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INDIAN CONSTITUTION

THE CONSTITUTIONAL FRAMEWORK

HISTORICAL BACKGROUND

In the long and eventful history of India, 15 August 1947 holds immense importance. On this day, the two-century old British rule of India ended and political authority was transferred to the representatives of the Indian people.

The Historical Review of Constitutional Development

Constitution of a country lays down the basic structure of the political system under which its people are to be governed. Though the concept of democracy, representative institutions, rule of law, etc. were not alien to India as the *Rigveda* and the *Atharvaveda* mention about the *Sabha* (General Assembly) and the *Smiti* (House of Elders), we can yet claim that the conventional political institutions established by the Hindus in the ancient times and later by the Muslims in mediaeval era do not survive in any form in present day. However, we can trace the history of evolution of Indian Constitution from 1601 when East India Company, which had come to India as traders, received its first **Charter of 1601** by the Queen of England. As per the Charter of 1601, the company was given the power to make, ordain and constitute such and so many reasonable laws, Constitutions, orders and ordinances for the good governance of the company. The legislative powers of the company were very limited in its scope and character. Later, similar legislative powers were thus designed and affirmed by the Charters of 1609, 1661 and later by the Charter of 1693, which enabled the company to regulate its business and to maintain discipline among its servants. The **Charter of 1726** had a great significance as the Mayors' courts were established for the first time in India at the three Presidencies—Calcutta, Bombay and Madras—to introduce English laws in India. But still the British were not the ruling power in India and it was only in the latter half of seventeenth century, the period of gradual disintegration of Mughal power, that the British administration of civil justice evolved after the company was awarded the *Diwani* of Bengal, Bihar and Orissa. This led to maladministration of Indian affairs by the company

officials who amassed great wealth and left for England leaving East India Company on the verge of bankruptcy.

Indian Constitution: The Landmarks

The landmarks in the development of the Indian Constitution are:

- (i) Regulating Act, 1773;
- (ii) Pitt's India Act, 1784;
- (iii) Charter of 1813;
- (iv) Charter of 1833;
- (v) Government of India Act, 1858;
- (vi) Indian Council Act, 1861;
- (vii) Indian Council Act, 1892;
- (viii) Indian Council Act, 1909;
- (ix) Government of India Act, 1919;
- (x) Government of India Act, 1935;
- (xi) Indian Independence Act, 1947.

All of these developments have been appropriately discussed in detail in Indian National Movement. The readers are advised to go through the details of these landmark developments to truly understand their need and repercussions on the political dynamics which led to the framework of the existing Indian Constitution. The very fact that the Constitution of Indian Republic is the product not of a political revolution but of the research and deliberations of a body of eminent representatives of the people who sought to improve upon the existing systems of administration, makes a retrospect of the Constitutional development indispensable for the proper understanding of this Constitution.

A Secret Committee was appointed by British Parliament in 1772 that exposed several defects and lacunas in the administration of the company. Consequently, the Parliament passed the **Regulating Act of 1773** to regulate the affairs of East India Company.

The **Government of India Act of 1919** was essentially transitional in character. Under Section 84 of the said Act, a statutory Commission was to be appointed at the end of 10 years to determine the next stage in the realisation of self-rule in India. The activities of the Swaraj Party had induced the British government to review the working of

dyarchy introduced by the Montague–Chelmsford Reforms and to report as to what extent a representative government could be introduced in India.

The British government appointed a Commission, known as Simon Commission, under Sir John Simon in November 1927. The Commission, which had no Indian members, was sent to investigate India's Constitutional problems and make recommendations to the government on a future Constitution for India. Indian political leaders felt insulted and decided to boycott the Commission.

Indian Constitutions Structural Sources

Historical and geographical factors have been responsible for the creation of the Indian Constitution, which is the largest Constitution in the world. The sources of the Constitution can be best explained with the reference to its principal parts. The structural part of the Constitution is, to a large extent, derived from the **Government of India Act (1935)**. The philosophical part of the Constitution has other sources. Part III on Fundamental Rights partly derives its inspiration from the **Bill of Rights**, enshrined in the American Constitution, and Part IV on the Directive Principles of State Policy is based upon the **Irish Constitution**. The principle parts (the principle of Cabinet government and the relation between the executive and the legislature) have been largely drawn from the **British experience**.

Union-state relations find a similarity in the Act of 1935, and also in the **Canadian Constitution**, though the expanded Concurrent List in the Seventh Schedule has a model in the **Australian Constitution**. Part XIII, dealing with trade, commerce and intercourse, also appears to derive inspiration from the Australian Constitution. The Constitution provides for the privileges of the members of Parliament and the State Legislature follows the Australian model to some extent.

The Constituent Assembly

The task of framing the Constitution of India was given to the Constituent Assembly, formed under the Cabinet Mission Plan (1946) even before the complete transfer of power that was affected by the Indian Independence Act (1947). It composed of members chosen by the members of the Provincial Legislative Assemblies through indirect election according to the scheme recommended by the Cabinet Mission. The arrangement was: (i) 292 members were elected through the Provincial Legislative Assemblies; (ii) 93 members representing the Indian princely states and (iii) Central provinces & Berar, Assam, North West Frontier Province and Andaman & Nicobar Islands were Chief Commissioners' Provinces. 4 members representing the Chief Commissioners' Provinces. The total membership of the Assembly, thus, was to be 389. However, as a result of the partition of India under the Mountbatten Plan of 3 June 1947, a separate Constituent Assembly was set up for Pakistan and representatives of some Provinces ceased to be members of the Assembly. As a

result, the membership of the Assembly was reduced to 299. The inaugural meeting of the Constituent Assembly was held on 9 December 1946. **Dr Sachidanand** was the first Chairman of the Constituent Assembly. On 11 December 1946, **Dr Rajendra Prasad** was elected President of the Constituent Assembly. The Constituent Assembly had **385 members** (292 from British Indian Provinces and 93 members as representatives of the Indian states). At the beginning, this Assembly was not a sovereign body but was subject to the final authority of the British Parliament. It was the Indian Independence Act (1947) that triggered a complete change in its character, as it was converted into a **sovereign body** that later re-assembled on 14 August 1947 to assume power on behalf of the Government of India.

Sessions of the Constituent Assembly

First Session	:	9–23 December 1946
Second Session	:	20–25 January 1947
Third Session	:	28 April–2 May 1947
Fourth Session	:	14–31 July 1947
Fifth Session	:	14–30 August 1947
Sixth Session	:	27 January 1948
Seventh Session	:	4 Nov 1948–8 January 1949
Eighth Session	:	16 May–6 June 1949
Ninth Session	:	30 July–18 September 1949
Tenth Session	:	6–17 October 1949
Eleventh Session	:	14–26 November 1949

The Assembly met once again on 24 January 1950 when the members appended their signatures to the Constitution of India.

Thus, the three phases of the Constituent Assembly can be described as: (i) **1st Phase**—as a Constituent Assembly under the limitations of Cabinet Mission Plan from December 1946 to 14 August 1947; (ii) **2nd Phase**—as Constituent Assembly, a sovereign body and Provisional Parliament from 15 August 1947, to 26 November 1949 and (iii) **3rd Phase**—as a Provisional Parliament from 27 November 1949 to March 1952.

Important Committees of the Constituent Assembly and Their Chairmen

- (i) Committee on the Rules of Procedure (Rajendra Prasad);
- (ii) Steering Committee (Rajendra Prasad);
- (iii) Finance and Staff Committee (Rajendra Prasad);
- (iv) Credential Committee (Alladi Krishnaswami Ayyar);
- (v) House Committee (B. Pattabhi Sitaramayya);
- (vi) Order of Business Committee (K. M. Munshi);
- (vii) AD hoc Committee on the National Flag (Rajendra Prasad);
- (viii) Committee on the Functions of the Constituent Assembly (G. V. Mavalankar);

- (ix) States Committee (Jawaharlal Nehru);
- (x) Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas (Vallabhbhai Patel);
- (xi) Minorities Sub-Committee (H. C. Mookherjee);
- (xii) Fundamental Rights Sub-Committee (J. B. Kripalani);
- (xiii) North-East Frontier Tribal Areas and Assam, Excluded and Partially Excluded Areas Sub-Committee (Gopinath Bardoloi);
- (xiv) Excluded and Partially Excluded Areas—Other than those in Assam Sub-Committee (A. V. Thakkar);
- (xv) Union Powers Committee (Jawaharlal Nehru);
- (xvi) Union Constitution Committee (Jawaharlal Nehru); Drafting Committee (B. R. Ambedkar).

The Objectives Resolution

The Constituent Assembly took almost 3 years (2 years, 11 months and 18 days to be precise) to complete its historic task of drafting the Constitution for Independent India. During this period, it held 11 sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution. On 13 December 1946, Pandit Jawaharlal Nehru moved the Objectives Resolution, which stated:

- (a) This Constituent Assembly declares its firm and solemn resolve to proclaim India an Independent Sovereign Republic and to draw up a Constitution for her future governance;
- (b) Wherein the territories that now comprise British India, the territories that now form the Indian States and such other parts of India as are outside British India and the states, as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all;
- (c) Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom;
- (d) Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people;
- (e) Wherein shall be guaranteed and secured to all the people of India, justice; socio-economic and political; equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality;
- (f) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes;
- (g) Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations;

- (h) Whereby this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

ADOPTION OF THE OBJECTIVES RESOLUTION This Resolution was unanimously adopted by the Constituent Assembly on 22 January 1947. Late in the evening of 14 August 1947, the Assembly met in the Constitution Hall and at the stroke of midnight, took over as the Legislative Assembly of Independent India.

On 29 August 1947, the Constituent Assembly set up a Drafting Committee under the Chairmanship of Dr B. R. Ambedkar to prepare a Draft Constitution for India. While deliberating upon the Draft Constitution, the Assembly moved, discussed and disposed off as many as 2,473 amendments out of a total of 7,635 that were tabled. The Constitution of India was adopted on 26 November 1949, and the members appended their signatures to it on 24 January 1950. In all, 284 members signed the constitution, 285th signatory was the President of the Constituent assembly. The Constitution of India came into force on 26 January 1950. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952.

Number of Articles in Indian Constitution

The last Article of Indian Constitution is Article 395. New articles added to the Indian Constitution have been inserted in the relevant location in the original structure of the Constitution which starts from Art. 1 and ends at Art. 395. It has been done so that the original numbering is not disturbed. The addition has been inserted with alphanumeric enumerations. Although last article is numbered 395, there are 465 articles in total. There has been 70 new Articles which have been adjusted in such a manner in the constitution, so one can say that total of 465 Articles (as of August 2015) find place in the list of Articles from Article 1 to Article 395.

The Foundation of the Indian Constitution

Adopted after two-and-a-half years of deliberation by the Constituent Assembly, which also acted as India's first legislature, the Constitution was put into effect on **26 January 1950**. B. R. Ambedkar, who had earned a law degree from Columbia University, chaired the Drafting Committee of the Constitution and shepherded it through Constituent Assembly debates. Supporters of independent India's founding father, Mohandas Karamchand (Mahatma) Gandhi, backed measures that would form a de-centralised polity with strong local administration—known as Panchayat in a system known as Panchayati Raj, that is, rule by Panchayats. However, the support of more modernist leaders, such as Jawaharlal Nehru, ultimately led to a parliamentary and federal system with a strong central government. Following the British parliamentary pattern, the Constitution embodies the Fundamental Rights, which are similar to the United States Bill of Rights, and a

Supreme Court similar to that of the United States. It creates a 'sovereign democratic republic' called India, or Bharat (after the legendary king of the Mahabharata), which 'shall be a Union of States'. The eight basic principles on which the Constitution was built upon are:

- (i) Sovereignty,
- (ii) Socialism,
- (iii) Secularism,
- (iv) Fundamental Rights,
- (v) Directive Principles,
- (vi) Judicial Independence,
- (vii) Federalism and
- (viii) Cabinet Governance.

ADOPTION OF INDIGENOUS IDEALS The framers of the Constitution were keen to preserve the democratic values to which Indians had attached the highest importance in their struggle for freedom. They were also keen to make provisions considered to be necessary in the light of the social and economic backwardness of certain sections of society. Some indigenous institutions like Panchayats have been specifically encouraged and new ideals, such as promotion of international peace and security, have been woven into the fabric of the Constitution. They also had before them the precedent of the Government of India Act (1935), whose detailed provisions were found suitable for adoption in the interests of continuity and certainty. Some precautions against the Constitutional image being distorted or being impaired in its essential features were also required. All this has contributed to the length of the Indian Constitution.

Sovereignty and Integrity of India

This clause for imposing restrictions on the right to freedom of speech and expression was added by the 16th Amendment in 1963 so as not to permit anyone to challenge the integrity or sovereignty of India or to preach cession of any part of the territory of India.

Uniqueness of the Indian Constitution

While the Indian Constitution provides for a central parliamentary role in numerous areas of the law, Fundamental Rights limit the powers of Parliament and are explicitly incorporated within the body of the Constitution. The Fundamental Rights of the Indian Constitution are positive in nature, not merely negative restrictions upon governmental action; and their violation gives rise to a Constitutional remedy. The Constitution of India contains both civil/political and economic/social rights. Many of the economic and social rights, however, have been included as 'Directive Principles'. Under Article 37, the state (executive and legislative branches) has a duty to apply these principles while making laws. This 'Directive Principles' cannot be enforced by the courts. However, the principles themselves are justiciable, in that the courts may take note of them.

The Significance of the Constitution

The Constitution operates as a fundamental law. Governmental organs owe their origins to the Constitution and derive their authority from and discharge their responsibility within the framework of the Constitution. The Union Parliament and the State Legislature are not sovereign. The validity of law, whether Union or state, is judged with reference to their respective jurisdiction, as defined by the Constitution. The judiciary has the power to declare a law unconstitutional, if the law is found to have contravened any provision of the Constitution.

AN ANALYSIS OF THE INDIAN CONSTITUTION

Salient Features of Constitution of India

The comparative study of any Constitution will reveal that it has certain prominent features which distinguish it from other Constitutions. It is these prominent features which have been discussed here by introducing the readers to the various provisions of the Indian Constitutions.

(A) IT IS THE LONGEST WRITTEN CONSTITUTION IN THE WORLD In the sheer physical terms, it is the lengthiest Constitution ever given to any nation. It is a very comprehensive document and includes many matters which could legitimately be subject matter of ordinary legislation or administration action. Another reason for its hugeness is that it includes not only Constitution of the Indian Union but also of the states, unlike the USA where in addition to a federal Constitution, each state has its separate Constitution.

(B) IT CONSISTS OF 22 PARTS WITH 395 ARTICLES AND 12 SCHEDULES Indian Constitution originally had 22 parts, 395 articles and 9 schedules. But after the Constitution's 92nd Amendment Act, 2003, the Indian Constitution now has 22 parts, 395 articles and 12 schedules. A number of new articles and new parts have been added to the Constitution and several articles or even full parts (e.g. Part VII) of the Constitutions have been repealed by the Constitutional Amendments, but following the standard practice in this regard and to facilitate referencing, the existing articles, parts or chapters have not been changed. Compared to this, the US Constitution consisted originally of only 7 articles, while the Australian Constitution had 128. Articles and the Canadian Constitution had 147 articles.

(C) IT PROCLAIMS THAT INDIA IS A SOVEREIGN DEMOCRATIC REPUBLIC The word 'sovereign' means that the state has power to legislate on any subject in uniformity with Constitutional limitations (*Synthetic and Chemicals Ltd vs State of Uttar Pradesh, 1990, 1 SCC 109*). 'Sovereignty' means the independent authority of a state. The Preamble declares, therefore, in unequivocal terms that the source of all authority under the Constitution is the people of India and that there is no subordination to any external authority.

The word 'Democracy' means that the Constitution has established a form of government which gets its authority from the will of the people. Justice, Equality and Fraternity, which are essential characteristics of a democracy, are declared in the Preamble of the Indian Constitution as the very objectives of the Constitution.

The word 'Republic' means a government by the people and for the people. While Pakistan remained a British Dominion until 1956, India ceased to be a Dominion and declared herself a 'Republic' since the making of the Constitution in 1949. On and from 26 January 1950, when the Constitution came into force, the Crown of England ceased to have any legal or Constitutional authority over India and no citizen of India was to have any allegiance to the British Crown. The picture of the 'democratic republic' which the Preamble envisages is democratic not only from the political but also from social standpoint.

(D) FUNDAMENTAL RIGHTS ARE GUARANTEED TO ALL CITIZENS OF INDIA The incorporation of a formal declaration of Fundamental Rights in Part III of the Constitution is deemed to be a distinguishing feature of a democratic state. These rights are prohibitions against the state. The state cannot make a law which takes away or abridges any of the rights of the citizens guaranteed in the Constitution. Further, our Constitution has conferred on judiciary the power to grant most effective remedies in the nature of writs like '*Habeas Corpus*', '*Mandamus*', '*Prohibition*', '*Quo Warranto*' and '*Ceritorari*' whenever these rights are violated.

(E) DIRECTIVE PRINCIPLES OF STATE POLICY ARE INCORPORATED The Constitution of India contains a list of Directive Principles of State Policy whose observance by the state is deemed for making essential for the welfare of the people. They direct the state to apply these principles in making laws. They are not enforceable by the court but have a moral force.

(F) IT ESTABLISHED THE PARLIAMENTARY SYSTEM OF GOVERNMENT The President of the Union is the Constitutional head, the Council of Ministers or the Union Cabinet is the real executive and is responsible to the Lok Sabha. Constitution of India has, from the British pattern, adopted both Union and state levels of parliamentary system of government with ministerial responsibility to the popular House as against the US system of Presidential government with separation of powers and a nearly irremovable President as the Chief Executive for a fixed term.

(G) IT IS FEDERAL IN FORM (NORMALLY) BUT UNITARY IN SPIRIT (IN EMERGENCIES) The text of the Constitution does not anywhere use the term 'federal' or 'federation'. The Supreme Court, however, has spoken of the Indian Union as 'federal', 'quasi-federal' or 'amphibian' meaning sometimes 'federal' and sometimes 'unitary' (*State of Rajasthan vs Union of India*, AIR 1977 SC 1361). Though the Constitution of states was provided by the Constitution of India, the state of Jammu and Kashmir was accorded a special status and was allowed to make its own State Constitution.

(H) IT IS NEITHER TOO RIGID (AS SOME PROVISIONS CAN BE AMENDED BY A SIMPLE MAJORITY) NOR TOO FLEXIBLE (AS SOME PROVISIONS REQUIRE SPECIAL MAJORITY FOR AMENDMENT) The Constitution is rigid or flexible depending upon amending procedure being difficult or easy. Federal Constitutions are generally classified as rigid. Indian Constitution may be termed as combination of rigid and flexibility. The fact that since the Indian Constitution was formed, there has been as many as 98 amendments approves that it is not too rigid and actually one of the most frequently amended Constitutions in the world. The first amendment came only a year after the adoption of the Constitution and incorporated numerous minor changes. Many more amendments followed, and by 2003 the Constitution had been amended 92 times, at the rate of almost one-and-a-half amendment per year since 1950. The most notable fact is that in the 65 years between 1950 and 2015, while a number of articles in the Constitution have been omitted, there has been addition of 64 articles and 4 schedules to the Constitution, viz., Articles 31A–31C, 35A, 39A, 43A, 48A, 51A, 131A, 134A, 139A, 144A, 224A, 233A, 239AA, 239AB, 239B, 243, 243A to 243ZG, 244A, 257A, 258A, 290A, 300A, 312A, 323A, 323B, 350A, 361A, 363A, 371A–371I, 372A, 378A and 394A. Most of the Constitution can be amended after a quorum of more than half of the members of each house in the Parliament passes an amendment with a two-thirds majority vote. Articles pertaining to the distribution of legislative authority between the central and state governments must also be approved by 50 per cent of the State Legislatures.

(I) IT DECLARES THAT INDIA IS A SECULAR STATE The term 'secularism' means a state which has no religion of its own as a recognised religion of state. It treats all religion equally. The Indian Constitution regulates the relation between man and man and is not concerned with the relation of man with God.

(J) IT GUARANTEES SINGLE CITIZENSHIP TO ALL CITIZENS Though the Constitution of India is federal and provides for dual polity, that is centre and state, but it provides for single citizenship for whole India. This is because under the Constitution, there is only one domicile viz., the domicile of the country and there is no separate domicile for the state (*Dr Pradeep Jain vs Union of India*, AIR 1984 SC 1420 para 8–9). The US Constitution provides for dual citizenship as the citizen of America and a State Citizenship.

(K) IT INTRODUCED ADULT FRANCHISE, THAT IS, EVERY ADULT ABOVE 18 YEARS HAS THE RIGHT TO VOTE (PRIOR TO 1989 THE LIMIT WAS 21 YEARS) AND THE SYSTEM OF JOINT ELECTORATES The 16 general elections of India has had so far have demonstrated that the illiterate and presumably ignorant masses of India are not altogether incapable of independently exercising the right of franchise. This principle of 'one man, one vote' has not been a mere ideal embodied in the Constitution but has been a living reality during last six decades and more during which the Constitution has been operational.

(L) IT ESTABLISHED AN INDEPENDENT JUDICIARY; THE SUPREME COURT ACTS AS A GUARDIAN OF THE CONSTITUTION IN PLACE OF THE PRIVY COUNCIL. In the British parliamentary system, Parliament is supreme and sovereign. There are no limitations on its powers and the judiciary has no power of judicial review of the legislation. However, the US system has the Supreme Court with its power of judicial review and of interpreting the Constitution assuming supremacy. However in India the Constitution has arrived the middle path between the battle of *Parliamentary Sovereignty vs Judicial Supremacy*. India is governed by the rule of law and the judicial review of legislation is the essential part of rule of law.

Strength of the Indian Constitution

With 22 parts, 395 articles and 12 schedules, the Indian Constitution is one of the longest and most detailed in the world. The Constitution of India draws extensively from western legal traditions in its outline of the principles of liberal democracy, but is distinguished from many western Constitutions in its elaboration of principles reflecting the aspiration to end the inequities of traditional social relations and enhance the social welfare of the population. According to Constitutional scholar Granville Austin, probably no other nation's Constitution 'has provided so much impetus towards changing and re-building society for the common good'. Since its enactment, the Constitution has fostered a steady concentration of power in the central government—especially the Office of the Prime Minister. This centralisation has occurred in the face of the increasing assertiveness of an array of ethnic and caste groups across Indian society. Increasingly, the government has responded to the resulting tensions by resorting to the formidable array of authoritarian powers provided by the Constitution.

INDIAN CONSTITUTION – A LIVING LAW

Indian Constitution is a living and organic document, which, of all instruments, has the greatest claim to be constructed broadly and liberally (*Goodyear India vs State of Haryana*, AIR 1990 SC 781 para 17). It guarantees, besides other rights, protection of life and personal liberty and provides adequate safeguards against the arbitrary deprivation thereof by the state. Therefore, the Constitution is not constructed as a mere law, but as the machinery by which laws are made.

The normal rules applicable to interpretation of statutes are equally valid in the field of Constitutional interpretation. The interpretation clause—Article 367—*inter alia* clarifies that the General Clauses Act shall apply to the interpretation of the provisions of the Constitution. But the Constitution is the fundamental and the supreme law which creates the legislature and under which all the laws of the land are to be enacted and draw their legitimacy.

Indian Constitution: Sources

Constitution of United States of America:

- (a) Fundamental Rights
- (b) Independence of Judiciary
- (c) Judicial Review
- (d) Removal of Supreme Court and the High Courts
- (e) Role of Vice President
- (f) Preamble to the Constitution

Constitution of the United Kingdom:

- (a) The Parliamentary System
- (b) The Election Procedure
- (c) Office of Comptroller and Auditor General
- (d) Writ Jurisdiction of Courts
- (e) Civil Services

Constitution of Britain:

- (a) The Law Making Procedures
- (b) The Rule of Law
- (c) The System of Citizenship

Constitution of Ireland:

- (a) Directive Principles of State Policy
- (b) The method of Indian Presidential Election
- (c) Nomination of Members of Rajya Sabha

Constitution of Australia:

- (a) Concurrent List
- (b) Trade and Commerce

Constitution of Canada:

- (a) The Federal System
- (b) Residuary Powers

Other Constitutions:

- (a) South Africa: Amendment Procedure and Election of Members of Rajya Sabha
- (b) Germany: Emergency Provisions
- (c) France: Republic
- (d) Japan: Procedure Established by Law
- (e) Former USSR: Fundamental Duties
- (f) Germany: Suspension of Fundamental Rights during Emergency

From more than one Constitution:

- (a) Australia and UK: The Parliamentary Privileges
- (b) Australia and USA: Public Interest Litigation

Doctrine of Liberal Interpretation

Indian Constitution has to be interpreted liberally and not in a narrow sense (*Goodyear India vs State of Haryana* AIR 1990 SC 781). Also, besides the general rules, there are some special rules for interpretation of the Constitution. Every provision of the Constitution has to be so constructed as to give meaning and relevance to every word used. It has been held by the Supreme Court that unless otherwise indicated, every word is supposed to have been used in the normal or ordinary connotation and should be given the plain common sense meaning (*Keshavanand Bharati vs State of Kerala* AIR 1973, 4 SCC 225). However, if the vagueness of the language

admits more than one interpretation of provision, these can be considered for the purpose of clarification (*Menon vs State of Bombay AIR 1951 SC 128*).

Principle of Harmonious Construction

Indian Constitution must be read as a whole with due importance given to every article. Where two provisions appear to be in conflict, under the Principle of Harmonious Construction, the meaning which gives effect to both the provisions and ensures their smooth and harmonious operation should be accepted (*Venkataramana vs State of Mysore AIR (1958) SC 22; State of Madras vs Chhampalam (1951) SCR 5257; Gopalan vs State of Madras, (1950) SCR 88*).

Doctrine of Severability

If in the Indian Constitution a part of the provision is found to be invalid, the validity of the remaining part need not be affected if it can be separated from the impugned part and can stand on its own (*Pratap Singh vs Allahabad Bank, AIR (1955) SC 765; Gopalan vs State of Madras (1950) SCR 88*).

Doctrine of Prospective Overruling

As adopted by the Supreme Court (*Golak Nath vs State of Punjab AIR 1967 SC 1643*), an interpretation given by the Court and the law declared by it may not be given retroactive operation, that is, the validity of past acts may not be affected.

The Basic Structure of Indian Constitution

The debate on the 'basic structure' of the Constitution has re-appeared in the public realm. While setting up the National

Commission to review the working of the Constitution, the NDA—National Democratic Alliance—government stated that the basic structure of the Constitution would not be tampered with. Justice M. N. Venkatachalaiah, Chairman of the Commission, has emphasised on several occasions that an enquiry into the basic structure of the Constitution lay beyond the scope of the Commission's work. There are 19 Basic features of the Constitution which cannot be amended. These include:

1. Domination or supremacy of the Indian Constitution
2. Nature and scope of Indian Polity that is sovereign, republican and democratic.
3. Constitution is secular in nature
4. Federal character of the Indian Constitution
5. Power of Judicial review and laws that transgress the basic structure of the constitution are likely to be down by the Supreme Court
6. Effective access to justice
7. Fair and free election system
8. Principle of rationale and reasonability
9. Equality to all as a fundamental principle
10. Rule of law
11. Legislative, executive and judiciary has clear and demarcated separation of powers
12. Limited power of parliament to bring in amendments in the Constitution
13. Unity and Integrity of Nation
14. Powers of Supreme Court under Articles 32, 136, 141–142 etc.
15. Parliamentary system
16. Freedom, dignity and gravitas to the individuals
17. Socio-economic justice to all through welfare state
18. Effective balance and no contradiction in scope and nature of fundamental Rights and Directive Principles of State Policy
19. Judiciary to remain Independent.

THE STRUCTURE OF THE INDIAN CONSTITUTION

A Constitution is not to be interpreted as a mere law, but as the machinery by which laws are made. The Constitution of India now consists of: (i) The Preamble; (ii) Parts I–XXII, covering Articles 1–395; (iii) Schedules 1–12 and the Appendix.

THE PREAMBLE

KESHAVANADA BHARTI CASE

The Preamble does form an integral part of the Constitution but embodies its spirit and meaning. The objectives specified in the Preamble contain the basic structure of our Constitution. It points out that the source of authority of the Constitution and, therefore, that of the state are the people of India. The

concept relating to separation of powers between the legislature, the executive and judiciary, as well as the fundamental concept of an independent judiciary, are now elevated to the level of the basic structure of the Constitution and are the very heart of the Constitutional scheme. Thus, the basic principle of democracy that sovereignty rests with the people is enshrined in India's Constitution.

The Original Preamble of the Indian Constitution

The draft of the Preamble was prepared by Jawaharlal Nehru and is based on the American model. This signifies

the philosophy of the Constitution, which is based on the historic Objectives Resolution drafted by Jawaharlal Nehru, which was adopted by the Constituent Assembly on 22 January 1947 and which inspired the shaping of the Constitution through all its subsequent stages.

The Preamble embodies the spirit of the Constitution, the determination of the Indian people to unite themselves in a common adventure of building up a new and independent nation, which will ensure the triumph of justice, liberty, equality and fraternity.

Preamble

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

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

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

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

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

The Preamble as Amended by the 42nd Amendment

The words 'Secular and Socialist' and the 'Integrity of the Nation' were added later to the original Preamble. The Preamble as amended by the Constitution (42nd Amendment) Act, 1976, Sec. 2, for 'SOVEREIGN DEMOCRATIC REPUBLIC' (w.e.f. 3 January 1977); and amended by the Constitution (42nd Amendment) Act, 1976, Sec. 2, for 'Unity and Integrity of the Nation' (w.e.f. 3 January 1977) reads as given in the box below.

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 citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

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

FRATERNITY, assuring the dignity of the individual and the unity integrity of the Nation.

The 44th Amendment and subsequent amendments have not made any changes in the Preamble and so India continues to remain a Sovereign Socialist Secular Democratic Republic.

Preamble—Present Form

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

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

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

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

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

An Analysis of the Preamble

REPUBLICAN CHARACTER It is declared that the Constitution has been 'given by the people to themselves', thereby affirming the republican character of Indian polity. It is in the widest sense that the Preamble speaks of India being a Republic. India is 'republic' because the head of the state is not a hereditary monarch. In our Constitution, there is a President who is the head of the Executive and who is elected and holds office for a term of 5 years.

SOVEREIGN CHARACTER India is free from any type of external control. It can acquire foreign territory and, if required, cede a part of the territory in favour of a foreign state, subject to certain Constitutional requirements (*Maganbhai Ishwarbhai Patel vs Union of India AIR 1970, 3 SCC 400*). The Preamble states that the Constitution of India is ordained by the people of India through their representatives assembled in a sovereign Constituent Assembly which was competent to determine the political future of the country in any manner it liked. The words—'WE, THE PEOPLE OF INDIA . . . adopt, enact and give ourselves this Constitution', thus, declare the ultimate sovereignty of the people of India and that the Constitution rests on their authority. (*Gopalan vs State of Madras AIR 1950 SCR 88 (198)*; *Union of India vs Madan Gopal AIR 1954 SCR 541*).

SECULAR CHARACTER The Constitution of India stands for a secular state. The state has no official religion. Secularism pervades its provisions, which gives full opportunity to all persons to profess, practice and propagate the religion of their choice. The Constitution not only guarantees a person freedom of religion and conscience, but also ensures freedom for one who has no religion, and it scrupulously restrains the state from making any discrimination on the grounds of religion. Single citizenship is assured to all persons, irrespective of their religion. In *S. R. Bommai vs Union of India (1994) SCC1*, it was

held by the Supreme Court that 'secularism is the basic feature of the Constitution'. In *Aruna Roy vs Union of India* AIR 2003 SC 3176 it was held by Supreme Court that 'secularism has a positive meaning in Indian Constitution that is developing, and understanding the respect towards different religion'.

SOCIALIST CHARACTER It is also emphasised in the Preamble, which spells out the aspirations of the people, that the state will secure for all citizens, social, economic and political justice. The Preamble also affirms a determination to secure liberty of thought, expression, belief, faith and worship, equality of status and opportunity, and to promote among the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the nation. In *Excel Wear vs Union of India* AIR 1979 SC 25, the Supreme Court considered the effect of word 'socialist' in the Preamble. It stated that the principles of socialism and social justice cannot be pushed to such extent so as to ignore completely the interest of private owners of industries in favour of nationalism and state ownership of industries. The Articles 14(4) and 16(4) of the Constitution intends to remove social and economic inequality to make equal opportunities available to everybody. It was held by the Supreme Court (*Valsamma Paul vs Cochin University* AIR 1996 SC 1101) that the right to social justice and economic justice is envisaged in the Preamble as well as the Directive Principles of the Constitution, and is elongated in the Fundamental Rights.

DEMOCRATIC CHARACTER The democratic character of Indian polity is illustrated by the provision conferring adult citizens with the right to vote, the provisions for elected representatives and those regarding the responsibility of the Executive to the Legislature. This is now being expressly ensured by amending Article 74(1) by the Constitution (42nd Amendment) Act, 1976 and the 44th Amendment Act, 1978.

In a nutshell, the Preamble aims at a social order wherein the people would be sovereign, the government would be elected and accountable to people, the powers of the government shall be restricted by the rights of people and people would have ample opportunities to develop their talents. Though the Preamble is not technically enforceable through course of law, it is useful in interpreting the various provisions of the Constitutions and acts as a beacon in conflicting situations.

Interpretation of the Preamble

PREAMBLE AS THE PART OF THE CONSTITUTION The Preamble is the part of the Constitution. It contains the principles and objectives which the Constitution makers planned to be realised by its performing provisions. It incorporates fundamental values, the viewpoint and the philosophy on which the constitution is based. However, the Supreme Court while giving its opinion on the Presidential reference on the transfer of the Berubari Union and exchange of Enclaves (*Berubari Union Case*, AIR 1960) accepted that 'Preamble is a key to open the mind of the makers... nevertheless the Preamble is not a part of the Constitution'.

Then it later reversed its judgement in *Keshvananda Bharati* Case and held that Preamble is part of the Constitution, though it is not enforceable yet part of the Constitution.

PREAMBLE CAN BE PRESSED INTO SERVICE TO INTERPRET PROVISIONS It may be invoked to determine the ambit of: (a) Preamble is the integral part of the constitution—*LIC of India vs Union Government* (1995); (b) the Fundamental Rights—*Keshvananda Bharati vs State of Kerala*, AIR 1973 SC 1461 and (c) the Directive Principles of State Policy—*Excel Wear vs Union of India*, AIR 1979 SC 25. It may be pressed into service to interpret Constitutional provisions, whereby, the Preamble declares India to be a sovereign, socialist, secular, democratic republic.

Preamble limits the power of the Amendment the objectives specified in the Preamble contain the basic structure of our Constitution. It was argued in the famous *Keshvananda Bharti* case that by virtue of the amending power of Article 368 even the Preamble can be amended as it is a part of the Constitution. However, it was stated that the Preamble contains the basic elements or the fundamental features of our Constitution. Consequently, amending power cannot be used so as to destroy or damage these basic features mentioned in the Preamble. The Preamble declares that the people of India resolved to constitute their country into sovereign, democratic and republic. The amending power cannot change the Constitution in such a way that it ceases to be a 'Sovereign Democratic and Republic'.

PARTS I-XXII COVERING ARTICLES 1-395

Parts and Articles of the Constitution

1. Part I/Articles 1-4 (Territory of India, admission, establishment or formation of new states) [4 Articles]
2. Part II/Articles 5-11 (Citizenship) [7 Articles]
3. Part III/Articles 12-35 (Fundamental Rights) [24 Articles]
4. Part IV/Articles 36-51 (Directive Principles of State Policy) [16 Articles]
5. Part IV-A/Article 51A (Duties of a citizen of India, added by the 42nd Amendment in 1976) [1 Article]
6. Part V/Articles 52-151 (Government at the Union level) [100 Articles]
7. Part VI/Articles 152-237 (Government at the state level) [86 Articles]
8. Part VII/Article 238 (Deals with states in Part-B of the first Schedule, repealed by *the 7th Amendment* in 1956) [1 Article]
9. Part VIII/Articles 239-242 (Administration of Union Territories) [4 Articles]
10. Part IX/Articles 243-243O (The Panchayats, Amended by the *73rd Amendment Act, 1992*) [16 Articles]
—Part IX-A/Articles 243P-243ZG (The Municipalities, added by the *74th Amendment Act in 1992*) [18 Articles]

- Part IX-B/Articles 243ZH–243ZT (The Co-operatives, added by the **97th Amendment Act in 2011**) [13 Articles]
11. Part X/Articles 244–244 A (Scheduled and tribal areas) [2 Articles]
 12. Part XI/Articles 245–263 (Relations between the Union and states) [19 Articles]
 13. Part XII/Articles 264–300A (Finance, property, contracts and suits) [38 Articles]
 14. Part XIII/Articles 301–307 (Trade, commerce and travel within the territory of India) [7 Articles]
 15. Part XIV/Articles 308–323 (Services under the Union and states) [16 Articles]
 16. Part XIV-A/Articles 323A–323B (Added by the **42nd Amendment Act, 1976** and deals with administrative tribunals.) [2 Articles]
 17. Part XV/Articles 324–329A (Election and Election Commission) [7 Articles]
 18. Part XVI/Articles 330–342 (Special provision to certain classes SCs/STs, OBCs and Anglo-Indians) [13 Articles]
 19. Part XVII/Articles 343–351 (Official languages) [9 Articles]
 20. Part XVIII/Articles 352–360 (Emergency provisions) [9 Articles]
 21. Part XIX/Articles 361–367 (Miscellaneous provisions) [7 Articles]
 22. Part XX/Article 368 (Amendment of Constitution) [2 Articles]
 23. Part XXI/Articles 369–392 (Temporary, transitional and special provisions) [24 Articles]
 24. Part XXII/Articles 393–395 (Short title, commencement and repeal of the Constitution) [3 Articles]

However, as discussed there are only Article 1–395 mentioned in the Constitution of India, and all new articles included after amendments (as total shown is 465 here) were adjusted in 395 Articles only. Similarly, there are 22 Parts and the adjusting/addition if any were brought in the 22 parts only.

Article 368

Article 368 of the Constitution gives the impression that Parliament's amending powers are absolute and encompass all parts of the document. However, the Supreme Court has acted as a brake to the legislative enthusiasm of Parliament ever since independence. With the intention of preserving the original ideals envisioned by the constitution makers, the Apex Court pronounced that Parliament cannot distort, damage, or alter the basic features of the Constitution under the pretext of amending it. The phrase 'basic structure' itself cannot be found in the Constitution. The Supreme Court recognised this concept for the first time in the historic *Kesavananda Bharati* case, in 1973. Ever since then, the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by Parliament.

Secular India

The Constitution calls India a sovereign, socialist, secular, democratic republic. The differences of religion, ethnicity, caste and languages of the order that India has, do not exist anywhere else in the world. India's traditional society and its economy, frozen for long years, are being modernised. The result is a social and moral convulsion, perhaps unprecedented in the history of the land. However, India has managed to contain this, by and large, within the framework of its constitution, laws and institutions. The secular fabric of India also deserves attention. It is well known that people of different religious faiths have co-existed in India for centuries. The founders of the Indian state made secularism the sheet anchor of India's unity.

The word 'Secularism' is rather vague and was introduced by the 42nd Amendment in 1976. Articles 25–28 of the constitution relating to the freedom of religion and freedom to manage religious affairs are more specific. They contain the clear directive that no "religious instruction shall be provided in any educational institution wholly maintained out of State Funds."

There is another provision in Article 28(3) that no person attending any educational institution recognised by the state or receiving aid out of state funds shall be required to take part in any religious instruction that may be imparted in such institution, or to attend religious worship that may be conducted in such institution or in premises attached there to, unless such person or, if such person is a minor, his guardian, has given his consent there to.

Thus complete religious freedom, with the absence of any compulsion whatsoever in religious matters, legally guarantee India as a secular country in which the state has no religion nor does it seek to promote or discourage any religion or religious belief. The state stands committed to a policy of non-interference in religious matters.

Parts and Articles of the Constitution

The Constitution of India is divided into 22 chapters or parts that contain 395 articles (slots that accommodates 465 articles). It is the longest written Constitution, which incorporates accumulated experience of different Constitutions of the world. The vastness of India and the various peculiar problems it faces made it mandatory that its Constitution was drafted in various chapters, which cater to specific domains. Thus, the Constitution covers the detailed provisions regarding specific problems, with an adequate number of articles in each Part.

Ninth Schedule of the Indian Constitution

The Ninth Schedule was created primarily to prevent the judiciary—which upheld the citizens' right to property on several occasions—from derailing the Congress-led government's agenda for a social revolution. Property

owners again challenged the Constitutional Amendments that placed land reforms laws in the Ninth Schedule before the Supreme Court, saying that they violated Article 13(2) of the Constitution. Parliament added the Ninth Schedule to the Constitution through the very first amendment in 1951 as a means of immunising certain laws against judicial review. Under the provisions of Article 31, which themselves were amended several times later, the laws placed in the Ninth Schedule—pertaining to acquisition of private property and compensation payable for such acquisition—cannot be challenged in a court of law on the ground that they violated the Fundamental Rights of citizens. This protective umbrella covers more than 250 laws passed by State Legislatures with the aim of regulating the size of land holdings and abolishing various tenancy systems. However, Supreme Court ruled (in 2007) that the laws included in this schedule are open to judicial review (included after 24 April 1973).

THE SCHEDULES

Schedules can be added to the Constitution by amendment. The original Constitution only had eight Schedules. The Ninth Schedule was the first Schedule added to the original Constitution by the first Amendment of 1951, and the Twelfth Schedule is the latest Schedule added by the 74th Amendment of 1992. The 12 Schedules cover the designations of the states and union territories (UTs); the emoluments for high level officials; forms of oaths; allocation of the number of seats in the Rajya Sabha (Council of States—the upper house of Parliament) per state or territory; provisions for the administration and control of Scheduled Areas and Scheduled Tribes (STs); provisions for the administration of tribal areas in Assam; the Union (meaning central government), state and concurrent (dual) lists of responsibilities; the official languages; land and tenure reforms; and the association of Sikkim with India.

A brief introduction of the schedules in the Constitution:

FIRST SCHEDULE It deals with the territories of the 29 states and 7 UTs of the Indian Union.

SECOND SCHEDULE It deals with salaries, allowances, etc., payable to the President of India, Governors of states, Chief Justice of India, judges of the Supreme Court and High Courts, and the Comptroller and Auditor General of India. The revised monthly salaries now are:

President of India	₹ 150,000 pm
Vice-President	₹ 125,000 pm
Governor of a state	₹ 110,000 pm (varies from state to state)
Chief Justice of the Supreme Court	₹ 100,000 pm
Judges of the Supreme Court	₹ 90,000 pm
Chief Justice of a High Court	₹ 90,000 pm
Judges of a High Court	₹ 80,000 pm
Comptroller and Auditor General	₹ 90,000 pm

THIRD SCHEDULE It prescribes the various forms of oath or affirmation, which various incumbents have to take before assuming a public office.

FOURTH SCHEDULE It allocates seats to each state and UT in the Rajya Sabha. It contains provisions as to the administration and control of Scheduled Areas.

FIFTH SCHEDULE It deals with the administration and control of the Scheduled Areas.

SIXTH SCHEDULE It deals with the provisions regarding administration of tribal areas in the states of Assam, Meghalaya and Mizoram. This Schedule in the Constitution, amended in 1988 by the Act 67 of 1988, received the assent of the President on 16 December 1988, and was applied to the states of Tripura and Mizoram with effect from 16 December 1988.

SEVENTH SCHEDULE It deals with three lists of powers and subjects to be looked after by the Union and the states, which are as follows: (i) Union List—comprises subjects of all-India importance like defence, international affairs, railways, post and telegraph, income tax, etc. The Parliament has the exclusive power to legislate on these subjects. It contains 97 subjects. (ii) State List—contains subjects of local importance. Normally, the State Legislature alone legislates on these subjects. It contains 66 subjects. (iii) Concurrent List—contains subjects on which the Parliament as well as the State Legislature enjoy authority.

EIGHTH SCHEDULE It has a list of 22 regional languages recognised by the Constitution. Originally, there were only 14 languages in this Schedule, the 15th language, Sindhi, was added by the 21st Constitutional Amendment in 1967. Further to this, three languages, Konkani, Manipuri and Nepali, were added by the 71st Amendment in August 1992 and by 92nd Amendment in January 2004, four more languages, Bodo, Dogri, Maithili and Santhali, were added. The languages are: (1) Assamese, (2) Bengali, (3) Gujarati, (4) Hindi, (5) Kannada, (6) Kashmiri, (7) Malayalam, (8) Marathi, (9) Oriya, (10) Punjabi, (11) Sanskrit, (12) Sindhi, (13) Tamil, (14) Telugu, (15) Urdu, (16) Konkani, (17) Manipuri, (18) Nepali, (19) Bodo, (20) Dogri, (21) Maithili and (22) Santhali. At present, there is a demand to include 38 more languages in this schedule. A committee under the chairmanship of Mr. Sitakant Mahapatra submitted a report in 2004 to evolve a set of objective criteria for inclusion of more languages in the 8th schedule of the Constitution.

NINTH SCHEDULE It contains certain acts and regulations of the State Legislature dealing with land reforms and abolition of the zamindari system. It contains 257 Acts. This Schedule was added to the Constitution in 1951 by the First Constitution (Amendment) Act and it was made immune to challenge in any court of law. It mentioned that any land reform law cannot be struck down on the basis that compensation is inadequate or any such basis.

TENTH SCHEDULE It contains certain provisions regarding disqualification of members on grounds of defection.

ELEVENTH SCHEDULE It lists 29 subjects on which the Panchayats have been given administrative control. It was added to the Constitution on 20 April 1992 by the 73rd Amendment in 1992.

TWELFTH SCHEDULE It lists 18 subjects on which the municipalities are given administrative control. It was added to the Constitution on 20 April 1992 by the 74th Amendment in 1992.

THE APPENDIX It consists of the following five parts:

- (a) Appendix I The Constitution (Application to Jammu and Kashmir) Order, 1954

(b) Appendix II Re-statement, with reference to the present text of the Constitution, of the exceptions and modifications subject to which the Constitution applies to the state of Jammu and Kashmir

(c) Appendix III Extracts from the Constitution (44th Amendment) Act, 1978.

(d) Appendix IV, the Constitution (86th Amendment) Act 2002

(e) Appendix V, the Constitution (88th Amendment) Act 2003.

UNION OF INDIA—ITS STATES AND UNION TERRITORIES

THE UNION OF INDIA

The Constitution describes India as a Union of States, thereby implying the indestructible nature of its unity. No unit constituting the Indian Union can secede from it. The country is divided into several units, known as states or UTs, and the Constitution lays down not only the structure of the Union government but also the structure of the state government.

THE RE-ORGANISATION OF THE STATES

Structure of the Union Before 1956

The Constitutional provisions in 1949, established a three-tier state system under which the constituent units of the Union had no uniform status. They were recognised under three separate categories:

(ii) Part-B (headed by Rajapramukhs, the states that entered the Union consequent to financial integration) and

(iii) Part-C (territories directly administered by the centre on a unitary basis).

Apart from these three parts, there was Part-D as well (mainly the islands of Andaman and Nicobar, which were under the direct control of central government).

Dhar Commission (1948)

During that period the southern states were particular on re-organisation of states on linguistic basis. Dhar Commission, under the chairmanship of SK Dhar, was constituted in 1948 that recommended that the rationale for re-organisations of the states should be on the basis of administrative conveniences rather linguistic factors. This was not accepted by all and another attempt was made to create states on the grounds of common languages which led to the appointment of JVP Committee.

JVP Committee (1948)

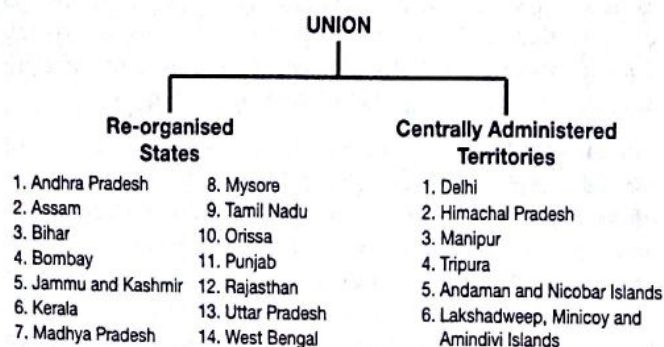
With the Prime Minister Jawaharlal Nehru as a member, another committee was formed, the JVP Committee, that included Vallabhbhai Patel and Pattabhi Sitaramayya, to look into possibilities of forming states on linguistic basis. However, JVP Committee also did not decide on favour of this.

- The only exclusion was creation of Andhra Pradesh which had a fair share of geographical area that was dominated by Telugu-speaking people from Madras Constituency.

Formation of a New State

As per Schedule 1, Article 2 of the Indian Constitution, the Parliament may by law admit into the Union, or establish, new states on such terms and conditions as it thinks fit.

The territory of India as defined in the Original Constitution (1949) was divided as given here



- (i) Part-A (headed by Governors, mainly the former British Indian states),

- Also, according to Article 3, Parliament may, by law,
 - (i) 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;
 - (ii) increase the area of any state;
 - (iii) diminish the area of any state;
 - (iv) alter the boundaries of any state;
 - (v) alter the name of any state.
- The Indian Constitution in its Article 4 provides that laws made under Articles 2 and 3 provide for the amendment of the First and the Fourth Schedules and for supplemental, incidental and consequential matters.
 - (i) Any law referred to in Article 2 or 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the state or states affected by such law) as Parliament may deem necessary.
 - (ii) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

Further Re-organisation of States

- 1953 → Andhra Pradesh—1st state created for Telugu-speaking people.
- 1960 → Maharashtra and Gujarat—Made by division of Bombay;
- 1963 → Nagaland;
- 1966 → Punjab, Haryana and Himachal Pradesh—Re-organised under Punjab Reorganization Act, 1966. (Himachal Pradesh) was still a UT;
- 1969 → Meghalaya—Created out of Assam;
- 1970 → Tripura and Manipur—Re-organised from UTs;
- 1971 → Himachal Pradesh—It became full-fledged state;
- 1975 → Sikkim;
- 1986 → Mizoram—UT re-organised as a state of Union;
- 1987 → Arunachal Pradesh—UT converted into state;
- 1987 → Goa—Youngest state converted from a UT;
- 2000 → Chhattisgarh, Jharkhand and Uttarakhand—Created out of Madhya Pradesh, Bihar and Uttar Pradesh, respectively.
- 2014 → Telangana—Out of Andhra Pradesh.

The State Reorganization Commission (1953)

On 1 October 1953, the state of Andhra Pradesh came into existence from certain parts of the former undivided Part-A state of Madras, on account of compelling demands of the

Telugu-speaking majority in those regions. This sparked off agitations all over the Union of India, where the various linguistic and religious regions demanded separate statehoods. In order to objectively and dispassionately settle this problem the centre appointed the State Reorganization Commission in 1953 under the chairmanship of former Supreme Court Judge, Fazl Ali. Other members were K.M. Panikkar and H.N. Kunzu. The Commission submitted its report, which became famous as the SRC report, on 30 September 1955 having these recommendations: (i) Abolition of the three-tier state system; (ii) Abolition of special agreement and institution of Rajapramukhs of the original Part-B states; (iii) Abolition of general control vested in Government of India by Article 371 and (iv) Only three states (Delhi, Manipur, and Andaman and Nicobar Islands) to be made centrally administered territories and all the rest of Part-C states and Part-D territories to be merged with the adjoining states. The Commission proposed the creation of a total of 16 states and 3 UTs. Based on the recommendations of the SRC report, the Parliament passed the State Reorganization Bill (1956). The Constitution also required certain amendments and the seventh Amendment of the Indian Constitution came into force along with the Reorganization Bill on 1 November 1956.

Process for Formation of a New State

The provisions for creating new states and changing the boundaries of new states are provided in Articles 2–4 of the constitution. Only a simple law passed by both the Lok Sabha and Rajya Sabha is enough to create a new state. However, only the Central Government can introduce a Bill for this purpose. And before introducing the Bill, the states which will be affected have to be consulted. The process of consultation followed has the following features:

- (i) The matter is referred to the legislatures of the affected states.
- (ii) No specific time period within which the states have to send their decision back to the Centre has been mentioned in the Constitution.
- (iii) The Constitution does not mention that the state legislatures have to agree to the proposed creation/alteration of states.

The names of the states in the Union are mentioned in the First Schedule of the Constitution. Similarly, the Fourth Schedule lists the number of seats each state is allotted in the Rajya Sabha. However, Article 4(2) of the constitution clearly says that no law creating or altering a new state will be considered as a constitutional amendment.

The Structure of the Union After the Seventh Amendment

The structure of the Indian Union after the re-organisation of states, according to Act of 1956 and seventh Amendment of the Constitution, was as given here:

They were further grouped into four zones:

- Zone 1 – Northern zone
- Zone 2 – Eastern zone
- Zone 3 – Southern zone
- Zone 4 – Central zone

Each of these zones was given a Zonal Council to discuss matters of common interest

THE PRESENT STRUCTURE OF THE UNION

The States and the UTs

India consists of 29 states and 7 UTs. The states are: Andhra Pradesh, Assam, Arunachal Pradesh, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh and West Bengal. UTs are: Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Delhi, Lakshadweep, and Puducherry. There are 7 UTs in India out of which Delhi holds a special status as 'National Capital Region (NCR)'. That's why you may see in many official reports claiming India to have 29 states, 6 UTs and one NCR.

The Relation Between the Indian Union and Its States

India is a sovereign, secular, democratic republic governed by the terms of the Indian Constitution. The structure of India's federal—or Union—system not only creates a strong central government but has also facilitated the concentration of power in the central government, in general, and in particular, in the Office of the Prime Minister. The Union constitutes of (i) the states, which enjoy the status of being members of the federal system and share the distribution of powers with the Union and (ii) the UTs, which are centrally administered areas, to be governed by the President, acting through an administrator appointed by him. Both, the states as well as the Union of India are the creation of the Constitution. The Indian Constitution derives its strength from the sovereignty of the people, therefore, states in India cannot claim that the Union of India is their creation and if they had not given powers to the Indian Union, it could not have come into existence.

INDIAN FEDERALISM

India—The Union of States

The Constitution itself says that India is a 'Union of States'. The word 'Federation', which was so often used in the

Government of India Act, 1935, has not been used even once in the new Constitution of India. Yet, if we look to the very nature of the Constitution, we find that it is not a unitary constitution but a federal one. Of course, the terms unitary and federal are not synonymous with good and evil. Whether a constitution is unitary or federal depends on the pattern on which the constitution has been drafted. A constitution drafted on a pattern that imparts a relatively high degree of genuine autonomy to its component units is federal in nature.

India—A Federal State

On studying the pattern of the Constitution of India, we find that the legislative and executive spheres of the centre and the states have been clearly defined. The centre cannot encroach upon the fields that are within the exclusive jurisdiction of the states. 'The essence of federalism is the existence of a sphere in which the units can exercise executive and legislative authority free of central control'. The pattern of the Indian Constitution answers this definition. The legislative powers of the Union and the State Legislatures have been embodied in separate lists. List I or the Union List covers such matters as are essential to the existence of the Union or which require uniform treatment throughout India. The exclusive legislative powers of the states are covered in List II or the State List. The centre cannot encroach upon this list, except when a proclamation of Emergency has been validly promulgated. 'A federal state, in short, is the fusion of several states into a single state in regard to matters affecting the common interest while each component unit enjoys autonomy in regard to other matters'.

Non-Federal Nature of the Indian Union

The framers of the Indian Constitution sought to combine the best features of different Constitutions, and one such combination is that in India we have a federal structure with unitary features. It is a federal structure at all times, except in the case of emergencies, when it will be open to the Union government to convert the state temporarily into a unitary state. But this does not mean that the Constitution of India is not federal. The chief characteristics of a federal Constitution are: (i) the supremacy of the Constitution and (ii) the distribution of powers and '... our constitution, with its distribution of powers and the duties of the Court to guard that, remains normally and basically a federal Constitution, subject to specified exceptions'. But these exceptions have also been provided in the Constitution and have not been left to the discretion or choice of the centre. These can be made only in the national interest. And as such the constitution embodies the principle that in spite of federalism the nation's interest ought to be paramount.

India—A Quasi-Federal State

India is not a federation, in the same sense as USA or Australia. In these countries one of the basic principles of

federalism is that in no case can the distribution be altered at the will of one of the parties but India, as we have observed above, has done away with that limitation in the national interest and to ensure national unity in emergencies. A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of state rights. There is no doubt that in India there is a great tendency towards giving more power to the centre as endorsed by Sir Ivor Jennings who said it is a 'federation with a strong centralising tendency', but this can neither make the Indian Constitution a unitary or India 'quasi-federation'.

Security of the State

Security of the state refers only to 'serious and aggravated forms of public disorder'. In other words, rebellion, waging war against the state, insurrection, etc. are most likely to threaten the security of the State. Thus, expression of views or making of speeches which tend to incite or encourage the people to commit violent crimes like murder, would constitute reasonable grounds for imposition of restrictions under Article 19(2) (*State of Bihar vs Shailabala Devi*, AIR 1952 SC 329). Making a speech which tends to overthrow the state can be made punishable (*Santosh Singh vs Delhi Administration*, AIR 1973 SC 1091). Though 'public order' was added as a ground for imposing restrictions through the 1951 Constitution Amendment, ordinary breaches thereof like unlawful assembly, riot, affray, etc. would remain outside the purview of Clause (2).

Detailed Discussion on Federal Character of India

Let us examine this provision of the Indian Constitution in the light of the aforesaid criteria. Now, if we look at the federal principle we find that the following are the most essential features:

- (i) **Division of Power** There is a clear-cut division of power between the Union and states. Seventh Schedule of the Constitution provides for three lists (a) the Union List comprises 97 subjects wherein, the Union government has exclusive jurisdiction; (b) the State List has 66 subjects wherein, the states have exclusive jurisdiction, while (c) the Concurrent List has 47 subjects wherein both the Union and states have jurisdiction but in case of conflict between the two, law of the Union prevails.
- (ii) **Written Constitution** The source of power of both the governments, Union and states, is the written constitution enacted by the Constituent Assembly.
- (iii) **Rigidity of the Constitution** The procedure of amending the Constitution regarding the federal principle is rigid. It requires not only the absolute majority of the members of the two Houses of Parliament and two-third majority of the members present and voting but also endorsement of the Legislatures of at least half of the states.
- (iv) **Supremacy of the Constitution** The Constitution is supreme. All the authorities of the Union and states, such

as legislatures, executives and judiciary, get their powers from the Constitution and are subordinate to it.

- (v) **Impartial Judiciary** The Constitution provides for a Supreme Court which is the highest authority in India regarding the interpretation of the Constitution. It possesses original jurisdiction in disputes arising between Union on the one hand and a state or more than one state on the other, or between one state on the one hand and another state or more than one state on the other.

It is, thus, clear that the Indian Constitution possesses almost all the essential characteristics of a federal polity. But then there are certain factors that deviate from the generally accepted norms of federalism. They can be summarised as follows:

- (a) Originally, in a federal form of government, the units of federation have their own identity and their own constitution which they can change as per their requirements, but in India it is not so. The Parliament of India can change not only the territories of a state, but also its name through an ordinary law. The states do not have a separate constitution of their own and cannot make any change in the Constitution by themselves.
- (b) The distribution of powers heavily tilts in favour of the Union. The Union List comprises the largest number of items. In the Concurrent List also, the centre supersedes the powers of the states. Thus the centre dominates in about two-thirds of the total number of subjects of the three lists together. Some of the items in the Concurrent List, such as 'economic and social planning', 'social security', etc., are of such potentiality that they can substantially minimise the powers of the State Legislatures.
- (c) Even in the State List, the Constitution permits the Union Legislature to enact a law if the Upper House of Parliament (Rajya Sabha), passes a resolution, supported by not less than two-thirds of the members present and voting, that it is necessary or expedient in the national interest that Parliament should make a law with respect to any matter enumerated in the State List, it would be competent for Parliament to make law for the states with respect to that matter to be operative for such period, not exceeding 1 year, as may be specified therein.
- (d) Not only this, laws passed by the State Legislature, on a subject on the State List, may be reserved for the consideration of the President by the Governor; some of them have to be specifically reserved and some of them cannot be even introduced or moved in the State Legislature without the previous sanction of the President.
- (e) Though law and order is a state issue, the centre deploys Central Reserve Police Force (CRPF) in states, whenever it deems necessary, without the concurrence of states. In fact, sometimes it deploys them against the wishes of and in spite of protest by the state governments.
- (f) Governors of the states are appointed by President and they hold their office during his pleasure and to the extent they exercise their powers in their discretion, are answerable to him.

- (g) The Union government is empowered to issue administrative directions to the states in relation to certain matters (such as to ensure compliance with the laws made by Parliament or such as not to impede or prejudice the exercise of the executive power of the Union). The Constitution provides adequate means for securing the compliance with the directions by the states. Non-compliance can be treated as a failure of the Constitutional machinery and entitle the President to impose, what in common parlance is called, President's rule in that state.
- (h) The Constitution has distributed the financial resources in such a way that states have to seek grants from the Union government. The President of India also appoints the Finance Commission of India, which recommends allocation of such grants.
- (i) During a period of Emergency (declared under Article 352 of the Constitution), the Union Parliament can make laws in relation to matters in the State List, give directions to states as to how they should exercise their authority, empower the Union officers to exercise executive authority on matters in the State List and suspend the financial provisions of the Constitution.
- (j) In case of failure of Constitutional machinery in a state (under Article 356 of the Constitution), the President can assume all the functions of the government of the state, including the powers of the Governor, but not the powers of the High Court. He can also authorise the Parliament to exercise the powers of the State Legislature.
- (k) Similarly, in case of financial emergency (declared under Article 360 of the Constitution) he can issue necessary directions, including orders for the reduction of salaries and allowances of public servants belonging to the Union and the states. All Money Bills, passed by the State Legislature during such an emergency are also subject to the control of the Union.
- (l) Generally, in a federation there prevails dual citizenship, the citizenship of the Union and that of the state. But in India there is no such provision. The Constitution provides for single citizenship. In fact, in India the Constitution grants freedom to every citizen to settle down in any part of India.
- (m) Generally, in a federation, there prevails dual judicial system. The Federal Courts are separate from the state

courts and the states have their own highest courts against whose judgements there is no appeal in any other court. But, in India there is unified judicial system where the Supreme Court of India is the highest court of appeal, both in the Union and the states' subjects.

- (n) Generally, in federations, there is separation of public services. The federal government has its own public services while the states have their own distinct services. But in India, there are all-India services. The personnel of these services, though assigned to a particular state, are called on deputation by the Union government for a fixed period.

This description makes it quite clear that the constitution makers intended to make the centre really strong. The distribution of legislative, executive and judicial powers between the centre and the states amply proves it. During Emergency, the federal polity virtually becomes unitary in character. The question then arises as to why the constitution makers were reluctant to accept the norms of federal principle. The following factors are responsible for it:

- (i) When the Constituent Assembly was drafting the Constitution, there prevailed anarchic conditions in India. Communal forces were active due to the partition of India. In some areas of Warangal and Nalgonda districts the writ of the Madras government did not prevail. There were media reports about a plot that some parts of India were going to secede and form an independent Bangla-speaking nation by joining hands with the then East Pakistan. The states, it was felt, would not be able to face such challenges.
- (ii) At the time of independence, India had a de-centralised unitary form of government. The feeling of Indian nationalism inspired the people. In fact, the election of Provincial Legislative Assemblies in 1946 was fought and won by the Indian National Congress on the platform of 'United India'. Not only Congress, almost all the political parties then were inspired and guided by the strong feeling of nationalism.
- (iii) There is a general trend in favour of centralisation in almost all the federations of the world. The development in modern means of transportation and communication and technological developments favour this trend.

INDIAN CITIZENSHIP

As per the Indian Constitution, a 'person' and a 'citizen' are clearly distinguished. Some Fundamental Rights are available only to citizens, whereas others are available to all persons, regardless of whether they are citizens. Part II of the Constitution relates to citizenship, and lays down the modes of acquiring citizenship of India at the time of commencement of the Constitution. The power to regulate, by legislation, the right to citizenship was vested with the Parliament of India through Article 11. In exercise of this power, Parliament enacted the Citizenship Act, 1955.

NATURE OF CITIZENSHIP

Single Citizenship

The Constitution provides for only single citizenship and there is no separate citizenship for states. Thereby, at the commencement of the Constitution every person domiciled in the territory of India, born in the territory of India, or who has been a resident of India for not less than 5 years immediately preceding the commencement of the Constitution (26 January 1950) is a citizen of India.

Rights of Citizens Under the Constitution

Only Indian citizens have the following rights under the Constitution, which 'aliens' cannot exercise in India:

- (i) Fundamental Rights;
- (ii) Eligibility for certain offices such as those of the President [Article 58(1)(a)], the Vice-President [Article 66(3)(a)], Judge of the Supreme Court [Article 124(3)] or of a High Court [Article 217(2)], Attorney General [Article 76(2)], Governor of a state (Article 157) and the Advocate General (Article 165);
- (iii) Election to the House of the People and the Legislative Assembly of a state (Article 326) and member of Parliament (Article 84) and of the State Legislature [Article 191(d)].

CITIZENSHIP ACT AND ITS AMENDMENTS

The Citizenship Act (1955)

The modes of acquiring Indian citizenship are:

- By birth—Every person born in India on or after 26 January 1950
- By descent—Every person born on or after 26 January 1950, anywhere in the world to parents who are Indian citizens at the time of the person's birth
- By registration—Every person who registers themselves before the prescribed authority
- By naturalisation—A foreigner who applies for naturalisation to the Government of India
- By incorporation of territory—Every resident of the territory becoming part of the Indian Union when India acquires new territories.

The right of citizenship is denied to those who migrated to Pakistan after 1 March 1947. But those who returned to India under a permit of resettlement after 19 July 1948 are exempted.

The territories which became part of India after 15.08.1947 are: (i) Sikkim 26.04.1975 (ii) Puducherry 16.08.1962 (iii) Dadra & Nagar Haveli 11.08.1961 (iv) Goa, Daman and Diu 20.12.1961

Amendment of Citizenship Act (1955)

In 1986, the Indian Citizenship Act was amended to restrict acquisition of citizenship by refugees coming to India from Bangladesh, Sri Lanka and other countries. It provided that persons born in India (i) on or after 26 January 1950, but prior to 26 November 1986 and (ii) on or after the commencement of the Amending Act, 1986, shall be citizens of India by birth only if either of their parents is a citizen of India at the time of his birth. The period for acquisition of citizenship through registration has also been increased from 6 months to 5 years.

Citizenship (Amendment) Bill (1992)

A Bill seeking to eliminate discrimination against women in the matter of citizenship of their children received parliamentary approval on 30 November 1992. Under the Bill, a person born outside India would be deemed to be an Indian citizen if either of his/her parents were Indian. The provision in the principal Bill of 1955 only applied to those born to Indian male citizens.

The Citizenship Act (2003)

There has been persistent demand and expectations for dual citizenship for persons of Indian origin (PIO) living in North America, Europe, Australia, New Zealand, Singapore and few other countries. The grant of dual citizenship was intended to remove for those who have taken foreign passports, the obstacle in travel to and from India, permit investment in business ventures and foster a greater sense of belonging. This provision is an incentive for people to relate themselves with India, to make investments, to make technology transfer and such like things. On the occasion of first Pravasi Bhartiya Divas on 9 January 2003, former Prime Minister of India Atal Bihari Vajpayee made an announcement for grant of dual citizenship to PIO. To translate that announcement into a reality, the necessary legislation was introduced by the Government of India in Parliament in May 2003. The Indian Parliament on 22 December 2003 passed a Bill to grant dual citizenship to the PIO. The Bill received the President's assent on 7 January 2004. Among other things, the Citizenship Amendment Bill, 2003, which amends the Citizenship Act, 1955, would simplify the procedure to facilitate reacquisition of Indian citizenship by persons of full age who are children of Indian citizens and former Indian citizens. It is a tribute to the broad vision of this concept, that it has enjoyed full support across various sections of people in India, including the full support of all political parties and subsequently, the legislation was passed by Parliament unanimously in December 2003. The concept of dual citizenship, now phrased as Overseas Citizenship, will grant overseas citizenship to PIO belonging to certain countries as well as Indian citizens who may take up the citizenship of these countries in future.

Eligibility Criteria for Dual Citizenship

The central government on application made in this behalf may register any person as an overseas citizen of India if: (i) that person is of Indian origin of full age and capacity who is a citizen of a specified country; (ii) that a person is of full age and capacity who has obtained the citizenship of a specified countries on or after the commencement of citizenship (Amendment) Act, 2003 and who was a citizen of India immediately before such commencement; (iii) The person registered as an overseas citizens of India shall be an overseas citizen of India as from the date on which he is so registered.

Deprivation of Indian Citizenship Under 2003 Act

No person who has been deprived of his Indian citizenship under this Act shall be registered as an overseas citizen of India except by an order of the central government. For this purpose, the expression 'person of Indian origin' shall mean a citizen of another country who;

- (i) was eligible to become a citizen of India at the time of the commencement of the Constitution;
- (ii) belonged to a territory that became part of India after the 15th day of August, 1947; and
- (iii) the children and grandchildren of a person covered under Clauses (i) and (ii), but does not include a person who is or had been at any time a citizen of Pakistan, Bangladesh or such other country as the central government may, by notification in the Official Gazette, specify.

Citizenship (Amendment) Bill (2015)

Indian Parliament on 5 March 2015 passed the Citizenship Amendment Bill which seeks to merge the PIO and Overseas Citizenship of India (OCI) schemes. It seeks to amend the Citizenship Act, 1955, which regulates the acquisition and determination of citizenship and details registration of overseas citizens of India and their rights.

- It provides additional grounds for registering for an OCI card. The ordinance was promulgated in order to give Persons of Indian Origins (PIOs) benefits like lifelong visa and exemption from appearing before the local police station on every visit.
- The Bill though enacted in March 2015 is to be considered to have come into force on January 6, 2015.
- The act provides that if anyone renounces its overseas citizenship, his or her minor child and spouse ceases to lose OCI privileges. The spouses of OCI also tend to lose the states and privileges if their marriage to the OCI states holder is dissolved or they marry again without dissolving the first marriage.

The Loss of Citizenship

Under the provisions of the Constitution (Articles 5–8), Indian citizenship can be lost in three ways:

By renunciation—if a person holding Indian citizenship as well as another citizenship refutes Indian citizenship voluntarily.

By termination—by operation of law as soon as an Indian citizen voluntarily acquires the citizenship of another country.

By deprivation—the Parliament can, by law, deprive any person of his citizenship by way of the provision of Article 10 of the Constitution if it is satisfied that citizenship was acquired by fraud, false representation; or concealment of material facts. If a person shows disloyalty towards the Indian Constitution; indulges in trade with enemy countries during war; is sentenced to imprisonment for a period of 2 years or more, within 5 years of registration of naturalisation, or has been continuously residing out of India for more than 7 years, he is liable to lose his citizenship.

OVERSEAS CITIZENSHIP OF INDIA (OCI)

Renunciation and Cancellation of Overseas Citizenship

The Citizenship Amendment Bill, 2015 provides that where a person renounces their overseas citizenship, their minor child shall also cease to be an OCI. The Bill extends this provision to cover spouses of OCI cardholders. The Bill also allows the central government to cancel the OCI card where it is obtained by the spouse of an Indian citizen or OCI cardholder, if:

- (i) the marriage is dissolved by a court, or
- (ii) the spouse enters into another marriage even while the first marriage has not been dissolved.

Benefits to be Allowed to an OCI

- (i) Multiple entry, multi-purpose lifelong visa to visit India.
- (ii) Exemption from reporting to Police authorities for any length of stay in India.
- (iii) Parity with Non-Resident Indians (NRIs) in financial, economic and educational fields except in the acquisition of agricultural or plantation properties.
- (iv) Registered OCI shall be treated at par with NRI in the matter of intercountry adoption of Indian children.
- (v) Registered Overseas Citizens of India shall be treated at par with resident Indian nationals in the matter of tariffs in air fares in domestic sectors in India.
- (vi) Registered Overseas Citizens of India shall be charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India.
- (vii) Parity with NRI in respect of entry fees to be charged for visiting the national monuments, historical sites and museums in India; Pursuing the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely: (a) doctors, dentists, nurses and pharmacists; (b) advocates; (c) architects; (d) chartered accountants.
- (viii) Parity with NRI to appear for the All India Pre-medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.
- (ix) 'State Governments should ensure that the OCI registration booklets of OCIs are treated as their identification for any services rendered to them. In case proof of residence is required, Overseas Citizens of India may give an affidavit attested by a notary public stating that a particular/ specific address may be treated as their place of residence in India and may also in their affidavit give their overseas residential address as well as e-mail address, if any'.

Who is Eligible for the OCI Status?

A foreign national, who was eligible to become a citizen of India on 26 January 1950 or was a citizen of India on or at any time after 26 January 1950 or belonged to a territory that became part of India after 15 August 1947 and his/her

children and grandchildren, is eligible for registration as an OCI. Minor children of such person are also eligible for OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.

Interesting Facts on 'OCI'

■ **Who was eligible to become Citizen of India on 26 January 1950?**

Any person, who or whose parents or grand-parents were born in India as defined in the Government of India Act, 1935 (as originally enacted), and who was ordinarily

residing in any country outside India, was eligible to become citizen of India on 26 January 1950.

■ **Would the Indian civil/criminal laws be applicable to persons registered as OCI?**

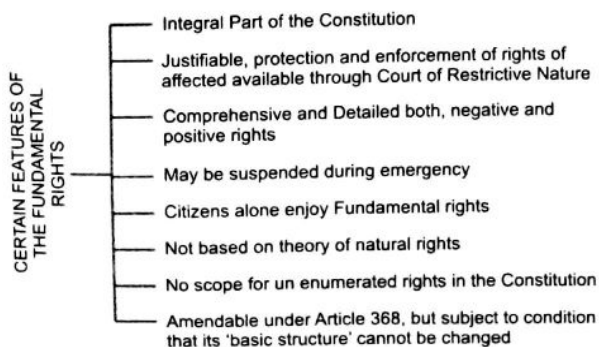
Yes, for the period OCI is living in India.

■ **Can a person registered as an OCI be granted Indian citizenship?**

Yes. As per the provisions of section 5(1) (g) of the Citizenship Act, 1955, a person who is registered as an OCI for 5 years and is residing in India for 1 year out of the above 5 years, is eligible to apply for Indian citizenship.

FUNDAMENTAL RIGHTS AS DEFINED IN THE CONSTITUTION

Part III of the Constitution, covering from Articles 12 to 35, embodies the Fundamental Rights of the Indian citizens. The Constitution affirms the basic principle that every individual is entitled to enjoy certain rights as a human being and the enjoyment of such rights does not depend on the will of any majority or minority. These rights include all basic liberties that make life significant and democracy fruitful, and which are essential for the proper, moral and material uplift of the people. Part III of the Constitution which contains perhaps one of the most elaborate characters of Human Rights yet framed by any state, consistent with the aim of the unity of the nations and the interests of the public at large, has been described by Justice Gajendragadkar as the 'very foundation in this country by the Constitution' (*Sajjan Singh vs State of Rajasthan*, AIR 1965 SC 845). These Fundamental Rights cover all the traditional civil and political rights enumerated in Article 2.21 of the Universal Declaration. According to Justice Bhagwati (*Maneka Gandhi vs Union of India* AIR 1978 SC 597) 'These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a 'pattern of guarantee' on the basic structure of Human Rights and impose negative obligations on the state not to encroach on individual liberty in its dimensions.



THE SCOPE OF FUNDAMENTAL RIGHTS

How Fundamental Rights embodied in the Constitution are guaranteed to all citizens?

In any democratic set-up, the fine balance that is mandatory for its success and longevity is, between personal liberty and social control.

The handling of the civil liberties of its citizens by the state is of prime importance for the success of any democracy.

Supreme development of citizen's personality and its relationship with civil liberty is among the core aims of any democratic set-up.

So, important is that the state provides wholesome liberty and freedom to its citizens without risking its own functioning and existence.

For this, there is need of such tools in the hands of the citizens that are constitutionally provided, to guarantee the citizens for violations by executive and legislative functions or the state. Fundamental Rights are such tools provided by the Indian Constitution, to the Indian citizens.

These civil liberties become primacy vis-à-vis any other law of the land and can be limited only during some special circumstances where state feels risk to its own functioning and existence. These liberties include one's rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom of religion and the right to Constitutional remedies for the protection of the personal and civil rights such as *habeas corpus*.

In addition, the Fundamental Rights are aimed at capsizing the injustices of past social instances.

They obliterate 'untouchability'; forbid discrimination on the basis of religion, race, caste, sex or place of birth; and prohibit human-trafficking and forced labour.

They go beyond orthodox civil liberties in shielding the cultural and educational rights of minorities by

safeguarding that minorities may keep their distinctive languages, cultures, practices, and establish and manage their own educational institutions.

Availability of Rights

Some of the Fundamental Rights are available to all 'persons'. For instance:

Equality before law and equal protection of all laws	Art. 14
Protection of self-respect of conviction for offences	Art. 20
Protection of life and personal liberty	Art. 21
Protection against arrest and detention in certain cases	Art. 22
Freedom of religion	Art. 25–28

There are, however, some rights which can be claimed only by the citizens. For example:

Not to be discriminated on grounds of religion, race, sex, caste or place of birth	Art. 15
Equality of opportunity in the matter of public employment	Art. 16
Protection of Interest on Minorities	Art. 29
Protection of Rights:	Art. 19
■ freedom of speech and expression to assemble peacefully and without arms ■ to form association or union ■ to move freely throughout the territory of India ■ to reside and settle in any part of the territory of India, and Art. 19(1)(f) relating to the right to own and acquire property was deleted by the Constitution's 42nd Amendment Act, 1978 w.e.f. 20th July 1979. ■ to practice any profession or to carry on any occupation, trade or business.	

Article 39(1) and Article 44 of the Directive Principles of State Policy contained in Part IV of the Constitution of India are for the citizens only.

Definition of 'State' in Context of Fundamental Rights

Under Article 12, the 'State' includes

- the government and Parliament of India,
 - the government and the legislature of each of the states,
 - all local authorities like municipalities, district boards, Panchayats, improvement trusts, etc. and
 - other authorities within the territory of India or under the control of Government of India.
- The last category 'other authorities' naturally posed some difficulties. However, it has been held to include all authorities created by the Constitution or statute on whom powers are conferred by law. For example, Rajasthan Electricity Board, Cochin Devaswom Board, Children Aid Society, etc.
 - The Life Insurance Corporation (LIC), the Oil and Natural Gas Commission (ONGC), the Delhi Transport Corporation (DTC), the Finance Commission have similarly been held to be 'State' under Article 12.
 - Even a private body may be a 'State' covered by the term 'other authorities' if it is entrusted with some public

service responsibility as an agency of instrumentality of the state.

- However, in regard to 'judiciary', the Supreme Court has held that even if a court is treated as a 'State' a writ under Article 12 cannot be issued to a High Court of competent jurisdiction against its judicial orders, because such orders cannot be said to violate the Fundamental Rights.

Provisions to Protect Rights

Article 31A and 31B inserted by the First Constitutional Amendment and Article 31C inserted by the 25th Amendment sought to protect laws providing for acquisition of estates, acts and regulations specified in the Ninth Schedule of laws giving effect to Directive Principles. Articles 33–35 deal with the power of Parliament to modify the rights conferred by Part III of the Constitution in their application to forces. Thus, Fundamental Rights secured to the individuals are in the nature of limitations or restrictions on the actions of the state. The Supreme Court held that the whole object of Part III of the Constitution is to provide the freedoms and rights mentioned therein against arbitrary invasion by the state (*State of West Bengal vs Subodh Gopal Bose AIR 1954 SC 92*). Article 13(2) declares that all laws and executive orders in force, immediately before the commencement of the Constitution, inconsistent with the Fundamental Rights to be *ultra vires* and void to the extent of such inconsistency. It also says that the state shall not make any law which takes away or abridges the rights conferred by its part and any law made in contravention of this clause shall to the extent of contravention be void.

CLASSIFICATION OF FUNDAMENTAL RIGHTS

Originally, seven Fundamental Rights were listed in the Constitution. However, after the 44th Amendment in 1978, there are now only six Fundamental Rights, viz.,

1. Right to Equality (Articles 14–18)
2. Right to Freedom (Articles 19–22)
3. Right Against Exploitation (Articles 23–24)
4. Right to Freedom of Religion (Articles 25–28)
5. Cultural and Educational Rights (Articles 29–30)
6. Right to Constitutional Remedies (Article 32)

(*Right of Property deleted by 44th Constitution Amendment Act (1978), and consequently it is not a fundamental right now.*)

Right to Property: Fundamental Right or Not

Originally, Article 19(1)(f) and Article 31 contained the right to property that meant to acquire, hold and dispose of property subject to the right of the state of compulsory acquisition for public purpose by authority of law. However, right to property ceased to be a fundamental right when the Constitution (44th Amendment) Act, 1978, omitted sub-clause (f) of Clause (1)

of Article 19 and the whole of Article 31 from the Constitution. A separate Article 300 (A) has been added to the constitution to protect it as a Constitutional right and Legal right.

Right to Equality (Articles 14–18)

Equality is the principal foundation of all other rights and liberties.

Equality before law and equal protection of all laws.	Art. 14
Non-discrimination by the state on the grounds of religion, race, caste, sex and place of birth	Art. 15
Equality of opportunity in matters of public appointment	Art. 16
Abolition of untouchability	Art. 17
Abolition of titles, except military and academic	Art. 18

EQUALITY BEFORE LAW (ARTICLE 14) Article 14 of the Constitution enunciates the fundamental right of every person not to be denied 'equality before the law' and the 'equal protection of laws' within the territory of India. Actually, the protection provided by this article is not limited to citizens only but is applicable to all persons. It embodies the principle contained in the Universal Declaration of Human Rights that 'All are equal before the law and are entitled without discrimination to equal protection of law'. The guiding Principle underlying Article 14 is that all persons and things similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Laws should be applied to all in the same condition. (*SC and Co. vs Union of India AIR 1973 SC 106*). Not only should the law be non-discriminatory for persons in the same condition but the processes of implementation between them (*Indian Express Newspapers vs Union of India AIR 1986 SC 319*).

'Equality before law' to some extent is analogous to the concept of 'Rule of law', by which we say that no man is above the law of the land and that every person is subject to ordinary law. But certain exceptions are recognised to the above rule of equality in the public interests. For example, the exercise and performances of the power and duties of the President of India or Governors of states.

The traditional concept of equality was challenged as a new approach to the right of equality under Article 14 and was propounded when Supreme Court held that 'Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined' within traditional doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an Act is arbitrary, it is implicit that it is unequal both according to political logic and Constitutional Law and is therefore violation of Article 14' (*E. P. Royappa vs State of Tamil Nadu AIR 1974 SC 555*). In later judgements of Supreme Court, a new approach to Article 14 received unanimous approval of a Constitution Bench of the Court in the following words: 'It must ... now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality'.

NON-DISCRIMINATION BY THE STATE ON THE GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH (ARTICLE 15) While Article 14 proclaims the general principle of equality before the law and equal protection of the laws, the subsequent Articles 15–18 specify some areas for application of the general principle mostly in regard to the citizens of India (*State of Sikkim vs S. P. Sharma, JT (1994) 3 SC 372*).

- Article 15 is a specific aspect of equality guaranteed by Article 14. Article 15, forbids discrimination on certain grounds.
- Deducing the Article 15, the Supreme Court rejected a petition that 'residence' in the state was similar to 'place of birth', and held that these two are distinct conceptions both in law and in fact.

Definition of 'Discrimination'

The crucial word in Article 15 is 'discrimination', which means 'making an adverse distinction with regard to' or 'distinguishing unfavourably from others' (*Kathi Raning Rawat vs State of Saurashtra (1952) SCR 435, 442*). Another crucial word is 'only' so that if the discrimination is based on some ground not connected with religion, etc., but with some other rational factors, the discrimination would be valid. In a sense, a general and abstract principle of equality laid down in Article 14 is spelt out for certain situations in greater detail in Article 15 is limited to citizens, while Article 14 extends to all persons. Secondly, Articles 15(1) and 15(2) are both limited to discrimination on the ground of religion, race, sex, place of birth or any of them. Thirdly, the article permits the state to make special provisions for women and children. Fourthly, the article also permits the state to make any special provision for the following:

- (i) socially and educationally backward classes of citizens;
- (ii) Scheduled Castes and
- (iii) Scheduled Tribes Article 14 prohibits the state from denying to any person equality of the law, etc.

Articles 15(1) and 16(2) protects the citizen from against any discrimination (*State of Sikkim vs Surendra Prasad Sharma, JT (1994) 3SC 372*).

EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC APPOINTMENT (BUT SOME POSTS MAY BE RESERVED FOR BACKWARD CLASSES) (ARTICLE 16) Under Clauses (1) and (2) of Article 16, all citizens of India are guaranteed equality of opportunity in matters relating to employment or appointment to any office under the state and no citizen can be discriminated against or be ineligible for any employment on grounds of religion, caste, sex descent, place or birth or residence.

The only exceptions to the above rule of equality are:

- (i) Residence within the state may be laid down by Parliament as a condition for specific classes of employment.
- (ii) The state may reserve any post of appointment in favour of any backward class of citizens, who are not adequately represented in the services under the state.

- (iii) The claim of members of SCs and STs shall be taken into consideration in the matter of appointment to services and posts under the states.
- (iv) The claim of members of STs shall be taken into consideration in the matter of appointment to services and posts under the Union and the states.

Reservation for OBCs, SCs and STs

Clause 4 is the second exception of Article 16 which empowers the state to make special provision for reservation of appointment or posts in favour of any 'backward class of citizens' which in opinion of the state are not adequately represented in the services under the state. The Clause, however, is only an enabling provision and no right or duty can be read into it (*Rajasthan vs Union of India AIR 1968 SC 507*). But as held in *N. M. Thomas case (AIR 1976 SC 490)*, it is an emphatic statement of equality of opportunity guaranteed under Clause 1 which means equality of members of the same class of employees and not equality between members of separate and independent classes. Thus, in case of Scheduled Castes (SCs) and STs who suffer from socio-economic backwardness, the fundamental right to equal opportunity justifies separate categorisation for the purpose of 'adequate representation in State services' (*ABSK Sangh (Rly) vs Union of India AIR 1981 SC 298*). However, reservation should not be excessive and could not be taken to the extent of effacing the guarantee contained in Article 16(1).

In the *Devadasan vs Union of India case (AIR 1964 SC 179)*, the Supreme Court when called upon to pronounce on the constitutionality of the 'carry forward rule', held the rule *ultra vires* by a majority of 4:1 on the ground that power vested in the state government under Article 16(4) could not be exercised as to deny reasonable equality of opportunity in matters of public employment to members of classes other than backward. It declared that more than 50 per cent reservation of posts in a single year would be unconstitutional as it per se destroyed Article 16(1).

On Treating Equals Differently

The maxim of equality before law therefore leads to the inevitability of classification. For, Article 14 applies where equals are treated differently without any reasonable basis. It thus forbids any class legislation but not reasonable classification, but it is necessary that the classification must not be 'arbitrary, artificial and evasive' and should be based on some real and substantive distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. It can be based on the basis of geography or other objects or occupation (*Shashi Mohan vs State of West Bengal AIR 1958 SC 194*). Permissible Classification, to be valid, must in fact fulfil two conditions, namely,

- (i) the classification must be found on an intelligent differentia which distinguishes persons or things that are grouped together from others left out of the group and
- (ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question.

Definition of 'Backward Class of Citizens'

The term 'backward class of citizens' has not been defined in the Constitution. But, since the emphasis in Article 16(4) is on social and not economic backwardness, backward class cannot be identified only and exclusively with reference to economic criteria. The Court, therefore, struck down the notification which sought to reserve another 10 per cent post for the economically backward sections not covered by any existing schemes of reservations. On the other hand, the Court held that a caste could quite often be a social class. 'If it is socially backward, it would be a backward class for the purpose of Article 16(4)'. Also, several socially backward occupational groups, sects and denominations among non-Hindus would also be covered by Article 16(4). It would, be incorrect, therefore, to say that the backward classes under Article 16(4) were the same as the socially and educationally backward classes under Article 15(4). Even though caste is mentioned in Article 15(2) and Article 16(2) as a prohibited ground of discrimination and the word used in Articles 15(4) and 16(4) is 'class', the majority judgement held that 'identification of the backward classes can certainly be done with reference to caste among, and along with, other occupation groups, classes and sections of people'.

ABOLITION OF UNTOUCHABILITY (ARTICLE 17) Article 17 abolishes 'untouchability' and forbids its practice in any form. If practiced, it shall be treated as an offence punishable in accordance with law. The objective of the article was to end the inhuman practice of treating certain fellow human beings as dirty and untouchable by reason of their birth in certain castes (*Devarajiah vs Padmanna AIR 1961 Mad 35*). The Supreme Court held that the fundamental right against untouchability guaranteed in the article is available against private individuals and it is the Constitutional duty of the state to take necessary steps to see that this right is not violated. (*People's Union for Democratic Rights vs Union of India AIR 1982 SC 1473*.) Most importantly, it is the bounden duty of every citizen to ensure that untouchability is not practiced in any form. The Untouchability (Offences) Act, 1955, later modified to read as the Protection of Civil Rights Act, 1955, provided for punishment of offenders.

ABOLITION OF TITLES, EXCEPT MILITARY AND ACADEMIC (ARTICLE 18) Article 18 prohibits the state to confer title on anybody, whether an Indian citizen or a foreign national. An exemption has however been made in case of military and academic distinctions. Under Clause (2) of the article, a citizen of India has also been prohibited from accepting any title from a foreign state. Clause (3) provides that a foreigner holding any office of profit or trust under the state cannot accept any title from foreign state without permission of the President. And under Clause 4, no person holding any office of profit or trust under the state shall, without the consent of the President, accept any present, employment, or office of any kind from or under any foreign state.

In 1954, the Government of India introduced decorations of four categories, namely, *Bharata Ratna*, *Padma Vibhushan*, *Padma Bhushan* and *Padma Shri*. There was an

intense criticism on the introduction of these awards as it was a violation of Article 18. However, these awards are mere decorations and not titles. These are mere state recognitions of good work by the citizens in various fields of activity.

Right to Freedom (Articles 19–22)

Under Article 19(1) now there are six basic freedoms:

Freedom of speech and expression	Art. 19(1)(a)
Freedom to assemble peacefully and without arms	Art. 19(1)(b)
Freedom to form associations and unions	Art. 19(1)(c)
Freedom of movement throughout India	Art. 19(1)(d)
Freedom to reside and settle in any part of India	Art. 19(1)(e)
Freedom to practice any profession or to carry on any occupation, trade or business	Art. 19(1)(g)

These are known as '6 Freedoms under the Indian Constitution'.

The 44th Amendment Act 1978, omitted the 'Right to Property' and hence it is ceased to be a fundamental right and became only a legal right, under the control of ordinary law.

FREEDOM OF SPEECH AND EXPRESSION Generally, interpreted to include freedom of the press, can be limited 'in the interests of the 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'. Article 19(1)(9) guarantees to every Indian citizen the right to freedom of speech and expression. Though it does not specifically refer to the freedom of the press, this right has been held to be included in the right to freedom of speech and expression. 'Freedom of the Press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate' (*Express Newspapers (P) Ltd vs Union of India*, AIR 1958 SC 578; *Indian Express Newspapers vs Union of India*, (1985) 1 SCC 641). This means that every citizen is free to express his views, beliefs and convictions freely and without inhibitions by word of mouth, through writing, printing, picturising or in any other manner. Thus, imposition of free censorship on a newspaper (*Brij Bhushan vs Delhi*, AIR 1950 SC 129) or prohibiting it from publishing its own views or those of its correspondents on a burning topic of the day would constitute a violation of the right to freedom of speech and expression (*Virendra vs Punjab*, AIR 1957 SC 896). The right is enjoyed by the citizens not only within the territory of India but also beyond its borders. (*Maneka Gandhi vs Union of India*, AIR 1978 SC 597)

An Indian citizen has freedom of flying the National Flag of India, because it is interpreted as a symbol of expression and falls within the preview of Article 19(1)(a).

A voter expresses himself during election and it would include casting of votes, as it is inferred that casting vote by him is his expression.

'Freedom of Expression' has the 'Right to information' as an integral part of freedom of expression. Also, voter's right to know the antecedents/assets of a candidate contesting election is derived from it.

One is free, not to listen and not to be forced to listen as 'Right to speech' implies the right to silence.

Freedom of Speech is matrix, the central condition of almost every other form of freedom provided by the Constitution of India.

Limitations upon Freedom of Speech and Expression

Reasonable limits or restrictions can be imposed on the exercise of the right to freedom speech under Article 19(2) in the interests or on the grounds of:

- (i) Security of the State
- (ii) Friendly relations with foreign countries
- (iii) Public Order
- (iv) Decency and Morality
- (v) Contempt of Court
- (vi) Defamation
- (vii) Inticement of offence
- (viii) Sovereignty and integrity of India

FREEDOM TO ASSEMBLE Article 19(1)(b) secures to all citizens of India the rights 'to assemble peaceably and without arms'. This consequently leads to the conferment of the right to hold public meetings and demonstrations and take out processions peacefully (*Babulal vs State of Maharashtra* AIR 1961.) Meetings, processions and demonstrations are inevitable corollaries of a democratic system. The people can be informed, educated and persuaded only through such exercises. However, under Clause (3) reasonable restrictions can be imposed on the right by the state by law 'in the interests of the sovereignty and integrity of India or public order' as may be deemed necessary from time to time.

Limitations upon Freedom of Assembly

LIMITATIONS UPON FREEDOM OF ASSEMBLY 'Freedom of Assembly' qualifies only if the assembly is conducted peacefully, without arms and subject to such reasonable restrictions as may be imposed by the 'state' in the interest of public order.

FREEDOM OF ASSOCIATION Article 19(1)(c) guarantees to all citizens the right to form associations and unions for pursuing lawful purposes.

Under Clause (4) of the article, however, reasonable restrictions can be imposed by the state. The associations formed will include political parties, societies, clubs, companies, organisations, partnership firms, trade unions and indeed any group of persons.

RIGHT TO STRIKE The Supreme Court has held that even a liberal interpretation of Article 19(1)(c) cannot mean that the trade unions have guaranteed right to strike. The right to strike can be controlled by appropriate industrial legislation (*All India Bank Employees Association vs The National Industrial Tribunal AIR 1962 SC 171*). Similarly, nobody can be compelled to become a member of a government-sponsored union.

FREEDOM OF MOVEMENT AND RESIDENCE The right of every citizen of India 'to move freely throughout the territory of India' and his right 'to reside and settle in any part of the territory of India' is guaranteed under Clauses (d) and (e) of Article 19(1). However, Article 19(5) provides for imposition of reasonable restrictions on the exercise of either of these provisions. Restrictions imposed by habitual offenders have been upheld by the court 'in the interest of the general public or for the protection of interests of any Scheduled Tribe'. Also, restrictions imposed on prostitutes to carry on their trade within specified areas and to reside in or move from particular areas have been upheld valid.

FREEDOM OF PROFESSION AND TRADE Article 19(1)(g) says any citizen of India has the right to practice any profession or to carry on any occupation, trade or business. The right to carry on business includes the right to close it anytime the owner likes. In *Excel Wear vs Union of India* case, the Supreme Court held that refusal or approval for closure of a business was invalid when the owner could not pay even the minimum wages to his employees. Under Clause 6, the state has also been empowered to prescribe professional or technical qualification necessary for practicing any profession or carrying on any occupation, trade or business.

Protection in Respect of Conviction for Offences (Article 20)

It has also been provided that no person can be convicted unless he has violated the law in force, nor subjected to penalty greater than permissible under the law; nor prosecuted and punished for the same offence more than once and cannot be compelled to be witness against himself (Article 20).

Freedom of Person (Article 21) and Preventive Detention (Article 22)

No person can be deprived of his life and personal liberty without authority of the law unless detained under the Preventive Detention Act in which case also, no person can be detained beyond a period of 3 months without being advised by the prescribed authority (Articles 21 and 22).

■ Three Rights guaranteed by Article 22:

1. Right to every person who is arrested to be informed of the cause of his arrest
2. Right of that person to consult and to be defended by a lawyer of his choice

3. Every person arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours and shall be kept in continued custody only with his authority.

However, two exceptions are there to the universal application of the rights guaranteed under the first two clauses of Article 22. These relate to:

- (i) Any person who is for the time being an enemy alien
- (ii) Any person who is arrested or detained under any law providing preventive detention.

■ Preventive detention for reasons connected with the security of the state, the maintenance of public order, or the maintenance of supplies and services essential to the community, or for reasons connected to Defence, Foreign Affairs or the Security of India.

■ There is difference between the 'Punitive detention' and 'Preventive detention'. 'Punitive detention' is concerned when a person is detained by way of his punishment after he is found guilty of wrong doing as a result of a trial where he has the fullest opportunity to defend himself, while 'Preventive detention' is not by way of punishment at all, but is intended to preempt a person from indulging in any conduct injurious to the society.

DISCUSSION POINTS: IMPORTANT RELATED TOPICS

FREEDOM OF THE PRESS It is regarded as the 'mother of all liberties' in a democratic society but it is not absolute and unfettered. An unrestricted freedom of speech and expression would amount to an uncontrolled license and could lead to disorder and anarchy. There had been no special provision in the constitution, guaranteeing the freedom of press. However, freedom of press is included in the wider freedom of 'expression' and is comprehensive enough to cover the press.

- The freedom is not to be misunderstood by the press so as to disregard its duty to be responsible. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by a court of Law.
- Some restrictions are, therefore essential even for preservation of the freedom of the Press.

CENSORSHIP OF THE PRESS Censorship of the press may not be prohibited by any provision of the constitution of India. However, like other restrictions, its constitutionality has to be judged by the test of 'reasonableness' within the meaning of Clause (2).

- The Censorship may be valid even at the time of peace (when Emergency is not in place) if it is subjected to reasonable safeguards, both from the substantive and procedural standpoints, but not otherwise.
- The Supreme Court has, as well, upheld that the validity of a law sanctioning pre-censorship of motion pictures to protect the interests safeguarded by Art. 19(2). For example, public order and morality.

FRIENDLY RELATIONS WITH FOREIGN COUNTRIES This ground for imposing restrictions on freedom of speech and expression was brought in by the Constitution (1st Amendment) Act, 1951 with a view to avoiding embarrassment to India through persistent and malicious propaganda. The ground, however has been criticised for being susceptible of supporting regulation kerbing even criticism of the government's foreign policy.

PUBLIC ORDER This ground too was added by the 1951 Amendment to overcome the situation arising out of the Supreme Court judgement in *Romesh Thapar vs State of Madras* (AIR 1950 SC 124) wherein it was held that ordinary or local breaches of public order were no grounds for imposing restrictions on the freedom of speech and expression, observing that 'Public order' was an expression of wide connotation and signified 'that state of tranquillity which prevails among the members of political society as a result of internal regulations enforced by the government which they have established'.

DECENCY AND MORALITY With no clear meanings and the perceptions changing in regard thereto from time to time, these terms have obviously been included as grounds for imposing restrictions on the freedom of speech and expression mainly to safeguard the society from depraved and corrupt actions or behaviour. Sections 292-294 of the Indian Penal code which indicate the scope of indecency or obscenity were upheld because 'the law against obscenity'. (*Ranjit Udeshi vs Maharashtra*, AIR 1965 SC 881.) The Supreme Court in the instant case had followed the test laid down in the English case of *R. V. Hicklin*, (LR 3 QB 360) holding *Lady Chatterley's Lover* as an obscene book, as it had the tendency to corrupt the mind of those who read it.

INCITEMENT OF AN OFFENCE This ground for restricting freedom of speech and expression was also added in 1951. The Supreme Court has taken the view that incitement to murder or other violent crimes would generally endanger the security of the state. Hence a restriction imposed on this ground would be valid under Article 19(2) (*State of Bihar vs Shailabala Devi*, AIR 1952 SC 329).

DEFAMATION The right to free speech and expression does not entitle a citizen to defame a person. The Constitutional validity of Section 499 of the Indian Penal Code which defines the law of defamation as exposing a man to hatred, ridicule or contempt has been upheld by the courts. The press is also subject to the defamation law (*Printers Mysore vs Asst. Comm. Law Officer, JT* (1994) ISC 692).

THE PREVENTION OF TERRORISM ORDINANCE (POTO), 2001 The Prevention of Terrorism Ordinance (POTO) provides for the holding of an accused person for a prolonged period of detention, for up to 180 days, without charges, and effectively subverts the cardinal principle of the criminal justice system—the presumption of innocence—by putting the burden of proof on the accused, withholding of the identity of witnesses, making confessions made to the police officer

admissible as evidence, and giving the public prosecutor the power to veto bail. Certain rights must be fully respected at all times and under all circumstances. These include the right not to be arbitrarily deprived of life, the right to freedom from torture, the right to a fair trial and the right to protection against discrimination.

EX-POST FACTO LAW According to Article 20(1), the legislature is prohibited to make criminal laws having retrospective effect. This protection against ex-post facto law provides immunity to person liable for being convicted under it, though the immunity cannot be claimed against preventive detention or against demanding security from a person.

DOUBLE JEOPARDY Article 20(2) incorporates the doctrine of 'double jeopardy', that is, 'no person shall be prosecuted and punished for the same offence more than once'. However, it does not immunise a person from proceedings which are not before the court of law.

PROHIBITION AGAINST SELF-INCRIMINATION Under the canons of common law criminal jurisprudence, a person is presumed to be innocent; the prosecution must establish his guilt. Secondly, a person accused of an offence need not make any statement against his will.

PROTECTION OF LIFE AND PERSONAL LIBERTY In the various cases which came up before the Supreme Court, this open-minded viewpoint and philosophy has continued all along. Article 21 guarantees that no person shall be deprived of his life or personal liberty 'except according to procedure established by law'. This right is available to the citizens as well as non-citizens. In the famous *Gopalan* case, 'personal liberty' was held to mean only liberty relation to or concerning the person or body of the individuals. In *Menaka Gandhi* case, it was held that right to 'live is not merely confined to physical existence but it includes within its ambit the right to live with human dignity'. In a case popularly known as the *Pavement Dweller's Case*, the Supreme Court observed that the word 'life' in Article 21 also included the 'right to livelihood', as right to livelihood is an integral facet of the right to life. In its judgement in *Mohini Jain vs State of Karnataka* (AIR 1992 SC 1858), the Supreme Court extended the scope of Article 21 further to include under the right to life, 'right to education' also. In fact, the Court stated even higher education in professional fields like medicine as a fundamental right. Later, however the Court overruled its decision in the *Mohini Jain* case and decided that under Article 21, there is no fundamental right to education for a professional degree. Three of the five judges however, thought that early education up to the age of 14 could be a fundamental right of the citizens (*J. P. Unnikrishnan and others vs State of Andhra Pradesh and others, etc. JT* 1993 (1) SC 474). On 7 June 1993, the Supreme Court reiterated that right to life under Article 21 included the right to livelihood. The order of termination of the service of an employee jeopardised

'not only his livelihood but also career and livelihood of his dependents' (*D. K. Yadav vs JMA Industries Ltd*). As per the Constitution of India, the government must place effective restrictions on the authority of the state in the interest of individual liberty and not vice versa.

TELEPHONE TAPPING Unless it comes within the grounds of restrictions under Article 19(2), the instant of telephone tapping would infract Article 19(1)(a) of the Constitution (*People's Union for Civil Liberties vs Union of India*, AIR 1997 SC 568). A government employee cannot seek the protection of Article 19(1) against his dismissal on account of misconduct in public (*Drappa vs Karnataka State Small Industries Development Corporation*, AIR 1998 SC 1064).

Right Against Exploitation (Article 23–24)

It bans traffic in human beings, forced labour and the employment of children below the age of 14 years in factories, mines, etc. It declares slavery or use of women for immoral or other purposes as a punishable offence. This fundamental right allows our Constitution to recognise the dignity of the individual and protects him against any form of exploitation, either by state or by the privileged classes in society. Articles 23 and 24 seek to provide protection against

- (i) exploitation through traffic in human beings,
- (ii) *begar* and other unforced labour and
- (iii) employment of children in factories, etc.

Traffic in human beings—women, children, etc.—and forced labour militate against human dignity which the fundamental Constitutional value enshrined in the Preamble.

Prohibition of Traffic in Human Beings and Forced Labour (Article 23)

PROVISION AGAINST FORCED LABOUR Under the old Zamindari System, the tenants were sometimes forced to render free service to their landlords. This was called *begar*. Courts have held that even if some remuneration is paid, the labour may be a forced one (*People's Union vs Union of India* AIR 1982 SC 1473).

PROVISION AGAINST HUMAN TRAFFIC Children of the prostitutes may be made to live away from them and Devadasis are also covered under the term 'traffic in human beings'. The whole idea is not to allow the state or anyone to compel a person to work against his will or to misuse the human person in any way. The only exception allows the state to impose compulsory service for public purposes as, for example, military service or social service which should be imposed equally on all without any discrimination of religion, race, caste or class.

Protection Against the Evil of Child Labour (Article 24)

Article 24 specifically prohibits the employment of children below the age of 14 in factories or mines or in any other hazardous jobs. This is in keeping with the Human Rights concepts and United Nations norms. Some laws have since been enacted by the Parliament to implement the provisions of Articles 22 and 23.

Right to Freedom of Religion (Article 25–28)

Except when it is not in the interest of public order, morality, health, etc., every citizen is entitled to freedom of conscience and right to profess, practice and propagate any religion freely.

RIGHT TO FREEDOM OF RELIGION The Preamble expresses our republic *inter alia* as secular. The notion of secularism in the Constitution is not that of irreligion or anti-religion. It only suggests that there is no state religion, there is equivalent respect for and safety of all religions, no one is to be shown favouritism on basis of religion and each one is assured full and same freedom of religion. Articles 25–28 guarantees to all persons the right to freedom of religion in all its aspects.

Right of Conscience and Free Profession, Practice and Propagation of Religion (Article 25)

Article 25 directs that all people—not just citizens, are equally allowed to liberty of conscience and the right to freely admit, practice and spread religion. However, this right to religious freedom is subject to: (i) public order, (ii) morality and (iii) health. The state would be free to control by law any secular activity associated with religious practice and to provide for social welfare and reform or the throwing open of Hindu temples, etc., to all classes of Hindus. The Supreme Court held that the right to propagate religion does not include any right to forcible conversions as these may disturb the public order (*Stainslaus vs State of MP* AIR 1977 SC 908). In the *Anand Marg* case the right to perform tandav dance with lethal weapons and human skulls in public procession was held not to be an essential religious practice and banning of the procession in the interest of 'public order and mortality' was considered reasonable restriction (*Jagdishwaranand vs Police Commissioner* AIR 1984 SC 51). The wearing of *Kirpans*, however, was included in the profession of the Sikh religion and the Hindus for purpose of the article were to include Sikhs, Jains and Buddhists. Cow slaughter on *Bakrid* was held not to be an essential practice of Islam and could be therefore prohibited by law in interest of public order (*Mohd Hanif Quareshi vs State of Bihar* AIR 1958 SC 731). Secular activities associated with religious practice which can be regulated by the state have

been interpreted to mean non-essential aspects of religion or, for example, matters of secular administration of religious properties which must be handled in accordance with law (*Ratilal vs State of Bombay (1954) SCR 1055*).

Freedom to Manage Religious Affairs (Article 26)

Article 26 which flows from Article 25 confers a fundamental right to all religious demonstrations and sections thereof to establish and uphold institutions for religious and charitable reason, to administer their own affairs in matters of religion, to hold, obtain and manage property. But, the administration of property has to be as per the law. It has been held that administration of the property of religious institutions can be regulated by law but the right of administration cannot be taken away altogether (*Ratanlal vs State of Bombay (1954) SCR 1055*).

Freedom Not to Pay Taxes for Religious Promotion of Any Particular Religion (Article 27)

Article 27 says that no person shall be bound to pay any taxes for expenses on encouragement or preservation of any specific religion that is, there could be no protest if the taxes were used for promotion of all religions. This is in keeping with the notion of secularism which means the same respect for all religions.

Freedom as to Attendance at Religious Instruction or Religious Worship in Certain Educational Institutions (Article 28)

Article 28 forbids totally any religious education being imparted in educational institutions wholly managed by state resources. In case of other institutions acknowledged and aided by the state, there will be liberty for every person not to participate in religious education or devotion.

Cultural and Educational Rights (Articles 29–30)

Every community has full freedom to run its own institutions, to preserve its own language, script and culture; to receive education (in state-owned institutions) and administer educational institutions of its choice. Under this right, minorities have been able to preserve and promote language, script and culture. They have also been able to establish and operate educational institutions and get financial aid, without any discrimination, from the state.

Protection of Interest of Minorities (Article 29)

The Constitution does not anywhere define the term 'minorities'. However, Article 29 guarantees to 'every section of the citizens' residing anywhere in India and 'having a distinct language, script or culture' the right to conserve the same. No citizen can be denied admission to any educational institution maintained or aided by the state on grounds only of religion, race, caste or language. Although the marginal heading of the article uses the term 'minorities', it has not been mentioned in the text of the article and it has been held that it is equally available to any section of citizen—whether in minority or majority.

Remedies for Enforcement of Rights Conferred on Indian Citizens

- (1) The right to move the Supreme Court by appropriate means for the enforcement of the rights conferred by this part is guaranteed.
- (2) The Supreme Court shall have the power to issue directions, 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 article.
- (3) Without prejudice to the powers conferred on the Supreme Court by Clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by the Constitution.

Right of Minorities to Establish and Administer Educational Institutions (Article 30)

Article 30(1) says that all minorities, whether religious or linguistic, shall have the right to establish and administer educational institutions of their choice. Clause 1(A) added by the 44th Amendment, in effect provides that if the property of any such institution is acquired, the compensation paid would be proper and adequate so that the right given by the articles remain meaningful. Clause (2) provides that in matter of giving aid, the state shall not discriminate against minority-managed institutions.

NATURE OF MINORITY RIGHT Article 30 is strictly in nature of minority right, that is, one intended to protect the rights of minorities. Autonomy of a minority institution cannot be taken away completely. It is quite wide in as much as it is not confined like Article 29 only to conservation of language, script and culture. Article 31 was repealed from the constitution.

Right to Constitutional Remedies (Article 32)

The Supreme Court of India possesses and exercises the right of judicial review for the protection and enjoyment of Fundamental Rights. Every citizen can move the Supreme Court or High Court or any other court for enforcement of his Fundamental Rights, through judicial writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* (these are explained separately under 'writs') and the like, under Part III. This right, however, can be suspended during the operation of Emergency proclaimed by the President of India under Articles 353 and 359 of the Constitution.

- The Article (32) is considered as the very soul of the Constitution of India and the very heart of it.
- A guaranteed remedy for the enforcement of Fundamental Rights is provided by the Article 32 and this remedial right is itself made fundamental by being included in Part III of the Constitution.
- The court is constituted by the protector and guarantor of the Fundamental Rights.
- The Indian Constitution by providing this right, that is, by making that remedial right itself a guaranteed fundamental right, has put the Indian Constitution a leap above most of the other Constitutions in the world.

Writs Mentioned in the Indian Constitution

Habeas Corpus

It literally means 'to have the body'. By issuing such a writ, the court can order that a person who has been imprisoned or detained be brought before it and enquire under what authority he has been imprisoned or detained. Nobody can be deprived of his right to remain free either by the state or by any group or individuals without being assigned a lawful order. Generally, the writ of *habeas corpus* is applied only after a person has been arrested. However, in exceptional cases, it may be granted even when detention is threatened or not yet to be carried out. The Constitution of India mentions *habeas corpus* in Articles 32 and 226.

Types of Writs Falling under *Habeas Corpus* There are other species of writ under the wider fabric of *habeas corpus*. They are as follows:

- (a) *Habeas Corpus ad deliberandum et recipiendum* A writ used to remove a person confined in one place for trial to another place in which the offence is alleged to have been committed.
- (b) *Habeas Corpus ad faciendum et recipiendum* (also called *habeas corpus cum causa*) A writ issued in a civil case to remove the case from the trial court to a superior court (having jurisdiction), for disposal.
- (c) *Habeas Corpus ad presequendum* This writ is issued by the court, when it is necessary to bring before the issuing court, for trial, a person who is confined for some other offence.

- (d) *Habeas Corpus ad satisfaciendum* A writ that is issued when the prisoner has had judgement (in a civil case) passed against him in an action and the plaintiff is desirous of bringing him up before a superior court to charge him with the process of execution.
- (e) *Habeas Corpus ad subjiciendum* A writ directed to the person detaining another in his custody and commanding him to produce him, before the issuing court, the person so detained. This is most common form of writ. Its object is to test the legality of the detention of a person and to secure his release if the detention is found to be illegal.
- (f) *Habeas Corpus ad testificationem* It means 'you produce the body for testifying'. The writ is used to bring up a prisoner detained in jail or prison, to give evidence before the issuing court.

Mandamus

It literally means a 'command' issued by the court to any public or quasi-public legal body that has refused to perform its legal duty. It is an order by a superior court commanding a person or a public authority to do or forbear to do something in the nature of public duty. In India, this writ lies not only against the officers or other persons who are bound to do public duty but also against the government itself. The writ is also available against inferior courts or other judicial bodies when they refuse to exercise their jurisdiction, and thus, to perform their duties. The *mandamus* may not be granted against the President, the Governor and the private individual or body (incorporated or not), except where the state is in collusion with such private party in the matter of contravention of any provision of the Constitution, statute or statutory instrument. The purpose for which *mandamus* may be issued are: (a) For the enforcement of Fundamental Rights—where the public officer of the government has done some act that violates the Fundamental Rights of a person, the Court would issue a writ of *mandamus* restraining the public officer or the government from enforcing that order or doing that act against the person whose fundamental right has been infringed. (b) Other purposes—(i) To enforce the performance of a statutory duty where a public officer has the power conferred by the Constitution or a statute; (ii) The writ will also compel any person to perform his public duty where the duty is imposed by the Constitution, a statute, or a statutory instrument; (iii) To compel a court of jurisdiction tribunal to exercise its jurisdiction when it has refused to exercise it; and (iv) To direct a public official or the government not to enforce a law that is unconstitutional.

Prohibition

It is issued by a superior court to an inferior court preventing it from dealing with a matter over which it has no jurisdiction. The object of the writ is to compel inferior courts to keep themselves within the limits of their jurisdiction. The writ of prohibition differs from the

mandamus in that while mandamus commands activity, prohibition commands inactivity. Further, mandamus is available not against administrative authorities, prohibition as well as certiorari are issued against administrative and quasi-judicial authorities. Hence, prohibition is not issued against a public officer who is not vested with judicial functions. The difference between the prohibition and certiorari lies in the fact that though both are issued against courts or tribunals exercising judicial or quasi-judicial powers, certiorari is issued to quash the order or decision of the tribunal while prohibition is issued to prohibit the tribunal from making the ultra vires order of decision. In India, the writ of prohibition may be issued not only in cases of absence or excess of jurisdiction but also in cases where the court or tribunal assumes jurisdiction under a law, which itself contravenes some fundamental right guaranteed by the Constitution. SC can issue the writ only where a fundamental right is affected due to the jurisdictional defect in the proceedings.

Certiorari

It is a writ issued by a superior court to an inferior court or body exercising judicial or quasi-judicial powers to remove a suit and adjudicate upon the validity of the proceedings or body exercising judicial or quasi-judicial functions. In India, certiorari would be available even against administrative bodies not having quasi-judicial obligations, if they affect the rights of individuals, without conforming to the principles of 'fair play'. The object of the writ of certiorari is to get rid of a decision that is vitiated by a defect or jurisdiction or a denial of the basic principles of justice—not substitute a right determination for a wrong one.

Quo Warranto

It is an order issued by the court to prevent a person from holding office to which he is not entitled and to oust him from that office. It is a powerful instrument for safeguarding against the usurpation of public offices. The fundamental basis of the proceeding of *quo warranto* is that the public has an interest in seeing that an unlawful claimant does not usurp public office. *Quo warranto* is a discretionary remedy that the court may grant or refuse according to the facts and circumstances of each case. However, the court may refuse it where the application was actuated by ill-will or malice, or ulterior motive.

The conditions necessary for the issue of writ are:

- (i) The office must be public and it must be created by a statute or by the constitution itself;
- (ii) The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another; and
- (iii) There has been a contravention of the Constitution, a statute or statutory instrument, in appointing such a person to that office.

DISCUSSION POINTS: CONNECTED TO FUNDAMENTAL RIGHTS

Natural Rights or Ordinary Rights

Fundamental Rights differ from ordinary rights in the sense that former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law which is violative of any of the Fundamental Rights (FR) is void. The object of making certain general aspects of rights fundamental is to guarantee them against illegal invasion of these rights by executive, legislative or judicial organ of the state.

- Chief Justice Subba Rao in *Golak Nath v. State of Punjab* had observed that Fundamental Rights are the modern name for what have been traditionally known as natural rights.
- The Supreme Court of India recognised these Fundamental Rights as 'Natural Rights' or 'Human Rights'.
- It refers to Fundamental Rights as those great and basic rights which are recognised and guaranteed as the natural rights inherent in the status of a citizen of a free country.

Positive Rights and Negative Rights

A distinction is sometimes sought to be made between what may be called 'positive rights' and 'negative rights'. Broadly speaking, while Part III deals with areas of individual freedom and the extent to which the state can restrain it, Part IV deals with positive cast upon the state to attain the ideal of social and economic justice.

- Even among the Fundamental Rights, however, there are some positive injunctions which seek to protect the interests of the society and the rights of the poor citizens from encroachment by entrenched sections.
- Thus, Article 17 abolishes untouchability and makes its practice in any form an offence punishable by law.
- Article 15 *inter alia* the use of public places like shops, wells, roads, eating, houses, etc., on account of his religion, race, caste, sex, or place of birth.
- Article 23 prohibits another great social evil, that of forced labour.

The whole effort has been to ensure that the Fundamental Rights of the citizens do not degenerate the liberties of the few against the interests of the many.

Fundamental Rights and Human Rights

The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in Part II of Indian Constitution (Articles 12—35). These include right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, and the right to Constitutional remedies.

Human Rights and the Indian Constitution

India was a signatory to the Universal Declaration of Human Rights. A number of Fundamental Rights guaranteed to the individuals in Part III of the Constitution of India are similar to the provision of the Universal Declaration of Human Rights.

Name of Rights	Universal Declaration	Indian Constitution
Equality before law	Art. 7	Art. 14
Prohibition of discrimination	Art. 7	Art. 15(1)
Equality of opportunity	Art. 21(2)	Art. 16(1)
Freedom of speech and expression	Art. 19	Art. 19(1)(a)
Freedom of peaceful assembly	Art. 20(1)	Art. 19(1)(b)
Right to form associations or unions	Art. 23(4)	Art. 19(1)(c)
Freedom of movement within borders	Art. 13(1)	Art. 19(1)(d)
Protection in respect of conviction for offences	Art. 11(2)	Art. 20(1)
Protection of life and personal liability	Art. 3	Art. 21
Protection of slavery and forced labour	Art. 4	Art. 23
Freedom of conscience and religion	Art. 18	Art. 25(1)
Remedy for enforcement of rights	Art. 8	Art. 32
Right against arbitrary arrest and detention	Art. 9	Art. 22
Right to social security	Art. 22	Art. 29(1)

Most of the economic, social and cultural rights proclaimed in the Universal Declaration of Human Rights have been incorporated in Part IV of the Indian Constitution.

Name of Rights	Universal Declaration	Indian Constitution
Right to work, to just and favourable conditions of work	Art. 23 (1)	Art. 41
Right to equal pay for equal work	Art. 23(2)	Art. 39(d)
Right to education	Art. 26(1)	Art. 21(A), 41, 45 & 51A(k)
Right to just and favourable remuneration	Art. 23(3)	Art. 43
Right to rest and leisure	Art. 24	Art. 43
Right of everyone to a standard of living adequate for him and his family	Art. 25(1)	Art. 39(a) & Art. 47)
Right to a proper social order	Art. 28	Art. 38

NHRC

National Human Rights Commission (NHRC) came into being as an autonomous body under the Protection of Human Rights Ordinance of 28 September 1993, which was later replaced by the Protection of Human Rights Act 1993 (PHR Act). Over the past 15 years, the Commission has been trying its best to give a positive meaning and achieve objectives set out in the PHR Act, for better protection of Human Rights. The Commission has worked effectively and vigorously all these years to create awareness and sensitise public authorities for promotion and protection of Human Rights. The Commission consists of

- A chairperson who has served as Chief Justice of India.
- One member who is/was judge in Supreme Court.
- One member who is/was Chief Justice of High Court.
- Two more members are appointed who have knowledge of Human Rights.

During this period, some important interventions were: the Commission took note of auctioning of Dalit women Panchayat President in Tamil Nadu, starvation deaths in Bundelkhand, fake encounter in Jammu and Kashmir, sexual abuse and murder of children in Nithari Case, interim relief to the victims of atrocities by the Joint Task Force of Karnataka and Tamil Nadu while the forest brigand when Veerappan was being chased. Some of the important meetings during this period were on Juvenile Justice System, Manual Scavenging, Review Meeting on Health and a Workshop on Bonded and Child Labour. The Commission which had been monitoring the Supreme Court guidelines on sexual harassment at workplace called Vishakha guidelines, had received compliance report from all the states and UTs that necessary amendments had been brought about in their conduct and regulation to implement the guidelines.

Group Rights Special Provisions Relating to Certain Classes

In addition to stressing the right of individuals as citizens, Part XVI of the Constitution endeavours to promote social justice by elaborating a series of affirmative-action measures for disadvantaged groups. These 'Special Provisions Relating to Certain Classes' include the reservation of seats in the Lok Sabha (House of the People) and in state legislative bodies for members of SCs and STs. The number of seats set aside for them is proportional to their share of the national and respective state populations.

Reservations for Government Appointments

Part XVI also reserves some government appointments for these disadvantaged groups in so far as they do not interfere with administrative efficiency. The section stipulates that a special officer for SCs and STs be appointed by the President to 'investigate all matters relating to the safeguards provided' for them, as well as periodic commissions to investigate the conditions of the backward classes. The

President, in consultation with state Governors, designates those groups that meet the criteria of SCs and STs. Similar protections exist for the small Anglo-Indian community.

Extension of the Group Rights

The framers of the Constitution provided that the special provisions would cease 20 years after the promulgation of the Constitution, anticipating that the progress of the disadvantaged groups during that time would have removed significant disparities between them and other groups in society. However, in 1969 the 23rd Amendment extended the affirmative-action measures until 1980. The 45th Amendment of 1980, extended them again until 1990, and in 1989 the 62nd Amendment extended the provisions until 2000. The 77th Amendment of 1995 further strengthened the states' authority to reserve government service positions for SC and ST members.

Contempt of Court

The underlying idea for this ground for imposing restrictions is to preserve the authority of courts in punishing for their contempt. Articles 129 and 215 of the Indian Constitution recognise the powers of the Supreme Court and the High Courts, respectively, to punish for their contempt. The Supreme Court has upheld the law of contempt under Article 129 as reasonable under Article 19(2) (*C. K. Daphtary vs O. P. Gupta*, AIR 1971 SC 1132). In *E. M. S. Namboodiripad vs T. N. Nambiar* (AIR 1970 SC 2015) the Court observed that freedom of speech shall always prevail except where contempt of court is manifest, mischievous or substantial. However, happily in recent times the Court has been taking a liberal view of the law of contempt (*See AIR 1978 SC 727; AIR 1978 SC 489*). In *M. R. Parashar vs Farooq Abdullah* (AIR 1984 SC 615), it said: 'Bona fide criticism of any system or institution is aimed at inducing the administration of that system or institution to look inwards and improve its public image. Courts do not like to assume the posture that they are above criticism and that their functioning needs to improvement'.

The Mandal Commission Report

The Mandal Commission had in its report recommended 27 per cent reservations for backward classes in view of the limit of 50 per cent imposed by the Supreme Court. In its judgement, in what has come to be known as Mandal case, the Supreme Court decided on 16 November 1992 by a 6 to 3 majority that 27 per cent reservation of posts for the socially and educationally backward classes were in order, provided that the advanced among them 'the creamy layer' were excluded from the list of beneficiaries, reservations were restricted to initial employment alone as Article 16(1) did not permit any reservation in promotions, and the total reserved quota did not exceed 50 per cent except in some extraordinary situations.

- The court held that any reservation in promotions was invalid as 'this would be a serious and unacceptable inroad into the rule of equality of opportunity' and would not be in the interest of efficiency of administration.
- By adding a new clause to Article 16, the Eighty-first (Amendment) Act, 2000 however, clarified that the unfilled reserved vacancies are to be treated as a separate class and are not to be included under the prescribed ceiling of 50 per cent reservation of vacancies of the year.

Reservations Not Available in Certain Areas

The Supreme Court held that it may not be advisable to provide for reservations in certain areas, for example, in technical posts, R&D organisations, in specialties and super-specialties in medicine, engineering and other such courses in physical science and mathematics, in defence services and connected establishments.

- Reservations may also not be advisable in higher posts like those of professors in education, pilots in airlines, scientists and technicians in nuclear and space application, etc. (*Indra Sawhney vs Union of India* AIR 1993).
- The Supreme Court disallowed lowering of qualifications for admission to super-specialties medical courses in favour of the reserved category candidates (*Kartar Singh vs State of MP* 1999).

Article 13(2) and Fundamental Rights

It provides for the protection of the Fundamental Rights of the citizen. Parliament and the State Legislatures are clearly prohibited from making laws that may take away or abridge the Fundamental Rights guaranteed to the citizen.

- They argued that any amendment to the Constitution had the status of a law as understood by Article 13(2).
- In 1952 (*Sankari Prasad Singh Deo vs Union of India*) and 1955 (*Sajjan Singh vs Rajasthan*), the Supreme Court rejected the arguments and upheld the power of Parliament to amend any part of the Constitution including that which affects the Fundamental Rights of the citizens.
- Significantly though, two dissenting judges in the *Sajjan Singh vs Rajasthan* case raised doubts whether the Fundamental Rights of citizens could become a plaything in the hands of the majority party in Parliament.

Fundamental Rights As Under PILs

Under the new concept of public interest litigation propounded by the Supreme Court in the Transfer of Judges case, it is no more necessary to be the affected party to approach the Court for violation of Fundamental Rights. Any member of the public can do so even through a letter on behalf of a person or group of persons who for any

reason may not be in a position to approach the Court (*S. P. Gupta vs President of India AIR 1982 SC 149*).

Application of Fundamental Right to Armed Forces

Article 33 empowers the Parliament to modify the application of Fundamental Rights to the armed forces or forces charged with maintenance of public order, intelligence personnel, etc. in the interest of discharge of duties and maintenance of discipline (*Gopal vs Union of India AIR 1987 SC 413*; *Delhi Police Sangh vs Union of India AIR 1987 SC 376*). However, when the appellate jurisdiction of courts is excluded in cases of court martial, the writ jurisdiction remains (unless taken away by law under Article 33) and there have been several resorts to the remedy (*Laxmi vs Union of India (1991) 2 SCCJ 86*). Under Article 34, Parliament may by law indemnify any person for anything done in contravention of Fundamental Rights for maintenance of order during the operation of martial law. Article 35 lays down that the power to make laws to give effect to certain specified Fundamental Rights shall vest only in the Union Parliament and not in State Legislature.

Right to Property and the 44th Amendment

Right to Property (Article 31) used to be a Fundamental Right (FR) but has now become only a legal right. Originally, according to this right, the state cannot acquire any property without compensation and no person can be deprived of his property except by the authority of law. Earlier, in the event of acquisition for public purpose, compensation was to be paid but according to the 25th Amendment of 1971, instead of compensation, only a specified amount is to be paid. Originally, the right to property was also included in the Fundamental Rights. On 20 June 1978, the Janata government omitted Right to Property by the 44th Amendment. Hence, the right of a citizen to acquire, hold, dispose off a property ceases to be a FR. However, under the Article 300A, right to property is a Constitutional right. It is, therefore, an ordinary, legal right, which states that 'No person shall be deprived of his property save by authority of law'.

Suspension of Fundamental Rights

Fundamental Rights are not absolute. Individual rights, however basic, cannot override the country's security and general welfare. Therefore, in case Emergency is declared, the President may suspend all or any of the Fundamental Rights and may also suspend the right of the people to move High Courts or the Supreme Court for restoration of these rights.

- The rights or freedoms guaranteed by the Article 19 are not absolute. The assurance of each of the rights is restricted by the constitution itself by conforming upon the state a power to impose by law reasonable restrictions as may be necessary in the larger interest of the community.
- The restrictions on their freedoms are provided in Clauses 2 to 6 of the Article 19 of the constitution.
- *Point to note:* With the proclamation of Emergency (Article 352), Article 19 itself remains suspended.
- Article 358 provides the suspension of provisions of Article 19 during emergencies.
- Article 359, is about suspension of the enforcement of the rights conferred by Part III during emergencies. These rights are also known as non-fundamental rights, or legal rights or the Constitutional rights. These are different than the Fundamental Rights as the recourse available to a person on denial of such rights is that he can move the High Court as any regular suit or at most under Article 226 which provides power to High Courts to issue certain writs.

The 62nd Amendment and Mandal Commission Report

The Janata Party, which came to power in 1977, under the leadership of Prime Minister Morarji Desai, made significant efforts to implement the Directive Principles. But it was under the National Front Government in 1989 that the Parliament passed the Bill of Reservation (62nd Amendment) for SCs and STs, for the next 10 year period. The Janata Dal also tried to implement the Mandal Commission Report in 1990. As per the Mandal Commission suggestions, the total reservations on the basis of various castes amounted to 49.5 per cent, which was opposed violently by members of the higher castes. Many students burnt themselves on roads and university campuses opposing the implementation of the Mandal Commission Report. In October 1990, the Supreme Court granted a stay on the implementation of Mandal Commission Report. This triggered the fall of Prime Minister V. P. Singh in 1990, and within a few months his successor, Chandra Shekhar's, government also fell. The Congress, under Narasimha Rao, came to power after fresh elections. They reintroduced the Mandal Commission Report after certain modifications, which were acceptable to the masses.

Fundamental Right to Property

Parliament's authority to amend the Constitution, particularly the chapter on the Fundamental Rights of citizens, was challenged as early as in 1951. After independence, several laws were enacted in the states with the aim of reforming land ownership and tenancy structures. This was in keeping with the ruling Congress party's electoral promise of implementing the socialistic goals of

the Constitution [contained in Articles 39(b) and (c) of the Directive Principles of State Policy] that required equitable distribution of resources of production among all citizens and prevention of concentration of wealth in the hands of a few. Property owners—adversely affected by these laws—petitioned the courts. The courts struck down the land reform laws saying that they transgressed the Fundamental Rights (FR) to property guaranteed by the Constitution. Piqued by the unfavourable judgements, Parliament placed these laws in the Ninth Schedule of the Constitution through the first (1951) and fourth Amendments (1952), thereby effectively removing them from the scope of judicial review.

EMERGENCY

A state of emergency is a temporary situation declared within the territorial boundaries of a state during which certain fundamental liberties of its citizens are kept in suspension. According to established international law, such a state can only be declared by lawful means and some core Human Rights such as the right to life and the arbitrary deprivation of life, the right of not to be tortured, and the prohibition of forced labour can never be derogated or set aside, even in a state of emergency. This worldwide concern arises from the close relationship between such emergency situations and the democratic functioning of states.

Emergency Provisions and Authoritarian Powers Emergency Rule

Part XVIII of the Constitution permits the state to suspend various civil liberties and apply certain federal principles during presidentially proclaimed states of emergency. The Constitution provides for three categories of emergencies: a threat by 'war or external aggression' or by 'internal disturbances'; a 'failure of constitutional machinery' in the country or in a state; and a threat to the financial security or credit of the nation or a part of it. Under the first two categories, the Fundamental Rights, with the exception of protection of life and personal liberty, may be suspended and federal principles may be rendered inoperative. A proclamation of a state of emergency lapses after 2 months if not approved by both the houses of Parliament.

Proclamation of Emergency

The President of India can proclaim Emergency if he is satisfied that it is justified and he can take under his direct charge the administration of any state. He has to get the written recommendation of the Cabinet before proclaiming Emergency.

There are three kinds of Emergency: (i) National Emergency arising out of war, external aggression or internal revolt (the words 'internal revolt' have been

replaced by 'armed rebellion' by 44th Amendment in 1978) within the country [Article 352(ii)]; (ii) Constitutional Emergency arising out of the failure of the Constitutional machinery in the states [Article 356(iii)]; (iii) Financial Emergency arising out of a threat to financial stability or credit of India (Article 360).

History of Emergency in India

So far, emergencies have been proclaimed three times in India:

1962 First Emergency was declared in October 1962 due to Chinese aggression.

1971 Second Emergency was declared in December 1971 due to the Indo-Pakistan war.

1975 Third Emergency was declared in June 1975 on grounds of 'internal disturbance'.

However, by the 44th Amendment in 1978, Emergency cannot be proclaimed now on the grounds of 'internal disturbance', and therefore, the words 'internal disturbance' have been substituted by 'armed rebellion'.

These are only theoretical powers of the President. In fact, all these powers are exercised by the President on the advice of the Cabinet and the advice of the Cabinet is binding on the President. As such, he is only a 'titular head'.

Emergency proclamations have been issued three times since independence. The first was in 1962 during the border war with China. Another was declared in 1971, when India went to war against Pakistan over the independence of East Pakistan, which became Bangladesh. In 1975, the third Emergency was imposed in response to an alleged threat by 'internal disturbances' stemming from political opposition to Indira Gandhi.

President's Rule

The President can issue a proclamation dissolving a state government, if it can be determined, upon receipt of a report from a Governor, that circumstances prevent the government of that state from maintaining law and order according to the Constitution. This action establishes what is known as President's rule; because under such a proclamation the President can assume any or all functions of the state government, transfer the powers of the State Legislature to the Parliament or take other measures necessary to achieve the objectives of the proclamation, including suspension, in whole or in part, of the Constitution. A proclamation of President's rule cannot interfere with the exercise of authority by the state's High Court. Once approved, President's rule normally lasts for 6 months, but it may be extended up to 1 year if the Parliament approves. In exceptional cases, such as the violent revolt in Jammu and Kashmir during the early and mid-1990s, President's rule lasted for a period of more than 5 years.

History of President's Rule in India

President's rule has been imposed frequently, and its use is often politically motivated. During the terms of Prime Ministers Nehru and Lal Bahadur Shastri, from 1947 to 1966, it was imposed 10 times. Under Indira Gandhi's two tenures as Prime Minister (1966 to 1977 and 1980 to 1984), President's rule was imposed 41 times. Despite Mrs Gandhi's frequent use of President's rule, she was in office longer (187 months) than any other Prime Minister, except Nehru (201 months). Other Prime Ministers also have been frequent users: Morarji Desai (11 times in 28 months), Chaudhury Charan Singh (5 times in less than 6 months), Rajiv Gandhi (8 times in 61 months), Vishwanath Pratap (V. P.) Singh (2 times in 11 months), Chandra Shekhar (4 times in 7 months), and P. V. Narasimha Rao (9 times in his first 42 months in office). Recently, Delhi was under President's rule from February 2014 to March 2015.

Constituent Power vs Ordinary Legislative Power

Unlike the British Parliament which is a sovereign body (in the absence of a written constitution), the powers and functions of the Indian Parliament and State Legislatures are subject to limitations laid down in the Constitution. The Constitution does not contain all the laws that govern the country. Parliament and the State Legislatures make laws from time to time on various subjects, within their respective jurisdictions. The general framework for making these laws is provided by the Constitution.

Authoritarian Powers

The Indian state has authoritarian powers in addition to the Constitution's provisions for proclamations of Emergency rule and President's rule. The Preventive Detention Act (1950) was passed in 1950 and remained in force until 1970. Shortly after the start of the Emergency in 1962, the government enacted the Defence of India Act (1962). This legislation created the Defence of India Rules, which allow for preventive detention of individuals who have acted or who are likely to act in a manner detrimental to public order and national security. The Defence of India Rules was re-imposed during the 1971 war with Pakistan. They remained in effect after the end of the war and were invoked for a variety of reasons not intended by their framers, such as the arrests made during a nationwide railroad strike in 1974.

The Maintenance of Internal Security Act (1971) also provides for preventive detention. During the 1975 to 1977 Emergency, the Act was amended to allow the government to arrest individuals without specifying

charges. The government arrested tens of thousands of politicians belonging to the opposition under the Defence of India Rules and the Maintenance of Internal Security Act, including most of the leaders of the future Janata Party government. Shortly after the Janata government came to power in 1977, the Parliament passed the 44th Amendment, which revised the domestic circumstances, cited in Article 352 justifying an Emergency from 'internal disturbance' to 'armed rebellion'. During Janata rule, the Parliament also repealed the Defence of India Rules and the Maintenance of Internal Security Act. However, after the Congress (I) returned to power in 1980, the Parliament passed the National Security Act (1980), authorising security forces to arrest individuals without warrant for suspicion of action that subverts national security, public order and essential economic services. The Essential Services Maintenance Act (1981) permits the government to prohibit strikes and lockouts in 16 economic sectors providing critical goods and services. The 59th Amendment, passed in 1988, restored 'internal disturbance' in place of 'armed rebellion' as just cause for the proclamation of an Emergency.

The Sikh militant movement that spread through Punjab during the 1980s spurred additional authoritarian legislation. The Parliament passed the National Security Amendment Act (1984), enabling government security forces to detain prisoners for up to 1 year. The Terrorist Affected Areas (Special Courts) Ordinance (1984) provided security forces in Punjab with unprecedented secret tribunals to try suspected terrorists. The Terrorist and Disruptive Activities (Prevention) Act (1985), also known as TADA, imposed the death penalty on anyone convicted of terrorist actions that led to the death of others. It empowered authorities to tap telephones, censor mail and conduct raids when individuals are suspected to pose a threat to the unity and sovereignty of the nation. The legislation renewing the Act in 1987 provided for in-camera trials, which may be presided over by any central government officer, and reversed the legal presumption of innocence if the government produces specific evidence linking a suspect to a terrorist act. In March 1988, the 59th Amendment increased the period that an Emergency can be in effect without legislative approval from 6 months to 3 years, and it eliminated the assurance, in Articles 20 and 21, of due process and protection of life and liberty with regard to Punjab. These rights were restored in 1989 by the Sixty-third Amendment. By 30 June 1994, more than 76,000 persons throughout India had been arrested under the Terrorist and Disruptive Activities (Prevention) Act or TADA. The Act became widely unpopular, and the Narasimha Rao government allowed the law to lapse in May 1995.

DIRECTIVE PRINCIPLES

INTRODUCTION

Part IV (Articles 36–51) of the Constitution deals with the Directive Principles of State Policy (DPSP). These principles command the state and every one of its agencies to follow certain fundamental principles while framing policies. These principles are assurances to the people on the one hand as to what they can expect from the state and on the other they are directives to central and state governments to establish and maintain a social order. Originally, unlike the Fundamental Rights, these Directive Principles could not be enforced by the judiciary. These principles are now enforceable through law courts, vide the 42nd Amendment Act.

The Directive Principles are as follows:

- (a) State to secure a social order for the promotion of welfare of the people (Article 38).
- (b) Certain principles of policy to be followed by the state (Article 39).
- (c) Equal justice and free legal aid (Article 39A).
- (d) Organisation of village Panchayats (Article 40).
- (e) Right to work, to education and to public assistance in certain cases (Article 41).
- (f) Provision for just and humane conditions of work and maternity relief (Article 42).
- (g) Living wage, etc. for workers (Article 43).
- (h) Participation of workers in management of industries (Article 43A).
- (i) Insertion of new article 43B Promotion of co-operative societies, The state shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).
- (j) Uniform civil code for the citizens (Article 44).
- (k) Provision for free and compulsory education for children (Article 45).
- (l) Promotion of educational and economic interests of SCs.
- (m) STs and other weaker sections (Article 46).
- (n) Duty of the state to raise the level of nutrition and the standard of living and to improve public health (Article 47).
- (o) Organisation of agriculture and animal husbandry (Article 48).
- (p) Protection and improvement of environment and safeguarding of forests and wild life (Article 48A).
- (q) Protection of monuments and places and objects of national importance (Article 49).
- (r) Separation of judiciary from executive (Article 50).
- (s) Promotion of International peace and security (Article 51).

Directive Principles are described as a 'novel feature of the constitution' by Dr B. R. Ambedkar.

- The Directive Principles may not be enforced legally by any court and the courts cannot compel the state to implement them as is in the case of Fundamental Rights.
- Despite that, the Indian Constitution asserts 'Directive Principles are fundamental in the governance of the country and application of these principles while making laws for the country is to be taken as the duty of the state'.
- The 'Instrument of Instructions' contained in the Government of India Act, 1935 have been incorporated in the Constitution of India as Directive Principles of State Policy in 1950.

THE SCOPE OF DIRECTIVE PRINCIPLES

The object of the Directive Principles is to embody the concept of a welfare state. Although the Directive Principles are asserted to be 'fundamental in the governance of the country', they are not legally enforceable. Instead, they are guidelines for creating a social order characterised by social, economic and political justice; liberty; equality and fraternity, as enunciated in the Constitution's Preamble. In some cases, the Directive Principles articulate goals that remain vague platitudes, such as the injunctions that the state 'shall direct its policy towards securing . . . that the ownership and control of the material resources of the community are so distributed to subserve the common good' and 'endeavour to promote international peace and security'. In other areas, the Directive Principles provide more specific policy objectives. They exhort the state to secure work at a living wage for all citizens; take steps to encourage worker participation in industrial management; provide for just and humane conditions of work, including maternity leave; and promote the educational and economic interests of SCs, STs and other disadvantaged sectors of society. The Directive Principles also charge the state with the responsibility for providing free and compulsory education for children up to the age of 14.

These principles may comprise some 'economic ideals' that every state may, endeavour for; certain guidelines and directions to the legislature and executive intended to show the way by that state could exercise their executive and legislative powers. It also provides some specific rights to the citizens which shall not be enforceable like the Fundamental Rights.

The administrators are to make sure to follow these principles both in administration and legislation.

The object of the state is embodied in it under the republican constitution, namely, that is to be a 'welfare state'.

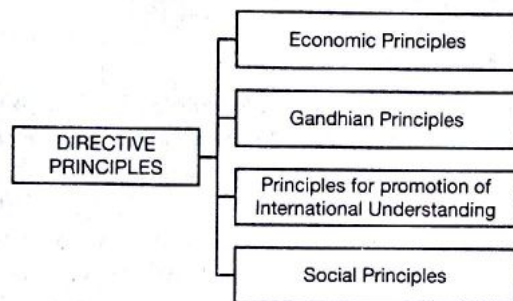
CLASSIFICATION OF DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP)

Classification of the Directive Principles

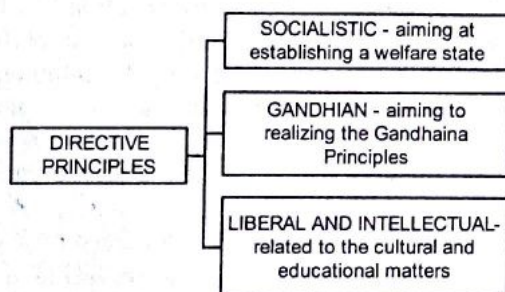
These principles may be classified under these groups:

- (i) Directives in the types of ideals of the state—certain ideals (e.g., economic) that the state should strive for;
- (ii) Directives determining the policy of the states—Certain guidelines proposed to the Legislature and the Executive to show the manner in which the state should exercise its legislative and executive powers; and
- (iii) Non-justifiable rights of citizens—Certain rights of citizens that shall not be enforceable by the courts, like the Fundamental Rights, but which the state is to secure.

The Directive Principles can also be classified into four categories:



The Directive Principles can also be classified into three categories:



Some other Important Directive Principles

- **Article 38(2)**—By 44th Amendment, the Janata government inserted section (2) in Article 38. 'The state shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities, and opportunities, not only among individuals but also among groups of people residing in different areas or engaged in different vocations' (Socialistic Principles).
- **Article 39**—To secure right to work, education and public assistance in cases of unemployment, old age, sickness, etc. (Socialistic principles).
- **Article 40**—The state shall organise village Panchayats as units of self-government (Gandhian Principle).
- **Article 43**—State shall try to promote cottage industries especially in rural areas (Gandhian Principles).

- **Article 43 A**—To deal with the participation of workers in the management of industries as per the 42nd Amendment Act.
- **Article 43 B**—In Part IV of the constitution, after Article 43 A, the following article shall be inserted namely 43 B which states that the state shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies (as per the 97th Amendment).
- **Article 44**—To secure uniform civil code applicable to the entire country (Socialistic).
- **Article 45**—State shall promote with special care the educational and economic interest of weaker sections of the people (Gandhian Principles).
- **Article 47**—State shall try to improve public health and the prohibition of intoxicating drinks and drugs (Gandhian Principles).
- **Article 48**—State shall preserve and improve the breeds and prohibit the slaughter of cows, calves and other milch and draught cattle (Gandhian Principles).
- **Article 50**—To separate judiciary from executive.
- **Article 51**—Related to international peace and security. The state shall endeavour to (a) promote international peace and security; (b) maintain just and honourable relations between nations; and (c) the settlement of international disputes through arbitration.
- **42nd Amendment**—Certain changes have been introduced in Part IV, adding new directives to accentuate the socialistic bias of the constitution.

Significance of the Directive Principles

- The Directive Principles urge the nation to develop a uniform civil code and offer free legal aid to all citizens.
- They urge measures to maintain the separation of the judiciary from the executive and direct the government to organise village Panchayats to function as units of self-government.
- This latter objective was advanced by the 73rd Amendment and the 74th Amendment (December 1992).
- The Directive Principles also order that India should endeavour to protect and improve the environment and protect monuments and places of historical interest.
- These principles are directives to the various governments and governmental agencies to be taken as the basis of the governance in India.
- State has to ensure that these principles are applied while making laws. Therefore, these are positioned as ideals before the legislatures of India while they frame new legislation.
- The 'Code of Conduct' for the administrators of India is laid down by the Directive Principles. In short, these enshrine the fundamentals for the realisation of which the state in India stands.
- These are guiding tools on the path which will lead India to achieve the noble ideas which the Preamble of the constitution proclaims: Justice, Liberty and Fraternity.

DIRECTIVE PRINCIPLES: IMPORTANT AMENDMENT ACTS

The 42nd Amendment

It came into force in January 1977, attempting to raise the status of the Directive Principles by stating that no law implementing any of the Directive Principles could be declared unconstitutional on the grounds that it violated any of the Fundamental Rights. The amendment simultaneously stated that laws prohibiting 'anti-national activities' or the formation of 'anti-national associations' could not be invalidated because they infringed on any of the Fundamental Rights. It added a new section to the Fundamental Duties in the constitution, enjoining citizens 'to promote harmony and the spirit of common brotherhood among all the people of India, transcending religious, linguistic and regional or sectional diversities'. However, the amendment reflected a new emphasis in governing circles on order and discipline to counteract what some leaders had come to perceive as the excessively freewheeling style of Indian democracy.

A Note on 42 Amendment Act, 1976

The Constitution (42nd Amendment) Act, 1976 added certain new directives to the effect:

- (i) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity [Article 39(f)];
- (ii) that the operation of the legal system promotes justice, on a basis of equal opportunity, and in particular the state provides free legal aid in cases of economic or other disability (Article 39A). This right was inherent in Article 21 also (*State of Haryana vs Darshana*, AIR 1979 SC 855; *Khatri vs State of Bihar*, AIR 1981 SC 928; *Suk Das vs Union Territory*, AIR 1986 SC 1991);
- (iii) that the participation of workers in management of industries is secured (Article 43A); and
- (iv) that the environment is protected and improved and the forests and wild life are safeguarded (Article 48A). The 44th Amendment added a clause to Article 30 to say that the state shall, in particular, try to reduce inequalities of income and eliminate inequalities in status, facilities, and opportunities among individuals and among groups of people living in different areas or engaged in different vocations. (Also see the chapter on 'Fundamental Rights' under 'Right to Property and Saving of certain laws', Article 31 C).

The 43rd and 44th Amendment

After the March 1977, general elections ended the control of the Congress (R) since 1969) over the executive and legislature for the first time since independence in 1947, the new Janata dominated Parliament passed the 43rd Amendment (1977) and 44th Amendment (1978). These

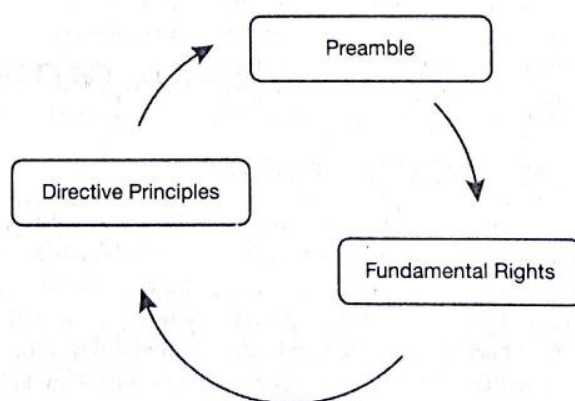
amendments revoked the 42nd Amendment's provision that Directive Principles take precedence over Fundamental Rights and also curbed the Parliament's power to legislate against 'anti-national activities'.

Differentiation: Fundamental Rights and Directive Principles of State Policy (DPSP)

To sum up the difference between Fundamental Rights and Directive Principles: (i) Fundamental Rights constitute a limitation upon the state actions, whereas Directive Principles are instruments of instruction to a government to carry out certain functions; (ii) Directive Principles need to be implemented by legislation and so long as there is no law carrying out the policy of the Directive Principles, neither the state nor an individual can act against any existing law or legal right under the Directive Principles; (iii) Directive Principles cannot be enforced in a court of law and do not create any justifiable right in favour of an individual. However, the 42nd Amendment Bill had given Directive Principles precedence over Fundamental Rights. This Amendment added two more Directive Principles, viz., (i) free legal aid from the state to the weaker sections of society and (ii) the state has the responsibility to protect the natural environment, forests and wildlife.

Even though made non-justiciable, the Directive Principles have thus far guided the Union and State Legislatures in enacting social reform legislation, the courts have cited them in support of their interpretation of Constitutional provisions and the Planning Commissions have accepted them as useful guidelines for determining their approach to national reconstruction and rejuvenation.

Interrelationships



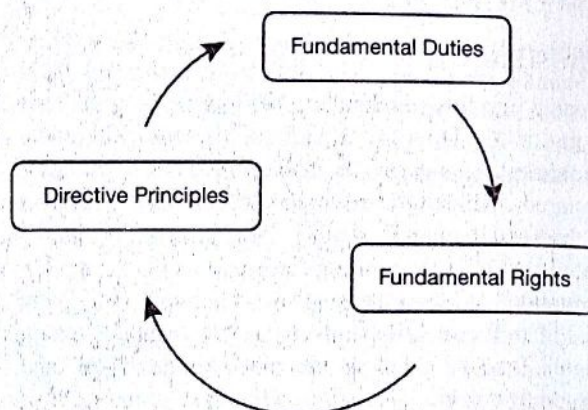
All the three are all integral parts of the same Constitutional edifice. They are all equally important and have to be read with each other. The emphasis in the entire scheme of the Constitution under the headings of the Preamble, the Fundamental Rights and the Directive Principles, is on

building an egalitarian society and on the concept of socio-economic justice. In as much as the Directive Principles—though declared to be fundamental as guiding principles for making and administering laws—were not made enforceable in a court of law, they represented a subtle compromise between what the framers, as the ideal or the goal and what, as realists, they found to be immediately feasible. The Fundamental Rights and the Directive Principles together constitute the soul of the Constitution. It is now clearly understood that there is no essential dichotomy between Fundamental Rights and the Directive Principles. They complement and supplement each other (*Kesavananda Bharti vs State of Kerala*, AIR 1973 SC 146). If the Fundamental Rights represents the don'ts for the government and the legislature, the Directive Principles represents the do's. There is no conflict.

With reference to the Constitution of India, Fundamental Rights and DPSP are fulfilled by the 'National Social Assistance Programme' launched by the Government of India. The National Social Assistance Programme (NSAP) which came into effect from 15th August, 1995 represents a significant step towards the fulfilment of the Directive Principles in Article 41 of the Constitution. The programme introduced a National Policy for Social Assistance for the poor and aims at ensuring minimum national standard for social assistance in addition to the benefits that states are currently providing or might provide in future. NSAP at present, comprises of Indira Gandhi National Old Age Pension Scheme (IGNOAPS), Indira Gandhi National Widow Pension Scheme (IGNWPS), Indira Gandhi National Disability Pension Scheme (IGNDPS), National Family Benefit Scheme (NFBS) and Annapurna.

The responsibility for the economic and social welfare policies of the nation should lie with Parliament and not with the courts. In so far as the decisions of courts had shown that there was some inherent contradiction between the Fundamental Rights and the Directive Principles, it was for the Parliament

to remove the contradiction and 'make Fundamental Rights subserve to Directive Principles of State Policy'.



- Fundamental Duties are inserted in Article 51-A (Part IV), just after the Directive Principles of State Policy.
- Since this part was not added after Fundamental Rights but after DPSP, it is clear that the intention of the 42nd Amendment was to keep duties at par with the Directive Principles and not with Fundamental Rights.

Criticism of Directive Principles

These are criticised on following grounds:

1. Vague and illogically arranged.
 2. Lack legal sanction.
 3. Moral precepts.
- The Directive Principles are categorically described as 'manifesto of aim and aspiration'. (K. C. Wheare).
 - Directive Principle are described as analogous to a situation—'Cheque payable by the bank only when the resources of the bank permit'. (K. T. Shah)
 - Formation of directives of the State Policy can hardly be considered as aspiring as these 'seem to be not based on consistent philosophy'. (Sreenivasan)

FUNDAMENTAL DUTIES OF A CITIZEN OF INDIA

FUNDAMENTAL DUTIES

Essentially all that is contained in the Fundamental Duties is just a codification of tasks integral to the Indian way of life. A close scrutiny of the clauses of Article 51A indicates that a number of these clauses basically refer to such values as have been a part of Indian tradition, mythology, religion and practices. Duties of a citizen of India were not included in the original Constitution. These have been added by the 42nd Amendment in 1976 as a new part to the Constitution—Part IVA. The 11 Fundamental Duties of Indian citizens, under Article 51A Part IV A are

- (a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

- (b) To cherish and follow the noble ideas that inspired our national freedom struggle.
- (c) To uphold and protect the sovereignty, unity and integrity of India.
- (d) To defend the country and render national service when called upon to do so.
- (e) To promote harmony and the spirit of common brotherhood among all the people of India, transcending religious, linguistic and regional sectional diversities; to renounce practices derogatory to the dignity of women.
- (f) To value and preserve the rich heritage of our composite culture.

- (g) To protect and improve the natural environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures.
- (h) To develop a scientific temper, humanism and the spirit of enquiry and reform.
- (i) To safeguard public property and to abjure violence.
- (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
- (k) A person who is parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years.
- As a result of the 42nd Amendment (1976), the Indian Constitution has incorporated a set of Fundamental Duties in a separate part added to chapter IV (Article 51 A). Also, 'Education' was included in the Concurrent List by the 42nd Amendment Act, 1976 to the Constitution of India.
- Under this article, it shall be the duty of every citizen of India.
- The adherence to Fundamental Duties can be brought into the society through public opinion and education in citizenship, values and duties. Constructing acceptable levels of consciousness about the Fundamental Duties wherein every citizen feels proud and bound to perform his Constitutional duties towards the nations and other citizens.

Sardar Swaran Singh Committee and the 42nd Amendment

Soon after the declaration of National Emergency in 1975, the Congress constituted a committee under the chairmanship of Sardar Swaran Singh to study the question of amending the Constitution. Based on its recommendations, the government incorporated several changes in the Constitution including the Preamble, through the 42nd Amendment. Passed in 1976, it came into effect on 3 January 1977.

Among other things, the amendment

- (i) gave the Directive Principles of State Policy (DPSP) precedence over the Fundamental Rights contained in Article 14 (right to equality before law and equal protection of the laws), Article 19 (various freedoms such as freedom of speech and expression, right to assemble peacefully, right to form associations and unions, right to move about and reside freely in any part of the country, and the right to pursue any trade or profession), and Article 21 (right to life and personal liberty). Article 31C was amended to prohibit any challenge to laws made under any of the Directive Principles of State Policy;
- (ii) laid down that amendments to the Constitution made in the past or those likely to be made in future could not be questioned in any court on any ground;
- (iii) removed all amendments to Fundamental Rights from the scope of judicial review, and removed all limits on Parliament's power to amend the Constitution under Article 368.

Constitutional Mechanism for Achieving Socio-Economic Goals

The Indian Constitutional scheme for the realisation of the socio-economic agenda comprises both the justiciable Fundamental Rights as well as the non-justiciable Directive Principles. The judicial contribution to the synthesis and the integration of the Fundamental Rights and the DPSP in the judicial process of 'constitutionalising' social and economic rights has been crucial to the realisation of the Directive Principles, not only as a means to effectuate Fundamental Rights but also as sources of law for a welfare state.

These enjoin upon a citizen, among other things, to abide by the Constitution, to cherish and follow the noble ideals that inspired our national struggle for freedom, to defend the country and render national service when called upon to do so and to promote harmony and the spirit of common brotherhood among all people of India, transcending religious, linguistic and regional or sectional diversities.

SUPREME COURT'S NOTICE ON FUNDAMENTAL DUTIES

In May 1998, the Supreme Court issued a notice to the Government of India, which stated that it is the obligation of the state to educate the citizens in the matter of Fundamental Duties so that a right balance between rights and duties may emerge. In the response of this notice, the Government of India constituted a committee to:

- (a) Develop a package for teaching Fundamental Duties at primary, secondary, senior secondary and university levels;
- (b) Decide the activities as part of the curriculum and as co-curricular activities;
- (c) Develop programmes for pre-services/in-services training of teachers at various levels;
- (d) Develop a separate package for training of citizens through non-formal education/adult education programme/media (print, electronic, etc.);
- (e) Receive the existing programme, already being implemented by the NCERT, under the National Curriculum Framework and the need for identifying additional inputs into it.

DISCUSSION POINTS: CONNECTED TO FUNDAMENTAL RIGHTS

Three Aspects of relations between Fundamental Rights and Fundamental Duties

1. It is the imperative duty of a citizen to use his rights in such a way as contribute to social richness;
2. The enjoyment of his rights by an individual enjoins on him the duty to let others enjoy the same rights;
3. Since this state protects my rights, therefore, it is my duty to perform my obligations towards it.

Gandhiji's View of Fundamental Duties

The Gandhian view on Fundamental Duties attaches significant importance to Fundamental Rights. As per him the rights provide chance towards achieving self-realisation, a way to self-realisation is the realisation of one's spiritual unity with others. Therefore, as per Gandhiji all the rights are the rights to do one's duty.

Implications of Fundamental Duties

The Supreme Court of India has in several cases relied on Fundamental Duties contained in Article 51A to determine the duty of the state, whenever necessary, to give directions

or frame guidelines to achieve the purpose. This has been done in several cases relating to preservation and conservation of environment, ecology, and prevention of degeneration of forests, wildlife, flora environment and maintenance of the ecological balance are the responsibility not only of the government but also the Fundamental Duty of every citizens. The only way to bring about adherence to Fundamental Duties is through public opinion and education in citizenship values and duties, and building adequate awareness and congenial climate wherein every citizen feels proud and bound to perform his Constitutional duties to the nation and pay his debt to society.

LIST OF IMPORTANT CONSTITUTIONAL AMENDMENTS

THE PROCEDURE OF AMENDMENT (ARTICLE 368)

The procedure to amend the Constitution of India is neither very rigid nor very flexible. The Constitution has prescribed the following three procedures of amendment:

- (a) Generally, an amendment to the Constitution is initiated by introducing a Bill for the purpose in either House of Parliament, which, when passed by majority of the total membership and by two-thirds of the members present and voting in each House, is presented to the President for his assent.
- (b) The Bill seeks to amend the provisions relating to:
 - (i) the manner of election of the President;
 - (ii) the extent of executive power of the state;
 - (iii) the Union and state judiciary;
 - (iv) the setting up of HCs in states;
 - (v) the distribution of legislative powers;
 - (vi) the representative of states in Parliament; and
 - (vii) the Seventh Schedule of the Constitution (which deals with the Union List, State List and Concurrent List). It requires, in addition to the above procedure [as laid down in point (a) above], ratification by resolutions passed by not less than one-half of the State Legislature, before the Bill is presented to the President for his assent.
- (c) A Bill that seeks:
 - (i) to increase or diminish the area of any state,
 - (ii) to alter the name or boundary of any state,
 - (iii) to create or abolish the Legislative Council of a state, or
 - (iv) to amend the Fifth Schedule of the Constitution only requires a simple majority for amendment. It may be noted that provisions that affect the federal character of the Constitution can be amended only with the approval of the states. Further, the initiative to amend the Constitution rests only with the centre and the states cannot initiate any amendment.

List of Important Constitutional Amendments

1. The **First Amendment, 1951**, was carried out to overcome certain practical difficulties related to the Fundamental Rights. It made a provision for special treatment of educationally and socially backward classes, and added the Ninth Schedule to the Constitution.
2. The **Third Amendment, 1954**, extended the powers of the Parliament by transferring certain items from the State List to the Concurrent List.
3. The **Seventh Amendment, 1956**, was necessitated on account of the re-organisation of states on a linguistic basis and introduced changes in the First and Fourth Schedules.
4. The **Eighth Amendment, 1959**, extended special provision for the reservation of seats for SCs, STs and Anglo-Indians in the Lok Sabha and Legislative Assemblies for a period of 10 years, from 1960 to 1970.
5. The **Ninth Amendment, 1960**, gave effect to the transfer of certain territories to Pakistan, following the September 1958 Indo-Pak Agreement.
6. The **Tenth Amendment, 1961**, incorporated the territories of Dadra and Nagar Haveli in the Indian Union.
7. The **Twelfth Amendment, 1962**, incorporated the territories of Goa, Daman and Diu in the Indian Union.
8. The **Thirteenth Amendment, 1962**, created Nagaland as a state of the Union of India.
9. The **Fourteenth Amendment, 1963**, incorporated the former French territory of Puducherry into the Union.
10. The **Eighteenth Amendment, 1966**, was made to facilitate the re-organisation of Punjab on a linguistic basis into Punjab and Haryana, and also created the UT called Chandigarh.
11. The **Twenty-first Amendment, 1967**, included Sindhi as the 15th regional language in the Eighth Schedule.
12. The **Twenty-second Amendment, 1969**, created a sub-state of Meghalaya within Assam.
13. The **Twenty-third Amendment, 1969**, extended the reservation of seats for SC/STs and nomination of

- Anglo-Indians for a further period of 10 years (up to 1980).
14. The **Twenty-sixth Amendment**, 1971, abolished the titles and special privileges of former rulers of princely states.
 15. The **Twenty-seventh Amendment**, 1971, provided for the establishment of the states of Manipur and Tripura and the formation of the UTs of Mizoram and Arunachal Pradesh.
 16. The **Thirty-first Amendment**, 1973, increased the elective strength of the Lok Sabha from 525 to 545. The upper limit of representatives of a state went up from 500 to 525.
 17. The **Thirty-sixth Amendment**, 1975, made Sikkim a state of the Indian Union.
 18. The **Thirty-eighth Amendment**, 1975, provided that the President can make a declaration of emergency, and the promulgation of ordinances by the President, Governors and administrative heads of UTs would be final and could not be challenged in any court. It also authorised the President to declare different kinds of emergencies at the same time.
 19. The **Thirty-ninth Amendment**, 1975, decreed that the election of a person holding the office of the Prime Minister or Speaker and the election of the President and Vice-President cannot be challenged in any court.
 20. The **Forty-second Amendment**, 1976, provided supremacy to the Parliament and gave primacy to the Directive Principles over the Fundamental Rights. It also added 10 Fundamental Duties in the Constitution. The Preamble of the Constitution was also altered from 'Sovereign Democratic Republic' to read 'Sovereign Socialist Secular Democratic Republic' and 'Unity of the Nation' to read 'Unity and Integrity of the Nation'.
 21. The **Forty-fourth Amendment**, 1978, restored the normal duration of the Lok Sabha and Legislative Assemblies to 5 years. The right to property was deleted from Part III. It also limited the power of the government to proclaim internal emergency and corrected some distortions that had crept into the Constitution during the emergency.
 22. The **Forty-fifth Amendment**, 1980, extended reservation for SC/ST by an additional 10 years (up to 1990).
 23. The **Fifty-second Amendment**, 1985, inserted the Tenth Schedule in the Constitution regarding provisions for disqualification on the grounds of defection.
 24. The **Fifty-fourth Amendment**, 1986, enhanced salaries of judges of the Supreme Court and High Courts (after 34 years of Independence) and fixed the salaries as: Chief Justice of Supreme Court, ₹ 10,000; other judges of Supreme Court, ₹ 9,000; Chief Justice of High Court, ₹ 9,000 and other judges of High Court, ₹ 8,000.
 25. The **Fifty-fifth Amendment**, 1986, conferred statehood on Arunachal Pradesh.
 26. The **Fifty-sixth Amendment**, 1987, the Hindi version of the Constitution of India was accepted for all purposes and statehood was conferred on the UT of Goa.
 27. The **Fifty-eighth Amendment**, 1987, provided reservation of seats in Legislatures for the four north-eastern states of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland.
 28. The **Fifty-ninth Amendment**, 1988, gave Emergency powers to the centre to deal with the problem of Punjab and extended Presidential rule in Punjab further by 2 years. The bill was strongly opposed by all opposition parties but ultimately received the President's assent and emergency was imposed in Punjab.
 29. The **Sixty-first Amendment**, 1989, reduced the voting age from 21 years to 18 years for the Lok Sabha as well as the Assemblies.
 30. The **Sixty-second Amendment**, 1989, was carried out in December 1989 to extend the reservation of seats for SC/ST up to AD 2000.
 31. The **Sixty-third Amendment**, 1990, carried out in 1990, repealed the 59th Amendment, which empowered the government to impose Emergency in Punjab.
 32. The **Sixty-fourth Amendment**, 1990, extended President's rule in Punjab by 6 months, beyond 11 May 1990. Initially, this amendment was introduced as the 65th Amendment Bill but subsequently became the 64th Amendment.
 33. The **Sixty-seventh Amendment**, 1990 (Introduced as the 75th Amendment Bill) was carried out in October 1990 to extend President's rule in Punjab for a further period of 6 months, beyond 11 November 1990.
 34. The **Seventy-third Amendment**, 1992 (Panchayati Raj Bill) seeks to provide, among other things, Gram Sabha in villages, constitution of Panchayats at the village and other levels, direct elections to all seats in Panchayats and reservation of seats for SC and ST and fixing of tenure of 5 years for Panchayats.
 35. The **Seventy-fourth Amendment**, 1993, (Nagarpalika Bill) provides for, among other things, the constitution of three types of municipalities and the reservation of seats in every municipality for the SC/ST, women and the OBCs.
 36. The **Seventy-fifth Amendment**, 1994, provides for timely relief to rent litigants by providing for setting up of state-level Rent Tribunals in order to reduce tiers of appeals and to exclude the jurisdiction of all courts, except that of the Supreme Court, under Article 136 of the Constitution.
 37. The **Seventy-sixth Amendment**, 1994, introduced the Tamil Nadu State Reservation Act, providing for 69 per cent reservations of seats in educational institutions and reservation of appointments or posts in public services for the BCs, SC/STs, in the ninth Schedule and outside the judicial law.
 38. The **Seventy-seventh Amendment**, 1995, provides for continuing the existing policy of reservation in promotions for SC/STs. It also made changing of Article 16 of the Constitution mandatory by inserting a new Clause (4A).
 39. The **Seventy-eighth Amendment**, 1995, states the reference of the state governments of Bihar, Karnataka,

- Kerala, Orissa, Rajasthan, Tamil Nadu and West Bengal suggesting the inclusion of some of their Acts relating to land reforms in the Ninth Schedule. It provides for the inclusion of 27 land reforms in the Ninth Schedule, thus, taking the total tally of Acts in this Schedule to 284.
40. The *Seventy-ninth Amendment*, 1999, provides for the extension of reservations of seats for SC/STs and Anglo-Indians in the House of the People and in the State Legislative Assemblies for an additional 10 years.
 41. The *Eightieth Amendment*, 2000, provides for an alternative tax sharing scheme between the Union and state governments, as per recommendations of the 10th Finance Commission. Henceforth, 26 per cent of the total Union taxes and duties would be assigned to the state governments in lieu of their existing share in income tax, excise duties, special excise duties and grants in lieu of tax on railway passenger fares.
 42. The *Eighty-first Amendment*, 2000, states about the unfilled vacancies of a year, which were reserved for the SC/STs for that year (in accordance with any provision for reservation made Article 16), shall be considered as a separate class of vacancies to be filled up in any succeeding year or years, and such class of vacancies shall not be considered together with the vacancies of the year in which they were filled up for determining the ceiling of 50 per cent reservation against the total numbers of vacancies of that year.
 43. The *Eighty-second Amendment*, 2000, provides that nothing in Article 335 shall prevent the state from making any provision in favour of the SC/STs for relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in matters of promotion to any class or classes of services or posts in connection with affairs of the Union or of a state.
 44. The *Eighty-third Amendment*, 2000, amends the Article 234M of the Constitution to provide that no reservation in Panchayats need to be made in favour of the SCs in Arunachal Pradesh, which is wholly inhabited by tribal population.
 45. The *Eighty-fourth Amendment*, 2001, states the number of representatives in the Lok Sabha and State Assemblies were to freeze to current levels for the next 25 years (till 2026).
 46. The *Eighty-fifth Amendment*, 2002, amended Article 16(4A) of the Constitution to provide for consequential seniority in case of promotion (with retrospective effect from 17 June 1995) by virtue of the rule of reservation for government servants belonging to SC/STs.
 47. The *Eighty-sixth Amendment*, 2002, deals with the insertion of a new Article 21A after Article 21. The new Article 21A deals with Right to Education. 'The State shall provide free and compulsory education to all children from the age to 6 to 14 years in such a manner as the State may, by law, determine'.
 48. The *Eighty-ninth Amendment*, 2003, provides for the Amendment of Article 338. There shall be a National Commission for the SCs and a National Commission for STs. 'Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine'.
 49. The *Ninetieth Amendment*, 2003, provides for the Amendment of Article 332. In Article 332 of the constitution, in Clause (6), the following provision shall be inserted, namely: 'Provided that for elections to the Legislative Assembly of the State of Assam, the representation of the Scheduled Tribes and non-Scheduled Tribes in the constituencies included in the Bodoland Territorial Areas District, soon notified, and existing prior to the constitution of the Bodoland Territorial Areas District, shall be maintained'.
 50. The *Ninety-first Amendment*, 2003, provides for the Amendment of Article 75. The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15 per cent of the total number of members of the House of the People. A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under Clause (1) 'for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier'.
 51. The *Ninety-second Amendment*, 2003, provides for the Amendment of the Eighth Schedule. In the Eighth Schedule to the Constitution, (a) existing entry 3 shall be renumbered as entry 5, and before entry 5 as so renumbered, the following entries shall be inserted, namely: '3. Bodo. 4. Dogri.'; (b) existing entries 4 to 7 shall respectively be re-numbered as entries 6 to 9; (c) existing entry 8 shall be re-numbered as entry 11 and before entry 11 as so renumbered, the following entry shall be inserted, namely: '10. Maithili'; (d) existing entries 9 to 14 shall respectively be re-numbered as entries 12 to 17; (e) existing entry 15 shall be renumbered as entry 19 and before entry 19 as so re-numbered, the following entry shall be inserted, namely: '18. Santhali'; (f) existing entries 16 to 18 shall respectively be re-numbered as entries 20 to 22.
 52. The *Ninety-third Amendment*, 2005 (came into effect on 20 January 2006), provided for special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the SC/STs in so far as such special provisions relate to their admission to educational institutions including private educational institutions.
 53. The *Ninety-fourth Amendment*, 2006, provides for the exclusion of Bihar from the proviso to Clause (1) of