### Professor Dicey gave three meanings of the Rule of Law

#### 1. Absence of arbitrary power or supremacy of the law

- This principle means that law is supreme and no one can be punished unless they have breached a specific law. It opposes arbitrary power, stating that government officials must act within the boundaries of the law and cannot punish individuals on their own discretion.

#### 2. Equality before law

- This emphasizes that every individual, regardless of their status or position, is subject to the same laws and jurisdiction of the ordinary courts. It ensures that no one is above the law and that all are treated equally in the eyes of the law.

#### 3. Primacy of Individual Rights

- Dicey believed that individual rights are not granted by a written constitution but are the result of judicial decisions in common law. In the UK, which lacks a codified constitution, personal liberties have evolved through case law rather than being explicitly laid out in a single constitutional document

The first and the second elements are applicable to the Indian System and not the third one. In the Indian System, the constitution is the source of the individual rights.

**Note:** The Supreme Court held that the 'Rule of Law' as embodied in Article 14 is a 'basic feature' of the constitution. Hence, it cannot be destroyed even by an amendment.

### Exceptions to Equality

The rule of equality before law is not absolute and there are constitutional and other exceptions to it. These are mentioned below:

- **President or Governor** of state is not answerable to court of law for exercising their executive powers.
- **No criminal** proceeding against **President or Governor** of state can be instituted or continued during their tenure in office.
- No **civil proceeding** in which there is a claim of compensation can be instituted against President or Governor of state except after the **expiry of 2-month notice** issued against them.
- Under international law, foreign diplomats who are on a visit to India or posted here, and leaders or heads of state on their official visit are not answerable in the local courts.
- No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper

(or by radio or television) of a substantially true report of any proceedings of either House of Parliament or either House of the Legislature of a State (Article 361-A).

- No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof (Article 105).
- No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof (Article 194).
- Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. The Supreme Court held that "where Article 31-C comes in, Article 14 goes out".
- The UNO and its agencies enjoy the diplomatic immunity.

### **Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**

- Article 15 prohibits the state from discriminating any citizen on ground of any religion, race, caste, sex, and place of birth or any of them. It provides that there shall be no restriction on any person on any of the above bases to access and use the public places.

### **Exceptions:**

However, this Article does not prevent the State from making any special provisions for women or children.

- **For example**, reservation of seats for women in local bodies or provision of free education for children.

It also allows the State to extend special provisions for socially and educationally backward classes for their advancement. It applies to the Scheduled Castes (SC) and Scheduled Tribes (ST) as well.

- For example, reservation of seats or fee concessions in public educational institutions.

The state is empowered to make any special provision for the advancement of any **socially and educationally backward classes** of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions

#### **Reservation for OBCs in Educational Institutions**

In order to give effect to this provision, the Centre enacted the Central Educational Institutions (Reservation in Admission) Act, 2006, providing a quota of 27% for candidates belonging to the Other Backward Classes (OBCs) in all central higher educational institutions including the Indian Institutes of Technology (IITs) and the Indian Institutes of Management (IIMs). In April 2008, the Supreme Court upheld the validity of both, the Amendment Act and the OBC Quota Act. But the Court directed the central government to exclude the 'creamy layer' (advanced sections) among the OBCs while implementing the law.

#### **EWS Reservations**

The state is empowered to make any special provision for the advancement of any economically weaker sections of citizens. Further, the state is allowed to make a provision for the reservation of upto 10% of seats for such sections in admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority

educational institutions. This reservation of upto 10% would be in addition to the existing reservations. For this purpose, the economically weaker sections would be notified by the state from time to time on the basis of family income and other indicators of economic disadvantage. (103<sup>rd</sup> Constitutional Amendment)

The above exception was added by the 103<sup>rd</sup> Amendment Act of 2019. In order to give effect to this provision, the central government issued an order (in 2019) providing 10% reservation to the Economically Weaker Sections (EWSs) in admission to educational institutions.

The benefit of this reservation can be availed by the persons belonging to EWSs who are not covered under any of the existing schemes of reservations for SCs, STs and OBCs. The eligibility criteria laid down in this regard is as follows:

- Persons whose family has gross annual income below ₹8 lakh are to be identified as EWSs for the benefit of reservation. The income would include income from all sources i.e., salary, agriculture, business, profession etc. and it would be income for the financial year prior to the year of application.
- Persons whose family owns or possesses any one of the following assets are to be excluded from being identified as EWSs, irrespective of the family income:
  - 5 acres of Agricultural land and above.
  - Residential flat of 1000 sq.ft. and above.
  - Residential plot of 100 sq.yards and above in notified municipalities.
  - Residential plot of 200 sq.yards and above in areas other than the notified municipalities.
- The property held by a family in different locations or different places / cities would be clubbed while applying the land or

property holding test to determine EWS status.

- Family for this purpose would include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/ her spouse and children below the age of 18 years.

### Equality of opportunity in matter of Public Employment

**Article 16 provides the guarantee of equality of opportunity in matters of public employment.**

Article 16(1) and 16(2) have laid down a general rule that there shall be equal opportunity for all citizens and thus emphasizes on universality of Indian Citizenship.

No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

#### Exceptions:

- As per Article 16(3) residence qualifications may be made necessary in the case of appointments under the state for particular positions, thus making the domicile provisions stronger, however, the **power is not vested in the states but in Parliament to prescribe the requirement as to residence in the state.**
- Article 16(4) empowers the state to make special provisions for the reservation of appointments or posts in favour of any “backward class of citizens” which in the opinion of state are not adequately represented in the services of the state.
- A law can provide that the incumbent of an office related to religious or denominational institution or a member of

its governing body should belong to the particular religion or denomination.

- The state is permitted to make a provision for the reservation of upto 10% of appointments or posts in favour of any economically weaker sections of citizens. This reservation of upto 10% would be in addition to the existing reservation. For this purpose, the economically weaker sections would be notified by the state from time to time on the basis of family income and other indicators of economic disadvantage.

Equality, as guaranteed by the Constitution of India, encompasses not just **formal equality** but also aims to ensure **substantive equality**. Articles 14 and 15(1) permit reasonable classification as a means to achieve this constitutional goal of real and meaningful equality. Articles 15(4) and 16(4) are not exceptions to Articles 15(1) and 16(1), but rather derive from them. They serve as enabling provisions, allowing the State to take affirmative measures to promote substantive equality for disadvantaged and underrepresented groups.

#### Reservation for Disabled

Supreme Court confirmed that persons suffering from disabilities are also socially backward and entitled to the same benefits of relaxation as Scheduled Caste/Scheduled Tribe candidates in public employment and education.

The Bench led by Justice Rohinton F. Nariman confirmed that **3% reservation** should be given to disabled persons both in direct recruitment and in promotions.

A careful reading of the *Indra Sawhney* judgment shows that the **50% ceiling on reservations** applies specifically to **vertical reservations**, such as those provided for **Other Backward Classes (OBCs)**,

**Scheduled Castes (SCs), and Scheduled Tribes (STs)** under **Article 16(4)** of the Constitution.

In contrast, **reservation for persons with disabilities** is a form of **horizontal reservation**, which operates under **Article 16(1)**.

**Vertical reservations** refer to reservations for distinct categories based on social and educational backwardness, like SCs, STs, and OBCs. **Horizontal reservations**, on the other hand, cut across these vertical categories and apply within them. For example, a person with a disability who also belongs to an OBC category would be considered under both the OBC quota (vertical) and the disability quota (horizontal).

Since horizontal reservations are not standalone categories but are distributed across vertical categories, the **50% ceiling rule laid down in Indra Sawhney does not apply to them**.

### Think!

- What is the Mandal Commission and how is it related to social justice?

### Right to reservation is not a Fundamental Right

- All political parties from Tamil Nadu had filed a writ petition in the Supreme Court seeking direction to the Centre to implement 50% OBC reservation in the all-India NEET seats surrendered by the state.
- They have accused the Centre of “violating the right of the people to have a fair education” by neither implementing the 50% quota for OBC in Tamil Nadu nor providing 27% reservation for OBC candidates in other states for the All-India Quota seats.
- **The Court observed that the Right to Reservation is not a fundamental right.**
- In February 2020, the Supreme Court ruled that there is no fundamental right to claim reservation in public jobs and no court can

order a state government to provide for reservation to SC/STs.

- Article 32 is available only for violation of fundamental rights, but right to reservation is not a fundamental right.

### Article 17 - Abolition of Untouchability

**Article 17 abolishes the untouchability and its practice in any form is made punishable under the law.**

This was the article which was adopted with the cries of "Mahatma Gandhi ki Jai" in the constituent assembly, honouring Gandhi's lifelong struggle against untouchability and caste-based discrimination.

**Note:** The term ‘untouchability’ has not been defined either in the Constitution or in any Act.

Accordingly, to give effect to Article 17 of the Constitution, the Parliament enacted the **Untouchability (Offences) Act, 1955**. Later, in **1976**, this law was renamed as the **Protection of Civil Rights Act, 1955** to better reflect its purpose.

Under this Act, **any offence committed on the grounds of untouchability** is considered a punishable offence, with penalties including **imprisonment of up to six months, a fine up to ₹500, or both**.

**The act defines civil right** as any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution.

A person convicted of the offence of ‘untouchability’ is **disqualified for election** to the Parliament or state legislature.

The Supreme Court held that the right under Article 17 is **available against private individuals**, and it is the constitutional obligation of the State to take necessary action to ensure that this right is not violated

**Think!**

- How is Article 17 related to the Sabarimala Temple entry case with respect to women?

**Article 18 -- Abolition of titles except military and academic distinction**

**Article 18 prevents the state from confirming any title except military and academic distinction.**

Article 18 prohibits the Indian citizens from receiving titles from any foreign state.

**Article 18 abolishes titles and makes four provisions in that regard:**

- It prohibits the state from conferring any title (except a military or academic distinction) on anybody, whether a citizen or a foreigner.
- 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.
- No citizen or foreigner holding any office of profit or trust under the State is to accept any present, emolument, or office from or under any foreign State without the consent of the president.

**Note:** The Supreme Court upheld the constitutional validity of the National Awards—Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri. It ruled that these awards do not amount to ‘titles’. It also ruled that they should not be used as suffixes or prefixes to the names of awardees. Otherwise, they should forfeit the awards. (The National Awards, instituted in 1954, were discontinued in 1977 by the Morarji Desai-led Janata Party government but were revived in 1980 by Indira Gandhi's government.)

**Article 19-22****Right to Freedom****Article 19 -- Protection of certain rights regarding freedom of speech, etc.**

Article 19 guarantees to all citizens the six rights. These are:

- Right to freedom of speech and expression.
- (Right to assemble peaceably and without arms.
- Right to form associations or unions or co-operative societies.
- Right to move freely throughout the territory of India.
- Right to reside and settle in any part of the territory of India.
- Right to practice any profession or to carry on any occupation, trade or business.

**1. Right to freedom of speech and expression.****Why to protect freedom of speech?**

Freedom of speech offers human being to express his feelings to other, but this is not the only reason; purpose to protect the freedom of speech. There could be more reasons to protect these essential liberties. There are four important justifications for freedom of speech –

- For the discovery of truth by open discussion** - According to it, if restrictions on speech are tolerated, society prevents the ascertainment and publication of accurate facts and valuable opinion. That is to say, it assists in the discovery of truth.
- Free speech as an aspect of self-fulfillment and development** – freedom of speech is an integral aspect of each individual's right to self-development and self-fulfillment. Restriction on what we are allowed to say and write or to hear and read will hamper our personality and its

growth. It helps an individual to attain self-fulfillment.

- c. **For expressing belief and political attitudes** - freedom of speech provides an opportunity to express one's belief and show political attitudes. It ultimately results in the welfare of society and state. Thus, freedom of speech provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.
- d. **For active participation in democracy** – democracy is most important feature of today's world. Freedom of speech is there to protect the right of all citizens to understand political issues so that they can participate in smooth working of democracy. That is to say, freedom of speech strengthens the capacity of an individual in participating in decision-making.

Although the Right to Information is not explicitly mentioned in Article 19, it is now well-established through numerous judicial decisions that **Article 19(1)(a)**—which guarantees the **right to freedom of speech and expression**—implicitly includes the **right to information**.

In *State of U.P. v. Raj Narain* (1975), the Supreme Court recognized that the **right to know** is a part of the **freedom of speech and expression** under Article 19(1)(a). This principle was further affirmed in *S.P. Gupta v. Union of India* (1981), where the Court held that:

“The concept of an open government is the direct emanation from the right to know, which is implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information regarding government functioning must be the rule, and secrecy the exception—justified only by compelling public interest.”

The jurisprudence on the right to information continued to evolve in cases like *Union of India v. Association for Democratic Reforms* (2002) and *PUCI v. Union of India* (2003), where the Court emphasized transparency and citizens' right to access information about public functionaries.

In line with this evolving constitutional mandate, the **Right to Information Act, 2005** was enacted by Parliament to give statutory recognition to the **citizens' right to access information** and promote transparency and accountability in governance.

### RIGHT TO SPEECH UNDER INFORMATION TECHNOLOGY ACT 2000

The **right to freedom of speech and expression**, guaranteed under **Article 19(1)(a)** of the Indian Constitution, has been significantly impacted by certain provisions of the **Information Technology Act, 2000**. The judiciary has played a crucial role in ensuring that digital spaces remain protected under constitutional freedoms.

#### Section 66A Struck Down in *Shreya Singhal v. Union of India* (2015)

In a landmark judgment, the **Supreme Court** in *Shreya Singhal v. Union of India* (2015), struck down **Section 66A** of the IT Act for being **unconstitutional**. The provision criminalized sending any information online that was "grossly offensive" or caused "annoyance or inconvenience." The Court held that the section was **vague, overbroad**, and violated the **freedom of speech and expression** under Article 19(1)(a). A bench comprising **Justices J. Chelameswar and R.F. Nariman** ruled that open criticism and expression—even if harsh—cannot be criminalized unless it amounts to a reasonable restriction under Article 19(2).

#### Section 69 and Mandatory Decryption

While Section 66A was struck down, **Section 69** of the IT Act remains in force and continues to raise concerns about the **right to privacy and free**

**speech.** This section empowers the **central and state governments** to **intercept, monitor, or decrypt** any information through any computer resource, in the interest of:

- Sovereignty or integrity of India
- Security of the State
- Friendly relations with foreign states
- Public order
- Prevention of incitement to a cognizable offence

Moreover, any **subscriber or person in control of a computer resource** is **legally bound to assist** with decryption when directed. Failure to comply is a criminal offence, punishable by **up to seven years' imprisonment and a fine.**

#### **Twitter v. Union of India (2022)**

In **June 2022**, **Twitter** filed a lawsuit in the **Karnataka High Court**, challenging several content takedown orders issued under **Section 69A** of the IT Act. Twitter argued that the government had abused its power by issuing **arbitrary and disproportionate block orders** without adequate justification. The platform claimed these directives **violated users' right to freedom of speech** and **lacked a proximate connection** to the grounds listed under Section 69A.

Twitter further alleged that the government had **threatened criminal action** against its Chief Compliance Officer if the company failed to comply, raising concerns over **executive overreach and misuse of censorship powers.**

*Q. What do you understand by the concept "freedom of speech and expression"? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss. (2014)*

#### **2. Right to assemble peaceably and without arms.**

This right is however subject to the following restrictions. :-

- The assembly must be peaceful and harmonious.
- It must be unarmed and not threatening the safety of the people.
- Reasonable restrictions can be imposed under clause 3 of article 19.

The right to assembly embodies the very idea of a democratic government. Article 19(1)(b) thus includes the right to hold meetings and to take out processions. However, this right is not absolute but restrictive in nature. The assembly must be non-violent and must not breach public peace.

#### **Right to Protest and Public Space:**

In 2021, the Supreme Court ruled that people have right to protest but can't block roads indefinitely. The bench of the SC headed by Justice Sanjay Kaul barred protesters from blocking public roads and cause harassment to commuters through sit-in dharnas on highways hindering traffic.

In 2022, Karnataka High Court directed the state government to ensure that no protests, processions or demonstrations are held in Bengaluru by any group or organization, except at a designated place. The court observed that protests and demonstrations should be held in an organized manner without disrupting the movement of traffic, especially during peak hours.

#### **Think!**

- **Can the state restrict a citizen's right to protest?**

#### **3. Right to form associations or unions or co-operative societies.**

The right to form associations or unions has a very wide and varied scope including all sorts of associations viz., political parties, clubs, societies, companies, organizations, entrepreneurships, trade unions etc.

It was held in **Kulkarni's case** that the right of association pre-supposes organization. It is an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, and trade union.

The right to form trade unions should not lead to the conclusion that trade unions have a **guaranteed right to an effective collective bargaining or to strike** as a part of collective bargaining or otherwise. The right to strike or to declare a lock-out may be controlled or restricted by various industrial legislations such as Industrial Dispute Act or Trade Unions Act.

- Right to form association does not carry the right to recognition
- Right to form association does not carry the right to strike
- Right to form association does not carry the right to inform rival union

#### **4. Right to move freely throughout the territory of India.**

Article 19(1)(d) of The Indian Constitution guarantees to all Citizens of India the Right "to move freely throughout the territory of India." This Right is, however, subject to reasonable restrictions mentioned under Article 19(5).

Clause (5) of Article 19 empowers the State to impose reasonable restrictions in the interest of general public or for the protection of the interest of any Scheduled Tribe.

According to clause (5) of Article 19 of Indian Constitution State may impose reasonable restrictions on the Freedom of movement on two grounds:

- In the Interest of the General Public
- For the Protection of Scheduled Tribes

Entry of outsiders into tribal areas is restricted to preserve their unique culture, customs, and prevent exploitation.

Further the **Supreme Court** upheld restrictions on the movement of **prostitutes** for reasons of **public health and morality**, and the **Bombay High Court** upheld similar restrictions for individuals affected by **AIDS**.

The freedom of movement has two dimensions, viz, internal (right to move inside the country) and external (right to move out of the country and right to come back to the country). Article 19 protects only the first dimension. The second dimension is dealt by Article 21 (right to life and personal liberty).

#### **5. Right to reside and settle in any part of the territory of India.**

Article 19(1)(e) of the Indian Constitution guarantees to every citizen of India, the right "to reside and settle in any part of the territory of India".

This right is subjected reasonable restrictions which may be imposed by the State, by law under clause (5) of Article 19, in the interest of the general public or for the protection of the interest of any Scheduled Tribe.

#### **Article 19(1)(d) and Article 19(1)(e) are Complementary**

It is to be noted that the right to reside [under Article 19(1)(e)] and right to move [under Article 19(1)(d)] freely throughout the Country are complementary and often go together. Most of the Cases considered under Article 19(1)(d) are relevant to Article 19(1)(e) also. The two rights, therefore, discussed together.

**The Freedom of Movement and Residence apply only to citizens of India and not the Foreigners. A**

foreigner cannot claim the right to reside and settle in the country as guaranteed by Article 19(1)(e). The Government of India has the Power to expel foreigners from India.

### 6. Right to practice any profession or to carry on any occupation, trade or business.

All citizens are given the right to practice any profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood.

The State may impose **reasonable restrictions** on the right to practice any profession or carry on any occupation, trade, or business in the **interest of the general public**.

Additionally, the Constitution empowers the State to:

- **Prescribe professional or technical qualifications** required for practicing any profession or carrying on any occupation, trade, or business; and
- **Engage in any trade, business, industry, or service**, either exclusively or alongside citizens.

Therefore, the State can establish **monopolies**, whether complete or partial, to the **exclusion of all or some citizens**, or operate in **competition with private individuals**, without needing to justify such actions.

This right does not include the right to carry on a profession or business or trade or occupation that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc.,). The State can absolutely prohibit these or regulate them through licensing.

**Reasonable Restrictions under Article 19:** The State can impose restrictions on the freedom of speech and expression in the interests of

- Sovereignty And Integrity Of India,
- The Security Of The State,

- Friendly Relations With Foreign States,
- Public Order, Decency Or Morality, Or
- In Relation To Contempt Of Court,
- Defamation, Or
- Incitement To An Offence.

### Current Update: Fundamental Rights Under Article 19, 21 are Enforceable Against Private Persons: SC

**By ruling that a citizen can seek enforcement of the fundamental rights to freedom of speech not just against the state, the Supreme Court has, effectively, extended the ground for seeking these rights against other citizens.**

#### Key details of the Supreme Court ruling:

- The court took this view while ruling that the **right of free speech and expression guaranteed under the Article 19(1)(a)** cannot be curbed by any additional grounds other than those already laid down in Article 19(2).
- Article 19 which guarantees **freedom of speech and expression is a right invoked against the state**.
- The court, **extending free speech against private citizens**, opens up a range of possibilities in Constitutional law.
- This interpretation could also bring an obligation on the state to ensure private entities also abide by Constitutional norms.
- **K S Puttaswamy case:** The Court relied on the 2017 verdict in Puttaswamy where a nine-judge bench unanimously upheld **privacy as a fundamental right**.
  - One of the key arguments by the government was that **privacy is a right enforceable against other citizens** and, therefore, cannot be elevated to the status of a fundamental right against the state.

- Under Indian Constitution, all the Fundamental Rights are available against the State but **only 4 fundamental Rights are available against both State and individuals**.
  - **Article 15(2)** – no citizen shall be subjected to any form of discrimination based on caste, religion, place of birth, or caste.
  - **Article 17** – abolition of Untouchability.
  - **Article 23** – Prohibits trafficking of humans and forced labour.
  - **Article 24** – Prohibits employment of children in factories and hazardous place.

#### Implications:

- The extension of **Articles 19 and 21 to private spheres** significantly broadens the **protective umbrella of fundamental rights**.
- It could reshape how **private companies**, particularly those in **technology, media, and employment sectors**, interact with individual rights.
- It may also lead to the creation of **positive obligations on the State** to regulate private entities in a manner that aligns with constitutional principles.

This decision opens a new chapter in Indian constitutional law, affirming that **fundamental rights are not confined to the public domain alone**, but must also be safeguarded in the **private sphere**, wherever individual dignity, autonomy, and freedom are at stake.

**Article 20: Protection in respect of conviction for offences.**

Article 20 of the Indian Constitution provides protection to individuals in respect of conviction for offences and lays down three fundamental safeguards for persons accused of crimes:

1. Ex post facto laws – No person shall be convicted of any offence except for the violation of a law in force at the time of the commission of the act (*Article 20(1)*).
2. Double jeopardy – No person shall be prosecuted and punished for the same offence more than once (*Article 20(2)*).
3. Self-incrimination – No person accused of an offence shall be compelled to be a witness against himself (*Article 20(3)*).

These provisions limit the State's power in criminal law enforcement, and act as specific protections within the broader guarantee of life and personal liberty under Article 21. So while Article 21 provides general protection, Article 20 imposes stricter safeguards specifically in the context of criminal proceedings.

**1. No ex-post-facto law:** Article 20(1) prohibits the enactment of ex-post-facto criminal laws. This means a person cannot be convicted for an act that was not an offence under the law at the time it was committed. Additionally, no one can be subjected to a penalty greater than what was prescribed under the law when the offence was committed. This safeguard applies strictly to **criminal laws** and **not to civil or tax laws**.

**2. No double jeopardy:** Article 20(2) provides protection against double jeopardy, ensuring that no person is prosecuted and punished for the **same offence more than once**. However, this protection is applicable only in the context of **judicial proceedings** before a **court or judicial tribunal**. It does not extend to **departmental or administrative proceedings**, as these are not considered judicial in nature.

**3. No self-incrimination:** Under Article 20(3), no person accused of an offence can be **compelled to be a witness against themselves**. This right protects the accused from being forced to provide **oral or documentary evidence** that may incriminate them. It is limited to **criminal proceedings** and does not apply to **civil cases** or other non-criminal inquiries.

#### Provisions for self-incrimination in the Indian Constitution:

- The protection against self-incrimination **extends to both oral evidence and documentary evidence**.
- **Exceptions: It does not extend to** the compulsory production of material objects, the compulsion to give a thumb impression, specimen signature, blood specimens, and compulsory exhibition of the body.
- It extends **only to criminal proceedings and not to civil proceedings** or proceedings which are not of criminal nature.

#### Judicial Rulings on Self-incrimination:

##### The State of Bombay versus Kathi Kalu Oghad 1961:

- The Supreme Court ruled that obtaining **photographs, fingerprints, signatures, and thumb impressions** would not violate the right against self-incrimination of an accused.

##### Selvi v State of Karnataka case, 2010

- In this case the Supreme Court held that a **narcoanalysis test without the consent of the accused would amount to a violation of the right against self-incrimination**.

##### Ritesh Sinha versus State of Uttar Pradesh 2019:

- In this case, the Supreme Court broadened the parameters of **handwriting samples** to include voice samples, adding that this would not violate the right against self-incrimination.

#### Article 21: Protection of Life and Personal Liberty.

Article 21 declares that no person shall be deprived of his life or personal liberty except according to **procedure established by law**. This right is available to both citizens and non-citizens.

#### Article 21 secures two rights:

- Right to life
- Right to personal liberty

The **expression "Procedure established by law"** is more definite phrase and this phrase finds the place in the Japanese Constitution of 1946. It implies that life and personal liberty of a person cannot be encroached upon arbitrarily without the proper sanction and provision of law.

Although Article 21 begins with a negative expression, the word "No" is specifically used in relation to the term "deprived." The fundamental aim of Article 21 is to **protect individuals from arbitrary encroachment on their life and personal liberty**. It ensures that no person can be deprived of these rights **except through a procedure established by law**, thereby providing a safeguard against unlawful actions by the State.

It clearly means that this fundamental right has been provided against state only. If, an act of private individual amounts to encroachment upon the personal liberty or deprivation of life of other person, such violation would not fall under the parameters set for the Article 21.

In such a case the remedy for aggrieved person would be either under Article 226 of the constitution or under general law. But, where an

act of private individual supported by the state infringes the personal liberty or life of another person, the act will certainly come under the ambit of Article 21. Article 21 of the Constitution deals with prevention of encroachment upon personal liberty or deprivation of life of a person.

### **Maneka Gandhi v. Union of India (1978): A Turning Point for Article 21**

The *Maneka Gandhi* case was a landmark judgment that **redefined the scope of Article 21** of the Indian Constitution. In this case, **Maneka Gandhi's passport was impounded** by the government "in the public interest" without giving her any prior notice or an opportunity to be heard. She challenged the action, arguing that it violated her **right to personal liberty** and **freedom of movement** under Articles 21 and 19.

The **Supreme Court**, in a 7-judge bench, ruled in her Favour and held that **"procedure established by law" under Article 21 must be fair, just, and reasonable**, and not arbitrary or oppressive. This marked a significant departure from the earlier interpretation in *A.K. Gopalan v. State of Madras* (1950), where the Court had taken a more restrictive view of Article 21.

The Court also established that **fundamental rights are interrelated and not watertight compartments**, meaning that a law depriving a person of personal liberty must not only conform to **Article 21**, but also **Articles 14 and 19**.

### **Rights Recognized Under Article 21 (Post-Maneka Gandhi)**

Following the *Maneka Gandhi* judgment, the Supreme Court, in various subsequent cases, has interpreted **Article 21** expansively to include a wide range of rights essential to a dignified life, such as:

1. Right to live with human dignity.

2. Right to decent environment including pollution free water and air and protection against hazardous industries.
3. Right to livelihood.
4. Right to privacy.
5. Right to shelter.
6. Right to health.
7. Right to free education up to 14 years of age.
8. Right to free legal aid.
9. Right against solitary confinement.
10. Right to speedy trial.
11. Right against handcuffing.
12. Right against inhuman treatment.
13. Right against delayed execution.
14. Right to travel abroad.
15. Right against bonded labour.
16. Right against custodial harassment.
17. Right to emergency medical aid.
18. Right to timely medical treatment in government hospital.
19. Right not to be driven out of a state.
20. Right to fair trial.
21. Right of prisoner to have necessities of life.
22. Right of women to be treated with decency and dignity.
23. Right against public hanging.
24. Right to hearing.
25. Right to information.
26. Right to reputation.
27. Right of appeal from a judgement of conviction
28. Right to family pension
29. Right to social and economic justice and empowerment
30. Right against bar fetters
31. Right to appropriate life insurance policy
32. Right to sleep
33. Right to freedom from noise pollution
34. Right to sustainable development
35. Right to Opportunity

### **Right to Privacy:**

In August 2017, a nine-judge bench of the Supreme Court in Justice K. S. Puttaswamy (Retd) Vs Union of India unanimously held that Indians have a **constitutionally protected fundamental right to privacy** that is an **intrinsic part of life and liberty under Article 21**.

It held that privacy is a natural right, and that the right may be restricted only by state action that passes each of the three tests:

- i. **First**, such state action must have a legislative mandate;
- ii. **Second**, it must be pursuing a legitimate state purpose; and
- iii. **Third**, it must be proportionate i.e., such state action — both in its nature and extent, must be necessary in a democratic society and the action ought to be the least intrusive of the available alternatives to accomplish the ends.

This landmark judgement fundamentally changed the way in which the government viewed citizens' privacy, both in practice and prescription.

It requires governments to undertake structural reforms and bring transparency and openness in the process of commissioning and executing its surveillance projects, and build a mechanism of judicial oversight over surveillance requests.

It demands from the authorities to demonstrate great care and sensitivity in dealing with personal information of its citizens. It requires to legislate a transformative, rights-oriented data protection law that holds all powerful entities that deal with citizens' personal data (data controllers), including the state, accountable.

#### THINK:

- National security vs Privacy
- Data Protection vs Privacy

#### The Right to Be Forgotten (RTBF)

- The Union Government recently notified the Delhi High Court that the Right to Privacy encompasses the Right to Be Forgotten (RTBF), a legal doctrine with roots in international law. According to a Supreme Court decision, the Right to Privacy comprises RTBF and the Right to Be Left Alone (RLTA).
- The right to be forgotten is the ability to request that personally identifiable information that is publicly accessible be deleted from databases, websites, search engines, and other public platforms once it is no longer required or relevant.

*Q. Does the right to clean environment entail legal regulations on burning crackers during Diwali? Discuss in the light of Article 21 of the Indian Constitution and Judgment(s) of the Apex Court in this regard. (2013)*

*Q. Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. (2017)*

#### Right to Reputation

A petition was filed in the **Supreme Court** challenging the constitutional validity of certain **amendments to the Unlawful Activities (Prevention) Act (UAPA)**, arguing that they **infringe upon the fundamental right to reputation and dignity**, which is recognized as an essential part of the **right to life and personal liberty under Article 21** of the Constitution.

**Key Concerns Raised:** The petition asserted that branding an individual as a **“terrorist” without trial or judicial oversight** could cause **irreparable damage to a person's reputation**, amounting to a **violation of substantive and procedural due process** guaranteed under Article 21.

**Key Provisions of amended UAPA Act are:**

- It empowers the government to designate individuals as terrorists. Previously, only an organization could be designated.
- It empowers the National Investigation Agency (NIA) to seize properties, which previously required permission from the State's Director General of Police.
- It allows NIA officers, of the rank of Inspector or above, to investigate cases. Before only DySP or ACP or above could do so.

The petition contended that the UAPA amendments lack safeguards like prior judicial review, enabling executive overreach. Designating individuals as terrorists without due process can unjustly harm their dignity and reputation, violating the fundamental right to life under Article 21..

#### Article 21 A -- 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 in such a manner as the State may determine.

Thus, 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**. This amendment is a major milestone in the country's aim to achieve "Education for All".

Even before this amendment, the Constitution contained a provision for free and compulsory education for children **under Article 45 in Part IV**. However, being a directive principle, it was not enforceable by the courts. Now, there is scope for judicial intervention in this regard.

The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and

equitable quality in a formal school which satisfies certain essential norms and standards.

#### The RTE Act provides for the:

The Right of Children to Free and Compulsory Education ensures that every child aged **6 to 14 years** has access to **free elementary education** in a **neighborhood school**. The term "**compulsory education**" refers to the **obligation of the government** to provide education and ensure **admission, attendance, and completion** of elementary education for all children in this age group. "**Free**" means that no child shall be required to pay any fee or charges that may hinder their access to schooling.

The Act provides for the **admission of out-of-school children** to age-appropriate classes and outlines the **roles and responsibilities** of the Central and State Governments, local authorities, and parents in implementing the right to education. It also defines **norms and standards** for schools, including **Pupil Teacher Ratios (PTRs)**, infrastructure, working days, and teacher hours.

To ensure **equity**, it mandates that PTRs must be maintained **at the school level**, avoiding urban-rural disparities in teacher deployment. Teachers are also protected from being assigned non-educational duties, except for **election duties, census, and disaster relief**.

The Act requires the **appointment of qualified teachers** and strictly prohibits practices such as **physical punishment, mental harassment, screening for admission, capitation fees, private tuition by teachers, and running unrecognized schools**.

Finally, the curriculum must align with **constitutional values**, promote the **holistic development** of children, and foster a learning environment that is **child-friendly, stress-free, and inclusive**, helping children realize their full potential without fear or anxiety.

**In Poulami Basu vs The Government of India:**

A Single Bench of Karnataka HC has held that, *right to travel abroad is a fundamental right guaranteed under Article 21 of the Constitution of India.*

**Article 22: Preventive Detention**

**Article 22** is also a very important Article which has given rise to so many controversial legislations.

The issue related to **Article 22** of the Indian Constitution is the **concept of preventive detention**. The purpose here is to understand the **basic idea of preventive detention** and examine the **contemporary issues surrounding it**.

Article 22 of the constitution of India provides that:

- a) A person cannot be arrested and detained without being informed about the grounds of such arrest.
- b) This means that before a person is arrested, he/ she must be informed that he is being arrested and reason why he / she is being arrested.
- c) A person who is arrested cannot be denied to be defended by a legal practitioner of his choice.
- d) This means that the arrested person has right to hire a legal practitioner to defend himself/ herself.
- e) Every person who has been arrested would be produced before the nearest magistrate within 24 hours.
- f) The custody of the detained person cannot be beyond the said period by the authority of magistrate.
- g) The Article 22(1) and 22(2) make the above provisions. However, Article 22(3) says that the above safeguards are not available to the following:

- If the person is at the time being an enemy alien.
- If the person is arrested under certain law made for the purpose of "Preventive Detention"

The first condition above is justified, because when India is in war, the citizen of the enemy country may be arrested.

**The reasons for the introduction of such a clause were explained by Dr. B.R Ambedkar as:**

"It has to be recognized that in the present circumstances of the country, it may be necessary for the executive to detain a person who is tampering either with public order or with the Defence Services of the country. In such case, I do not think that the exigency of the liberty of the individual shall be placed above the interests of the State."

Ambedkar, however, pointed out the safeguards provided in the Constitution to mitigate the rigours of an apparently absolute power of preventive detention permitted under Article 22 (3).

**First**, every case of preventive detention must be authorized by law. It cannot be at the will of the executive.

**Secondly**, no law of preventive detention shall normally authorize the detention of a person **for a longer period than three months**.

**Thirdly**, every case of preventive detention for a period longer than three months must be placed before an Advisory Board composed of persons qualified for appointment as Judges of a High Court. Such cases must be placed before the Board within the three months period.

**Fourthly**, no person who is detained under any preventive detention law can be detained indefinitely. There shall always be a maximum

period of detention which Parliament is required to prescribe by law.

**Fifthly**, in cases which are required to be placed before the Advisory Board, the procedure to be followed by the Board shall be laid down by Parliament.

**Sixthly**, when a person is detained under a law of preventive detention, the detaining authority shall communicate to him the grounds on which the order has been made. It should also afford him the earliest opportunity of making a representation against the order.

Article 22 also authorises the Parliament to prescribe (a) the circumstances and the classes of cases in which a person can be detained for more than three months under a preventive detention law without obtaining the opinion of an advisory board; (b) the maximum period for which a person can be detained in any classes of cases under a preventive detention law; and (c) the procedure to be followed by an advisory board in an inquiry.

The Constitution has divided the legislative power with regard to preventive detention between the Parliament and the state legislatures. The Parliament has exclusive authority to make a law of preventive detention for reasons connected with defence, foreign affairs and the security of India. Both the Parliament as well as the state legislatures can concurrently make a law of preventive detention for reasons connected with the security of a state, the maintenance of public order and the maintenance of supplies and services essential to the community.

#### Note-

- The Article 22 provides that **the detenu should be afforded an opportunity to make a representation against the detention order at the earliest opportunity.**

***The Supreme Court of India has stated that the country's preventive detention laws, inherited from colonial times, give excessive arbitrary power to the state. These laws are powerful and could potentially allow the state to exercise unrestricted authority.***

- The recent Supreme Court judgment on preventive detention laws in India has significant implications for civil liberties and the protection of fundamental rights.
- The judgment warns about the arbitrary power given to the state through preventive detention laws, emphasizing the need for checks and balances on government power.
- The Court's ruling emphasizes the importance of carefully analyzing cases with extreme caution and excruciating detail, setting a high standard for the government to follow every procedure of law while exercising preventive detention powers against individuals.

***Do You Know: 80 custodial deaths in 5 years, Gujarat tops list; Maharashtra second at 76.***

#### ***Court judgements on Custodial deaths/ Custodial violence:***

- In *Inderjeet v. State of Uttar Pradesh* (2014), the Supreme Court held that punishment which has an element of torture is unconstitutional.
- In *Francis Coralie Mullin vs. The Administrator, Union* (1981) the Supreme Court held that Article 21 includes the right to protection against torture.

#### **Article 23**

##### **Right Against Exploitation**

##### **Prohibition of Traffic in Human Beings and Forced Labour:**

- (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- (2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

#### Features:

- It protects both citizens and non-citizens against state and private individuals in terms of exploitation.
- Article 35 authorizes Parliament to make laws for punishing the acts which are prohibited under Article 23.
- It makes the state responsible for identifying & removing any such kind of bad practices.

#### Laws passed by the Parliament in pursuance of Article 23:

- Suppression of Immoral Traffic in Women and Girls Act, 1956
- Bonded Labour System (Abolition) Act, 1976

Ban against traffic in a human being is absolute but ban against forced labour is subject to an exception as mentioned in 23(2).

#### Some Landmark Judgements

##### People's Union for Democratic Rights v. Union of India

- This was regarding the working condition of employees in Asiad projects.
- It was discovered that the labourers were subject to immense exploitation, no

minimum wages and subjected to an inhumane working environment.

- J.P.N Bhagwati observed that the scope of Article 23 is vast and unlimited. It is not merely 'begar' which is prohibited but this Article strikes at forced labour in whichever form it may exist. Every form of forced labour is prohibited.
- No person shall be forced to provide labour or services against his will even if it is mentioned under a contract of service.
- The word 'force' has a very wide meaning under Article 23. It not only includes physical or legal force but also recognizes economic circumstances which compel a person to work against his will on less than minimum wage.

##### Sanjit Roy vs State of Rajasthan AIR 1983 SC 328

- In this case, the state had employed people for the construction of roads. Their work was allowed under the famine relief act.
- These workers were paid way less than the minimum wages. It was contended that this payment of wages lower than minimum wages was violative of Article 23.
- Court held that the state is not allowed to take undue advantage of the helplessness of people with an excuse of helping them to meet the situation of famine or drought.
- The court observed that they must be paid fairly for the work into which they put in effort and sweat, and which provides benefits to the state.

##### Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802

- Bandhua Mukti Morcha is an organization that works against the prevalent system of bonded labours in India.

- This case is special in the sense that the court for the first time accepted and treated a letter written to J.Bhagwati as a petition for PIL. The letter described the ordeal of a large number of workers in the Faridabad district of UP who were working in inhuman and intolerable conditions.
- The court laid down guidelines for the determination of bonded labourers and pointed out that it was the duty of the state government to identify, release, and rehabilitate the bonded labourers.

### **Durbar Goala v Union of India**

- This case holds that there is no forced labor, or beggar if an individual willingly decides to do work or to do extra work to gain other return benefits.

### **Raj Bahadur Case**

- In Raj Bahadur Case, it was held that Article 23 specifically prohibits traffic in human beings or women for immoral purposes.

### **Deena v. Union of India**

- It talked about laborers taken from prisons and said taking any kind of labor work without any reimbursement will amount to forced labor. The state is entitled to pay wages for the work done by those prisoners in respect of the state.
- In Deena v. Union of India, it was held by Chandarchud C. J. that-
  - “The labours taken from the prisoners without paying remuneration was ‘forced labour’ and violative of Article 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the Court is under a duty to enforce their claim.”

### **Article 24**

#### **Prohibition of Employment of Children in Factories, etc.**

- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- Provided that nothing in this sub clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7)
- The employment of children in non-hazardous work is allowed like working in agricultural fields, entertainment industries, grocery shop, etc.

**NOTE-** Article 24 must be read with Article. 39(e) and Article. 39(f) of DPSP which provides for the protection of health and strength of children and that the tender age of children should not be abused.

#### **The Supreme Court in Peoples Union for Democratic Rights v. Union of India**

- Held that building construction work was such hazardous employment where children below the age of fourteen years should not be employed.
- The court also pointed out the horizontal nature of Article 24. Prohibition of Article 24 could be enforced against everyone, whether State or private individual.
- *“The contention given by the Government is not at all acceptable. The construction work is hazardous employment and therefore, the children below 14 years must not be employed in the construction work*

*even if the construction work is not specifically mentioned under the schedule of the Employment of Children Act, 1938. The State Government is advised to take immediate necessary steps in order to include the construction work in the schedule of the Act and to ensure that Article 24 is not violated on any part of the country.”*

#### **In MC Mehta Vs State of Tamil Nadu**

- MC Mehta brought before the court the plight of children engaged in Sivakasi cracker factories.
- In this case, the Supreme Court directed setting up of Child Labour Rehabilitation Welfare Fund and asked the employer to pay Rs. 20,000 as compensation to each child.
- *“The children below 14 years cannot be employed in hazardous activities and state must lay down certain guidelines in order to prevent social, economic and humanitarian rights of such children working illegally in public and private sector. Also, it is violative of Article 24 and it is the duty of the state to ensure free and compulsory education to them. It was further directed to establish Child Labour Rehabilitation Welfare Fund and to pay compensation of Rs. 20,000 to each child.”*

India is also a signatory of the **Convention on the rights of child, 1989**: Article 32 of the convention requires that each state party to the Convention shall protect the children from economic exploitation and any hazardous work. India ratified the convention in 1999.

**In pursuance of the obligation under Article 24 and international instruments, parliament has enacted various laws against child labour–**

- **The Employment of Children Act, 1938**: This Act prohibits the employment of children below the age of 14 in the railways and other means of transport.
- **The Child Labour (Prohibition and Regulation) Act, 1986**: This Act prohibits the engagement of children in certain employments and regulates the condition of employment of children where they are not prohibited to work.
- **The Child Labour Amendment Act, 2016**: provides for complete prohibition on employment or work of children below 14 years and also prohibits employment of adolescents (14-18 years) in hazardous occupations and processes.
- **The Mines Act, 1952**: This Act explicitly mentions that a person working in the mine should not be less than 18 years. Thus, prohibiting employment of children in mines.
- **The Factories Act, 1948**: It prohibits the employment of children below 14 years in factories. This Act prescribes certain restrictions and proper procedure for employing children above the age of 14 years.
- **The Plantation Labour Act, 1951**: This Act fixes the minimum age of employment as 12 years and further lays down provision for periodical fitness checkup for children above 12 years who are employed.
- **The Motor Transport Workers Act, 1961**: This Act prohibits the employment of children under the age of 15 years in the motor transport sector.
- **The Apprentices Act, 1961**: This Act prohibits the children below 14 years to undergo apprenticeship training.
- **The Beedi and Cigar Workers (Condition of Employment) Act, 1966**: It prohibits the employment of children below 14 years of

age in any industrial premises manufacturing bidis and cigars.

India being a member of the United Nations, has ratified many international conventions like International Labour Organization Conventions in order to safeguard the rights of the child.

**The National Commission for the Protection of Child Rights (NCPCR)** is an Indian Government Commission established in 2007 under the Commission for Protection of Child Rights Act, 2005.

The objective of this statutory body is to ensure all the laws, policies, programmes and administrative mechanisms are in accordance with the provisions of child rights enshrined under the Indian Constitution and the UN Convention on the Rights of the Child.

This commission is installed at both the Centre and the State levels. It also works for speedy trials of the Children's Court in case of offences against them or any violation of the child's right.

#### Article 25-28

#### Right to Religious Freedom

#### Article 25: Freedom of Conscience and Free Profession, Practice and Propagation of Religion

Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are:

**Freedom of conscience:** Inner freedom of an individual to mould his relationship with God or Creatures in whatever way he desires.

**Right to profess:** Declaration of one's religious beliefs and faith openly and freely.

**Right to practice:** Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.

**Right to propagate:** Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion.

- But it does not include a right to convert another person to one's own religion. Forcible conversions impinge on the 'freedom of conscience' guaranteed to all the persons alike.

Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals).

**These Rights are available to all person— citizens as well as non-citizens.**

Further, the state can impose reasonable restrictions on these Rights on the following grounds:

- Public Order
- Morality
- Health
- Other provisions relating to Fundamental Rights.

**Further Article 25 also permits the State to:**

1. Regulate or restrict any economic, financial, political or other secular activity associated with religious practice; (It means the state will not interfere in religious matters but it can interfere the economic, financial, political and other matters of any religion or religious practice)
2. Provide for social welfare and reform or throw open Hindu religious institutions of public character to all classes and sections of Hindus. (In Hindu Religion there are caste system and a lot of discrimination on

the grounds of Castes, so the article 25 authorizes the state to open the Hindu Religious Institutions for all Hindus).

#### Article 25 also contains two explanations:

1. The **wearing and carrying of kirpans** is considered an essential part of the **practice of the Sikh religion**.
2. For the purposes of this Article, the term "**Hindus**" also includes **Sikhs, Jains, and Buddhists**.

#### Right to not belong to any religion ( Article 25)

- The **Punjab and Haryana High Court** has held that a **person who identifies as an atheist and chooses not to associate with any caste or religion does not require any legal certificate** to that effect. The Court stated that **there is no provision in law mandating or recognizing the issuance of such a certificate**, and thus, it cannot direct authorities to issue one declaring a person to be of **no caste, no religion, and no God**.
- This ruling came in response to a petition filed by **Ravi Kumar Atheist**, a 33-year-old who had approached the Court after district authorities in **Fatehabad** withdrew a previously issued "**No God Certificate**", citing a misinterpretation of court orders. The Court clarified that **freedom of belief, including the choice to not follow any religion**, is already protected under the Constitution and **does not require official validation** through certificates.

#### Following were the High Court observations

- The **freedom of conscience** guaranteed under **Article 25** of the Constitution includes the **right of an individual to not belong to any religion**.
- This freedom also encompasses the **right to identify as an atheist**, affirming that

**belief in no religion or God is as much a personal choice** as following a particular faith.

Just as a freedom of conscience confers a fundamental right to a citizen to entertain a particular religious belief, it equally confers a right on any other individual/citizen to express an opinion that he does not belong to any religion.

#### Essential Religious Practice and the Doctrine of Essentiality

In a secular and pluralistic democracy like India, where multiple religions are practiced and protected under the Constitution, the intersection of religious freedom with other fundamental rights has often led to complex legal and constitutional debates. One such significant development in this context is the evolution of the "Essential Religious Practice" doctrine or the "Doctrine of Essentiality", crafted by the Supreme Court of India to determine the extent to which religious practices are protected under Article 25 (freedom of religion).

#### What is the Doctrine of Essentiality?

- The Essential Religious Practice test is a judicially created doctrine used by the courts to identify and protect only those religious practices that are essential and integral to a religion. It was first laid down by a seven-judge bench of the Supreme Court in the Shirur Mutt case (1954). In this landmark judgment, the Court assumed the responsibility of determining what constitutes an essential religious practice, thereby making it the arbiter of religious beliefs and customs.
- This doctrine is particularly applied when religious practices come into conflict with other fundamental rights, such as the right to equality, dignity, or life. The Court uses this test to decide whether a practice is protected under the freedom of religion or whether it can be declared unconstitutional or invalid.

Notable Applications of the Doctrine:

**1. Sri Venkataramana Devaru vs State of Mysore (1958):** The Court examined whether restricting temple entry for certain castes was an essential Hindu practice. It held such exclusionary practices to be non-essential and thus unconstitutional, ensuring temple access for all Hindus.

**2. Ayodhya Case:** The Court acknowledged that while offering namaz (prayer) is an essential part of Islam, offering it specifically in a mosque is not essential, thereby distinguishing between the practice and the location.

**3. Haji Ali Dargah Case (2016):** The Bombay High Court struck down the ban on entry of women into the inner sanctum of the Dargah, ruling that such exclusion was not an essential practice of Islam.

**4. Sabarimala Case (2018):** The Supreme Court held that banning menstruating women (aged 10–50) from entering the Sabarimala temple was not an essential Hindu practice, and therefore unconstitutional, as it violated the right to equality and dignity.

#### Positive Outcomes of Judicial Interventions:

- **Balancing of Fundamental Rights:** For example, in the Sabarimala case, the Court tried to balance the right to religious freedom (Article 25) with the right to equality (Article 14) and dignity (Article 21).
- **Promotion of Social Justice:** The doctrine has been instrumental in eliminating discriminatory practices, ensuring that religion is not used as a cover to perpetuate inequality or oppression.
- **Upholding Constitutional Morality:** It emphasizes constitutional values over religious morality, supporting a more inclusive and rights-based approach in a diverse society.
- **Primacy of Rule of Law:** By reinforcing that no religious practice is above the Constitution, the doctrine ensures uniformity, justice, and the rule of law, reducing potential social conflicts.
- **Protection of Genuine Religious Practices:** At the same time, it safeguards truly essential and

integral practices from undue state interference, maintaining the core identity of religions.

#### Concerns and Criticism

- **Who Decides What Is Essential?:** A major concern is whether judges—often not experts in theology—should decide what constitutes an essential religious practice, or if this should be left to the religious communities themselves.
- **Lack of Consistent Standards:** There is no uniform criteria for determining essentiality. In some cases, courts rely on religious texts, in others on historical practices, or on the empirical behavior of followers, leading to inconsistent and subjective interpretations.
- **Beyond Judicial Competence:** Constitutional scholars argue that this doctrine pulls the judiciary into theological debates, an area arguably beyond its institutional competence, and risks judicial overreach.

#### THINK:

- Hijab controversy
- Does the Right to Propagate means Right to Convert?

#### How the supreme court has addressed the concern for freedom of religion:

- In the **Hadiya case**, the Supreme Court held that the **freedom to choose one's religion or life partner** is an integral part of individual liberty and is central to the **pluralistic fabric of India**.
- In **Indian Young Lawyers Association v. State of Kerala**, the Supreme Court allowed **women between the ages of 10 and 50** to enter the **Sabarimala temple**, holding that exclusion based on menstruation violated the right to equality and freedom of religion.

- In **Rev. Stanislaus v. State of Madhya Pradesh**, the Supreme Court upheld that **the right to convert** must be based on **individual freedom and voluntary consent**, and that forced conversions can be restricted.
- The Supreme Court has also held that **Parsi women who marry outside their community** should not be barred from entering **fire temples** or participating in religious practices, affirming their right to religious freedom.
- The Court has **criticized extra-constitutional bodies** like **Khap Panchayats** for annulling **inter-caste or inter-religious marriages**, and reaffirmed that such marriages are protected under the **Hindu Marriage Act** and the Constitution.
- In the **Triple Talaq case (Shayara Bano v. Union of India)**, the Supreme Court declared the practice of **instant triple talaq** unconstitutional, citing it as a violation of the **fundamental rights of Muslim women** and a step towards **women's empowerment**.
- The Supreme Court allowed **women to enter religious places** like **Haji Ali Dargah** and **Shani Shingnapur**, holding that barring women from entry violates their fundamental rights.
- The Court has also **regulated the use of firecrackers** and **banned the use of loudspeakers** in both **mosques and temples** during certain hours, citing concerns of **public health, noise pollution, and the right to peaceful living**.
- Additionally, the Supreme Court has **banned the practice of Female Genital Mutilation (FGM)** prevalent in the **Dawoodi Bohra community**, considering it a violation of bodily

integrity and the right to dignity under **Article 21**.

**However, at times, Supreme Court fails to address the concern of freedom of religion:**

- The Supreme Court has been **unable to prevent communal violence**, such as the **1984 anti-Sikh riots**, the **1990 anti-Hindu riots**, the **Muzaffarnagar riots**, and the **2002 Godhra riots**, leading to criticism regarding the judiciary's role in safeguarding religious communities during times of unrest.
- There was **discontent among sections of the Muslim community** when the Supreme Court held that a **mosque is not an essential part of Islam**, raising concerns about judicial interpretation of religious practices.
- In the **Sabarimala case**, **Justice Indu Malhotra**, in her **dissenting opinion**, argued that **courts should not interfere in long-standing religious practices** unless they are inherently discriminatory, emphasizing the need for **judicial restraint** in matters of faith.

**Does Right to Propagate Religion Mean Right to Proselytise?**

- The key question raised in constitutional discourse is whether the **right to "propagate" religion under Article 25** of the Indian Constitution also includes the **right to proselytise**—that is, to actively convert others to one's own religion.
- In the landmark case of **Rev. Stanislaus v. State of Madhya Pradesh (1977)**, the **Supreme Court of India clarified that the right to propagate does not include the right to convert others**. The Court held that **"propagate" means to transmit or spread one's religion by an exposition of its beliefs and tenets, but does not mean the right to forcibly or actively convert someone**.

- The judgment also **overruled the Odisha High Court's interpretation**, which had earlier held that **proselytism** is central to the Christian faith and is protected under Article 25. The Supreme Court rejected this view, stating that while individuals have the right to **freely profess and spread their religion**, this right **does not extend to converting others**, as it may infringe upon **another person's freedom of conscience**, which is also protected under Article 25.
- Thus, the Court in the **Stainislaus case** drew a clear line between **sharing one's religion** and **compelling or attempting to convert others**, upholding that the **right to propagate does not include the right to proselytise**.

#### Article 26: Freedom to Manage Religious Affairs

According to Article 26, every religious denomination or any of its section shall have the following rights:

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

#### Religious Denomination: Meaning and Scope

It has been firmly established through various judicial pronouncements that **to qualify as a "religious denomination" under Article 26** of the Indian Constitution, **three essential conditions** must be met:

- Common Faith:** The group must be a **collection of individuals** who share a **system of beliefs** regarded as conducive to their **spiritual well-being**.
- Common Organization:** There must be a **collective organizational structure** that unites members for the practice and

preservation of their shared religious beliefs.

- Distinctive Name:** The group must be **designated by a distinctive name**, identifying it as a separate entity from other groups or sects.

Based on these criteria, even if the members belong to different religions, as long as they satisfy the above three tests, they can qualify as a **religious denomination** under Article 26. The term "denomination" also extends to **sects or sub-sects** within a religion, provided they are designated by a **distinctive identity**.

It is important to note that, **unlike Article 30**, which is specifically limited to **minority communities**, the **benefits of Article 26 are not confined to minorities**. For instance, **Sikhs in Punjab**, although not a minority in the state, have been recognized as a **religious denomination** and are entitled to the protections and rights conferred by Article 26.

#### Article 27: Freedom from Taxation for Promotion of a Religion

Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.

In other words, the State should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion.

This provision prohibits the State from favouring, patronizing and supporting one religion over the other.

This means that the taxes can be used for the promotion or maintenance of all religions.

**The provision prohibits only levy of a tax not a fee.** This is because the purpose of a fee is to control the secular administration of religious institutions and not to promote or maintain religion. Thus, a fee can be levied on pilgrims to provide them some special service or safety measures.

Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

### Article 28: Freedom from Attending Religious Instruction

Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of State funds.

However, this provision shall not apply to an educational institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.

**According to Article 28 (3),** No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to attend any religious instruction or worship in that institution without his consent. **In case of a minor the consent of his guardian is needed.**

Thus, article 28 distinguishes between four types of educational institutions:

1. Institutions wholly maintained by the State
2. Institutions administered by the State but establish under any endowment or trust.
3. Institutions recognised by the State.
4. Institutions receiving aid from the State.

In Type-1 institutions (those wholly maintained by the State), religious instruction is completely prohibited.

In Type-2 institutions (those administered by the State but established under any endowment or trust), religious instruction is permitted if it aligns with the terms of the endowment or trust.

In Type-3 and Type-4 institutions (those recognized by the State and those receiving aid from the State), religious instruction is permitted only on a voluntary basis. No student can be compelled to attend such instruction without their consent (or the consent of their guardian, in the case of minors).

### Article 29-30

#### Cultural and Educational Rights:

#### Article 29: Protection of interests of minorities

**(1)** Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

**(2)** No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

The first part of this article protects the collective right of a group to preserve its cultural identity. In contrast, the second part guarantees an individual citizen the right to equality in educational opportunities, regardless of the community to which they belong. This dual nature ensures both group and individual rights are upheld under the Constitution.

Article 29 extends protection to both religious and linguistic minorities. However, the Supreme Court clarified that the scope of this Article is not confined only to minorities, as is often misunderstood. This is due to the deliberate use of the term “section of citizens,” which can refer to both majority and minority groups, depending on the context.

Furthermore, the Supreme Court has also held that the right to conserve one's language includes the right to advocate or agitate for its protection. As a result, political speeches or election promises made in support of conserving the language of a section of citizens do not qualify as corrupt practices under the **Representation of the People Act, 1951**. This interpretation reinforces the democratic space for linguistic and cultural expression within the country.

### Principles of Article 29 as per Supreme Court

The Bombay High Court held that it embodied two important principles under Article 29:

The Bombay High Court emphasized two core principles within Article 29.

- First, every citizen has the right to choose any educational institution maintained or aided by the State. The State cannot compel anyone to attend one institution over another.
- Second, the rights granted under Article 29 are individual in nature—meaning they are available to every citizen personally, not only to members of a specific community or group.

### Article 30: Right of minorities to establish and administer educational institutions

**Article 30** of the Indian Constitution grants minorities, whether based on **religion or language**, the **right to establish and administer educational institutions of their choice**. This provision ensures that minorities can preserve and promote their distinct culture, language, and religion through education.

Because of the wide scope of protection it offers, Article 30 is often referred to as the **Charter of Educational Rights** for minorities. One well-known example is **madrasas**, which are educational

institutions run by religious minorities, and are protected under Article 30.

Article 30 gives **absolute rights** to minorities to:

- Establish and manage their own **religious and linguistic** educational institutions.
- **Receive State aid** (grant-in-aid) **without any discrimination**, even if the institution is run by a minority.

It's important to note that the Constitution does **not define the term 'minority'**. However, the Supreme Court has clarified that minorities can be based on **language or religion**, and their status depends on their **population in a particular state**, not at the national level.

Also, Article 30 includes the **right of minorities to impart education in their own language**. This helps in preserving their linguistic identity.

### Types of Minority Educational Institutions

Minority-run educational institutions can be classified into three categories:

1. **Institutions seeking both recognition and aid** from the State.
2. **Institutions seeking only recognition, but not aid.**
3. **Institutions that neither seek recognition nor aid** from the State.

Each category enjoys varying degrees of autonomy, but all are protected under Article 30.

### Minority Status in India – State-wise Basis

In **July 2022**, the **Supreme Court ruled** that **minority status** for religious and linguistic communities should be determined **state-wise**, not nationally. This means:

- A **Kannada-speaking person** would be a **linguistic minority** in states other than Karnataka.

- A **Hindu** would be a **religious minority** in a **Muslim-majority Union Territory** like **Lakshadweep**.

The Court emphasized that **religious or linguistic minorities in a specific state** can claim the **protection of Articles 29 and 30**. This allows them to **run and manage their own educational institutions**, ensuring their cultural and educational rights are safeguarded.

#### About Minority status:

- **The central government** decides who gets the minority community status in India.
- It is done under the **National Commission for Minorities Act, 1992**.
- Only those belonging to the communities notified under Section 2(c) of the 1992 law are regarded as minority citizens.
- The central government has notified only **six communities** as having the **minority status at the national level**. Five of them were declared minority communities in October 1993 **Muslims, Christians, Sikhs, Buddhists and Parsis**. **In January 2014, the Centre added Jains to the list.**

The main difference between Article 29 and Article 30 is that Article 29 protects the cultural rights of any section of citizens, including the majority, and guards against discrimination in educational admissions. In contrast, Article 30 grants exclusive rights to religious and linguistic minorities to establish and manage their own educational institutions, with or without State aid.

#### The Aligarh Muslim University (AMU) case

A significant case related to Article 30 is the Aligarh Muslim University (AMU) case. In the *Azeez Basha v. Union of India* (1968), the Supreme Court held that AMU was not a minority institution, reasoning that it was established by an Act of Parliament and

not directly by the Muslim community. Therefore, it could not claim the protection of Article 30.

However, this interpretation was revisited in November 2024, when a seven-judge Constitution Bench of the Supreme Court, by a 4:3 majority, overruled the 1968 verdict. The Court clarified that the mere fact that an institution is incorporated or recognized through legislation does not take away its character as a minority institution, if it was fundamentally established by a minority community. While the judgment set the legal foundation, the final decision on whether AMU qualifies as a minority institution has been referred to a smaller bench for detailed consideration.

#### Article 31: It has been Repealed. (Right to Property)

Article 31 (Right to Property) was repealed because it hindered land reforms and redistribution of resources. Courts frequently struck down laws related to zamindari abolition and agrarian reforms for violating property rights. To ensure social justice and equitable distribution, the 44th Amendment (1978) removed it as a fundamental right and made it a legal right under Article 300A, enabling the state to regulate property in public interest.

#### Article 31A

- **Article 31A** was introduced by the **First Constitutional Amendment Act of 1951** to protect laws aimed at implementing land reforms and socio-economic restructuring from being invalidated on the grounds of violating the **Fundamental Rights**, particularly **Articles 14 and 19**.
- It safeguards laws that deal with the acquisition of estates, rights over land, taking over management of industrial or commercial undertakings, amalgamation of corporations, and extinguishment or modification of property rights.

- This provision was crucial in enabling the government to undertake **zamindari abolition** and land redistribution without interference from the judiciary.

#### Article 31B,

- **Article 31B**, also added by the **First Amendment**, provides constitutional protection to certain laws by placing them in the **Ninth Schedule** of the Constitution.
- These laws, even if inconsistent with or in violation of any of the Fundamental Rights, are **immune from judicial review**.
- The main objective was to ensure the validity of land reform laws and other progressive legislations that were being struck down by courts.
- However, in the landmark **I.R. Coelho case (2007)**, the Supreme Court ruled that laws inserted into the Ninth Schedule after **April 24, 1973** (the date of the Kesavananda Bharati judgment) can still be **challenged** if they violate the **basic structure** of the Constitution.

#### Article 31C

- **Article 31C** was introduced by the **25th Amendment Act of 1971** to give primacy to certain **Directive Principles of State Policy (DPSPs)** over Fundamental Rights.
- Specifically, it protects laws enacted to give effect to **Article 39(b)** and **39(c)** — which relate to equitable distribution of material resources and prevention of concentration of wealth — from being challenged for violating **Articles 14 or 19**.
- Initially, the **42nd Amendment** expanded its scope to cover all DPSPs, but this extension was struck down by the Supreme Court in the **Minerva Mills case (1980)**.

- Therefore, only laws made to implement Article 39(b) and 39(c) are protected under Article 31C today.

#### Article 32

##### Right to Constitutional Remedies

**Article 32 (1)** : It guarantees the **right to move the Supreme Court** directly for the **enforcement of Fundamental Rights** granted under Part III of the Constitution.

**Article 32 (2)** : 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 any of the rights conferred by this Part.

Dr. B.R. Ambedkar called Article 32 “the very soul of the Constitution and the very heart of it” because it provides an effective legal remedy for the protection of Fundamental Rights. Mere declaration of rights would be of no use unless there is a mechanism to enforce them. Article 32 ensures that if a citizen’s Fundamental Rights are violated, they can directly approach the Supreme Court for justice.

This article reflects the importance the Constitution gives to Fundamental Rights by making their enforcement itself a Fundamental Right. In essence, it upholds the principle that a right without a remedy is of no value, and thus, Article 32 acts as the cornerstone of the citizen’s right to constitutional protection.

**Why Dr. Ambedkar considered the right to constitutional remedies as “heart and soul of the constitution”?**

**Dr. B.R. Ambedkar** considered the **Right to Constitutional Remedies (Article 32)** as the “**heart and soul of the Constitution**” because it provides

a **guaranteed mechanism** for the enforcement of **Fundamental Rights**. Without the ability to enforce these rights, their mere existence would be meaningless. This right empowers citizens to directly approach the **Supreme Court** or **High Courts** if their Fundamental Rights are violated.

Through this Article, the **Supreme Court and High Courts** have the authority to issue **writs, orders, or directions** to the government or public authorities to ensure that citizens' rights are protected and restored. Thus, Article 32 acts as a powerful tool to hold the State accountable and safeguard individual freedoms, making it a cornerstone of the Constitution's commitment to justice.

### What are the writs issued by the court?

The Supreme Court (under Article 32) and the High Courts (under Article 226) have the power to issue writs for the enforcement of Fundamental Rights. These writs are special orders that act as legal remedies when the rights of individuals are violated.

#### 1. Habeas Corpus – "To have the body of"

This writ is used to protect personal liberty. If a person is illegally detained or arrested, the court can order the authorities to produce the person before it and justify the detention. If the arrest is found to be unlawful, the court can order the person's immediate release.

#### 2. Mandamus – "We Command"

This writ is issued when a public authority fails to perform its legal duty. The court can direct that authority to carry out its responsibility. However, **Mandamus cannot be issued:**

- Against the President of India or Governors.
- Against a Chief Justice of a High Court when acting in a judicial capacity.

- Against private bodies.

#### 3. Prohibition – "To Forbid"

This writ is issued by a higher court (like the Supreme Court or a High Court) to a lower court or tribunal, preventing it from continuing proceedings in a case where it has no legal authority. It ensures that lower courts do not exceed their jurisdiction. It can only be issued against judicial or quasi-judicial bodies, not against administrative or legislative authorities.

#### 4. Quo Warranto – "By What Authority"

This writ is issued when a person is found to be illegally holding a public office. The court can question and stop the person from continuing in that position. It helps prevent the misuse of public offices. It cannot be issued against private employment or non-statutory posts.

#### 5. Certiorari – "To be Certified"

Under this writ, a higher court orders a lower court or tribunal to transfer a case or quash its order if the lower body has acted without jurisdiction or in violation of the law.

- Before 1991, Certiorari was only issued against judicial or quasi-judicial authorities.
- After 1991, the Supreme Court extended it to include administrative authorities as well, if their decisions affect the rights of individuals.
- It cannot be issued against legislative bodies or private individuals/bodies.

#### Recent Judicial Clarification (2024)

The Supreme Court recently clarified that a petition under Article 32 cannot be used to challenge a final judgment delivered by the Supreme Court itself. This reinforces that Article 32 is meant to enforce Fundamental Rights, not to reopen concluded decisions of the apex court.

### Article 33 - Armed Forces and Fundamental Rights

Article 33 empowers the Parliament to restrict, modify, or even abrogate the Fundamental Rights of the following categories of individuals:

- Members of the Armed Forces
- Members of Paramilitary Forces
- Police Forces
- Intelligence agencies
- Any other service involved in maintaining public order and national security

This provision is considered necessary for ensuring the **proper discharge of duties** by these personnel, especially given the sensitive and high-risk nature of their responsibilities.

Importantly, this power is **vested only in Parliament**, not in the **State Legislatures**, to maintain **uniformity across the country**. Also, any law made under Article 33 **cannot be challenged in court** on the ground that it **violates Fundamental Rights**.

Furthermore, **military tribunals (courts martial)** are **exempted from the writ jurisdiction** of the **Supreme Court and High Courts**, ensuring internal military discipline remains free from regular judicial interference.

Using this power, Parliament has passed laws like:

- Army Act, 1950
- Navy Act, 1950
- Air Force Act, 1950
- Police Forces (Restriction of Rights) Act, 1966

### Article 34 – Restrictions During Martial Law

**Article 34** deals with the situation when **martial law is in force** in any area within the territory of India. It empowers **Parliament** to:

- **Restrict Fundamental Rights** in that area
- **Indemnify** (protect from legal action) any government servant or person for acts done in connection with **maintaining or restoring order** during martial law

This means that any action taken by authorities during the period of martial law—such as detentions, restrictions, or use of force—can be protected by a law made by Parliament, and **such laws cannot be challenged** in any court on the ground of violating Fundamental Rights.

It's important to note that the term '**martial law**' is **not defined** in the Constitution. However, it generally refers to a temporary military rule imposed in place of civilian authority during extreme emergencies.

The **Supreme Court** has clarified that **martial law does not automatically suspend the writ of habeas corpus**, meaning the courts still retain some power to protect personal liberty even during martial law.

#### Think!

**What is the difference between National Emergency and Martial Law?**

### Article 35 – Exclusive Power of Parliament to Make Laws on Certain Rights

**Article 35** ensures that only the **Parliament of India** has the power to make laws relating to the **implementation and regulation** of certain Fundamental Rights, especially those requiring **uniform application** across the country.

These include laws related to:

- Restriction/modification of rights of armed forces under **Article 33**

- Indemnity during martial law under **Article 34**
- Regulation of rights under **Article 16(3)** (public employment)
- Laws related to **preventive detention** under **Articles 22(3) to 22(7)**

By conferring this power exclusively to Parliament, Article 35 ensures **consistency and uniformity** in the **nature of laws**, the **implementation of certain Fundamental Rights**, and the **punishment for their violation**, regardless of the state in which a person resides.

### Criticism of Fundamental Rights:

The FRs enshrined in Part III of the Constitution have met with a wide range and varied criticism.

#### Excessive Limitations

- They are subjected to innumerable exceptions, restrictions, qualifications and explanations. Hence, the critics remarked that the Constitution grants Fundamental Rights with one hand and takes them away with the other.

#### No Social and Economic Rights

- The list is not comprehensive as it mainly consists of political rights. It makes no provision for important social and economic rights like right to social security, right to work, right to employment, right to rest and leisure and so on.

#### No Clarity

- It is alleged that the Constitution was made by the lawyers for the lawyers. Sir Ivor Jennings called the Constitution of India a 'paradise for lawyers'. The various phrases and words used in the chapter like 'public order', 'minorities', 'reasonable restriction', 'public interest' and so on are not clearly defined.

#### No Permanency

- They are not sacrosanct or immutable as the Parliament can curtail or abolish them, as for example, the abolition of the fundamental right to property in 1978. Hence, they can become a play tool in the hands of politicians having majority support in the Parliament.

The judicially innovated '**doctrine of basic structure**' is the only limitation on the authority of Parliament to curtail or abolish the fundamental right.

#### Suspension during Emergency

- The suspension of their enforcement during the operation of National Emergency (except Articles 20 and 21) is another blot on the efficacy of these rights.

#### Expensive Remedy

- The judicial process is too expensive and hinders the common man from getting his rights enforced through the courts. Hence, the critics say that the rights benefit mainly the rich section of the Indian Society.

#### Preventive Detention

- No democratic country in the world has made preventive detention as an integral part of their Constitutions as has been made in India. It confers arbitrary powers on the State and negates individual liberty.

#### No Consistent Philosophy

- Sir Ivor Jennings expressed this view when he said that the Fundamental Rights proclaimed by the Indian Constitution are based on no consistent philosophy.<sup>25</sup> The critics say that this creates difficulty for the Supreme Court and the high courts in interpreting the fundamental rights.

### Significance of Fundamental Rights

In spite of the above criticism and shortcomings, the Fundamental Rights are significant in the following respects:

- They constitute the bedrock of the democratic system in the country.
- They provide necessary conditions for the material and moral protection of man.
- They serve as a formidable bulwark of individual liberty.
- They facilitate the establishment of rule of law in the country.
- They protect the interests of minorities and weaker sections of society.
- They strengthen the secular fabric of the Indian State.
- They check the absoluteness of the authority of the government.
- They lay down the foundation stone of social equality and social justice.
- They ensure the dignity and respect of individuals.
- They facilitate the participation of people in the political and administrative process.

### How have the Fundamental Rights been expanded since Independence?

Since the adoption of the Constitution, the scope of **Fundamental Rights under Part III** has been significantly expanded through **Supreme Court judgments, constitutional amendments, and progressive legislation**. These developments have helped interpret **Article 21 (Right to Life and Personal Liberty)** in a broad, inclusive manner, covering various socio-economic rights essential to a dignified life.

#### 1. Right to Food

The Supreme Court has interpreted the right to food as an essential part of Article 21—the right to life. This recognition led to policy-level changes,

including the enactment of the National Food Security Act, 2013, which ensures:

- Subsidized foodgrains (5 kg per person per month) to up to 75% of the rural population and 50% of the urban population.
- Maternity benefits of at least ₹6,000 to pregnant and lactating mothers.
- Nutritious meals for children under 14, aligning with nutritional standards.

#### 2. Right to Water, Shelter, and Electricity

##### Right to Water

Though not explicitly mentioned, courts have included access to clean drinking water within the right to life. Related constitutional provisions such as Article 39(b), Article 47, and Article 262 empower the State to ensure equitable distribution of resources and address water disputes.

##### Right to Shelter

Recognized under Article 21, the right to shelter includes safe and secure housing necessary for human dignity. It has been supported by laws like the Forest Rights Act (2006), Land Acquisition Act (2013), and judicial rulings:

- **Samarpal v. Union of India (2022)** – Delhi HC affirmed shelter as a fundamental right.
- Jharkhand HC ruled that even encroachers cannot be evicted without due legal process.
- **Rajesh Yadav v. State of UP** – Allahabad HC held that the right to shelter includes all infrastructure necessary to live and grow as a human being.

##### Right to Electricity

In 2021, the Kerala High Court ruled that electricity connection is integral to Article 21, affirming the

mandate under the Electricity Act, 2005 that a connection must be provided within one month of application.

### 3. Right to Education

In 2002, the 86th Constitutional Amendment added Article 21-A, making free and compulsory education for children aged 6 to 14 years a Fundamental Right. This was operationalized by the Right to Education (RTE) Act, 2009, which:

- Ensures no fees, no expulsion, and no physical punishment.
- Mandates infrastructure, teacher training, and inclusive access for weaker sections.
- Prevents discrimination and guarantees completion of elementary education.

### 4. Right to Information

The Right to Information Act, 2005, enacted under Article 19(1)(a) (freedom of speech and expression), empowers citizens to access government-held information, enhancing transparency and accountability. However, certain information is exempted, such as:

- Matters affecting national security, privacy, court proceedings, or foreign relations.
- Trade secrets, cabinet papers, and confidential documents.

The Department of Personnel and Training (DoPT) manages the national RTI portal and facilitates information requests.

### 5. Right to Privacy

In a landmark judgment in 2017, a nine-judge bench of the Supreme Court declared that the right to privacy is a fundamental right under Article 21, intrinsic to personal liberty and dignity. This ruling came in the context of challenges to the Aadhaar scheme and emphasized informational privacy and bodily autonomy.

To create a legal framework for data protection, the Personal Data Protection Bill, 2019 was introduced, though later withdrawn. A new, more comprehensive version is expected.

### 6. Other Expanded Rights

#### Right to Apply for Bail

The Supreme Court recently held that the right to seek bail is a fundamental right implicit in Articles 14, 19, and 21, reinforcing the principle of liberty in the justice system.

#### Right Not to Declare Father's Name

The Kerala High Court ruled that it is a fundamental right not to mention the father's name in identity documents, recognizing autonomy in personal identity.

The interpretation of Fundamental Rights in India has evolved far beyond their original text, thanks to an activist judiciary, progressive legislation, and the State's commitment to a welfare Constitution. From basic needs like food and shelter to modern concerns like privacy and information access, the scope of human dignity under Article 21 has grown to include all essentials for a meaningful life.

## Practice Questions

### Conceptual Questions

1. Explain the difference between natural rights, constitutional rights, and statutory rights. Give examples of each.
2. What do you understand by the doctrine of "Essential Religious Practices"? How has it shaped religious freedom in India?
3. How does Article 13 safeguard Fundamental Rights, and why was its interpretation in the Kesavananda Bharati case (1973) significant?
4. Critically Analyse the scope of Article 21 post the Maneka Gandhi case (1978). Provide at least five new rights derived under Article 21.
5. Discuss the relationship between Directive Principles of State Policy and Fundamental Rights, highlighting the significance of Article 31C.
6. Why is Article 32 described as the "heart and soul of the Indian Constitution"? Explain with relevant judicial interpretations.
7. What is preventive detention? Analyse the constitutional safeguards provided under Article 22 against arbitrary preventive detention.
8. How does Article 15 address issues of discrimination? Explain the implications of the 103rd Constitutional Amendment (EWS reservation).
9. Discuss the significance of Articles 29 and 30 in protecting cultural and educational rights of minorities. How does Article 30 differ from Article 29?
10. Explain the principle of judicial review as implied by Article 13. Can personal laws be reviewed under Article 13? Discuss with examples.

### One Liner Revision Questions

1. What is the purpose of Article 12 in the context of Fundamental Rights?
2. Which amendment inserted the Article 31B in the Indian Constitution?
3. Which Article provides equality before the law and equal protection of the laws?
4. Under which article is untouchability abolished, and what is the punishment for practicing it?
5. Which constitutional amendment removed the Right to Property from the Fundamental Rights?
6. Which Article explicitly guarantees the Right to Education as a Fundamental Right?
7. What are vertical and horizontal reservations, and which one applies to persons with disabilities?
8. Mention any two rights available exclusively to Indian citizens under the Constitution.
9. What are the restrictions on freedom of speech and expression under Article 19(2)?

10. Which writ protects an individual against unlawful detention?
11. Which article of the Constitution prohibits forced labour and trafficking?
12. Which amendment added Fundamental Duties to the Indian Constitution?
13. What is the main provision of Article 28 regarding religious instruction?
14. Mention the three principles of Rule of Law as given by A. V Dicey.
15. Which article guarantees the right to constitutional remedies?
16. Under which article can the state impose restrictions on Fundamental Rights of armed forces personnel?
17. Which article permits reasonable restrictions on freedom of movement in the interest of Scheduled Tribes?
18. Under which article and through which amendment the reasonable restrictions were inserted in the Indian constitution?
19. What landmark judgment established the Right to Privacy as a fundamental right?
20. Which Article allows minorities to establish and administer educational institutions?

### Prelims PYQ

1. With reference to the writs issued by the Courts in India, consider the following statements: (2022)
  - a) Mandamus will not lie against a private organisation unless it is entrusted with a public duty.
  - b) Mandamus will not lie against a Company even though it may be a Government Company.
  - c) Any public minded person can be a petitioner to move the Court to obtain the writ of Quo Warranto.

Which of the statements given above are correct?

  - a) 1 and 2 only
  - b) 2 and 3 only
  - c) 1 and 3 only
  - d) 1, 2 and 3
2. In India, if a religious sect/community is given the status of a national minority, what special advantages is it entitled to? (2011)
  1. It can establish and administer exclusive educational institutions.
  2. The President of India automatically nominates a representative of the community to Lok Sabha.
  3. It can derive benefits from the Prime Minister's 15-Point Programme.

Which of the statements given above is/are correct?

  - a) 1 only
  - b) 2 and 3 only
  - c) 1 and 3 only
  - d) 1, 2 and 3
3. Which of the following are envisaged by the Right against Exploitation in the Constitution of India? (2017)
  1. Prohibition of traffic in human beings and forced labour
  2. Abolition of untouchability
  3. Protection of the interests of minorities

4. Prohibition of employment of children in factories and mines

- a) 1 only  
b) 2 only  
c) Both 1 and 2  
d) Neither 1 nor 2

Select the correct answer using the code given below:

- a) 1, 2 and 4 only  
b) 2, 3 and 4 only  
c) 1 and 4 only  
d) 1, 2, 3 and 4

4. In the context of India, which one of the following is the correct relationship between Rights and Duties? (2017)

- a) Rights are correlative with Duties.  
b) Rights are personal and hence independent of society and Duties.  
c) Rights, not Duties, are important for the advancement of the personality of the citizen.  
d) Duties, not Rights, are important for the stability of the State.

5. One of the implications of equality in society is the absence of: (2017)

- a) Privileges  
b) Restraints  
c) Competition  
d) Ideology

6. Which one of the following statements is correct? (2017)

- a) Rights are claims of the State against the citizens.  
b) Rights are privileges which are incorporated in the Constitution of a State.  
c) Rights are claims of the citizens against the State.  
d) Rights are privileges of a few citizens against the many.

7. Consider the following statements: (2018)

1. The Parliament of India can place a particular law in the Ninth Schedule of the Constitution of India.  
2. The validity of a law placed in the Ninth Schedule cannot be examined by any court and no judgement can be made on it.

Which of the statements given above is/are correct?

8. Which of the following are regarded as the main features of the "Rule of Law"? (2018)

1. Limitation of Powers  
2. Equality before law  
3. People's responsibility to the Government  
4. Liberty and civil rights

Select the correct answer using the code given below:

- a) 1 and 3 only  
b) 2 and 4 only  
c) 1, 2 and 4 only  
d) 1, 2, 3 and 4

9. Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty. Which of the following in the Constitution of India correctly and appropriately imply the above statement? (2018)

- a) Article 14 and the provisions under the 42<sup>nd</sup> Amendment to the Constitution  
b) Article 17 and the Directive Principles of State Policy in Part IV  
c) Article 21 and the freedoms guaranteed in Part III  
d) Article 24 and the provisions under the 44<sup>th</sup> Amendment

10. In essence, what does 'Due Process of Law' mean? (2023)

- a) The principle of natural justice  
b) The procedure established by law  
c) Fair application of law  
d) Equality before law

11. Under which of the following Articles of the Constitution of India, has the Supreme Court of India placed the Right to Privacy? (2024)

- a) Article 15  
b) Article 16  
c) Article 19  
d) Article 21

12. A Writ of Prohibition is an order issued by the Supreme Court or High Courts to: (2024)

- a government officer prohibiting him from taking a particular action.
- the Parliament/Legislative Assembly to pass a law on Prohibition.

- the lower court prohibiting continuation of proceedings in a case.
- the Government prohibiting it from following an unconstitutional policy.

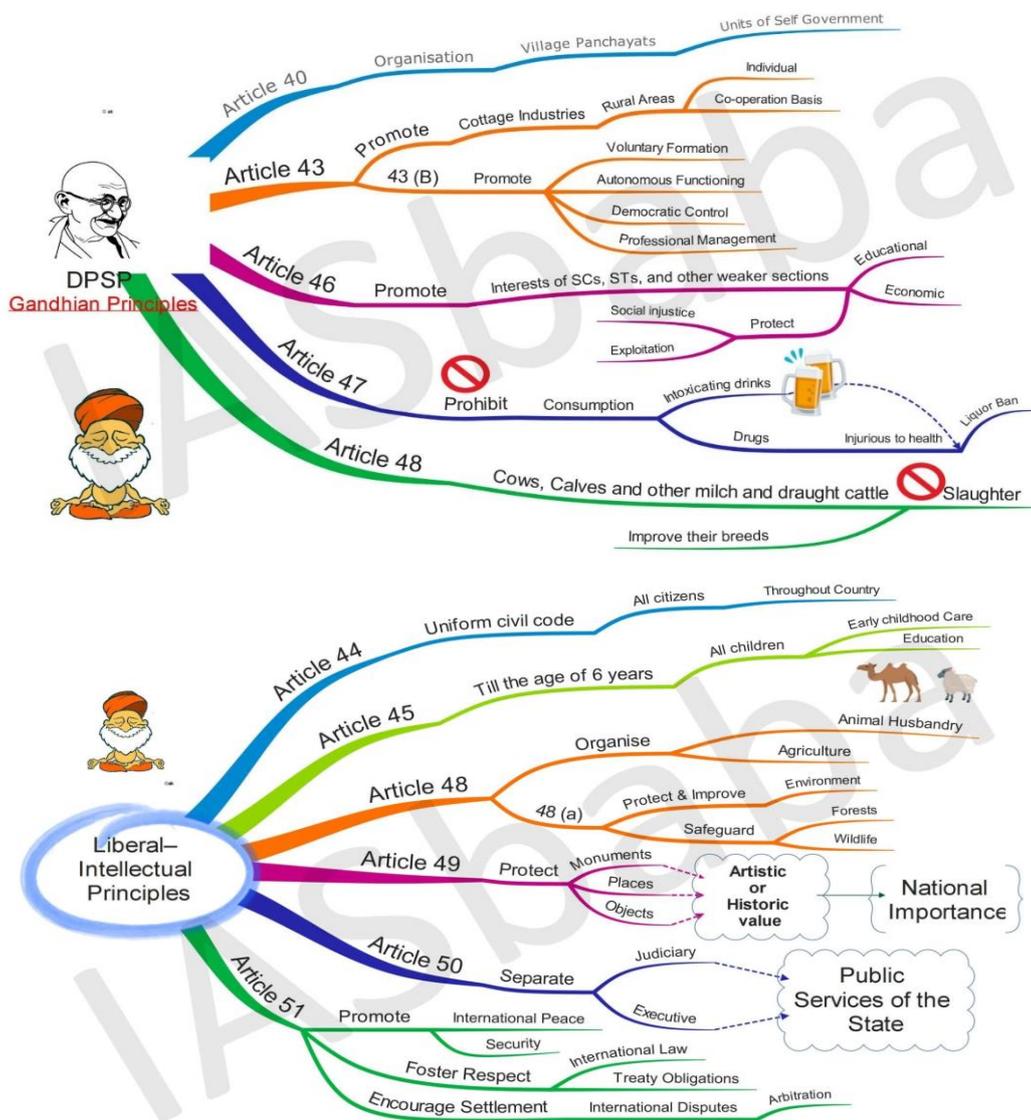
Question No.	Correct Option
1	(c)
2	(c)
3	(c)
4	(a)
5	(a)
6	(c)
7	(a)
8	(c)
9	(c)
10	(c)
11	(d)
12	(c)

### Mains PYQ

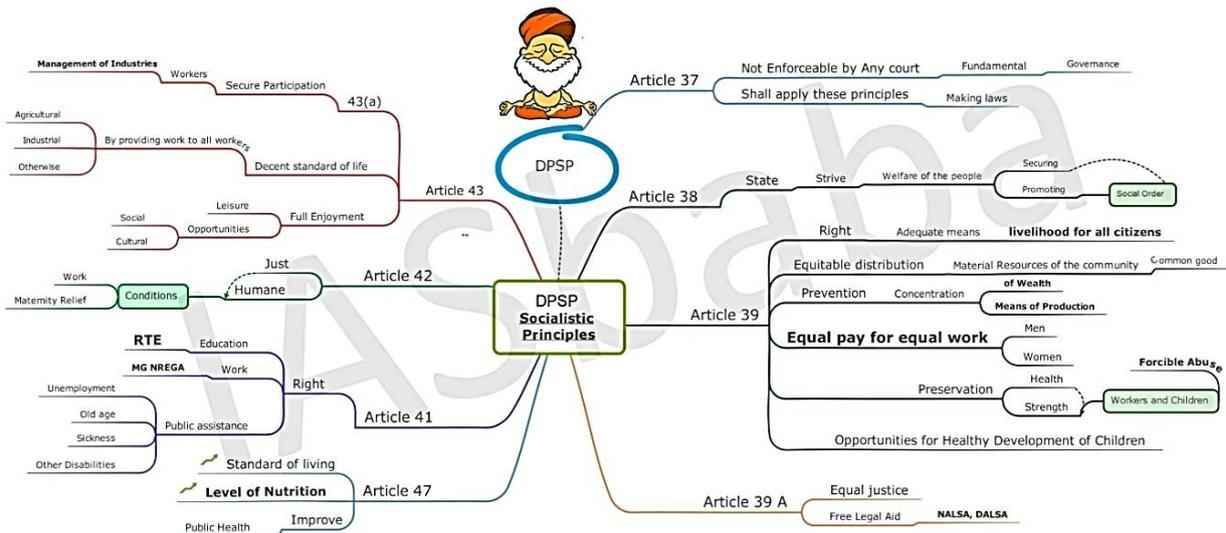
- Discuss the constitutional provisions regarding the rights of children. (2001) (15 Marks, 150 words)
- Discuss how the Constitution of India provides equal rights. (2004) (30 Marks, 250 words)
- What is Habeas Corpus? (2004) (2 Marks, 20 words)
- What is the special facility provided to the linguistic minorities under Article 350A? (2004) (10 Marks)
- Give your views on the right to freedom of religion as enshrined in the Indian Constitution. Do they make India a secular State? (2005) (30 Marks, 250 words)
- What are the constitutional limitations on the free movements of Indians throughout the country? (2005) (15 Marks, 150 words)
- What is meant by 'double jeopardy'? (2005) (2 Marks, 20 words)
- What is the right to life and personal liberty? How have the courts expanded its meaning in recent years? (2006) (30 Marks, 250 words)
- Bring out the differences between the Fundamental Rights and the Directive Principles of State Policy. Discuss some of the measures taken by the Union and State Governments for the implementation of the Directive Principles of State Policy. (2007) (30 Marks, 250 words)
- What is the importance of the Right to Constitutional Remedies? (2007) (2 Marks)
- What are the Rights within the ambit of Article 21 of the Indian Constitution? (2012) (5 Marks)
- What do you understand by the concept of freedom of speech and expression? Does it cover hate speech also? Why do films in India stand on a slightly different plane from other forms of expression? Discuss. (2014) (20 Marks)

13. Does the right to clean environment entail legal regulations on burning crackers during Diwali? Discuss in the light of Article 21 of the Indian Constitution and judgment(s) of the Apex Court in this regard. (2015) (12 Marks)
14. Analyze the distinguishing features of the notion of right to Equality in the Constitutions of the USA and India. (2021) (15 Marks, 250 words)
15. "The Constitution of India is a living instrument with capabilities of enormous dynamism. It is a constitution made for a progressive society." Illustrate with special reference to the expanding horizons of the right to life and personal liberty. (2023) (15 Marks, 250 words)

**DIRECTIVE PRINCIPLES OF STATE POLICY**



<https://iasbaba.com/2020/06/mind-maps-directive-principles-of-state-policy-dpsr-general-studies-2/>  
<https://iasbaba.com/2020/06/mind-maps-directive-principles-of-state-policy-dpsr-fundamental-duties-general-studies-2/>



**Directive Principle of State Policy** provides guidelines to Central and State government in India, to be kept in mind while framing laws and policies and are mentioned in Part IV of the constitution.

and it shall be the duty of the State to apply these principles in making laws.

While most of the Fundamental Rights are negative obligations on the state, DPSP are

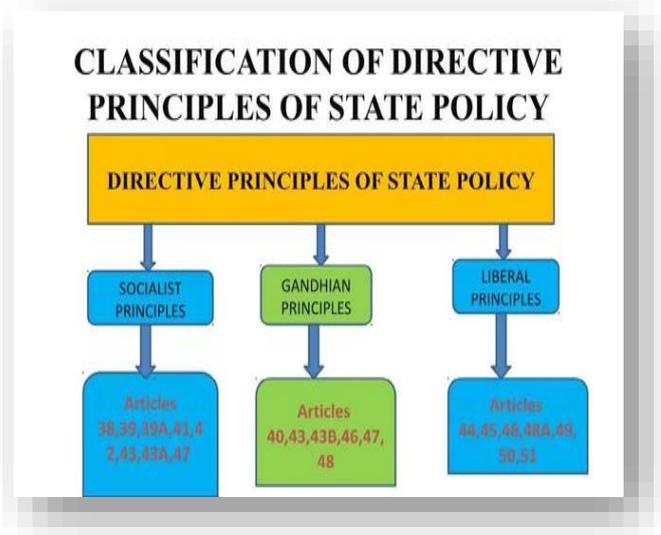
### *Distinction Between Fundamental Rights and Directive Principles*

<i>Fundamental Rights</i>	<i>Directive Principles</i>
1. These are negative as they prohibit the State from doing certain things.	1. These are positive as they require the State to do certain things.
2. These are justiciable, that is, they are legally enforceable by the courts in case of their violation.	2. These are non-justiciable, that is, they are not legally enforceable by the courts for their violation.
3. They aim at establishing political democracy in the country.	3. They aim at establishing social and economic democracy in the country.
4. These have legal sanctions.	4. These have moral and political sanctions.
5. They promote the welfare of the individual. Hence, they are personal and individualistic.	5. They promote the welfare of the community. Hence, they are societarian and socialistic.
6. They do not require any legislation for their implementation. They are automatically enforced.	6. They require legislation for their implementation. They are not automatically enforced.
7. The courts are bound to declare a law violative of any of the Fundamental Rights as unconstitutional and invalid.	7. The courts cannot declare a law violative of any of the Directive Principles as unconstitutional and invalid. However, they can uphold the validity of a law on the ground that it was enacted to give effect to a directive.

The provisions contained in this Part **cannot be enforced by any court**, but these principles are **fundamental in the governance of the country**,

positive obligations on the state, though not enforceable in a court of law.

The framers of the Constitution **borrowed this**



**idea from the Irish Constitution of 1937**, which had copied it from the **Spanish Constitution**.

Dr B R Ambedkar described these principles as **‘novel features’** of the Indian Constitution.

Together, DPSPs and Fundamental Rights represent the “Conscience of the Constitution.” Their combined vision reflects the “Soul of the Constitution,” as they balance individual freedom with collective well-being, ensuring that liberty does not ignore equality and development does not overlook dignity.

### Features

- Basic aim of DPSPs is to set up social and economic goals before the law makers
- To bring socio-economic change in the country
- To fulfill the basic needs of the common man
- To reshape the structure of Indian society in direction of greater socio-economic equality

DPSPs are fundamentals in governance of the country and shall be considered dutifully by the state while making laws, but DPSPs are not enforceable in court of law.

- If state fails to fulfill these obligations, one cannot go to court of law
- DPSPs only provides a yardstick for measuring success or failure of the government.

**Articles 36 to 51** deal with the provisions of the Directive Principles and are broadly classified into

1. Socialist principles
2. Gandhian principles
3. Liberal intellectual principles

### Socialist Principles

These aim to promote **social and economic justice** and reduce **inequality** in society.

- To secure a **social order** for the promotion of the **welfare of the people**. *(Article 38(1))*
- To minimize **inequalities of income, status, facilities, and opportunities**. *(Article 38(2))*
- The **ownership and control of the material resources** of the community to be so distributed as to **best serve the common good**. *(Article 39(b))*
- The **economic system** should not result in the **concentration of wealth and means of production** to the common detriment. *(Article 39(c))*
- **Equal pay for equal work** for both men and women. *(Article 39(d))*
- Protection of the **health and strength of workers**, and prevention of abuse of the **tender age of children**. *(Article 39(e))*
- Opportunities for the **development of children** in a healthy manner and protection of **childhood and youth** against exploitation and moral and material abandonment. *(Article 39(f))*
- Right to **work**, to **education**, and to **public assistance** in certain cases. *(Article 41)*
- Provision of **just and humane conditions for work** and **maternity relief**. *(Article 42)*
- **Participation of workers** in the management of industries. *(Article 43A)*

- Duty of the State to **raise the level of nutrition, standard of living**, and to **improve public health**. (*Article 47*)

### Liberal Principles

These reflect **liberal democratic ideals**, including individual freedom, justice, and international peace.

- Provision for a **Uniform Civil Code** throughout the territory of India. (*Article 44*)
- Provision of **free and compulsory education** for children below the age of 14 years. (*Article 45; now largely fulfilled by Article 21A*)
- **Separation of the judiciary from the executive** in the public services of the State. (*Article 50*)
- **Promotion of international peace and security**, just and honorable relations between nations, respect for international law, and settlement of disputes by arbitration. (*Article 51*)
- **Protection of monuments and places and objects** of artistic or historic interest of national importance. (*Article 49*)
- **Protection and improvement of the environment**, safeguarding of **forests and wildlife**. (*Article 48A*)

### The Gandhian Principles

These reflect the vision of **Mahatma Gandhi**, focusing on rural upliftment, self-reliance, and support for the underprivileged.

- **Organization of Village Panchayats** and giving them the powers to function as units of self-government. (*Article 40*)
- Promotion of **cottage industries** in rural areas. (*Article 43*)

- **Promotion of educational and economic interests** of SCs, STs, and other weaker sections. (*Article 46*)
- **Prohibition of intoxicating drinks and drugs** that are injurious to health. (*Article 47*)
- **Organization of agriculture and animal husbandry** on modern and scientific lines. (*Article 48*)
- **Prohibition of slaughter of cows, calves, and other milch and draught animals**. (*Article 48*)

### Detailed Description of DPSP

#### Article 36

##### Definition

- In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III.

#### Article 37

##### Application of the principles contained in this Part

- The provisions contained in this Part shall not be enforced by any court, but the principles therein 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.

#### Article 38

##### State to secure a social order for the promotion of welfare of the people

- 1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic

and political, shall inform all the institutions of the national life.

- 2) 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.

**Q. 'Economic Justice' as one of the objectives of the Indian Constitution has been provided in (UPSC PRELIMS)**

- a) *The Preamble and the Fundamental Rights.*
- b) *The Preamble and the Directive Principles of State Policy.*
- c) *The Fundamental Rights and the Directive Principles of State Policy.*
- d) *None of the above*

#### Article 39

##### **Certain principles of policy to be followed by the State**

The State shall, in particular, direct its policy towards securing –

- a) that the citizen, men and women equally, have the right to an adequate means of livelihood;
- b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- d) that there is equal pay for equal work for both men and women;
- e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to

enter avocations unsuited to their age or strength;

- f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

#### Article 39A

##### **Equal justice and free legal aid**

- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

#### Article 40

##### **Organisation of village panchayats**

- The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

#### Article 41

##### **Right to work, to education and to public assistance in certain cases**

- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

**Article 42****Provision for just and humane conditions of work and maternity relief**

- The State shall make provision for securing just and humane conditions of work and for maternity relief.

**Article 43****Living wage, etc., for workers**

- The State shall endeavor to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

**Article 43A****Participation of workers in management of industries**

- The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisation engaged in any industry.

**Article 43B**

- To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.

**Article 44****Uniform Civil Code for the citizen**

- The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

**Article 45****Provision for free and compulsory education for children**

- Provision for early childhood care and education to children below the age of six years.
- The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years."

**Article 45** of the Indian Constitution, as originally enacted, directed the State to provide **free and compulsory education** for all children until they complete the age of **fourteen years**, within a period of ten years from the commencement of the Constitution.

However, after the **86th Constitutional Amendment Act, 2002**, the original mandate was shifted to **Article 21-A** as a Fundamental Right. The revised **Article 45** now directs the State to **provide early childhood care and education** for all children **below the age of six years**, focusing on their holistic development in the early years.

**Article 46****Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections**

- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

**Article 47****Duty of the State to raise the level of nutrition and the standard of living and to improve public health**

- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

**Article 48****Organization of agriculture and animal husbandry**

- The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

**Article 48A****Protection and improvement of environment and safeguarding of forests and wildlife**

- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

**Article 49****Protection of monuments and places and objects of national importance**

- It shall be the obligation of the State to protect every monument or place or object

of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

**Article 50****Separation of judiciary from executive**

- The State shall take steps to separate the judiciary from the executive in the public services of the State.

**Article 51****Promotion of international peace and security**

The State shall endeavour to –

- a) promote international peace and security;
- b) maintain just and honourable relations between nations;
- c) foster respect for international law and treaty obligations in the dealings of organised people with one another; and
- d) encourage settlement of international disputes by arbitration.

**PREVIOUS YEARS QUESTIONS**

**Q. Which of the following provisions of the Constitution of India have a bearing on Education?**

1. Directive Principles of State Policy
2. Rural and Urban Local Bodies
3. Fifth Schedule
4. Sixth Schedule
5. Seventh Schedule

**Select the correct answer using the codes given below:**

- a) 1 and 2 only
- b) 3, 4 and 5 only

- c) 1, 2 and 5 only
- d) 1, 2, 3, 4 and 5

**Q. The 42nd Amendment Act of 1976 added four new Directive Principles to the original list. They are**

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

**Q. Which principle among the following was added to the Directive Principles of State Policy by the 42nd Amendment to the Constitution?**

- a) Equal pay for equal work for both men and women
- b) Participation of workers in the management of industries
- c) Right to work, education and public assistance
- d) Securing living wage and human conditions of work to workers

**NOTE:**

The 44th Constitutional Amendment Act of 1978 made an important addition to Article 38 by directing the State to strive to minimize inequalities in income, status, facilities, and opportunities. This expanded the scope of the original Article 38 and reinforced the commitment to achieving social and economic justice for all citizens.

The 86th Constitutional Amendment Act of 2002 brought a significant change by transferring the responsibility of providing free and compulsory education for children aged 6 to 14 years to Article 21-A, making it a Fundamental Right.

Consequently, Article 45 was revised to direct the State to provide early childhood care and education for all children below the age of six years.

The 97th Constitutional Amendment Act of 2011 introduced a new Directive Principle, Article 43B, which mandates the State to promote voluntary formation, autonomous functioning, democratic control, and professional management of cooperative societies. This amendment aimed to strengthen the cooperative sector as an important component of India's socio-economic development.

**Directives in other Parts of the Constitution (Except Part IV)**

While the main body of Directive Principles of State Policy (DPSPs) is found in Part IV (Articles 36 to 51) of the Constitution, some directive provisions are also found in other parts of the Constitution:

**Article 350 A:** It enjoins every State and every local authority within the State to provide adequate facilities for the instructions in the mother tongue at the primary stage to children of linguistic minority areas.

**Article 351:** It enjoins the Union to promote the spread of Hindi Language so that it may serve as a medium of expression of all the elements of the composite culture of India.

**Article 335:** It says that the claims of SC/ST shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of the Union or of a State.

Under the implementation of DPSP, Zamindari, Jaghirdari and Inamdari systems were abolished and actual tillers of the soil were made owner of the land.

### Criticism of DPSP

Many critics have been very vocal in criticizing the existence of unenforceable pious declarations (Directive Principles) in the Constitution of India.

K.T. Shah compares DPSP to a cheque payable by the bank at its convenience.

#### Main Points of Criticism:

##### Lack of Legal Force:

- The critics hold that as unenforceable directives, these principles do not carry any weight. Their violation or non-realization cannot be challenged in any court.

##### Mere Declarations:

- The Directive Principles are mere declaration of intentions or instructions which are to be observed and secured by the State at will. The Constitution neither makes them justiciable nor fixes the time-limit within which these are to be secured.

##### Unsystematic Enumeration and No Classification:

- Another point of criticism against the Directive Principles has been that these have been neither systematically stated nor properly classified. These appear to be a collection of some pious declarations which have only a moral value.

##### Lack of Clarity:

- Several Directives lack clarity. Several principles have been repeated at different places. The Directive to promote international peace and friendly cooperation among all the nations is a laudable declaration. But the real issue is how to secure it? No clear guideline has been given for this purpose.

##### Reactionary in Nature:

- Many critics hold that written during 1947-49, several of the Directives appear to be reactionary in contemporary times. The party in power at a particular time can use some of the directives for political and selfish ends. Moreover, enumeration of these principles involves an attempt to unduly bind the present with the past.

##### Impracticability of some of the principles:

- Part IV includes some directives which cannot be realized in actual practice. The ideal is to introduce prohibition, but this ideal cannot be really and effectively realized. The states which introduced prohibition had to later on scrap it.

##### Obsolete Philosophical Foundations:

- Most of the Directive Principles incorporated in this part of the Constitution are based on age old and foreign philosophical foundations (Fabian Socialism). The philosophy of Fabian Socialism has lost much of its relevance in contemporary times.

##### Superfluous:

- Many critics hold that the Directive Principles merely restate the objectives and goals clearly stated in the Preamble of the Constitution. Their description in Part IV has made things more complex and complicated.

##### Mere Promises:

- Directive principles are designed to serve as pious promises for creating an impression about a just exercise of the

power of the State. Their aim is to secure support through promise-making and not action. On the basis of these arguments the critics severely criticise the existence and scope of Part IV of the Constitution.

### Significance of DPSP

#### Directive Principles are backed by Public Opinion:

- It is true that Directive Principles are non-justiciable. These are not backed by legal sanctions. However, these are backed by public opinion, which is in reality the real sanction behind every law.

#### Provide for a Welfare State:

- The Directive Principles clearly lay down the philosophical foundations of a welfare polity. These make it a responsibility of the State to secure it through welfare legislation. These also provide that a welfare state stands for securing of Justice—social, economic and political for all the people.

#### Importance as Moral Ideals:

- Directive Principles are indeed of the nature of moral ideals. They constitute a moral code for the State. This does not reduce their value. Through these the founding fathers placed before the nation the goals and ideals which are to be achieved through future legislation.
- State is a human social institution. Government is always made and managed by the people. Just as people have a moral code which guides their behavior in society, likewise there is every justification for the existence of a moral code for the men who form and run the government of the state.

#### Directives Constitute a Guide for the State:

- Directive Principles act as a guide to the government for making policies and laws for the purpose of securing justice and welfare.

#### Source of continuity in Policies:

- The Directive Principles are a source of continuity in the policies of the government. In a democratic system, the governments change after regular intervals and each new government has to make policies and laws. The presence of Directive Principles ensures that every government, whether it is formed by a rightist or a leftist party, will exercise its power for implementing Directive Principles.

#### Directive Principles are Supplementary to the Fundamental Rights:

- Directive Principles are the positive directions to the State for securing and strengthening the socio-economic dimension of Indian democracy. **These aim at the establishment of socio-economic democracy.** These are supplementary to Fundamental Rights which provide for civil and political rights and freedoms.

#### Yardstick for measuring the Worth of the Government:

- Directive Principles of State Policy constitute a yardstick with which the people can measure the worth of a government. A government which ignores the task of implementing the Directive Principles can be rejected by the people in favour of a government by another political party which can be expected to

give due importance to the task of securing the Directive Principles.

#### Helpful in the interpretation of the Constitution:

- The Directive Principles constitute a manifesto of the aims and goals of the nation. These reflect the wisdom and views of the founding fathers of the constitution. These reflect the philosophy of the Constitution and hence provide useful help to the courts in their task of interpreting the Constitution.

#### Ambiguity of Directive Principles is Useful:

- The Directive Principles have been couched in words which are not very rigid in their meanings. This ambiguity has been helpful in so far as it helps the State to interpret and apply these principles in accordance with the socio-economic environment which prevails at a given time.

Thus, the inclusion of Part IV containing the Directive Principles of State Policy in the Constitution has been a welcome, worthwhile and useful decision. The Directive Principles provide for necessary and good foundations for the Indian state as a democratic and welfare polity. The securing of Directive Principles alone can complete our democratic system, supplement the Fundamental Rights of the people and build a welfare state characterised by Justice, Liberty, Equality and Fraternity. In the words of M.C. Chagla, "If all these principles are carried out, our country would indeed be a heaven on earth."

#### PREVIOUS YEARS QUESTIONS

**Q. The ideal of 'Welfare State' in the Indian Constitution is enshrined in its (2015)**

- a) Preamble
- b) Directive Principles of State Policy
- c) Fundamental Rights
- d) Seventh Schedule

**Q. Consider the following statements regarding the Directive Principles of State Policy: (2015)**

1. The principles spell out the socio-economic democracy in the country.
2. The provisions contained in these Principles are not enforceable by any court.

**Select the correct answer using the code given below:**

- a) 1 only
- b) 2 only
- c) Both 1 and 2
- d) Neither 1 nor 2

**Q. Consider the following statements:**

**With reference to the Constitution of India, the Directive Principles of State Policy constitute limitations upon**

1. legislative function.
2. executive function.

**Which of the above statements is/are correct?**

- a) 1 only
- b) 2 only
- c) Both 1 and 2
- d) Neither 1 nor 2

#### Fundamental Rights and Directive Principles

The question of relationship between the Directive Principles and the Fundamental rights has caused some difficulty, and the judicial attitude has undergone transformation on this question over time.

**What if a law enacted to enforce a directive principle infringes a fundamental right?** On this question, the judicial view has veered round from irreconcilability to integration between the Fundamental rights and Directive Principles and in some of the more recent cases, to giving primacy to the Directive Principles.

Initially, the courts adopted a strict and literal legal position in this respect. The Supreme Court adopting the literal interpretative approach to Article 37 ruled that a Directive Principle could not override a Fundamental right, and that in case of conflict between the two, the Fundamental right would prevail over the Directive Principle.

**The Supreme Court in State of Madras v. Champakam Dorairajan, stated that :**

“The Directive Principles of the state policy, which by Art. 37 are expressly made unenforceable by a court cannot override the provisions found in part III (fundamental rights) which, notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders or directions under article 32.

The chapter on fundamental rights is sacrosanct and not liable to be abridged by any legislative or executive act or order, except to the extent provided in the appropriate article in part III. The Directive Principles of state policy have to conform to and run as subsidiary to the chapter on Fundamental rights.”

In course of time, The Supreme Court started giving a good deal of value to the Directive principles from a legal point of view and started arguing for harmonizing the two the Fundamental rights and Directive Principles.

**In the Kerala Education Bill case,** the Supreme Court observed that while Fundamental Rights are enforceable in courts and Directive Principles are not, the latter cannot be completely ignored when interpreting the Constitution. The Court

emphasized the need for a harmonious construction, where efforts should be made to give effect to both Fundamental Rights and Directive Principles as far as possible.

**This idea was further developed in the landmark Golak Nath case (1967).** Here, the Supreme Court emphasized that Fundamental Rights and Directive Principles form an "integrated scheme", flexible enough to respond to changing social needs. However, the Court held that Parliament could not amend Fundamental Rights to implement Directive Principles. In response, the Parliament enacted the 24th and 25th Constitutional Amendment Acts in 1971.

- The 24th Amendment gave Parliament the power to amend any part of the Constitution, including Fundamental Rights.
- The 25th Amendment introduced Article 31C, which provided that:
  1. Laws made to implement Directive Principles under Article 39(b) and (c) cannot be challenged on the grounds that they violate Articles 14, 19, or 31.
  2. Any such law containing a declaration to that effect cannot be questioned in any court.

**However, in the Kesavananda Bharati case (1973),** the Supreme Court upheld the first part of Article 31C but struck down the second, stating that judicial review is a basic feature of the Constitution and cannot be removed.

In the same judgment, the Court also observed that Fundamental Rights and Directive Principles together form the "conscience of the Constitution". There is no conflict between the two; instead, they are complementary and supplementary. The Court stated that both Part III (Fundamental Rights) and Part IV (Directive

Principles) must be balanced and harmonized to uphold the dignity of the individual and achieve the goals of the Constitution.

This evolving judicial attitude marked a shift from conflict to integration. Over time, the courts began to read Directive Principles into Fundamental Rights. A prime example is the right to education, which started as a Directive Principle but was later made a Fundamental Right through Article 21-A.

**The Minerva Mills case (1980)** reinforced this idea by holding that Fundamental Rights are not ends in themselves but means to achieve the goals laid out in the Directive Principles. The Court stated that the Indian Constitution is founded on a "bedrock of balance" between Fundamental Rights and Directive Principles, and to give absolute primacy to one over the other would disturb the harmony of the Constitution. Both are essential for realizing the vision of a social revolution and together constitute the core commitment of the Constitution.

**This view was echoed in the Dalmia Cement case**, where the Supreme Court emphasized that the rule of law and social justice require effectuating both Fundamental Rights and Directive Principles as complementary tools. The Court described the Preamble, Fundamental Rights, and Directive Principles as a "trinity"—the conscience of the Constitution.

**In 1976, through the 42nd Amendment**, Parliament attempted to give precedence to all Directive Principles over Articles 14, 19, and 31. However, this was again rejected by the Supreme Court, which reiterated that the Constitution is based on a delicate balance between rights and principles. The Court stressed that Directive Principles should be implemented without abrogating Fundamental Rights, and both can coexist harmoniously.

**This principle was reaffirmed in the I.R. Coelho v. State of Tamil Nadu (2007) case**, where the

Supreme Court observed that the Constitution requires a middle path between individual liberty and public good. While the balance may tilt in Favour of public interest, it cannot completely override personal freedoms. This balance, the Court said, is an essential feature of the Constitution's basic structure.

### Current Position

Today, the position is that while Fundamental Rights enjoy supremacy over Directive Principles, this does not prevent the implementation of Directive Principles. Parliament can amend the Constitution to give effect to them, as long as such amendments do not damage the basic structure of the Constitution. This ensures that both individual liberty and social welfare are protected in a balanced and constitutional manner.

### NOTE:

- DPSP and FRs go hand in hand.
- DPSP is not subordinate to FRs.

### Implementation of DPSP

Since 1950, the successive governments at the Centre and in the states have made several laws and formulated various programmes for implementing the Directive Principles. These are mentioned below:

The successive Five-Year Plans aimed at **securing socio-economic justice** and reducing inequalities of income, status and opportunities. In 2015, the Planning Commission was replaced by a new body called NITI Aayog (National Institution for Transforming India).

Almost all the states have passed **land reform laws** to bring changes in the agrarian society and to improve the conditions of the rural masses. These measures include

- abolition of intermediaries like zamindars, jagirdars, inamdars, etc;
- tenancy reforms like security of tenure, fair rents, etc;
- imposition of ceilings on land holdings;
- distribution of surplus land among the landless labourers; and
- cooperative farming.

The Minimum Wages Act (1948), the Payment of Wages Act (1936), the Payment of Bonus Act (1965), the Contract Labour Regulation and Abolition Act (1970), the Child Labour Prohibition and Regulation Act (1986), the Bonded Labour System Abolition Act (1976), the Trade Unions Act (1926), the Factories Act (1948), the Mines Act (1952), the Industrial Disputes Act (1947), the Workmen's Compensation Act (1923) and so on have been enacted to protect the interests of the labour sections.

#### **In 2006, the government banned the child labour.**

In 2016, the Child Labour Prohibition and Regulation Act (1986) was renamed as the Child and Adolescent Labour Prohibition and Regulation Act, 1986.

**The Maternity Benefit Act (1961)** and the Equal Remuneration Act (1976) have been made to protect the interests of women workers.

Various measures have been taken to utilize the financial resources for promoting the common good. These include **nationalization of life insurance (1956)**, the nationalization of fourteen leading commercial banks (1969), nationalization of general insurance (1971), abolition of Privy Purses (1971) and so on.

The **Legal Services Authorities Act (1987)** has established a nation-wide network to provide free and competent legal aid to the poor and to organize lok adalats for promoting equal justice. Lok adalat is a statutory forum for conciliatory settlement of legal disputes. It has been given the status of a civil court. Its awards are enforceable,

binding on the parties and final as no appeal lies before any court against them.

**In 2019, the central government issued orders providing 10% reservation to the Economically Weaker Sections (EWSs)** in admission to educational institutions and civil posts and services in the Government of India. The benefit of this reservation can be availed by the persons belonging to EWSs who are not covered under any of the existing schemes of reservations for SCs, STs and OBCs. This reservation was facilitated by the 103rd Amendment Act of 2019.

#### **In mains examination you can get questions like:**

- Critically examine the extent to which the Directive Principles of State Policy have been implemented in India. Examine their relevance in the era of liberalization and globalization.*
- Most of the DPSPs reflect the ideology of socialism and welfare state. Elucidate. In your opinion, which non-justifiable rights should be incorporated as fundamental rights? Examine.*
- How are the Fundamental Rights different from other legal and constitutional rights? What makes them so special?*

Fundamental Rights	Directive Principles
1. These are negative as they prohibit the State from doing certain things.	1. These are positive as they require the State to do certain things.
2. These are justiciable, that is, they are legally enforceable by the courts in case of their violation.	2. These are non-justiciable, that is, they are not legally enforceable by the courts for their violation.
3. They aim at establishing political democracy in the country.	3. They aim at establishing social and economic democracy in the country.
4. These have legal sanctions.	4. These have moral and political sanctions.
5. They promote the welfare of the individual. Hence, they are personal and individualistic.	5. They promote the welfare of the community. Hence, they are societal and socialistic.
6. They do not require any legislation for their implementation. They are automatically enforced.	6. They require legislation for their implementation. They are not automatically enforced.

**SOCIAL REVOLUTION THROUGH DPSP**

**Directive Principles of State Policy act as a decisive politico-constitutional tool for bringing about social revolution.**

**How it plays a role in bringing social revolution to create welfare state:**

The content can be segregated into Gandhian, Liberal and Social principles and then respective articles can be mentioned under the headings. Important articles are mentioned below, use them accordingly.

- **Article 38:** Eliminate inequalities by securing and promoting social order in economic, social, political spheres of life.
- **Article 39:** gender equality in pay, opportunity and livelihood, elimination in the concentration of wealth etc.
- **Article 39A:** Access to the judiciary in form of free legal aid for needy.
- **Article 40:** Village panchayat to empower people and give direct power into their hands.
- **Article 42:** Women empowerment.
- **Article 44:** Implementing uniform civil code where all are treating equally irrespective of religion, culture or gender.
- **Article 45:** Compulsory education to achieve 100% literacy and provide a strong foundation to future of nations.
- **Article 46:** Provide an opportunity to those people who have been at disadvantage due to historical reasons like SC, ST's and other weaker sections.
- **Article 48A:** Protection of the environment which has cultural, social and economic importance to humans.

**Liberal-Democratic Principles enshrined in the Directive Principles of State Policy: Why are they important for a constitutional design?**

**Liberal-democratic principles enshrined in DPSPs are:**

- **Article 44:** To secure for all citizens a uniform civil code throughout the country.
- **Article 45:** To provide early childhood care and education for all children until they complete the age of six years.
- **Article 48:** To organise agriculture and animal husbandry on modern and scientific lines.
- **Article 48-A:** To protect and improve the environment and to safeguard forests and wild life.
- **Article 49:** To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance.
- **Article 50:** To separate the judiciary from the executive in the public services of the State.
- **Article 51:** To promote international peace and security.

**Why are they important for a constitutional design:**

- **To establish a socio-political system:** The aim of these principles is to establish a liberal socio-political system in India and to make the state an instrument of socio-economic welfare.
- **National integration:** A common civil code will help the cause of national integration by removing contradictions based on ideologies.
- **To promote education to children:** Janani Shishu Suraksha Yojana (2005), Pade Bharat Bade Bharat, Anganwadi schools, Article 21-A, Right to Education Act 2009, etc., are some of the schemes and policies introduced by the government to promote

early childhood care and education to the children.

- **To modernise agriculture:** Agriculture has been modernised by providing improved agriculture inputs, seeds, fertilisers and irrigation facilities. Various steps have been taken to organise animal husbandry on modern and scientific lines. Cow and calf slaughter have been banned in certain areas.
- **To protect the environment:** Action has been taken by the Government of India in this regard by implementing some of the acts such as Wild life (Protection) Act (1972), Forest Conservation Act (1980). Further the Water and Air Acts have been provided for the establishment of central and state pollution control boards, which are engaged in the protection and improvement of environment.
- **To promote and protect our national heritage:** Incredible India programme has been launched for this purpose. The Ancient Monument and Archaeological Sites and Remains Act have been enacted to protect the monuments and places of national importance.
- **Promotion of international peace:** India follows this principle in letter and spirit and has been following the principles of Non-Alignment and Panchsheel to promote international peace and security. It is a member of SAARC, BIMSTEC, IORA, SCO, etc., for these purposes. Furthermore, the Indian Army has participated in 37 UN peace-keeping operations.

#### Relevance of Gandhian Principles for a Free-Market Democracy:

- Mahatma Gandhi was an egalitarian and a socialist whose ideas on socialism were an

improvement on present-day notions of socialism and communism.

- His idea was that, power is to be as decentralized as possible. Gandhi had a different take on diffusing powers to the grass-root level. Later it culminated into 73rd and 74th constitutional amendment as directed under Article 40. And 97th Amendment Act for cooperative societies as per Article 43B. The powers were decentralized and the responsibility of every individual was to be performed effectively.
- Globalization has turned the world into a global village while Gandhiji wanted to promote a Globe of Villages. He said that developing a village is to make it self-sufficient and capable enough to develop itself against the world. The village industries are still abiding by the Gandhian Model of development. As directed under Article 43.
- Globalization and consumerism have in fact made people's lives tougher. The gulf between the rich and poor is widening day by day. Gandhian principle of self-sustenance and serving others is a significant requirement in present times as ever. But some people repudiate the Gandhian idea of self-reliance. They are of the view that this principle has become obsolete in contemporary times, as it seems like a form of a protectionist barrier. But his values of self-empowerment and self-control are crucial in current times because people seem to have succumbed under the worldly temptations.
- Social justice is also one of the basic principles of Gandhianism. He was of the view that absolute equality is impossible but we can try to bridge the gap between the rich and poor. Starting from universal healthcare under Ayushman Bharat,

Reservation programmes for SC, ST and other weaker section of society as directed under Article 46, scheme like Sarva Shiksha Abhiyan to Obamacare policy in the United States of America, the contemporary world has adopted the concept of social justice as a guiding principle in recent times.

- His principle of Swadeshi is quintessential in times of globalization. Globalization results in local producers being harmed. Gandhi always said to wear Khadi and use products which are made in India, but in present times this is not the case. Government and even the citizens need to work and encourage the producers to use local resources and make local products. The central government's initiative of Make in India and Atmanirbhar Bharat is one step ahead to achieving self-sufficiency.
- The main tenet that he propagated was Satya. As opposed to this, in contemporary times, people are not truthful and they are not presented with the existing reality of the system. Here, technology plays its part. Technology can help bring the reality and truth out of the systems. It can curb our main evil, corruption. Information and Communications Technology plays a significant role in this.
- All the climate deals, environment conservation treaties and Sustainable Development Goals follow the Gandhian principle of self-sustenance directed in DPSP. The Gandhian idea of trusteeship is one of the most significant principles in these dire times. We need to realize that we don't own the universe and how our behavior disrupts nature and how sustainable living is the need of the hour.

**The Supreme Court has played an important role in reinventing the Directive Principles of State Policy.**

**The SC through its various judgements spread across years have helped in realizing these directives:**

- In **Hindustan Machine Tools Case**: SC said that the casual workers who were rendering services similar to regular employees of government company for a decade on daily wages should be absorbed –Advocating Art 38,39e,43
- In **MC Mehta Vs Tamil Nadu**: The SC issued directions to state to see that an adult member of family whose child is in employment in a factory, mine or hazardous employment gets employment –Thereby advocating for realization of article 39e,39f,41 and 47
- In **Unni Krishnan vs State of Andhra Pradesh**: The SC held that right of education is implied by Art 21 when read in conjunction with Art 41 –There by paving path to Article 21A
- **State of Gujarat vs. Mirzapur Moti**: Ban on slaughter of cow was not illegal as the cow progeny was needed in interest of national economy –Art48
- **Centre for Environment law, WWF India vs Union of India**- SC emphasized State as a custodian of natural resources has duty to maintain them not merely for public interest but for interest of flora and fauna –Emphasis on Art 48 A
- **Taj Trapezium Case**: SC emphasized on protecting Taj Mahal from pollution and emphasized on its protection –This is in accordance of article 49
- **Supreme Court Advocates on record**: SC emphasized on the opinion of CJI having a Primacy-Stressing on importance of Article 50.

- Thus, Supreme court has played a very important role in reinventing DPSP and working for the benefit of common man.

### How have the Directive Principles been translated into policy-making?

On November 19, 1948, Dr. Ambedkar, speaking in the Constituent Assembly debate during the drafting of the Constitution, said about the Directive Principles of State Policy (DPSPs) contained in Part IV of the Constitution: *“It is the intention of this Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country.”*

Multiple Supreme Court judgements have given importance to DPSPs in the past, arguing that they give meaning to Fundamental Rights and the two should be harmonised and balanced if they were to maintain social order and empower people.

M.C Chagla, former Chief Justice of India during the early years of Independence, had said that *“if all these principles are fully carried out, our country would indeed be a heaven on earth.”*

#### Article 38

- The first Principle directs the state to promote the welfare of people by creating a social order where there is social, political, and economic justice. It says that the state shall strive to minimise income inequalities and those in status and opportunities among people and regions.
- The debate over **welfare schemes versus “freebies”** is not a new one and has raged for decades. Multiple governments have enacted welfare schemes such as Mahatma Gandhi National Rural

Employment Guarantee Act (MGNREGA), the national public distribution scheme, the Mid-day Meal Scheme, the Food Security Act, and farm and gas subsidies.

- MGNREGA, for example, started by the UPA government in 2006, guarantees 100 days of employment a year in unskilled work to at least one member of every rural household. Parliament was recently informed that the demand for jobs under MGNREGA had increased from 1.64 core in 2015 to 3.07 crore in 2022. However, more than ₹4 crore was pending from the Centre’s side in wages to the States under the scheme.
- The chairperson of the 15th Fifteenth Finance Commission, NK Singh, recently said that ‘cheap’ freebies are expensive for the economy, quality of life, and social cohesion over the long run.
- Chief Justice of India NV Ramana said, that there has to be a final discipline to freebies and they cannot be called welfare schemes.
- As for achieving income equality, the World Inequality Report revealed that India is now among the most unequal countries in the world. As per the report, 57 per cent of national income was accumulated in the hands of the affluent top 10 per cent of the population.
- The report stated that while “socialist-inspired Five Year plans contributed” to reducing the share of the top 10 per cent who had 50 per cent of the income under colonial rule, to 35-40 per cent in the early decades of Independence, since the mid-1980s deregulation and liberalisation policies, “one of the most extreme increases in income and wealth inequality” has been observed.

#### Article 44

- This principle pertains to securing a Uniform Civil Code or a uniform law for all religious communities in personal matters of divorce, marriage, succession and so on.
- However, the stand taken by Dr Ambedkar in the Constituent Assembly debates has survived the years and India still does not have a UCC, he believed that a UCC was desirable but should, for the moment, remain voluntary.
- Currently, each religion has a separate set of personal laws and the codification of personal laws has historically generated protests.
- In the Shah Bano case of 1985, the Supreme Court lamented that Article 44 remained a “dead letter”.
- The Court ruled that section 125 of the Code of Criminal Procedure, relating to maintenance applied to all, regardless of religion. But the Rajiv Gandhi government introduced a new law for Muslim women—the Muslim Women (Protection on Divorce Act), 1986—which nullified this judgement. Only one State- Goa, currently has a UCC.
- Then in 2009, the Right of Education (RTE) Act was passed.
- Yet, more than a decade later, there is significant debate about the parameters through which that promise is supposed to be realised.
- Education Minister Dharmendra Pradhan said that while 35 crore children were getting educated in schools, there was a whopping 15 crore out-of-school children in the country. The Act’s mandatory provision requires government/aided/private schools to reserve 25 per cent of their seats for children between six to 14 for free education. This has created a problem, with several children being denied education.
- The next to be the Chief Justice of India U.U. Lalit expressed last year that India had not achieved the goal of inclusive education, which is also envisioned in the DPSPs.
- Besides regular school closures posing a hurdle to RTE even before the pandemic, UNESCO estimated that 1.3 billion children and young people — that is, 70 per cent of the world’s student population— were affected by COVID-related closures of educational institutions.

#### Article 45

- This article says that the State should endeavour to provide free and compulsory education, within 10 years of the Constitution’s commencement, for all children until they complete 14 years of age.
- However, education was made a right well past 10 years of the Constitution’s coming into force.
- In 2002, with the 86th Amendment of the Constitution, Article 21A was added, making free and compulsory education for children aged six to 14 years a Fundamental Right.

#### Article 39A

- The Constitution (42nd Amendment) Act, 1976, inserted Article 39A to provide “equal justice and free legal aid”.
- To this end, the Legal Services Authorities Act, 1987, was enacted by Parliament and it came into force in 1995 “to provide free and competent legal services to weaker sections of the society” and to “organise Lok Adalats (literally, ‘People’s Court’) to secure justice on the basis of equal opportunity”.
- National Lok Adalats (NLA) are an alternate dispute resolution mechanism, regularly

organised to help parties reach a compromise. NLAs deal with motor-accident claims, disputes related to public-utility services, dishonour of cheques, and land, labour and matrimonial disputes (except divorce).

- 2021 data from the National Legal Services Authority (NALSA) shows that Lok Adalats organised across the country from 2016 to 2020 disposed of 52,46,415 cases, demonstrating speed and efficiency. NLAs also settle a huge number of cases across the country in a single day.
- With formal Indian judiciary experiencing a well-recorded pendency, litigants approach Lok Adalats, as a party-driven alternative. However, experts have long been concerned about the quality of justice in Lok Adalats.
- The Supreme Court, in *State of Punjab vs Jalous Singh* (2008), held that a Lok Adalat is purely conciliatory and it has no adjudicatory or judicial function.
- As compromise is its central idea, there is a valid concern that in the endeavour for speedy disposal of cases, it undermines the idea of justice.

### Article 43

- It calls for providing a living wage, suitable working conditions, and a decent standard of living for all workers- industrial, agricultural or otherwise.
- Dr. Ambedkar, a long-time advocate for labour rights, inculcated in the DPSPs the idea of “real economic freedom”, meaning workers are not forced to take up any job paying less than minimum wage owing to economic compulsions.
- Labour laws, according to experts, are meant to mitigate the imbalance of power, which has only risen with the advent of the

platform or gig economy, and the rise of casualisation and precarious employment.

- Indian labour laws have been criticised for setting up a labour bureaucracy prone to corruption, for workers losing jobs under the cover of liberalisation and globalisation, and for inefficient adjudicatory mechanisms.
- This was seen during the pandemic when multiple states granted sweeping exemptions from legal provisions aimed at protecting labourers and employees for achieving economic revival.
- Further, India is among the countries with the lowest participation of women in the national labour workforce.

**Note-** *The CJI observed that political parties and individuals cannot be prevented from making poll promises aimed at fulfilling the constitutional mandate and the term “freebie” should not be confused with genuine welfare measures.*

### What is a Uniform Civil Code?

A **Uniform Civil Code (UCC)** aims to replace **personal laws based on religion** with a **common set of civil laws** applicable to all citizens of India, in matters such as **marriage, divorce, inheritance, adoption**, and maintenance. It seeks to promote **equality and secularism** by ensuring that **all citizens are treated the same under one civil law**, irrespective of their religion, region, or customs.

### Constitutional Basis

- **Article 44** of the Constitution, under the **Directive Principles of State Policy (Part IV)**, states: *“The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.”*

- While this is a **directive principle** and not enforceable in a court of law, it is **fundamental in the governance of the country**.
- Unlike other directive principles that use stronger language (e.g., “shall direct its policy,” “shall be the obligation”), **Article 44 only says "shall endeavour"**, reflecting a **weaker constitutional push**.

### Recent Development: Uttarakhand's UCC Law

In **2024**, **Uttarakhand** became the **first state** to pass a **Uniform Civil Code**, covering civil issues like marriage, divorce, succession, live-in relationships, and inheritance. This development has renewed national debate, making UCC a **live constitutional issue** rather than a theoretical one.

This state-level move is significant because **"personal laws" are on the Concurrent List**, meaning **both Centre and States can legislate**. However, it also raises questions about **uniformity** across India, since other states may adopt different versions or resist it altogether.

### Why UCC Is Complex and Contested

1. **Religious and Cultural Diversity:** India is home to **numerous religions, sects, tribes, and customs**. Even within one religion, different communities follow different personal laws.
  - For example, **Muslim marriage registration laws differ** across states like **J&K, West Bengal, Bihar, Assam, and Odisha**.
  - **Over 200 tribes in the Northeast** follow their **own customary laws**, which are protected by the Constitution (e.g., **Nagaland, Mizoram, Meghalaya**).
  - Even **Hindus are not governed by a single law** across the country;

**Portuguese and French civil codes** still apply in **Goa and Puducherry**.

### 2. Conflict with Religious Freedom?

- **Article 25** protects the **individual's right to religion**, subject to public order, morality, and health.
- **Article 26(b)** allows religious groups to **manage their own religious affairs**.
- **Article 29** safeguards **cultural rights** of minorities.

This raises a critical constitutional question: **Can a uniform law override religious or cultural practices**, or does that infringe on **religious freedom**?

### 3. Constituent Assembly Debate:

The idea of putting UCC in the **Fundamental Rights chapter** was rejected by the **Sardar Patel-led committee**, by a narrow **5:4 vote**, arguing that it **infringed on religious freedom**. Hence, UCC was placed in **Part IV**, reducing its legal enforceability.

### Law Commission's Stand

In **2018**, and again in **2023**, the **Law Commission of India** stated that a **Uniform Civil Code is "neither necessary nor desirable"** in the current context. Instead, it recommended **piecemeal reforms** in personal laws to **promote equality** while respecting diversity.

### Critical Thinking for Students

- Should **equality before law (Article 14)** be prioritized over **religious freedom (Article 25 & 26)**?
- Can **customs** that are discriminatory or outdated be allowed to persist under the guise of tradition?

- Is it more democratic to allow **diverse personal laws**, or to have **one uniform law** for all?
- Does a **state-level UCC** like Uttarakhand's truly reflect **uniformity**, or does it risk **regional inconsistency**?
- Can we move toward a **common civil law** through **consensus and reform**, rather than **imposition**?

The **Uniform Civil Code** is not just a legal reform but a **deeply social and political issue**, balancing **equality, secularism, and diversity**. While its **constitutional intent** is clear, its **implementation remains complex** in a pluralistic society like India. As debates continue, the path forward may lie in **dialogue, gradual reform, and sensitive lawmaking** that unites rather than divides.

### Supreme Court's Verdict on Private Property and Article 39(b): Balancing Social Justice and Individual Rights

In a landmark 2024 judgment (*Property Owners Association v. State of Maharashtra*), the Supreme Court clarified the scope of **Article 39(b)**, which allows the State to ensure that **material resources of the community are distributed for the common good**. The case challenged whether **privately owned property** could be treated as such a resource. The Court ruled that not all private property qualifies—only those resources that are **essential for public welfare** and serve a **significant community interest** can be included.

The Court laid down specific criteria for classifying private property as community resources: the **acquisition must serve a clear public benefit**, address a **widespread need**, involve **essential or scarce resources**, and have a **positive socio-economic impact**. While recognizing the State's role in ensuring social justice, the Court emphasized that individual property rights under

**Article 300A** must be respected, and any deprivation must follow **due process**.

This decision is significant because it balances the **Directive Principles' goal of social justice** with the **constitutional protection of property rights**. It limits the State's power to arbitrarily acquire private property under the guise of public good and offers clear legal guidance for future policymaking and land reforms aligned with both **constitutional values and individual freedoms**.

## Practice Questions

### Conceptual Questions:

1. What is the main objective of the Directive Principles of State Policy in the Indian Constitution?
2. How do Directive Principles differ from Fundamental Rights in terms of enforceability?
3. Why are DPSPs considered essential for establishing a welfare state?
4. How do the Gandhian Principles under DPSPs aim to achieve rural development?
5. In what way do Socialist Principles in DPSPs help reduce inequality in India?
6. What is the significance of including Liberal Intellectual Principles in the DPSP?
7. How do DPSPs influence government policy despite being non-justiciable?
8. Explain the role of DPSPs in maintaining a balance between individual rights and social welfare.
9. Why have DPSPs been criticized as mere moral guidelines?
10. How has the Supreme Court influenced the interpretation and implementation of DPSPs?

### One Liner Revision Questions:

1. From which country's constitution were the Directive Principles borrowed?
2. Under which part of the Indian Constitution are DPSPs enumerated?
3. Which article of the DPSP directs the state to secure a Uniform Civil Code?
4. What significant change did the 86th Constitutional Amendment Act bring to DPSPs?
5. Which article was added by the 42nd Amendment to promote participation of workers in industry management?
6. Which article mandates the State to improve public health and prohibit intoxicating drinks?
7. Which DPSP article emphasizes free legal aid and equal justice?
8. By which amendment was Article 43B added, promoting cooperative societies?
9. What was the judicial ruling in the landmark Kesavananda Bharati case concerning DPSP?
10. Which DPSP article directs the separation of the judiciary from the executive?

## Prelims PYQ

1. Consider the following provisions under the Directive Principles of State Policy as enshrined in the Constitution of India: (2012)

1. Securing for citizens of India a uniform civil code.
2. Organizing village Panchayats.

3. Promoting cottage industries in rural areas.
4. Securing for all the workers reasonable leisure and cultural opportunities.

Which of the above are the Gandhian Principles that are reflected in the Directive Principles of State Policy?

- 1, 2 and 4 only
- 2 and 3 only
- 1, 3 and 4 only
- 1, 2, 3 and 4

2. Which of the following provisions of the Constitution of India have a bearing on Education? (2012)

- Directive Principles of State Policy
- Rural and Urban Local Bodies
- Fifth Schedule
- Sixth Schedule
- Seventh Schedule

Select the correct answer using the codes given below:

- 1 and 2 only
- 3, 4 and 5 only
- 1, 2 and 5 only
- 1, 2, 3, 4 and 5

3. According to the Constitution of India, which of the following are fundamental for the governance of the country? (2013)

- Fundamental Rights
- Fundamental Duties
- Directive Principles of State Policy
- Fundamental Rights and Fundamental Duties

4. In the Constitution of India, promotion of international peace and security is included in the: (2014)

- Preamble to the Constitution
- Directive Principles of State Policy
- Fundamental Duties
- Ninth Schedule

5. Consider the following statements regarding the Directive Principles of State Policy: (2015)

- The principles spell out the socio-economic democracy in the country.

- The provisions contained in these Principles are not enforceable by any court.

Which of the statements given above is/are correct?

- 1 only
- 2 only
- Both 1 and 2
- Neither 1 nor 2

6. The ideal of 'Welfare State' in the Indian Constitution is enshrined in its: (2015)

- Preamble
- Directive Principles of State Policy
- Fundamental Rights
- Seventh Schedule

7. Which principle among the following was added to the Directive Principles of State Policy by the 42<sup>nd</sup> Amendment to the Constitution? (2017)

- Equal pay for equal work for both men and women
- Participation of workers in the management of industries
- Right to work, education and public assistance
- Securing living wage and human conditions of work to workers

8. Consider the following statements: With reference to the Constitution of India, the Directive Principles of State Policy constitute limitations upon: (2017)

- legislative function
- executive function

Which of the above statements is/are correct?

- 1 only
- 2 only
- Both 1 and 2
- Neither 1 nor 2

9. Which part of the Constitution of India declares the ideal of a Welfare State? (2020)

- Directive Principles of State Policy
- Fundamental Rights
- Preamble
- Seventh Schedule

**10.** With reference to the provisions contained in Part IV of the Constitution of India, which of the following statements is/are correct? (2020)

1. They shall be enforceable by courts.
2. They shall not be enforceable by any court.
3. The principles laid down in this part are to influence the making of laws by the State.

Select the correct answer using the code given below:

- a) 1 only
- b) 2 only
- c) 1 and 3 only
- d) 2 and 3 only

**11.** In India, separation of judiciary from the executive is enjoined by: (2020)

- a) the Preamble of the Constitution
- b) a Directive Principle of State Policy
- c) the Seventh Schedule
- d) the conventional practice

**12.** In India, Legal Services Authorities provide free legal services to which of the following types of citizens? (2020)

1. Person with an annual income of less than Rs. 1,00,000
2. Transgender with an annual income of less than Rs. 2,00,000
3. Member of Other Backward Classes (OBC) with an annual income of less than Rs. 3,00,000
4. All Senior Citizens

Select the correct answer using the code given below:

- a) 1 and 2 only
- b) 3 and 4 only
- c) 2 and 3 only
- d) 1 and 4 only

**13.** Under the Indian Constitution, concentration of wealth violates: (2021)

- a) the Right to Equality
- b) the Directive Principles of State Policy
- c) the Right to Freedom
- d) the Concept of Welfare

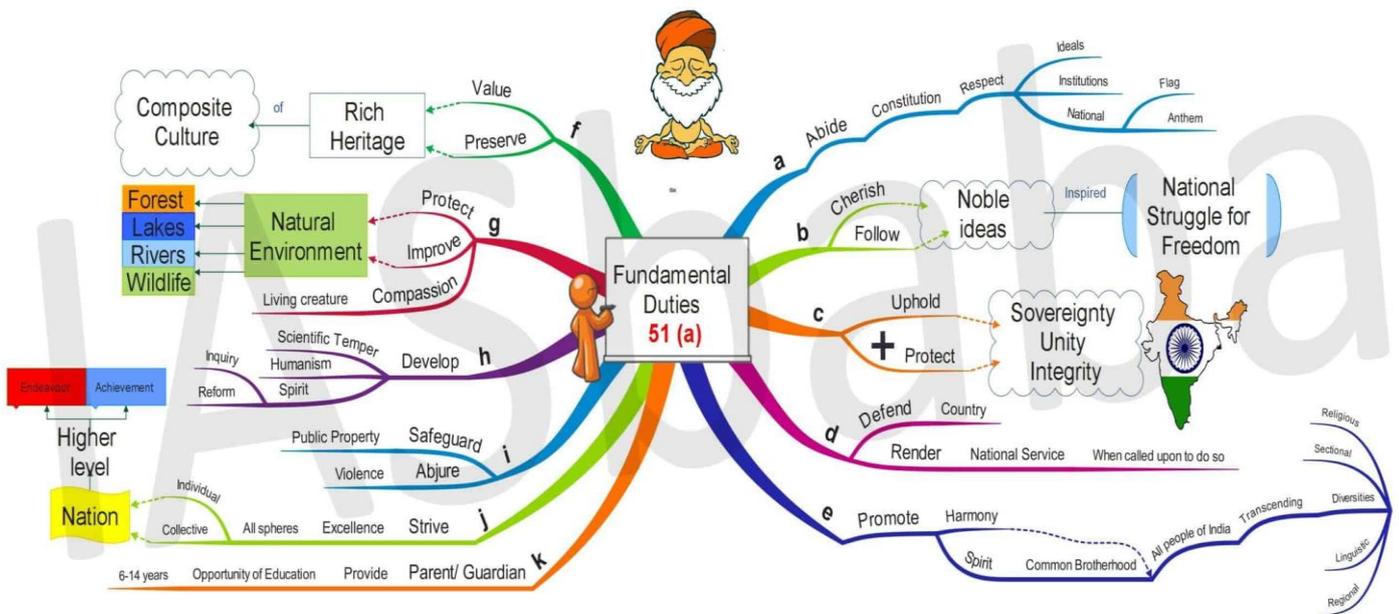
Question No.	Correct Option
1	(b)
2	(c)
3	(c)
4	(b)
5	(c)
6	(b)
7	(b)
8	(d)
9	(a)
10	(d)
11	(b)
12	(a)
13	(b)

### Mains Pyq

1. What is the constitutional position of Directive Principles of State Policy? How has it been interpreted by the judiciary after the Emergency in 1975-77? (2001) (30 Marks, 250 words)
2. Discuss the constitutional provisions relating to the non-justiciable directives binding upon the states. (2002) (15 Marks, 150 words)
3. Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy. (2015) (12 Marks)

4. Examine the scope of Fundamental Rights in light of the latest judgement of the Supreme Court on the Right to Privacy. (2017) (15 Marks, 250 words)
5. Discuss the significance of the Directive Principles of State Policy in achieving the goals of social justice. (2024) (250 words)

## Fundamental Duties



<https://iasbaba.com/2020/06/mind-maps-directive-principles-of-state-policy-dpsp-fundamental-duties-general-studies-2/>

India is among the rare nations in the world with a **timeless legacy of democracy**, deeply rooted in its ancient civilizational ethos.

From the earliest Vedic times, the **concept of duty has been revered** as sacred. Duties were not merely obligations—they were acts of **spiritual devotion**.

The **Rig Veda** exhorts, “O, citizens of Bharat! As our ancient saints and seers, leaders and preceptors have performed their duties righteously, similarly, you shall not falter to execute your duties.” (Rig.10.191.2). Performing one’s duty with sincerity was not just civic responsibility—it was considered a **form of worship**.

Our scriptures and epics have long guided us on the path of **selfless duty**. The **Bhagavad Gita**, the spiritual bedrock of Indian philosophy, proclaims

through Lord Krishna: “*One should do one’s duties without expectation of any fruits.*” Similarly, the **Ramayana** upholds the ideal of unwavering devotion to dharma. This cultural heritage shaped the minds of our greatest leaders.

**Mahatma Gandhi** once said, “*I learnt my duties on my mother’s lap. She was an unlettered village woman... She knew my dharma... If from my childhood we learn what our dharma is and try to follow it, our rights look after themselves.*” He firmly believed that “**the very performance of a duty secures us our right. Rights cannot be divorced from duties.**” The philosophy of **satyagraha** was born out of this very conviction.

Echoing this sentiment, **Swami Vivekananda** powerfully asserted that, “*It is the duty of every person to contribute in the development and progress of India.*”

A defining strength of our **Constitution** is its **delicate yet powerful balance** between **Fundamental Rights and Fundamental Duties**. These are not abstract ideas, but **living values** drawn from India's traditions, culture, and moral fabric.

The **Fundamental Duties** enshrined in **Article 51A** are not imposed obligations; they are a **codification of the Indian way of life**—emphasizing **tolerance, peace, unity, and harmony**. They remind us that nation-building begins with individual responsibility. Even the **Fundamental Rights** acknowledge the importance of duty.

For instance, while **Article 19** guarantees freedom of speech, Clauses 2 to 6 impose **reasonable restrictions** to safeguard the **sovereignty, integrity, and morality** of the nation. This inherent limitation conveys a profound truth: **our rights flourish only when grounded in our duties**.

In essence, the Indian Constitution does not separate the individual from the collective. It empowers us with rights, yes—but it equally **inspires us to rise to our responsibilities**. In a world increasingly focused on entitlement, India's constitutional philosophy gently reminds its citizens: **it is through duty that we secure our destiny**.

### Fundamental Duties

- The **original Constitution** of India included only **Fundamental Rights (FRs)** and did **not contain Fundamental Duties (FDs)**.
- **Ten Fundamental Duties** were added later by the **42nd Constitutional Amendment Act, 1976**.
- In **2002**, the **86th Constitutional Amendment** added **one more duty**, raising the total to **eleven**.

- The concept of Fundamental Duties was **inspired by the Constitution of the erstwhile USSR**, where rights and duties were treated with **equal importance**.
- Among democratic nations, **only the Japanese Constitution** contains an explicit **list of duties** for citizens.
- **Most major democracies**, such as the USA, UK, or Canada, do **not have a codified list of Fundamental Duties** in their constitutions.
- **Socialist countries**, however, have historically given **equal constitutional significance** to both **Fundamental Rights and Fundamental Duties**, promoting a model of **balanced civic responsibility**.

*Mahatma Gandhi in Hind Swaraj observed that "Real rights are a result of the performance of duty".*

### Swaran Singh Committee Recommendations

- In **1976**, during the **Internal Emergency (1975–1977)**, the **Congress government** set up the **Sardar Swaran Singh Committee** to examine the need for including **Fundamental Duties (FDs)** in the Constitution.
- The committee strongly felt that while citizens enjoy Fundamental Rights, they must also be reminded of their **civic responsibilities**.
- It recommended the **inclusion of Fundamental Duties** in the Constitution to foster a sense of **discipline and commitment to national values**.
- The **Congress government** accepted the recommendations and passed the **42nd Constitutional Amendment Act, 1976**, which formally added the **Fundamental**

**Duties** to the Constitution under **Article 51A**.

- Interestingly, while the **Swaran Singh Committee recommended 8 Fundamental Duties**, the **42nd Amendment incorporated 10 Duties** into the Constitution.

**Recommendations of Committee which were not included –**

- Parliament may provide for the imposition of penalty/punishment for any non-compliance with or refusal to observe any duties.
- No law imposing such penalty/punishment shall be called in question in any court on the grounds of infringement of any FRs or repugnancy to any other provision of the Constitution.
- The duty to pay taxes should also be a Fundamental Duty

#### 42nd Constitutional Amendment Act, 1976

- The **42nd Constitutional Amendment Act, 1976** introduced a **new Part IV-A** to the Constitution of India.
- This new part deals exclusively with **Fundamental Duties** of citizens.
- **Part IV-A** consists of a **single Article – Article 51A**.
- **Article 51A** originally **enumerated 10 Fundamental Duties** for the citizens of India.

#### 86th Constitutional Amendment Act, 2002

- The **86th Constitutional Amendment Act, 2002** added **one more Fundamental Duty** under **Article 51A (k)**.
- It states that **"every parent or guardian shall provide opportunities for education**

**to their child or ward between the age of 6 to 14 years."**

- This amendment complements **Article 21A**, which makes **free and compulsory education** for children in the **6–14 years age group** a **Fundamental Right**.

#### Fundamental Duties

- To abide by the Constitution and respect its ideals and institutions, National Flag and National Anthem.
- To cherish and follow the noble ideals that inspired the national struggle for freedom.
- To uphold and protect the sovereignty, unity and integrity of India.
- To defend the country and render national service when called upon to do so.
- To promote harmony and the spirit of brotherhood among all the ppl of India, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women.
- To value and preserve the rich heritage of the country's composite culture.
- To protect and improve the natural environment (forests, lakes, rivers and wildlife) and to have compassion for living creatures.
- To develop scientific temper, humanism and the spirit of inquiry and reform.
- To safeguard public property and to adjure violence.
- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher level of endeavor and achievement.
- To provide opportunities for education to his child or ward between the age of 6 – 14yrs → added in 86th Constitutional Amendment Act, 2002.

### Features of Fundamental Duties

- Some **Fundamental Duties** are **moral in nature**, such as **cherishing the noble ideals of the freedom struggle**.
- Others are **civic duties**, like **respecting the Constitution, the National Flag, and the National Anthem**.
- These duties reflect **values deeply rooted in Indian tradition**, mythology, religion, and cultural practices.
- They represent a **codification of responsibilities** that are considered **integral to the Indian way of life**.
- **Fundamental Duties apply only to Indian citizens** and **do not extend to foreigners**, unlike **Fundamental Rights**, which are available to **both citizens and non-citizens** (with some exceptions).
- Similar to **Directive Principles of State Policy (DPSPs)**, Fundamental Duties are **non-justiciable**, meaning they **cannot be directly enforced by courts**.
- However, **Parliament is empowered to make laws for the implementation and enforcement** of these duties, even though the Constitution itself **does not provide any legal sanction** for their violation.

### Criticism of FD

- The **list of Fundamental Duties is not exhaustive**; it omits several **crucial civic responsibilities** such as **casting votes, paying taxes, practicing family planning**, and more.
- Some duties are **vague, broad, or abstract**, making them **difficult to interpret or implement** (e.g., phrases like *"noble ideals"* or *"scientific temper"* lack precise legal meaning).
- Critics argue that Fundamental Duties are merely a **"code of moral precepts"** due to their

**non-justiciable** nature and **lack of enforceability**.

- Their inclusion in the Constitution is seen as **superfluous** by some, as it is believed that **responsible citizens would perform such duties naturally**, even without constitutional mention.
- Placing the Fundamental Duties in **Part IV-A**, as an **appendage to the Directive Principles**, has been criticized for **diminishing their importance**; many believe they should have been placed **immediately after Part III (Fundamental Rights)** to reflect **equal constitutional significance**.

### Significance of FD

- Fundamental Duties **remind citizens** that while they enjoy their **Fundamental Rights**, they must also be **conscious of their responsibilities** towards the **nation, society, and fellow citizens**.
- They act as a **deterrent against anti-national and anti-social acts**, such as **damaging public property** or **dishonoring national symbols**.
- FDs **promote discipline, civic responsibility, and national commitment**, inspiring citizens to be **active participants** in the **nation-building process**, not just passive beneficiaries.
- They **assist courts in interpreting laws and determining the constitutional validity** of legislation, especially when the law seeks to give effect to any duty.
- Though **non-justiciable**, **FDs are enforceable through legislation**—Parliament can enact laws to **impose penalties or punishments** for failure to fulfill specific duties (e.g., Prevention of Insults to National Honour Act).

- The inclusion of FDs plays a vital role in **strengthening Indian democracy** by fostering a **sense of responsibility and collective consciousness** among citizens.

### **Verma Committee Observations (1999) on Legal Provisions Supporting Fundamental Duties**

The Justice J.S. Verma Committee (1999) observed that although Fundamental Duties are non-justiciable, there are existing legal provisions in various laws that indirectly enforce many of these duties. These laws reflect the spirit of the duties enshrined in Article 51A of the Constitution.

- The Prevention of Insults to National Honour Act, 1971 Prohibits disrespect to the Constitution, National Flag, and National Anthem, supporting the duty to respect national symbols.
- Various Provisions under Criminal Laws Punish acts that promote enmity or hatred between different communities, aligning with the duty to promote harmony and brotherhood.
- The Protection of Civil Rights Act, 1955 and The Untouchability (Offences) Act, 1976 Punish offences based on caste or religion, reinforcing the duty to renounce practices derogatory to human dignity and promote equality.
- Indian Penal Code (IPC) Declares as punishable the acts and statements prejudicial to national integration, thereby supporting the duty to uphold unity and integrity of the nation.
- The Unlawful Activities (Prevention) Act, 1967 Enables the government to ban communal or extremist organizations, in line with the duty to safeguard public order and national unity.
- The Representation of the People Act, 1951 Provides for disqualification of MPs/MLAs who engage in corrupt practices, or promote enmity based on religion or caste, reflecting

the duty of citizens and representatives to uphold democratic values.

- The Wildlife (Protection) Act, 1972 Prohibits hunting and trade in endangered species, upholding the duty to protect the environment and wildlife.
- The Forest (Conservation) Act, 1980 Prevents indiscriminate deforestation and misuse of forest land, supporting the duty to preserve the natural environment.

### **Fundamental Duties and Fundamental Rights**

As provided in Article 32 of the Constitution (which itself is a fundamental right) fundamental rights are enforceable through Supreme Court. High Court also under Article 226 can issue Writs etc. for enforcement of fundamental rights.

**However, Fundamental Duties are not enforceable through courts.**

The Courts while interpreting Fundamental Rights or any restrictions imposed on such rights may take into account the Fundamental Duties and also the Directive Principles of the State policy enshrined in Part IV of the Constitution.

**In State of Gujarat v. Mirzapur (2005)** while considering provisions of Articles 48, 48-A and also Article 51-A(g), the Supreme Court held:

*“It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the directive principles of State policy and fundamental duties as enshrined in Article 51-A of the Constitution play a significant role.”*

**In Ramlila Maidan Incident, (2012) it was held:**

*“There has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty, on the other. It will create*

*an imbalance, if undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is duty. When the courts are called upon to examine the reasonableness of a legislative restriction on exercise of a freedom, the fundamental duties enunciated under Article 51-A are of relevant consideration. Article 51-A requires an individual to abide by the law, to safeguard public property and to abjure violence. It also requires the individual to uphold and protect the sovereignty, unity and integrity of the country. All these duties are not insignificant.”*

Fundamental Rights guaranteed under Part III of the Constitution are important natural rights necessary for development of human beings. They are enforceable through court of law. No law can be made which takes away or abridges any fundamental rights. On the other hand, Fundamental Duties though not enforceable, **but always taken into account while interpreting any fundamental rights.**

**Q. In the context of India, which one of the following is the correct relationship between Rights and Duties?**

- a) *Rights are correlative with Duties.*
- b) *Rights are personal and hence independent of society and Duties.*
- c) *Rights, not Duties, are important for the advancement of the personality of the citizen.*
- d) *Duties, not Rights, are important for the stability of the State.*

**Mains Practice Questions:**

- **The moral value of fundamental duties is not to smother rights but to establish a democratic balance by making the people conscious of their duties equally as they are conscious of their rights. Discuss.**

- **Essentially all that is contained in part IV-A of the Constitution is just a codification of tasks integral to the Indian way of life. Critically examine this statement.**

## Practice Questions

### Conceptual Questions:

1. How do Fundamental Duties balance individual rights with civic responsibilities in India?
2. Why did the framers of the Constitution not originally include Fundamental Duties?
3. The moral value of fundamental duties is not to smother rights but to establish a democratic balance by making the people conscious of their duties equally as they are conscious of their rights. Discuss.
4. Essentially all that is contained in part IV-A of the Constitution is just a codification of tasks integral to the Indian way of life. Critically examine this statement.
5. What is the philosophical significance of Fundamental Duties in the Indian Constitution?
6. How do Fundamental Duties contribute to national unity and social harmony?
7. Why are Fundamental Duties non-justiciable in nature?
8. How do Fundamental Duties guide the judiciary while interpreting Fundamental Rights?
9. What criticism do Fundamental Duties face regarding their enforceability?
10. "Fundamental duties are only ethical or moral duties and should not form a part of the Fundamental law." Critically comment.

### One Liner Revision Questions:

1. Which Constitutional Amendment introduced Fundamental Duties into the Indian Constitution?
2. Under which Article of the Constitution are Fundamental Duties enumerated?
3. How many Fundamental Duties are listed in the Indian Constitution as of today?
4. Which Committee recommended the introduction of Fundamental Duties in India?
5. Which Constitutional Amendment added the duty related to providing education to children aged 6-14 years?
6. Which country's Constitution inspired the inclusion of Fundamental Duties in India?
7. Are Fundamental Duties applicable to foreigners residing in India?
8. Which Act prohibits disrespect to the National Flag and Anthem, supporting Fundamental Duties?
9. What did the Justice J.S. Verma Committee (1999) say about the enforceability of Fundamental Duties?
10. Which fundamental duties are similar to some of the Directive Principles of State policy?

## Prelims PYQ

1. Under the Constitution of India, which one of the following is **not** a Fundamental Duty? (2011)

- (a) To vote in public elections
- (b) To develop the scientific temper
- (c) To safeguard public property
- (d) To abide by the Constitution and respect its ideals

2. Which of the following is/are among the Fundamental Duties of citizens laid down in the Indian Constitution? (2012)

- 1. To preserve the rich heritage of our composite culture.
- 2. To protect the weaker sections from social injustice.
- 3. To develop the scientific temper and spirit of inquiry.
- 4. To strive towards excellence in all spheres of individual and collective activity.

Select the correct answer using the codes given below:

- (a) 1 and 2 only
- (b) 2 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

3. "To uphold and protect the Sovereignty, Unity and Integrity of India" is a provision made in the: (2015)

(a) Preamble of the Constitution

Question No.	Correct Option
1	(b)
2	(d)
3	(b)
4	(d)
5	(d)

(b) Directive Principles of State Policy

- (c) Fundamental Rights
- (d) Fundamental Duties

4. Which of the following statements is/are true of the Fundamental Duties of an Indian citizen? (2017)

- 1. A legislative process has been provided to enforce these duties.
- 2. They are correlative to legal duties.

Select the correct answer using the code given below:

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

5. As per Article 368 of the Constitution of India, the Parliament may amend any provision of the Constitution by way of: (2024)

- 1. Addition
- 2. Variation
- 3. Repeal

Select the correct answer using the code given below:

- (a) 1 and 2 only
- (b) 2 and 3 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

## Mains PYQ

- 1. Identify the major Fundamental Duties. (2003) (15 Marks, 150 words)
- 2. Enumerate the Fundamental Duties incorporated in the Constitution after the 42nd Amendment. (2008) (15 Marks)
- 3. 'Essentially all that is contained in Part IV-A of the Constitution is just a codification of tasks integral to the Indian way of life.' Critically examine this statement. (2011) (20 Marks)

## Amendment of the Constitution

The **Constitution of India** is a **living document**, designed to adapt to the **evolving needs and aspirations** of its people. Recognizing that no Constitution can remain static in a dynamic society, the framers incorporated provisions for its **amendment**, allowing it to **adjust to changing socio-political and economic conditions**.

The power to amend the Constitution is dealt with under **Article 368 in Part XX**. It explicitly states that the **Parliament may amend the Constitution** by way of **addition, variation, or repeal** of any of its provisions, **in accordance with the procedure laid down**. This process ensures that constitutional changes are not made hastily, but through **deliberation and democratic approval**.

Importantly, the Indian Constitution is **neither too rigid nor too flexible**, but rather a **harmonious blend of both**. While some provisions can be amended by a **simple majority**, others require a **special majority** of Parliament and, in certain cases, ratification by **half of the state legislatures**, ensuring federal participation.

However, this power of amendment is **not absolute**. In the landmark **Kesavananda Bharati v. State of Kerala (1973)** case, the **Supreme Court ruled** that while Parliament has wide powers to amend the Constitution, it **cannot alter or destroy the 'basic structure'** of the Constitution. This doctrine acts as a **constitutional safeguard**, preserving the core principles such as **sovereignty, democracy, secularism, federalism, and the rule of law**.

Thus, the amending process under Article 368 reflects a **delicate balance between rigidity and flexibility**, allowing for **continuity of foundational values** while enabling **constitutional evolution** in tune with the times.

### Procedure

- The procedure of amending the constitution has been adopted from the constitution of South Africa.
- Amendment of the Constitution can be initiated only by the introduction of a bill in either of the House and not in the state legislatures.
- The Bill can be introduced either by a minister or by a private member and doesn't require prior permission of the President.
- Each House must pass the bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses.
- If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the state legislatures of half of the states by a simple majority.
- After duly passed by both Houses and ratified by the state legislatures, the Bill is presented to the President for assent.
- The President must give his assent; he can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.
- After the President's assent the Bill becomes an Act (Constitutional Amendment Act).

### Types of Amendment

#### **Types of Amendments of Indian Constitution**

Indian constitution can be amended in three ways:

- a) Amendment by simple majority of the parliament,
- b) Amendment by special majority of parliament,
- c) Amendment by special majority of the parliament and the ratification of the half of the state legislatures.

### Simple Majority

- The provisions in the Constitution that can be amended by the simple majority of the two houses of Parliament are outside the scope of Article 368.
- **Note:** They are considered as constitutional amendments, but they don't fall under the purview of Article 368.

Simple majority or working majority refers to majority of more than 50% of the members present and voting. Example:

- Total strength of Lok Sabha: 545
- Vacant Seats: 5
- Members present: 500
- Members present, but decide to abstain / not to vote: 50
- Members present and voting:  $500 - 50 = 450$
- Simple Majority in this case would be: 226
- Used for most routine legislative business in the House such as:
  - No-confidence Motion
  - Motion of Confidence
  - Motion of Thanks
  - Censure Motion
  - Adjournment Motion
  - Money Bills
  - Ordinary Bills, etc.

**The provisions in the constitution that can be amended by a simple majority are as follows;**

- Admission or establishment of new states.
- Formation of new states or alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative council in states.

- 2nd Schedule emoluments, allowances, privileges etc. of the President/Governor/Speakers/Judges.
- Quorum in Parliament.
- Salaries and allowances of MPs.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of English language in Parliament.
- Number of puisne judges in SC.
- Conferment of more jurisdictions on the SC.
- Use of official language.
- Citizenship -- acquisition and termination.
- Election to the Parliament and State legislatures.
- Delimitation of constituencies.
- Union Territories.
- 5th Schedule administration of scheduled areas and scheduled tribes.
- 6th Schedule administration of tribal areas.

### Special Majority

- Many provisions in the Constitution can be amended by a special majority of Parliament.
- Special majority means, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting.
- The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.

### Example

- **Total strength of Lok Sabha:** 545
- To pass a constitutional amendment, it requires the support of **more than 50% of the total strength**, i.e., at least **273**

**members** (50% of 545 = 272.5 → rounded up).

- However, **this alone is not sufficient**.
- The amendment must also be supported by at least **two-thirds of the members present and voting** on that particular day.
- For example, if **500 members are present and voting**, then **two-thirds of 500 = 333 members** must vote in favour of the amendment.
- Hence, a constitutional amendment under Article 368 requires **both conditions** to be fulfilled:
  1. **Majority of the total membership of the House** (absolute majority), and
  2. **Two-thirds majority of members present and voting** (special majority).

**The provisions which can be amended by this way include:**

- Preamble
- Fundamental Rights (Part III)
- Directive Principles of State Policy (Part IV)
- Union Legislature – Structure and functioning
- Union Executive – Powers of President and Vice-President (excluding election process)
- Emergency Provisions (Part XVIII)
- Anti-defection Law (Tenth Schedule)
- Citizenship (Part II)
- Union Territories (Part VIII)
- Official Language (Part XVII) – except Articles requiring state ratification

**Special Majority of Parliament and Consent of States:**

- Provisions of the Constitution that relate to the **federal structure** of India can be amended only by:
  1. A **Special Majority of the Parliament** (as per Article 368), and
  2. The **consent of more than half of the state legislatures**.
- **Unanimous consent** of all states is **not required**.
- For instance, if India has **28 states**, then the approval of at least **15 states** (14 + 1) is sufficient for the amendment to be valid.
- The Constitution does **not prescribe any time limit** within which the states must **ratify or reject** such an amendment bill.

**The provisions which can be amended by this way are as follows.**

- Election of the President (Articles 54 & 55)
- Extent of executive powers of the Union and States (Articles 73 & 162)
- Jurisdiction and powers of the Supreme Court and High Courts (where federal structure is impacted)
- Distribution of legislative powers (Seventh Schedule)
- Representation of States in Parliament (e.g., seats in Rajya Sabha)
- Amendment procedure under Article 368 itself
- Concurrent List entries affecting Centre-State balance
- Matters related to State boundaries affecting legislative representation
- Inter-state Council provisions (Articles under Part XI)
- Provisions dealing with language use in legislative bodies (when impacting states)

**Quotes:**

- “This variety in the amending process is wise but rarely found”- KC Wheare
- “The amending process has proved itself one of the most ably conceived aspects of the constitution. Although it appears complicated, it is merely diverse”- Granville Austin

**Think!****What is effective and absolute majority?****Amendability of FRs**

The question of whether **Fundamental Rights (FRs)** can be amended under **Article 368** of the Constitution has undergone significant judicial scrutiny. The debate began soon after the Constitution came into force and evolved over several landmark Supreme Court judgments.

The issue first came up in the **Shankari Prasad v. Union of India (1951)** case, where the **First Constitutional Amendment Act, 1951**, which curtailed the **Right to Property**, was challenged. The Supreme Court held that the power of Parliament to amend the Constitution under **Article 368** included the power to **amend or abridge Fundamental Rights**. This interpretation remained unchallenged for over a decade.

However, a major turning point came in the **Golak Nath v. State of Punjab (1967)** case. The Supreme Court, in a radical shift, held that **Fundamental Rights are immutable and transcendental** in nature and **cannot be abridged or taken away** by the Parliament. It ruled that any amendment affecting Fundamental Rights would be **unconstitutional**, as Parliament, acting under Article 368, is not a constituent body but an ordinary legislature for this purpose.

In response, Parliament enacted the **24th Constitutional Amendment Act, 1971**, which explicitly declared that **Parliament has the power to amend any part of the Constitution, including Fundamental Rights**, under Article 368. It also made it mandatory for the President to give assent to any such amendment.

This led to the landmark judgment in the **Kesavananda Bharati v. State of Kerala (1973)** case. A 13-judge bench of the Supreme Court **overruled Golak Nath**, upheld the validity of the **24th Amendment**, and laid down the historic **"Basic Structure Doctrine"**. The Court ruled that while **Parliament can amend any part of the Constitution, including Fundamental Rights**, it **cannot alter or destroy the "basic structure"** of the Constitution. Thus, any Fundamental Right that forms part of the basic structure is **beyond the reach of parliamentary amendment**.

Reacting to this judicial innovation, Parliament passed the **42nd Constitutional Amendment Act, 1976**, which attempted to **curb judicial review** by inserting a provision in Article 368 declaring that **no constitutional amendment could be questioned in any court on any ground**, including **contravention of Fundamental Rights**.

This move was struck down in **Minerva Mills v. Union of India (1980)**. The Supreme Court held that **judicial review is itself a basic feature** of the Constitution, and therefore, Parliament **cannot take away the Court's power to review amendments**. The ruling reaffirmed the sanctity of the **basic structure doctrine**.

Further clarity came in the **Waman Rao v. Union of India (1981)** case, where the Supreme Court upheld the basic structure doctrine and ruled that **any constitutional amendment enacted after April 24, 1973** (the date of the Kesavananda Bharati judgment) would be subject to **judicial review under the basic structure test**.

**The present position is that the Parliament under Article 368 can amend any part of the Constitution including the FRs but without affecting the ‘basic structure’ of the Constitution.**

**The following have emerged as ‘basic structures’ from various judgments –**

- Supremacy of the Constitution.
- Sovereign, democratic and republican nature of the Indian Polity.
- Secular character of the Constitution.
- Separation of powers between the Legislature, Executive and Judiciary.
- Federal character of the Constitution.
- Unity and integrity of the Nation.
- Welfare State (socio – economic justice)
- Judicial Review
- Harmony and balance between FRs and DPs
- Parliamentary System
- Rule of Law
- Freedom and dignity of the individual
- Free and fair elections
- Principle of Equality
- Independence of Judiciary
- Effective access to justice
- Limited power of Parliament to amend Constitution.

### **Criticism of the Amendment Procedure of the Indian Constitution**

- There is **no provision for a special body** like a **Constitutional Convention (as in the USA)** or a **Constituent Assembly** for amending the Constitution in India.
- The **amendment process** is largely **similar to the legislative process**—amendment bills are introduced and passed in Parliament **like ordinary bills**, though with special majority requirements.
- The **constituent power is vested solely in Parliament**, with the **state legislatures**

**playing a limited role**, and that too only in specific cases requiring ratification.

- A **major portion** of the Constitution can be **amended by Parliament alone**, and **only in select cases**, such as those affecting the **federal structure**, is **state ratification** needed.
- The **initiative to amend** the Constitution lies **only with Parliament**. **State legislatures have no power** to initiate an amendment bill (unlike in the USA).
- The **only exception** is when **state legislatures pass a resolution** requesting Parliament to **create or abolish Legislative Councils**—even then, **Parliament is not bound** to act on the resolution.
- The Constitution **does not specify a time limit** within which the **state legislatures must ratify or reject** an amendment bill referred to them.
- It is also **silent on whether a state can withdraw its approval** once it has ratified an amendment.
- There is **no provision for a Joint Sitting** of both Houses of Parliament for the purpose of constitutional amendments.
- The **procedure for amendment is sketchy** in parts, leaving **scope for judicial interpretation**, and sometimes leading to **legal disputes and constitutional litigation**.

### **Mains Questions:**

- The 42nd amendment is considered a watershed in India’s constitutional history. Why? Analyse. How did the amendment shape India’s polity in the coming years? Examine.
- Is it possible for a democracy to function if the constitutional provisions for amendments are completely removed? Substantiate your viewpoint.

## 42nd Constitutional Amendment Act: A Mini Constitution

**42nd Constitutional Amendment Act**, sometimes called ‘**mini-Constitution**’ is the most comprehensive amendment carried out in the year 1976 during internal emergency (1975-1977). It has brought about widespread changes to the Constitution most of which were curtailed in the 44th Constitutional Amendment Act 1978. *(Refer to the above table)*

The main purpose behind the enactment of the amendment was to trim the powers of judiciary with regard to the issue of judicial review and writs and strengthen the central government. Some of the changes made under the Amendment are-

### Preamble

- The characterization of India as “Sovereign Democratic Republic” was changed to “Sovereign Socialist Secular Democratic Republic”.
- The words ‘unity of Nation’ replaced with ‘unity and integrity of Nation’.

### Legislature

The **tenure of the Lok Sabha and State Legislative Assemblies** was extended from **five to six years**, weakening democratic accountability during emergency periods.

### Judiciary

**Two critical insertions were made:**

- **Article 32A** was added to **bar the Supreme Court** from reviewing the **constitutional validity of state laws** in writ jurisdiction.

### Fundamental Duties

Through the insertion of Part IVA and Article 51A, the amendment introduced Fundamental Duties for Indian citizens, aiming to instill a sense of

- **Article 131A** granted the **Supreme Court exclusive jurisdiction** to decide constitutional validity of **central laws**, further **limiting High Court powers**.

### Executive

- **Article 74(1)** was amended to state explicitly that the **President shall act in accordance with the advice** of the **Council of Ministers**, making the President's role entirely ceremonial in decision-making.

### Federal relations

- Insertion of Article 257A, to enable the Centre to deploy armed forces to deal with any grave situation of law and order arising in any State.

### Emergency

- The amendment authorized the **President to declare a National Emergency for a specific part of India**, instead of the entire country, thereby expanding the scope of emergency powers.

### Directive Principle of State Policy

Four new directive principles were added

- To secure opportunities for healthy development of children (Article 39)
- Enabling free legal aid Article 39A,
- Protection of workers in factories Article 43A,
- Protection of environment and to safeguard Forest and Wildlife Article 48A

constitutional responsibility and civic ethics among the populace.

The 42nd Amendment heavily tilted the constitutional balance in favour of the Executive and Legislature, reduced judicial independence,

and weakened federalism. It was widely seen as an authoritarian measure to suppress dissent and centralize power. In response to these distortions, the 44th Amendment Act of 1978 rolled back several key provisions and reaffirmed the democratic framework, judicial review, and federal balance of the Constitution.

## Important Amendments

Amendment Act	Newly added, Removed and Amended Articles/Scheduled/Parts	Amendments
1st Amendment Act, 1951	Articles 15, 19, 85, 87, 174, 176, 341, 342, 372, 376; First Schedule; Ninth Schedule (added)	Empowered the state for backward class provisions; added Ninth Schedule to protect land reform laws.
7th Amendment Act 1956	Article 1 Article 3 Article 49 Article 80 Article 81 Article 82 Article 131 Article 153 Article 158 Article 168 Article 170 Article 171 Article 216 Article 217 Article 220 Article 222 Article 224 Article 230 Article 231 Article 232 Part VIII	<p>The Seventh Amendment brought about the most comprehensive changes so far in the Constitution. This amendment was designed to implement the State Reorganisation Act.</p> <ul style="list-style-type: none"> <li>• Reorganisation of states on linguistic basis</li> <li>• Abolition of Class A, B, C and D states</li> <li>• Introduction of Union Territories</li> </ul> <p>The Second and Seventh schedules were substantially amended for the purpose of the States Reorganization Act.</p>

	First, Second, Fourth and Seventh Schedules of Indian Constitution	
9th Amendment Act, 1960	Schedule 1 of Indian Constitution	It provided for the transfer of certain territories of India to Pakistan under an agreement between India and Pakistan as a part of a comprehensive settlement of border disputes between the two countries.
10th Amendment Act, 1961	Article 240 First Schedule	Integrated the areas of Free Dadra and Nagar Haveli with the Union of India and provides for their administration under the regulation making powers of the President
12th Amendment Act 1961	Article 240 First Schedule	The main object of the Amendment was to add Union Territories of Goa, Daman and Diu to the Union of India and for this First Schedule of the Constitution was amended.
13th Amendment Act, 1963	Article 170 Added new article 371A	The Act provides the creation of Nagaland as the Sixteenth State of the Union.  The Amendment provides also for the vesting of certain special responsibilities in the Governor of Nagaland. (under Article 371A)
14th Amendment Act, 1962	Articles 81 and 240 First and fourth Schedules Added Article 239A	The amendment provides for the incorporation of the former French Establishments in India, under the name Pondicherry, as an integral part of the territory of the Indian Union.  It also amended Article 31 to increase, from a maximum 20 to 25, the number of seats assigned in the Lok Sabha for the Union Territories.
17 <sup>th</sup> Amendment Act, 1964	Amend article 31A. Amend schedule 9	To secure the constitutional validity of acquisition of Estates and place land acquisition laws in Schedule 9 of the constitution.
21st Amendment Act, 1967	Eighth Schedule	It amended the Eighth Schedule to the Constitution by including 'Sindhi' therein.
24th Amendment Act 1971	Amended Article 13 and 368	It amended Article 13 and 368 with a view to removing all possible doubts regarding the power of Parliament to amend the Constitution and procedure thereof.

		It gets over the Golak Nath ruling and asserts the power of Parliament, denied to in the Golak Nath, to amend Fundamental Rights.
25th Amendment Act 1971	Added a new clause, Article 31C	Upto 1971, the position was that Fundamental Rights prevailed over the Directive Principles of State Policy and that a law enacted to implement a Directive Principle could not be valid if it conflicted with a Fundamental Right.  Article 31C sought to change this relationship to some extent by conferring primacy on Articles 39(b) and 39(c) over Articles 14, 19 and 31.
26th Amendment Act 1971	Article 366 Added Article 363A Removed Articles 291 and 362	The cumulative effect of these changes was the end of the recognition granted to the former rulers of Indian States and the abolition of Privy Purses.
36th Amendment Act	Articles 80 and 81 First and fourth Schedules	Sikkim incorporated as an Indian state.
42nd Amendment Act 1976	Article 31 Article 31C Article 39 Article 55 Article 74 Article 77 Article 81 Article 82 Article 83 Article 100 Article 102 Article 103 Article 105 Article 118 Article 145 Article 150	The Act inter-alia gave preponderance to the Directive Principles of State Policy over the Fundamental Rights.  Established the supremacy of Parliament and curtailed the powers of Judiciary. The Act was first of its kind.  It was the most comprehensive Act and touched almost all the sensitive areas of the Constitution.  The Amendment was meant to enhance enormously the strength of the Government.  <b><i>The major Amendments made in the Constitution by the 42nd Amendment Act are:</i></b>  <b>Preamble</b>  The characterization of India as ‘Sovereign Democratic Republic’ has been changed to ‘Sovereign Socialist Secular Democratic Republic’. The words ‘Unity of the nation’ have been changed to ‘Unity and integrity of the nation’.

	<p>Article 166</p> <p>Article 170</p> <p>Article 172</p> <p>Article 189</p> <p>Article 191</p> <p>Article 192</p> <p>Article 194</p> <p>Article 208</p> <p>Article 217</p> <p>Article 225</p> <p>Article 226</p> <p>Article 227</p> <p>Article 228</p> <p>Article 311</p> <p>Article 312</p> <p>Article 330</p> <p>Article 352</p> <p>Article 353</p> <p>Article 356</p> <p>Article 357</p> <p>Article 358</p> <p>Article 359</p> <p>Article 366</p> <p>Article 368</p> <p>Article 371F</p> <p>Seventh Schedule</p> <p>Added Articles 31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A and 257A</p> <p>Added Parts IVA and XIVA</p>	<p><b>Parliament and State Legislatures:</b> The life of the Lok Sabha and State Legislative Assemblies was extended from 5 to 6 years.</p> <p><b>Executive:</b> It amended Article 74 to State explicitly that the President shall act in accordance with the advice of the Council of Ministers in discharge of his functions.</p> <p><b>Judiciary:</b> The 42nd Amendment Act inserted Article 32A in order to deny the Supreme Court the power to consider the Constitutional validity of a State law. Another new provision, Article 131A, gave the Supreme Court an exclusive jurisdiction to determine question relating to the Constitutional validity of a central laws.</p> <p>Article 144A and Article 128A, the creatures of Constitutional Amendment Act made further innovation in the area of judicial review of the Constitutionality of legislation. Under Article 144A, the minimum number of judges of the Supreme Court to decide a question of a Constitutional validity of a Central or State law was fixed as at least seven and further, this required two-thirds majority of the judges sitting declare law as unconstitutional. While the power of the High Court to enforce Fundamental Rights remained untouched, several restrictions were imposed on its power to issue writs 'for any other purpose'.</p> <p><b>Federalism:</b> The Act added Article 257A in the Constitution to enable the Centre to deploy any armed force of the Union, or any other force under its control. For dealing with any grave situation of law and order in any State.</p> <p><b>Fundamental Rights and Directive Principles:</b> A major change that was made by 42nd Constitutional Amendment was to give primacy to all Directive Principles over the Fundamental Rights contained in Articles 14, 19 or 31. The 42nd Constitutional Amendment added a few more Directive Principles - free legal aid, participation of workers in management of industries, protection</p>
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		<p>for environment and protection of forests and wildlife of the country.</p> <p><b>Fundamental Duties:</b> The 42nd Amendment Act inserted Article 51-A to create a new part called IV-A in the Constitution, which prescribed the Fundamental Duties to the citizens.</p> <p><b>Emergency:</b> Prior to 42nd Amendment Act, the President could declare emergency under Article 352 throughout the country and not in a part of the country alone. The Act authorized the President to proclaim Emergency in any part of the country.</p> <p>The dominant thrust of the Amendment was to reduce the role of courts, particularly, that of the High Courts. It also sought to strengthen Parliament in various ways which in effect, added to the power of the Central Government. It drew enormous criticism particularly for it was pushed through during Emergency.</p>
44th Amendment Act 1978	<p>Article 19</p> <p>Article 22</p> <p>Article 30</p> <p>Article 31A</p> <p>Article 31C</p> <p>Article 38</p> <p>Article 71</p> <p>Article 74</p> <p>Article 77</p> <p>Article 83</p> <p>Article 103</p> <p>Article 105</p> <p>Article 123</p> <p>Article 132</p> <p>Article 133</p> <p>Article 134</p>	<p>The 44th Amendment passed in 1978 undid most of the distortions introduced into the Constitution by the 42nd Amendment of the Constitution.</p> <p><b>The salient features of the Amendment Act are as follows :</b></p> <ul style="list-style-type: none"> <li>• It reduced the life of Lok Sabha and State Legislative Assemblies again to five years and thus restored the status quo ante.</li> <li>• It cancelled 39th Amendment which had deprived the Supreme Court of its jurisdiction to decide disputes concerning election of the President and the Vice-President.</li> <li>• A new provision was added to Article 74(1) saying that the President could require the council of ministers to reconsider its advice to him, either generally or otherwise and the President should Act in accordance with the advice tendered after such re-consideration.</li> </ul> <p><b>Article 257A was Omitted</b></p>

	<p>Article 139A</p> <p>Article 150</p> <p>Article 166</p> <p>Article 172</p> <p>Article 192</p> <p>Article 194</p> <p>Article 213</p> <p>Article 217</p> <p>Article 225</p> <p>Article 226</p> <p>Article 227</p> <p>Article 239B</p> <p>Article 329</p> <p>Article 352</p> <p>Article 356</p> <p>Article 358</p> <p>Article 359</p> <p>Article 360</p> <p>Article 371F</p> <p>Ninth Schedule</p> <p>Added Articles 134A and 361A</p> <p>Deletion of Articles 31, 257A and 329A</p>	<ul style="list-style-type: none"> <li>• It has been provided that an Emergency can be proclaimed only on the basis of written advice tendered to the President by the Cabinet.</li> <li>• Right to Property has been taken out from the list of Fundamental Rights and has been declared a legal right.</li> </ul>
52nd Amendment Act, 1985	Added Tenth Schedule	Introduced <b>Anti-Defection Law</b> .
61st Amendment Act 1989	Article 326	The 61st Amendment reduces the voting age from 21 years to 18 years for the Lok Sabha and Assembly election.

69th Amendment Act 1991	Insertion of new articles 239 AA and 239 AB	<p>The Amendment Act was to grant Statehood to Delhi as 'National Capital Territory of Delhi'.</p> <p>Confers special provisions for Delhi (National Capital Territory of Delhi)</p> <p>It also provides a 70 member assembly and a 7 member Council of Ministers for Delhi</p>
71st Amendment Act 1992	Article 332	Manipuri, Konkani, and Nepali were added in the 8th Schedule of Indian Constitution
73rd Amendment Act 1992	Added Part IX Added 11 <sup>th</sup> Schedule Article 243A	<p>Introduction of Panchayat Raj</p> <p>Addition of Part IX and Eleventh Schedule to the Indian Constitution</p> <p>The Act provides for Gram Sabha, a three-tier model of Panchayati Raj, reservation of seats for SCs and STs in proportion to their population and one-third reservation of seats for women.</p>
74th Amendment Act 1992	Article 280 Article 280 Added Part IXA Added 12 <sup>th</sup> Schedule	<p>Introduction of Municipalities and Nagarpalikas</p> <p>The Act provides Municipal Panchayat, Municipal Council and Municipal Corporation, reservation of seats for SCs and STs in proportion to their population and one-third reservation of seats for women</p>
77th Amendment Act 1995	added a new clause (4-a) to Article 16	<p>Empowers the State to make any provisions for reservation in promotions in Government jobs in favour of SCs and STs, if it is of opinion that they are inadequately represented in the services under the State.</p> <p>This has been done to nullify the effect of the Supreme Court Judgment in the Mandal Commission Case (Indra Sawhney vs. Union of India) in which the Court has held that reservation in promotions cannot be made.</p>
86th Amendment Act 2002	Amended Articles 45 and 51A Added Article 21A	With a view to making right to free and compulsory education a fundamental right, the Act inserts a new Article, namely, Article 21A conferring on all children in the age group of 6 to 14 years the right to free and compulsory education.

	The Act amends in Part-III, Part –IV and Part-IV (A) of the Constitution.	
89th Amendment Act 2003	Added Article 338A	Creation of National Commission for Scheduled Tribes.
92nd Amendment Act 2003	8 <sup>th</sup> Schedule	The Amendment facilitates for the inclusion of Bodo, Dogari, Maithili and Santhali in the VIIIth Schedule of the Constitution. With the inclusion of these four languages, the number of languages in the VIIIth Schedule goes upto 22.
93rd Amendment Act 2006		The 93rd Amendment enables provision of reservation (27%) for OBCs in government as well as private educational institutions.
95th Amendment Act 2010	Article 334	Extension of reservation of seats for SC/ST Nomination of Anglo-Indian members in Parliament and State Assemblies to Seventy years
96th Amendment Act 2011	Eighth Schedule	It has substituted "Odia" for "Oriya" in the 8th Schedule
97th Amendment Act 2012	Articles 19 Added Part IXB	Introduction of Part IXB in the Constitution of India relating to Co-operative Societies
99th Amendment Act 2015	Insertion of new articles 124A, 124B and 124C. Amendments to Articles 127, 128, 217, 222, 224A, 231.	The amendment provides for the formation of a National Judicial Appointments Commission. The amendment was struck down by the Supreme Court on 16 October 2015.
100th Amendment Act 2015	Amendment of First Schedule	Exchange of some enclave territories with Bangladesh Conferment of citizenship rights to citizens of enclaves resulting to signing of Land Boundary Agreement (LBA) Treaty between India and Bangladesh.
101st Amendment Act 2016	Article 248 Article 249 Article 250 Article 268	Introduction of Goods and Services Tax (GST)

	<p>Article 269</p> <p>Article 270</p> <p>Article 271</p> <p>Article 286</p> <p>Article 366</p> <p>Article 368</p> <p>Amended Sixth Schedule and Seventh Schedule</p> <p>Deletion of Article 268A</p>	
102nd Amendment Act 2018	<p>Addition of articles 338B, 342A, and Added Clause 26C.</p> <p>Modification of articles 338, 366</p>	Constitutional status to National Commission for Backward Classes
103 <sup>rd</sup> Amendment Act 2019	<p>Amendment to Article 15, added Clause [6]</p> <p>Amendment to Article 16, added Clause [6]</p>	A maximum of 10% Reservation for Economically Weaker Sections (EWSs).
104th Amendment Act 2020	Amend article 334	To extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Seventy years to Eighty years. Removed the reserved seats for the Anglo-Indian community in the Lok Sabha and state assemblies.
105 <sup>th</sup> Amendment Act, 2021	<p>Inserted Article 366(26C) and 338B</p> <p>Introduced based on the Supreme Court ruling in the Maratha reservation case</p>	To restore the power of states and Union Territories to identify socially and economically backward communities (SEBCs) and maintain a separate list of other backward communities other than the central list.
106th Amendment Act, 2023	It inserted two new Articles— <b>Article 330A</b> (for Lok Sabha) and <b>Article 332A</b> (for State Assemblies)—and amended <b>Article 239AA</b> to extend this provision to Delhi.	<ul style="list-style-type: none"> <li>• One-third reservation for women in legislatures (including SC/ST reserved seats)</li> <li>• Effective <b>after census &amp; delimitation</b></li> <li>• <b>15-year duration</b> (extendable)</li> <li>• <b>Rotation</b> of reserved seats across constituencies after each delimitation</li> </ul>

## Practice Questions

### Conceptual Questions:

1. How does the amendment procedure under Article 368 maintain a balance between flexibility and rigidity?
2. Why did the Supreme Court introduce the "basic structure" doctrine?
3. How does the amendment process ensure federal participation?
4. Why are some provisions amended by a simple majority while others require a special majority?
5. How has the 42nd Constitutional Amendment shaped India's constitutional and political landscape?
6. What is the significance of judicial review in the amendment process?
7. Why is there criticism regarding the absence of a joint sitting for constitutional amendments?
8. How does the amendment procedure of the Indian Constitution differ from that of the United States?
9. What role do Fundamental Rights play in limiting constitutional amendments?
10. Why is it important that constitutional amendments are not left solely to the discretion of ordinary legislative processes?

### One Liner Revision Questions

1. Which Article of the Indian Constitution deals with its amendment procedure?
2. From which country's Constitution is India's amendment procedure inspired?
3. Which landmark case introduced the "basic structure" doctrine?
4. What majority is required for amending Fundamental Rights under Article 368?
5. Which Constitutional Amendment is known as the "Mini Constitution"?
6. How many judges constituted the bench in the Kesavananda Bharati case?
7. Which Amendment Act explicitly declared that Parliament could amend any part of the Constitution, including Fundamental Rights?
8. Can the President withhold assent to a Constitutional Amendment Bill?
9. Which amendment removed the "Right to Property" from Fundamental Rights?
10. What is the special requirement for amending provisions affecting federal structure under Article 368?

## Prelims PYQ

1. Consider the following statements: (2022)

1. A bill amending the Constitution requires a prior recommendation of the President of India.
2. When a Constitution Amendment Bill is presented to the President of India, it is obligatory for the President of India to give his/her assent.
3. A Constitution Amendment Bill must be passed by both the Lok Sabha and the Rajya Sabha by a special majority and there is no provision for joint sitting.

Which of the statements given above are correct?

- a) 1 and 2 only
- b) 2 and 3 only
- c) 1 and 3 only
- d) 1, 2 and 3

2. Consider the following statements: (2013)

1. An amendment to the Constitution of India can be initiated by an introduction of a bill in the Lok Sabha only.
2. If such an amendment seeks to make changes in the federal character of the Constitution, the amendment also requires to be ratified by the legislature of all the States of India.

Which of the statements given above is/are correct?

- a) 1 only
- b) 2 only
- c) Both 1 and 2
- d) Neither 1 nor 2

3. Consider the following statements: (2019)

1. The 44<sup>th</sup> Amendment to the Constitution of India introduced an article placing the election of the Prime Minister beyond judicial review.
2. The Supreme Court of India struck down the 99<sup>th</sup> Amendment to the Constitution of India

as being violative of the independence of judiciary.

Which of the statements given above is/are correct?

- a) 1 only
- b) 2 only
- c) Both 1 and 2
- d) Neither 1 nor 2

4. With reference to the Constitution of India, consider the following statements: (2019)

1. No High Court shall have the jurisdiction to declare any central law to be constitutionally invalid.
2. An amendment to the Constitution of India cannot be called into question by the Supreme Court of India.

Which of the statements given above is/are correct?

- a) 1 only
- b) 2 only
- c) Both 1 and 2
- d) Neither 1 nor 2

5. As per Article 368 of the Constitution of India, the Parliament may amend any provision of the Constitution by way of: (2024)

1. Addition
2. Variation
3. Repeal

Select the correct answer using the code given below:

- a) 1 and 2 only
- b) 2 and 3 only
- c) 1 and 3 only
- d) 1, 2 and 3

Question No.	Correct Option
1	(b)
2	(d)
3	(b)
4	(d)
5	(d)

## Mains PYQ

1. What are the main differences between the passage of a Constitution Amendment Bill and other Legislative Bills? (2001) (30 Marks, 250 words)
2. How is the Constitution of India amended? Do you think that the procedure for amendment makes the Constitution a plaything in the hands of the Centre? (2002) (30 Marks, 250 words)
3. With what objectives was the 'Essential Commodities Act, 1955' amended last year? (2002) (15 Marks)
4. Highlight the significance of the Forty-Fourth Amendment to the Constitution of India. (2003) (15 Marks, 150 words)
5. What are the distinctive features of the Lokpal Bill introduced in the Parliament this year? (2003) (10 Marks)
6. What is the main objective of the Competition Act, 2002? (2003) (2 Marks)
7. Define Money Bill. Discuss how it is passed in the Parliament. (2004) (15 Marks, 150 words)
8. Explain the objectives of Plant Varieties Right Act, 2002. (2004) (2 Marks)
9. How would you differentiate between the passage of a Constitution Amendment Bill and of an ordinary legislative bill? (2006) (15 Marks)
10. Write notes on the Lokpal Bill. (2007) (10 Marks, 125 words)
11. What are your views on the features and impact of the Domestic Violence Act, 2005? (2009) (15 Marks)
12. With respect to Cooperative Societies, what are the salient features of the 106th and 111th Constitutional Amendment Bills as at present? (2010) (24 Marks, 150 words)
13. Bring out the salient features of the PCPNDT Act, 1994, and the implications of its amendment in 2003. (2011) (20 Marks)
14. Write about the Bihar Special Courts Act, 2009 and why it has been in the news recently. (2011) (15 Marks)
15. The Union Cabinet recently cleared the proposal to rename and amend the Child Labour (Prohibition and Regulation) Act, 1986. What are the salient features of the proposed amendments? (2012) (15 Marks)
16. What are the salient features of the Consumer Protection (Amendment) Bill, 2011 introduced in the Lok Sabha in December 2011? (2015) (10 Marks)
17. Discuss Section 66A of the IT Act, with reference to its alleged violation of Article 19 of the Constitution. (2013) (10 Marks, 200 words)
18. Explain the salient features of the Constitution (One Hundred and First Amendment) Act, 2016. Do you think it is efficacious enough to remove the cascading effect of taxes and provide for a common national market for goods and services? (2017) (15 Marks, 250 words)

## Basic Structure

The **Constitution of India** is not a rigid, inflexible document—it is a **living, evolving framework** shaped by experience, adaptation, and the pressing needs of society. The framers of the Constitution, aware of the inevitability of change, incorporated **Article 368**, granting **Parliament the power to amend** the Constitution. This power was meant to ensure flexibility and continuity of governance through reform.

However, the journey of constitutional amendments in India took a defining turn with the emergence of the **Basic Structure Doctrine**—a principle that ensures that **certain core features of the Constitution remain inviolable**, regardless of the majority held by the Parliament.

### Origins and Evolution of the Doctrine

The doctrine of basic structure did not exist at the time of the **Constitution's commencement**. Initially, Parliament's power under **Article 368** was seen as **unlimited**, as reflected in early judgments like **Shankari Prasad (1951)** and **Sajjan Singh (1965)**, where the Supreme Court upheld the view that **Fundamental Rights could be amended** by Parliament.

But this perspective faced a serious challenge in the landmark case of **Golak Nath v. State of Punjab (1967)**, where the Court ruled that **Fundamental Rights are beyond the reach of Parliament**. Reacting to this, Parliament passed the **24th Constitutional Amendment Act, 1971**, reaffirming its power to amend any part of the Constitution, including Fundamental Rights.

The turning point came in the historic **Kesavananda Bharati v. State of Kerala (1973)** case. The Supreme Court, in a 13-judge bench decision—the largest in Indian legal history—**rejected the idea of unlimited amending power**. It held that while Parliament may amend the

Constitution, **it cannot alter or destroy the “basic structure” of the Constitution**. This doctrine was a **judicial innovation**, balancing Parliament's amending power with the protection of the Constitution's fundamental identity.

### Amendment and Fundamental Rights: Know about these cases

#### Shankari Prasad Case (1951)

Case questioning that whether **fundamental rights can be amended** under Article 368 & also questioned the constitutional validity of First amendment act that curtailed the right to property.

SC said that Parliament can amend the Fundamental rights under article 368. Also, **laws under Article 13 are ordinary laws** & hence can be taken away by Parliament by amendment.

#### Golak Nath Case (1967)

Case questioned the constitutional validity of putting some state laws under Schedule 9 of the constitution (by 7th Amendment Act)

Any law put under Schedule 9 is not available for Judicial Review

SC said that its decision in Shankari Prasad Case was wrong & Fundamental rights have an important position in the constitution & hence can't be amended under article 368.

Constitutional amendment is also a law under Article 13 & hence can't take away the fundamental rights.

Parliament after this judgment enacted the 24th amendment act, 1971 which amended the Article 13 & Article 368. The new law stated that Parliament can take away any Fundamental right by use of Article 368 & such a constitutional

amendment act will not be considered as a "law" under article 13.

### **Kesavananda Bharati Case (1973)**

SC stated that 24th Constitutional amendment act is valid & Parliament can take away Fundamental rights.

SC at this time came out with doctrine of "basic structure". It states that Parliament cannot amend the constitution under Article 368 that relates to the change of basic structure of the constitution i.e. Parliament can't take away those fundamental rights that are a part of basic structure of the constitution.

Parliament then enacted 42nd Constitutional amendment act, 1976. It states that there is no limit to the power conferred by Article 368 to the Parliament & any change brought about by article 368 cannot be questioned in the court of law.

### **Minerva Mills Case (1980)**

The provisions that were laid down by the 42nd Constitutional Amendment act, 1976 were declared invalid by the Supreme Court in this 1980 Supreme Court case.

### **Waman Rao Case (1981)**

Supreme Court stated that any amendment act can't change the basic structure of the constitution & these would apply to the amendments after April 24, 1973.

So, as of now, Parliament can do any type of amendment & even amend the Fundamental rights but which are not changing the "basic structure" of the constitution.

**In I.R.Coelho's** case Supreme Court held that, Art.31-B gives validation based on fictional immunity. In judging the validity of Constitutional amendment, we have to be guided by the impact test i.e. Right Test. The basic structure doctrine requires the State to justify the degree of invasion of Fundamental Rights.

The Parliament is presumed to legislate compatibly with the Fundamental Rights and this is where judicial review comes in. The greater invasion into essential freedoms, greater is the need for justification and determination by the Court whether invasion was necessary and if so to what extent.

The degree of invasion is for the court to decide. Compatibility is one of the species of judicial review which is premised on compatibility with rights regard as fundamental. The power to grant immunity, at will, on fictional basis, without full judicial review, will nullify the entire basic structure doctrine.

Thereby Supreme Court reaffirms the Constitution Supremacy through this basic structure and now we can say that the **"Doctrine of Basic Structure made uncontrolled Constitution into Controlled one."**

***Q. What was held in the Coelho case? In this context, can you say that judicial review is of key important amongst the basic features of the Constitution? (2016)***

### **Kesavananda Bharati Case**

Kesavananda Bharati challenged the Constitution (29th Amendment) Act, 1972, questioning the Kerala government's attempts, under two-state land reform acts, to impose restrictions on the management of its (mutt) property.

He also challenged three Constitutional amendments – the 24th, 25th and 26th amendments introduced by the Indira Gandhi government.

The principal question that was raised in the case was about the power of Parliament to amend the Constitution in totality especially with respect to fundamental rights.

The basic question that the Supreme Court had to decide was whether Parliament could alter, amend, abrogate any part of the Constitution even to the extent of taking away all fundamental rights?

A 13-judge bench was formed to preside over the case, in which 11 different judgments were delivered in what is said to be a 7:6 majority.

The Supreme Court then ruled that the 'basic structure' of the Constitution was inviolable, and could not be amended by Parliament. The 'basic structure' doctrine has since been regarded as a tenet of Indian constitutional law.

### Elements of Basic Structure

The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' of the Constitution.

However, the Supreme Court is yet to define or clarify as to what constitutes the 'basic structure' of the Constitution.

From the various judgments, the following have emerged as 'basic features' of the Constitution or elements / components / ingredients of the 'basic structure' of the constitution:

- Supremacy of the Constitution
- Sovereign, democratic and republican nature of the Indian polity
- Secular character of the Constitution
- Separation of powers between the legislature, the executive and the judiciary
- Federal character of the Constitution
- Unity and integrity of the nation
- Welfare state (socio-economic justice)
- Judicial review
- Freedom and dignity of the individual
- Parliamentary system
- Rule of law

- Harmony and balance between Fundamental Rights and Directive Principles
- Principle of equality
- Free and fair elections
- Independence of Judiciary
- Limited power of Parliament to amend the Constitution
- Effective access to justice
- Principle of reasonableness
- Powers of the Supreme Court under Articles 32, 136, 141 and 142
- Powers of the High Courts under Articles 226 and 227

### Significance

- The basic structure limitation comes out of the realization that the only way to safeguard the Constitution from opportunistic destruction and defilement by temporary majorities in Parliament is to reject those amendments which go to tarnish its identity.
- It arises out of the need to strengthen the Constitution and to prevent its destruction by a temporary majority in Parliament.
- What is basic structure will depend upon what is vital to Indian democracy and that cannot be determined except with reference to history, politics, economy and social milieu in which the Constitution functions.
- The Court cannot impose on society anything it considers to be basic. What the judges consider to be basic structure must meet the requirement of national consciousness about the basic structure.
- Whatever may be the merits or demerits of judicial review, to an extent, the basic structure limitation upon the constituent power has helped arrest such forces to some extent and to stabilize the democracy.

### Criticism

The doctrine of “**basic structure of the Constitution**” is very controversial. This doctrine does not have a textual basis. We do not find, a provision stipulating that this Constitution has a basic structure and that **this structure is beyond the competence of amending power.**

Therefore, the limitation of the amending power through the basic structure of the **Constitution is deprived of positive legal validity.**

Moreover, not having its origin in the text of the Constitution, the concept of the “basic structure of the Constitution” cannot be defined.

What constituted the basic structure of the Constitution? Which principles are or not included in this concept? An objective and unanimous answer cannot be given to this question.

Constitution may be necessary even to change the original intention of the Constitution framers, which may not suit a subsequent generation which is to work with the Constitution. Therefore, to hold that an amendment not falling in the line with the original intention of the founding fathers is not valid, does not seem to be a sound view.

One of the important critiques is that, if the basic structure theory was upheld, “every amendment made by the Parliament would be subject to judicial approval on the question whether it damages the core of an essential feature or not... and it is up to the Supreme Court and High Courts either to validate or invalidate the amendment. It is a step towards the ‘**Government of Judges**’ as the final say rests with the judges of the Supreme Court not with the Parliament.

The **Basic Structure Doctrine** is a judicial innovation that upholds the **spirit, values, and core identity of the Indian Constitution.** It is not a limitation but a **protector of constitutional continuity**, ensuring that even as the Constitution evolves, it does not lose its foundational essence. It reflects the **mature balance between the powers of Parliament and the role of the judiciary**, making India’s constitutional democracy resilient and future-ready.

### Mains Questions

- The basic structure doctrine forms the bulwark of the Indian Constitution. Do you agree? Critically examine.
- Is it fair to argue that the basic structure doctrine contributes to a hyperactive judiciary in India? Substantiate your response.
- The Basic Structure has maintained the integrity of Indian constitution. Elucidate
- The basic structure doctrine imparts totality and philosophical integrity to the Constitution. Comment.

## Practice Questions

### Conceptual Questions:

1. How does the Basic Structure Doctrine balance parliamentary sovereignty and judicial review?
  2. Why was the Basic Structure Doctrine considered necessary by the judiciary?
  3. How has the Basic Structure Doctrine influenced constitutional amendments?
  4. What implications did the Kesavananda Bharati judgment have on Indian federalism?
  5. Why is judicial independence considered part of the basic structure?
  6. What role does the Basic Structure Doctrine play in protecting democracy in India?
  7. How can the doctrine be criticized for promoting judicial activism?
  8. Why has the judiciary deliberately avoided giving an exhaustive definition of the basic structure?
  9. How does the Basic Structure Doctrine strengthen the rule of law?
  10. What is the significance of the Basic Structure Doctrine in maintaining constitutional stability?
- 

### One Liner Revision Questions

1. Which landmark case introduced the Basic Structure Doctrine in India?
2. In which year was the Kesavananda Bharati judgment delivered?
3. How many judges constituted the bench in the Kesavananda Bharati case?
4. Which amendment led to the Kesavananda Bharati case?
5. What was the key outcome of the Golak Nath case (1967)?
6. Which amendment explicitly attempted to negate the Basic Structure Doctrine?
7. Which case declared certain provisions of the 42nd Amendment Act invalid?
8. From which date does the Basic Structure Doctrine apply, as per the Supreme Court ruling in Waman Rao (1981)?
9. Did the Supreme Court validate the 24th Amendment Act in the Kesavananda Bharati case?
10. Which recent Supreme Court case emphasized that the validity of amendments under Schedule 9 could be reviewed under the Basic Structure Doctrine?

## Prelims PYQ

1. Consider the following statements: (2020)

1. The Constitution of India defines its 'basic structure' in terms of federalism, secularism, fundamental rights and democracy.
2. The Constitution of India provides for 'judicial review' to safeguard the citizens' liberties and to preserve the ideals on which the Constitution is based.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

The correct answer is: **(b) 2 only**

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📍 LUCKNOW

📍 BHOPAL

